Guest Editor's Introduction

Regulatory Reform and Affordable Housing: Thirty-Years After the Kemp Commission's Report on Regulatory Barriers

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In 1991, at the behest of U.S. Department of Housing and Urban Development (HUD) then-Secretary Jack Kemp, the Advisory Commission on Regulatory Barriers to Affordable Housing delivered a report on how land-use restrictions have worsened housing affordability. Secretary Kemp charged the commission to "explore the effect of the maze of federal, state, and local laws, regulations, ordinances, codes, and innumerable other measures that act as barriers to the development of affordable housing in appropriate places … (and) to catalogue the barriers, identify the sources of those barriers, and propose solutions."

The commission found that:

> In community after community across the country, local governments employ zoning and subdivision ordinances, building codes, and permitting procedures to prevent the development of affordable housing. "Not In My Back Yard"—the NIMBY phenomenon—has become the rallying cry for current residents of these communities. They fear affordable housing will result in lower land values, increasingly congested streets, and a rising need for new infrastructure such as schools (HUD, 1991).
>
> What does it mean if there is not enough "affordable housing?" Most urgently, it means that a low- or moderate-income family cannot afford to rent or buy a safe (up-to-code)

> decent-quality dwelling without spending more than 30 percent of their income on shelter, so much that they cannot afford other necessities of life.

Thirty years later, most of the barriers remain, and some of them are higher. In this introduction, we point the reader to subsequent research and information that HUD has published on regulatory barriers, their consequences, and strategies for reducing them. We then preview the significant new research presented by the authors of the articles in this symposium.

HUD Research and Information Resources

One ongoing resource for analysts and practitioners is the Regulatory Barriers Clearinghouse (RBC)—https://www.huduser.gov/portal/Rethinking-American-Communities.html—created to document the prevalence of regulatory barriers that influence the cost of housing and offer best practice solutions for their removal. To this very day, the clearinghouse is managed by the Office of Policy Development and Research (PD&R). It is an easily searchable electronic database containing over 4,800 barriers and solutions spanning all 50 states and over 460 cities and counties. RBC partners include representatives from the housing industry, the National League of Cities, the National Association of Counties, the National Association of Mayors, and many other private and public advocacy groups.

It should be noted that a 2005 symposium in this journal (Volume 8, Number 1) features several comprehensive reviews of the literature to that date. It can be accessed electronically through this link: https://www.huduser.gov/portal/periodicals/cityscpe/vol8num1/index.html.

Subsequent research has offered contributions to the growing body of research outlining regulatory barriers to affordable housing. It has been demonstrated that cities and counties intentionally reduce the supply of market-rate housing by blocking multifamily housing construction through zoning ordinances (Knaap et al., 2008). These limiting actions include the formation of stringent subdivision requirements, notably the number of homes permitted on large lots (NAHB Research Center, 2007). These requirements generally include prohibitions on accessory dwelling units, which can, when allowed, relieve the housing shortage for some tenants (Sage Computing, 2008).

Other barriers include impact fees that may unduly reduce the supply of market-rate housing if they excessively burden the residents of new development, relative to existing residences, for the construction and maintenance of infrastructure that they will all use in common (Bowles and Nelson, 2008). Even precautionary measures, such as environmental reviews of new construction, have been shown to disproportionately constrict supply and increase market-rate housing costs (Randolph et al., 2007). Similarly, barriers may be due to unintentional policy effects, such as obsolete and inefficient building codes that can reduce the supply of market-rate housing (Listokin and Hattis, 2005), or requiring rehabilitation projects to meet the same standards as new construction.

Regulatory barriers, particularly those reflecting local NIMBY sentiments, are often the result of political pressure placed on local politicians. Local governments, including those outside of the South, have put many barriers to the placement of manufactured housing on lots zoned for residential use (Dawkins et al., 2011). Since off-site construction is generally less costly than on-site construction, this constitutes a significant supply constraint.

In sum, land-use requirements are erected by local governments using authority delegated from the states. We hope that the six featured articles in this symposium will offer further insight into how local decisionmakers have grappled with identifying barriers and engaged in regulatory reform.

Featured Symposium Articles

This symposium presents six new research articles on regulatory barriers, some of which utilize increasingly robust datasets continually updated to reflect the most contemporary regulations.

Robert Wassmer and Joshua Williams of California State University, Sacramento, analyze data from the Wharton Residential Land Use Regulatory Index (WRLURI) to estimate the effects of a one-unit change in regulatory strictness on the price of land available for construction in metropolitan areas, finding significant impacts.

Mike Fratantoni, Edward Seiler, and Jamie Woodwell of the Mortgage Bankers Association utilize WRLURI data from 2006 to 2018 and the Federal Housing Finance Agency's (FHFA) Home Affordability Estimate (HAE) to examine changes in community-level land-use restrictions in comparison to trends in housing supply and affordability. They differ from Wassmer and Williams by focusing on intra-metropolitan trends. Here, the authors use two affordability measures to capture both the homebuyer's access to affordable housing and housing tenure. Nine case studies are presented.

Michael LaCour-Little and Weifeng Wu—in collaboration with Fannie Mae—utilize another popular dataset, the National Longitudinal Land Use Survey (NLLUS), to evaluate density controls with rent growth and home appreciation over time and across 50 metropolitan areas. Using data collected in 1994, 2003, and 2019, the authors examine home-price indices published by FHFA and used in conjunction with core-based statistical areas to determine home appreciation rates, while multifamily rental data from the CoStar Group are used for rental price analysis. The authors conclude that density regulations have taken a bifurcated path, whereby jurisdictions in the low- and high-density categories have increased, while those categorized as middle density have decreased significantly.

Janet Li, Michael Hollar, and Alastair McFarlane from HUD seek to advance a balanced view of building codes that recognizes both the benefits and the costs of effective regulation. They focus on energy efficiency as a building code component. Li, Hollar, and McFarlane develop an economic framework by investigating market failures, evaluating impacts on the housing market, and considering the distributional impacts of regulations of residential solar panels as a case application.

Jorge de la Roca, Marlon Boarnet, Richard Green, and Eugene Burinsky of the University of Southern California, and Linna Zhu of the Urban Institute, investigate the value proposition of floor area ratio (FAR) increases to developers in transit-oriented communities (TOCs) in Los Angeles, where developers can obtain higher FARs in TOCs in exchange for the provision of affordable housing. The authors devise detailed financial proformas on the feasibility of hypothetical TOC projects and non-TOC projects in various parts of the city by comparing internal rates of return. The authors show that TOC developments are preferred in all but moderate-strong markets to non-TOC developments using 20 hypothetical locations. The number of TOC permits is also cited as equal to the number of density-bonus program building permits despite the latter program's seniority, indicating a high adoption rate. The authors find that the program's current scale is insufficient to affect housing prices in Los Angeles, but the program can be successfully replicated elsewhere.

Finally, Emily Hamilton of George Mason University estimates the effects of inclusionary zoning on housing supply and prices in the Baltimore-Washington D.C. region. Hamilton tries to distinguish differences in effects between mandatory and optional inclusionary zoning programs on housing supply and prices. She finds that inclusionary zoning programs sometimes increase market-rate housing prices but finds no impact on housing supply.

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