

State Affordable Housing Appeals Systems

**Nicholas J. Marantz, University of California, Irvine
Presentation @ FedCommunities, Washington, DC, September 26, 2023**

State affordable housing appeals systems in the US

- In the United States, local governments typically exercise extensive authority over land-use regulation (i.e., delineating the permissible uses of land).
- In general, this includes authority to limit (or prohibit) apartment development.
- A state affordable housing appeals system empowers developers of below-market-rate and mixed-income housing to challenge local land-use regulation.

Affordable housing appeals system states



Components of a state affordable housing appeals system

- A mechanism for determining whether a municipality has satisfied its regional housing obligations.
- An expedited appeals procedure for developers of qualifying projects in non-exempt municipalities.
- A rule shifting of burden of proof from developer to municipality.
- A zoning override for developers who prevail (i.e., a “builders’ remedy”).

Potential benefits of a state affordable housing appeals system

- Increase stock of deed-restricted below-market-rate housing (affordable at \leq 80% of area median income) (Marantz & Zheng, 2018).
- Increase below-market-rate housing in high-opportunity areas (Fisher & Marantz, 2015).
- Increase the stock of units affordable to households with incomes at 80%-120% of the area median.
- Increase affordability of existing market-rate units (supply effects) (Been et al., 2019).

Sources

- Been, Vicki, Ingrid Gould Ellen, and Katherine O'Regan. 2019. "Supply Skepticism: Housing Supply and Affordability." *Housing Policy Debate* 29 (1): 25–40. <https://doi.org/10.1080/10511482.2018.1476899>.
- Fisher, Lynn M., and Nicholas J. Marantz. 2015. "Can State Law Combat Exclusionary Zoning? Evidence from Massachusetts." *Urban Studies* 52 (6): 1071–89. <https://doi.org/10.1177/0042098014534906>.
- Marantz, Nicholas J, and Huixin Zheng. 2020. "State Affordable Housing Appeals Systems and Access to Opportunity: Evidence from the Northeastern United States." *Housing Policy Debate* 30 (3): 370–95. <https://doi.org/10.1080/10511482.2020.1712612>.

Do state affordable housing appeals systems work?

- In Massachusetts, developers of mixed-income housing were more likely to use the appeals system in municipalities that were relatively accessible to jobs and that placed relatively stringent zoning restrictions on multifamily development (Fisher & Marantz, 2015).
- In northern New Jersey, the appeals system was associated with increases in the stock of townhome and apartment units in comparison with nearby New York State municipalities, after controlling for socio-economic characteristics (Marantz & Zheng, 2018). This is relevant because New York State has no housing appeals system.
- Among the four appeals system states, the Massachusetts system is associated with the best outcomes, in terms of generating below-market-rate units (as a share of all units), reducing the rent burdens of low-income households, and facilitating the development of LIHTC units (Marantz & Zheng, 2020).

Sources

- Fisher, Lynn M., and Nicholas J. Marantz. 2015. "Can State Law Combat Exclusionary Zoning? Evidence from Massachusetts." *Urban Studies* 52 (6): 1071–89. <https://doi.org/10.1177/0042098014534906>.
- Marantz, Nicholas J., and Huixin Zheng. 2018. "Exclusionary Zoning and the Limits of Judicial Impact." *Journal of Planning Education and Research*. <https://doi.org/10.1177/0739456X18814924>.
- Marantz, Nicholas J., and Huixin Zheng. 2020. "State Affordable Housing Appeals Systems and Access to Opportunity: Evidence from the Northeastern United States." *Housing Policy Debate* 30 (3): 370–95. <https://doi.org/10.1080/10511482.2020.1712612>.

But appeals systems (and inclusionary zoning) rely on an exclusionary baseline

Metropolitan Statistical Areas with most restrictive zoning

National Zoning & Land Use Database (N = 48)

Washington–Arlington–Alexandria, DC–VA–MD–WV

New York–Northern New Jersey–Long Island, NY–NJ–PA

Providence–New Bedford–Fall River, RI–MA

Seattle–Tacoma–Bellevue, WA

Tampa–St. Petersburg–Clearwater, FL

Milwaukee–Waukesha–West Allis, WI

Miami–Ft. Lauderdale–Pomona Beach, FL

Detroit–Warren–Livonia, MI

Boston–Cambridge–Quincy, MA–NH

Springfield, MA

2018 Wharton Residential Land Use Regulatory Index (N = 54)

New York–Northern New Jersey–Long Island, NY–NJ–PA

San Francisco–Oakland–Fremont, CA

Phoenix–Mesa–Glendale, AZ

Providence–New Bedford–Fall River, RI–MA

Riverside–San Bernardino–Ontario, CA

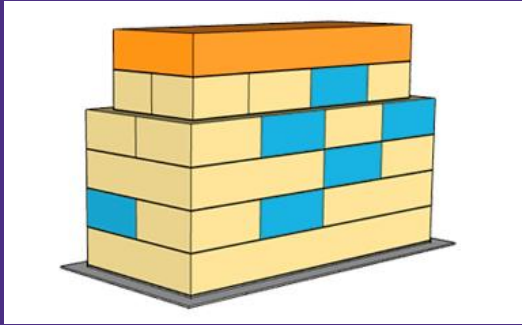
Seattle–Tacoma–Bellevue, WA

Portland–Vancouver–Hillsboro, OR–WA

Miami–Fort Lauderdale–Pompano Beach, FL

Washington–Arlington–Alexandria, DC–VA–MD–WV

Philadelphia–Camden–Wilmington, PA–NJ–DE–MD



Inclusionary Zoning Policy:

Prevalence, Design and Productivity

Vince Wang, PhD
Assistant Professor
University of Washington

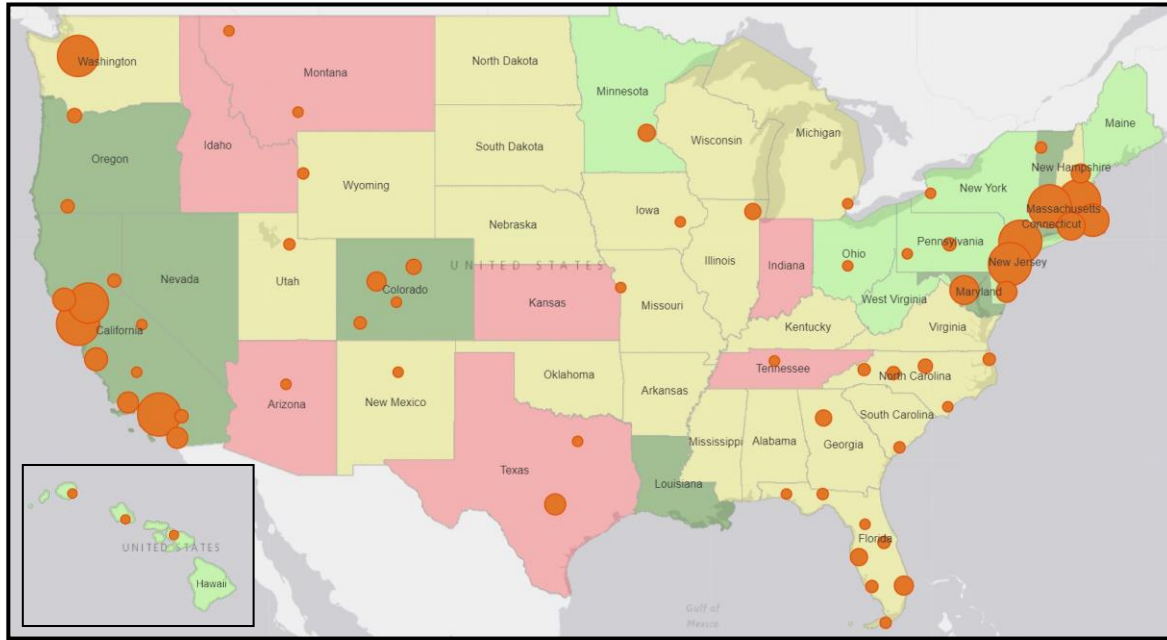


Why are inclusionary zoning programs popular?



- > **Shrinking affordable housing and growing economic inequality**
- > **One tool in the affordable housing continuum**
- > **Neighborhood of opportunity and displacement mitigation**

The prevalence, production, and practice of IZ



- > **1,000+ IZ programs in 31 states and D.C.**
- > **110k+ below-market rate (BMR) units in 258 IZs; \$1.76B generated by 123 IZs**
- > **Wide variation in policy design**

The effect of IZ's policy design on BMR unit productivity:

- > **Mandatory IZs were 1.5 times more likely to produce at least 1 BMR unit than voluntary IZs**
- > **Rental IZs generated 17 more BMR units per year than ownership policies**
- > **IZs that were older, were mandatory, covered the entire jurisdiction, and had more complex income requirements were more likely to be top-BMR unit producing policies**
- > **Longer affordability terms didn't affect BMR unit productivity**

Policy implications:



- > **More stringent IZ policies with flexible income requirements help greater BMR unit productivity**
- > **Consider local context when designing effective IZ policies**
- > **Better track IZ policy outcome and impact**

Thank you!

Vince Wang

vrwang@uw.edu

Runstad Department of Real Estate

University of Washington





CLTs:

sustainably
affordable housing
in expensive cities

by Professor Annette M. Kim,
USC

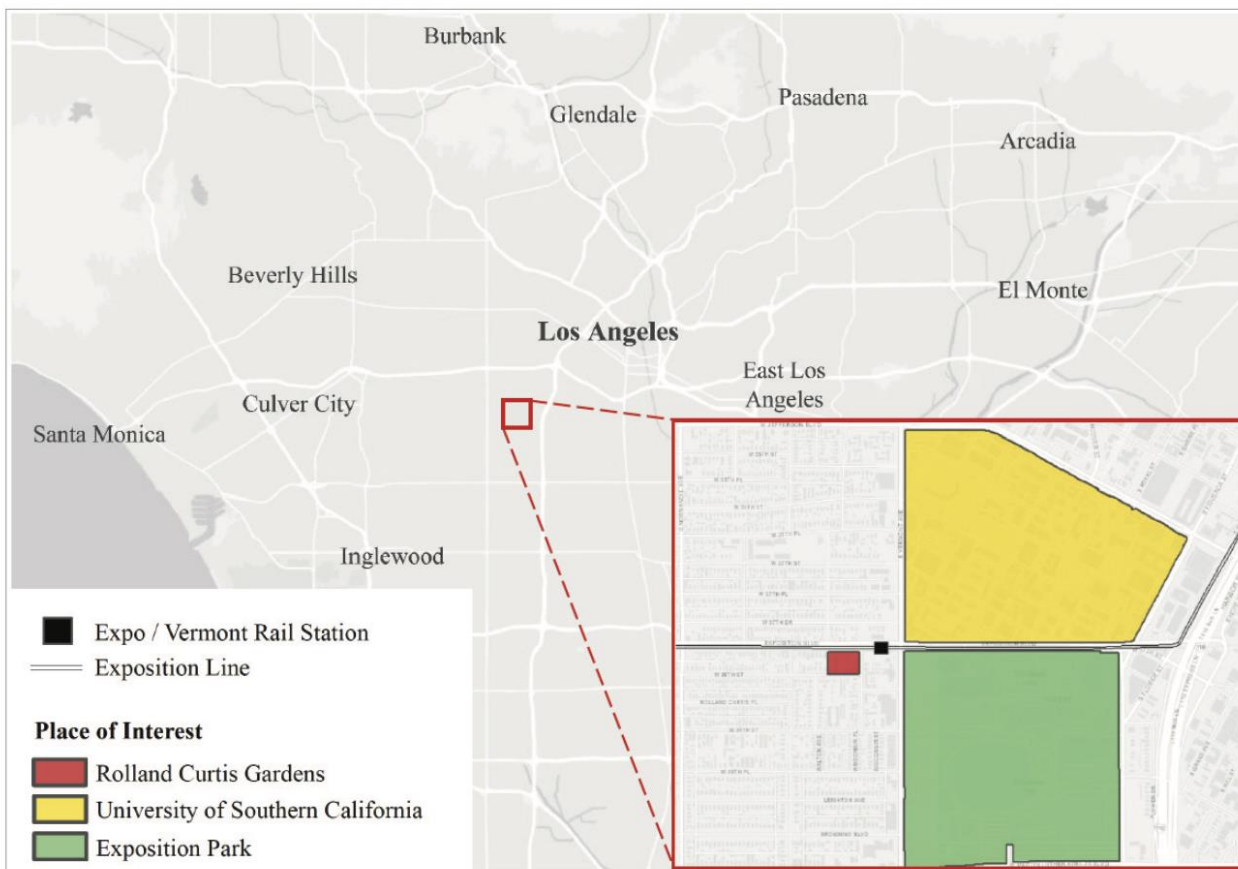
Rolland Curtis Gardens



140 affordable **rental** units developed in Los Angeles in 2019
with right to return for original RCG residents

in gentrifying urban location with transit access and amenities

Rolland Curtis Gardens' Location in the Los Angeles Region and Relative to Neighborhood Amenities





redeveloped from 48 Section 8 funded units
originally built in 1981, had 300 code violations and illegal evictions
with affordability covenants expiring in 2011

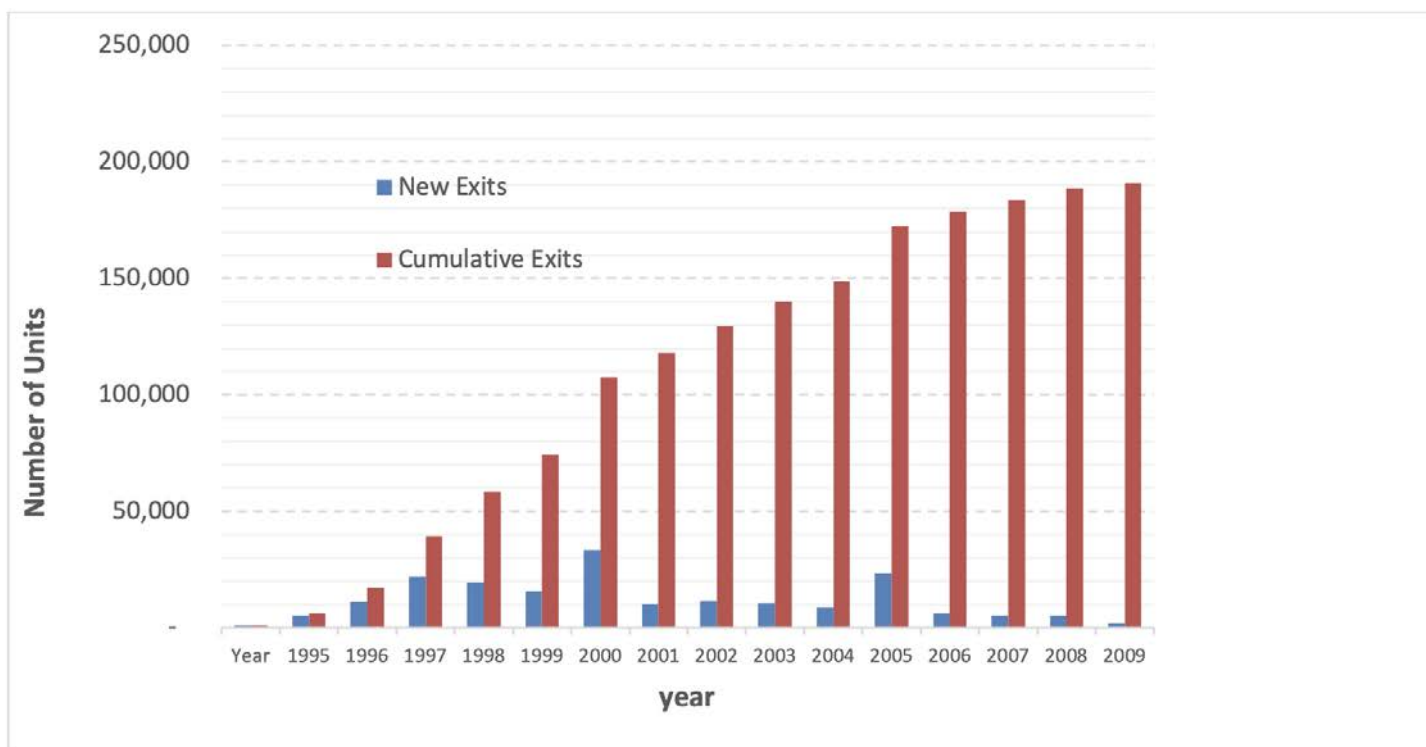


in a neighborhood of private, sub-standard housing starting to gentrify



Now a growing national problem with Section 8 and LIHTC affordable housing supply as affordability covenants expire

Figure 1:
Number of Units Exiting the Project-Based Section 8 Program, by Year



Source: adapted from Vincent Reina and Ben Winter in Schwartz et al, 2016.

Community Land Trusts

an alternative approach
to **private, affordable** housing supply

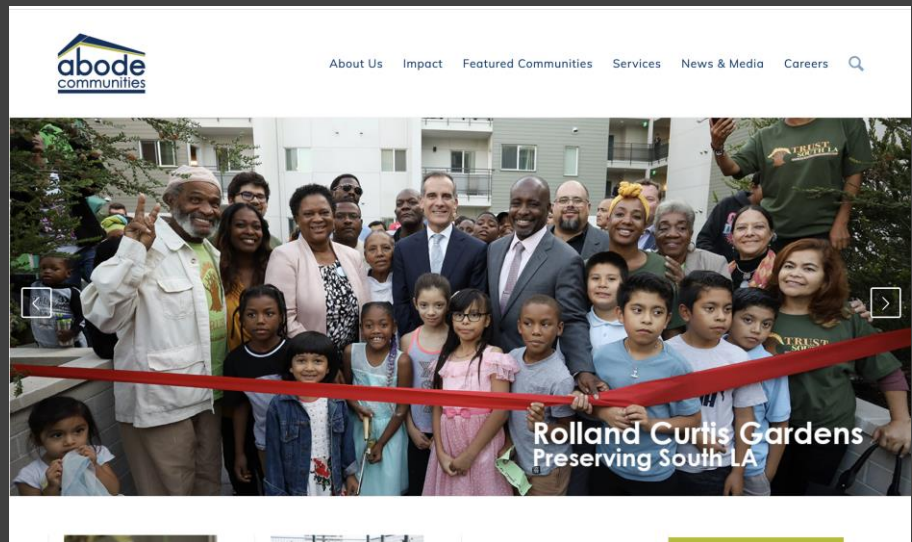
land held in trust and restrictions on
property's market resale price, in **perpetuity**

Case findings:

needed the strengths of both
activist community organizers and professional
affordable housing developers

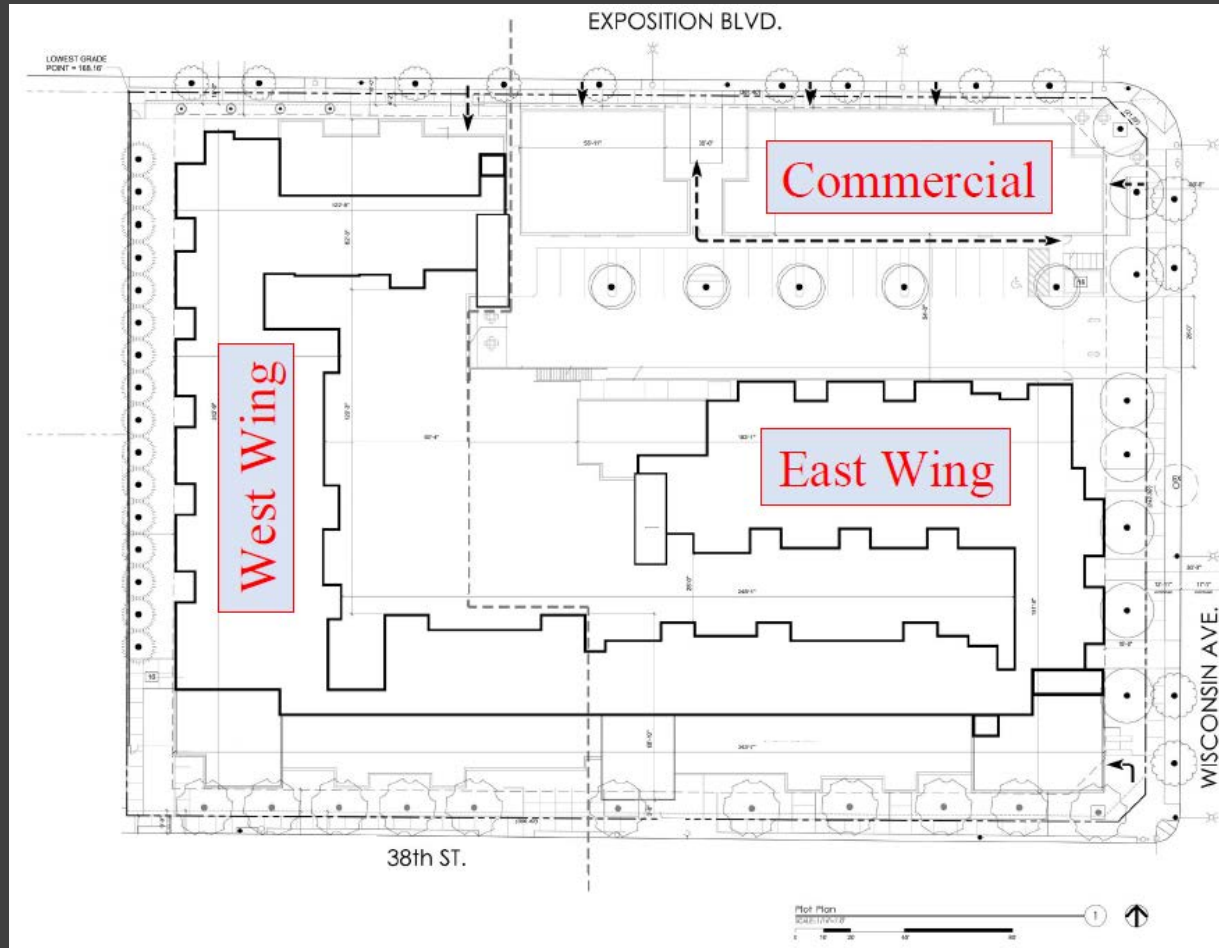


TRUST South LA



Abode Communities

density design, mixed-use, lower parking requirements, tax changes...





Cities could increase allowable density, floor area ratio, lower parking ratios especially for affordable housing near transit

Adjusting the appraisal methodology for properties in rapidly appreciating real estate markets to facilitate more appropriate levels of public funds to affordable housing projects in gentrifying neighborhoods.



Case findings:

RCG was expensive to build
private market land supply is the key constraint,
timing of site acquisition is critical

- Cost of developing RCG (\$564,227 per unit) was comparable to private affordable housing projects in Los Angeles (\$558,110 per unit).
- Perpetual affordability is the key advantage: eliminates the waste in public investment into expiring affordable housing projects

Case findings:

RCG still does not serve the lowest income population

- Returning RCG residents, 30% AMI
- remaining units 40-60% AMI

Marqueece
@mhdcd8

The line was around the block for tonight's leasing meeting for the new Rolland Curtis affordable housing project. The need is deep. Even though the Eighth has more affordable housing than any other district, we will keep pushing forward. ift.tt/2zzdQEJ





Faircloth to RAD (Rental Assistance Demonstration Program):
Increasing the Supply of Public Housing

Federal Reserve Community Development Research Seminar Series
September 26, 2023

Public Housing- Deeply Affordable Rentals

- Public Housing Authorities (PHAs) operate approximately 1 million units serving 1.7 million residents
- 75% of the residents served have extremely low incomes
 - Nearly 1/3 are over 62
 - 1/4 live with a disability
- In the past 20 years, approximately 300,000 uninhabitable units have been demolished

Three Factors Contributed to the Decline

- Decades of underinvestment in PHA operating and capital funding resulted in unit obsolescence
- Lack of capital for construction and operations to re-invest in units or rebuild
- Faircloth Amendment/Limit (Sen. Lauch Faircloth, NC)
 - As of 10/1/99, capped PHAs from adding to their public housing stock
 - As a result of demolitions/dispositions, many PHAs operate fewer units than their Faircloth Limit

Faircloth to RAD

- Authorized in 2012, RAD allows PHAs to convert public housing funding to project-based Section 8 rental assistance.
 - Has facilitated over \$15 billion in capital to improve or replace nearly 175,000 rent assisted homes.
- Faircloth to RAD HUD guidance issued in 2021.
 - Create and/or redevelop public housing up to the Faircloth limit using RAD to convert to project-based Section 8 rental assistance.

Faircloth to RAD Status

- 249,878 Faircloth units available
- 4,359 units in the HUD Faircloth pipeline
- Pipeline development status:
 - Pre-Development- 52 projects, 3,134 units
 - Pre-Construction- 7 projects, 434 units
 - Construction- 16 projects, 791 units
 - Permanent financing & conversion- 5 projects, 176 units

Turner's Analysis of Faircloth to RAD Implementation Opportunities and Barriers

- Opportunities:
 - Faircloth units available and number is increasing
 - Layer rental subsidies into existing affordable housing to deepen affordability
- Barriers identified:
 - PHA admin capacity
 - Access to affordable housing development partners
 - Faircloth to RAD per unit contract rents too low

Possible Solutions

- Combine Faircloth to RAD & Project Based Voucher Units
- Use Moving to Work PHA funding flexibility
- Partner with affordable housing developers building new units where Faircloth to RAD contract rents may be higher

HUD 7/27/23 RAD Notice 4B Program Improvements

- For Project Based Voucher (PBVs) conversions, under certain conditions allows a PHA to use its existing Section 8 Voucher Program Reserve Funds to set initial RAD contract rents higher.
- PBVs in a RAD-converted property that replace existing public housing units do not count against the 20% cap on the number of Housing Choice Vouchers a PHA may project-base.
- For Project Based Rental Assistance (PBRA) projects, the RAD rent may be modified through other existing flexibilities, e.g. rent bundling, Opportunity Zone enhancements, etc.
- For Project Rental Assistance Contract (PRAC) Section 202 projects, expands the option to convert to RAD providing an opportunity for recapitalization, maintenance of nonprofit control and extension of the affordability period.
- Added a clause to the provision determining how many units in a property may be disposed of through Section 18 conversions in a high-cost areas.