

# REAFFIRMING HOUSING AS INFRASTRUCTURE IN INDIANA

IU MCKINNEY HEALTH AND HUMAN RIGHTS CLINIC\*

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## I. INTRODUCTION

This topic presents a rare situation where opening with a definition is beneficial. “Infrastructure,” in everyday use, has come to be associated with the fruits of civil engineering: roads, bridges, energy grids, and water supplies. But “infrastructure” is broader than that. Merriam-Webster defines the word as “the system of public works of a country, state, or region; also: the resources (such as personnel, buildings, or equipment) required for an activity.”<sup>1</sup>

Regarding affordable housing as infrastructure is neither bold nor novel.<sup>2</sup> Housing has long been viewed as central to promoting economic growth and household stability.<sup>3</sup> In 1933, the National Industrial Recovery Act (NIRA) was

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1. *Infrastructure*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/infrastructure> [https://perma.cc/YZH3-ULXH].

2. See Juli Ponce, *Social Infrastructure: Affordable Housing as Urban Infrastructure: A Comparative Study From a European Perspective*, 43 URB. LAW. 223 (2011).

3. See James A. Kushner, *Affordable Housing as Infrastructure in the Time of Global Warming*, 43 URB. LAW. 179 (2011) (describing the five stages of affordable housing development, beginning in the Civil Rights era and leading to the modern era of “smart development” that regards affordable housing as essential infrastructure).

passed as a component of the New Deal, meant to “prime the pump” on Great Depression economy revitalization.<sup>4</sup> The NIRA created “a comprehensive program of public works,” among them a program for “construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects.”<sup>5</sup> Congress created the Public Works Administration to carry out that goal.<sup>6</sup> “Viewing affordable housing as essential infrastructure—understanding that the economic viability of an area is tied to its workers, including lower income workers who require such housing—[means that] affordable housing must be available, like adequate roads, sewer, and potable water, to the area’s growing population.”<sup>7</sup>

Indianapolis, like many burgeoning cities in the mid-1900s, was planned to be, and remains today, segregated.<sup>8</sup> New Deal homeownership programs like Federal Housing Administration and Veterans Affairs loans are credited with turning the United States into a “nation of homeowners.”<sup>9</sup> But New Deal programs really only turned the country into a nation of *white* homeowners—98% of the \$120 billion in federal homebuyer loans between 1934 and 1968 went to white homebuyers in all-white communities.<sup>10</sup>

There has been public dispute about the dividing line between social and physical infrastructure, but there is no need to perpetuate this false dichotomy.<sup>11</sup> Affordable housing is a physical development that yields tangible social

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4. Gail Radford, *Modern Housing for America: Policy Struggles in the New Deal Era* 89 (The University of Chicago Press, 1996).

5. *Id.* at 89.

6. *Id.* at 91.

7. Kristin Larsen, *Florida’s Housing Trust Fund—Addressing the State’s Affordable Housing Needs*, 19 J. LAND USE & ENVTL. L. 525, 527 (2004).

8. Rebecca Denne, *Inequality Remade: Residential Segregation, Indianapolis Public Schools, and Forced Busing*, IND. HIST. BLOG (Feb. 16, 2017), <https://blog.history.in.gov/inequality-remade-residential-segregation-indianapolis-public-schools-and-forced-busing/> [<https://perma.cc/ZC5T-VJZP>]; see generally RICHARD B. PIERCE, *POLITE PROTEST: THE POLITICAL ECONOMY OF RACE IN INDIANAPOLIS, 1920-1970* (Indiana University Press, 2005).

9. A Review of the State of and Barriers to Minority Homeownership: Hearing Before the Subcomm. on Hous. Comm. Dev., and Ins. of the Comm. On Fin. Serv. 116th Cong. 15 (May 8, 2019).

10. *Brown: We Must Address the Legacy of Housing Discrimination*, U.S. S. COMM. ON BANKING, HOUSING, & URB. AFF. (Apr. 13, 2021), <https://www.banking.senate.gov/newsroom/majority/brown-we-must-address-the-legacy-of-housing-discrimination> [<https://perma.cc/Z5YP-U74B>].

11. See, e.g., Hilary Jochmans, *Democrats Tackle the Environment*, N.Y. ST. B. ASS’N. (Apr. 4, 2021), <https://nysba.org/democrats-tackle-the-environment/> [<https://perma.cc/G4YG-C56V>]. (“The physical infrastructure piece will likely include traditional components such as investments in roads, bridges, public housing, schools and manufacturing. It is expected that the human infrastructure piece will include investments in childcare, paid leave, community college education and broadband expansion and access.”).

benefits.<sup>12</sup> It is best regarded merely as public infrastructure, mirroring the definition adopted in some states' Smart Development plans by placing housing alongside transportation, sewers, and water management system priorities.<sup>13</sup>

This Article is limited in several respects. First, each section and subsection could easily be expanded into independent articles; presented here is only a fly-over of the detailed and complex geography of housing policy and law. It would be an injustice to attempt exploring it all in only one symposium article. Second, this paper solely focuses on supply-side opportunities, not demand-side options such as a vastly expanded voucher program.<sup>14</sup> Like most solutions, no one approach is sufficient standing alone—the community development opportunities explored here are desperately needed but will ultimately fail without parallel demand-side advancements. In fact, some housing advocates argue that while more quality housing stock is needed, the *only* solution to the affordable housing crisis is vastly expanded federal subsidies for low-income families the free market could never house.<sup>15</sup> Finally, solutions discussed are limited to approaches that have already been used in Indiana. There are myriad other aspirational approaches, but the tunnel-vision purpose of this article is to present politically feasible and resource-conscious avenues to expand affordable housing in Indiana.

Part II lays out the present state of housing in Indiana, including its quantity, quality, economic impact, and governmental priorities for it. Part III then zooms

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12. Bergeron writes:

[T]he United States is far from addressing the lasting impacts of historic and continuing injustices. Unfortunately, housing has ultimately been commodified and, therefore, disconnected from its social function. It reflects income inequality and environmental injustice. From federal- to local-level laws impacting air and water, along with homeowners and the homeless, regulatory processes that influence where and how people live have an immediate and profound effect on shaping public health.

Emily Bergeron, *Introduction, Adequate Housing is a Human Right*, 44 HUMAN RIGHTS 1 (2019).

13. Michael Frascarelli, *The New York State Smart Growth Public Infrastructure Policy Act: Encouraging Environmental and Fiscal Sustainability Through Smart Growth Review Procedures*, 11 No. 6 N.Y. ZONING L. AND PRAC. REP. 1 (2011).

14. Although affordable housing is a human right, it is not an entitlement. *See generally Entitlement, Enjoyment, and Due Process of Law*, 89 DUKE L.J. (1974); *Harvard Joint Center for Housing Studies' Rental Housing Report Highlights Affordability Challenges*, NAT'L LOW INCOME HOUS. COAL. (Feb. 18, 2020), <https://nlihc.org/resource/harvard-joint-center-housing-studies-rental-housing-report-highlights-affordability> [<https://perma.cc/7PAG-RQLW>] (explaining that for every four households who qualify for tenant-based rental assistance, only one gets it). This results in some housing authorities going so far as to suspend waitlists. For example, the Indianapolis Housing Agency has not opened its waitlist since 2016. *Housing Choice Voucher: Frequently Asked Questions*, INDIANAPOLIS HOUS. AGENCY, <https://www.indyhousing.org/housing-choice-voucher/frequently-asked-questions> [<https://perma.cc/8T6N-Z8KP>].

15. *See* Vincent Reina et al., *Exploring a Universal Housing Voucher*, THE HOUSING INITIATIVE AT PENN (Sept. 21, 2021), <https://www.housinginitiative.org/universal-voucher.html> [<https://perma.cc/QY94-59CK>].

out to view Indiana's housing status as compared to the rest of the country and national initiatives. Part IV details pragmatic, high-priority actions that state and local governments can take to better enable private sector development and utilization of currently available federal dollars. Finally, Part V explores how public-private partnerships can leverage federal money in local communities to increase the stock of healthy, affordable housing in Indiana.

## II. THE STATE OF INDIANA'S HOUSING STOCK

### *A. Housing Stock Supply*

1. *Homes for Sale.*—Like many markets, Indiana saw an explosion of home sales and skyrocketing prices throughout the Covid-19 pandemic.<sup>16</sup> The 17.5% increase in purchase price from 2020 to 2021 is the largest annual increase in Indiana to date, resulting in a 13% decrease in homeownership affordability.<sup>17</sup> The median list price was \$375,000 in April 2021, another record.<sup>18</sup> Despite the relatively poor homeownership investment returns—3.7% since 1982<sup>19</sup>—purchasers are winning bidding wars by offering above list price and waiving inspection.<sup>20</sup> Competition for residential, single-family homes is only exacerbated by commercial investors. In Indianapolis, 19% of residential, single-family homes are owned by institutional investors, the highest rate of all tracked markets.<sup>21</sup>

New home builds have fallen sharply since 2005, with only one new construction home being sold for every four existing home sales in 2021.<sup>22</sup> “A rule of thumb is that a market with four to six month's supply of homes for sale is considered a balanced market . . . . [m]arkets with less than a four-month supply of homes for sale favor the seller. Right now, the central Indiana housing

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16. Matt Kinghorn, *Indiana's positive housing market outlook for 2022*, IND. BUS. REV. (2021), <https://www.ibrc.indiana.edu/ibr/2021/outlook/housing.html> [https://perma.cc/5TLS-HAAN].

17. *Id.*

18. Tony Knoble, *Housing Frenzy Emphasizes Immediate Need for More Affordable Housing Options*, INSIDE IND. BUS. (July 27, 2021, 6:17 PM), <https://www.insideindianabusiness.com/articles/housing-frenzy-emphasizes-immediate-need-for-more-affordable-housing-options> [https://perma.cc/FTM8-PW8M].

19. James Briggs, *Briggs: Housing market is 'peak insanity,' but there are signs it's starting to normalize*, INDIANAPOLIS STAR (May 30, 2021), <https://www.indystar.com/story/opinion/columnists/james-briggs/2021/05/30/indianapolis-home-market-is-insanity-now-but-shows-signs-of-normalizing/7487062002/> [http://perma.cc/LL3D-ZFKQ].

20. Knoble, *supra* note 18.

21. Briggs, *supra* note 19. About 25% of single-family home sales in 2021 were to institutional investors; nearly 30% of these purchases were low-priced homes. *Single-Family Investor Activity Remained High in the Third Quarter*, CORELOGIC (Dec. 23, 2021), <https://www.corelogic.com/intelligence/single-family-investor-activity-remained-high-in-the-third-quarter/> [https://perma.cc/AV8R-2G5M].

22. Kinghorn, *supra* note 16.

market has about a one-month supply.<sup>23</sup> This squeeze on households is exacerbated by institutional investors who have the capital on hand to make cash offers and assume the risk of no-inspection purchases.<sup>24</sup> Investors then quick-flip and resell at a premium—with varying degrees of quality—or turn properties into rentals for monthly costs that are both unaffordable for many families and far above what they would pay for a mortgage.<sup>25</sup>

2. *Market-Rate Rentals.*—Over a quarter of Indianapolis—217,461 households—are extremely low-income households. This means they make below 30% of Area Median Income (AMI).<sup>26</sup> In Indiana, four-person households earning at or below \$25,750 are considered extremely low income.<sup>27</sup> Based on the Housing and Urban Development (HUD) fair market rent estimation, a household needs to make \$34,474 to afford a two-bedroom rental; this is a third higher than the actual AMI in Indiana.<sup>28</sup> As a result, nearly 9 in 10 extremely low income (ELI) households are cost burdened to remain housed, meaning they spend more than 30% of their income on housing.<sup>29</sup> Over 7 in 10 extremely low-income households spend more than *half* of their income on housing.<sup>30</sup> Using a four-person ELI household as an example, that leaves \$12,875 for *all* other non-housing expenses, or \$268.23 per person, per month.

In the IU McKinney Health and Human Rights Clinic (Clinic), students are used to seeing clients who are incredibly rent burdened. One client, a single mother with two small children and a part-time job due to childcare affordability and availability challenges, paid more than 80% of her take-home pay in rent. Another client, a security guard in his 60s who works in a downtown Indianapolis building, spent nearly 90% of his income on rent. Such stories abound.

While many factors influence low incomes and high housing costs, together they make for a simple economic reality: the demand for affordable housing far exceeds supply. There is a deficit of 126,952 rental homes available for ELI households even at a severe cost burden.<sup>31</sup> Put otherwise, there are only thirty-

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23. Ko Lyn Cheang, “It Would Take a Recession” to Cool Indiana’s Record-High Home-Buying Market, INDIANAPOLIS STAR (Feb. 16, 2022), <https://www.indystar.com/story/news/real-estate/2022/02/16/indiana-real-estate-home-inventory-low-prices-high/6787831001/> [https://perma.cc/9AJZ-PNCS].

24. See Briggs, *supra* note 19.

25. Jasmine Minor, Expert: *Out-of-state investors buying houses to flip or rent, driving Indy prices up*, WISHTV.COM (Feb. 22, 2022, 6:28 PM), <https://www.wishtv.com/news/i-team-8/expert-out-of-state-investors-buying-houses-to-flip-for-rent-driving-indy-prices-up/> [https://perma.cc/RS3R-5Z4A].

26. *Housing Needs By State: Indiana*, NAT’L. LOW INCOME HOUS. COAL., <https://nlihc.org/housing-needs-by-state/indiana> [https://perma.cc/7Q8N-MD33].

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

seven market-rate homes available to every 100 renting ELI households.<sup>32</sup> For households at 50% AMI, there are only 81 homes for every 100 renting households.<sup>33</sup> There is a slight excess of rental homes available to renters at and above 80% AMI.<sup>34</sup> But even for these households that by basic economic principles should have good market competitiveness, there are only 107 homes per 100 renter households.<sup>35</sup>

3. *Subsidized Rentals.*—As discussed later in Part VI, there are many ways the federal government subsidizes affordable rental housing. Major subsidized rental programs include the Low Income Housing Tax Credit (LIHTC) program, vouchers, and public housing.<sup>36</sup> LIHTC is an investor-based subsidy that adds units to the stock of affordable housing, while vouchers provide a direct tenant-based subsidy to be used in market-rate housing—perhaps at a LIHTC development—and public housing does both.<sup>37</sup> The LIHTC program (a supply-side solution) is discussed in more depth in Part VI. The tenant-based rental assistance programs (demand-side solutions) are discussed here.

Housing Choice Vouchers, commonly referred to as Section 8 Vouchers, can be an efficient way to expand the number of houses available to ELI households in markets with an abundance of properties.<sup>38</sup> But “[f]rom the perspective of generally addressing affordability issues within regions, housing subsidies are simply inadequate to widely [impact] the regional housing market. There is not, and is unlikely to ever be, enough housing subsidy to make meaningful amounts of affordable housing available to all low- and moderate-income families.”<sup>39</sup> Chronic federal underfunding leaves only one family with assistance for every four families who qualify.<sup>40</sup> While vouchers are profoundly impactful for families who receive assistance, they do little to affect the broader affordable housing market shortage. And once families finally get a voucher, it can be extraordinarily

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32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Maggie McCarty et al., Cong. Res. Serv., RL34591 OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY 1, 9 (Mar. 27, 2019), available at <https://crsreports.congress.gov/product/pdf/RL/RL34591>. There are myriad other programs as well, but as discussed in the introduction, this Article is meant to provide the high points of housing in Indiana rather than a primer on all federal housing programs.

37. *Id.* at 4-7.

38. ANDREW AURAND ET AL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES, NAT’L. LOW INCOME HOUS. COAL. 1, 18 (Mar. 2021), [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2021.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf) [<https://perma.cc/5QES-DE5A>].

39. John Marron et al., *The Affordable Housing Market and Why It Matters*, THE POLIS CENTER AT IUPUI (Nov. 2016), <https://polis.iupui.edu/wp-content/uploads/2019/01/affordable-housing.pdf> [<https://perma.cc/R8GB-W7Q2>].

40. AURAND ET AL., *supra* note 38, at 18. Indiana Senator Todd Young (R) is co-author to a bill that would create 500,000 more housing vouchers. *Id.*

challenging to find properties with landlords who will accept vouchers.<sup>41</sup> An estimated 299,303 federally assisted units, including those within LIHTC developments, are expected to have expired affordability restrictions by 2024.<sup>42</sup>

Public housing, available to the lowest income households, is not in much better condition. Consistent disinvestment since the construction of most public housing complexes began in the 1930s has left at least 147,783 properties in dire need of repairs.<sup>43</sup> A conservative estimate to cover only the most egregious defects is \$70 billion.<sup>44</sup>

4. *Homelessness*.—In the January 2020 point in time count, there were 5,625 people identified as experiencing homelessness in Indiana.<sup>45</sup> Slightly more than a quarter of homeless Hoosiers are veterans, part of a homeless family, or experiencing chronic homelessness.<sup>46</sup> An estimated 18,252 students in public school experienced homelessness in the 2018-2019 school year.<sup>47</sup> Importantly, the counts that yield these statistics only count individuals found on the streets or in shelters. They do *not* account for individuals who find temporary housing couch surfing with friends or family or paying exorbitant amounts for daily rental rooms.<sup>48</sup> Tempting though it may be, homelessness should not be regarded as a historically ever-present phenomenon:

The early 1980s marked the emergence of what now may be considered the modern era of homelessness. Major forces that changed the complexion of homelessness in the modern era include gentrification of the inner city, deinstitutionalization of the mentally ill, high unemployment rate, the emergence of HIV/AIDS, an inadequate supply of affordable housing options, and deep budget cuts to the U.S. Department of Housing and Urban Development (HUD) and social service agencies in response to what was then the country's worst recession since the Great Depression.<sup>49</sup>

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41. Abby Vesoulis, *Including Housing Voucher Funds in Democrats' Reconciliation Bill is the First Challenge. Getting Landlords to Accept Them is Another*, TIME (Oct. 4, 2021, 6:00 PM), <https://time.com/6103813/housing-voucher-problem/> [https://perma.cc/7KU2-M7VZ].

42. AURAND ET AL., *supra* note 38, at 19.

43. *Id.*

44. *Id.* at 19-20.

45. *Indiana Homelessness Statistics*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/homelessness-statistics/in/> [https://perma.cc/CX2E-SVU6].

46. *Id.*

47. *Id.*

48. *See 2021 Point-in-Time Count survey provides glimpse into homelessness in Indianapolis*, IND. UNIV. PUB. POL'Y INST. (July 28, 2021), <https://policyinstitute.iu.edu/news-media/stories/2021-pit-count-homeless.html> [https://perma.cc/9JR5-ZQRJ].

49. NATIONAL ACADEMIES OF SCIENCES, *PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS* 176 (National Academies Press, 2018).

### B. Housing Stock Quality

The City of Indianapolis has footed the bill for malfeasant landlords. In an egregious example of landlord-created dangerous squalor, residents of Lakeside Point at Nora suffered years of dangerous and dilapidated conditions.<sup>50</sup> In 2021 alone, the Indianapolis Fire Department was called to the complex approximately twenty times and Emergency Medical Services called approximately fifty-five times.<sup>51</sup> In just one Lakeside Pointe unit, there were more than twenty housing violations, including roach infestations, broken appliances, “windows that do not lock, and moldy drywall.”<sup>52</sup> Tenants across the complex experienced no heat in the winter, no air conditioning in the summer, inconsistent hot water service, and water leaks that resulted in a collapsed ceiling while tenants occupied the units.<sup>53</sup>

In February 2022, Indianapolis paid more than half of the Berkley Commons and Capital Place apartment’s unpaid \$1.3 million water bill.<sup>54</sup> Service had been shut off to the property due to the massive outstanding balance, even though tenants had been paying for service through their utilities-included rent payments.<sup>55</sup> Between the apartment complexes there were nearly 1,000 health and housing violations racked up from January 2015 to November 2021.<sup>56</sup> The same tax-exempt nonprofit group owns a total of seven similar complexes in Indianapolis alone, providing 2,517 primarily low-income units; in total, 8,379 violations have been reported.<sup>57</sup>

These uninhabitable conditions are not constrained to a single bad actor. In the Clinic, habitability issues are ever-present. The Clinic represents tenants whose landlords range from large interstate corporations to small family-owned operations. Over half of the tenants represented by the Clinic report sub-standard conditions in their rental units, including rampant mold, persistent leaks, caved-in

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50. Ko Lyn Cheang, *Indianapolis Threatens to Sue Lakeside Pointe at Nora Owner for Nuisance*, INDIANAPOLIS STAR (Jan. 25, 2022), <https://www.indystar.com/story/news/real-estate/2022/01/25/indianapolis-threatens-sue-lakeside-pointe-owner-nuisance/9204782002/> [<https://perma.cc/8ZLF-B697>] [hereinafter Cheang, *Indianapolis threatens to sue Lakeside Pointe at Nora owner*].

51. Ko Lyn Cheang, *Tenants at Lakeside Pointe Suffered Years of Neglect. Then, Their Homes Caught Fire.*, INDIANAPOLIS STAR (Nov. 24, 2021), <https://www.indystar.com/story/news/local/marion-county/2021/11/24/indianapolis-apartments-lakeside-pointe-tenants-suffered-neglect-before-fire/8725147002/> [<https://perma.cc/2W8W-S7VZ>] [hereinafter Cheang, *Tenants at Lakeside Pointe suffered years of neglect*].

52. *Id.*

53. Cheang, *Indianapolis Threatens to Sue Lakeside Pointe at Nora Owner*, *supra* note 50.

54. Rachael Wilkerson, *Unpaid utility bills at two southside apartment complexes exceed \$1.3 million, according to city*, WRTV (Feb. 23, 2022, 6:01 PM), <https://www.wrtv.com/unpaid-utility-bills-at-two-southside-apartment-complexes-exceed-1-3-million-according-to-city>.

55. *Id.*

56. Cheang, *Tenants at Lakeside Pointe Suffered Years of Neglect*, *supra* note 51.

57. *Id.*

ceilings, rodent and pest infestations, and inadequate plumbing that backs raw sewage into their homes. It is important for readers to keep in mind the selection bias of the Clinic's clients—the tenants that are represented are rarely there on their own accord, as nearly all come to small claims court in response to an eviction filing. Thus, there are countless tenants living at shared properties who are experiencing the same conditions but who never seek legal remedy. This is an unsurprising result given that Indiana provided *no* protection against retaliatory evictions for raising habitability concerns before 2021, and the law that now prohibits such evictions (1) may not be enforced by local governments, (2) has not been meaningfully tested in the courts, and (3) does not create a right to civil representation.<sup>58</sup>

Nor are blighted properties constrained to urban areas. Over half of Indiana's housing stock was built before the 1980s.<sup>59</sup> A 2016 study by the Purdue Center for Regional Development found an overwhelming presence of “older homes that require substantial resources to bring up to current codes or to be retrofitted with the amenities [new residents] want in their homes. The lack of moderate-to-higher income housing is resulting in new workers moving to counties with a better mix of housing stock.”<sup>60</sup> It further concluded that “[t]he need for *quality* rental housing is significant” in the sample of rural counties evaluated.<sup>61</sup> Additionally, there is an increasing share of older residents in rural areas that may be forced to leave their communities as their homes become inaccessible to them and they are able to find no suitable senior housing in their area.<sup>62</sup>

Finally, there are chronic, unremedied environmental pollutants in houses throughout Indiana.<sup>63</sup> One toxin that has received much attention, but little state action, is lead—a heavy metal that can profoundly affect cognitive development, poses a heightened risk to children under the age of seven, and most often poisons children in their own homes.<sup>64</sup> In 2020, 226 children were found to have an

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58. IND. CODE § 32-31-8.5 (2022).

59. *Indiana Dashboard: Population*, IND. HOUS. DASHBOARD, [https://indianahousingdashboard.com/?utm\\_content=&utm\\_medium=email&utm\\_source=govdelivery](https://indianahousingdashboard.com/?utm_content=&utm_medium=email&utm_source=govdelivery) [https://perma.cc/7298-UUQ6].

60. HEATHER STROHM ET. AL., AN EXAMINATION OF RURAL HOUSING DEVELOPMENT PROGRAMS, ISSUES AND STRATEGIES WITH A SPECIAL FOCUS ON RURAL INDIANA, PURDUE UNIV. CTR. FOR REG'L DEV. 21 (Dec. 2016), <https://cdext.purdue.edu/wp-content/uploads/2020/12/An-Examination-of-Rural-Housing-Development-Programs-Issues-and-Strategies.pdf> [https://perma.cc/9H5A-WLGD] (The study was performed at the request of the Indiana Office of Community and Rural Affairs).

61. *Id.* at 22 (emphasis added).

62. *Id.* at 21.

63. For a discussion of the history, state, and future of lead poisoning prevention policy in Indiana, see Cassidy Segura Clouse, Comment, *Hoosier Public Health: Reinvigorating Indiana Lead Law Using a Lens for Health Equity*, 10 IND. J.L. & SOC. EQUAL. 291 (2022).

64. IND. DEP'T OF HEALTH LEAD & HEALTHY HOMES DIV., 2020 CHILDHOOD LEAD SURVEILLANCE REP. 4-5 (2020), <https://www.in.gov/health/lead-and-healthy-homes-division/>

elevated blood lead level above 10 ug/dL (micrograms per deciliter).<sup>65</sup> Indiana will not track data for children with blood lead levels above 3.5 ug/dL, the CDC-recommended reference value to trigger intervention since, until October 2022.<sup>66</sup> The Indiana State Department of Health acknowledges this deficiency: “early childhood exposure to lead remains a significant, solvable problem for Indiana residents. Lead testing rates do not reflect that all, or even a majority, of Indiana’s children are tested at recommended intervals.”<sup>67</sup> An estimated 177,054 housing units in Indiana have both lead hazards and a child under six living in the home.<sup>68</sup>

### C. Economic Impact of an Underhoused Workforce

Indiana’s lack of affordable housing has deterred some promising employers from the state, like Intel in early 2022.<sup>69</sup> It also deters workers from staying in the state. Only 50% of Purdue STEM graduates were employed in Indiana after graduation, while less than 40% of all biological and engineering graduates remained in the state following undergraduate graduation.<sup>70</sup> Affordable housing is a major factor:

Manufacturers have been screaming because they have the factory jobs, but the communities where they do business don’t have enough affordable workforce housing — homes between \$100,000 and \$250,000. We have a giant auto plant in Southern Indiana but not enough affordable housing to keep up with the demands of the manufacturer or the vendors that work with them. The bankers are screaming because they have money to lend families, but there’s not enough housing that the workers can afford.<sup>71</sup>

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files/2020-Annual-Lead-Report-FINAL.pdf [https://perma.cc/8P25-UZ3M].

65. *Id.* at 9.

66. See *Childhood Lead Poisoning Prevention: Blood Lead Reference Value*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nceh/lead/data/blood-lead-reference-value.htm> (Sept. 6, 2022) [https://perma.cc/EJ3P-QNJ7]; 20220928 Ind. Reg. 410220119FRA (Sept. 28, 2022), <http://iac.iga.in.gov/iac/20220928-IR-410220119FRA.xml.html> [https://perma.cc/CB5Q-3WTX] (updating Indiana’s action level from 10 ug/dL).

67. STROHM ET AL., *supra* note 60, at 10.

68. IND. ADVISORY COMM.: U.S. COMM’N ON CIVIL RIGHTS, ENVIRONMENTAL INJUSTICE: LEAD POISONING IN INDIANA 32 n.198 (Nov. 2020), <https://www.usccr.gov/files/2020/2020-11-12-Report-Lead-Poisoning-in-Indiana.pdf> [https://perma.cc/6XAT-PWWU].

69. Michael J. Hicks, *Opinion: Intel’s Choice of Ohio for Its \$20 Billion Factory Shows What Matters at Least as Much as Low Taxes—and It Costs Money*, MARKETWATCH (Feb. 5, 2022), <https://www.marketwatch.com/story/intels-choice-of-ohio-for-its-20-billion-factory-shows-what-matters-at-least-as-much-as-low-taxes-and-it-costs-money-11643812717> [https://perma.cc/62GG-ZP8G].

70. Nick Dmitrovich, *Brainpower is in Demand*, BUILDINGINDIANA (Feb. 15, 2019), <https://buildingindiana.com/brainpower-is-in-demand/> [https://perma.cc/AK5V-HWCL].

71. *The Impact of Housing Affordability on the Economy*, HABITAT FOR HUMANITY, <https://www.habitat.org/costofhome/housing-affordability-and-economy> [https://perma.cc/8JUR-

The shortage of affordable housing costs the U.S. around \$2 trillion each year in lost productivity and lower wages.<sup>72</sup> The economic impact of housing is twofold: (1) production and rehabilitation of housing creates skilled labor jobs, and (2) it supports a healthy workforce, literally and figuratively. The National Association of Home Builders estimates that for every 1,000 homes built, “2,970 full-time jobs, \$162 million in wages, \$118 million in business income, and \$111 million in taxes and revenue” are generated.<sup>73</sup> As discussed in Part II, Section B, there is an abundance of need for immediate housing expansion and rehabilitation projects.

Housing is a key social determinant of health, which in turn impacts careers and educations.<sup>74</sup> “Families grappling with housing uncertainty experience physical and mental health challenges, from elevated rates of childhood and chronic disease and mortality, to stress, depression, anxiety, and suicide. Those who lack stable housing are more likely to experience homelessness, unemployment, substance use, food insecurity, and violence.”<sup>75</sup> And make no mistake, unstable housing is absolutely an issue in Indianapolis: Indiana’s capitol has the highest eviction rate per capita of any city with a population greater than 500,000.<sup>76</sup>

#### *D. Shifting State Priorities*

Governor Eric Holcomb identified housing as one of the five pillars of his 2021 legislative agenda, stating that it “is just as important to us as water access, internet, broadband internet access, road access. Housing is critically important no matter where you find yourself.”<sup>77</sup> He convened a Housing Working Group

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S589].

72. *Why Do Affordable Homes Matter?* NAT’L LOW INCOME HOUSING COAL., <https://nlihc.org/explore-issues/why-we-care> [https://perma.cc/T3WV-BJG2].

73. *Housing Equals Jobs Resonates with Lawmakers*, NAT’L ASS’N OF HOME BUILDERS, <https://www.nahb.org/news-and-economics/housing-economics/housings-economic-impact/housing-equals-jobs-resonates-with-lawmakers> [https://perma.cc/3FZN-9J3P].

74. Veronica Gaitan, *How Housing Can Determine Educational, Health, and Economic Outcomes*, URBAN INST. (Sept. 19, 2018), <https://housingmatters.urban.org/articles/how-housing-can-determine-educational-health-and-economic-outcomes> [https://perma.cc/H29H-UDUJ].

75. *The Public Health Implications of Housing Instability, Eviction, and Homelessness*, THE NETWORK FOR PUB. HEALTH L. (Apr. 2021), <https://www.networkforphl.org/wp-content/uploads/2021/04/Fact-Sheet-Public-Health-Implications-of-Housing-Instability-Eviction-and-Homelessness.pdf> [https://perma.cc/335G-QCDM].

76. *An Anti-Displacement & Inclusive Growth Policy Agenda for Indianapolis*, GROUNDED SOLUTIONS NETWORK (2020), <https://groundedsolutions.org/sites/default/files/2021-04/Indianapolis%20Anti-Displacement%20Agenda.pdf> [https://perma.cc/3J9S-63E6].

77. Wes Mills, *State to Focus on Housing Shortage in 2021*, INSIDE IND. BUS. (Dec. 21, 2020), <https://www.insideindianabusiness.com/articles/state-to-focus-on-housing-shortage-in-2021> [https://perma.cc/Z9H4-UYVF] (last updated Dec. 22, 2020) [hereinafter Mills, *State to Focus on*

under the Indiana Housing and Community Development Authority (IHCDA), which created an online interactive platform that has a county-by-county breakdown of housing stocks, regional average rents, number of cost-burdened households, and other metrics.<sup>78</sup> This is in addition to the broader Regional Cities Initiative:

The rationale for Indiana's Regional Cities Initiative is the exodus of human capital from the state, and the loss of jobs and investment that follows. After six consecutive years of declining population, Indiana managed to add residents in 2013—but ranked in the bottom half of states (29th) in population growth last year, and 32nd since 2010, also remaining among the least-educated states by adult college graduates per capita.<sup>79</sup>

The legislature takes a different approach. Overriding Governor Holcomb's veto of Senate Bill 148, the landlord-tenant preemption law from the 2020 session, Indiana law now prevents local regulation of most aspects of landlord-tenant relationships.<sup>80</sup> The action abrogated some cities' attempts to require landlords to advise tenants of their rights, prevent retaliatory evictions for reporting health code violations, and provide tenants with the opportunity for legal counsel.<sup>81</sup> Priorities in 2022 did not shift. One 2022 bill, Senate Bill 230, would have enabled tenants to withhold rent for a landlord's failure to maintain essential utilities in proper working order.<sup>82</sup> It was converted into a request for a summer study committee in the Senate and never given a hearing in the House, killing the bill.<sup>83</sup>

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*Housing Shortage*]; see also Wes Mills, *Housing Remains High Priority for Holcomb in 2022*, INSIDE IND. BUS. (Dec. 28, 2021), <https://www.insideindianabusiness.com/articles/housing-remains-high-priority-for-holcomb-in-2022> [<https://perma.cc/4YG3-LDZF>] [hereinafter Mills, *Housing Remains High Priority for Holcomb*].

78. Mills, *State to Focus on Housing Shortage*, *supra* note 77; *Indiana Dashboard: Population*, *supra* note 59.

79. INDY'S METRO MOMENTUM AGENDA, CENT. REG'L DEV. AUTH. 2 (Aug. 2015), <https://www.iedc.in.gov/materials/downloads/Download/2a0f259c-34ce-6748-857a-ff0000c19905/> [<https://perma.cc/4SAY-3KUW>].

80. See IND. CODE § 32-31-1-20 (2021).

81. WISH staff reports, *Indiana Lawmakers Override Holcomb Veto; Law Now Block Cities from Regulating Rental Properties*, WISH TV (Feb. 7, 2021), <https://www.wishtv.com/news/indiana-news/indiana-lawmakers-override-holcombs-veto-of-bill-to-block-cities-from-regulating-rental-properties/> [<https://perma.cc/5922-LK63>].

82. S.B. 230, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022). (Indiana is one of only five states that neither allows tenants to withhold rent nor deduct the cost of repairs); Ko Lyn Cheang, *Renters in Other States Have Laws to Protect Them . . . That's Not the Case in Indiana*, INDIANAPOLIS STAR (Jan. 6, 2022), <https://www.indystar.com/story/news/real-estate/2022/01/06/indiana-renters-rights-no-rent-withholding-repair-and-deduct-law/6250569001/> [<https://perma.cc/APK5-XN2Z>] [hereinafter Cheang, *Renters in Other States Have Laws to Protect Them*].

83. S.B. 230, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022).

Some laws passed in 2022 have the potential to alleviate various housing market pressures. Nonprofits can now jump to the front of the line in some real property tax sales<sup>84</sup> whereas entities with an interest in property subject to an administrative or judicial unsafe building order will be barred from participating.<sup>85</sup> A taskforce was created to review the distribution of state versus local powers in regulating land drainage as compared to neighboring states,<sup>86</sup> while the Indiana Finance Authority (IFA) has been tasked with administering federal infrastructure funds for capital wastewater improvements.<sup>87</sup> Governmental bodies are now empowered to enter into public-private agreements for transportation infrastructure projects.<sup>88</sup> The types and amounts of tax credits available for award from the Indiana Economic Development Corporation have been expanded,<sup>89</sup> as have banks' abilities to broadly invest in public welfare investments.<sup>90</sup> The Governor's Housing Task Force, convened on an emergency basis, issued its final report on October 22, 2022, making over a dozen recommendations:

1. State funding for housing infrastructure;
2. Raising the current 1% cap on residential TIF;
3. Allocate resources for brownfield redevelopment;
4. Property tax abatements and housing tax credits for first-time homebuyers and development of workforce multifamily housing;
5. Financial literacy efforts for prospective homeowners;
6. Continuing education for fair housing lending practices;
7. Tax sale reforms to advantage community development groups;
8. Prioritizing housing projects that align with regional development plans (READI);
9. Providing financial and technical assistance for homeowners to age in place;
10. Incentivizing local units to revise restrictive zoning practices;
11. Supporting faster local construction permit approvals;
12. Encouraging local adoption of statewide building codes;
13. Revise state statutes to allow for more manufactured and modular housing;
14. Offsetting the technical and monetary burden of utility hookups to razed properties;
15. Oppose new housing and transaction taxes; and
16. Address substandard housing.<sup>91</sup>

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84. S.B. 62, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No.123 (Ind. 2022).

85. H.B. 1048, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No.112 (Ind. 2022).

86. S.B. 85, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 7 (Ind. 2022).

87. S.B. 272, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 18 (Ind. 2022).

88. S.B. 166, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 57 (Ind. 2022).

89. S.B. 361, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 135 (Ind. 2022).

90. S.B. 408, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 31 (Ind. 2022).

91. H.B. 1306, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 99 (Ind. 2022).

Finally, tenants may now seal the records of eviction actions where the landlord failed to carry their burden, although any state-wide, judicially mandated participation in eviction diversion programs is prohibited.<sup>92</sup>

Judicial priorities are more closely aligned with the executive viewpoint. The Indiana Supreme Court struck new ground in 2019 in *Rainbow Realty Group v. Carter* where it applied a functional, rather than formal, analysis of the 2002 landlord-tenant laws.<sup>93</sup> As a result, the implied warranty of habitability applies to *all* “rental agreements,” regardless of whether the parties regard the agreement as a lease or land contract or otherwise.<sup>94</sup> Exercising its supervisory authority over all tribunals in the state, the Supreme Court launched a groundbreaking Landlord and Tenant Settlement Conference Program in the summer of 2020,<sup>95</sup> followed by a creation of the Eviction Task Force in September 2021.<sup>96</sup> Upon release of the Task Force’s interim report, the Supreme Court mandated that all trial courts notify parties of pre-eviction diversion resources and invite them to participate in the voluntary Settlement Conference Program.<sup>97</sup> While a good policy statement, in reality, landlords—who are accustomed to cheap, quick, and easy evictions—have little incentive to participate, and under to the new law, cannot be mandated to participate.<sup>98</sup>

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92. H.B. 1214, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022); Pub. L. No. 164 (Ind. 2022); HOUSING TASK FORCE (2022), <https://iga.in.gov/documents/339177f4> [<https://perma.cc/MG8P-Z56Z>].

93. *Rainbow Realty Group, Inc. v. Carter*, 131 N.E.3d 168 (Ind. 2019).

94. For a thorough discussion of the doctrine’s uncertain and belated evolution in the state of Indiana, see Florence Wagman Roisman, *Indiana Landlord-Tenant Law: An Important Step Forward in Theory Needs to be Made Real in Practice*, 53 IND. L. REV. 317 (2020).

95. *Settlement Conference Program for Landlords and Tenants*, COURTS.IN.GOV, <https://www.in.gov/courts/housing/fast/> [<https://perma.cc/K5YA-2HJE>].

96. Ind. Sup. Ct., Order Establishing the Indiana Eviction Task Force, Case No. 21S-MS-422 (2021), *available at* <https://www.in.gov/courts/files/order-other-2021-21S-MS-422.pdf> [<https://perma.cc/5MU6-ZXS5>].

97. Ind. Sup. Ct., Order Establishing Pre-Eviction Diversion Program, Case No. 21S-MS-422 (2021), *available at* <https://www.in.gov/courts/files/order-other-2021-21S-MS-422a.pdf> [<https://perma.cc/H979-RAZN>].

98. Ko Lyn Cheang, *Supreme Court announces eviction diversion program. Advocates worry it's not mandatory*, INDIANAPOLIS STAR (Oct. 22, 2021) <https://www.indystar.com/story/news/real-estate/2021/10/22/indiana-supreme-court-announces-voluntary-eviction-diversion-program/6134178001/> [<https://perma.cc/F8U8-AE3C>] (last updated Oct. 25, 2021, 10:02 AM) [hereinafter Cheang, *Supreme Court Announces Eviction Diversion Program*].

## III. NATIONAL INCENTIVES AND COMPARISONS

*A. United States Supply Measures Compared to Other Wealthy Nations*

In 2019, there were over 341,000 apartments constructed nationwide.<sup>99</sup> The median monthly rent for these newly constructed apartments was \$1,653.<sup>100</sup> In 2021, there were over 334,000 created and opened in the United States.<sup>101</sup> The places constructing the most apartments were Los Angeles, California, Phoenix, Arizona, Dallas, Texas, and New York, New York.<sup>102</sup> Each of these cities constructed over 15,000 new apartments in 2021.<sup>103</sup> Dallas, Texas built 21,173 units in 2021, which was a 13% decrease from 2020.<sup>104</sup> These numbers only include new apartment units that were created during 2021, not any were produced in previous years.<sup>105</sup>

There are currently 21.9 million apartment units throughout the United States.<sup>106</sup> Over 24 million apartments were used during 2021.<sup>107</sup> The United States housing market is still lagging compared to other G10 countries.<sup>108</sup> The G10 “[c]ountries include Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States.”<sup>109</sup> There are factors that constrain the supply of housing, including the opposition to new developments near owner-occupied homes, also called “not in my backyard-ism.”<sup>110</sup>

Germany’s renter rates include more than half of all households.<sup>111</sup> In 2019

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99. Florentina Sarac, *Despite Challenges, 2021 New Apartment Construction tops 330,000 for 5<sup>th</sup> Consecutive Year*, RENTCAFE (Aug. 30, 2021), <https://www.rentcafe.com/blog/rental-market/apartment-construction-2021/> [https://perma.cc/58GU-6F4Q].

100. George Boyd, *15,000 Fewer Rental Units Were Completed in 2019 than in 2017*, U.S. CENSUS BUREAU (Mar. 18, 2021), <https://www.census.gov/library/stories/2021/03/new-apartment-construction-declined-nationwide-between-2017-and-2019.html> [https://perma.cc/4M33-CRBV].

101. Sarac, *supra* note 99.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Quick Facts: Apartment Stock*, NAT’L MULTIFAMILY HOUS. COUNCIL, <https://www.nmhc.org/research-insight/quick-facts-figures/quick-facts-apartment-stock/> [https://perma.cc/49DD-FHTF].

107. *Id.*

108. *How does the US Housing Market Compare to other World Powers?*, LAKESIDE TITLE CO. (May 30, 2017), <https://lakesidetitle.com/us-housing-market/> [https://perma.cc/68LQ-P79F].

109. *Id.*

110. *The Major Challenges of Inadequate U.S. Housing Supply*, FREDDIE MAC (Dec. 5, 2018), [http://www.freddiemac.com/research/insight/20181205\\_major\\_challenge\\_to\\_u.s.\\_housing\\_supply.page](http://www.freddiemac.com/research/insight/20181205_major_challenge_to_u.s._housing_supply.page) [https://perma.cc/5MHC-8N92].

111. Jenny Schuetz & Sarah Crump, *What the US can learn from rental housing markets across the globe*, BROOKINGS INST. (Apr. 20, 2021), <https://www.brookings.edu/essay/intro-rental-housing->

there were 21.2 million rental apartments in Germany.<sup>112</sup> Germany created over 306,000 dwellings in 2020, an increase from 2019.<sup>113</sup> Düsseldorf and Berlin, Germany's most populated cities, each have over 74% of apartments that are rented rather than owned.<sup>114</sup> In contrast, there were only 1,952 apartments released for sale in Japan in 2020.<sup>115</sup> Japan is struggling with land scarcity issues, the most fundamental factor defining the Japanese housing market.<sup>116</sup> There were over 216,000 dwellings created during 2020 in the United Kingdom.<sup>117</sup> Of these, 194,060 were new homes, 23,790 changed use from non-domestic to residential, and 3,870 converted from houses to flats.<sup>118</sup> This was an 11% decrease from the previous year.<sup>119</sup> In Sweden, there were around 800,000 units publicly rented and 700,000 units privately rented in 2015.<sup>120</sup> Sweden constructed around 45,000 units that year.<sup>121</sup>

### *B. International Recognition of Housing as a Human Right*

The Universal Declaration of Human Rights (UHDR) was written in 1948.<sup>122</sup> The United States is among the 192 member states who are signatories to the Universal Declaration of Human Rights.<sup>123</sup> Article 25 of this Declaration states,

markets/ [https://perma.cc/K3T3-ZJS3].

112. MATTI SCHENK, WHO OWNS GERMANY'S RENTAL APARTMENTS?, SAVILLS RESEARCH 3 (2019), <https://pdf.euro.savills.co.uk/germany-research/eng-2019/spotlight-ownership-structure-of-the-german-residential-market.pdf> [https://perma.cc/LN25-D3CS].

113. *Germany Construction Completion: Dwellings*, CEIC, <https://www.ceicdata.com/en/germany/construction-completion/construction-completion-dwellings> [https://perma.cc/MJ6K-XSDJ].

114. SCHENK, *supra* note 112, at 3.

115. Property Report, *Demand for New Apartments in Japan Continues to Outpace Supply*, PROPERTYGURU (Aug. 25, 2021), <https://www.asiapropertyawards.com/en/demand-for-new-apartments-in-japan-continue-to-outpace-supply/> [https://perma.cc/B7WA-877F].

116. Jiro Yoshida, *Land Scarcity, High Construction Volume, and Distinctive Leases Characterize Japan's Rental Housing Markets*, BROOKINGS INST. (Apr. 20, 2021), <https://www.brookings.edu/essay/Japan-rental-housing-markets/> [https://perma.cc/XXU6-3DQ4].

117. Neil Higgins, *Housing supply; net additional dwellings, England: 2020-21*, DEP'T FOR LEVELLING UP, HOUS. & COMMUNITIES 4 (Nov. 25, 2021), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1035653/Housing\\_Supply\\_England\\_2020-21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035653/Housing_Supply_England_2020-21.pdf) [https://perma.cc/9PWX-PYHM].

118. *Id.* at 5.

119. *Id.*

120. HOUSING IN SWEDEN: AN OVERVIEW, TERNER CTR. FOR HOUS. INNOVATION: UC BERKELEY 6 (Nov. 2017), [https://turnercenter.berkeley.edu/wp-content/uploads/2020/11/Swedish\\_Housing\\_System\\_Memo.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/11/Swedish_Housing_System_Memo.pdf) [https://perma.cc/TUF5-QXBX].

121. Robert Emanuelsson, *Supply of Housing in Sweden*, SVERGES RIKSBANK ECON. REV. 51 (Sept. 23, 2015), [https://archive.riksbank.se/Documents/Rapporter/POV/2015/2015\\_2/rap\\_pov\\_artikel\\_3\\_150917\\_eng.pdf](https://archive.riksbank.se/Documents/Rapporter/POV/2015/2015_2/rap_pov_artikel_3_150917_eng.pdf) [https://perma.cc/M6J9-FNA2].

122. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948),

123. *United Nations: Universal Declaration of Human Rights*, YOUTH FOR HUMAN RIGHTS,

“everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including . . . housing.”<sup>124</sup> This recognizes adequate and safe housing as a component of the human right to an adequate standard of living.<sup>125</sup> The UHDR was codified into a binding treaty law by the International Covenant of Economic, Social, and Cultural Rights (ICESCR) in 1966.<sup>126</sup> According to the ICESCR, the human right to adequate housing consists of seven elements: (1) security of tenure, (2) availability of services, materials, and infrastructure, (3) affordability, (4) accessibility, (5) habitability, (6) location, and (7) cultural adequacy.<sup>127</sup> Having the right to housing does not mean that the government must build a house for every person in a country.<sup>128</sup> But it does assign ultimate responsibility to the government to realize the right to adequate housing.<sup>129</sup> The ICESCR allows victims of a violation of the ICESCR to present complaints at the international level.<sup>130</sup>

The United Nations Office for High Commissioner for Human Rights created the Right to Adequate Housing (RHA).<sup>131</sup> The RHA describes that adequate housing is the “right to live somewhere in security, peace, and dignity.”<sup>132</sup> The freedoms of this right include; “protection against forced evictions . . . the right to be free from arbitrary interference with one’s home, privacy, and family; and the right to choose one’s residence.”<sup>133</sup> There are eight minimum criteria:

- (1) more than four walls and a roof; (2) security of tenure; (3) occupants must have safe drinking water, energy, heating, lighting, food storage, and disposal; (4) affordability; (5) habitability; (6) accessibility; (7) must not be cut off from employment opportunities, health-care services, schools, childcare centers, and other social facility or located in polluted or dangerous areas; (8) respects the expression of cultural identity.<sup>134</sup>

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<https://www.youthforhumanrights.org/what-are-human-rights/universal-declaration-of-human-rights/introduction.html> [https://perma.cc/54CM-SKGS].

124. *Universal Declaration of Human Rights*, *supra* note 123.

125. *Id.*

126. ERIC TARS, HOUSING AS A HUMAN RIGHT, NAT’L LOW INCOME HOUS. COAL. (2020), [https://nlihc.org/sites/default/files/AG-2021/01-06\\_Housing-Human-Right.pdf](https://nlihc.org/sites/default/files/AG-2021/01-06_Housing-Human-Right.pdf) [https://perma.cc/CTY4-MFWU].

127. *Id.*

128. *Id.*

129. *Id.*

130. *UN Housing Rights*, HOUS. RIGHTS WATCH (Oct. 10, 2013), <https://www.housingrights-watch.org/page/un-housing-rights> [https://perma.cc/B545-HKW9].

131. THE RIGHT TO ADEQUATE HOUSING, U.N. FACT SHEET No. 21/REV.1, OFF. OF THE UNITED NATIONS HIGH COMM’R FOR HUM. RTS. (2009), <https://unhabitat.org/sites/default/files/download-manager-files/Right%20to%20adequate%20housing.pdf> [https://perma.cc/L9H5-2RTX].

132. *Id.* at 3.

133. *Id.*

134. *Id.* at 3-4.

These criteria mirror the seven elements listed in the ICESCR but add the requirement that adequate housing be more than just four walls and a roof. The right to adequate housing is not the same as the right to land or the property.<sup>135</sup> It is a way to ensure that people are not living in life or health-threatening situations.<sup>136</sup>

### *C. Existing Investments in Housing in the United States*

Direct subsidies from the United States to tenants are woefully insufficient. While the federal government has been involved in providing housing assistance to lower-income households since the 1930s,<sup>137</sup> the programs are underdeveloped and underfunded. There are three main categories for housing assistance programs: “rental housing assistance, federal assistance to state and local governments, and housing finance and homeownership assistance.”<sup>138</sup> This section focuses on the rental housing assistance programs.

“Rental assistance is provided primarily through rent vouchers that families can use in the private market.”<sup>139</sup> The main voucher is the Section 8 Housing Choice Voucher. Section 8 vouchers are a “form of tenant-based rental assistance funded by the federal government, administered locally by . . . PHAs [Public Housing Authorities], and provided to private landlords on behalf of low-income families.”<sup>140</sup> An eligible family with this voucher must find a private landlord who will participate in the program.<sup>141</sup> The voucher pays the difference between the family’s contribution toward rent (30% of their adjusted income) and the actual rent for the unit.<sup>142</sup> Households are eligible if they earn less than 80% of the AMI, although 75% of vouchers must go to households that earn less than 50% of the AMI.<sup>143</sup> Voucher holders may have to also meet age or ability criteria, or agree to live in a specific development.<sup>144</sup>

Another form of a federal subsidy is public housing.<sup>145</sup> Public housing developments are operated, owned, and directly funded by the federal government.<sup>146</sup> Households are eligible for public housing if they earn below 80%

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135. *Id.* at 7-8.

136. *Id.*

137. OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY, CONG. RESEARCH SERV. 28 (Mar. 27, 2019), <https://crsreports.congress.gov/product/pdf/RL/RL34591> [<https://perma.cc/5SU6-FHXR>].

138. *Id.* at 9.

139. *Id.* at 9.

140. *Id.* at 10.

141. *Id.*

142. *Id.* Roughly 2 million vouchers are currently funded. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 11.

146. *Id.* “There are roughly 1 million public housing units under contract with the federal government.” *Id.*

of the AMI.<sup>147</sup> Forty percent of public housing must go to tenants that earn less than the greater of 30% of AMI or federal poverty guidelines.<sup>148</sup> Like with vouchers, “families living in public housing pay 30% of their adjusted income towards rent.”<sup>149</sup>

Other major federal funding streams for affordable housing include the LIHTC, Choice Neighborhoods, the HOME Investment Partnership Program, and the Community Development Block Grant (CDBG), discussed in Part IV.<sup>150</sup> All of these programs offer federal funding to states and cities to aid in the development of housing availability. The CDBG provides annual grants on a formula basis to states, cities, and counties to develop viable urban communities.<sup>151</sup> CDBG developments should provide decent housing and a suitable living environment.<sup>152</sup> The program is intended to empower people and communities with design tailored to their unique needs.<sup>153</sup>

#### *D. Infrastructure Legislation*

On November 6, 2021, Congress passed the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Deal.<sup>154</sup> The IIJA allocated \$1.2 trillion to improve critical infrastructure, which includes some aspects of affordable housing.<sup>155</sup> The Act does not specifically target affordable housing, but will impact it insofar as affordable housing is a critical part of infrastructure. For example, one of the IIJA’s goals is to expand clean water delivery to all American families and eliminate leaded service lines.<sup>156</sup> Therefore, housing infrastructure will be affected by this Act.

Another blockbuster legislative package, the 2022 Inflation Reduction Act (IRA), includes \$25 billion that can be leveraged by affordable housing providers,

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147. *Id.*

148. *Id.*

149. *Id.*

150. *Federal Programs for Affordable Housing*, LOCAL HOUS. SOL., <https://localhousing.solutions.org/fund/federal-programs-for-affordable-housing/> [<https://perma.cc/8V75-SN57>].

151. *Community Development Block Grant Program*, U.S. DEP’T OF HOUS. & URBAN DEV. (June 2, 2022), [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg](https://www.hud.gov/program_offices/comm_planning/cdbg) [<https://perma.cc/EE4W-9D59>].

152. *Id.*

153. *Id.*

154. *Fact Sheet: The Bipartisan Infrastructure Deal*, THE WHITE HOUSE (Nov. 6, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/> [<https://perma.cc/9PYP-TXNM>].

155. *Id.*

156. *Id.* Water service lines run from a utility’s water main into the property. Because service lines are owned by landowners, utilities must first be granted a right-of-way to the customer’s property by the landowner—which, for rental properties, is the landlord. *See Lead Service Line Replacement Program*, CITIZENS ENERGY GROUP, <https://www.citizensenergygroup.com/Our-Company/Our-Projects/Lead-Service-Line-Replacement-Program> [<https://perma.cc/BLF5-VP8X>].

of which \$1 billion is earmarked to retrofit affordable housing with energy-efficient features.<sup>157</sup> The IRA directs implementing agencies to alleviate bureaucratic burdens on funds use where possible, such as limiting requirements for low-cash flow affordable housing properties to match funds and providing technical assistance.<sup>158</sup> Although the IRA is in some ways a successful successor to failed Build Back Better Act, the nearly trillion-dollar earmarks for capital public housing improvements and expanded vouchers did not make it into the final bill.<sup>159</sup>

#### IV. STATE AND LOCAL ACTIONS

Pairing expanded tenant rights with supply-oriented reforms is the key to achieving housing stability. Housing safety and quality are inseparable from the discussion about housing supply. When housing quality diminishes, “it exacerbates the shortage of and heightens competition for the remaining modestly priced, decent rental homes.”<sup>160</sup> The scarcity of decent housing makes it easier for exploitative—even merely negligent—property owners and managers to disadvantage tenants, creating further instability.<sup>161</sup> The instability is suffered by tenants and communities alike. Where deterioration results in blighted areas, property values plummet far enough to invite mass redevelopment, which in turn drives housing costs too high for existing residents to remain. Therefore, where areas are redeveloped, housing supply should be expanded at a range of price points to increase housing stability for all residents.<sup>162</sup> State and local governments can directly impact the supply through comprehensive planning, deterring land speculators, and increasing tenant protections.

##### *A. Comprehensive Planning, Zoning Reform, and Incentives*

Comprehensive planning coupled with zoning reform is crucial to optimize private sector development and maximize federal dollars. Indiana should

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157. *NHT Policy Brief: Key Provisions in the Inflation Reduction Act for Affordable Housing*, NAT'L HOUSING TRUST (Aug. 8, 2022), <https://www.nationalhousingtrust.org/news-article/nht-policy-brief-key-provisions-inflation-reduction-act-for-affordable-housing> [https://perma.cc/W8ZY-JVWY].

158. *Id.*

159. *See House Votes to Advance “Build Back Better Act” with Historic Affordable Housing Investments*, NAT'L LOW INCOME HOUS. COAL. (Nov. 22, 2021), <https://nlihc.org/resource/house-votes-advance-build-back-better-act-historic-affordable-housing-investments> [https://perma.cc/7YWR-NNB6].

160. STABLE RESIDENTS, STABLE PROPERTIES: PERSPECTIVES ON RENT CONTROL, EVICTION MORATORIUMS, AND OTHER CONTEMPORARY APPROACHES, URB. LAND INST. 11 (2021), [https://knowledge.uli.org/-/media/files/research-reports/2021/uli-stableresidentsstable-properties\\_final.pdf?rev=258962a660c04f7abf1cf2dcb497205&hash=11413638732264C8DEF9C4EAFF7C6142](https://knowledge.uli.org/-/media/files/research-reports/2021/uli-stableresidentsstable-properties_final.pdf?rev=258962a660c04f7abf1cf2dcb497205&hash=11413638732264C8DEF9C4EAFF7C6142) [https://perma.cc/5J2V-2DUD].

161. *Id.*

162. *Id.* at 16.

incentivize local governments to encourage more development where there is higher population growth. State preemption of zoning ordinances, by providing developers a pathway to receive zoning variances from the state, and state oversight of land use planning are both effective strategies.<sup>163</sup> Evidence shows that strict local zoning and land use regulations “leads to too little housing being added in places with high demand and drives up the cost of housing.”<sup>164</sup>

1. *Focus on Building Housing Where There is Demand.*—Indiana can use financial “carrots” to incentivize and set targets for housing production in areas where the demand far outpaces the supply, prioritizing development in localities that might otherwise be resistant to increasing their housing supply.<sup>165</sup> Historically, higher-income communities have used exclusionary zoning to prevent the building of rental housing or multi-family units.<sup>166</sup> “Localities would be assigned a target” based on demand “and would receive extra funding from the state for achieving that goal.”<sup>167</sup> With state funding and oversight, those targets can require that housing be built at a variety of price points to meet demand.

Indiana could also assume oversight of local land use and comprehensive plans to ensure an increase in housing supply. For example, California and Oregon have “statewide mandates to monitor land use and/or housing production.”<sup>168</sup> Comprehensive plans might require state approval, like in Oregon where the plan must outline “planned capacity for additional housing” and “be approved by the state’s Land Conservation and Development Commission.”<sup>169</sup> Indiana has restricted the ability for local governments to regulate the landlord-tenant relationship. Rather than leave a regulatory void, the state should take on greater responsibility to ensure there is adequate housing supply in the areas with the highest need. Should the State of Indiana be unwilling to consolidate power in this manner, it should relinquish its preemption and allow for local solutions (discussed in Part IV, Section C).

2. *State Preemption of Zoning Restrictions.*—Several states have preempted local zoning restrictions to support an increase in the housing supply. Zoning changes alone will not be enough to tackle the housing supply shortage. They must be coupled with other strategic measures to ensure that housing is built

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163. Jenny Schuetz, *States Can Improve Housing Well-Being Through Thoughtfully Designed Policies*, BROOKINGS INST. (Nov. 15, 2021), <https://www.brookings.edu/research/states-can-improve-housing-well-being-through-thoughtfully-designed-policies/> [https://perma.cc/N2EC-C2AU].

164. JENNY SCHUETZ, HOW CAN STATE GOVERNMENTS SUPPORT HEALTHIER HOUSING MARKETS?, BROOKINGS INST. 2 (Oct. 2021), <https://s3-us-west-2.amazonaws.com/marriner-wpmedia/wp-content/uploads/2021/11/Schuetz-state-policy-Oct2021.pdf> [https://perma.cc/7D79-UFT6].

165. *Id.* at 8.

166. *Id.* at 4.

167. *Id.* at 8.

168. *Id.* at 10.

169. *Id.* at 17.

where there is demand. However, exclusionary zoning prevents development of affordable housing in areas with high-density job availability; this forces low-income families to find housing far from their jobs, perhaps still at a cost burden.<sup>170</sup>

Zoning restrictions are generally the harshest on high-density housing like apartments, which are more likely to be rental units.<sup>171</sup> “Upzoning” increases the zoning capacity, allowing taller or denser developments, and states can preempt local governments from restricting housing density.<sup>172</sup> In 2021, California Governor Gavin Newsom signed legislation that preempted local ordinances to make duplexes legal in residential areas throughout the state.<sup>173</sup> Similarly, “Oregon passed a law. . . that require[s] all cities to allow duplexes in residential neighborhoods, while large cities must also allow” three and four-unit buildings, and sometimes more.<sup>174</sup>

States can also encourage development by authorizing builders to seek a state variance to local zoning restrictions in certain conditions. Massachusetts provides a statewide “fair share” override “to boost production of below-market housing in affluent locations.”<sup>175</sup> Under this provision, in areas “where less than 10 percent of the existing housing meets affordability criteria, developers can request state approval for housing projects that do not conform with local zoning, as long as 25 percent of homes are set aside for low-income households.”<sup>176</sup>

### *B. Foreign and Out of State Investors*

“Housing markets are preferred destinations for foreign investors looking for yields, vacation homes or safe havens, or for those dodging tax restraints and corruption crackdowns in their home countries.”<sup>177</sup> According to the National Association of Realtors (NAR), “foreign buyer purchases made up 4 percent of

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170. Stockton Williams, Lisa Sturtevant & Rosemarie Hepner, *Yes in My Backyard: How States and Local Communities Can Find Common Ground in Expanding Housing Choice and Opportunity*, URBAN LAND INST. (2017), <https://2os2f877tn11dvtmc3wy0aq1-wpengine.netdna-ssl.com/wp-content/uploads/ULI-Documents/State-Housing-Policy-Report-2017.pdf> [<https://perma.cc/3HKW-TGHJ>].

171. *Id.* at 4.

172. Diana Budds, *Will Upzoning Neighborhoods Make Homes More Affordable?*, CURBED (Jan. 20, 2020), <https://archive.curbed.com/2020/1/30/21115351/upzoning-definition-affordable-housing-gentrification> [<https://perma.cc/9RGY-39G6>].

173. SCHUETZ, *supra* note 164, at 1.

174. *Id.* at 17 (citing Michael Anderson, *Oregon just voted to legalize duplexes on almost every lot*, SIGHTLINE INSTITUTE, <https://www.sightline.org/2019/06/30/oregon-just-voted-to-legalize-duplexes-on-almost-every-city-lot/> [<https://perma.cc/X7HE-37QT>]).

175. *Id.* at 10, 18.

176. *Id.* at 20.

177. *How Foreign Purchases of U.S. Homes Impact Prices and Supply*, KNOWLEDGE AT WHARTON (Sept. 1, 2020), <https://knowledge.wharton.upenn.edu/article/foreign-purchases-u-s-homes-impact-prices-supply/> [<https://perma.cc/9ZT5-C3UP>].

... [total] existing-home sales” in 2019.<sup>178</sup>

Housing markets are also attractive to domestic investors looking. Investors own an unusually large share of single-family homes in Indianapolis,<sup>179</sup> and increasingly those investors are from out of state.<sup>180</sup> Because “Indianapolis has been a buyer’s market for the last five years,” out-of-state investors can cheaply buy homes in the city—competing with most first-time homebuyers—and turn them into rentals.<sup>181</sup> Investors do not have the financial constraints or risk aversion that individual buyers have, so can offer cash or waive inspections, which makes it nearly impossible for would-be owner-occupants to compete.<sup>182</sup> Typically, investors can charge higher rents in these homes due to low rental market competition and a low supply of for-sale single-family homes.<sup>183</sup> This practice is driving up Indianapolis rent prices considerably.<sup>184</sup> In some neighborhoods, the rent has been increased “by 100% or 200%.”<sup>185</sup>

The increase in out-of-state ownership and management correlates with increased habitability claims among tenants represented by the Clinic. Absentee landlords are not responsive to poor conditions because they do not have ties to the community and can legally take advantage of tenants’ weak bargaining power in Indiana. Typically, “non-local investors may invest less in renovation and upkeep.”<sup>186</sup> Tenants represented by the Clinic regularly report sub-standard conditions in these units and poor communication, if any at all, with property management. Even making a gracious assumption of good faith, absentee landlords are simply not on-site to identify poor property management services. For example, in a single February 2022 afternoon, there were eight eviction hearings on the docket for non-payment of rent from one apartment complex recently acquired by an out-of-state landlord. Many of those tenants experienced

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178. *Id.*

179. Briggs, *supra* note 19, 21 and accompanying text.

180. Jasmine Minor, *Expert: Out-of-State Investors Buying Houses to Flip for Rent, Driving Indy Prices Up*, WISH TV (Feb. 22, 2022), <https://www.wishtv.com/news/i-team-8/expert-out-of-state-investors-buying-houses-to-flip-for-rent-driving-indy-prices-up/> [<https://perma.cc/ALF2-4Q58>].

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*; see also Leslie Bonilla Muñiz, *City, Partners Push Forward with Renter Support Despite Setbacks*, IND. LAW. (Feb. 21, 2022), <https://www.theindianalawyer.com/articles/city-partners-push-forward-with-renter-support-despite-setbacks> [<https://perma.cc/25PF-5BAX>] (“Indianapolis has long struggled to rein in dilapidated housing complexes owned by absentee, typically out-of-state, landlords.”).

186. Desiree Fields et al., *The Rise of the Corporate Landlord: The Institutionalization of the Single-Family Rental Market and Potential Impacts on Renters*, RIGHTS TO THE CITY ALL. HOMES FOR ALL CAMPAIGN 16 (July 2014), <https://homesforall.org/wp-content/uploads/2014/07/corp-landlord-report-web.pdf> [<https://perma.cc/73X3-UWZ6>].

habitability concerns they repeatedly reported to the new property managers to no avail.

Rising rents and the inability for owner-occupant buyers to compete create supply shortages for most families. Sellers should be aware of the issue, and if so compelled in the interest of their community, consider sacrificing the highest cash offer in favor of someone who will reside in the home. But state and local governments are in a better position to address the issue. Indiana “set[s] the parameters for local . . . fiscal authority” and local governments “set . . . [and] administer property taxes.”<sup>187</sup>

Indiana could protect Hoosier renters and buyers from increasing prices attributable to out of state investors by increasing taxes for such land speculators. Tax increases can deter foreign investments in housing through a foreign buyer tax.<sup>188</sup> Anti-vacancy taxes are another option to encourage housing for shelter rather than investment. In British Columbia, for example, there is an annual “speculation and vacancy tax . . . designed to turn empty housing into housings” and ensure foreign owners contribute to the tax base.<sup>189</sup> Within British Columbia, local governments are permitted to impose additional taxes. Vancouver has a three percent “Empty Homes Tax” to encourage properties to be used for people who live and work in the city.<sup>190</sup> The tax “does not apply to principal residences . . . or homes rented for at least six months per year.”<sup>191</sup> “Net revenues generated from the tax are being reinvested into affordable housing initiatives.”<sup>192</sup>

Similar tax initiatives are being considered to discourage “house flipping” and gentrification. The Small Home Anti-Speculation Tax, designed to encourage long-term investments by families rather than short-term monetary gains by investors, was introduced in the 2019-2020 New York State Legislative Session.<sup>193</sup> For properties transferred to a new owner within two years of a previous transfer, a fifteen to twenty percent tax would be imposed, and the revenues from the tax would be used to fund another state program called Homes and Community Renewal.<sup>194</sup> In addition to being a revenue generator, this type of tax protects vulnerable homeowners from rapidly increasing property values which often result in significant property tax increases that cause owners to fall

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187. SCHUETZ, *supra* note 164, at 5.

188. *How Foreign Purchases of U.S. Homes Impact Prices and Supply*, *supra* note 177.

189. *How the Speculation and Vacancy Tax Works*, BRITISH COLUMBIA, <https://www2.gov.bc.ca/gov/content/taxes/speculation-vacancy-tax/how-tax-works#:~:text=The%20speculation%20and%20vacancy%20tax%20is%20designed%20to%20turn%20empty,owners%20use%20their%20residential%20property> [<https://perma.cc/6NBB-T9SL>].

190. *Empty Homes Tax*, CITY OF VANCOUVER, <https://vancouver.ca/home-property-development/empty-homes-tax.aspx> [<https://perma.cc/KVV6-XDY5>].

191. *Id.*

192. *Id.*

193. A.B. A5735A, 2019-20 Leg., Reg. Sess. (NY 2019-20).

194. *With ‘flip tax,’ a push to save affordable homeownership*, GAR ASSOC. (Nov. 19, 2019), <https://www.garappraisal.com/with-flip-tax-a-push-to-save-affordable-homeownership/> [<https://perma.cc/5BER-MW3L>].

behind.

There is an appetite to deter out-of-state investments in the Hoosier state. In 2022, Indiana enacted a law that protects local farmers by preventing foreign businesses from purchasing agricultural land located in the state.<sup>195</sup> The bill also prevents Russian businesses and non-legal resident Russian citizens from “acquir[ing] by grant, purchase, devise, descent, or otherwise any real property located within Indiana” for one year.<sup>196</sup> The author of the Russian property ownership amendment, State Representative Ryan Dvorak (D-South Bend), stated that he wanted to “create permanent systems that stop the corrosive influence of state-based money laundering.”<sup>197</sup> We should extend this philosophy to protect Hoosiers from housing and rental price inflations due to all out-of-state investments, foreign and domestic, in real property—tax deterrents are a way to do so.

### *C. Tenant Protections*

As discussed in Part I, Hoosier homeownership rates are down, and there is a shortage of units for low-income renters. This supply and demand mismatch coupled with “Indiana’s lack of tenant protections. . . makes it too easy for the worst actors to unnecessarily drain resources from the entire community.”<sup>198</sup> Due to the General Assembly’s override of Governor Holcomb’s 2020 SB 148 veto, the landlord-tenant relationship bill,<sup>199</sup> local governments cannot regulate any portion of the landlord-tenant relationship. To avoid exacerbating the housing supply shortage, the state must reverse course and empower both local governments to enforce health codes and tenants to withhold rent for habitability issues.

*1. Empower Local Enforcement of Housing/Health Codes.*—Examples abound of egregious health code violations in units rented by Hoosiers. Local impotence resulting from SB 148 makes it challenging for localities to hold unscrupulous landlords accountable. For example, at Lakeside Pointe at Nora, a negligent property owner was issued over 600 health and safety violations from the Marion County Public Health Department in 2019.<sup>200</sup> The property owner left

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195. S.B. 388, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022).

196. *Id.*

197. *Dvorak amendment sanctioning Russia for Ukraine invasion headed to governor*, IND. HOUSE DEMOCRATIC CAUCUS (Mar. 11, 2022), <https://indianahousedemocrats.org/news-media/dvorak-amendment-sanctioning-russia-for-ukraine-invasion-headed-to-governor> [<https://perma.cc/4P4V-6E3F>].

198. Andrew Bradley, *Andrew Bradley: We Must Protect Renters to Fix Housing Shortage*, INDIANAPOLIS BUS. J. (Feb. 11, 2022), <https://www.ibj.com/articles/andrew-bradley-we-must-protect-renters-to-fix-housing-shortage> [<https://perma.cc/27FG-GERT>].

199. *Indiana Lawmakers Override Holcomb Veto; Law Now Block Cities from Regulating Rental Properties*, *supra* note 81; *see also* IND. CODE § 32-31-1-20 (2022).

200. Dustin Grove, *City of Indianapolis Threatens to Sue Lakeside Pointe Owners Over ‘Unacceptable Living Conditions’*, WTHR, <https://www.wthr.com/article/news/local/lakeside->

most of those unresolved for the following two years, allowing residents to live without hot water and heat as well with as mold infestations, water leaks, and numerous fires.<sup>201</sup> The owner accumulated an outstanding water bill in excess of \$1.3 million, resulting in nearly 900 apartments losing access to running water.<sup>202</sup> Local officials are extremely limited in what they can do to enforce code violations of this magnitude; as a stopgap, the City of Indianapolis paid more than half the amount on the property owner's behalf to end the shutoff.<sup>203</sup>

State officials are also limited. The Indiana Attorney General brought a lawsuit against the New Jersey-based owner—a registered non-profit with tax-exempt status due to its relationship with the U.S. Refugee Admissions Program and supposed wraparound services for tenants—and the New York-based property manager in 2021 for dangerous conditions and sought a receivership.<sup>204</sup> Because landlords are well-protected by Indiana law, lawsuits of this nature by the state are unusual. In this egregious case, the Attorney General cited the authority to intervene because of the office's role in regulating non-profits.<sup>205</sup> The lawsuit sought appointment of a receiver, alleging that the owners were unable to fulfill their purpose for their non-profit and that both the owners and managers were engaged in gross neglect.<sup>206</sup> While sympathetic to the tenant issues, the

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pointe-at-nora-north-side-indianapolis-hogsett-sue-unacceptable-living-conditions/531-1d149bdc-6703-4764-87e4-0c411a1665c8 [https://perma.cc/W5X8-5YE6].

201. *Id.*; see also Rachael Wilkerson, *Lakeside Pointe at Nora residents say its time to shut down troubled complex*, WRTV, <https://www.wrtv.com/news/working-for-you/lakeside-pointe-at-nora-residents-say-its-time-to-shut-troubled-complex-down> [https://perma.cc/6HT4-VR2T] (last updated Dec. 6, 2021, 7:51 AM).

202. Leslie Bonilla Muñiz & Mason King, *AG Rokita Sues Firms for Dangerous Conditions at Two Indy Apartment Complexes*, IND. LAW. (July 20, 2021), <https://www.theindianalawyer.com/articles/ag-rokita-sues-firms-for-dangerous-conditions-at-two-indy-apartment-complexes> [https://perma.cc/BP2X-E4TR] [hereinafter Muñiz & King, *AG Rokita Sues Firms for Dangerous Conditions*].

203. Ko Lyn Cheang, *After landlord fails to pay \$1.3M water bill, nearly 900 have water turned off*, INDYSTAR (Feb. 25, 2022), <https://www.indystar.com/story/news/real-estate/2022/02/25/indianapolis-apartments-indiana-tenant-rights-landlord-fails-pay-1-3-million-bill-jpc-charities/6921971001/> [https://perma.cc/BJA7-9N82].

204. *Id.*; see also Complaint, State of Indiana v. Aloft Mgt., Inc. and Fox Lake AHF, Inc., (Marion Superior Ct. July 20, 2021), [https://content.govdelivery.com/attachments/INAG/2021/07/20/file\\_attachments/1883426/SO1%20v.%20Aloft,%20et.%20al.%20-%20Complaint%20for%20Damages,%20Injunction,%20and%20for%20the%20Appt.%20of%20Receiver.pdf](https://content.govdelivery.com/attachments/INAG/2021/07/20/file_attachments/1883426/SO1%20v.%20Aloft,%20et.%20al.%20-%20Complaint%20for%20Damages,%20Injunction,%20and%20for%20the%20Appt.%20of%20Receiver.pdf) [https://perma.cc/NF5U-ZF7H]. Filings in this case are under seal.

205. Ko Lyn Cheang, *Tenants, Advocates Devastated as Court Rules in Favor of Lakeside Pointe Landlord*, INDIANAPOLIS STAR (Sept. 3, 2021), <https://www.indystar.com/story/news/real-estate/2021/09/03/indiana-landlord-fox-lake-court-win-leaves-tenants-advocates-upset/5703623001/> [https://perma.cc/XWA8-Q774] [hereinafter Cheang, *Court Rules in Favor of Lakeside Pointe Landlord*].

206. Muñiz & King, *AG Rokita Sues Firms for Dangerous Conditions*, *supra* note 202; Emergency Motion for Preliminary Injunction and for the Appointment of a Receiver, State of

judge ruled that the state failed to establish its claims under the Indiana Deceptive Consumer Sales Act, the Indiana Nonprofit Corporations Act, and the Indiana Home Loan Practices Act.<sup>207</sup> Further litigation was put on hold while the property was sold to another not-for-profit housing group.<sup>208</sup> The new owner agreed to set aside “\$7.25 million for required repairs,” “resolve existing emergency health department violations within 30 days,” create a structured timeline for remaining issues, and rebuild or renovate fire-damaged units.<sup>209</sup>

After the Attorney General’s initial failed attempt at a remedy and subsequent suit seeking dissolution of the nonprofit owner, the City of Indianapolis and Citizens Energy group both filed lawsuits against the property owner, directors, and manager.<sup>210</sup> The City’s claim arose under Indiana’s nuisance statute in a “test case” for a 2018 interpretation of state law.<sup>211</sup> The parties entered into joint settlement agreements in September 2022, whereby the owner entity and its affiliates must dissolve and pay 80% of the outstanding \$1.9 million water debt (of which Indianapolis will be reimbursed).<sup>212</sup>

The settlements should provide these vulnerable tenants a long-awaited resolution for some of their problems moving forward. But the government suits

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Indiana v. Aloft Mgt., Inc. and Fox Lake AHF, Inc., (Marion Superior Ct. July 20, 2021), [https://content.govdelivery.com/attachments/INAG/2021/07/20/file\\_attachments/1883427/SOI%20v.%20Aloft,%20et.%20al.%20-%20Motion%20for%20Receiver%20w%20Exhibits.pdf](https://content.govdelivery.com/attachments/INAG/2021/07/20/file_attachments/1883427/SOI%20v.%20Aloft,%20et.%20al.%20-%20Motion%20for%20Receiver%20w%20Exhibits.pdf) [<https://perma.cc/9ETY-T6K6>].

207. Cheang, *Court Rules in Favor of Lakeside Pointe Landlord*, *supra* note 205.

208. *Id.*; see also Leslie Bonilla Muñiz & Mason King, *Troubled Lakeside Pointe Apartment Complex Acquired; Lawsuit Shelved*, IND. LAW. (Mar. 2, 2022), <https://www.theindianalawyer.com/articles/troubled-lakeside-pointe-apartment-complex-acquired-lawsuit-shelved> [<https://perma.cc/8XNB-PB9B>] [hereinafter Muñiz & King, *Troubled Lakeside Pointe Apartment Complex*].

209. *Attorney General Todd Rokita secures \$7.25 million in relief in connection with Aloft Mgt., Fox Club/Lakeside Pointe lawsuit*, OFFICE OF THE IND. ATTY GEN. (Mar. 3, 2022), [https://events.in.gov/event/attorney\\_general\\_todd\\_rokita\\_secures\\_725\\_million\\_in\\_relief\\_in\\_connection\\_with\\_aloft\\_mgt\\_fox\\_clublakeside\\_pointe\\_lawsuit?utm\\_campaign=widget&utm\\_medium=widget&utm\\_source=State+of+Indiana](https://events.in.gov/event/attorney_general_todd_rokita_secures_725_million_in_relief_in_connection_with_aloft_mgt_fox_clublakeside_pointe_lawsuit?utm_campaign=widget&utm_medium=widget&utm_source=State+of+Indiana) [<https://perma.cc/BX5W-9E8S>].

210. Ko Lyn Cheang, *City, state, water company sue negligent apartment owners in Indianapolis*, INDYSTAR (Apr. 21, 2022), <https://www.indystar.com/story/news/local/marion-county/2022/04/13/indiana-indianapolis-citizens-energy-sue-apartment-complex-owners/7304171001/> [<https://perma.cc/Z4X2-TTTP>].

211. Leslie Bonilla Muñiz & Mason King, *City, Partners Push Forward with Renter Support Despite Setbacks*, IND. LAW. (Feb. 21, 2022), <https://www.theindianalawyer.com/articles/city-partners-push-forward-with-renter-support-despite-setbacks> [<https://perma.cc/4GK5-AS4>] [hereinafter Muñiz & King, *City, Partners Push Forward*];

212. Ko Lyn Cheang, *City reaches settlement with JPC landlord as tenants’ fears mount over water shutoff*, INDYSTAR (Sept. 1, 2022), <https://www.indystar.com/story/news/local/marion-county/2022/09/01/indianapolis-pushes-deal-to-keep-water-running-at-jpc-affordable-housing-apartments/65466383007/> [<https://perma.cc/9HDL-25EP>].

were unable to provide any compensation for the years of uninhabitable conditions tenants endured, and the absence of tenant lawsuits is a chilling indicator of how difficult it is for individuals to bring actions for habitability issues. Indiana desperately needs to adopt policies that serve as prophylactics to Lakeside-esque situations and provide meaningful ways for state and local officials to hold negligent landlords accountable.

2. *Tenant Right to Withhold or Deduct Rent for Repairs.*—There is no meaningful private right of action for tenants in Indiana with substandard rental units because they must continue to pay rent in full—even when their unit is uninhabitable and they are incurring additional housing, cleaning, and repair expenses. Further, their habitability defenses for nonpayment of rent will generally not be heard at the possession hearing.<sup>213</sup> Typically, courts defer hearing a tenant’s defenses until the damages hearing.<sup>214</sup> But a tenant has a statutory right to raise this defense at the possession hearing,<sup>215</sup> and empowering tenants to exercise this right would keep more tenants housed.

The law must change to allow tenants to make repairs and deduct rent because local enforcement power in response to code violations is weak. A bill proposed in 2022, Indiana Senate Bill 230, would have given tenants this right. If a tenant gave notice to the landlord and the landlord failed to make necessary repairs within thirty days, the bill would have allowed a tenant to withhold rent or to make the repairs and deduct the cost from the next month’s rent.<sup>216</sup> When the bill was introduced, “Indiana . . . [was] one of only five states that . . . [did] not have either of those habitability rights.”<sup>217</sup> The bill failed. To make it out of the House, the bill was turned into a summer study committee to address landlords’ extreme neglect, but even that version did not make it out of the Senate.<sup>218</sup> Indiana should join the forty-five states that give these enforcement mechanisms to renters.

#### V. (MOSTLY) PRIVATE ACTION: PUBLIC-PRIVATE PARTNERSHIP OPPORTUNITIES

The Authors remain stalwart that housing is a fundamental human right. But in recognition that housing in the U.S. is still very much tied to a market-based system, what follows is a sample of opportunities from the complex web of housing infrastructure programs that can be implemented in Indiana, adding immediately to the stock of quality affordable housing. To be clear, though, these development opportunities are only band-aids to triage the issue. In fact, some

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213. Roisman, *supra* note 94, at 328.

214. *Id.*

215. *Id.* at 328-29

216. S.B. 230, 122nd Gen. Assemb., 2nd Reg. Sess. (Ind. 2022).

217. Ko Lyn Cheang, *Indiana Lawmakers Kill Bill to Bolster Tenant Rights*, INDIANAPOLIS STAR (Jan. 25, 2022), <https://www.indystar.com/story/news/real-estate/2022/01/25/indiana-tenant-rights-statehouse-bill-rent-withholding-killed/9214044002/> [https://perma.cc/7V7D-Q75J] [hereinafter Cheang, *Indiana Lawmakers Kill Bill to Bolster Tenant Rights*].

218. *Id.*

affordable housing commentators argue that development within the free market can never effectively meet the nation's affordable housing needs. Satisfying basic human needs, like the provision of shelter, medical treatment, water, or even education, run counter to the private market's objective of maximizing profit. One of the most pressing questions facing proponents of stable housing markets is how to secure the provision of safe, sound, affordable, and decent housing for everyone. The obstacles to that goal have always been business's bottom line.<sup>219</sup> Thus, there should be no expectation that community development alone can be a silver bullet to "realiz[ing] as soon as feasible . . . the goal of a decent home and a suitable living environment for every American family."<sup>220</sup>

From the beginning of the United States' concerted housing development policies, people of color were intentionally and systematically disadvantaged.<sup>221</sup> Housing discrimination was approved as a proper use of the state police power by the United States Supreme Court in 1926 and heavily relied upon in the urban renewal efforts of the 1950s and 1960s.<sup>222</sup> These are critical historical facts that must remain at the forefront of any housing infrastructure efforts.

To best moderate the goal of achieving equitably available quality, affordable housing in an inherently inequitable market-based delivery system, developers should prioritize redevelopment without displacement—and communities inviting development should hold them to account.<sup>223</sup> Developers should also be creative in their proposals: some of the programs discussed may be layered or otherwise synergized.<sup>224</sup>

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219. See generally Keeanga-Yamahatta Taylor, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (2019).

220. 42 U.S.C. § 1441 (codifying the Congressional Declaration of National Housing Policy of the Fair Housing Act, enacted as Title VIII of the 1964 Civil Rights Act).

221. See generally Richard Rothstein, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

222. Bergeron, *supra* note 12; see also *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

223. See generally Angela Glover Blackwell, *Promoting Equitable Development*, 34 *IND. L. REV.* 1273 (2001); see also Ko Lyn Cheang, 'It's Gone.' *HGTV Show 'Good Bones' Accused of Gentrification of Fountain Square*, *INDIANAPOLIS STAR* (Mar. 8, 2022), <https://www.indystar.com/story/news/real-estate/2022/03/08/good-bones-house-flipping-and-gentrification-fountain-square-indianapolis-indiana/6972501001/> [<https://perma.cc/ZY8B-P4JS>] (detailing community criticism of Two Chicks and a Hammer gentrifying the Fountain Square area through use of Renew Indy properties, funded in part by HUD Community Block Development grants).

224. For example, New Market Tax Credit guidance restricts its use in conjunction with LIHTC, but is silent on its pairing with other programs. See JARED BERNSTEIN & KEVIN A. HASSETT, *ECONOMIC INNOVATION GROUP, UNLOCKING PRIVATE CAPITAL TO FACILITATE ECONOMIC GROWTH IN DISTRESSED AREAS 15* (2015), <https://eig.org/wp-content/uploads/2015/04/Unlocking-Private-Capital-to-Facilitate-Growth.pdf>. Opportunity zones have no explicit restrictions on their use in conjunction with other incentive programs. See Brian Blacker, *Stacked Incentives: NMTC Eligibility and Opportunity Zones*, *POLICY MAP* (Sept. 16, 2019), <https://www.policymap.com/2019/09/>

*A. Federal Tax Credits, Local Development*

1. *Programs Overview.*—The basic premise of all tax credit programs discussed here is to encourage investment of unrealized capital gains dollars, thereby realizing the capital gains, in exchange for a discount on the capital gains taxes. Some policymakers like Senator Elizabeth Warren argue credits like this do not go nearly far enough and are an inefficient use of federal revenue.<sup>225</sup> In the failed Build Back Better Act, policymakers proposed taxing all unrealized capital gains for only the wealthiest 0.0002% as a way to fund desperately needed “social infrastructure,” generating an anticipated \$200 billion in additional tax revenue.<sup>226</sup> As of 2017, there was an estimated “\$6.1 trillion in unrealized capital gains” assets held by U.S. entities.<sup>227</sup>

The distinction between the three programs discussed here, the New Market Tax Credit Program (NMTC), Opportunity Zones (OZs), and Low-Income Housing Tax Credit (LIHTC), is the mechanism by which investors invest. The programs range between traditional multi-layered approval processes and a near-absence of red tape once within approved tracts. And while the federal government outlines its own restrictions for tax purposes, local communities maintain control of nearly every element of development through ordinary real property approval processes.<sup>228</sup>

The LIHTC program has created over 3.34 million units since 1987<sup>229</sup> and

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stacked-incentives-nmtc-eligibility-and-opportunity-zones/ [https://perma.cc/7379-53QK]; Corianne Payton Sally et al., *The Low-Income Housing Tax Credit: How it Works and Who it Serves*, URBAN INST. (July 2018), available at [https://www.urban.org/sites/default/files/publication/98758/litc\\_how\\_it\\_works\\_and\\_who\\_it\\_serves\\_final\\_2.pdf](https://www.urban.org/sites/default/files/publication/98758/litc_how_it_works_and_who_it_serves_final_2.pdf) (“LIHTC is often layered with other government funding”).

225. Richard Rubin, *Elizabeth Warren’s Tax Plan Would Bring Rates Over 100% for Some*, WALL ST. J. (Nov. 15, 2019, 8:58 AM), <https://www.wsj.com/articles/elizabeth-warrens-tax-plan-would-bring-rates-over-100-for-some-11573819200>.

226. Andrew Ross Sorkin et al., *The New Billionaire Tax in Democrats’ Sights*, NYTIMES (Oct. 27, 2021), <https://www.nytimes.com/2021/10/25/business/dealbook/democrats-capital-gains-tax.html?searchResultPosition=1> [https://perma.cc/5256-RFBY]. As discussed in the introduction to this article, the authors view the distinction between physical and social infrastructure as a false dichotomy; it is included here for identification purposes only. *Id.*

227. KENAN FIKRI ET AL., ECONOMIC INNOVATION GROUP, OPPORTUNITY ZONES: STATE OF THE MARKETPLACE 2 (2021), <https://eig.org/wp-content/uploads/2021/02/OZ-State-of-the-Marketplace.pdf>.

228. The NMTC and OZ programs are targeted toward community development generally, which goes beyond real estate and into workforce development. For various reasons beyond the scope of this article, both programs have been utilized most consistently for real estate development. See BERNSTEIN & HASSETT, *supra* note 224, at 10, 15; Tracy A. Kaye, *Ogden Commons Case Study: A Comparative Look at the Low-Income Housing Tax Credit and Opportunity Zone Tax Incentive Programs*, 48 FORDHAM URB. L.J. 1067, 1105 (2021). In any event, they will only be discussed here insofar as they encourage development of affordable housing units.

229. *Low-Income Housing Tax Credit (LIHTC): Property Level Data*, OFF. OF POL’Y DEV. &

costs the federal government “around \$9.5 billion per year.”<sup>230</sup> It has been described as “the single most important federal resource available to support the development and rehabilitation of affordable housing—currently financing about 90% of all new affordable housing development.”<sup>231</sup> Indiana has 682 LIHTC developments, housing 45,562 tenants.<sup>232</sup> State housing finance authorities administer their allocated federal tax credits through competitive grant processes; the IHCD awarded \$170 million in credits in 2021.<sup>233</sup> Projects qualify for application in three ways, all of which simplistically boil down to requiring 20-40% of occupants have an income no more than 50-60% of AMI.<sup>234</sup> These ratios must be maintained for at least fifteen and usually thirty years, lest the tax credits be recaptured.<sup>235</sup> Investors can expect to see up to a 9% tax credit for new construction, capped at a 70% subsidy over ten years, and up to a 4% credit for rehabilitation projects, capped at a 30% subsidy over ten years.<sup>236</sup> Rather than a discount on investment-specific gains, the credit is calculated based on the LIHTC investment but the resulting dollar amount reduces the investor’s overall tax liability.<sup>237</sup> Some critics argue that this is an inefficient use of federal dollars

RSCH., DEP’T OF HOUS. & URBAN DEV. (Aug. 30, 2021), <https://www.huduser.gov/portal/datasets/lihtc/property.html> [<https://perma.cc/HXB3-8368>].

230. *What Is the Low-Income Housing Tax Credit and How Does It Work?*, *Key Elements of the U.S. Tax System, Briefing Book*, TAX POL’Y CTR., URBAN INST., BROOKINGS INST. (May 2020), <https://www.taxpolicycenter.org/briefing-book/what-low-income-housing-tax-credit-and-how-does-it-work> [hereinafter *Tax Policy Center Briefing Book*].

231. *Intro to the Low-Income Housing Tax Credit*, LOCAL INITIATIVES SUPPORT CORP., [https://www.lisc.org/our-resources/resource/low-income-housing-tax-credit/?gclid=EAIaIQobChMiraXE4bu69gIVBylMCh1adgbIEAAYASAAEgJwjd\\_BwE](https://www.lisc.org/our-resources/resource/low-income-housing-tax-credit/?gclid=EAIaIQobChMiraXE4bu69gIVBylMCh1adgbIEAAYASAAEgJwjd_BwE) [<https://perma.cc/FY2X-PSEK>].

232. DEP’T HOUS. & URBAN DEV., TENANTS IN LIHTC UNITS AS OF DECEMBER 31, 2019 2 (2019), <https://www.huduser.gov/portal/Datasets/lihtc/2019-LIHTC-Tenant-Tables.pdf>.

233. Mary Roberts, *Projects Receive Low-Income Housing Tax Credits*, INSIDE IND. BUS. (Nov. 22, 2021, 1:29 PM), <https://www.insideindianabusiness.com/articles/projects-receive-low-income-housing-tax-credits> [<https://perma.cc/32GC-EP6Y>] (“These awards are a major investment in our state’s infrastructure,” said Lt. Gov. Crouch upon announcing the awards).

234. *Tax Policy Center Briefing Book*, *supra* note 230. The three pathways are 20% of units rented to residents at or below 50% AMI, 40% at or below 60% AMI, or 40% at or below 60% AMI and no other units rented to tenants above 80% AMI. *Id.*

235. *Id.*

236. Kaye, *supra* note 228, at 1085 n.110.

237. The Congressional Research Service provides a useful example:

Consider a new apartment complex with a qualified basis of \$1 million. Since the project involves new construction[,] it will qualify for the 9% credit and, assuming for the purposes of this example that the credit rate is exactly 9%, will generate a stream of tax credits equal to \$90,000 (9% × \$1 million) per year for 10 years, or \$900,000 in total. Under the appropriate interest rate the present value of the \$900,000 stream of tax credits should be equal to \$700,000, resulting in a 70% subsidy.

and doesn't yield enough long-term affordable housing units to justify its enormous expense.<sup>238</sup>

The NMTC program is “[a]rguably the most successful of the federal legacy programs for stimulating investment in distressed areas.”<sup>239</sup> Investors seeking to use NMTCs must first create a tract-specific Community Development Entity<sup>240</sup> and are subject to competitive grant approval by the Department of the Treasury.<sup>241</sup> Census tracts qualify based on unemployment, poverty, and low-income rates—75% of NMTC projects are in tracts with a 30% or higher poverty rate.<sup>242</sup> A major benefit of the program is its ability to attract additional investment: for every \$53 of NMTC investment, \$47 was invested from other sources.<sup>243</sup> However, credit-user research has shown that where the NMTC incentive reliably convinces investors who were already considering a project, it is not as persuasive for new investments.<sup>244</sup>

In contrast to NMTCs as a budget item subject to Congressional renewal, OZs are part of the tax code, making them a far more permanent fixture.<sup>245</sup> However, “federal regulation surrounding the [Opportunity Zone] program is distressingly skeletal”<sup>246</sup> and use is not subject to any competitive grant process. With fewer regulations comes more flexibility but also more potential for abuse.<sup>247</sup> And critics argue that this credit does more to benefit the experience of out-of-town residents who visit OZs than it does to actually benefit the residents of OZs.<sup>248</sup> Nevertheless, the program attracts investors by offering both a deferral and exclusion benefit.<sup>249</sup> The first benefit is “deferred” in two parts: (1) after the

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CONGRESSIONAL RESEARCH SERVICE, AN INTRODUCTION TO THE LOW-INCOME HOUSING TAX CREDIT 3 (2021), <https://sgp.fas.org/crs/misc/RS22389.pdf>.

238. Kaye, *supra* note 228, at 1142-43.

239. See BERNSTEIN & HASSETT, *supra* note 224, at 9. A major critique of the other legacy programs, like Enterprise Zones, is that the data supporting their efficacy is mixed. *Id.* at 6. However, all are only temporary tax credit programs that rely on continued renewal by Congress. *Id.* at 5. There appears to be continued bipartisan support in favor of at least the NMTC program, but its fleeting nature may discourage some investors. *Id.* at 10.

240. *Id.* at 9.

241. Kaye, *supra* note 228, at 1141.

242. See BERNSTEIN & HASSETT, *supra* note 224, at 9.

243. *Id.* at 9-10.

244. *Id.* at 10-11.

245. *Id.* at 1132.

246. Charlie Metzger, “*We’re Not in Kansas Anymore*”: *Using State and Local Power to Fulfill the Potential of the Opportunity Zone Program*, 47 *FORDHAM URB. L.J.* 1121, 1125 (2020).

247. Kaye, *supra* note 228, at 1139 (identifying that OZ is a “place-based” rather than “person-based” program that lacks any “meaningful guardrails to channel capital,” which could result in investors reaping the benefits of the program while only holding half of their capital within an OZ); *id.* at 1144 (“Professor Michelle Layser has gone so far as to suggest that spurring gentrification is a feature of the OZ program, and not a bug.”).

248. Kaye, *supra* note 228, at 1142-43.

249. *Id.* at 1136.

investor realizes a capital gain (sells an asset), capital gains taxes are deferred until 2026 and (2) the basis (the look-back value of the asset when acquired) is stepped up in part depending on how many years the investor keeps money in the opportunity zone, reducing the overall tax burden.<sup>250</sup> The second benefit “excludes” any tax liability on the investment’s appreciation while invested in the OZ if the investment is held for a minimum of ten years.<sup>251</sup> OZs were identified geographically by state governors in 2017, relying in part on NMTC parameters and definitions, and then certified by the Department of the Treasury for ten years.<sup>252</sup> Tax credits doled out for OZ investment from 2017 through 2021 is anticipated to reach \$1.6 billion in lost capital gains revenue.<sup>253</sup>

2. *Programs in Action.*—IHCDA announced \$170 million in LIHTC awards to seventeen developments in 2022.<sup>254</sup> Of the awardees, most have around fifty units, three are for rehabilitation of existing structures, and two are in Indianapolis.<sup>255</sup> There are nearly 1,000 existing LIHTC developments in Indiana, but only fifty remain bound by affordability requirements.<sup>256</sup>

NMTCs are popular. The Cook Medical Facility at Arlington and 38th Street in Indianapolis will employ around 100 workers in one of the most poverty-

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250. *Id.* at 1137. By way of a simple example, let’s say an investor has an asset she purchased for \$75,000 that has now appreciated to a fair market value of \$100,000. When she sells that asset, realizing the gain, she would ordinarily be liable for capital gains tax that same tax year on the \$25,000 gain. However, if she invests that gain in an opportunity zone, her capital gains taxes on the \$25,000 won’t be due until 2026 (we will assume for purposes of this example that her income bracket places her in the 15% capital gains tax rate and that she held the asset for more than a year). This is part one of the deferral benefit. In part two of the deferral benefit, the stepped-up basis on the underlying gain is 10% at the five-year and 15% at the seven-year opportunity zone investment mark. In some actuarial trickery, this “steps up” the initial asset value by that amount, reducing her overall tax liability—i.e. the asset’s basis is \$82,500 at five years and \$86,250 at seven. As a result, if she keeps her money in the opportunity zone for seven years, she’ll show a capital gain of only \$13,750 rather than \$25,000, reducing her capital gains tax liability to \$2,062.50 rather than \$3,750.

251. *Id.* Using the same investor from n. 194 and assuming a 7% annual appreciation rate, her \$25,000 2022 investment will grow to \$49,178.78 by 2032. The exclusion benefit excludes any tax liability for this gain while invested in the opportunity zone—without it, she would owe an additional \$3,626.817 on this new gain (bringing her total tax liability to \$6,814.32). However, with the two benefits combined, she will owe only \$2,062.50 in taxes on a total gain of \$49,178.78, an effective 4.19% tax rate.

252. *Id.* at 1133.

253. Metzger, *supra* note 246, at 1126.

254. Mary Roberts, *Projects Receive Low-Income Housing Tax Credits*, INSIDE IND. BUS. (Nov. 22, 2021, 1:29 PM), <https://www.insideindianabusiness.com/articles/projects-receive-low-income-housing-tax-credits> [<https://perma.cc/9637-9WGS>].

255. INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY, 2021 LIHTC AWARDEES, [https://content.govdelivery.com/attachments/INHCDA/2021/11/18/file\\_attachments/1999654/LIHTC%20awards.pdf](https://content.govdelivery.com/attachments/INHCDA/2021/11/18/file_attachments/1999654/LIHTC%20awards.pdf).

256. *LIHTC Database Access: HTML Output*, HUD USER, <https://lihtc.huduser.gov/>.

burdened areas of the city, providing full benefits, wraparound social services, and housing support (although no direct housing) to all employees.<sup>257</sup> The Sherman Park development sponsored by RecycleForce, a near-Eastside Indianapolis employer committed to helping people recently released from prison successfully reenter society, will provide direct housing to employees living there.<sup>258</sup>

Finally, OZs have been readily adopted by rural areas of the state. Although Muncie's new luxury White River Loft apartments don't directly add to the affordable housing stock, it has the potential to cause a domino effect of drawing higher-earning renters upward, making lower-cost vacated apartment available to lower-earning renters.<sup>259</sup> The Westmont, another near east-side Indianapolis development, is built on a remediated Brownfield and will provide 188 workforce housing units.<sup>260</sup> Administered by the Indiana Office of Community & Rural Affairs and in partnership with the Purdue Center for Regional Development, Governor Holcomb introduced the Rural Opportunity Zone Initiative in 2018 to attract OZ investors to expand their geographic boundaries.<sup>261</sup>

### *B. Federal Direct Funds, Local Development*

1. *Programs Overview.*—The Housing Trust Fund (HTF) program is funded through HUD and administered by state housing finance authorities through competitive grant applications.<sup>262</sup> “[F]unds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities. All HTF-assisted rental housing must meet a 30-year affordability

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257. Goodwill Indy Project Factsheet, Cook Medical (Nov. 2, 2020), <https://www.cookmedical.com/wp-content/uploads/sites/2/2020/11/Goodwill-Indy-Project-Factsheet-final.pdf>.

258. Eric Pointer, *RecycleForce breaks ground on new facility, hopes to help more people recently released from prison, jail*, FOX 59 (Oct. 13, 2021, 7:00 AM), <https://fox59.com/morning-news/recycleforce-breaks-ground-on-new-facility-hopes-to-help-more-people-recently-released-from-prison-jail/> [<https://perma.cc/VAT8-C75K>] (last updated Oct. 13, 2021).

259. Alex Brown, *Muncie to Cut Ribbon on White River Lofts*, INSIDE IND. BUS. (Nov. 3, 2021, 5:34 PM), <https://www.insideindianabusiness.com/articles/muncie-to-cut-ribbon-on-white-river-lofts> [<https://perma.cc/JRL3-YDU3>].

260. *The Wesmont Brings Workforce Housing and Brownfield Cleanup to Indianapolis' Near Eastside*, CISION PR NEWSWIRE (Jun. 29, 2021), <https://www.pnewswire.com/news-releases/the-wesmont-brings-workforce-housing-and-brownfield-cleanup-to-indianapolis-near-eastside-301321253.html>. The Westmont is also located within one of only 22 “Promise Zones” in the nation.

261. *Rural Opportunity Zone Initiative (ROZI): Program Overview*, IND. OFFICE OF CMTY. & RURAL AFFAIRS, [https://www.in.gov/ocra/additional-resources/opportunity-zones/#:~:text=Rural%20Opportunity%20Zone%20Initiative%20\(ROZI\)%3A%20Program%20Overview&text=The%20goals%20of%20the%20Rural,of%20the%20Opportunity%20Zone%20legislation](https://www.in.gov/ocra/additional-resources/opportunity-zones/#:~:text=Rural%20Opportunity%20Zone%20Initiative%20(ROZI)%3A%20Program%20Overview&text=The%20goals%20of%20the%20Rural,of%20the%20Opportunity%20Zone%20legislation) [<https://perma.cc/3K8J-PJWB>].

262. *National Housing Trust Fund Fact Sheet*, U.S. DEP'T OF HOUS. & URBAN DEV., [https://www.hud.gov/program\\_offices/comm\\_planning/htf](https://www.hud.gov/program_offices/comm_planning/htf) [<https://perma.cc/9PNB-CELH>].

period.”<sup>263</sup> Indiana has elected to devote its 2022 funding—\$3.6 million,<sup>264</sup> down from the emergency CARES 2021 funding of \$10.6 million<sup>265</sup>—to supportive housing developments for people experiencing homelessness, which serve Extremely Low-Income individuals (less than 30% AMI).<sup>266</sup> HTFs are only considered for qualified applicants, which are Rental Housing Tax Credit or HOME developments that apply for funds and successfully complete the Indiana Supportive Housing Institute programming.<sup>267</sup> Recipients are expected to apply a Housing First model, an evidence-based approach that provides housing and wraparound social services.<sup>268</sup>

The Rental Assistance Demonstration (RAD) was created in response to the faltering attempts to meet the large and growing capital improvement needs of the nation’s public housing stock.<sup>269</sup> RAD is an affordable housing preservation initiative developed in consultation with residents, public housing authorities (PHAs), and private funding sources.<sup>270</sup> Under this program, public housing properties can convert their assistance to long-term, project-based Section 8 contracts.<sup>271</sup> Therefore, the property is now on the project-based Section 8 platform but still tied to public housing eligibility criteria.<sup>272</sup> This creates flexibility for PHAs and owners alike because the Section 8 platform provides predictable, stable rental assistance for use in market-based rentals.<sup>273</sup> This conversion also ensures that the units remain permanently in low-income housing.<sup>274</sup> RAD has two components: (1) addressing conversion of public housing properties and (2) governing conversion of properties from several, much smaller affordable housing portfolios.”<sup>275</sup>

Key features of RAD are that properties must undergo an environmental

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263. *Id.*

264. *Housing Needs By State: Indiana*, *supra* note 26.

265. FY2021 HOUSING TRUST FUND FORMULA ALLOCATIONS, NAT’L HOUS. TRUST FUND (Apr. 2021), [https://nlhc.org/sites/default/files/NHTF\\_StateAllocations\\_2021.pdf](https://nlhc.org/sites/default/files/NHTF_StateAllocations_2021.pdf) [<https://perma.cc/97ZU-GQVP>].

266. NATIONAL HOUSING TRUST FUND APPLICATION POLICY, INDIANA HOUSING & COMMUNITY DEVELOPMENT AUTHORITY 3 (2021), <https://www.in.gov/ihcda/files/2021-Action-Plan-HTF-Policy-DRAFT.pdf> [<https://perma.cc/SZC7-GD8C>].

267. *Id.*

268. *Id.*

269. *About RAD Public Housing*, U.S. DEP’T HOUS. & URBAN DEV., <https://www.hud.gov/RAD/program-details> [<https://perma.cc/W6U9-H63V>].

270. THE RENTAL ASSISTANCE DEMONSTRATION (RAD) AN OVERVIEW, U.S. DEP’T HOUS. & URBAN DEV. (June 2021), [https://www.hud.gov/sites/dfiles/Housing/documents/RAD\\_Overview\\_06072021.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/RAD_Overview_06072021.pdf) [<https://perma.cc/5EEJ-LQEP>].

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. THE RENTAL ASSISTANCE DEMONSTRATION (RAD) AN OVERVIEW, *supra* note 270.

review and be brought into compliance with accessibility requirements, while assistance may be transferred to lower poverty neighborhoods.<sup>276</sup> Every household has the right to return to the location if RAD construction requires them to temporarily relocate.<sup>277</sup> Public housing properties that convert through RAD remain perpetually affordable through long-term Use Agreements and mandatory renewal Housing Assistance Program contracts.<sup>278</sup> This ensures more secure housing for low-income families for years to come. Tenants can request a tenant-based voucher after living at the property for a set period.<sup>279</sup> PHAs have been able to replace over 99% of the public housing units under new Section 8 contracts.<sup>280</sup> RAD has enabled PHAs to modernize their organizations and consolidate work.<sup>281</sup> Maryland, Tennessee, and Vermont have converted over half of their public housing that existed in 2012 through RAD.<sup>282</sup>

The HOME Investment Partnership Program (HOME) provides grants to states and localities that communities use to fund a wide range of activities,<sup>283</sup> including “building, buying, and/or rehabilitating affordable housing for rent or homeownership.”<sup>284</sup> HOME is codified under 24 C.F.R. § 92.207.<sup>285</sup> HOME is the largest federal block grant to state governments, designed exclusively to create affordable housing for low-income households.<sup>286</sup> HOME provides a wide range of flexibility to local governments to use these funds for “grants, direct loans, loan guarantees or other forms of enhancements, or rental assistance or security deposits.”<sup>287</sup>

States are automatically eligible for HOME funds and receive either their “formula allocation or \$3 million, whichever is greater.”<sup>288</sup> Local jurisdictions are eligible for at least \$500,000 under the formula.<sup>289</sup> “The formula allocation considers the relative inadequacy of each jurisdiction’s supply, its incidence of

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276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *HOME Investment Partnerships Program*, U.S. DEP’T HOUS. URB. DEV., [https://www.hud.gov/program\\_offices/comm\\_planning/home](https://www.hud.gov/program_offices/comm_planning/home) (July 8, 2021) [<https://perma.cc/N9TZ-8ULC>] (July 8, 2021).

284. *Id.*

285. HOME FACTS, U.S. DEP’T HOUS. URBAN, Aug. 2021, at 10, [https://www.hud.gov/sites/dfiles/CPD/documents/vol10no2\\_written-agreement-execution-date.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/vol10no2_written-agreement-execution-date.pdf) [<https://perma.cc/2H6T-35ZE>].

286. *Id.*

287. *Id.*

288. *HOME Overview*, HUD EXCHANGE, <https://www.hudexchange.info/programs/home/home-overview/> [<https://perma.cc/LRB4-RSV2>]

289. *Id.*

poverty, its fiscal distress, and other factors.”<sup>290</sup> Communities that do not qualify can join with one or more neighboring localities in a legally binding consortium if their combined allocation would meet the threshold for direct funding.<sup>291</sup> For rental housing and rental assistance, at least 90% of the benefiting families must have incomes that are no more than 60% of the HUD-adjusted AMI.<sup>292</sup> HOME regulations require that if a “participating jurisdiction does not complete a project within four years of the date of commitment of funds, the project is considered terminated, and the participating jurisdiction must repay all funds invested in the project.”<sup>293</sup>

2. *Programs in Action.*—The IHCDA administers HOME funds in Indiana.<sup>294</sup> The mission of the IHCDA is to promote self-sufficiency and strengthen communities by “creat[ing] and preserv[ing] housing for Indiana’s most vulnerable populations” and “promot[ing] place-based initiatives that provide Hoosiers opportunities to improve their quality of life.”<sup>295</sup> The IHCDA also administers CDBG and Rental Housing Tax credits.<sup>296</sup>

Evansville, Indiana is a prime example of how Indiana has incorporated these programs into their housing ecosystem. The Evansville Housing Authority (EHA) has been working tirelessly for the past five years to implement RAD in the community and complete the transition.<sup>297</sup> The EHA has seen “888 units of public housing converting to project-based voucher funding, in addition to over \$30 million being invested into infrastructures that make up EHA’s portfolio of quality affordable housing.”<sup>298</sup> And the Bloomington Housing Authority recently was approved for \$30 million in bonds by the city council to rehabilitate an affordable housing complex, which will transform the residences from traditional public housing into RAD developments that operate on vouchers.<sup>299</sup>

In August of 2020, Evansville provided a one-time cash incentive (with funds

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290. *Id.*

291. *Id.*

292. *Id.*

293. HOME FACTS, *supra* note 285.

294. HOME Investment Partnerships Program (HOME), IND. HOUS. & CMTY. DEV. AUTH., <https://www.in.gov/ihcda/developers/home-investment-partnerships-program-home/> [<https://perma.cc/7M37-QR7J>].

295. IND. HOUS. & CMTY. DEV. AUTH., ANNUAL REPORT 2021, at 4 (2021), *available at* [https://www.in.gov/ihcda/files/ihcda\\_2021\\_annual\\_report\\_FINAL\\_WEB.pdf](https://www.in.gov/ihcda/files/ihcda_2021_annual_report_FINAL_WEB.pdf) [<https://perma.cc/N3PD-2Q9T>].

296. *Id.*

297. Rental Assistance Demonstration (RAD), EVANSVILLE HOUS. AUTH., <https://www.evansvillehousing.org/rad/> [<https://perma.cc/JS6Z-ZL7X>].

298. *Id.*

299. Sean Gilley, *Bloomington City Council Approves \$30 Million in Bonds to Finance Affordable Housing*, IND. DAILY STUDENT (Sept. 2, 2021), <https://www.idsnews.com/article/2021/09/bloomington-city-council-approve-30-million-bond-funding-finance-crestmont-affordable-housing> [<https://perma.cc/RG85-KREH>].

allocated through the CARES Act) for landlords to enter into new HAP contracts to increase the number of voucher units available.<sup>300</sup> The EHA offered more money to landlords if they agreed to extend affordable housing opportunities into less populated areas.<sup>301</sup> And Bloomington, Indiana has successfully been using CDBG through Bloomington's Department of Housing and Neighborhood Development (HAND).<sup>302</sup>

### *C. Local Capital, Local Development*

*1. Programs Overview.*—By statute, housing authorities in Indiana “may issue bonds, notes, or warrants to finance any of its corporate purposes,” which are “not a debt of the state or any political subdivision . . . not payable out of any funds or properties other than those of the authority” and are “exempt from all taxes,” along with any interest on the instruments.<sup>303</sup> Bonds are often used in Tax Increment Financing (TIF) districts, where they become more valuable to the local government unit.<sup>304</sup> TIFs work like this: (1) a local government unit first designates an area as a TIF district, then issues bonds to finance infrastructure in that district; (2) developments within the district are taxed like normal, but all *additional* tax revenue attributable to the infrastructure improvements and subsequent higher assessed property values is diverted directly to the local government unit (rather than the county or state) to repay the bond; (3) once the bond is repaid, the district expires and taxes flow to ordinary sources.<sup>305</sup> TIF districts are critiqued that they do more to increase property values than wages or job availability, but the greatest opportunities for abuse have been curtailed by amendments to TIF authorizing statutes.<sup>306</sup>

Community Land Trusts (CLTs) are community-based non-profit organizations that provide housing sustainability through community stewardship of land “held ‘in trust’ for community needs.”<sup>307</sup> The first CLT was formed by Black families in Albany, Georgia for a collective farm, but most often they are used to support permanently affordable housing.<sup>308</sup> Because the land is put in a

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300. Rick Moore, The Housing Authority of the City of Evansville, Evansville Hous. Auth. (Aug. 27, 2020), *available at* <https://www.evansvillehousing.org/wp-content/uploads/2020/08/Landlord-Incentive-Letter-9.1.2020.pdf> [<https://perma.cc/JS7B-H6W7>].

301. *Id.*

302. *Community Development Block Grants*, THE CITY OF BLOOMINGTON, <https://bloomington.in.gov/grants/community-development-block-grants> [<https://perma.cc/AC2G-UEUP>].

303. IND. CODE § 36-7-18-30(a)-(f) (2022).

304. LARRY DEBOER, THE USE OF TAX INCREMENT FINANCE BY INDIANA LOCAL GOVERNMENTS 7 (Dec. 2016), *available at* <https://pcrd.purdue.edu/ruralindianastats/downloads/The-Use-of-Tax-Increment-Finance.pdf> [<https://perma.cc/S7GD-QQM9>].

305. *Id.* at 4.

306. *Id.* at 2-5.

307. Miriam Axel-Lute, *Understanding Community Land Trusts*, ShelterForce (July 12, 2021), <https://shelterforce.org/2021/07/12/understanding-community-land-trusts/> [<https://perma.cc/2HAG-Z7GL>].

308. *Id.*

trust, the ownership of the land is separate from the ownership of the houses and homeowners retain control as owners while the land remains affordable.<sup>309</sup> Land makes up between 20 to 50 percent of the purchase price of a home, so when a homeowner purchases through the trust, they pay below-market rates but have long-term sustainability.<sup>310</sup>

Typically, a ground lease includes a term that allows the trust to intervene if a homeowner falls behind on mortgage payments, authorizing the non-profit to provide support to prevent foreclosure. This support also leads to significantly lower delinquency and foreclosure rates among CLT homeowners.<sup>311</sup> One study found that prime-rate mortgage loans were 5.9 times more likely to foreclose than loans on CLT houses.<sup>312</sup> Homeowner stewardship, support, and community control were keys to keeping people in their homes. Successful community land trusts prove that subsidized housing is at its best when permanent and community controlled.

2. *Programs in Action.*—Bloomington contains “one of the most successful [TIF] districts in the United States. Since 1995, [Bloomington’s] Westside TIF has invested over \$6.1 million on infrastructure.”<sup>313</sup>

While there are over 220 CLTs in the country, the model has not yet been replicated in Indiana.<sup>314</sup> An Indianapolis non-profit currently operates a shared-equity housing project for twenty-three local artists and their families in previously vacant homes.<sup>315</sup> Two true CLTs will begin operating in Indianapolis in 2022 after years of work by local advocates. One city-wide CLT utilizing funding from the CARES Act is supported by a coalition of community organizations through Homes for All Indy and area residents.<sup>316</sup> The other trust organized by the Near North Development Corporation focuses on a smaller geographic region with defined boundaries.<sup>317</sup> Both will give residents everyday control and a major role in the governance of the trusts.

The citywide trust will receive \$1.5 million of city funds to be used for development and operating costs, which will allow the trust to operate for three years. The Near North Side trust will not utilize city funds. It will instead provide staffing and other operational support through the non-profit for three to four

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309. *Id.*

310. *Id.*

311. Emily Thaden, *Stewardship Works*, ShelterForce (Dec. 24, 2010), [https://shelterforce.org/2010/12/24/stewardship\\_works/](https://shelterforce.org/2010/12/24/stewardship_works/) [<https://perma.cc/9BFY-GSGJ>].

312. *Id.*

313. *Economic Development Commission*, MONROE COUNTY INDIANA, <https://www.co.monroe.in.us/departments/board.php?structureid=142> [<https://perma.cc/EJ6C-YKF3>].

314. Leslie Bonilla Muñiz, *Community leaders form land trusts to tackle affordable housing shortage*, INDIANAPOLIS BUS. J. (Jan. 14, 2022), <https://www.ijb.com/articles/community-leaders-form-land-trusts-to-tackle-affordable-housing-shortage> [<https://perma.cc/94QR-GSYP>].

315. *Id.*

316. *Id.*

317. *Id.*

years until the subsidiary is able to sustain itself.<sup>318</sup> Advocates acknowledge that financial constraints will still exist, requiring subsidies for some projects,<sup>319</sup> but these trusts will add significantly to the supply of long-term affordable housing and will not be subject to the sunset provisions that limit sustainability for many housing programs.

## VI. CONCLUSION

From the inception of the United States' involvement in housing policy in the 1930s, housing was viewed as infrastructure.<sup>320</sup> And housing has been viewed as a human right by the United Nations—of which the United States is a signatory to its Universal Declaration of Human Rights—since 1948.<sup>321</sup> As a social determinant of health and a primary consideration by new businesses looking for a home, housing is inextricably tied to economic development. Hoosier developers and policymakers alike have both a moral imperative and fiscal incentive to re-prioritize housing as essential infrastructure.

There is no one solution to the affordable housing crisis—but the federal government's purse is sure to be a necessary participant. Tenant-based rental assistance is useless without habitable physical structures in which to use it; habitable physical structures are useless to many without tenant-based rental assistance. Thus, federal housing reform must leverage multiple approaches, spanning from direct subsidies to low-income tenants, tax subsidies for new development, direct subsidies for long-delayed maintenance in existing structures (public and private), and homeownership programs that center on restorative justice. State governments must do their part, as well, exerting their supreme authority over agencies and local units of government in some respects while ceding power to agencies and local units in others. At the state level, the Indiana legislature should do away with local restrictive and exclusionary zoning ordinances or provide developers paths to state-granted variances to meet demand. State agencies like the IHCDA and IFA, the administrators of most federal housing funds, should be empowered to incentivize housing production in areas where demand outpaces supply. Indiana should also consider tax policy shifts to deter out of state investors from driving up housing costs. And local units of government should be granted robust authority over enforcement of local health and housing codes to ensure that the housing supply is safe and healthy for its residents.

At the epicenter of any efforts to make housing more affordable and available, though, should be a laser-focus on restorative justice and community-

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318. *Id.*

319. *Id.*

320. Gail Radford, *Modern Housing for America: Policy Struggles in the New Deal Era* 89 (The Univ. of Chi. Press, 1996).

321. *United Nations: Universal Declaration of Human Rights*, YOUTH FOR HUMAN RIGHTS, <https://www.youthforhumanrights.org/what-are-human-rights/universal-declaration-of-human-rights/introduction.html> [<https://perma.cc/3VJJ-7VER>].

based reparations.<sup>322</sup> For all the laudable achievements of the PWA and FHA, whole swaths of the population were left behind—intentionally and systematically.<sup>323</sup> A direct line can be drawn from the discriminatory lending policies of the 1940s to growing racial wealth gaps that persist today.<sup>324</sup>

Through all these cautions, obstacles, and confluent problems, the unyielding fact is that there is insufficient housing in the United States to meet the population's needs. No program or policy change discussed in this Article is without its faults or potential for abuse. But all programs discussed have already been shown to be successful in Indiana. Indiana recently ranked 6th in net move-in growth states in the United States, indicating that its efforts to attract skilled labor and develop the economy are on the right track.<sup>325</sup> Hoosiers should maintain that momentum by utilizing creative, layered approaches to housing development to avert an exacerbated affordable housing crisis.

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322. *See generally* RASHAWN RAY & ANDRE PERRY, WHY WE NEED REPARATIONS FOR BLACK AMERICANS, BROOKINGS INST. (Apr. 2020), [https://www.brookings.edu/wp-content/uploads/2020/04/BigIdeas\\_Ray\\_Perry\\_Reparations-1.pdf](https://www.brookings.edu/wp-content/uploads/2020/04/BigIdeas_Ray_Perry_Reparations-1.pdf) [<https://perma.cc/LA5A-RXWK>].

323. *See generally* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2019).

324. *See, e.g.*, ALANNA MCCARGO & JUNG HYUN CHOI, CLOSING THE GAPS: BUILDING BLACK WEALTH THROUGH HOMEOWNERSHIP 1 (URBAN INST. Nov. 2020), [https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership\\_1.pdf](https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_1.pdf) [<https://perma.cc/87NJ-5379>] (“Homeownership is the primary tool for building wealth, especially for Black households, but homeownership has failed to benefit Black homeowners as much as it has benefited white homeowners because of a long history of unequal treatment”); *but see* WILLIAM DARITY JR. ET AL., WHAT WE GET WRONG ABOUT CLOSING THE RACIAL WEALTH GAP, SAMUEL DUBOIS CTR ON SOCIAL EQUITY & INSIGHT CTR. FOR COMM. ECONOMIC DEV. 12 (Apr. 2018), <https://socialequity.duke.edu/wp-content/uploads/2019/10/what-we-get-wrong.pdf> [<https://perma.cc/BV8F-K4NY>] (arguing that the wealth-homeownership correlation is a false causal connection, as homeownership is a sign of family wealth in the first place, creating an uninformative chicken-and-egg situation).

325. Alex Brown, *Indiana Among Top Growth States for 2021*, INSIDE IND. BUS. (Jan 5, 2022), <https://www.insideindianabusiness.com/articles/indiana-among-top-growth-states-for-2021> [<https://perma.cc/A3DL-5SVR>].