Regulations and Housing Development: What We Need To Know

Michael H. Schill
University of California, Los Angeles

Abstract

Additional research is needed to inform public debate on the impact of government regulation on the housing market. This research includes cost/benefit analyses of individual regulations, investigations of the impact of regulations on affordable housing, city- or state-specific research on regulatory barriers, and analyses of the effects of regulatory barrier removal in those jurisdictions that effectively have reformed their regulatory processes. In addition, further research would be useful to understand why many jurisdictions employ regulations to thwart housing production and what impacts housing shortages created by regulatory barriers have on municipal and regional economic competitiveness.

The U.S. Department of Housing and Urban Development has an important role to play in stimulating research on the relationship between government regulation and housing supply and cost. This role includes investing research dollars in the collection of both quantitative and qualitative data on regulatory practices throughout the nation. It also includes providing "seed" money to researchers to stimulate use of this data to answer a set of relevant policy questions.

Introduction

The articles prepared for this volume clearly demonstrate that insufficient research exists on the subject of regulatory barriers to development. For most forms of land development regulation, more questions than answers exist. In particular, very little research exists to demonstrate the costs and benefits of regulations, the effect of regulations on the price of affordable housing, which barriers are particularly problematic, and the possible effects of barrier removal on housing prices. In addition, we need to know more about the reasons municipalities erect barriers to housing development and whether the concerns of residents are justified. Finally, research is needed to understand the consequences of constrained housing production for municipalities and regions.

One reason for our modest progress in eliminating regulatory barriers is a lack of sufficient information about the effects of federal, state, and local regulations. More and better research, therefore, is needed—a point that is emphasized in each of the articles contained in this volume. Part 1 of this concluding article presents some ideas about particularly fruitful avenues of inquiry; part 2 explores the U.S. Department of Housing and Urban Development's (HUD's) role in stimulating this research.

Part 1. Priorities for Research on Regulatory Barriers to Housing

Cost/Benefit Analysis of Regulations Affecting Housing

As discussed in the first article of this volume, the efficiency of a given regulation may not determine if the regulation constitutes a barrier to housing, but it is certainly relevant to that conclusion. Complete cost/benefit analyses that take into account the effect of regulations on housing simply do not exist. Part of the problem is methodological. In many instances, disentangling costs and benefits is difficult because of the joint effects of supply and demand. In addition, the adoption of regulations often is endogenous to the types of impacts that would be studied in a cost/benefit analysis.

Although these methodological difficulties are significant, they pale next to the problem of data limitations. As many of the articles in this volume indicate, no up-to-date nationwide census or compendium of regulations and regulatory practices is available in the United States. Ideally, information would be collected over time on the types of regulations each jurisdiction has on the books. In addition, it would be necessary to identify what proportion of developable land is subject to the regulations. A strict building code in a jurisdiction with little vacant land would be unlikely to have the same impact on housing as a comparable code in a growing locale. Data collection cannot solely rely on objective information from zoning maps and building codes. As May (2005) suggests, the stringency with which government officials and line staff enforce a given legal requirement varies tremendously across jurisdictions. Some municipalities are facilitative, while others go by the book. Any comprehensive collection of data to be used in a cross-sectional cost/benefit analysis would have to include a combination of quantitative and qualitative data.

Current data limitations might inhibit cost/benefit analyses of regulations throughout the nation, but researchers can still conduct studies based on individual jurisdictions or groups of municipalities. In many instances, this strategy would make both the data and methodological problems more tractable.

The Effect of Regulations on Affordable Housing

As discussed in the first article of this volume, even if the benefits of land development regulations exceed the costs they generate, policymakers still might be concerned about their impact on particular segments of the market. For example, environmental restrictions on certain types of development may be efficient (assuming that all costs and benefits have been appropriately accounted for) in the sense that they prevent externalities or congestion, but they also may push the cost of housing beyond the reach of low- and moderate-income families. This distributional result may be unsatisfactory either because it intensifies concentrated poverty or racial segregation elsewhere or leads to labor shortages or extremely burdensome commutes to work.

Very few of the studies examining the effect of government regulation on the cost and supply of housing have focused specifically on affordable housing. Instead, most of the studies examine impacts on the housing market as a whole. Additional research on this issue, therefore, would be useful. Definitions of affordable housing could be tied to commonly used criteria for housing assistance. Alternatively, affordable housing also could include what some have called "workforce" housing—housing that can be afforded by the types of employees needed in a given community.

To the extent that efficient regulations generate distributionally undesirable results, policymakers have several tools within their arsenal to alleviate the problem. For example, government could subsidize affordable housing for those households that are priced out of the market. Another option would be for the state or municipality to enact some form of inclusionary land use ordinance that either would mandate affordable housing as part of any market-rate development or grant density bonuses or other regulatory relief to developers who provide the housing voluntarily. Additional research is needed to identify which strategies are feasible and productive. Some have suggested that inclusionary requirements might operate as a tax on housing development and actually reduce overall housing supply rather than increase it (Ellickson, 1982). Studies that examine empirically which market conditions are most likely to facilitate the production of affordable housing through regulatory means would certainly be in order.

City- or State-Specific Studies of Regulatory Barriers

Although cross-sectional statistical analyses of the impact of regulations are necessary to develop a complete understanding of the problem of regulatory barriers to housing, actual change on the ground will likely occur only as a result of city- or state-specific research. Typically, such a study will involve interviews with a broad array of builders, bankers, housing advocates, and policymakers to learn what regulations in a particular jurisdiction pose the greatest impediments to housing developers. Researchers can then propose changes to those regulations that will enable the municipality to achieve its legitimate purposes, while also promoting housing development. This type of analysis has recently been done in Boston (Euchner, 2003) and New York City (Salama, Schill, and Stark, 1999).

The Effects of Barrier Removal on Municipalities

Closely related to the previous two research topics—the effect of regulations on affordable housing and city- or state-specific studies of regulatory barriers—is research on the impacts of efforts to remove regulatory barriers. Some municipalities and states have begun to experiment with efforts to remove regulatory barriers to housing. It would be immensely useful to understand what happens as regulations are streamlined. Specifically, do municipalities substitute other regulations for the ones removed in an effort either to limit production overall or limit certain types of housing? A second question is the extent to which removing regulatory barriers would lead to the creation of lower cost housing. It is plausible, of course, that just as the cost of regulations is partially borne by landowners, so too the benefits of deregulation may be capitalized into land values.

Understanding the NIMBY Phenomenon and How To Alleviate It

The 1991 report of the Advisory Commission on Regulatory Barriers to Affordable Housing identified the "Not In My Back Yard," or NIMBY, mindset as one of the primary reasons that municipalities erected barriers to development. The reasons for this aversion to new development have been described in detail in the literature. Studies have not examined, however, whether the fears are justified and what could be done to reduce the problems that might occur.

One of the principal concerns communities have when faced with new development is that their property values could decline. This fear is particularly acute when low- and moderate-income housing is proposed but frequently exists for market-rate housing as well. The literature on the spillover effects of housing is growing rapidly. Most studies, however, have examined only the effects of subsidized housing. According to one recent review of the literature (Galster, 2003), several studies have found positive, rather than negative, impacts. The magnitude of these impacts tends to vary with the number of units built, the context of neighborhoods, and the share of housing that is owner occupied.[1]

Unfortunately, very little research has studied carefully the impact of the most likely type of housing that would be built in communities that reduced regulatory barriers—market-rate workforce housing.

It is possible that housing developments sometimes will create negative impacts for communities. Crime may increase as lower income people move into the community, congestion might intensify, and taxes might need to rise to pay for public schools. Research is needed to show how communities have dealt with these challenges. Over the past 10 to 15 years, developers have experimented with a variety of mixed-income development models. An analysis of what designs work best, what services are most useful, and what tenant mixes are most successful would be useful. In addition, Been (2005) suggests that one of the theoretical benefits of impact fees over more traditional growth controls is that they might make a community more willing to accept additional housing. It would be useful to learn whether this hypothesis is true, and, if so, how the impact fees are calculated.

Finally, and in a related vein, much of the support for regulatory barriers to housing likely derives from our system of public finance. Municipalities rely heavily on local property tax revenue to fund local services, and, thus, have a tremendous incentive to bar development that leads to an influx of population demanding more in services than it provides in revenue. Some cities and states have experimented with a variety of equalization and tax-base sharing mechanisms. Whether these fiscal "reforms" reduce opposition to development and whether they lead to more socially optimal expenditure patterns are subjects that certainly deserve increased academic attention.

The Effects of Housing Shortages on Economic Competitiveness

Much of the concern over the shortage of workforce housing revolves around the fear that the absence of affordable housing could endanger the economic competitiveness of cities and regions. To the extent that affordable housing is unavailable nearby, employers will need to pay their employees more to compensate them for the increased housing expenses, or, alternatively, for their longer commutes to work. The fear is that over time, inflated labor costs will cause businesses to relocate elsewhere where the cost of living is lower.

Although surveys of business executives typically suggest that housing and living costs are often instrumental in their location decisions, no empirical studies support the argument that high housing costs and economic activity are inversely related. Indeed, high housing costs might actually reflect the economic vitality of a region. In other words, housing expenses and economic activity are most likely endogenous.

Even so, it is plausible that regulations could serve as barriers to entry in the housing market and may independently reduce the overall economic competitiveness of a region. Research on this question would be useful but would require cross-sectional data on regulatory stringency that do not currently exist, as well as a sophisticated methodology to tease out causation.

Part 2. HUD's Role in Supporting Research on Regulatory Barriers

As part of the America's Affordable Communities Initiative, HUD has requested a $2 million appropriation from Congress for fiscal year 2005 to fund research on regulatory barriers. This sum of money, while large, is no doubt insufficient to support all the research that would be necessary to address the issues outlined in this article, plus many other related questions. To obtain the greatest leverage from this appropriation, HUD might consider creating a partnership with foundations to support a research program in the area of regulatory barriers.

HUD's money would best be invested in data gathering. The single most important reason for the absence of research on the impact of regulations on housing development is the lack of systematic and consistent data on local regulatory practices. This absence of data is mentioned in each of the articles prepared for this volume. To fill this gap in our knowledge and spur additional research, HUD could support a census of regulatory practices throughout the nation. The data collected would include both objective data about regulation in each municipality (for example, amount of land zoned for multifamily housing, whether certain cost-saving technologies are permitted), as well as data from interviews on the average time it takes to obtain approvals and certifications. Although performed on a much smaller scale, as Quigley and Rosenthal (2005) note, similar data-gathering efforts have been undertaken by researchers at the University of Pennsylvania (Linneman, et al., 1990) and the University of California (Glickfeld and Levine, 1992). The questionnaires used, the problems encountered, and the data collected would be immensely helpful in structuring HUD's own efforts.

HUD could collect the data on regulations and regulatory practices in several ways. One approach would be to rely on localities to provide the data to HUD. One model would be the recent HUD Notice offering applicants for HUD funds the opportunity, if they so desire, to earn points in competitive funding situations based on their efforts to reduce regulatory barriers. Participation in data gathering under this model would be voluntary.

Many jurisdictions, however, might be unlikely to respond to this invitation, particularly those most likely to create regulatory barriers. Therefore, a mandatory data collection effort might be advisable. HUD could require all recipients of HUD funding to provide information according to a prescribed protocol. Again, the same problem might occur with certain of the most problematic jurisdictions not providing data because they do not receive Community Development Block Grants or discretionary HUD funding. Perhaps the only way to ensure that these jurisdictions participate in the data collection effort would be to make it a requirement of both municipal and state recipients of HUD funding. Because municipalities are legally the creations of their states, they would have no choice but to follow state dictates.

An alternative approach would be for HUD or some other agency to collect the data from municipalities. If HUD were to perform this task, it could make use of its decentralized Economic Market Analysis Division, which is located in regional offices throughout the nation. If this data collection effort would strain HUD's capacity, it could either contract with the Census Bureau to collect the information or make arrangements with a private organization. As Quigley and Rosenthal (2005) point out, the Census Bureau would be a natural partner. They currently collect local administrative data on a variety of indicators, such as building permits. In addition, the Census Bureau and HUD already collaborate closely on data collection in the context of the American Housing Survey.

If HUD were to undertake a census of regulatory practices, the agency could then make this data freely available to researchers throughout the nation. Together with its foundation partners (for example, the Fannie Mae Foundation and the National Science Foundation), HUD could provide small, competitive research grants to academics who have innovative ideas for using the data to answer a preselected set of important policy questions.

One excellent model for this type of research is the Moving To Opportunity (MTO) grant program sponsored by HUD in the mid-1990s. This program used centralized data on the experimental program, plus $50,000 research grants, to leverage additional resources and generate a substantial body of useful, and sometimes pathbreaking, research (Goering and Feins, 2003). Ultimately, 8 researchers were selected from more than 25 applicants in a competitive peer review process administered by an outside agency. This small grants competition produced impressive research. In addition, the modest grants were able to leverage substantial additional private funds—in some instances, many times the HUD contribution.

As happened with the MTO research, HUD should reach out to fund cross-disciplinary work on the relationship between regulation and housing. To a large extent, real estate economists have dominated the field. Other academics with different perspectives or institutional knowledge, such as economists, civil engineers, sociologists, planners, and lawyers, also should be encouraged to conduct research on the impact of regulations on housing development.

This strategy has several advantages. First, it is unlikely that any individual researcher would have the resources to put together the type of data necessary to provide an accurate picture of regulatory stringency in the United States. A government agency with access to funds and a mission to generate public benefits would be well suited to generating this data. A second and substantial benefit of a small-grants program is that it might spark an interest in research on the relationship between regulation and housing among more junior academics and build a field of intellectual inquiry. As each of the articles prepared for this volume indicates, that field will likely be quite fertile for years to come.

Author

Michael H. Schill, Dean of the UCLA School of Law, is a national expert on real estate and housing policy, deregulation, finance, and discrimination. Before joining the UCLA School of Law, he was the Wilf Family Professor in Property Law at the New York University School of Law and professor of urban planning at the New York University's Robert F. Wagner Graduate School of Public Service. He has written or edited three books and more than forty articles on various aspects of housing, real estate, and property law.

Note

1. According to Galster (2003), most studies show that positive spillover effects will tend to be larger when greater numbers of units are provided (up to a threshold level, at which point, additional units tend to generate negative externalities), when developments are located in more affluent locations, and when greater shares of total units are composed of owner-occupied dwellings.

References

Advisory Commission on Regulatory Barriers to Affordable Housing. 1991. *"Not In My Back Yard": Removing Barriers to Affordable Housing.* Final report. Washington, DC: U.S. Department of Housing and Urban Development.

Been, Vicki. 2005. "Impact Fees and Housing Affordability," *Cityscape* 8 (1): 139–186.

Ellickson, Robert C. 1982. "The Irony of 'Inclusionary Zoning.'" In *Resolving the Housing Crisis: Government Policy, Decontrol, and the Public Interest,* edited by M. Bruce Johnson. San Francisco: Pacific Institute for Public Policy Research.

Euchner, Charles C. 2003. *Getting Home: Overcoming Barriers to Housing in Greater Boston.* With Elizabeth G. Frieze. Cambridge, MA: Pioneer Institute for Public Policy Research and the Rappaport Institute for Greater Boston, Kennedy School of Government. http://www.pioneerinstitute.org/pdf/wp21.pdf.

Galster, George C. 2003. Review of the Literature on Impacts of Affordable and Multi-Family Housing on Market Values of Nearby Single-Family Homes. Paper presented at the Brookings Symposium on the Relationships Between Affordable Housing and Growth Management, Brookings Institution, May 29, 2003.

Glickfeld, Madelyn, and Ned Levine. 1992. *Regional Growth … Local Reaction: The Enactment and Effects of Local Growth Control and Management Measures in California*. Cambridge, MA: Lincoln Institute of Land Policy.

Goering, John, and Judith D. Feins. 2003. *Choosing a Better Life? Evaluating the Moving to Opportunity Social Experiment*. Washington, DC: The Urban Institute.

Linneman, Peter, et al. 1990. "The State of Local Growth Management," Real Estate Working Paper no. 81. The Wharton School, University of Pennsylvania.

May, Peter J. 2005. "Regulatory Implementation: Examining Barriers From Regulatory Processes," *Cityscape* 8 (1): 209–232.

Quigley, John M., and Larry A. Rosenthal. 2005. "The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn," *Cityscape* 8 (1): 69–138.

Salama, Jerry J., Michael H. Schill, and Martha E. Stark. 1999. *Reducing the Cost of New Housing Construction in New York City.* A Report to The New York City Partnership and Chamber of Commerce, The New York City Housing Partnership and The New York City Department of Housing Preservation and Development. New York: New York University School of Law, Center for Real Estate and Urban Policy. http://www.law.nyu.edu/realestatecenter/CREUP_Papers/Cost_Study_1999/NYCHousingCost.pdf.