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Whither Workforce Housing?

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WHITHER WORKFORCE HOUSING?

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ABSTRACT

The last forty years have marked a dynamic era in affordable housing. During this time, affordable housing shifted from being largely government-owned to privately-owned, though certainly supported by government efforts. This evolution thus marked a distinct switch from a supply-side approach to a demand-side approach to affordable housing. As states and localities adapted to this paradigm shift, some high-priced metropolitan regions discovered that their housing markets were squeezing out middle-income service workers, such as police officers and teachers. In response, many localities—and some states—adopted various laws and policies to spur the creation of workforce housing: that is, moderately-priced housing that is affordable and desirable for these middle-income workers. These types of efforts seemed—and, indeed, were—necessary for these metropolitan areas when the housing market was at its peak in the mid-2000s. However, with the Great Recession came a bursting of the housing bubble, and home prices dropped dramatically all around the country. With the correction in the housing market, the continued need for workforce housing programs is less clear. In the context of the changes in affordable housing, this article seeks to analyze workforce housing's place in the affordable housing landscape and explore the need for workforce housing in the future.

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INTRODUCTION

The last forty years have seen a dramatic evolution in affordable housing efforts on the local, state, and federal levels. Many early affordable housing efforts began as public efforts—that is, government entities built, owned, and managed public housing buildings for low-income individuals.[1] As these forms of public housing became too expensive for governments, affordable housing initiatives turned to the private sector.[2] These efforts consisted largely of governments releasing their control over affordable housing by lessening restrictions that prohibited or hindered private sector involvement. In this regard, governments attempted to incentivize private sector construction and maintenance of affordable housing.[3] This evolution marked a philosophical shift from a supply-side

1. *See* Peter W. Salsich, Jr., *Toward a Policy of Heterogeneity: Overcoming a Long History of Socioeconomic Segregation in Housing*, 42 WAKE FOREST L. REV. 459, 476 (2007) [hereinafter Salsich, Jr., *Toward a Policy*].

2. *See generally* Harold A. McDougall, *Affordable Housing for the 1990's*, 20 U. MICH. J.L. REFORM 727, 748–50 (1987).

3. *See* John Emmeus Davis, *Introduction* to THE AFFORDABLE CITY 1, 20 (John Emmeus Davis ed., 1994).

approach to affordable housing to a demand-side approach as governments went from directly providing affordable housing to giving low-income families and individuals vouchers, certificates, or other subsidies to increase their buying (or renting) power, thus allowing them to participate in the affordable housing market.[4]

As the various types of affordable housing programs took root, some expensive metropolitan areas found themselves struggling with housing for middle-income workers: police officers, firefighters, teachers, health care workers, retail clerks, and the like. These workers could not afford to purchase or rent homes close to their jobs and thus had to travel long distances to work, which took an economic and emotional toll on their families and their lives. These major metropolitan areas saw the problems caused by such circumstances and attempted to create workforce housing for these middle-income workers.[5] In response, some states and many local governments[6] adopted workforce housing initiatives through inclusionary zoning laws, a reduction in regulatory barriers, the creation of housing trust funds, the provision of "gap funding" measures, and incentives for employer-assisted housing initiatives.[7]

Due to the Great Recession[8], the real estate market has adjusted from its staggering prices in the mid-2000s. Accordingly, the question arises as to whether workforce housing programs are still needed and, in any event, whether they should be prioritized in an era of reduced government budgets. This Article seeks to analyze the evolution of affordable housing over the past forty years and situate workforce housing within this framework. In the process, this Article seeks to

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4. *See generally* McDougall, *supra* note 2, at 752–54.

5. The term "workforce housing" can be a bit misleading. It appears, at first glance, to refer to housing efforts tied to individuals working in a particular type of occupation. However, the term relates to housing that is affordable to those people with low-middle income employment. These individuals tend to work in many of the service industry occupations listed above, but the term itself encompasses any and all occupations whose wages place that individual in this low-middle income category. For definitions of workforce housing, see *infra* notes 75–77 and accompanying text.

6. In this Article, I use the term local governments, cities, and localities interchangeably to refer to local government entities that have land use powers related to affordable and workforce housing.

7. *See infra* text accompanying notes 62–125 and accompanying text.

8. For the purposes of this article, the term "Great Recession" will refer to the significant economic downturn that affected the United States and global economies beginning in 2007. *See generally*, Catherine Rampell, *"Great Recession": A Brief Etymology*, N.Y. TIMES, Mar. 11, 2009, http://economix.blogs.nytimes.com/2009/03/11/great-recession-a-brief-etymology.

determine the continued relevance and importance of workforce housing initiatives to a region's overall housing approach.

Part II of this Article provides an overview of the significant changes in affordable housing over the past forty years. Part III situates workforce housing within the affordable housing landscape and details the various approaches to spurring more development of homes for middle-income workers. Finally, Part IV offers some concluding thoughts related to the question of whether workforce housing continues to be needed after the recent correction in the housing market.

I. AFFORDABLE HOUSING: A FORTY-YEAR RETROSPECTIVE

A. Public Housing: The Supply Side Approach

Beginning in the 1930s when the federal government became more heavily involved in affordable housing matters, and into the 1970s, affordable housing measures were largely public endeavors.[9] The federal government enacted legislation enabling local governments to build and own public housing for low-income individuals.[10] Those local governments interested in participating would create public housing authorities to build, own, and maintain public housing for low-income families and individuals.[11] Government efforts in affordable housing thus constituted a supply side approach: that is, governments sought to build, maintain, and rehabilitate affordable housing units in an attempt to affect the available supply of housing, particularly for low-income individuals and families.[12] However, this model was marked by two significant, interrelated problems. First, because such programs were funded through taxpayer dollars—whether at the federal, state, or local level—the public housing authorities were unable to create enough public housing to meet the needs of the low-income populations in their jurisdiction.[13] Second, the expense of continuing to build and maintain public housing became a drain on public resources, making the model financially

9. *See* Salsich, Jr., *Toward a Policy*, *supra* note 1, at 476–78.

10. *See* Janet L. Smith, *Public Housing Transformation: Evolving National Policy*, *in* WHERE ARE POOR PEOPLE TO LIVE?: TRANSFORMING PUBLIC HOUSING COMMUNITIES 19, 22–23 (Larry Bennett et al. eds., 2006).

11. *See id.* at 22.

12. *See* EDWARD L. GLAESER & JOSEPH GYOURKO, RETHINKING FEDERAL HOUSING POLICY: HOW TO MAKE HOUSING PLENTIFUL AND AFFORDABLE 102–03 (2008).

13. *See* Smith, *supra* note 10, at 24.

unsustainable.[14] Due to these and other problems, governments have moved away from the public, supply side approach to affordable housing and more to privatization and a demand side approach.[15]

B. Privatization: The Demand Side Approach

This privatization movement was driven, in part, by several assumptions: that the public sector was the reason for the dearth of affordable housing; that the private sector could better produce affordable housing, particularly if government regulation was minimized or eliminated; and that it would be more advantageous for the poor if they could purchase their dwelling units rather than merely rent them, as was the case with public housing.[16] Accordingly, privatization saw a de-emphasis of public housing authorities and a lessening of regulations that had, up until the 1970s, prohibited or hindered private sector involvement in affordable housing efforts.[17] As described further below, all levels of government sought to break down these barriers and spur the private construction and maintenance of affordable housing.[18] This change led to more private sector construction and ownership of affordable housing, as well as more home ownership by low-income families and individuals.[19] Such a shift evinced a movement away from the supply-side approach to affordable housing and toward a demand-side philosophy.[20] As noted further below, these changes manifested themselves in programs designed to increase the buying and renting power of low-income individuals and families through vouchers, certificates, and other forms of subsidies.[21]

There may be no one true event or policy decision that marked the shift from the supply side approach to the demand side approach to affordable housing. However, President Nixon's implementation of a moratorium on housing and community development assistance in 1973 may have been as significant as any event in signaling such a

14. *See* McDougall, *supra* note 2, at 756–57. To be sure, there were other mitigating factors to explain why this model was ultimately abandoned, but the financial pressures seem to have been significant driving forces to the paradigm shift that ensued.

15. *See* Davis, *supra* note 3, at 20.

16. *See id.*

17. *See id.*

18. *See infra* text accompanying notes 22–74.

19. *See* Davis, *supra* note 3, at 20–21.

20. *See* McDougall, *supra* note 2, at 752.

21. *See id.*

change.[22] The moratorium was not met with much resistance because various stakeholders in the affordable housing sector believed that governmental efforts up until that point had been largely ineffective.[23] During this temporary moratorium, President Nixon convened a task force to analyze affordable housing efforts and propose a new program aimed at bolstering the affordable housing sector.[24] This deliberative process led to the federal government's adoption of the Housing and Community Development Act of 1974 (HCDA).[25] The HCDA launched two significant initiatives—the Section 8 program and the Community Development Block Grant program—that led to the effective end to governments building public housing and a rise in private sector affordable housing efforts.[26]

1. Section 8

The Section 8 program had two facets: (1) project-based assistance to help fund new construction and substantial rehabilitation efforts, as well as Loan Management Set-Asides (LMSA) and (2) tenant-based assistance through certificates.[27] Approximately 850,000 affordable housing projects were funded through the project-based assistance of the Section 8 program from the 1970s through the early 1980s.[28] However, Congress revoked the statutory authority for such project-

22. *See* Charles L. Edson, *Affordable Housing—An Intimate History*, *in* THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 1, 9 (Tim Ilgesias & Rochelle E. Lento eds., 2d ed. 2011).

23. *See* George Sternlieb & David Listokin, *A Review of National Housing Policy*, *in* HOUSING AMERICA'S POOR 14, 30 (Peter D. Salins ed., 1987).

24. *See id.*

25. *See* Shelby D. Green, *Imagining a Right to Housing, Lying in the Interstices*, 19 GEO. J. ON POVERTY L. & POL'Y 393, 420 (2012). Congress's passage of the HCDA was influenced by both the general concern regarding federal housing approaches and their funding issues, as well as various scandals in various communities that demonstrated the problems facing the current federal programs. *See* Smith, *supra* note 10, at 29.

26. *See* Smith, *supra* note 10, at 29–30. Prior to the HCDA, there had been an experimental housing program that served as a precursor to the Section 8 program: the Section 23 program. The Section 23 program provided low-income tenants with funds to rent housing units in the private sector, rather than in public housing. *See* Edson, *supra* note 22, at 9.

27. *See* Edson, *supra* note 22, at 9; *Section 8 Program Background Information*, U.S. DEP'T HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rfp/s8bkinfo (last visited Oct. 14, 2013) (defining "project-based" programs as those where a "subsidy is committed by HUD for the assisted units of a particular Mortgaged Property for a contractually determined period").

28. *See* Edson, *supra* note 22, at 10.

based assistance in 1983, and the program officially ended in 1985.[29] Similarly, the LMSA—which "provide[d] financial assistance in the form of rental subsidies to multifamily properties subject to FHA insured mortgage loans which are in immediate or potential financial difficulty"—has been effectively discontinued, as Congress has not appropriated funds to the program in recent years.[30]

The most well-known, and lasting, aspect of Section 8 is the certificate or voucher program. This program provides tenants with financial assistance that allows them to rent affordable housing units on the private housing market.[31] To do so, the owner of the private housing unit must enter into a housing assistant payment (HAP) with the government agency that administers the Section 8 program in the area.[32] Through the HAP, the owner of the rental unit agrees to receive a certain amount of rent based on the U.S. Department of Housing and Urban Development's (HUD) fair market rent determination for that particular area.[33] The eligible low-income tenant takes the Section 8 certificate from the same local government agency and leases the unit from the owner who has entered into the HAP.[34] Through this arrangement, the tenant agrees to pay up to thirty percent of his or her income as rent, with the difference being covered by the Section 8 certificate.[35] In this regard, the Section 8 certificate program represents a significant shift to the demand side

29. *See id.;* THE NAT'L LOW INCOME HOUSING PRESERVATION COMM'N, PREVENTING THE DISAPPEARANCE OF LOW-INCOME HOUSING 20 (1988). The Housing and Urban-Renewal Recovery Act of 1968 effected this revocation. Much like federal affordable housing programs before it, the project-based assistance approach was eliminated because it was quite expensive, particularly compared to merely providing certificates or other subsidies to low-income tenants or owners of affordable housing. *See* James E. Wallace, *Financing Affordable Housing in the United States*, 6 HOUSING POL'Y DEBATE 785, 792–93 (1995).

30. *Section 8 Program Background Information*, *supra* note 27.

31. *See* Zachary Bray, *The New Progressive Property and the Low-Income Housing Conflict*, 2012 B.Y.U. L. REV. 1109, 1129.

32. *See generally* Meghan P. Carter, *How Evictions from Subsidized Housing Routinely Violate the Rights of Persons with Mental Illness*, 5 NW. J. L. & SOC. POL'Y 118, 130 (2010). Most likely, the relevant administrative agency will be the locality's public housing authority. *See* Edson, *supra* note 22, at 17.

33. *See* J. William Callison, *Achieving Our Country: Geographic Desegregation and the Low-Income Housing Tax Credit*, 19 S. CAL. REV. L. & SOC. JUST. 101, 127 (2010).

34. *See* Edson, *supra* note 22, at 17–18.

35. *See* Tamica H. Daniel, Note, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Fair Housing Act*, 98 GEO. L.J. 769, 772 (2010).

approach to affordable housing, as it allows low-income tenants to rent units on the private housing market.

2. Community Development Block Grants (CDBG)

The HCDA also ushered in the CDBG program, which provides another avenue of funding for affordable housing. The CDBG program consolidated many federal grant programs into this one block-grant program.[36] These block grants seek to empower local governments to determine how best to use such monies for their housing and community development efforts.[37] Given this interest in greater flexibility and local autonomy, the CDBG block grants are rather broad in nature. In fact, the funds can be used for a variety of complementary purposes, not merely affordable housing.[38] However, a community must demonstrate that the funds will be used for particular objectives, such as development that benefits low- and moderate-income families or individuals, preventing or eliminating slums or blighted areas, and meeting a community's most urgent needs.[39] Finally, in allocating funding, the CDBG program uses a formula that differentiates between "entitlement" and "non-entitlement" communities based on whether the community is in a metropolitan city or urban county.[40] Through the use of CDBG funds, many local communities have helped create more private market affordable housing.

C. Expansion of Demand Side Affordable Housing Efforts

After the HCDA, Congress passed other legislation that sought to build upon the change in affordable housing policy. For example, Congress passed the Community Reinvestment Act (CRA) as a response to communities engaging in redlining, banks refusing to

36. *See* Joseph P. Viteritti & Gerald J. Russello, *Communities and American Federalism: Images Romantic and Real*, 4 VA. J. SOC. POL'Y & L. 683, 740 n.303 (1997).

37. *See* Smith, *supra* note 10, at 30.

38. *See* Rochelle E. Lento & Danielle Graceffa, *Federal Sources of Financing*, *in* THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 249, 269 (Tim Ilgesias & Rochelle E. Lento eds., 2d ed. 2011).

39. *See* 42 U.S.C. § 5301(c)(1)–(9) (2006). At least seventy percent of CDBG funds have been used since 1992 to for the principal benefit of low- and moderate-income families and individuals. *See* Lento & Graceffa, *supra* note 38, at 269.

40. *See* Robert G. Schwemm, *Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act's "Affirmative Further" Mandate*, 100 KY. L.J. 125, 148 (2012).

make loans in certain communities or to certain individuals, and banks only making loans with atypical terms that were more onerous and costly than standard market terms.[41] The CRA provides that banks must meet all of the banking needs of the community in which they are located or face sanctions.[42] In this regard, the CRA advances affordable housing efforts by ensuring that banks invest in affordable housing projects.[43] Another example is the Urban Development Action Grants program of 1977, which was modeled after the CDBG program.[44] Discontinued in 1989, this program provided grants to fund local urban and economic development projects in economically distressed communities.[45]

While it is outside of the scope of this Article to detail all of the major federal affordable housing initiatives, a few others are worth mentioning as illustrations of how affordable housing efforts transformed since the early 1970s. The Housing and Urban-Rural Recovery Act of 1983 (HURRA)[46] continued to expand on programs like Section 8 and the Urban Development Action Grant program (UDAGP).[47] For example, HURRA instituted a complementary voucher program to the Section 8 certificate program. This voucher program allowed tenants to pay more than thirty percent of their income to rent—the cap for Section 8 certificates—and thus for owners to receive more than the HUD-designated standard payment.[48] This approach thus broadened the potential rental market for those with vouchers. The voucher program and the Section 8 certificate program were consolidated in 1998 through the Quality

41. *See* Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J. 483, 535 (2013).

42. *See generally* McDougall, *supra* note 2, at 771.

43. *See* Maeve Elise Brown, *Federal Regulation of Financing for Affordable Housing*, *in* THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 219, 223–27 (Tim Ilgesias & Rochelle E. Lento eds., 2d ed. 2011). However, as one scholar notes, community activism plays a large role in whether banks provide such funding. *See id.*

44. *See* Kenneth W. Ellison, *The Urban Development Action Grant Program: Using Federal Funds to Leverage Private Investment in Distressed Communities*, 11 URB. LAW. 424, 424 (1979).

45. *See id.* at 424–25; *see also* Mary K. Nenno, *Changes and Challenges in Affordable Housing*, *in* AFFORDABLE HOUSING AND URBAN REDEVELOPMENT IN THE UNITED STATES 1, 5 (William Van Vliet ed., 1997).

46. *See* Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181, 97 Stat. 1159-1240 (codified as amended at 12 U.S.C. § 1701 (2006)).

47. The Urban Development Action Grant program was created as part of the Housing and Community Development Act of 1977. 42 U.S.C. § 5318 (2006).

48. *See* Edson, *supra* note 22, at 18.

Housing and Work Responsibility Act.[49] HURRA also provided Housing Action Grants to local and state governments to help fund new affordable housing construction and to rehabilitate multifamily residential housing.[50]

The Low-Income Housing Tax Credit (LIHTC)[51] also represents a significant landmark in the construction of new affordable housing units and the rehabilitation and maintenance of existing affordable housing units. Congress recognized that affordable housing units were not large revenue-generators for private owners and developers and that the costs of maintaining affordable units might cannibalize rents received.[52] Congress thus created this tax credit to provide an incentive for private developers to build more affordable housing. The federal government provides states with a certain number of tax credits based on their respective populations and then states allocate these credits among developers through a competitive application process.[53] The developers then sell these tax credits to investors to help raise money to fund their affordable housing projects.[54] As one scholar notes, while the LIHTC program started slow, it has achieved considerable success in the affordable housing realm.[55]

Finally, two other federal government programs sought to build on the success of some of the programs detailed above to further expand affordable housing opportunities for low-income families and individuals: the Home Ownership Made Easy (HOME) and the Homeownership and Opportunity for People Everywhere (HOPE) program.[56] The HOME program had its origins in the CDBG program.[57] While some CDBG funding could be used for affordable housing, Congress—through the HOME program—sought to bolster the construction of new affordable housing units through block grants made exclusively for housing construction.[58] Through the HOME program, the federal government gives HOME funds to states and local governments for housing development, with a promise from

49. *See id.*
50. *See* McDougall, *supra* note 2, at 766.
51. I.R.C. § 42 (2006).
52. *See generally* Salsich, Jr., *Toward a Policy, supra* note 1, at 484.
53. *See* Lento & Graceffa, *supra* note 38, at 252.
54. *See id.* The investors, in turn, can use these tax credits on their tax returns to offset taxes that they would otherwise owe on their income and investments. *See id.*
55. *See* Salsich, Jr., *Toward a Policy*, *supra* note 1, at 485.
56. *See generally* 42 U.S.C. § 1437v (2006).
57. *See* Edson, *supra* note 22, at 10–11.
58. *See id.* at 11.

those receiving such funds that at least fifteen percent of the grant will be given to Community Housing Development Organizations.[59] The HOPE program provides funding to demolish existing affordable housing developments that are in poor condition—usually public housing that had been built in the 1970s or before—and replace them with new affordable housing units.[60] While the HOPE program has experienced a good deal of success and remains in existence today, its funding has decreased in recent years—thus limiting its impact.[61] As these various programs demonstrate, the shift in affordable housing policy that began in 1974 with the HCDA led to a proliferation of various market-driven approaches to spurring more affordable housing development and to support low-income tenants and owners in gaining access to such housing.

D. State and Local Government Efforts

During this same period of time, state and local governments were also expanding their affordable housing policies. The 1970s saw a proliferation of community development corporations (CDCs) on the local level. CDCs were created by local governments "to fight the war against poverty and gain community control."[62] Approximately one hundred CDCs received funding during the 1970s, enabling them to take part in various community development activities that oftentimes included affordable housing.[63] Federal funding waned during the 1980s, though CDCs continued to make significant contributions in the affordable housing realm despite this reduction in federal monies.[64]

State and local governments also developed other approaches to providing more affordable housing within their jurisdictions with

59. *See id.* at 11.

60. Yan Zhang & Gretchen Weismann, *Public Housing's Cinderella: Policy Dynamics of HOPE VI in the Mid-1990s*, *in* WHERE ARE POOR PEOPLE TO LIVE? TRANSFORMING PUBLIC HOUSING COMMUNITIES 41, 48–51 (Larry Bennett et al. eds., 2006). Many of the developments that were demolished were high-density, high-rise public housing buildings. They were replaced by lower-density developments. *See* Edson, *supra* note 22, at 6.

61. *See* P.K. Casey & A.M. McClain, *Mixed-Finance Development of Public Housing*, *in* THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 339, 342 (Tim Ilgesias & Rochelle E. Lento eds., 2d ed. 2011).

62. Peter Dreier & J. David Hulchanski, *Social Housing: U.S. Prospect, Canadian Reality*, *in* THE AFFORDABLE CITY 39, 51 (John Emmeus Davis ed., 1994) (internal quotation marks omitted).

63. *See id.*

64. *See id.* at 52.

various policy tools such as inclusionary zoning, impact fees, community benefit agreements, and rent control, among others. Many local governments adopted inclusionary zoning ordinances to ensure the continued building of affordable housing within their boundaries. There are two types of inclusionary zoning approaches: set-aside programs and density bonuses to developers.[65] Set-aside programs require developers to allocate a certain number of units within the development for low-income individuals and families.[66] Density bonuses tend to be voluntary instead of mandatory—by providing an incentive for developing some units as affordable housing—and offer developers increased development densities for their residential projects in exchange for a certain percentage of units being affordable to low-income tenants or owners.[67] Some local governments use both inclusionary zoning approaches, as they are not mutually exclusive.[68]

Many states and cities impose impact fees as an avenue for creating more affordable housing.[69] The theory behind such impact fees is to offset problems that a particular development causes: for affordable housing, the problem is usually the removal of a potential site to develop affordable housing and/or create a larger need for affordable housing.[70] Some cities take a slightly different approach by providing incentives to developers who include affordable housing units in their developments. They do so by exempting those developers from other "land-use regulations, including open space regulations, development impact fees, and environmental review."[71] Community benefit agreements (CBAs) are also popular tools used by local communities

65. *See* Peter Salsich, Jr., *State and Local Regulation Promoting Affordable Housing*, *in* THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 81, 99 (Tim Iglesias & Rochelle E. Lento eds., 2d ed. 2011) [hereinafter Salsich, Jr., *State and Local Regulation*].

66. *See id.* at 99. Such ordinances will oftentimes set a threshold level—based on the number of units in the development—for when these inclusionary requirements are triggered, as well as what socio-economic level will be judged as qualifying for these affordable units. While these ordinances can be voluntary—where a developer receives variances and the like for setting aside a certain number of units for affordable housing—many of them are mandatory. *See id.*

67. *See id.* at 100–01.

68. *See id.* at 101.

69. *See* James A. Kushner, *Affordable Housing as Infrastructure in the Time of Global Warming*, 42/43 URB. LAW. 179, 196–97 (2010).

70. *See* James Berger, Note, *Conscripting Private Resources to Meet Urban Needs: the Statutory and Constitutional Validity of Affordable Housing Impact Fees in New York*, 20 FORDHAM URB. L.J. 911, 935 (1993).

71. *See* Salsich, Jr., *State and Local Regulation*, *supra* note 65, at 97.

to spur affordable housing development.[72] Unlike traditional development agreements, CBAs do not have local governments as a party to the agreement; rather, the developer negotiates with community stakeholders regarding benefits it will deliver in the community—including affordable housing—in exchange for community support in the land use entitlement process.[73] Finally, a limited number of states and cities use rent control or rent stabilization ordinances to aid low-income tenants. Such laws regulate how much a landlord may charge a tenant for rent and limit the landlord's ability to refuse to renew a tenant's lease—thus allowing low-income tenants to keep their rent low for as long as they live in the unit.[74]

II. WORKFORCE HOUSING

It is within this affordable housing landscape that workforce housing was born. While the term is somewhat fluid in nature, a working definition for "workforce housing" is that it is housing that fits the budget of the median-income household in a community.[75] In other words, the term describes housing that is affordable to working families and individuals who do not qualify for housing subsidies.[76] The Urban Land Institute defines workforce housing as "housing for households making between 60 and 120 [percent] of [the] AMI [Area Median Income]."[77] In the late 1990s and early 2000s, the lack of affordable housing for middle-income workers in some major metropolitan areas became acute.[78] Simply put, middle-income workers like police officers, firefighters, teachers, health care workers, retail clerks, and others could not afford to buy or rent

72. *See* Stephen R. Miller, *Legal Neighborhoods*, 37 HARV. ENVTL. L. REV. 105, 155–56 (2013) (describing the popularity of CBAs and the various policy issues, including affordable housing, that they may include).

73. *See* Salsich Jr., *State and Local Regulation*, *supra* note 65, at 115–16. While CBAs tend not to formally involve local governments, sometimes they can become part of the development agreement between the developer and the locality. *See id.* at 117.

74. *See id.* at 120–21.

75. *See* Tim Sullivan, *Putting the Force in Workforce Housing*, PLANNING, Nov. 2004, at 26, 26.

76. *See* John K. McIlwain, *Show Me the Money: A Proposed Federal Response to Urban Sprawl*, 11 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 26, 30 (2001).

77. RICHARD M. HAUGHEY, WORKFORCE HOUSING: BARRIERS, SOLUTIONS, AND MODEL PROGRAMS 4 (2002), *available at* http://www.tbrpc.org/resource_center/pdfs/housing/ULI_Workforce_Housing.pdf.

78. *See* Sullivan, *supra* note 75, at 26–27.

housing in the high-priced metropolitan regions in which they worked.[79] This was due, in part, to the failure of their wages to keep up with the rising costs of living in these various regions.[80] This situation was also spurred by the stagnation in the supply of housing affordable to these workers.[81]

In response, these middle-income workers moved to "the outer fringes of the metropolitan regions."[82] Housing in these areas was more affordable to these workers because land and the costs of construction were less expensive.[83] This migration contributed to many of the negative effects of urban sprawl, such as traffic, pollution, and less open space.[84] Such migration led to other problems as well. For example, as these middle-income workers moved to the outskirts of a region, many continued to keep their jobs located closer to the downtown area.[85] Therefore, in choosing to pursue housing that they could afford, these workers committed to longer commutes to work.[86] Moreover, the long commutes for these workers took significant tolls

79. *See generally* MAYA BRENNAN & LAURA WILLIAMS, CTR. FOR HOUS. POL., PAYCHECK TO PAYCHECK 2011: IS HOUSING AFFORDABLE FOR AMERICANS GETTING BACK TO WORK? (2011), *available at* http://www.nhc.org/media/documents/P2P_2011_Housing_Affordability_Analysis.pdf; John J. Delaney, *How We Got into a Workforce Housing Crisis: And Why Getting Out of It Will Not be Easy*, SM004 ALI-ABA 287 (2006).

80. *See* Keaton Norquist, Note, *Local Preferences in Affordable Housing: Special treatment for Those Who Live or Work in a Municipality?*, 36 B.C. ENVTL. AFF. L. REV. 207, 212 (2009).

81. *See generally* Robert E. Lang, *Is the United States Undersupplying Housing?*, 4 HOUSING FACTS & FINDINGS, no. 2, 2002, at 1, *available at* http://www.knowledgeplex.org/kp/text_document_summary/article/relfiles/hff_0402_complete.pdf (describing that though America's population has increased since the 1970s, the supply of affordable housing has yet to catch up).

82. *See* McIlwain, *supra* note 76, at 31.

83. *See id.* at 32.

84. *See* HAUGHEY, *supra* note 77, at 3.

85. *See e.g.,* Rubina Shaldjian, *Assessing the Validity of Linking Programs: A Case Study of Destin, Florida's Innovative Attainable Workforce Housing Program*, 24 J. LAND USE & ENVTL. L. 337, 339 (2009) (providing an example in the context of Destin, FL, where "workers either live in overcrowded conditions or put up with lengthy commutes").

86. *See* BARBARA J. LIPMAN ET AL., SOMETHING'S GOTTA GIVE: WORKING FAMILIES AND THE COST OF HOUSING 29 (2005), *available at* http://www.nhc.org/media/documents/somethings_gotta_give.pdf (describing that affordable housing is generally not available in the suburbs, which is where the jobs are, thus leaving individuals and families to choose between an increase in the cost of housing or an increase in the time of a commute). The cruel irony of this situation is that these middle-income workers tend to spend less money for transportation than other workers, thus putting themselves in the financially precarious situation of needing to spend more in this area by relocating to the periphery of the region. *See id.* at 25–27.

on them and their families—due to their extended absences from the longer commutes.[87] Employers, in turn, faced increasingly unhappy workforces.[88] Indeed, employers faced other related problems as well: many of the workers that relocated to the outskirts a region chose to find jobs closer to their new homes, making it difficult for employers to keep or attract qualified employees.[89] To address these growing problems, many cities (and some states[90]) began to develop workforce housing initiatives, such as inclusionary zoning laws; land trusts and housing trust funds; and grants, subsidized loans, and tax credits. There were also some private sector responses, including employer-assisted housing.[91]

A. Inclusionary Zoning

Many cities adopted inclusionary zoning ordinances—similar to those described above related to affordable housing—to spur more workforce housing in their communities. These laws can take the form of mandatory set-asides, where the developer is required to offer a certain percentage of the housing units at a purchase or rental price that is affordable to middle-income families or individuals.[92] Such ordinances usually require that ten to fifteen percent of a development's units qualify as workforce housing.[93] Other inclusionary zoning ordinances aimed at workforce housing offer density bonuses and other development incentives in exchange for

87. *See* Carol A. Bell, *Workforce Housing: The New Economic Imperative?*, 4 HOUSING FACTS & FINDINGS, no. 2, 2002, at 3, *available at* http://www.knowledgeplex.org/kp/text_document_summary/article/relfiles/hff_0402_complete.pdf.

88. *See id.*

89. *See id.*

90. *See, e.g.*, N.H. REV. STAT. ANN. § 674.59(I) (LexisNexis 2013) (providing that "every municipality [in New Hampshire] that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing"); N.M. STAT. ANN. § 5-15-2(A)–(B) (Matthew Bender & Co., LEXIS through First Sess. of Fifty-First Legis.) (creating a tax increment development program that enables the State of New Mexico to finance workforce housing initiatives).

91. *See* Stephanie A. Jennings, *Reinventing the Company Town: Employer-Assisted Housing in the 21st Century*, 2 HOUSING FACTS & FINDINGS, no. 2, 2000, at 6.

92. *See* Michael Kroopnick, *Affording Baltimore: Public-Private Approaches to Workforce Housing*, 40 URB. LAW. 331, 354–55 (2008).

93. *See* Joseph A. Dane, *Maui's Residential Workforce Housing Policy: Finding the Boundaries of Inclusionary Zoning*, 30 U. HAW. L. REV. 447, 455–56 (2008).

voluntary set-asides of units at the workforce housing price-point.[94] Some cities' inclusionary zoning laws require developers to pay linkage fees—mandatory contributions to public funds set up to help produce more workforce housing—while others require developers to provide the city with land to build more workforce housing.[95] These efforts and other inclusionary zoning ordinances aim to use a municipality's land use powers to help spur more workforce housing within its jurisdiction.

B. Land Trusts and Housing Trust Funds

Many states and cities have created housing trust funds and land trusts in an effort to support workforce housing efforts.[96] Housing trust funds are dedicated funding sources that provide financing for partnerships between governmental entities and private developers to build more workforce (or other affordable) housing.[97] Many cities and states fund their housing trust funds through real estate recording or transfer fees.[98] In addition to providing funds to help spur the building of more workforce housing, housing trust funds also provide funding for down-payments and rental assistance for those seeking such housing.[99] In Maryland, for example, the state created a workforce housing fund to provide funds for its Workforce Housing Grant Program.[100] Through this fund and program, the state provides funding for the development of workforce housing.[101]

Other cities and states have created land trusts as part of their workforce housing strategy; in fact, more than 200 communities have

94. *See* Peter Salsich et al., *Affordable Workforce Housing—An Agenda for the Show Me State: A Report from an Interactive Forum on Housing Issues in Missouri*, 27 ST. LOUIS U. PUB. L. REV. 45, 62 (2007) [hereinafter Salsich, Jr., *Affordable Workforce Housing*]. Some scholars have noted that the voluntary set-aside approach has not been as effective as the inclusionary zoning ordinances with mandatory set-aside requirements. *See* Kroopnick, *supra* note 92, at 351–52.

95. *See* David L. Callies, *Mandatory Set-Asides as Land Development Conditions*, 42/43 URB. LAW. 307, 321 (2011); Shaldjian, *supra* note 85, at 343–45.

96. *See* Salsich, Jr., *Affordable Workforce Housing*, *supra* note 94, at 49.

97. *See* Kristin Larsen, *Florida's Housing Trust Fund—Addressing the State's Affordable Housing Needs*, 19 J. LAND USE & ENVTL. L. 525, 529 (2004).

98. *See* Salsich, Jr., *Affordable Workforce Housing*, *supra* note 94, at 56.

99. *See* Kristin Larsen, *Housing Opportunities in Florida: The State Housing Trust Fund*, 23 J. LAND USE & ENVTL. L. 161, 170–71 (2007).

100. *See* MD CODE ANN., HOUS. & CMTY. DEV. § 4-506 (Matthew Bender & Co., LEXIS through 2013 Gen. Assemb. Reg. Sess.).

101. *See id.* at § 4-506(d). The state devotes money to the program through its general budget, and the fund also grows through interest earned on existing monies in the fund. *See id.*

land trusts.[102] Land trusts were created to design a legal system where an owner would own the building or improvement on the land, but where the land would be owned by a nonprofit organization and leased to the owner of the building or improvement.[103] This model thus seeks to reduce the cost of living in a particular area by resting ownership of the land—and with it a substantial expense in real property transactions—with a nonprofit organization whose purpose is to help make housing more affordable to lower- and middle-income families and individuals.[104] In Washington, D.C., land trusts have been formed to help provide affordable workforce housing.[105] The relevant enabling statutes created community land trusts to be "run by public, nonprofit, or other community-based entities whose mission would be to acquire land and hold it long-term while providing long-term leases to developers of housing for both rental and for-sale units."[106] In doing so, Washington, D.C., has helped create permanent affordable and workforce housing that would likely be otherwise unavailable or unaffordable to lower- and middle-income renters and buyers.[107]

C. Incentives: Grants, Loans, and Tax Credits

Some states have promoted incentive grant programs to encourage the development of more workforce housing. For example, California's Jobs-Housing Balance Improvement Program targeted $100 million for incentive grants to cities and counties that increase workforce housing within their boundaries and to otherwise plan for an adequate supply of housing for all income levels in their communities.[108] Recognizing the housing deficit it faced—particularly for the working class—the state created this program "[t]o develop an incentive-based strategy to encourage the construction of housing in those areas of the state that over the last decade have experienced the greatest increase in job growth but have not kept pace with necessary

102. *See* Alese Bagdol, Note, *Property Taxes and Community Land Trusts: A Middle Ground*, 91 TEX. L. REV. 939, 940 (2013).
103. *See id.* at 939–40.
104. *See id.*
105. *See* D.C. CODE § 6-1061.02 (LexisNexis 2012).
106. D.C. CODE § 6-1061.01(d).
107. *See id.*
108. *See* CAL. HEALTH & SAFETY CODE § 50544(a) (West 2006). The State of Maryland also created a similar workforce housing program that provides a dollar-for-dollar matching fund to fund the development of workforce housing. *See* MD CODE ANN., HOUS. & CMTY. DEV. § 4-1804(a) (LexisNexis 2006).

housing."[109] At the same time, the state recognized the importance of local control and innovation and thus allowed the incentive grants to be used for any project or service that the city or county deemed to be in its community's best interest.[110] Some cities have offered different kinds of grant programs to assist middle-income purchasers in buying a home in their jurisdictions.[111] For example, the City of Baltimore—through its "Buying into Baltimore" and "Live Near Your Work" grant programs—provides grants to working-class homebuyers to help them afford closing costs and down payments.[112]

Other states provide subsidized loan programs to assist middle-income workers buy a home in more expensive metropolitan areas within their state. Through such loan programs, borrowers pay a reduced interest rate on their home mortgages because the sponsoring jurisdiction pays for the points charged by the banks.[113] The State of Maryland sponsors such a subsidized loan program for a variety of targeted groups, including first-time homebuyers with income less than $106,260 (for a family of three).[114] In some cases, the state may pay up to four mortgage points to reduce the mortgage interest rate, thereby significantly increasing the purchase power of those who qualify for such subsidized loans.[115]

Finally, some states provide tax credits for developers that build or preserve workforce housing. For example, the State of Connecticut has a tax credit program to provide incentives for businesses to donate money to workforce housing development programs.[116] In exchange for such monetary donations, these businesses receive tax credit vouchers.[117] The donations, in turn, fund "housing programs developed, sponsored or managed by a nonprofit corporation . . . which benefit low and moderate income persons or families . . . ."[118]

109. CAL. HEALTH & SAFETY CODE § 50542(a); *see also id.* § 50541(a)–(k).

110. *See id.* § 50544(a).

111. *See* Kroopnick, *supra* note 92, at 356–57.

112. *See id.*

113. *See id.* While the amount of points can range, one scholar noted that points are typically one percent of every $100,000 borrowed and that banks reduce interest rates by .0125% for every point paid. *See id.* at 356.

114. *See id.*

115. *See id.*

116. *See* CONN. GEN. STAT. § 8-395(c) (West 2013).

117. *See id.*

118. *See id; see also* 35 ILL. COMP. STAT. 11/10 (West 2013) (under the Illinois Business Efficiency Incentive Act, businesses can obtain tax credits if they seek to develop, among other things, affordable workforce housing).

D. Employer-Assisted Housing

Some private employers have realized the importance of workforce housing and have adopted programs to assist moderate- and low-income employees afford housing close to work.[119] These efforts are called employer assisted housing or EAH. The typical EAH program "provide[s] workers with home-buying assistance in the form of a grant or forgivable loan that can be used for the down payment or closing costs on a home purchase."[120] Some EAH programs also provide employees with money to supplement their monthly rental payments.[121] Some employers offer subsidized mortgages, provide mortgage guarantees, or offer mortgages themselves at below-market rates.[122] In providing these types of housing assistance programs for their employees, employers increase the likelihood of worker retention—for they do not need to move far away to afford housing—and employee satisfaction.[123] Employers may also enjoy attendant benefits as well, such as the revitalization of communities or neighborhoods close to the employer's place of business.[124] Given the success of some EAH programs, some city governments have created partnerships with employers to help support these efforts.[125]

CONCLUSION

The workforce housing crisis seemed to reach its peak during the mid-2000s when the real estate market—both residential and otherwise—had reached unprecedented heights. The housing bubble then burst, and there were dramatic adjustments in the residential real estate market.[126] For example, there were more than $1.2 million foreclosures filed in 2006—a 42% increase from the previous year—and more than $2.2 million foreclosures in 2007, a 75% increase over

119. *See* Jennings, *supra* note 91, at 6.
120. *See id.*
121. *See id.*
122. *See id.* at 8.
123. *See id.* at 6.
124. *See id.* at 10–12.
125. *See id.* at 10.
126. *See, e.g.*, Les Christie, *Real Estate Cools Down*, CNNMONEY (May 16, 2006, 5:10 PM), http://money.cnn.com/2006/05/15/real_estate/NAR_firstQ2005_home_prices/index.htm (noting that the median prices of homes in the United States decreased by 3.3% in the first quarter of 2006 compared to the fourth quarter of 2005).

2006.[127] In March 2007, the median sale price for new homes reached its peak at $262,600, but by the end of 2007, it had dropped to $227,700—a decline of 13.3%.[128] The Case-Shiller U.S. National Home Price Index, which uses the numerical value of 100 to represent home prices in 2000, went from 189.93 in June 2006 to 129.17 in 2009—a drop of almost 32% in value.[129]

This brief illustration of the collapse of the residential real estate market in the late 2000s raises the question of whether the workforce housing initiatives detailed above are still necessary. This question is intriguing. On the one hand, one could argue that the corrections in the residential real estate market have made housing far more affordable than it was during the mid-2000s. As prices dropped, in theory, expensive metropolitan housing markets should no longer be cost prohibitive to middle-income workers. On the other hand, there is ample evidence to suggest that these housing markets are still out of the reach of middle-income workers. For example, one study notes that while housing prices—and rental rates—have dropped in recent years, such a decrease did not necessarily correlate with middle-income workers being able to afford housing that was once out of their financial reach.[130] The study explains that because the price of housing remains volatile—while many markets decreased in price, others actually increased in price—and given the income realities of various groups of workers, "many workers cannot afford to live in the communities they serve."[131]

127. *See More Than 1.2 Million Foreclosure Filings Reports in 2006*, REALTYTRAC (Feb. 8, 2007), http://www.realtytrac.com/content/press-releases/more-than-12-million-foreclosure-filings-reported-in-2006-2234; *U.S. Foreclosure Activity Increases 75 Percent in 2007*, REALTYTRAC (Jan. 30, 2008), http://www.realtytrac.com/content/press-releases/us-foreclosure-activity-increases-75-percent-in-2007-3604.

128. *See* U.S. CENSUS BUREAU, MEDIAN AND AVERAGE SALES PRICES OF NEW HOMES SOLD IN UNITED STATES, *available at* http://www.census.gov/const/uspricemon.pdf; *see also* U.S. CENSUS BUREAU, NEW PRIVATELY OWNED HOUSING UNITS STARTED, *available at* http://www.census.gov/construction/nrc/pdf/startsan.pdf (noting that in 2005 there were 2.07 million new homes that were started compared to 1.36 million in 2007).

129. *See S&P/Case-Shiller 10-City Composite Home Price Index*, S&P DOW JONES INDICES, http://us.spindices.com/indices/real-estate/sp-case-shiller-10-city-composite-home-price-index (follow "national" hyperlink) (last visited Oct. 14, 2013). By March 2012, the index had slipped further to 124.04. *See id.* For more background information on the entire Case-Schiller index, follow the "methodology" tab on the website.

130. *See* BRENNAN & WILLIAMS, *supra* note 79, at 3–4.

131. *Id.* at 4.

Issues related to income and unemployment—which became exacerbated during the Great Recession—surely help contribute to this study's findings. In fact, in the latest twelve-month period, the average wages of American workers have declined by 1.1%, even when the American economy as a whole has been improving.[132] Another reason may be that the supply of housing in major metropolitan areas for middle-income workers has not kept up with demand.[133] These various factors related to the continuing inability of middle-income workers to afford to live close to where they work have begun to dovetail with a gradually improving residential real estate market. Indeed, since mid-2011, the number of foreclosures from the previous year has been declining.[134] Moreover, the number of new homes under construction increased from 428,700 in July 2011 to 605,300 in April 2013.[135] In addition, the National Association of Realtors reports that the national median home price is up 11.6% from February 2012 to February 2013.[136]

This context lends credence to the view that workforce housing will continue to be an issue for many major metropolitan areas, particularly if the housing market continues to improve while issues related to wage stagnation and unemployment persist. Even in an era of limited government dollars for various housing policies, it seems prudent that federal, state, and local governments continue to keep workforce housing as a key component of their overall housing strategies to address the housing challenges facing middle-income workers.

132. *See* John Schmid, *American Workers Losing Ground on Wages*, JSONLINE.COM (May 26, 2013), http://www.jsonline.com/business/american-workers-losing-ground-on-wages-b9914759z1-208979131.html.

133. *See* HAUGHEY, *supra* note 77, at 3.

134. *See 2011 Year-End Foreclosure Report: Foreclosures on the Retreat*, REALTYTRAC (Jan. 9, 2012), http://www.realtytrac.com/content/foreclosure-market-report/2011-year-end-foreclosure-market-report-6984 (not seasonally adjusted).

135. *See* UNITED STATES CENSUS BUREAU, NEW PRIVATELY OWNED HOUSING UNITS UNDER CONSTRUCTION, *available at* http://www.census.gov/construction/nrc/pdf/underua.pdf (not seasonally adjusted).

136. *See* Walter Molony, *Existing-Home Sales and Prices Continue to Rise in February*, NAT'L ASS'N REALTORS (Mar. 21, 2013), http://www.realtor.org/news-releases/2013/03/existing-home-sales-and-prices-continue-to-rise-in-february.