Unfulfilled Promises: Affordable Housing in Metropolitan Washington

June 2014

A Report of the
Washington Lawyers' Committee
for Civil Rights and Urban Affairs

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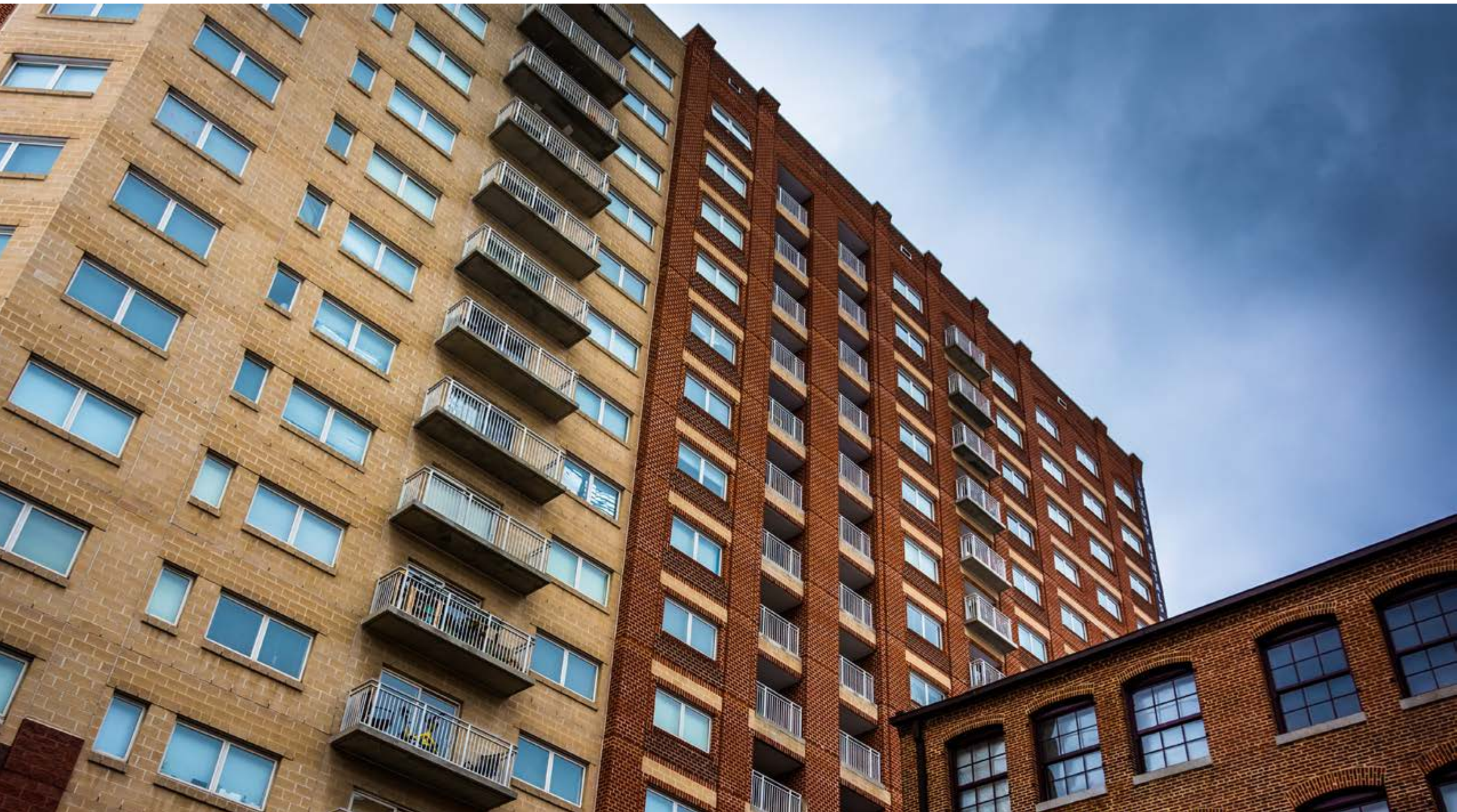
I. Preface

Since its founding in 1968, the Washington Lawyers' Committee for Civil Rights and Urban Affairs has sought to address issues of racial discrimination and poverty in the D.C. metropolitan area. Our work started with efforts to address issues of discrimination and poverty identified by the Report of the National Advisory Commission on Civil Disorders (known as the Kerner Commission) as the root causes of the riots that erupted in cities across the country throughout the 1960s. Forty-five years later, the Washington Lawyers' Committee has developed a wide range of litigation and advocacy programs and projects addressing a broad range of civil rights and poverty concerns.

The Committee's Fair Housing Project was established to address racial discrimination in housing and other denials of equal housing opportunity, as well as to advocate for the right to fair and affordable housing in the D.C. metropolitan area. Over the years, the Project's work has expanded into new and emerging areas, including predatory lending, redlining, discriminatory real estate advertising, insurance discrimination, exclusionary zoning and other discriminatory practices by municipalities, and discrimination against low-income families who use housing subsidies.

The genesis of this report was the recognition that, given the disparities in income along racial and ethnic lines, as well as the high level of segregation in the housing market evident in our country in general and the D.C. metropolitan area in particular, assuring the fullest possible supply of affordable housing should appropriately be viewed as an important civil rights priority. For this reason, the Washington Lawyers' Committee is most grateful that a team of lawyers from Hogan Lovells LLP offered its services to prepare this report – one of the few analyses that looks at the issues across the boundaries of the multiple jurisdictions that make up the metropolitan area. We are most appreciative for the excellent work they have done and believe their findings and recommendations will contribute significantly to advancing the much needed conversation on this important topic.



II. Introduction

Affordable housing in the region has become a crisis for residents at both low and middle income levels. This crisis is only expected to get worse in the decades to come, as the population of the region grows and the gap between the need for and the availability of affordable units widens. The region's affordable housing crisis is the result of a failure to both create sufficient affordable units and preserve existing affordable units. Gentrification, community opposition, and lack of political will in some jurisdictions all contribute to these problems, and despite much study, there has been insufficient action to move forward with solutions. While each individual affordable housing unit is important, the only way that we can begin to reverse this trend is through larger, more systematic actions.

The Washington region is not alone in experiencing such an affordable housing crisis. Across the country, 90 cities have median rent (not including utilities) that is more than 30 percent of median gross income.[1] New York City is still hundreds of thousands of units short of meeting demand for affordable housing[2] despite the preservation or addition of approximately 165,000 affordable housing units during the 12 years of the Bloomberg administration.[3] In Philadelphia, where 26.9 percent of the City's 1,500,000 residents live at or below the federal poverty line, there are only 37 affordable rental units available for every 100 households classified as extremely poor.[4]

In this region, however, there are multiple population centers spread across multiple jurisdictions. No one administration can pursue policy initiatives and allocate funds to address the affordable housing crisis for the entire region. Thus, there has been no regional response. Rather, each local jurisdiction makes its own independent decisions about how to respond. This report evaluates the operation and efficacy of some of the most promising tools and programs in use in six local jurisdictions – Washington, D.C., Montgomery County and Prince George's County in Maryland, and Arlington County, Fairfax County, and Alexandria City in Virginia – to identify some of the best options for meeting the serious need for more affordable housing throughout the region. The report also analyzes why, to date, the available tools and programs have not been able to meet the need.

Demand for affordable housing is growing while the available stock of affordable housing is shrinking.

At the outset, it is important to note that demand for affordable housing is growing while the available stock of affordable housing is shrinking. For example, in Washington, D.C., job growth and commuting patterns suggest that demand for housing through 2020 will require a minimum of 21,100 net new housing units.[5] There are approximately 72,000 people on the waiting list for public housing or a Housing Choice Voucher, and 42 percent of District residents are housing cost burdened, meaning they spend more than 30 percent of their income on housing.[6] The situation is similar in Maryland's Montgomery County, where there will be a need for 33,000 to 50,000 additional housing units by 2022 for families making $100,000 a year or less, more than half of which must accommodate families that make less than $50,000 a year.[7] In Arlington, rents have risen 47 percent over the last 10 years, and the county-wide vacancy rate is 1.1 percent. The problem is also acute in Alexandria, where there were 18,218 affordable units available to households with 60 percent of the Washington metropolitan area median income ("AMI") in 2000, but by 2011, that number had dwindled to 6,416.[8] This pattern continues in each jurisdiction throughout the region, in part because wages have not risen at a pace commensurate with housing prices.[9] Additionally, much of the area's affordable housing has been redeveloped to make way for developments that target the influx of high earners in the region.

Ambitious programs that were instituted to remedy the crisis in our region have frequently fallen far short in implementation. As just one example, Washington, D.C.'s far-reaching New Communities Initiative, introduced in 2005, was intended to transform four public housing communities in the Northeast, Southeast, and Northwest quadrants of the city into mixed-income neighborhoods.[10] In the nine years of its existence, New Communities has produced only 149 of the 1,500 units that were intended to replace current public housing, and three of the four redevelopment projects have not seriously begun.[11]

Housing advocates D.C. Fiscal Policy Institute and the Washington Legal Clinic for the Homeless have called for significant changes to New Communities because of its failures.[12] The region as a whole faces growing challenges in maintaining and adding to the affordable housing stock.

In addition to failures in execution, affordable housing efforts in the Washington metropolitan area suffer from insufficient funding. Washington, D.C.'s Housing Production Trust Fund, one of the city's most effective tools for creating and preserving affordable housing, has produced more than 7,000 affordable units in the last decade, but its funding levels are unpredictable. From 2010 to 2012, Mayor Vincent Gray removed $38 million from the fund to cover unbudgeted rent subsidies for low income renters.[13] Recognizing the serious impact on the city's affordable housing needs, in early 2014, Mayor Gray and Councilmembers Mendelson and McDuffie reached an agreement that half of the city's excess budget surplus would go to the Housing Production Trust Fund, bolstering the city's current financing commitment to the Fund. Although this year's uncommitted funds amount to only $9.6 million, that figure may be higher in future years as other commitments are fulfilled.[14] In Prince George's County, the problem has not necessarily been insufficient funding, but insufficient disbursements of federal funds received specifically for the purpose of increasing affordable housing. Auditors determined that for the fiscal year ending June 30, 2009, the County had in excess of $12 million of HOME funds committed but not expended by the end of the fiscal year.[15] The federal government had already reduced the County's HOME funds by $2.2 million because of the County's prior failure to disburse the funding.

The multiplicity of federal, state, and local programs, each with its own eligibility requirements, leads to fragmentation of funding, administrative challenges, and increased administrative expense.

A related issue affecting affordable housing is the multiplicity of federal, state, and local programs. The existence of so many programs, each with its own eligibility requirements, leads to fragmentation of funding, administrative challenges, and increased administrative expense.

A further problem for affordable housing in this region is that many local officials and developers see affordable housing as a low priority, and focus instead on more lucrative housing for wealthier residents. For example, the Alexandria City Council approved the Beauregard Redevelopment Plan in 2013. This plan will result in the razing of nearly 2,475 post-war garden-style apartments that currently provide a substantial amount of Alexandria's affordable housing and replace them with 5,000 new apartments.[16] Of these, only 800 are slated to be affordable housing units, and residents will be required to meet certain qualifications in order to return. The 800 units fall far short of compensating for the 2,475 affordable units that will be lost, and current residents will need to relocate pending the redevelopment or find new housing altogether.

Programs that can aid the promotion of affordable housing are often subject to numerous exceptions to and exclusions from program requirements. For instance, inclusionary zoning programs are intended to ensure that each new market-rate development has at least some affordable units in it, but these programs often have exceptions that developers can employ to avoid or minimize any affordable housing obligations. In Fairfax County, for example, only developments of 50 or more units for which the developer seeks "public action" are subject to its inclusionary zoning ordinance. In the District of Columbia, the requirement to include affordable units applies only to buildings with ten or more units. Some developers are building apartment buildings with nine units to take advantage of that exception.[17] D.C. also allows developers to provide the required affordable units in a location other than the development project that that had benefited from the increased density. Frequently, this results in affordable units being created in areas of concentrated poverty, resulting in lost opportunities for economic integration in D.C.'s fastest changing neighborhoods. Further, it runs counter to D.C.'s obligation to affirmatively further fair housing.

While it has been most visible in D.C., gentrification in many areas in the region has resulted – or is on its way to resulting – in a drastic reduction in the amount of affordable housing. As the District and other areas near Metro stations have attracted wealthier residents, developers have raced to build multi-family complexes tailored to luxury living with high rents to accompany their amenities. In addition, units that were previously affordable, whether due to government subsidies or to the market itself, are quickly becoming unaffordable as owners cancel subsidy contracts, raise rents to match the now-higher market, or sell the properties for redevelopment. In areas that still have some market-rate affordable housing, such as parts of Prince George's County, actions must be taken so that these patterns are not repeated and the affordable housing that exists is preserved.

Community resistance to affordable housing has also sometimes played a part in stymying the building of affordable housing in the region. Residents in wealthier and middle class areas often use their political power to block the construction or zoning changes that could produce affordable housing in their neighborhoods. For example, until recently, Maryland residents had power to block affordable housing because developers had to obtain community approval to use Low-Income Housing Tax Credits. While the state legislature has now passed a bill repealing that requirement, a number of communities across the state, including Gaithersburg, successfully blocked planned affordable housing developments during the many years the requirement was in place.

The report that follows provides an overview of the situation for affordable housing in each of the six jurisdictions we studied. It then identifies and analyzes the housing tools in use in one or more of the jurisdictions that – if more aggressively used and more effectively executed – could make a positive impact on the serious affordable housing shortage that characterizes the entire region.

Metropolitan Washington Affordable Housing By the Numbers

How best to meet the affordable housing needs in the Washington area is a complex subject – not readily susceptible to understanding through sound bites. However, some numbers can help to illustrate the magnitude of the challenge:

1

D.C.'s place on the list of least affordable housing markets in the U.S. – with home purchase costs equal to 17 times the area mean income.

72,000

People on the waiting list for one of DC's 8,000 public housing units or 10,500 Housing Choice Vouchers when the Housing Authority closed the list to new applicants in 2013. (The Housing Authority has now commenced an effort to understand the current housing needs of those on the list.)

33,000 – 50,000

New housing units needed in Montgomery County by 2022 for families making less than $100,000.

47 percent

Increase in average rents in Arlington in ten years.

11,800

Affordable housing units lost in Alexandria since 2000.

$38 million

Diverted from D.C.'s Housing Production Trust Fund – which is designed to support creation of new affordable housing units – to cover unbudgeted rent subsidies for existing low income housing from 2010 to 2012.

50 percent

The portion of the low cost housing units lost in D.C. since 2000.

491,000

New housing units needed by 2032 at all income levels to provide housing to match projected job growth in the region.

18.5 percent

Increase in homeless people in D.C. since 2010.

25

New affordable housing units Alexandria will be able to support from its Housing Trust Fund each year through 2011 at current funding levels.

83,069

New housing units needed in Fairfax County by 2032.

2,638

Affordable housing units preserved in Fairfax County since 2004.

$7 million

Federal funding lost by Prince George's County for failure to spend it on affordable housing programs.

III. Overview of the Affordable Housing Landscape by Jurisdiction

The District of Columbia

The affordable housing situation in the Nation's Capital is dire. Washington's housing costs caused the city to be ranked the least affordable in the United States for housing in 2013, with housing purchase costs at almost 17 times AMI.[18] Similarly, a study by the National Low Income Housing Coalition determined that the District of Columbia is the second most expensive jurisdiction in the country for renters of two-bedroom apartments, such that a family must earn either $28.25 per hour, or $58,760 per year, to afford to rent a two-bedroom apartment at the fair market rent ($1,469).[19] The number of homeless people in the District is large and growing; it includes many families and long-term District residents who are being forced to leave their homes because they can no longer afford their rent. The high cost of housing means that much of the workforce, including employees in the public sector, is unable to live near their jobs. The high housing costs thus also contribute to long commutes and terrible traffic congestion.

A few additional statistics are indicative of the seriousness of the problem:

- Washington has lost more than half of its low cost rental units since 2000, and experts estimate that the city will lose at least another 8,000 such units by 2020.[20]
- Almost half of all renters and more than 40 percent of all Washington, D.C. residents suffer a housing cost burden, as defined by the U.S. Department of Housing and Urban Development ("HUD"), in that they pay more than 30 percent of their total income for housing.[21]
- From 2010 to 2014, the number of homeless people in D.C. increased 18.5 percent, and the number of homeless people in families increased more than 50 percent.[22]
- Affordable housing available for purchase has dropped. Median home prices have roughly doubled since the 1990s.[23]
- Population and job growth trends suggest that Washington will need at least 21,000 new housing units at all income levels by 2020.[24]
- Washington owns 8,000 units of public housing, but the waiting list would require decades to clear at current rates. In recognition of this, the city closed the waiting list to new applicants in 2013.[25]

Recent development in D.C. has focused largely on high-end housing[26] at the same time that long-term, predominantly African American residents have been displaced due to rising rents and the District's lack of a commitment to create or maintain substantial numbers of affordable units. In 2010, the families on the District's waitlists for public housing and Housing Choice Vouchers were more than 92 percent African American and virtually all earn 30 percent or less of the AMI.[27] A disproportionate number of the homeless are persons of color, veterans, victims of domestic abuse and persons with disabilities. There is also an increasing number of homeless families.

Washington is not lacking in programs for affordable housing. It has a broad array of programs, many of which have been designed around HUD programs. The HUD programs, however, are severely underfunded, which means that the D.C. programs are also underfunded. In addition, many landlords in the project-based Section 8 program are cancelling their Section 8 contracts, allowing units that have been affordable to low- and very low-income families for decades to begin charging market rate rents.[29] Further, much of the affordable housing created pursuant to D.C.'s programs is affordable only to people earning 80 percent AMI; it is not available to low income families.

Washington likewise has no shortage of studies on the affordable housing problem. However, those studies typically call for further studies to more completely analyze the problem, rather than targeted action, additional funding or reforms to address recognized, long-standing problems. The opportunity for Washington is that, if it were to act decisively, it could "transform itself into a stable, racially, ethnically, and economically integrated city without displacing its most vulnerable residents."[30]

Alexandria

As in the region's other jurisdictions, the need for affordable housing in Alexandria is great. The number of rental units affordable to households with incomes at 60 percent of AMI was 6,416 in 2011 compared to 18,218 units in 2000. Moreover, much of Alexandria's market rate affordable housing is no longer affordable because of rising rents, a result of increased demand from more affluent residents who can absorb the increases. Much of Alexandria's affordable housing is at risk of redevelopment or renovation that would eliminate much of the remaining stock. Finally, the expiration of affordability requirements for many properties further threatens availability.

These conditions affect lower income households acutely. For low-income households, defined as at or below 30 percent AMI, Alexandria has a limited stock of committed affordable units or market units that are subsidized to be affordable. These units include a small number of Section 8 units, Alexandria Redevelopment and Housing Authority ("ARHA") public housing units, and some special needs housing run by the City or nonprofit organizations. These units are not enough to satisfy the unmet need, conservatively estimated at around 3,560 units.[31] In the future, the need will only grow, even for households at the 60 percent AMI level. The projected unmet need by 2030 for households at or below 60 percent AMI is 14,000 units.[32]

Alexandria has undertaken several major planning initiatives in recent years to address the growing problem of affordable housing. These include the ARHA Strategic Plan, the Beauregard Small Area Plan, and the Strategic Plan on Aging. The most comprehensive of these efforts, however, is the Draft Housing Master Plan released in November 2012. The Master Plan offers principles, goals, strategies, tools, and potential funding resources to meet Alexandria's anticipated affordable housing needs over the next 20 years. This comprehensive plan suggests that Alexandria would like to create and preserve affordable housing, but successful execution will be challenging, particularly because some of the redevelopment plans entail eliminating existing affordable units and replacing only a fraction of the affordable units that previously existed at the sites. Without more aggressive action, Alexandria's unmet need for affordable housing will only worsen.

Fairfax County

Based on projected job growth, Fairfax County is expected to need 83,069 new housing units by 2032.[33] The current affordable housing gap in Fairfax County for low and moderate income individuals, earning 80 percent of AMI and below, is approximately 28,405 units for renters and 49,120 units for owners.[34] The rate at which affordable units are created or preserved lags significantly behind the rising demand. Between April 2004 and June 2013, only 2,638 low income housing units were preserved, and even fewer created.[35] The average household income served in affordable housing programs in FY 2013 was $24,426, or approximately 25 percent of AMI for a family of three.[36]

Fairfax County has tried to incentivize for-profit and non-profit developers to create and preserve affordable housing units, which has included providing free or low-cost public land, low interest bonds, repayment of loans by transferring ownership of affordable units to the County, and supportive zoning ordinances. A successful example is the Founders Ridge project. There, in a public-private partnership, developers were able to obtain at no cost land owned by Fairfax County Redevelopment and Housing Authority ("FCRHA") and to obtain below-market financing to provide home ownership to 88 families with incomes at or below 50 percent of AMI. The County also allowed the transfer of affordable units from developers to the County as a method of loan repayment.[37] In other words, rather than requiring developers to pay the loan back to the County, the County had the developers transfer ownership of a percentage of the affordable housing units to the County. While this project has been successful, these tools must be used on a much larger scale before they will meet more than a tiny fraction of Fairfax County's need.

Much of Alexandria's affordable housing is at risk of redevelopment or renovation that would eliminate much of the remaining stock.

Fairfax County has also developed various ways to create and maintain stable funding. The Penny Fund provides for the County to set aside one penny on the dollar of real estate tax revenue. Between 2006 and 2009, the fund raised $85.3 million.[38] The Penny Fund is used in various affordable housing development projects and, as of FY 2010, has been used to preserve 1,805 units of affordable housing.[40] The County also issues bonds secured by the Penny Fund and other trust funds or tax credit financing for certain affordable housing projects. For example, $104 million of Bond Anticipation Notes were competitively sold for interim financing as part of the 672-unit Wedgewood Apartments acquisition. Similarly, the Madison Ridge Project used the Fund to assist in the development of 216 units of affordable housing; ten units were transferred back to the County in repayment of loans.[41] While these successful programs should be replicated, Fairfax County will need to invest significantly more resources to meet its growing affordable housing need.

Arlington County

As with the other jurisdictions in the D.C. metropolitan area, the need for affordable housing in Arlington far exceeds availability. Specifically, incomes have not kept pace with rising housing costs. Due to its location along major transit lines, walkable urban communities, and quality public schools, the County's population has increased, driving up housing prices. The recent US Census Bureau Population Estimates Program ranks Arlington County seventh out of the ten fastest growing urban areas in the country. In addition, Arlington County is the smallest county in the US, with a limited supply of available land. In January 2013, the County had a total population of approximately 227,000. As of June 30, 2013, the County had 6,662 committed affordable housing units (those with legally binding agreements with the federal state or county government to remain affordable to low and moderate incomes for a specified period of time). Facts that are indicative of the challenge of providing affordable housing in Arlington include:[42]

- Rent has jumped 47 percent over the past 10 years;
- The current vacancy rate is approximately 1.1 percent;
- Average monthly rent for an efficiency apartment is $1,422;
- Average monthly rent for a 3-bedroom apartment is $2,782; and
- Arlington needs 14,000 affordable housing units.

Arlington County has been able to create some stable affordable housing funding through its Affordable Housing Investment Fund. Established in 1988, this revolving loan fund is funded from federal and local dollars as well as loan repayments and payoffs. The fund provides incentives for developers through low-interest, secondary loans for new construction, acquisition and rehabilitation of affordable housing. As federal funds have decreased, the County has sought to replace these funds with increased contributions from local resources to maintain a stable fund balance.

The high demand for housing in the County is putting particular strain on families, the elderly, persons with disabilities and others with limited financial resources to keep pace with increasing housing costs. Arlington County has no public housing authority and, as a result, no public housing. In order to address the dire shortage of affordable housing, the County relies predominantly on the following tools:

- Providing financing and zoning incentives for developers;
- Working with local non-profits that finance and develop affordable housing; and
- Providing rental assistance to low income families.

Due to the limited availability of housing, the Section 8 or Arlington County Housing Choice Voucher Program is no longer accepting applications. The Program has a waitlist of approximately 5,000 people, representing an estimated five-year or more waiting period. For the recently completed Arlington Mill affordable housing complex, there were over 3,600 applications for 122 apartments. As an indication of the regional nature of the problem, more than half of the applicants were from outside Arlington.

Prince George's County

Prince George's County has the largest stock of affordable housing among the six jurisdictions studied,[43] but like the other jurisdictions in the region, it seems to be moving in the wrong direction in terms of meeting the need. In addition, the interest of County officials in adding to or even preserving the supply of affordable housing seems particularly low.

Prince George's County has a serious foreclosure problem, and this problem is impeding the County's ability to implement effective affordable housing policy.[44] In July 2010, during the height of the housing crisis, Prince George's County had the highest foreclosure rate in Maryland and the tenth highest foreclosure rate in the nation.[45] Nearly four years later, the problem persists, as homeowners continue to face the threat of foreclosure, and foreclosed homes sit vacant or are sold to investors and speculators with few ties to the community.[46] The latter action almost certainly takes the homes out of the County's affordable house stock, while the former creates streets and neighborhoods blighted with abandoned homes, devaluing neighboring properties.[47]

Although Prince George's County has made some attempts to address foreclosures, these attempts have generally done little to assist current homeowners facing potential foreclosure. For example, the County received funds pursuant to HUD's Neighborhood Stabilization Program ("NSP")[48] and the 2013 National Mortgage Settlement Agreement[49] that could have been used to provide real help to families in foreclosures and their neighborhoods. Instead, the County used its NSP funds for first-time homebuyer programs, which primarily served middle-income individuals and did nothing to stem the tide of ongoing foreclosures.[50] Although the County recently established an Emergency Mortgage Assistance ("EMA") program with a portion of its National Mortgage Settlement funds, the requirements for the EMA program are so strict that housing counselors are having difficulty finding eligible homeowners.[51] Moreover, the EMA program uses only 20 percent of the National Mortgage Settlement funds that Prince George's County received.[52] The remaining funds will go to first-time homebuyers and property rehabilitation programs that do not benefit homeowners facing foreclosure.

Prince George's County has the largest stock of affordable housing among the six jurisdictions studied, but like the other jurisdictions in the region, it seems to be moving in the wrong direction in terms of meeting the need.

Until Prince George's County resolves its foreclosure crisis, it seems unlikely to pursue new affordable housing programs, and it is at risk of losing much of the affordable housing stock it currently has. As discussed below,[53] this could result in the loss of the one-time opportunity to promote affordable housing near the new public transit stops that will be developed in the County along the Purple Line. Prince George's County's focus on attracting first-time homebuyers also risks displacing long-term residents who may soon be unable to afford to live in much of Prince George's County.

Montgomery County

Although Montgomery County served as a regional model for affordable housing policy for many years, the County has failed to keep pace with demand for affordable units in recent years. Montgomery County's primary affordable housing challenges include: (1) missteps in the management of the County's inclusionary zoning program; (2) lack of land available for new housing developments; (3) an unwieldy network of affordable housing programs; and (4) housing programs that exist in theory but that provide no assistance to new applicants.

While the County's inclusionary zoning program (the "Moderately Priced Dwelling Unit" or "MPDU" program) served as a nationwide model of its kind and enjoyed considerable success, failure to retain the units it created as affordable housing stock resulted in the program's near-demise.[54] Today, with few large tracts of undeveloped land available, the County can no longer rely on the MPDU program to produce significant numbers of new affordable units.[55]

Montgomery County operates public housing and rental voucher programs, but these programs have lengthy waiting lists, both of which are currently closed to new applicants.[56] Although these programs do provide some affordable housing in the County, they currently provide no assistance to new tenants and are unlikely to be expanded in the future.

Despite the County's history with the MPDU program, local opposition to affordable housing continues to serve as a barrier across the County. For example, the city of Gaithersburg recently blocked the construction of affordable housing in its downtown area by refusing to support the developer's request for Low Income Housing Tax Credits.[57] Although the City of Gaithersburg provided various reasons for its decision to block the developer's tax credit request, its use of this tactic raises concerns about possible civil rights implications. Other towns in Maryland have similarly prevented affordable housing developments from being built when faced with opposition from neighbors of the proposed development. In 2014, the Maryland legislature finally passed a bill repealing the requirement that a developer secure local approval to be eligible for Low Income Housing Tax Credits.

Montgomery County's inclusionary zoning program served as a nationwide model, but failure to retain the units it created as affordable housing stock resulted in the program's near-demise.

IV. Affordable Housing Tools: Their Efficacy and Potential on a Regional Basis

The discussion that follows is not intended to be an exhaustive survey of all available affordable housing tools. Rather, it addresses the tools and approaches that seem best able to meaningfully contribute to a reduction in the region's affordable housing shortage – provided they are deployed more broadly and consistently throughout the region. We do not address approaches that we do not believe will succeed in producing affordable housing on any reasonable scale,[58] nor do we propose the use of strategies that seem ill-suited to communities that are already highly developed. Finally, we assume that no substantial new federal resources will be brought to bear on this problem for the foreseeable future. The experts we spoke with all stated that the tools most likely to be effective in producing large numbers of affordable housing units today are those that do not require significant additional government funding, and so those tools have been our focus.

Housing Production Trust Funds

Background

A housing trust fund is a "dedicated source of money administered by a state or local agency and made available to sponsors of affordable housing."[59] These funds are created by state or local ordinance and usually have four characteristics: (i) a regular source of revenue, (ii) dedicated to housing assistance, (iii) targeted to low and moderate income beneficiaries and (iv) designed to establish a permanent source of funding for affordable housing.[60] Each housing trust fund also typically has allocation procedures and eligibility criteria. Revenue for such trust funds is generated from a variety of sources, including for example: real estate transfer taxes, litigation settlements, inclusionary in-lieu fees, and in some cases, an appropriation from a jurisdiction's general revenue. As of 2010, there were 71 city housing trust funds in 27 states and 41 county housing trust funds in 13 states. In the Washington metropolitan area, the District of Columbia, Fairfax County, Alexandria, Arlington County and Montgomery County all have some form of housing trust fund. Of the jurisdictions studied, only Prince George's County does not have a housing trust fund.[61] There is also the National Housing Trust Fund, created by the Housing and Economic Recovery Act of 2008, but it has yet to be capitalized.[62]

Trust Funds in the Area

Washington's Housing Production Trust Fund is intended to support the creation of new affordable housing. It can support both rental housing and home ownership. It is funded by a legislated share of deed and recordation taxes and real estate transfer taxes, currently 15 percent. The statute provides that a minimum of 40 percent of all trust

fund monies disbursed each year must benefit households earning up to 30 percent of the AMI; 40 percent must benefit households earning between 31 and 50 percent of the AMI; and the remainder must benefit households earning between 51 percent and 80 percent of the AMI. At least half of the monies disbursed each year must be used for the development of rental housing. In 2011, 65 percent of the projects funded were rental projects.[63]

During the recession, when other rental assistance funding was scarce, the trust fund was used to pay current rental assistance instead of creating new affordable housing units. In a recently issued report on 2011 activity, the District of Columbia Department of Housing and Community Development identified limited resources as the "major challenge" for the Housing Production Trust Fund.[64] It was projected to have a nearly $23 million shortfall in funding to meet the needs of projects already earmarked for assistance. Assuming the necessary follow through, a recent agreement to use a portion of the city's budget surplus for the trust fund could help to close that gap.[65]

Fairfax County operates the Penny Fund, under which the County sets aside one penny of each dollar of real estate tax revenue. Between 2006 and 2009, the Fund raised $85.3 million. To date, the fund has been used to preserve 1,805 units of affordable housing. The Penny Fund is also used to support new affordable housing development projects.

Alexandria's Housing Trust Fund is funded by voluntary developer contributions and loan repayments of prior affordable housing loans. Alexandria's City Council voted in May 2013 to eliminate the set aside of six-tenths of a cent of its tax rate for its trust fund; at one time, the set aside was a penny on each dollar of tax revenue.[66] From fiscal year 2013 through fiscal year 2016, it is estimated that there will be $3,100,000 available from the trust fund, which is sufficient to create or preserve only 75 units of affordable housing, or 25 units a year.[67] Absent a change in policy, no new funds will be added during that period.

Arlington's Affordable Housing Investment Fund, created in 1988, is comprised of local and federal dollars and is also supported by loan repayments and developer contributions. For fiscal year 2013, a total of $9,500,000 was allocated to the fund. Projects eligible for money from the fund include acquisition, rehabilitation and development of affordable multi-family units, specialized housing for the elderly, the homeless or persons with disabilities, and affordable home ownership opportunities. Since 2000, more than $200 million in loans for affordable housing have been granted to developers through low-interest, secondary loans.[68]

> Housing trust funds can be an important and effective source of funding for affordable housing initiatives, although they can be subject to shortfalls and raids during periods of economic stress.

Montgomery County operates the Housing Initiative Fund, which receives revenue from loan repayments and 2.5 percent of the County's property tax revenue, in addition to other sources. Between July 1989 and June 2012, the fund preserved or created more than 15,000 housing units through this program. During the economic downtown, the County Executive and County Council did not appropriate the full amounts from the County's general fund to the Housing Initiative Fund, and it is now underfunded. For instance, in fiscal year 2014, if the full 2.5 percent were transferred, it would be equal to $25,912,515; however, the budget only provides for a transfer of $17,816,357.[69]

Path Forward

Housing trust funds can be an important and effective source of funding for affordable housing initiatives. They are intended to provide a regular source of funding that usually does not depend on direct appropriations, although they can – as noted above – be subject to shortfalls and raids during periods of economic stress. Prince George's County is the only one of the six jurisdictions studied that lacks a housing trust fund, and given its rapidly escalating housing prices, enactment of a housing trust fund should be a priority for the County. For the other five jurisdictions studied, the challenges for the future are to preserve and increase the funding levels, and to prevent the diversion of funding to meet other budget needs. Alexandria, in particular, should reinstitute its funding set aside.

Harnessing Public Property to Create Affordable Units: "Public Land for Public Good"

Background

Almost all of the housing experts we spoke with identified the need to harness the existing inventory of public land (federal, state, and city) to serve affordable housing goals. This could take the form of requiring developers to create affordable housing as a condition to purchasing public land. Enhanced affordable housing obligations might also be imposed on those who receive public funds for the development of affordable housing. Potential targets for such conditions include land and buildings that public agencies can no longer use, surplus parking lots, and surplus land adjacent to public buildings such as libraries, community centers and schools.

When using this tool to advance affordable housing, it is important to put in place an effective monitoring mechanism for the valuation of public property being sold and for making developers accountable for delivering on their promises. If a private developer fails to deliver its end of the bargain (may it be creating more affordable units or jobs, for example), it should pay the government back an amount at least equivalent to the value of the benefits it received. This is to ensure that public funds are used at their full value and that each jurisdiction receives the appropriate return on these public-private efforts. Keeping parties accountable will result in more affordable housing and reduced misuse of public lands and funds.

Current Situation in the Region

In the District, a bill was introduced by Councilman McDuffie on January 23, 2014, proposing, among other things, that the District require the creation of affordable housing units to be part of the package when it bids out city-owned property for sale or lease. The bill would require at least 20 percent of units be affordable, and 30 percent if the land is near a metro station or major transit line.[70] In addition, the District would be authorized to subsidize the cost of creating affordable units by selling or leasing the land at a discount. So far, the District has explored, with some success, creating affordable housing on public lands at Hine Junior High School, the West End Library and Fire Station, and the Anacostia Waterfront.[71]

On January 1, 2014, the new Arlington County Chairman Jay Fisette declared that affordable housing is one of his top priorities and that he supports the concept of "public land for public good." The County is considering a proposal to perform a survey identifying available land for building 1,000 to 1,500 affordable rental housing units following community activism.[72] Possible sites identified include the Arlington Career Center, Arlington Central Library, East Falls Church metro station, and the parking lot at Lubber Run Community Center.[73]

Fairfax County recognizes the need for the County to identify and harness public land for creating affordable units, such as repurposing schools and other County buildings.[74] The County has participated in the successful Founders Ridge Project, a public-private venture that developed affordable housing using county-owned land, and provided affordable units to families with income at or below 50 percent of AMI. The venture reduced development costs and financing for the developers, leaving them with more funds and incentives to create and maintain affordable units. The County's "Housing Blueprint" emphasizes its desire for more such partnerships in the future.[75]

As part of its ongoing assessment of affordable housing efforts, Alexandria has been reviewing the merits of using public land to increase the total affordable units available in the city.[76] As one example, 64 affordable units were created at the Station at Potomac Yard, above a City fire station built on land that had been donated to the City by the developer of the surrounding Potomac Yard development. While the city has made clear that it would like to replicate this success, the small number of affordable units created at the Potomac Yard site demonstrates that this tool is unlikely to substantially fulfill Alexandria's need for affordable housing.

In 2012, Montgomery County established goals to develop a database of County-owned land parcels and their characteristics to help make future determinations of sites for affordable housing units, and to establish that developing affordable housing is the preferred use of land when the County sells its property.[77] By February 2013, Montgomery County had several new projects underway, including developing affordable housing on the property of the Silver Spring Library.[78]

Prince George's County does not appear to have any current plans or projects to use public land to promote affordable housing.

Path Forward

Advocates for increasing affordable housing in the region should consider encouraging jurisdictions to: (i) perform surveys of all publicly-owned land and maintain a database where suitable land could be efficiently identified; (ii) make it a jurisdictional preference to have public land being sold used for building affordable units; and (iii) consolidate land by transferring or exchanging it with adjacent privately-owned land to maximize space for building affordable units. Given the relatively mature levels of development in most of the region, finding ways to create affordable housing on public land may represent one of the best opportunities for local governments to ensure that affordable housing is created in their jurisdictions and that they are fulfilling their obligation to affirmatively further fair housing. Further, jurisdictions must ensure that projects involving public land are held accountable, such that public land is valued accurately, that contracts for the land include an enforceable affordable housing component that includes units affordable to a mix of income ranges, and that developers are required to reimburse the jurisdiction for any subsidy or discount they have received if they fail to deliver on their affordable housing promises.

Effective Public/Private Partnerships

Background

Given the decline in public funding for affordable housing, one of the common approaches to addressing the affordable housing crisis has become the use of public-private partnerships. These partnerships emerged in the 1980s as part of the trend toward deregulation and divestment or privatization of state services. They are used both for construction of new affordable housing and in the management of existing developments. These partnerships often work in tandem with the other affordable housing tools, such as inclusionary zoning and use of public land sales. Many of the public-private partnerships depend on the availability of tax credits to support the private investment. When the economy is weak, the appetite for tax credits tends to decline. Thus, the ability of such partnerships to meet housing needs may be lowest when the need for such programs is

Given the relatively mature levels of development in most of the region, finding ways to create affordable housing on public land may represent one of the best opportunities for local governments to ensure that affordable housing is created in their jurisdictions.

greatest. Nevertheless, public-private partnerships seem to be central to the future of most affordable housing development options.

One of the first types of public-private partnerships in the area of affordable housing was the community development corporation ("CDC"). CDCs are nonprofit, community-based organizations focused on revitalizing the areas in which they are located, typically low-income, underserved neighborhoods that have experienced significant disinvestment. The experts we interviewed as part of this project emphasized effective public-private partnerships as a key tool to improve the availability of affordable housing stock. They also noted the importance of local governments focusing on the capacity to deliver on those with whom they partner, allocating funds only to those with proven records of performance.

Current Use of Public-Private Partnerships in the Region

The District of Columbia has a number of programs intended to assist developers in providing affordable housing units. For example, the District has a program for selling public land to developers at reduced rates to help cover the cost of setting aside a percentage of total units as affordable. The Land Acquisition for Housing Development Opportunities Program is designed to provide financial assistance to developers and to the D.C. government to acquire vacant land or land improved with buildings, resulting in the rehabilitation of existing residential structures, conversion of existing structures to residential use, or construction of new residential or mixed use structures on vacant land to increase the stock of affordable housing.[79]

Also in the District, the Site Acquisition Funding Initiative is designed to provide accessible revolving loan funds for acquisition and pre-development costs to non-profit developers committed to the production, rehabilitation and preservation of affordable housing. The New Communities Initiative seeks to redevelop neighborhoods troubled by concentrations of violent crime and poverty. A fundamental principle of the New Communities Initiative is to replace every unit of affordable housing demolished with a new unit of affordable housing. The initiative is funded through the securitization of a dedicated portion of the Housing Protection Trust Fund.[80]

According to the experts we spoke with, many of the issues for public-private partnerships in the District seem to be focused on execution challenges. Some affordable housing developers suggest that it can be difficult to deal with the D.C. housing agencies because lack of information, long delays and uncertain outcomes are routine. In addition, for at least the New Communities Initiative, developers have had difficulty attracting enough interest for high-rent units to subsidize the affordable units, leading to stalled developments – after some of the former residents had already been displaced to make room for the new developments.

Montgomery County has worked with a number of non-profit developers to increase the availability of affordable housing units. For example, the County worked with Affordable Housing Corporation ("AHC"), a non-profit developer, to acquire 29 new condominiums that will be operated as long-term affordable rental housing. On another project, AHC obtained a loan from the County's Housing Initiative Fund to purchase two, three-bedroom townhouse-style condominium units that have been leased by AHC as affordable rental housing. On a third project, Victory Housing, a nonprofit development arm of the Catholic Archdiocese of Washington, purchased a 181-unit affordable housing community for seniors from the Housing Opportunities Commission with a loan from the Housing Initiative Fund. While these partnerships have been effective, they have operated on a relatively small scale given the scope of the need. Further, community opposition to affordable housing can stand in the way of even public-private partnerships for affordable housing.[81]

Prince George's County's Redevelopment Authority indicates that it is committed to the development and preservation of affordable housing near transit centers. Its Acquisition and Rehabilitation Program provides funding to developers to acquire, rehabilitate and sell

residential properties to eligible low-income households. The New Construction Program provides subsidies to assist developers to stimulate construction of new affordable housing for eligible low-income households. For both programs, the property must remain affordable for 5 to 15 years depending on the amount of funds provided. While these are good starts, the programs should be revised to ensure that they are effective for the creation and long-term preservation of affordable housing units. Additionally, a recent Workforce Housing Study found that non-profit builders in the County do not have the capacity to play more than a modest role in adding affordable units to the existing housing supply. Finally, we were told that some developers are hesitant to partner with the County's Department of Housing and Community Development because of a past corruption problem, even though the individuals involved were removed from the agency some years ago.

Because it does not have a public housing authority, Arlington relies entirely on partnerships with the private sector for housing development and rehabilitation. Partnerships include those with AHC and Arlington Partnership for Affordable Housing ("APAH"), another non-profit developer. For example, the County partnered with APAH on the new Arlington Mill 122-unit affordable housing apartments. The County also negotiates with developers to set aside affordable units in any new construction.

Fairfax County has several developer assistance programs. Both the Founders Ridge Project and the Madison Ridge Project discussed above are examples of successful public-private partnerships in Fairfax. Together, they provided more than 150 units of affordable housing. While these projects are good starts, it is clear that far more is needed to meet the need in Fairfax.

Path Forward

Those we interviewed who have direct experience developing affordable housing through public-private partnerships suggest that the most effective strategy may be for local governments to improve professionalism within the housing agencies where it is lacking and to limit the number of partnerships they work with – focusing on those partners that have a proven track record and a demonstrated ability to deliver. In addition to careful

> Public-private partnerships are central to the future of most affordable housing development options, but local governments must focus on the capacity to deliver of those with whom they partner, allocating funds only to those with proven records of performance.

selection of private partners, there are two concepts governments should keep in mind when negotiating such partnerships: (1) accountability and (2) affordable housing control periods. Accountability is a strategy for curbing abuses and ensuring the affordable housing objectives of the partnership are met. This can be achieved by providing a mechanism to delay or revoke any subsidy or other benefit received by the private partner in the event the affordable housing objective is not met. Control periods represent a strategy to maintain a stable and long-term inventory of affordable housing. Jurisdictions in other regions are increasing control periods to as much as 60 years to prevent private partners from taking advantage of subsidies and benefits and then quickly converting affordable housing to market rate housing.

Inclusionary Zoning

Background

Inclusionary zoning is broadly defined as "any municipal or county ordinance that requires or allows a property owner, builder, or developer to restrict the sale or resale price or rent of a specified percentage of residential units in a development as a condition of receiving permission to construct that development."[82] In essence, inclusionary zoning capitalizes on local development, trading zoning flexibility for affordable housing units. Inclusionary zoning programs may adopt one of two approaches: (1) "the set-aside program, in which a specified percentage of units in a residential development [is] required to be offered at prices affordable" to a specified income group, or (2) the "density bonus program," in which permissible unit density in residential development is increased in exchange for inclusion of affordable units.[83] Since the early 1970s, hundreds of local governments have adopted mandatory or voluntary inclusionary zoning programs.[84]

Inclusionary zoning programs are an attractive tool for jurisdictions facing housing crises. Such programs harness the momentum of local development.

While inclusionary zoning programs vary by jurisdiction, such programs generally include the following elements: (1) a threshold number of units that triggers the inclusionary requirement; (2) a percentage of units which must be offered at an affordable rental or sale price; (3) a target population, specifying eligibility to rent or purchase the affordable units, usually predicated on household income as a percentage of AMI; (4) the length of the term during which the unit must remain affordable; and (5) exceptions permitting the developer to avoid the inclusionary requirements.[85]

Inclusionary zoning programs are an attractive tool for jurisdictions facing housing crises. First and foremost, such programs harness the momentum of local development. Mandatory inclusionary zoning ordinances require developers to offer a certain percentage of affordable units in new or renovated housing projects. These units are then retained as affordable for a specified period of time, after which they are not price- or income-restricted. Second, such programs seek to ensure that affordable housing is integrated into new community development rather than being isolated in areas of concentrated poverty.[86] Finally, in at least some jurisdictions, local governments have the option of purchasing affordable units after expiration of the control period. The purchase option ensures that these units will always remain in the jurisdiction's affordable housing stock, guaranteeing preservation of existing housing stock.

Local Laws Governing Inclusionary Zoning

Every jurisdiction we studied in the Washington metropolitan area has adopted some variation of an inclusionary zoning program, although one subsequently repealed its program.

Montgomery County

Montgomery County's inclusionary zoning ordinance is widely recognized as one of the most successful of its kind, and as a model for similar legislation nationwide.[87]

The Moderately Priced Dwelling Unit ("MPDU") program produced more than 10,600 affordable housing units from its inception in 1974 through 1999.[88] The program also provided a means for Montgomery County's Housing Opportunities Commission ("HOC") and other nonprofit housing groups to purchase more than 1,000 units for long-term retention as part of the County's low income housing supply.

The MPDU program's innovative sliding scale density bonus provides developers with tangible incentives to set aside up to 15 percent of the units in any new development as "affordable." The density bonus provided under the program runs from 0 percent (if the development is only providing 12.5 percent affordable units) to 22 percent (if the development is providing 15 percent affordable units). After the expiration of the control period – 30 years for owned units and 99 years for rental units – the HOC may purchase up to 33 percent of affordable units for which the control period has expired. Qualified non-profits can purchase what the HOC does not buy, up to 40 percent. Once purchased, these units are set aside as rentals for very low to low-income households and will always remain in the County's affordable housing stock.[89]

The County's program enjoyed considerable success, producing thousands of affordable units over a period spanning several decades. Further, the MPDU program contributed to the economic and racial integration of the County, as affordable units were marketed to an economically and racially diverse group. A 1998 survey of 130 MPDU owners in the county showed that purchasers of such units earned between less than $24,000 per year, to $49,000 per year.[90] In this way, inclusionary zoning helps "break up entrenched economic segregation by providing options for lower-income families to live in higher-income neighborhoods."[91]

The loss of most of the affordable housing that the program created is probably the MPDU program's most significant failure. Originally, the resale price of a MPDU was controlled for only 10 years. After that, homeowners were permitted to sell their affordable units without any price limitation, resulting in sales that took the units out of the pool of affordable housing stock. In response to this loss of affordable housing stock, the County amended the ordinance to extend the control period to 30 years for owned units and 99 years for rental units. However, by the time the ordinance was amended, much of the County's affordable housing stock had already been lost.[92]

Today, there are few large tracts of undeveloped land available for new construction in Montgomery County. Accordingly, the MPDU Program's ability to produce additional affordable housing units has declined. Because fewer parcels of land are available for large-scale residential development, local developers now frequently build on smaller lots that fall outside of the 20-unit threshold required for the MPDU ordinance to apply. This suggests it might be appropriate for the County to revisit that threshold.[93]

In sum, while Montgomery County's inclusionary zoning program was well drafted and executed, lack of foresight about the need for extended control periods caused the program's effectiveness to decline. Given the scarcity of large tracts of undeveloped land in the county, the MPDU program is likely to be a less effective tool going forward.

Fairfax County
Fairfax County adopted one of the nation's first inclusionary zoning programs in 1971, but the program was struck down by the Virginia Supreme Court in 1973 on the grounds that the ordinance exceeded the County's zoning authority.[94] The program was not replaced until 1990.

Fairfax's current inclusionary zoning ordinance, the Affordable Dwelling Unit program, has created 2,499 affordable units.[95] The program applies to developments of 50 or more units for which the developer seeks special "public action," such as rezoning or a special exception. The program does not govern developments allowed "as of right, requiring no other public action."[96]

For multi-family developments, developers receive a 10 percent density bonus in exchange for setting aside 6.25 percent of units as affordable. In single-family or townhouse developments, developers must set aside up to 12.5 percent of units as affordable, and they receive a density bonus of up to 20 percent in return. The control period for owned units is 15 years; for rental units it is 20 years. Upon the expiration of the control period, the County's Redevelopment and Housing Authority may purchase up to one-third of affordable units during the first 90 days the units are on the market.[97]

The program's ability to produce some affordable units suggests that this is a tool worth pursuing. However, Fairfax County should learn from Montgomery County's experience: control periods should be lengthened beyond 15 and 20 years, and the program's reach should be broadened to encompass new development permitted as of right. Further, the program should apply to developments of 10 or more units, as in D.C., not only to large developments of 50 or more units. With these changes in place, the program could make a meaningful contribution to the county's affordable housing crisis.

Prince George's County
Passed in 1991, Prince George's County's inclusionary zoning ordinance was repealed in 1996 because County officials believed that the County had more than its "fair share" of the region's affordable housing.[98] During the five years that the ordinance was in place, 1,600 affordable units were created. The ordinance applied only to developments of at least 50 units, and the control period lasted only 10 years. Developers were granted a 10 percent density bonus in exchange for deeming 10 percent of the units as affordable.[99]

While it is true that the average rent in Prince George's is lower than in other jurisdictions in the D.C. metropolitan area, the County must adopt a new inclusionary zoning ordinance now to ensure that future development includes housing for people with a mix of incomes and preserves some affordable housing as housing prices in the County continue to rise. With the coming construction of the Purple Line, developers will likely seek to construct apartment buildings and mixed-use developments near the proposed public transit stations. More than 50 percent of these stations are in Prince George's County,[100] and an inclusionary zoning program could provide means to ensure that developers set aside a certain number of "affordable" units in these new buildings and developments while still drawing a wealthier tax base to the newly-developed areas. As rents increase and new developments are built, the County must act so that it does not lose this opportunity. The County currently does not have programs in place to either preserve or create

In 2013, the D.C. Department of Housing and Community Development was tracking 89 projects, representing more than 26,000 dwelling units, that fall within one or more exclusions. Legislative or regulatory reform to address the widespread availability of exclusions seems clearly warranted.

affordable housing on a large scale, but prices within the County are already starting to rise sharply.

The District of Columbia

The Inclusionary Zoning Implementation Amendment Act of 2006, a mandatory inclusionary zoning program, exchanges density bonuses for affordable units. The law applies to any new development or substantially rehabilitated development that increases the size of the existing building. The requirement applies to both sale and rental units, with eligibility requirements for families set at or below 50 percent or 80 percent of AMI.[101] The program is subject to multiple exclusions for, among other things, projects of fewer than 10 units, certain neighborhoods where density bonuses are not allowed and, most notably, projects that received building permits before the inclusionary zoning regulations went into effect in 2009.[102] The law also permits developers, under limited circumstances, to construct affordable units at an off-site project.[103]

D.C.'s program suffers mainly from a failure of implementation. As of 2013, only 24 affordable units had been created, but there are as many as 900 additional units in the pipeline. Despite its poor track record to date, the program should not be abandoned, but the exclusions should be sharply pared back. As of mid-2012, the exclusions for housing developments that received permits before the law took effect covered approximately 16,000 units. In 2013, the D.C. Department of Housing and Community Development ("DHCD") was tracking 89 projects, representing more than 26,000 dwelling units, that fall within one or more exclusions. Legislative or regulatory reform to address the widespread availability of exclusions seems clearly warranted. Such reform should also include measures to ensure that units created as affordable units remain so; pending proposals instead seek to shorten the periods of control, which vary depending on whether the property is in a "distressed" neighborhood. The Coalition for Smarter Growth has also recommended that DHCD staffing for this program be increased and improved and that the "overly prescriptive lottery requirements" for inclusionary zoning units be suspended "until a lottery is needed to fairly allocate a unit among a larger pool of qualified applicants."

With these reforms in place, the act could provide a steady supply of affordable units in every new or redeveloped housing project in the District. Nevertheless, D.C.'s inclusionary zoning program may do little to help low income people. The units created pursuant to this program are for families at 50 percent or 80 percent AMI, so they are really housing for the workforce rather than housing for low income people. In 2013, the median income in the region was $107,300, so a family of four would qualify for the 50 percent AMI units if it earned $54,722, and would qualify for the 80 percent AMI units if it earned $86,912.[110] Because the rent in many of D.C.'s new multi-family buildings is so high, even the affordable units are only affordable to low income families if they have a second subsidy, such as a Housing Choice Voucher. Still, the affordable units created pursuant to the inclusionary zoning program provide an opportunity for economic diversity in D.C.'s new buildings – one of the few opportunities in many of D.C.'s neighborhoods where prices have soared in recent years.

D.C. offers one special possibility for additional inclusionary zoning that warrants mention, although public opposition suggests it is not the most promising target of opportunity. Since 1910, the Height of Buildings Act[111] has restricted the height of any building in Washington, D.C. to no more than 110 feet. A number of experts with whom we spoke noted that, at least outside of the "historic core" of the city,[112] the existing building height restriction might be lifted. Such a change could be allowed only on the condition that any such development include a significant percentage (e.g., 30 percent) of permanently affordable housing units, targeted toward both low income and very low income residents.

In 2012 and 2013, the City Council's Committee on Oversight and Government Reform conducted hearings to consider whether the Height of Buildings Act should be modified. The final report,[113] issued in late 2013, recommended that the Act should remain in place with no changes made to the formula or approach for calculating allowable building height. In short, regardless of the opportunity it might represent to increase affordable housing in the City, even a limited departure from the height restriction is seen as a "deeply controversial" proposal[114] that is unlikely to be adopted any time soon.

Alexandria

Alexandria can, through its special-use permit process, grant increases in allowable floor area ratio, density, and height in exchange for provision of on-site affordable units.[115] The ordinance does not define the percentage of units that a developer must provide to receive a density bonus or the length of time those units must remain affordable.[116] However, the ordinance does specify that "affordable" units shall be available to persons for whom gross annual income is at or below the median income for the Washington metropolitan area.[117] According to an oft-used formula, one third of the bonus units provided under the ordinance must be affordable for a period of at least 30 years.[118] In some circumstances, the City has been able to secure 40-year commitments.[119]

While Alexandria's ordinance shows promise, its lack of specificity suggests that the program will be ineffective in creating affordable units on a large scale unless requirements are tightened.

Arlington

Arlington adopted its inclusionary zoning ordinance in 2004.[120] The ordinance requires either cash contributions allocated by square foot of gross floor area, or a percentage of gross floor area of certain developments to be devoted to affordable units.[121] The county's 25 percent density and six-story height bonus for site plan projects allows the county to approve additional height and/or residential density for both market-rate and affordable units, with the income from the market-rate units designed to offset the cost of affordable units. The Special Affordable Housing Protection District is a special land use overlay which identifies existing affordable housing in certain corridors and requires a one-to-one replacement of bedrooms for development projects within these corridors. The County also permits a shift of density from one part of a site to another within a site plan.

Arlington County has also adopted an ordinance to allow for the transfer of development rights consistent with state enabling legislation. This program allows a site to send density and other development rights to another site

for the purpose of, among other things, the preservation or facilitation of affordable housing. While the program's approach is innovative, its lack of structure suggests that the program may be ineffective on a large scale. Further, the ability for developers to create affordable units at locations other than in the new development is a lost opportunity to ensure some measure of economic diversity in new buildings and neighborhoods and can lead to further concentration of poverty.

Obstacles to Inclusionary Zoning

Despite the obvious benefits of inclusionary zoning programs, these programs are not universally successful. Such programs have limited effectiveness in areas like Montgomery County, where there are few large tracts of land available for new development and little opportunity for large scale redevelopment. Further, most programs include exceptions through which developers can avoid building affordable units in their new developments if they: (1) provide affordable units at another location, (2) provide land for affordable units at another location, or (3) make a monetary contribution to a local housing fund.[122] Where readily available, such exceptions greatly weaken inclusionary zoning ordinances and subvert one major goal of inclusionary zoning by allowing for the segregation of affordable units rather than integrating them into developing communities. Finally, short control periods result in loss of existing affordable housing units once they are created. When local governments are not granted a first right to purchase affordable units, such units are irretrievably lost.

Path Forward

Inclusionary zoning will be most effective in areas where land is available for new development or redevelopment. Given the amount of new residential construction in the District, sharply restricting the exceptions available and strictly enforcing the inclusionary zoning requirements in Washington D.C. could produce a substantial number of affordable units in D.C.'s rapidly redeveloping neighborhoods. Yet, in order to be effective, any such program must include both creation and preservation of affordable units, specifically (1) adequate control periods, (2) local government purchase rights after expiration of the control period, (3) low thresholds for the number of units that trigger the inclusionary zoning requirement in developments, and (4) limited exceptions.

Further, eligibility to rent or purchase inclusionary units is generally predicated on household income as a percentage of AMI. In some jurisdictions, these units are available to households earning up to 80 percent of AMI. A more effective approach would either (1) reduce the AMI cap to 30 percent, in order to target a relatively more vulnerable population or (2) establish quotas of units available to certain ranges of AMI (*e.g.* X units available to households earning 30 percent or less of AMI; X units available to households earning between 31-50 percent of AMI, and so on).

With these policies in place, inclusionary zoning programs can offer another partial solution to the region's affordable housing crisis in ways that foster economic integration and thus help jurisdictions meet their obligations to affirmatively further fair housing.

Accessory Dwelling Units

Background

Accessory dwelling units ("ADUs"), often referred to as "granny flats," are independent living quarters on single family lots that are equipped at a minimum with a bedroom, kitchen, bathroom and separate entrance. An ADU may be attached to or separate from the main dwelling.[123] Such units were common in the early twentieth century, but became disfavored during the post-World War II era, when there was a strong trend toward suburban-style development centered on single family homes.[124]

The benefits of ADUs include: affordability; the absence of the need for new infrastructure; the low investment of government resources required (generally for permitting only); more inclusive, higher density, transit friendly neighborhoods; providing older people and lower income homeowners economic support to remain in their homes; and increased tax revenues. Some objections raised to ADUs include: changes to the character of established neighborhoods; increased numbers of poor people and renters in neighborhoods; increased traffic and parking shortages; impacts on schools; and potential loss of privacy in the case of detached ADUs.[125] However, in communities that have adopted permissive ADU zoning, there has been little public dissatisfaction with the results.[126]

Some advocates for the poor also express concern that ADUs do not really increase the stock of affordable housing that is committed to low-income people. However, others argue that ADUs "have the broad potential to increase the stock of market-affordable housing … by virtue of their smaller size and lower building costs."[127] Additionally, some ADU zoning laws require those who have had illegal ADUs to commit to affordable rent for a specified period as a condition of being brought into compliance without fine or penalty; still other zoning laws restrict the rents charged or offer incentives for maintaining affordable rents.[128]

Because of their small size and commonly-imposed occupancy limits, ADUs themselves are not likely to accommodate families. Where allowed, ADUs are often subject to a limit on the number of people who can occupy either the ADU or the combination of the principal dwelling and the ADU. These limits raise fair housing concerns, as discrimination still makes it especially difficult for families to find housing, and ADUs will often exclude families with children by virtue of their small size. However, in some areas that have zoning that is friendly to ADUs, property owners choose to down-size by occupying the ADU, leaving their former family home available for rental. In other areas, both the principal dwelling and the ADU may be rented. These kinds of policies allow ADUs to help ease the burden on families of finding affordable housing.

Clearly, ADUs are not a complete answer to the region's shortage of affordable housing, but some studies have indicated that permissive zoning for ADUs can increase the total housing stock by as much as 10 percent[130] at little or no cost to local governments. Portland, Oregon, which has adopted ADU-friendly zoning, found that building permits for ADUs are equal to fully 25 percent of the number of permits for single family homes, increasing from 30 per year before the rules changed to 200 per year after the change.[131] Principles of supply and demand suggest that such a dramatic increase in housing stock could ease housing prices more broadly. Thus, they would seem to warrant a prominent place in the response of all of the local jurisdictions to the area's severe shortage of affordable housing. The reality in this region, however, is that they are sharply restricted where they are allowed at all.

Accessory Dwelling Units or "granny flats" are not a complete answer to the region's shortage of affordable housing, but some studies have indicated that permissive zoning for ADUs can increase the total housing stock by as much as 10 percent at little or no cost to local governments.

Current Rules for ADUs in the Region

In the District, current law allows ADUs in most neighborhoods only for domestic employees of the household. Since 2006, the D.C. Office of Planning has called for exploring zoning changes to ease the requirements for ADUs, but progress has been slow, at least in part because of citizen opposition. A pending proposal from the Office of Planning would allow ADUs in R-1 and R-2 zones (one and two-family homes), regardless of the occupant (i.e., no longer just for domestic employees) under still quite limited conditions, including:

- The ADU would have to be secondary in size to the main dwelling;
- Only one ADU per lot;
- No ADU entry visible from the street;
- Combined occupancy not to exceed six; and
- The owner must occupy either the principal or the accessory unit.[132]

To protect neighbors' privacy, the proposal would apply still more restrictions to ADUs in accessory buildings relating to, among other factors: height, size, offsets from other buildings, and a use of the accessory building that is subordinate to the main building (such as a garage).[133] The Office of Planning proposal has been under consideration for over a year, the subject of numerous public meetings, and modified in response to public comments; however, objections continue to be raised. The comment period closed on April 25, 2014.

While Montgomery County eased the process for obtaining approval for ADU's in 2013, they are still only allowed under quite restrictive conditions. For example, ADUs can be located only on lots with owner-occupied single family homes that are at least five years old, with at least one on-site parking space in addition to the parking for the principal dwelling. If attached to the main dwelling unit, an ADU must be at least 300 feet from any other ADU, measured from side lot line to side lot line on the same block; however if the ADU is detached, the distance must be 500 feet and it must be internal to the existing house unless the lot is larger than one acre. In addition to satisfying generally applicable occupancy limits, there must not be more than two adult occupants in an ADU. Notwithstanding these restrictions, Montgomery County provides what appears to be the most ADU-friendly policy in the region.

Alexandria does not permit ADUs. In 2012, the City Manager suggested that allowing such units was one way to support residents who wish to age in place. Despite this stated objective, an Accessory Dwelling Unit Policy of the Alexandria Office of Housing Draft Master Plan proposed that ADUs be authorized only in connection with new construction within new Coordinated Development Districts, anticipating that there would likely be "significant community opposition, especially in established neighborhoods."[134] No action has been taken on even this limited proposed policy change.

Based on rules adopted in 2008, Arlington County allows the permitting of only 28 ADUs per year, and we have found no suggestion that any increase in this number is under consideration. Moreover, for those 28 authorized ADUs per year, the conditions are quite restrictive, including, for example: the owner must have lived in the main dwelling for at least the immediately preceding year; the ADU must not exceed 750 square feet and must be located in the main dwelling on a lot that is at least 50 feet wide; and ADU occupancy is restricted to two persons. A permit application triggers a parking survey designed to assure that parking is preserved or created in connection with the addition of an ADU.

Prince George's County does not appear to allow ADUs at all. Likewise, Fairfax County does not allow ADUs, except pursuant to a special permit issued by the Board of Zoning Appeals. One source reports that, between 1988 and 2012, Fairfax County approved only 102 such permits, which suggests that the demand was not great.[135]

In short, throughout the region, the limits on ADUs are tight, and proposals to ease those limits do not easily win approval, notwithstanding the experience noted above that communities with permissive ADU zoning generally are happy with the results. If a single jurisdiction in the region were to adopt a genuinely ADU-friendly policy and both track and publicize its success, it could encourage other jurisdictions to follow suit. Such action could begin to make at least a modest dent in the region-wide affordable housing shortage with little or no expenditure of government funds.

Illegal Unit Problem

Anecdotal evidence suggests that, if local governments do not embrace ADUs and regulate them in sensible ways, extreme housing shortages may produce a large illegal ADU market. By way of example, San Francisco discovered in 1960 that, as a result of housing shortages in that region, the city was home to between 20,000 and 30,000 ADUs, 90 percent of which were illegal. More recently, the much smaller community of Barnstable, Massachusetts likewise found itself with a large number of illegal accessory units. It responded with an amnesty program that, among other things, made available Community Development Block Grant funds to bring units into compliance with zoning requirements. In return, it required a commitment to rent to persons at 80 percent or lower of AMI, and it provided tax relief to offset the effect of the low-income deed restrictions designed to preserve the affordability of the units. The result was the addition of 160 safe, compliant, affordable ADUs to the housing stock in an area with a population of fewer than 50,000.[136]

Path Forward

Given the likely absence of large infusions of public funding for affordable housing in the near future, advocates for increasing affordable housing in the region should give attention to easing rules for ADUs. HUD has concluded that, to be successful, such programs need to be flexible and uncomplicated, include fiscal incentives, and be accompanied by a public education campaign to generate community support.[137] Consideration of fair housing concerns, including unnecessary exclusions and limits on families from ADUs and their accompanying dwellings, should also be part of the discussion as rules are formulated. Finally, an amnesty program like the one successful in Barnstable will help to encourage owners to bring their illegal units into compliance with the housing code while also ensuring a level of affordability for these units. All of these elements should be part of any advocacy in support of ADUs.

Workforce/Employer-Assisted Housing

Background

As noted above, the shortage of affordable housing is a problem not only for the poor, but also for many middle income workers whose salaries have not kept pace with the rising cost of housing in the region. Employer-assisted housing ("EAH") is one response. "EAH reflects the recognition that employers cannot fully externalize the costs of locating or operating in a tight market (such as a suburban location) or in a soft market (such a distressed urban neighborhood) onto their employees or the public or nonprofit sectors."[138] EAH refers to any housing program that is in some way assisted by an employer, and aims to help working families secure affordable housing near to their workplaces while also helping employers reduce employee turnover and improve community relations.[139]

EAH typically provides workers with rental assistance or forgivable, low- or zero-interest loans or grants to help with the initial costs of home purchase.

EAH began in the United States in the 19th century when New England mill owners provided housing for their workers and the industrialist, George Pullman, created the concept of the "company town."[140] In the 20th century, employer involvement in housing turned to executive compensation and corporate-relocation-assistance, but in the late 1980s and early 1990s employers again began to offer housing benefits to non-management workers. Also at this time, neighborhood-based nonprofits and community development corporations started offering housing-related services to local employers; the federal government made EAH an eligible activity within its HOME program; Fannie Mae began accepting employer contributions towards down payments, closing costs and/or monthly housing costs; and unions became involved in negotiating employer housing assistance with their members' employers.[142] However, this boom in EAH activity did not last, because as the economy has worsened over the last decade, the "worker's market" disappeared and corporate employers became less concerned with the need to recruit and retain non-management workers.

While EAH is most commonly associated with local jurisdictions and anchor employers such as universities,[144] there have been several unsuccessful attempts at the federal level to encourage employers to participate in EAH. For example, the proposed Housing America's Workforce Act[145] would have provided a 50 percent federal tax credit to employers for housing assistance targeted to low and moderate income employees. Employees would not be taxed on the assistance and to help employers, the act would have established a grant program so that nonprofit housing corporations could assist employers in implementing effective forms of EAH. Unfortunately, this legislation, proposed in 2007, died without making it out of committee.

Local Employer Housing Assistance

Three jurisdictions studied in this report have some form of EAH, all of which is focused on public sector employees.

There are two employer-assisted housing programs that assist employees of the District of Columbia Government who are first-time homebuyers in the District: one for those covered by collective bargaining agreements and one for those who are not. Non-covered employees of District government agencies may be eligible for matching down payment funds up to $1,500 and a deferred loan of up to $10,000. The home purchased with these benefits cannot cost more than $417,000. There are also income tax and real property tax credits available to participants in this program. Employees covered by specific collective bargaining agreements can receive a grant to be used toward the purchase of a primary residence in the District. Grant levels range between $3,000 and $26,500, depending on the union member's years of service.

Fairfax County has the Magnet Housing Rental Program,[146] which provides affordable rental housing in five communities in the County to bus drivers, new school teachers employed by Fairfax County Public Schools, recruits in training hired by the Fairfax County Fire and Rescue and Police Departments and Fairfax County Sheriff's Office. Eligibility depends on income levels that vary based on family size and continued employment by the participating County offices and schools. School employees can rent for as long as their income remains between the limits, while Fire and Rescue, Police and Sheriff's office employees can rent for a maximum of two years.

Arlington has a program for local school employees who work 30 or more hours per week, which provides forgivable grants in the amount of one percent of the purchase price up to a maximum of $5,300.[147] As of April 11, 2014, 20 grants for the purchase of homes in Arlington had been awarded for 2013-2014.[148]

Path Forward

While the existing programs in the region are on the right track, they are not enough. As housing costs have gone up, low and moderate income workers have been pushed out to the edges of the Washington metropolitan area in order to find affordable housing. Workers routinely face the tough decision whether to pay a greater share of their moderate incomes to stay in housing closer to their workplaces, or move and face long, expensive daily commutes. Both options reduce local spending and in turn, tax revenue, leading to less local funding for regional investments (and less revenue for housing trust funds that rely on tax revenue).

The problem is only going to get worse. It is estimated that, over the next 20 years, the Washington metropolitan area will add 857,334 net new jobs, provided that the region can create a sufficient supply of housing that meets the needs of the future workforce, is affordable and is located near job and transportation centers.[149] This projected job growth translates to 548,298 new housing units between 2012 and 2032 that will be needed to house these workers, 491,698 of which will be needed within the Washington metropolitan area just to maintain current commuting patterns.[150]

In order to realize the enormous job growth potential predicted for the Washington metropolitan area, EAH cannot be left to local municipalities; private employers must also get involved. However, studies have documented several fundamental issues standing in the way of increased use of EAH, including: (1) the lack of understanding by corporate employers regarding the link between housing and business/area competitiveness;[151] (2) human resources professionals in the corporate world do not view housing assistance as an employee benefit in the same way they view medical, retirement or even education assistance;[152] and (3) the tax laws do not make

> In order to realize the enormous job growth potential predicted for the Washington metropolitan area, employer-assisted housing programs cannot be left to local municipalities; private employers must also get involved.

offering housing assistance an attractive employee benefit.[153] Until these hurdles are overcome, EAH will not make a significant contribution to the affordable housing crisis in the Washington metropolitan area.

Rapid Rehousing and Emergency Rental Assistance Programs in the Region

Background

Rapid rehousing programs and emergency rental assistance programs can be effective short term tools to provide shelter for those who might otherwise face homelessness. Given the lack of affordable housing in our region, many families and individuals find themselves consistently at the brink of losing their homes. They may avoid this outcome with the help of emergency programs that can help them get through job loss, illness, and other temporary causes of severe financial hardship. Critics, however, argue that such temporary programs do nothing to resolve the underlying crisis in this region of a lack of affordable housing.[154] Although families and individuals can obtain support for a limited period of time, in some cases for as short as four months, their circumstances are unlikely to have changed enough to make market rents affordable.

Current State of Rapid Rehousing and Emergency Rental Assistance Programs

All of the jurisdictions that we have studied provide some form of temporary, emergency rental assistance. In the District of Columbia, there is both a Rapid Rehousing Program (“RRP”) and an Emergency Rental Assistance Program (“ERAP”). RRP provides temporary rental assistance for four months, guaranteed, with the possibility of extension beyond that.[155] By the time this

Temporary assistance programs should not be seen as a solution to the affordable housing problem in the region. Rather, these programs should be viewed as important social service programs designed to provide immediate relief and to prevent temporary crises from spiraling into long-term homelessness.

subsidy stops, at least in theory, the families should no longer be suffering pressing economic hardship and should be able to return to self-sufficiency in their current housing. The City's ERAP also provides house emergencies funding for low-income District residents, funding for overdue rent if a qualified household is facing eviction, security deposits, and first month's rent for residents moving to new apartments. This program is open only to households with children, elderly households (age 60 or older), and people with disabilities. The amount of the subsidy available depends on a household's income and the program's resources. Further, ERAP payments can only be used once per year for each eligible household.

Montgomery County has two programs that can serve families and individuals with emergency needs. One program is its Rental Assistance Program ("RAP"). This program is limited to one year duration and is subject to certain income and rental amount limits. The amount participants can obtain is limited to between $50 and $200 per month.[156] Montgomery County also has an Emergency Eviction Program, which provides temporary assistance and/or shelter to families and adults who are homeless, at high risk of losing housing (eviction, put out, foreclosure), victims of individual or community disasters, or persons stranded from their homes.[157]

In Arlington, there are two community-government partnership programs and one government program that provide rental assistance to individuals and families. The Homelessness Prevention and Rapid Re-housing Program ("HPRP") is operated collaboratively by the Department of Human Services, A-SPAN, Arlington-Alexandria Coalition for the Homeless, Doorways for Women and Families and Volunteers of America-Chesapeake. It provides short-term housing stabilization services (financial assistance and case management) to households that are homeless and to those at imminent risk of losing housing.[158] Arlington Thrive is a second community-based program that provides same-day emergency financial assistance to Arlington residents facing financial crises that could lead to eviction.[159] Finally, Arlington has a RAP, which is a county-funded program that provides rental assistance to certain categories of individuals including working families with children. There are income eligibility and rental amount limits.[160]

Prince George's County has a RAP that provides emergency assistance,[161] and the City of Alexandria has two programs, a Homeless Intervention Program and an Emergency Shelter Fund.[162] In Alexandria there is a separate emergency fund for individuals with a total disability or those over 65 with limited income.[163]

Fairfax County, via a network of community-based and County organizations, provides some rental assistance to prevent eviction or foreclosure, security deposit assistance to secure permanent housing, utility payments to prevent disconnection, prescription assistance, and other special needs. Assistance is determined on a case-by-case basis and is generally available only once a year.[164]

The Path Forward

These temporary assistance programs should not be seen as a solution to the affordable housing problem in the region. Once the funding has ceased, many families still cannot afford the rapidly increasing rents in our area. Likewise, temporary assistance programs should not be permitted to divert funds from other programs that are more directly tied to increasing the availability of affordable housing, which is sometimes the root cause of housing emergencies. Rather, these programs should be viewed as important social service programs designed to provide immediate relief and to prevent temporary crises from spiraling into long-term homelessness. Acceptance of such temporary assistance should not preclude families' efforts to obtain permanent housing assistance.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V. Reflections and Recommendations

The foregoing analysis shows that the challenges to providing adequate levels of affordable housing in the region is enormous, and the public response has fallen far short of what is necessary to meet the need. The lack of a stronger response is in part a funding issue, but it also reflects citizen concern with or opposition to doing more in "my neighborhood" and developers taking advantage of readily available exceptions and exemptions in order to maximize their benefits from the region's strong real estate market.

If the requisite public support can be mustered, the tools we have focused on seem the most likely to be able to respond to the need, provided that program requirements are both tightened and streamlined, and if exceptions are limited. Generally, the tools we have identified do not depend on a large new influx of federal funding, which seems unlikely to be forthcoming. Additionally, federal programs are often funded inadequately or only for short periods, leaving local housing officials with an array of underfunded programs to administer, each with its own eligibility criteria.

Affordable housing involves many complexities not addressed in this analysis. Many of the tools we have discussed are better able to provide new or redeveloped housing, but there is also a great need to preserve existing affordable housing, and the region is rapidly losing ground in that area. For example, under many past and present programs, including Project-Based Section 8 and the Low-Income Housing Tax Credit program, owners agree to maintain affordable rents for a specified period of time in exchange for federal subsidies or tax credits. Once the period expires, the owners do not typically re-enroll in the programs but rather convert the units to market-rate units. This in and of itself is problematic for affordable housing stock, but most programs also permit the developer to prepay the mortgage after a set number of years and leave the subsidized programs even more quickly. These issues contribute significantly to the affordable housing crisis in D.C., as many buildings have been canceling their Project-Based Section 8 contracts to take advantage of the suddenly high market rents in their neighborhoods. As a result, many units that have been subsidized for decades are no longer affordable. Because much of the funding for these programs has been federal, there needs to be both a federal and a local response to these issues.

Only the District has a rent control program,[165] and it has not been cited by affordable housing experts as a model to be emulated.[166] However, the law generally restricts the frequency and amount by which owners can increase rents, thus helping to restrain the upward pressure on rents. Like other programs, it is subject to broad exemptions, including for properties that receive federal or District subsidies, were built after 1975, are owned by

natural persons who own no more than four rental units in the District, or were vacant when the act took effect. Because of these many exemptions, some believe it has not served as an effective tool for preserving affordable rental units. Moreover, because it only applies to buildings constructed more than 39 years ago, its effectiveness will only decrease further over time. In addition, the program imposes no eligibility requirements on tenants, so benefits may go to residents who can afford market-rate units. Given the great need that exists to preserve affordable housing, however, the law may warrant an update, not rejection. For example, it could be changed to apply to housing built before 1995 or 2005, rather than 1975.

Prince George's County has a Moderate Housing Rehabilitation Program that provides low interest loans to owners of multifamily sites who agree to allocate a fixed number of units to families who receive rental assistance in the form of subsidies. This is a program that may warrant duplication in other jurisdictions.

Some groups of people with a disproportionate need for affordable housing, such as the elderly and persons with disabilities, may also need wraparound services that ideally would be provided along with the housing. Our analysis suggests, however, that the simpler and the more inclusive program requirements can be made, the more likely they are to successfully deliver more affordable housing to the market. Advocacy groups that work with communities that have additional needs might consider teaming with nonprofit housing developers to provide needed support services, rather than trying to extend their reach to the complex area of developing affordable housing.

Recycling existing subsidies and focusing on support for renters rather than buyers could also make existing resources go further. Funding now provided in the form of grants could be turned into interest-free loans. That funding would then gradually return, for example, to a housing trust fund and create a base for future lending for new programs and new assistance.

Further, the sheer number of jurisdictions that make up the D.C. metropolitan area leads to a vast array of different programs, eligibility requirements, and duplication. While there is large overlap in the actual people served by the affordable housing programs in each jurisdiction, there is no regional strategy or coordination among the different jurisdictions. While it may be the most difficult recommendation to implement, all of the experts we consulted said that a regional strategy for creating and preserving affordable housing is needed to further efficiency and ensure that affordable housing is distributed across the region. The Metropolitan Washington Council of Governments clearly recognizes the lack of affordable housing in the region is a serious problem. It has issued three reports this year alone that address the issue, providing useful insights into tools and strategies that have been successful in various jurisdictions in the region.[167] However, MWCOG is not proposing coordinated action – presumably recognizing the political difficulty such an initiative would likely face. Indeed, waiting for the region's jurisdictions to agree on a path forward to provide affordable housing at all levels of need would likely serve primarily to slow progress on this pressing issue.

In short, the affordable housing issue is large and complex, and we conclude that it has been studied in depth. At this point, targeted actions in every local jurisdiction aimed at strengthening the best programs and focusing on effective execution are the things that are most needed.

The simpler and the more inclusive program requirements can be made, the more likely they are to successfully deliver more affordable housing to the market.

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48 Maeve Elise Brown, *Federal Regulation of Financing for Affordable Housing*, in The Legal Guide to Affordable Housing Development 247 (Tim Iglesias & Rochelle E. Lento eds., 2d ed. 2011). The Neighborhood Stabilization Program (NSP1) was created in 2008 for the "redevelopment of abandoned and foreclosed upon homes and residential properties." States and certain communities (of which Prince George's is one) receive grants on a formula basis. There have been two subsequent rounds of neighborhood stabilization grants, NSP2 and NSP3.

49 According to the Prince George's Foreclosure Study, pursuant to the National Mortgage Settlement Agreement, Prince George's was reported to receive $10,000,000 from the Maryland Attorney General's settlement funds for targeted neighborhood stabilization programs and activities.

50 *Neighborhood Stabilization Program (NSP)*, Prince George's Cnty. Maryland, http://www.princegeorgescountymd.gov/sites/RedevelopmentAuthority/Services/NSP/Pages/default.aspx (last visited Mar. 21, 2014).

51 Mortgage Servicing Settlement Fund Memorandum of Understanding between Md. Office of the Attorney General, the Md. Dep't. of Housing. and Cmty. Dev., and Prince George's Cnty., Md. 2 (June 10, 2013) (on file with parties).

52 *Id*.

53 See discussion *infra* at 17-18.

54 See Brown, Karen D., *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area*, The Brookings Inst. on Urban and Metro. Policy, 17-18 (Oct.2001) available at http://www.brookings.edu/~/media/research/files/reports/2001/10/metropolitanpolicy %20brown/inclusionary.pdf.

55 *Id*.

56 See *Housing Choice Voucher Holders*, Housing Opportunities Comm'n of Montgomery Cnty. (2014), http://www.hocmc.org/For-Our-Customers/Public-Housing-Residents.aspx; http://www.hocmc.org/For-Our-Customers/Housing-Choice-Voucher-Holders.aspx.

57 Jenn Davis, *Without State Financing, Gaithersburg Apartment Complex Might Stall, Developer Says*, Gazette.Net (Dec. 20, 2013), http://www.gazette.net/article/20131220/NEWS/131229809/without-state-financing-gaithersburg-apartment-complex-might-stall&template=gazette.

58 For example, while we are not arguing for its repeal, we concluded that the complexities associated with D.C.'s Tenant Opportunity to Purchase Act, D.C. Code Ann. §§ 42-3401.01– 42-3405.13, suggest that it should not be emphasized as an approach likely to make a substantial dent in the affordable housing shortage.

59 See *supra* note 48 at 296. There is also a National Housing Trust Fund, created under Title I of the Housing and Economic Recovery Act of 2008, Section 1338 (Public Law 110-289).

60 *Id*. at 297.

61 *Id*. at 309.

62 Keith Ellison, *Give the National Housing Trust Fund Its Due*, N.Y. Times, (Oct. 17, 2103), http://www.nytimes.com/roomfordebate/2013/10/16/housing-thats-not-a-luxury/give-the-national-housing-trust-fund-its-due. The National Housing Trust Fund is intended to be funded through assessments on new business by Fannie Mae and Freddie Mac, however both GSEs were placed into conservatorship, and their contributions suspended, before any money could be transferred into the fund. The Federal Housing Finance Agency, which oversees both GSEs, has yet to lift the suspension even though both entities are now healthy. Funds from the trust would be given to states by HUD in the form of block grants and would primarily be used to preserve, rehabilitate and build renting housing for families that earn 30 percent or less of area median income.

63 *Housing Production Trust Fund and Affordable Housing Report*, D.C. Dep't of Hous. and Cmty. Dev. 1 (2011), available at http://dhcd.dc.gov/publication/2011-housing-production-trust-fund-and-affordable-housing-annual-report.

64 *Id*. at 2.

65 See discussion *supra* at 4.

66 Patricia Sullivan, *Alexandria Action Worries Affordable-Housing Advocate*s, Washington Post (May 16, 2013), http://www.washingtonpost.com/local/alexandria-action-worries-affordable-housing-advocates/2013/05/16/cd2452ac-be3a-11e2-9b09-1638acc3942e_story.html.

67 Budget Memorandum #32: Status of Housing Trust Fund and Households Qualifying for Affordable Housing from Nelsie Smith, Dir. of Mgmt. and Budget to The Honorable Mayor and Members of City Council 1 (May 1, 2013) available at https://www.alexandriava.gov/uploadedFiles/budget/info/budget2014/memos/BM32HousingTrust.pdf.

68 *Affordable Housing Investment Fund*, Arlington Cnty. Gov't (2014), http://housing.arlingtonva.us/development/affordable-housing-investment-fund/.

69 FY Operating Budget: Hous. Initiative Fund and Hous. First Memorandum, from Linda McMillan, Senior Legislative Analyst, to Planning, Hous. and Econ. Dev. Comm., Health and Human Serv. Comm. 2 (Apr. 24, 2013) available at http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2014/140425/20140425_PHEDHHS1.pdf.

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73 See *County to Identify Public Land for Affordable Housing*, ARLnow.com (Dec. 18, 2013), http://www.arlnow.com/2013/12/18/county-to-identify-public-land-for-affordable-housing/.

74 See *2012 Affordable Housing*, Fairfax Cnty. Human Servs (Dec. 10, 2012), available at http://www.fairfaxcounty.gov/hscouncil/affordable_housing_2012.pdf.

75 *Id.*

76 See *Affordable Housing Initiatives Work Group Initial Recommendations*, City of Alexandria, Virginia (Apr. 2008), available at https://www.alexandriava.gov/uploadedFiles/housing/info/AHIWG%20Initial%20Recommendations%20Presentation%20City%20Council%20May%2013.pdf.

77 See Worksession Memorandum: Montgomery Cnty.'s 2012 Housing Policy from Linda McMillian, Senior Legislative Analyst to Planning, Hous. and Econ. Dev. Comm. (Jan. 15, 2013), available at http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2013/130117/20130117_PHED1 pdf.

78 See Press Release, Montgomery Cnty. Council, Montgomery Cnty. Council Approves Affordable Hous. Assessment Legislation (Feb. 5, 2013), http://www6.montgomerycountymd.gov/Apps/Council/PressRelease/PR_details.asp?PrID=9180.

79 D.C. Mun. Regs. Chap. 10-B45.

80 D.C. Code § 48-2802(b-2)(1).

81 See discussion *supra* at 13.

82 See *supra* note 48 at 81-82.

83 *Id.* at 99.

84 *Id.* at 81.

85 *Id.* at 99.

86 Brown, Karen D., *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area*, The Brookings Inst. on Urban and Metro. Policy, 15-16 (Oct. 2001), http://www.brookings.edu/~/media/research/files/reports/2001/10/metropolitanpolicy%20brown/inclusionary (hereinafter "Brookings Report").

87 See *supra* note 48 at 98.

88 Brookings Report at 12.

89 *Id.* at 5, 7.

90 *Id*. at 14.

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92 Brookings Report at 17-18.

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94 See *Bd. of Supervisors' v. De Groff Enters Inc., et al*., 198 S.E.2d 600 (Va. 1973).

95 *Fairfax County Comprehensive Plan and Related Inclusionary Zoning Affordable Housing Provisions*, at 3, available at http://www.fairfaxcounty.gov/dpz/projects/reston/reference_documents/fairfax_affordable_housing-white_paper_oca.pdf (last visited May 28, 2014).

96 Brookings Report at 7.

97 *Id*. at 8-9.

98 See, e.g., *id*. at 21.

99 *Id*. at 11.

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[151] Harvard Study at 14.

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[154] See, e.g., Petula Dvorak, *Without Affordable Rents, D.C.'s Rehousing Program Can't Rescue Homeless Families*, Washington Post (Apr. 21, 2014), available at http://www.washingtonpost.com/local/without-affordable-rents-dcs-rehousing-program-cant-rescue-homeless-families/2014/04/21/c2a148c2-c991-11e3-95f7-7ecdde72d2ea_story.html; Aaron Weiner, *The Home Stretch*, The Washington City Paper (Apr. 16, 2014), available at http://www.washingtoncitypaper.com/blogs/housingcomplex/2014/04/16/the-home-stretch/.

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[165] Title II of the Rental Housing Act of 1985, as amended by the Rent Control Reform Amendment Act of 2006 (D.C. Law 6-10).

[166] One problem with D.C. the rent control law is that it has a provision for hardship petitions that allow landlords to escape the rent increase restrictions and to sometimes effectively force tenants out. It has been the subject of a number of as yet unsuccessful amendment efforts. Testimony of Julie Becker of the Legal Aid Society of the District of Columbia to the Comm. on Econ. Dev. (Apr. 11, 2014) available at http://www.legalaiddc.org/wp-content/uploads/2014/04/JBecker4-11-14.pdf.

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