NLC NATIONAL LEAGUE OF CITIES

CENTER FOR CITY SOLUTIONS

Local Tools to Address Housing Affordability

A STATE-BY-STATE ANALYSIS

NATIONAL LEAGUE OF CITIES

CENTER FOR CITY SOLUTIONS

About the National League of Cities

The National League of Cities (NLC) is the nation's leading advocacy organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. Through its membership and partnerships with state municipal leagues, NLC serves as a resource and advocate for more than 19,000 cities and towns and more than 218 million Americans. NLC's Center for City Solutions provides research and analysis on key topics and trends important to cities and creative solutions to improve the quality of life in communities.

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About the Report

This report is the fifth project outcome of a research collaborative between NLC and the state municipal leagues. We are grateful for the guidance, data verification and housing affordability narratives they provided.

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Foreword

There is a simple truth that connects every person in every city, town and village across America: They want a safe, affordable place to call home. A place to raise their families, enjoy meals with friends and rest their heads at night. But for too many people across the country, that vision of home is not accessible, affordable, or in many cases, available. That is why the National League of Cities (NLC) has made it a priority to support local leaders' efforts to identify and implement local housing solutions.

Local Tools to Address Housing Affordability: A State-by-State Analysis is an important part of that work. Developed and published in collaboration with the 49 state municipal leagues, the report provides an in-depth look at the interplay of state policies and local housing markets. While no two communities face the exact same set of challenges, we can see the varied impact of policies through this research.

This report complements NLC's broad focus on housing, which includes the development of resources and best practices, on-the-ground technical assistance, and advocacy at the federal level. In late 2018, NLC further expanded its housing work through the creation of a national housing task force comprised of mayors and councilmembers from 20 states as well as two state municipal league leaders. The task force will publish recommendations to help communities respond to the growing challenges of housing availability, affordability, investment and quality in June 2019.

Local leaders are unified in their call to improve housing opportunities for all — because every person not only wants a place to call home, they deserve it. I look forward to NLC's continued partnership with the state leagues to provide in-depth research, uplift effective solutions, and build a stronger America from the ground up.

Clarence E. Anthony
CEO and Executive Director, NLC

Local leaders are unified in their call to improve housing opportunities for all — because every person not only wants a place to call home, they deserve it.

Introduction

Nearly all communities in the United States struggle with housing affordability, no matter their size, level of prosperity or growth pressures. Some cities seek to provide enough housing for all incomes by preserving existing affordable housing units and creating new ones. Others focus on preventing poor housing conditions and housing displacement. Still others concentrate on helping households access and afford private-market housing or connecting housing strategies to employment, mobility and health initiatives.

Given the diverse landscape of housing affordability, cities must build and maintain the proper tools and flexibility to meet the needs of their residents. To that end, cities have implemented solutions such as inclusionary housing, rent control, fair housing and housing trust funds. They have also leveraged programs like their states' tax incentive programs to expand housing affordability and access.

This report explores how states and cities interact in each of these policy areas, and details cities' implementation authority. We collected data for each policy from existing research, state legislation and relevant court decisions. State municipal leagues then confirmed the data for their states to ensure timeliness and accuracy.

In summary, our assessment of all 50 states and the District of Columbia finds that:

- Cities in 20 states and the District of Columbia are expressly permitted or face no legal barriers to **inclusionary housing**
- Cities in 13 states and the District of Columbia are permitted, have some barriers, or have limited control to implement **rent control**
- Cities in 25 states and the District of Columbia have either state law protections or local protections for those using **housing vouchers** as a source of income
- Cities in 35 states and the District of Columbia have established **housing trust funds**

Several key factors have influenced the city-state relationship in housing policy, including Dillon's Rule vs. Home Rule status and emerging issues over local control, which are discussed below.

Dillon's Rule vs. Home Rule

The U.S. Constitution does not mention local governments. Instead, the 10th Amendment provides authority-giving powers to the states. The fact that states decide the level of power their local governments have has led to a great deal of diversity in state-local relations between and within states. States take on one of two approaches, providing either narrow (Dillon's Rule) or broad (home rule) governing authority, defined in the state constitution and/or by statute enacted by the legislature.

Cities in Dillon's Rule states do not have authority to control their local government structures or their methods of financing activities or procedures. These cities must also defer to the state to make and implement policy, unless it is expressly authorized. Cities with home rule, on the other hand, have much more autonomy. The state interferes in local

Local Housing Affordability Tools by State

This radial graphic shows city authority to implement common housing strategies*

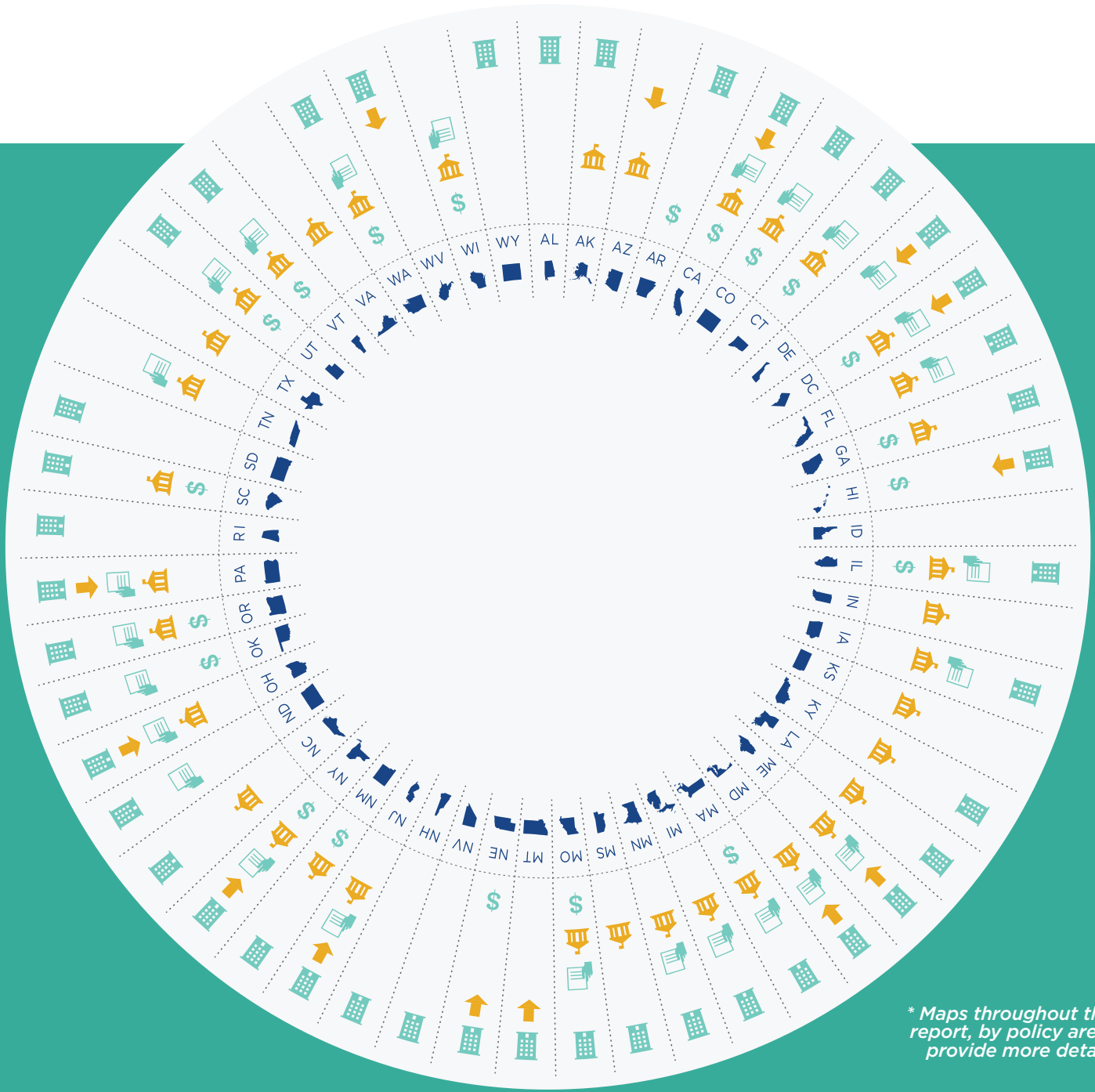
Inclusionary Housing
Permitted or Permitted with Limitation

Rent Control
Permitted or Permitted with Limitation

Vouchers as Source of Income
State Protection or Permitted

City Housing Trust Funds
Established

State Tax Incentives



** Maps throughout the report, by policy area, provide more detail.*

affairs only on a limited basis. Home rule states often delegate power to cities, but that power can be limited to specific fields and subject to constant judicial interpretation.

In this report, we parse out the impact of Dillon's Rule vs. Home Rule on cities' ability to establish housing policies. For example, we identify what happens when cities face legal barriers to inclusionary housing policy due to Dillon's Rule status when no state statue exists to authorize local inclusionary housing measures.

Local Control

Greater local control is often at the heart of policies that accelerate progress, expand rights, build strong economies and promote innovation. However, there are examples, particularly in the affordable housing policy arena, in which state policy is needed to make progress for everyone.

In some cases, significant community backlash against proposals to increase the supply of affordable housing has led to a standstill on the issue. This has prompted states to limit, or preempt, cities' decision-making powers related to land use and housing. This dynamic has played out most recently in California on mandates for cities to increase density around transit stations, and currently in Washington state on accessory dwelling units.

Given the scale of the housing problem and the need to incorporate local strategies that work best for particular circumstances, some states have established a minimum set of flexible requirements for cities, also known as "floors."[1]

For example, this year, cities in the state of Utah worked with the state legislature and state Commission on Housing Affordability on Senate Bill 34 (SB 34). The purpose of this bill is to increase housing options for a broad spectrum of income levels in high population growth areas and to promote regional integration of housing and transportation.[2] SB 34 leverages the most powerful housing affordability key that cities hold — planning, and mandates that cities include a moderate income housing component in local general plans in order to be eligible for state transportation dollars. Informed by cities across the state, the bill provides a menu of 22 options for how cities can approach the mandate in ways that allow for local flexibility. According to the Utah League of Cities and Towns, the bill ensures that policy leaders "think regionally, act locally" when addressing pressing housing needs in the state.

Another example of a floor preemption is local fair housing laws. Federal government and many state governments have established laws to protect individuals and families from housing discrimination. These laws identify a minimum set, or "floor," of protected groups defined by race, gender, disability and other characteristics. Many states also permit their cities to enact local fair housing laws to protect additional classes, such as those on public assistance.

Throughout the country, the tools available to cities to ensure a diverse mix of housing options vary. This report helps city and state leaders better understand their housing policy context in relation to others and illuminates opportunities for expanding the policy tools available for leadership to improve housing availability for all residents.

Given the diverse landscape of housing affordability, cities must build and maintain the proper tools and flexibility to meet the needs of their residents.

Inclusionary Housing Policy

Inclusionary housing policies, often referred to as "inclusionary zoning," are programs at the state and municipal level that require or incentivize the development of affordable housing alongside market-rate units. These policies can either be voluntary or mandatory, based on the state or city. Mandatory inclusionary housing programs require developers to include affordable units in their building plans in order to obtain development rights. In voluntary programs, developers earn incentives like tax breaks and density bonuses, in exchange for including units for sale or rent below-market rate.

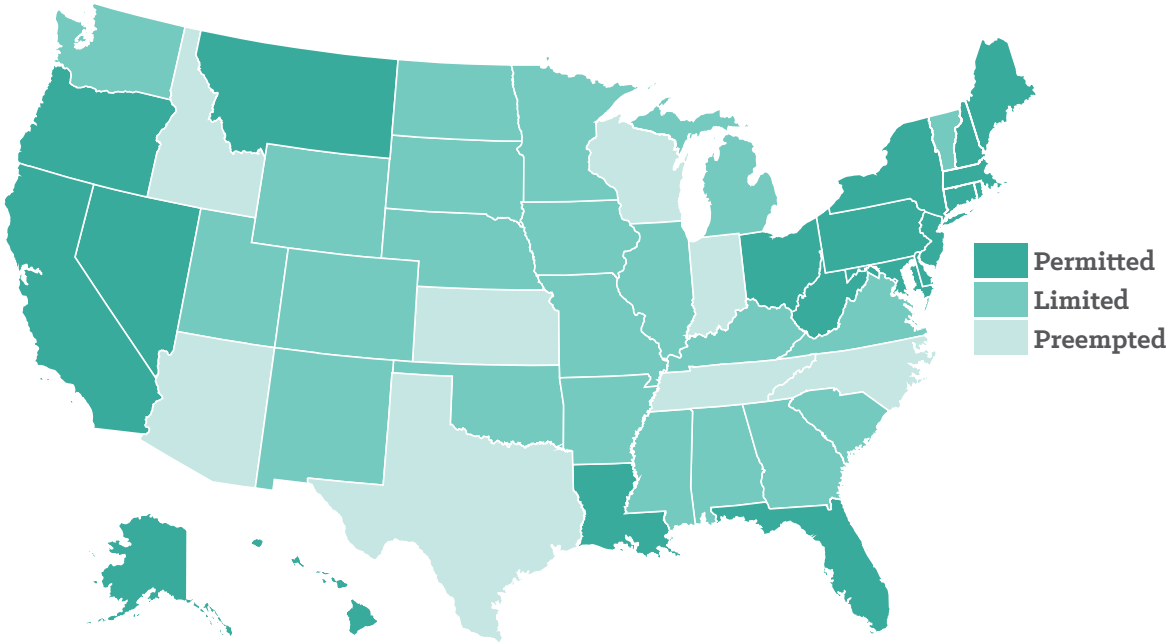
State and local governments have employed inclusionary housing policies since the 1970s, creating and expanding the availability of below-market rate units and a variety of programs in more than 800 U.S. cities.[3] Evidence suggests that mandatory inclusionary zoning programs generate greater benefits, like expanding the supply of affordable housing. Evidence also suggests that voluntary programs only work if they offer substantial subsidies to developers.[4]

Given the significance and breadth of inclusionary housing policies, we assessed city-level authority to implement these policies based on the related legal framwork developed by the National Low-Income Housing Coalition and Grounded Solutions Network:

- **Permitted** *(20 states and the District of Columbia):* Cities in these states are either expressly permitted to create all forms of inclusionary housing policy or have home rule with no state restrictions on local inclusive housing.

- **Limited** *(22 states):* These states impose either limitations on city inclusionary housing policies or legal barriers to implementing

Inclusionary Housing



Source: National League of Cities

inclusionary housing policies, particularly mandatory programs.

- **Preempted** *(8 states):* Cities in these states are expressly prohibited from enacting local inclusionary housing measures.[5]

Of the 20 cities in "permitted" states, 10 are explicitly permitted or mandated by legislation to adopt some form of inclusionary housing (California, Connecticut, Florida, Louisiana, Maryland, Massachusetts, Nevada, New Hampshire, Oregon, Rhode Island and the District of Columbia). In each of these cases, all forms of inclusionary housing policy are allowed at the municipal level.

In California, cities can "require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income."[6] This allows for cities to then choose to implement inclusionary zoning policy as they see fit. For example, Davis, CA has a straightforward mandatory zoning policy. The program requires that developers set aside between 25 and 35 percent of any new rental development and between 10 and 25 percent of owner-occupied development. The income thresholds for rental units are 80 percent and below area median income and 120 percent and below for owner occupied.[7] They have also created two alternatives to building units: a fee in-lieu of unit creation or land dedication.

Cities in 10 of the "permitted" states face no legal barriers to inclusionary housing. These include Alaska, Delaware, Hawaii, Maine, Montana, New Jersey, New York, Ohio, Pennsylvania

and West Virginia. Cities in these states have home rule authority, which grants them the power to pass laws and govern themselves. In these states, at least one city has implemented a mandatory inclusionary housing policy.

Cities in 22 states are "limited" in their ability to create inclusionary housing policy due to legal barriers. Cities in limited states are either governed by Dillon's Rule with no state statute expressly authorizing inclusionary housing measures, or state law prohibits rent control. In rent control cases, courts have interpreted prohibition on rent control as a de facto ban on inclusionary housing programs that require the development of affordable rental units. Mandatory inclusionary housing forces a rental price on units for developers, thus breaching the prohibition on rent control. For example, North Carolina has a state prohibition on rent control that has made it difficult for cities to enact mandatory inclusionary policies for rental housing. Three North Carolina cities have enacted mandatory programs, but all have been sued and settled before going to trial.[8]

On the other hand, there are instances in which states have a legal barrier, like rent control preemption, but make allowances to let cities circumvent the limitation in order to implement inclusionary housing under certain circumstances. For example, the state of Minnesota prohibits cities from enacting rent control policies but allows cities to establish sales prices or rents for affordable housing for low- and moderate-income households. It also includes equity sharing to maintain the long-term affordability of the affordable units.[9] These provisions make it possible for inclusionary housing policy but limit it to projects receiving public subsidy or a zoning change.

Eight states (Arizona, Idaho, Indiana, Kansas, Tennessee, Texas, Virginia and Wisconsin) fall into the category of "preempting" cities from enacting inclusionary housing, where at least some form of inclusionary housing is strictly prohibited for both ownership and rental housing, either by statute or by court decision. Many preempt mandatory local inclusionary housing policies but allow voluntary programs. In Indiana, the state prohibits municipalities from requiring developers to follow any requirement that would control rental or purchase prices, and they may not establish it in lieu of a fee.[10] Some states permit cities to establish voluntary policies where developers can be incentivized to create more affordable housing. For example, the city of Austin, Tex., offers developers waivers, density bonuses, tax breaks and development agreements if they set aside affordable rental and ownership housing for low and moderate-income households.[11]

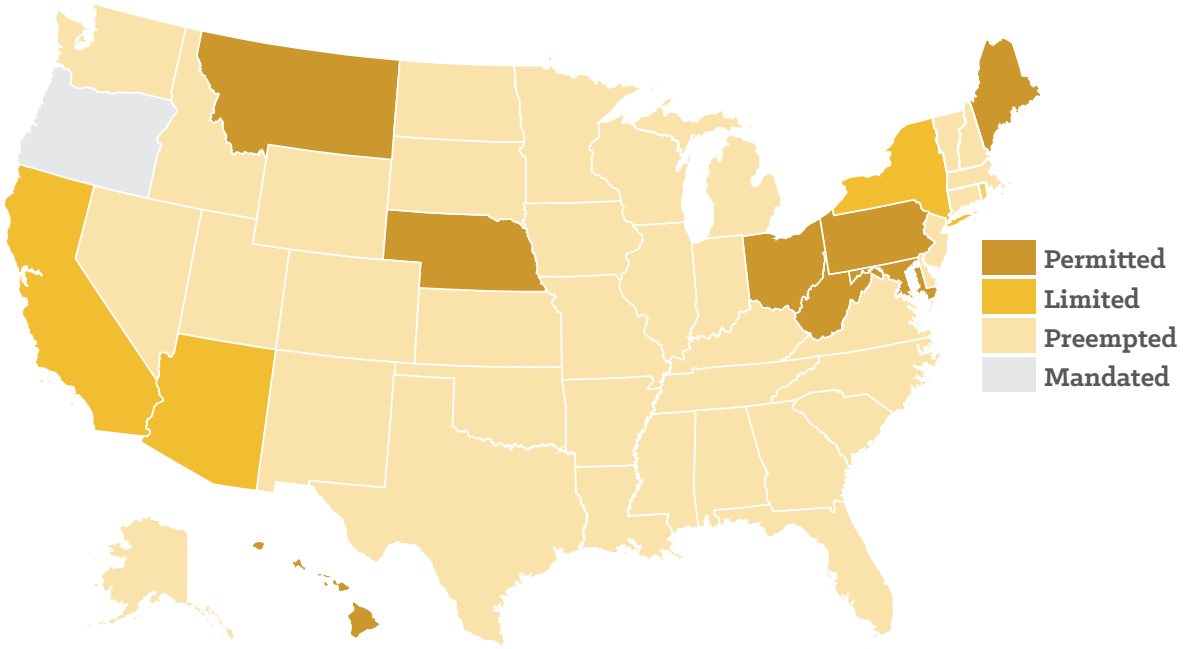
In rent control cases, courts have interpreted prohibition on rent control as a de facto ban on inclusionary housing programs that require the development of affordable rental units.

Rent Control Policy

Some cities with competitive real estate markets have implemented rent control to combat rapidly increasing rent burdens. Rent control ordinances limit the amount a landlord can charge tenants. They can also regulate the frequency and timing of rent increases.

There are strong disagreements about the impact of rent control on housing affordability. Those in favor of rent control argue that this policy helps existing residents remain in their dwellings, stabilizes neighborhoods and reduces gentrification.[12] Opponents say rent control dissuades developers from building new housing or improving existing stock.[13] A 2018 Stanford University study discovered that rent control tends to accelerate gentrification because it incentivizes landlords to convert rental housing into higher-end condominiums and cooperatives.[14] On the other hand, as reported by *The New York Times,* "The study also concluded however, that rent control lived up to its promise of reducing the displacement of lower-income tenants and older people."[15] Economists tend to view rent control as a short-term fix that has the potential to distort housing markets. They advocate instead for increased housing supply.

Rent Control



Source: National League of Cities

Nonetheless, rent control policies provide municipalities the ability to regulate increases in residential rent prices. This analysis assesses states based on the authority they grant cities to implement rent control. These include:

- **Permitted** (9 states and the District of Columbia): These cities are in states that permit local rent control with minimal restrictions, or are in home rule states with no state restrictions on local rent control policies.
- **Limited** (4 states): These cities are in states that permit local rent control with restrictions or specific implementation criteria, including requiring state approval, permitting rent control only for public housing, or establishing a ceiling or rate of increase for local policies.
- **Preempted** (36 states): These cities are in Dillon's Rule states with no statute expressly authorizing local rent control, or are in states that expressly prohibit local rent control.
- **Mandated** (1 state): Cities in this state must adhere to the statewide rent control laws and are preempted from passing their own rent control laws.

Cities in only nine states and the District of Columbia are permitted to implement rent control with no state restrictions. In seven of these states (Montana, Nebraska, West Virginia, Ohio, Hawaii, Pennsylvania and Maine), there are simply no state-level laws limiting how local governments can create rent policy. Interestingly, even though these states allow cities to create rent control policies, no one has done so yet. The District of Columbia, Maryland and New Jersey, however, permit rent control and have cities with policies on the books. For example, in New Jersey, over 100 municipalities have rent control ordinances in varying degrees based on what they cover or how rents can be adjusted.[16]

Cities in four states (Arizona, Delaware, California and New York) have "limited" ability to enact rent control policy. It's worth pointing out that Arizona and Delaware have a unique approach to rent control policy. Arizona does not allow any private residential housing unit to be subject to rent control. Cities, charter cities and towns may not impose rent control on these units in their jurisdictions. However, publicly-owned residential property, or property that is financed or insured by Arizona's state or local governments, can be subject to a rent control law.[17]

In 2013, Delaware created a rent justification law that applies to manufactured homes.[18] These homes, unlike traditional mobile homes, are typically built into the ground. They are owned by the dwellers, like mobile homes, the land is rented.[19]

California preempts cities from implementing rent control in all but 15 cities. These 15 cities had a form of rent control before the state decided what municipalities could or could not do regarding rent control policy. Local rent control was grandfathered in, but face state restrictions about how it is applied.

New York has a centralized rent regulation framework, which includes an Office of Rent Administration, and two types of rent policy programs. The first is rent control, which generally applies to buildings constructed before 1947, and the second is a rent stabilization program that covers buildings constructed between then and 1974. New York City is administered separately from other areas within the state under these programs.[20]

There are 36 states that preempt cities from establishing a rent control policy. Cities are either in Dillon's rule states, like Nevada, Vermont and Rhode Island, with no state statute allowing for local rent control, or in states like Michigan, Wisconsin and Florida that expressly preempt cities from rent control policies regardless of Dillon's or home rule status.

In February 2019, Oregon became the first state in the U.S. to enact mandatory statewide rent control.[21] Cities in Oregon must adhere to the statewide rent control laws and are preempted from passing their own rent control laws. The law limits rental price increases to once per year and a maximum of seven percent plus the yearly change in the consumer price index. Any property built within the past 15 years is exempt from rental control. Landowners who give reduced rent from federal, state or local government subsidies or programs are also exempt. The legislation also prohibits no-cause evictions, except for the first year of tenancy.

“

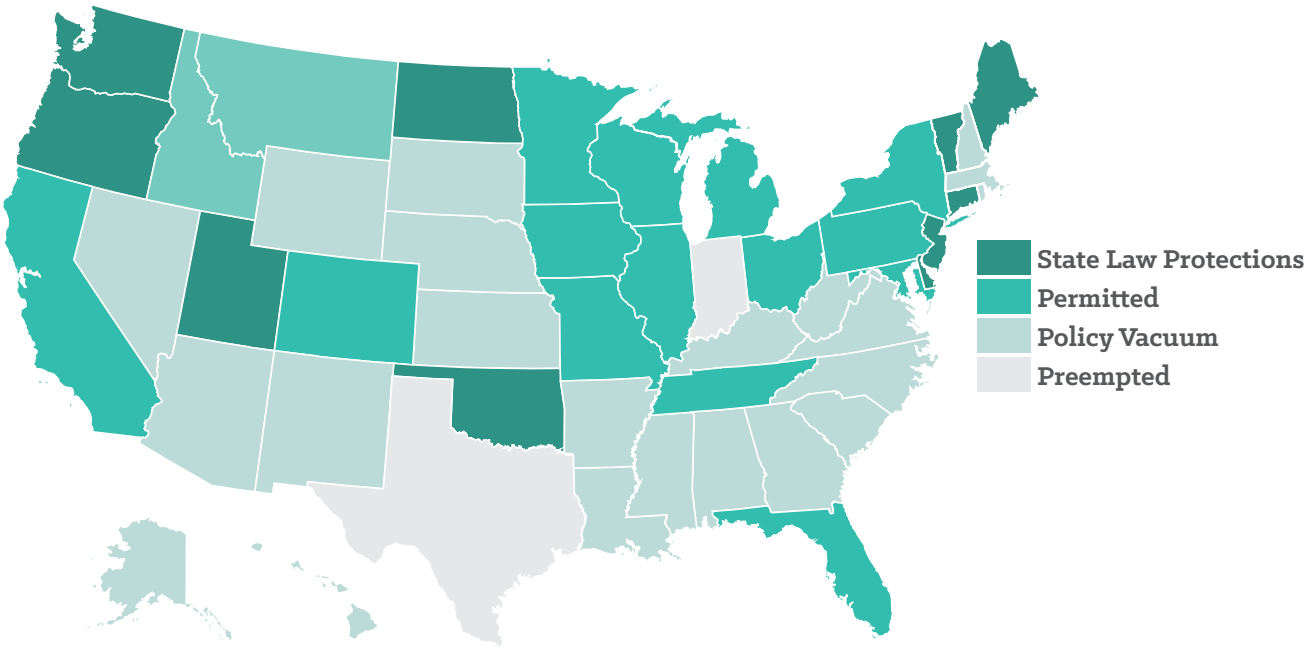
There are strong disagreements about the impact of rent control on housing affordability.

Housing Vouchers as Source of Income

The federal government enacted the Fair Housing Act (FHA) to protect citizens from discrimination. The law prohibits property owners, real estate companies, municipalities, banks and other lending and insurance institutions from discriminating on the basis of seven classes (race, religion, national origin, sex, disability and family status) in the sale, rental and financing of housing.[22] FHA provides minimum specifications of protected classes, or a "floor preemption," but permits states to implement their own fair housing laws that extend housing protections to other groups excluded from the federal protections.

Since families that use housing vouchers to help pay their rent are excluded from federal protections, they increasingly face housing discrimination. The Housing Choice Voucher (HCV) is a federal assistance program created to help citizens obtain affordable housing in the private market. In most cases, however, laws do not require direct housing providers to accept housing vouchers. Accepting housing vouchers requires providers to work directly with housing agencies for rental payments, a hurdle many providers prefer to avoid. This hurdle, as well as a bias by some providers that voucher holders are less responsible renters, has caused an increase in a growing number of discriminatory housing practices against voucher holders.[23] Some states and localities have responded by specifying housing voucher holders as a protected class under source of income statutes in fair housing laws (other sources of income can include alimony and disability benefits).

Vouchers as Fair Housing



Source: National League of Cities

This additional protection means that housing providers may not legally refuse to rent based solely on a renter's source of income when that source of income is tied to housing vouchers. A 2018 U.S. Department of Housing and Urban Development study found that voucher non-discrimination laws are associated with substantial reductions in the share of property ownersthat refuse to accept vouchers.[24] This has led to greater affordability in more opportunity-rich areas.

In our assessment of the states, we classify whether state fair housing laws address housing voucher holders as a protected class, and the extent to which cities are permitted to protect vouchers as a source of income:

- **State law protections** *(11 states and the District of Columbia)*: Housing voucher holders are a protected class under state fair housing law.
- **Permitted** *(14 states)*: Cities are permitted to extend protections to voucher holders via local fair housing ordinances.
- **Policy vacuum** *(23 states):* Cities in states with neither state nor local protections but have no restrictions on local fair housing.
- **Preempted** (*2 states):* Cities in states that expressly prohibit local fair housing.[25]

According to the Poverty and Race Research Council, the District of Columbia and 11 states (Connecticut, Delaware, Maine, Massachusetts, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont and Washington) explicitly include housing vouchers as a protected class under source of income in the state fair housing law.[26] Three other states, California, Minnesota and Wisconsin, have source of income protections in their state fair housing law, but do not include housing voucher holders among those protected classes.

Localities in 14 states (California, Colorado, Florida, Illinois, Iowa, Maryland, Michigan, Minnesota, Missouri, New York, Ohio,

Case Study: Fair Housing in Washington State

Washington is the most recent state to enact source of income protections after House Bill 2578 went into effect in September 2018.[28] These protections include "housing vouchers, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs and other programs administered by any federal, state, local, or nonprofit entity."[29] Landlords may be penalized up to 4.5 times a unit's monthly rent and be responsible for court costs and attorneys' fees if they discriminate against a current or prospective tenant based on source of income.[30]

In addition to protections, the state of Washington established a landlord mitigation program to incentivize landlords to rent to voucher holders. Funded by existing document recording fees from county auditors, HB 2578 covers a landlord's cost of repairs from $500 up to $1,000 for any prospective tenant protected based on source of income.[31] Furthermore, the program offers reimbursement of up to $5,000 to landlords for lost rental income and/or damages that result from renting to low-income tenant with a subsidy.[32]

Pennsylvania, Tennessee and Wisconsin) are permitted to extend voucher holder protections. Three states (California, Minnesota and Wisconsin) have statewide source of income laws but have excluded housing vouchers as a protected class while 11 states (Colorado, Florida, Illinois, Iowa, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania and Tennessee) do not have statewide source of income laws and therefore, they have no statewide housing voucher protections. However, localities in all of these 14 states have enacted local ordinances to protect voucher holders.

Twenty-three states have policy vacuums on housing voucher source of income protections because there are neither state law protections nor local protections. These states include Alabama, Alaska, Arizona, Arkansas, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Rhode Island, South Carolina, South Dakota, Virginia, West Virginia and Wyoming.

There are several reasons for this policy vacuum. In some cases, cities have fair housing laws but choose not to include include housing voucher holders as a protected class. In other cases, cities are in states that follow Dillon's Rule and have no statute expressly authorizing local fair housing policies.

Cities in two states (Texas and Indiana) are preempted from implementing housing voucher protections. When cities in Texas and Indiana passed local ordinances including housing vouchers as a protected class under source of income, both states passed laws in 2015 preventing local governments from implementing any form of voucher protections.[27]

Deep Dive: State Fair Housing Laws

According to the Policy Surveillance Program at the Temple University Beasley School of Law, 49 states and the District of Columbia have enacted their own statewide fair housing laws.[33] Mississippi is the only state that hasn't. Most states permit cities to expand fair housing laws locally to address housing discrimination not covered by state and federal fair housing protections.

Each state's fair housing law is different in terms of which classes and/or types of discriminatory actions are regulated under law. For example, states often add protected classes including age, ancestry, sexual orientation, gender identity, marital status, military status, domestic violence victims, source of income, genetic information, pregnancy and HIV/AIDS.

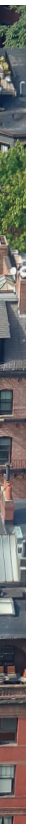
Six states (Washington, Illinois, Ohio, New York, Massachusetts and Rhode Island) also include fair housing protections for individuals based on their military status. In addition to protected classes, other types of discriminatory actions are addressed under state fair housing laws. For instance, refusing to provide municipal services is a type of discriminatory practice under fair housing laws in five states (Arizona, Texas, Georgia, Virginia and Maryland).

Seven states (Alaska, Colorado, Kansas, Maryland, Montana, New York and Pennsylvania) authorize fines, prison sentences or misdemeanors as potential penalties for violations of fair housing laws.

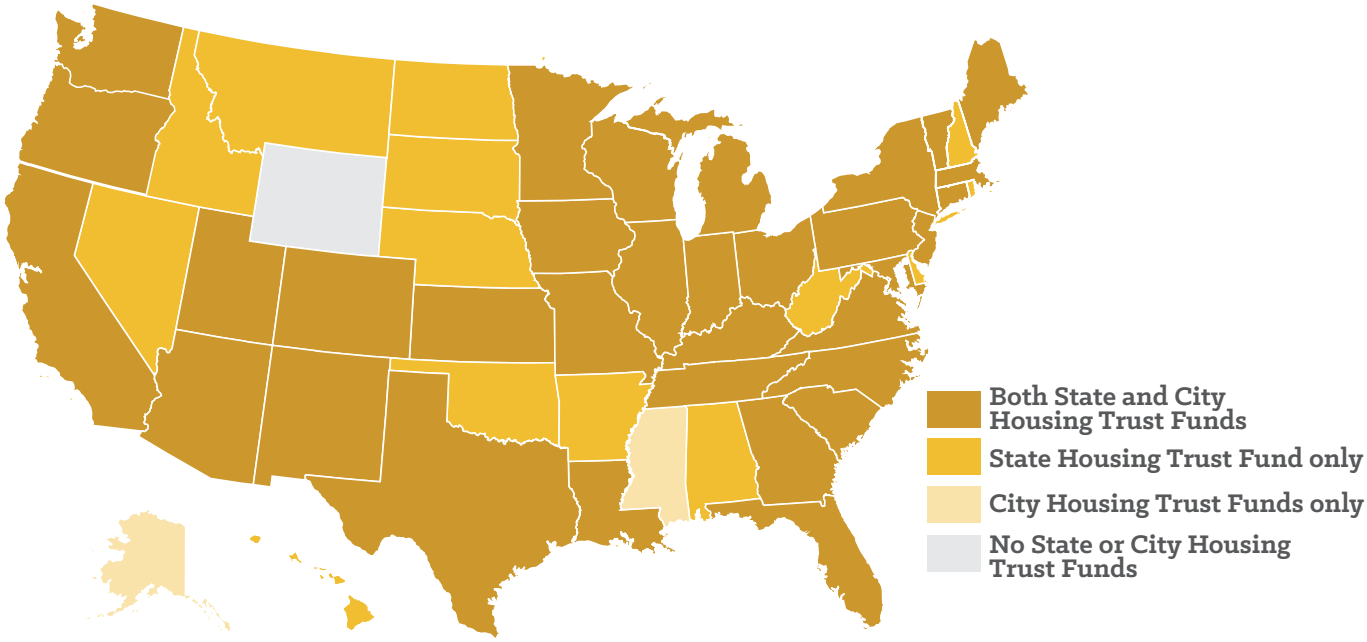
Local Housing Trust Funds

Housing trust funds are established, ongoing, public funding sources for low-income housing development. They can be established by legislation or ordinance.[34] Forty-seven states and the District of Columbia have state-level housing trust funds in place to bolster development of affordable housing. Of these, Alabama, Idaho and Rhode Island have yet to identify ongoing, defined sources of revenue for their programs and do not have any money in their trust funds. The only states that do not have state-level housing trust funds are Mississippi, Wyoming and Alaska.

States, however, are not the only source of housing trust fund dollars for cities. Local governments across the country have established their own local-level funds. One hundred and nine cities in 34 states and the District of Columbia have established housing trust funds, which collected over $1 billion in 2018.[35] Wyoming is the only state without any housing trust funds at the state or local level, creating a policy vacuum.



City and State Housing Trust Funds



Source: National League of Cities

Housing trust funds are a policy area on which state and city governments agree. There are no laws on the 14 states that don't require city-level housing trust funds that prevent local governments from establishing them. There are also several states where the state funds are the sole source of funding as cities have not established their own funds. These states tend to either have low populations or very robust state-level funds, thereby decreasing the need for additional funding at the local level.

State and local housing trust fund dynamics fall into one of four categories:

- The **state** has a housing trust fund and **cities** within that state also have funds *(33 states and the District of Columbia)*
- The **state** has a housing trust fund, but the cities do not *(14 states)*
- The state does not have a housing trust fund, but **cities** do *(2 states)*
- Neither the state nor cities within the state have housing trust funds *(1 state)*

In the absence of state funds, Jackson, Miss., and Juneau, Alaska, have established local trust funds.[36, 37] According to Jackson city staff, the funds intended for the housing trust fund were spent on unexpected city needs. As a result, the city has yet to put money into the trust fund but is currently exploring new funding sources. Juneau established its housing trust fund in 2010 and began the disbursement of funds in 2011. Some common sources of funding for city-level housing trust funds include developer impact fees, inclusionary in-lieu fees, property and housing excise taxes and construction excise taxes.

Housing trust funds provide vital funding for increasing the stock of affordable housing in cities and towns across the country. City-level housing trust funds, as shown by cities like Juneau, create revenue when a state lacks funds. They can also cater to the specific needs of the population. State- and city-level trust funds are, in many cases, complementary funds that increase the development of affordable housing *(see page 24).*

Case Study: State Housing Trust Funds

In 2018, individual states collected a total of $1.6 billion for housing trust fund money. State governments relied on a variety of income sources, including real estate transfer taxes, interest on real estate escrow taxes, general fund revenues, document recording fees and appropriation budget allocations[38]

A few states have turned to less conventional methods to build revenue for their funds. Pennsylvania creates revenue through the Marcellus Shale impact fee, a tax levied on natural gas companies, as a source of revenue.[39] New Jersey collects revenue for its housing trust fund from those fined for unsafe driving.[40] Indiana earns revenue through the Smokeless Tobacco Tax, among other source, for its state housing trust fund.[41]

Case Study: Juneau, Alaska

Established in 2010, the Juneau Affordable Housing fund serves as Alaska's only housing trust fund. No such fund exists at the state government level. Managed by the city and borough of Juneau, the trust fund is fed by the city's general fund and state capital budget.[42]

The trust fund helps low-income residents tackle the challenge of finding affordable housing. Non-profit, for-profit and public housing authority entities can all apply for low or zero percent interest loans to build affordable housing units for residents at 120 percent area median income or below, with amounts not to exceed $150,000.[43] The fund seeks to expand:

- Use of capital to develop housing units
- One-bedroom rental units for low-income residents
- Long-term affordability
- Sustainability of the trust fund[44]

Juneau determined that 85 percent of its residents made less than $35,000 and that, in 2010, approximately 1,200 households were rent-burdened. Many of the residents in this category were found to be youth, special needs residents, veterans and seniors.[45] These groups typically need both single and multi-family housing, both of which the fund can address.

With over $400,000 in the fund and two-years' worth of operating expenses held in reserve, Juneau is working to combat the lack of accessible and affordable housing, one unit at a time.

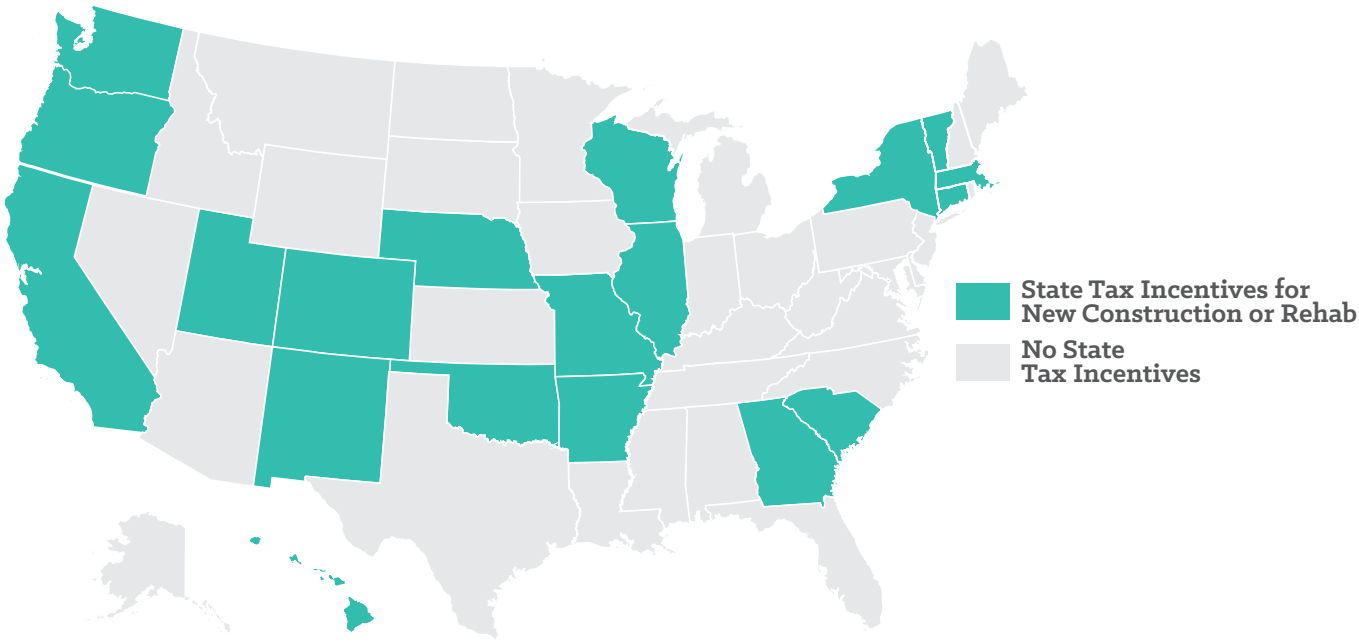
State Affordable Housing Tax Incentives

The most common source of low-income housing tax credits is the federal Low-Income Housing Tax Credit (LIHTC) program, which "gives state and local LIHTC-allocating agencies the equivalent of nearly $8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation or new construction of rental housing targeted to lower-income households."[46] Some states, however, supplement these federal funds with dollars from their own budgets to further increase development of affordable housing. Common state policies include tax-exempt housing bonds, tax credits distributed to owners with properties reserved all or in part for low-income residents, and income tax liability reduction for developers.

While cities do not have direct control over how these funds are allocated, the program encourages private developers to increase the supply of affordable housing resulting in substantial affordable housing development in urban centers.[47] Currently, 2.5 million units in 6,286 cities have been financed through the LIHTC program.[48]

Nineteen states and the District of Columbia have state-level tax incentives for new construction and/or rehabilitation of existing low-income housing. Of this group, 14 states

State Tax Incentives



Source: National League of Cities

tie these tax-incentive dollars to federal LIHTC funding. In most cases, states require applicants to indicate that they will be applying for state funding on the federal application. Sometimes, this state funding is bound to the federal funding in the form of a dollar-for-dollar match or percentage of federal funds. Since states distribute these federal funds, overlap sometime occurs in how the funds are awarded. In some cases, the programs are combined.

States often leverage their low-income housing tax credits to maximize the impact. Connecticut, for example, allocates up to $10 million in tax credits every year for non-profit developers building housing for low or very low-income residents.[49] Illinois encourages private investment in affordable housing by offering qualified donors a one-time state income tax credit equal to 50 percent of the donation.[50]

The District of Columbia and five states (New Mexico, New York, Oregon, Washington and Wisconsin) do not require applicants to first apply for federal funding. They also have their own separate applications. While many of these programs mirror the federal program in terms of the eligibility for benefits and types of tax credits offered, these funds are not tied to federal funding applications.

Conclusion

The local housing context varies not only by regional housing market types, but also by the tools available to cities, towns and villages to address the needs of their communities. Based on our assessment of inclusionary housing, rent control, housing voucher holder protections, housing trust funds and state tax incentive programs, cities in New York and California and the District of Columbia have more tools to address housing affordability than others. Cities in Idaho, Indiana, Kansas, Texas and Virginia have fewer.

In addition to the number of tools available to cities, the way these policies play out locally varies significantly by state. For example, in some states with local inclusionary housing, rent control restrictions limit the authority of cities to implement mandatory programs, whereas in other states, this is not the case.

Despite these variations, one thing is crystal clear: The significant housing problem facing our country is compelling cities and states to rethink how they address the issue, and to adapt the relationship they have with each other to meet the scale of the challenge. Cities can take a number of steps to achieve the careful balance of local flexibility and mutual housing affordability goals, including:

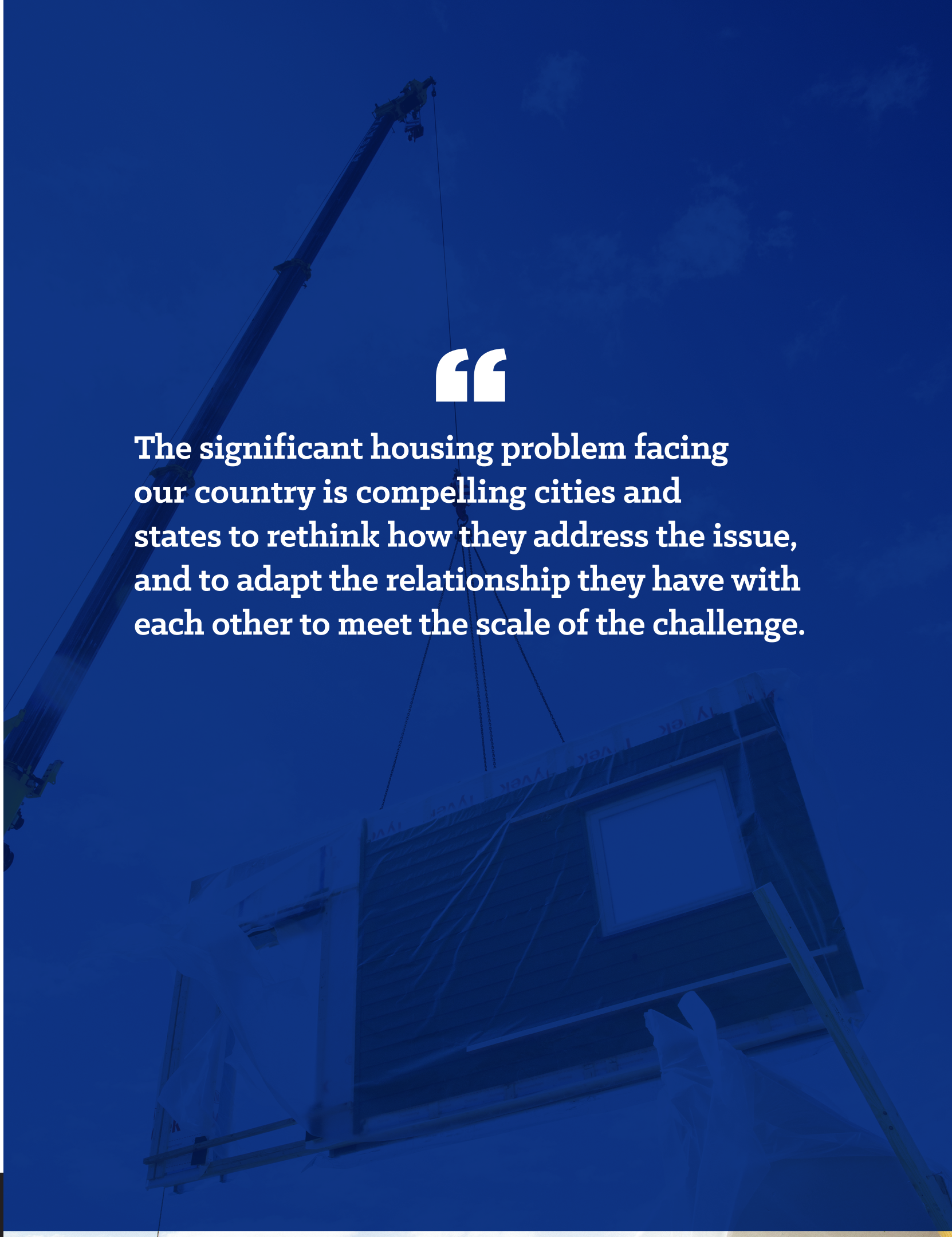
- **Review, strengthen and update low-hanging fruit tools.** Nearly all cities have control over local planning, zoning and development regulations and can carefully examine these tools to improve housing options across income levels. For example, cities can relax density requirements in areas designated as single family, modify parking requirements and streamline development processes for projects with an affordability component.

- **Fill a policy vacuum.** Cities in 23 states do not have state or local sources of income protections for housing voucher holders. These states also do not have explicit restrictions on local fair housing, meaning that many cities have the opportunity to create policies to limit discrimination and help extend housing options to those using housing vouchers.

- **Proactively engage state partners.** For example, cities in the state of Utah have been working with the state legislature and state Commission on Housing Affordability to craft a bill that not only accelerates affordability in regional housing markets across the state, but also offers cities flexibility to do so in ways that meet their unique needs.

- **Leverage State Programs for Local Investment** Leverage state programs for local investment, such as state tax credits and state housing trust funds.

No matter the solution, the plan or the type of city, a productive local-state relationship is at the heart of providing housing opportunities for people across the income spectrum. After all, ensuring everyone has a place to call home is a priority for all cities and states.



The significant housing problem facing our country is compelling cities and states to rethink how they address the issue, and to adapt the relationship they have with each other to meet the scale of the challenge.

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