

# District of Columbia Housing Authority Reform: Low-Income Housing Problems and Reformatory Action

Drew Knauss\*

## ABSTRACT

*Affordable housing in the United States faces several challenges including a lack of supply and a lack of quality housing for many tenants. This means that, for lowest-income housing seekers, many are left without affordable options or in inadequate housing. This housing can be unsafe and detrimental to the health and development of residents. While this crisis can be seen nationwide, this Note will focus on the affordable housing offered by the D.C. Housing Authority (DCHA). The Department of Housing and Urban Development has conducted an audit of DCHA that identified major problems that must be remedied. This Note will detail the major issues with DCHA and offer a number of potential actions that could improve the operation of DCHA and the properties they manage.*

I.	THE HISTORY AND MOTIVATIONS OF LOCAL HOUSING AUTHORITIES AND DCHA’S OBJECTIVE . . . . .	340
	A. <i>The Motivation and Purpose of Local Housing Authorities</i> . . . . .	340
	B. <i>The Responsibilities of the District of Columbia Housing Authority</i> . .	341
II.	THE MAJOR PROBLEMS FACING DCHA LOW-INCOME HOUSING: QUALITY AND QUANTITY . . . . .	341
	A. <i>The Quality Crisis in DCHA Managed Housing Units, Including Health and Safety Issues</i> . . . . .	342
	B. <i>The Lack of Sufficient Quantity of Low-Income Housing to Meet the Required Demand and the Responsibilities of DCHA</i> . . . . .	342
III.	UNDERSTANDING WHY DCHA LOW-INCOME HOUSING FAILS TO MEET REQUIRED STANDARDS . . . . .	342
	A. <i>DCHA Lacks Sufficient Oversight to Incentivize New Approaches</i> . .	342

---

\* J.D. Candidate, Georgetown University Law Center; M.A., International Relations, University of St. Andrews, 2021. I have experience in local housing and building ordinances and have previously interned with the Federal Government. © 2024, Drew Knauss.

<i>B. Aging Supply and Lack of Investment Causing Inadequate Conditions for Low-Income Residents of DCHA Housing . . . . .</i>	343
<i>C. Lack of New Construction Leading to an Imbalance of Supply with Current Demand . . . . .</i>	344
IV. EXPLORING SOLUTIONS TO THE PROBLEMS IDENTIFIED WITH DCHA LOW-INCOME HOUSING . . . . .	344
<i>A. Moving Low-Income Housing Provision to a Regulated Competitive Market . . . . .</i>	344
<i>B. The Problems with a Competitive Low-Income Housing Market . . .</i>	347
<i>C. Monitoring the Market for Anticompetitive Behavior and Neglectful Conduct . . . . .</i>	348
<i>D. Using Modular Construction Methods to Offload and Replace Existing DCHA Housing Assets . . . . .</i>	349
<i>E. Entering DCHA Into the Housing Development Market . . . . .</i>	351
<i>F. Incentivizing Social Enterprises to Provide Low-Income Affordable Housing to D.C. . . . .</i>	352
V. A REVIEW OF AVAILABLE OPTIONS AND FINAL RECOMMENDATIONS . . .	353

The public interest vision of public housing in the Washington, D.C. Metropolitan area is derived from the United States Department of Housing and Urban Development (HUD) and D.C. Code. HUD describes public housing’s mission as “provid[ing] decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities.”<sup>1</sup> D.C. Code established a Housing Authority (DCHA or the Authority) which would be “responsible for providing decent, safe, and sanitary dwellings, and related facilities, for persons and families of low- and moderate-income in the District.”<sup>2</sup> This has been further defined in DCHA’s Transformation Plan, which promoted five relevant values for the Authority, including a more specific focus on the provision of housing to those households at or below 30% of area median income (AMI).<sup>3</sup>

The problems DCHA, its residents, and its applicants face involve both the quality and quantity of existing public housing. The quality issue is dire as it involves individuals and families currently living in squalor. In 2018, DCHA found that 2,500 of the “roughly 8,000 housing units” managed by the Authority required “extremely urgent” repairs or else those units would

---

1. HUD’s Public Housing Program, U.S. DEP’T HOUS. & HUM. DEV., [https://www.hud.gov/topics/rental\\_assistance/phprog](https://www.hud.gov/topics/rental_assistance/phprog) (last visited Feb. 19, 2022).

2. D.C. Code § 6-202(b) (1999), <https://code.dccouncil.gov/us/dc/council/code/titles/6/chapters/2>.

3. See D.C. HOUS. AUTH., OUR PEOPLE, OUR PORTFOLIO, OUR PLAN: DISTRICT OF COLUMBIA HOUSING AUTHORITY 20-YEAR TRANSFORMATION PLAN (Aug. 28, 2019) [hereinafter TRANSFORMATION PLAN], [https://dcha.us/img/guest\\_uploads/temp\\_rimehhGVtC15670083132z6ZwtkqRDhoZKdydLeU.pdf](https://dcha.us/img/guest_uploads/temp_rimehhGVtC15670083132z6ZwtkqRDhoZKdydLeU.pdf).

become uninhabitable.<sup>4</sup> The urgent repairs include units with black mold, major pest concerns, caved in ceilings, lead hazards, and “other environmental hazards.”<sup>5</sup> These issues present an imminent threat to the health of residents, either in immediate damages or long-term afflictions. The Transformation Plan asserts a need for \$2.2 billion to “modernize and/or redevelop” fourteen sites “and refresh the entire forty-one site public housing portfolio.”<sup>6</sup> Data from January 2022 shows that a total of 24,368 people are on the DC housing waitlist for public housing options and that an additional 58,887 people are on the waitlist for both available voucher programs.<sup>7</sup> The actual number of those waiting may be lower, as the response rate for both programs is low, due to the time it takes for DCHA to respond. Another metric from the National Low Income Housing Coalition estimates a need for an additional 32,990 rental units that are “affordable and available for extremely low-income renters.”<sup>8</sup> Even a significant reduction suggests a lack of availability. This issue will be compounded as existing stock is renewed and redeveloped, rendering it uninhabitable for a time. The quantity of available housing is and will be limited below the demand for the program.

When a government seeks to provide a service, particularly one where private competition is non-existent or negligible, it will inescapably find itself acting as a monopoly. Unlike traditional monopolies, which seek to maximize profit, these public monopolies seek to maximize the impact of their budgets.<sup>9</sup> The relevant public body will operate on a “zero profit, zero loss, constraint.”<sup>10</sup> This is “equivalent to . . . maximizing output.”<sup>11</sup>

The Authority’s current Transformation Plan is reliant on the rejuvenation of available capital funding.<sup>12</sup> While funding is necessary to provide current residents with safe and affordable housing, DCHA could be more transformative with its available resources in order to maximize output. For DCHA, maximizing output means maximizing adherence to the public interest vision. Potential solutions to the output gap include incentivizing market participation, the privatization of existing aging units, investing in new constructions, diversifying unit types and the creation of pilot programs for those new housing

---

4. Morgan Baskin, *Nearly One-Third of the City’s Public Housing Stock is at Risk of Becoming Uninhabitable*, WASH. CITY PAPER (Dec. 20, 2018), <https://washingtoncitypaper.com/article/182436/nearly-onethird-of-the-citys-public-housing-stock-is-at-risk-of-becoming-uninhabitable/>.

5. *Id.*

6. See TRANSFORMATION PLAN, *supra* note 3.

7. See Annemarie Cuccia, *There Are 40,000 People on DC’s Housing Waitlist*, ST. SENSE MEDIA (June 15, 2022), <https://www.streetsensemedia.org/article/40000-people-d-c-s-housing-waitlist/#.Y5qYYnbMLZt>.

8. *District of Columbia*, NAT’L LOW INCOME HOUS. COAL. (2022), <https://nlihc.org/housing-needs-by-state/district-columbia>.

9. Richard E. Wagner & Warren E. Weber, *Competition, Monopoly, and the Organization of Government in Metropolitan Areas*, 18 J. L. & ECON. 661, 664 (1975).

10. *Id.*

11. *Id.*

12. See TRANSFORMATION PLAN, *supra* note 3.

types, the modular construction of new units to reduce costs, and further exploration of conditional privatization under government oversight.<sup>13</sup>

The District of Columbia Housing Authority is failing to adhere to the public interest vision set forth in its authorizing Code and by HUD. The housing provided by DCHA to low-income residents is inadequate and in need of significant improvement. Instead of just following the current request from DCHA to increase their budget and using that to plug the holes, DCHA should seek to reform the current public housing system and experiment with new models. This does not necessarily mean that a market transition should or must take place, but such a model, among others, should be explored.

## I. THE HISTORY AND MOTIVATIONS OF LOCAL HOUSING AUTHORITIES AND DCHA'S OBJECTIVE

### A. *The Motivation and Purpose of Local Housing Authorities*

Government managed housing programs are meant to ensure that all residents within a given jurisdiction have access to affordable, stable, and adequate housing. HUD's mission for public housing is to "provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities."<sup>14</sup> As a part of President Franklin Roosevelt's New Deal program, adequate housing was meant to be a right for all families.<sup>15</sup> While the "Second Bill of Rights" was never codified, it did manifest itself through new legislation such as the Wagner-Steagall Housing Act. Passed in 1937, the bill involved the Federal Government in the funding and spreading of local housing authorities.<sup>16</sup> The provision of affordable, stable, and adequate housing not only affords decent living conditions to those who would otherwise be homeless,<sup>17</sup> but has downstream impacts on employment,<sup>18</sup> education,<sup>19</sup> vertical

---

13. See Ally Schweitzer, *How European-Style Public Housing Could Help Solve the Affordability Crisis*, NAT'L PUB. RADIO (Feb. 25, 2020), <https://www.npr.org/local/305/2020/02/25/809315455/how-european-style-public-housing-could-help-solve-the-affordability-crisis>.

14. U.S. DEP'T HOUS. & HUM. DEV., *supra* note 1.

15. See *FDR and Housing Legislation*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM (2016), <https://www.fdrlibrary.org/housing>.

16. *Id.*

17. See Osbourne Jackson & Laura Kawano, *Do Increases in Subsidized Housing Reduce the Incidence of Homelessness? Evidence from the Low-Income Housing Tax Credit* (Fed. Rsv. Bank Boston, Working Paper No. 15-11, 2015), <https://www.bostonfed.org/publications/research-department-working-paper/2015/do-increases-in-subsidized-housing-reduce-the-incidence-of-homelessness-evidence-from-the-low-income-housing-tax-credit.aspx>.

18. See Aaron Shroyer & Veronica Gaitán, *Four Reasons Why Employers Should Care about Housing*, URB. INST. (Sept. 11, 2019), <https://housingmatters.urban.org/articles/four-reasons-why-employers-should-care-about-housing>.

19. See Maya Brennan et al., *The Impacts of Affordable Housing on Education: A Research Summary*, NAT'L HOUS. CONF. (Nov. 2014), <https://nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Education-1.pdf>.

mobility,<sup>20</sup> and crime.<sup>21</sup>

*B. The Responsibilities of the District of Columbia Housing Authority*

In Washington, D.C., DCHA is in charge of implementing policies and regulations to achieve the goal of providing affordable, stable, and adequate housing to low-income individuals and families. DCHA is “responsible for providing decent, safe, and sanitary dwellings, and related facilities, for persons and families of low-and moderate-income in the District.”<sup>22</sup> Alongside the provision of housing for those who cannot afford the market-rate for housing, DCHA has a responsibility to provide housing for those who meet the definition of moderate-income. Although the former category is most important to serve given their lack of other options, DCHA should not reject the potential to serve those of moderate-income as well, especially if that can be accomplished in a way which even partially subsidizes their low-income program.

II. THE MAJOR PROBLEMS FACING DCHA LOW-INCOME HOUSING: QUALITY AND QUANTITY

The major issues facing DCHA are a crisis of housing quality and a lack of housing supply. Without addressing these problems, DCHA will be unable to meet its delegated responsibilities and those seeking housing within their jurisdiction will be worse off. Leaving these responsibilities unattended will result in fewer low-income individuals and families living in D.C. and, for those who are able to find housing, it will be of low quality and residents will risk their health and wellbeing. Housing shortages for any income level will, eventually, have a significant impact upon the local economy and the area’s ability to attract new workers. In a city like D.C., a lack of low-income housing will impact Federal and local government, services, construction, and other industries due to the relationship between low-income housing and decreased homelessness.<sup>23</sup> Accordingly, the need to achieve the goals of DCHA, aside from fulfilling a regulatory policy, is also an economic imperative for D.C. and the federal government. Alongside the economic argument, a moral argument exists for ensuring that all families and individuals have access to safe housing regardless of their income status.

---

20. See Will Fischer et al., *Research Shows Assistance Reduces Hardship and Provides Platform to Expand Opportunity for Low-Income Families*, CTR. ON BUDGET & POL’Y PRIORITIES (Dec. 5, 2019), <https://www.cbpp.org/research/housing/research-shows-rental-assistance-reduces-hardship-and-provides-platform-to-expand>.

21. See DANIEL A. HARTLEY, FED. RESRV. BANK CLEVELAND, PUBLIC HOUSING, CONCENTRATED POVERTY, AND CRIME (2014), <https://doi.org/10.26509/frbc-ec-201419>.

22. D.C. Code § 6-202(b).

23. See Jackson & Kawano, *supra* note 17.

*A. The Quality Crisis in DCHA Managed Housing Units, Including Health and Safety Issues*

As of 2018, DCHA manages around 8,000 housing units.<sup>24</sup> Of those units, 2,500 needed “urgent repairs” which referred to health or safety issues including black mold, pest infestations, structural problems, lead, and other environmental hazards.<sup>25</sup> DCHA’s Transformation Plan identified a need of \$2.2 billion to modernize, redevelop, and refresh the existing properties, including those 2,500 mentioned above.<sup>26</sup> These “urgent repairs” are not small issues that can be quickly fixed, and it is likely that the remaining 5,500 units will face the same or similar health and safety dangers in the near future.<sup>27</sup> DCHA has failed to properly maintain their existing housing stock and, in doing so, has placed their residents in danger.

*B. The Lack of Sufficient Quantity of Low-Income Housing to Meet the Required Demand and the Responsibilities of DCHA*

The current housing stock managed by DCHA is insufficient to address the current need for affordable low-income housing. The National Low Income Housing Coalition (NLIHC) estimates a need for 27,057 additional rental units that are “affordable and available for extremely low income renters.”<sup>28</sup> Data from January 2022 shows that 24,368 people are currently on the DCHA housing waitlist for public housing options and that many more are on the waitlist for available voucher programs.<sup>29</sup> Although the low response rate from DCHA may mean that the actual number in need is lower, as many have been on the waitlist for years and may have moved on, it is a similar number to the need identified by NLIHC and shows that there is a lack of supply for affordable housing in D.C. for this vulnerable group. This exposes low-income groups in D.C. to inadequate housing facilities or homelessness,<sup>30</sup> and instability in education<sup>31</sup> and employment.<sup>32</sup>

III. UNDERSTANDING WHY DCHA LOW-INCOME HOUSING FAILS TO MEET REQUIRED STANDARDS

*A. DCHA Lacks Sufficient Oversight to Incentivize New Approaches*

DCHA does not face actual consequences as an organization for failing to provide adequate housing. It is both the regulator and the primary supplier of low-income housing, and only the D.C. City Council or the DCHA Board of

---

24. Baskin, *supra* note 4.

25. *Id.*

26. See TRANSFORMATION PLAN, *supra* note 3, at 14.

27. See Baskin, *supra* note 4.

28. NAT’L LOW INCOME HOUS. COAL., *supra* note 8.

29. See Cuccia, *supra* note 7.

30. See Jackson & Kawano, *supra* note 17.

31. See Brennan et al., *supra* note 19.

32. See Shroyer & Gaitán, *supra* note 18.

Commissioners could implement changes to its policies. This is not to suggest that DCHA is being managed in bad faith or by disinterested bureaucrats, but there is not somewhere else that their tenants could go without packing up their lives and moving to a new city, a process that takes financial resources and requires risking what income is available through finding a new job.<sup>33</sup>

DCHA is accountable to the DCHA Board of Commissioners and the mayor and city council of Washington, D.C., but this oversight has other priorities and disciplining DCHA is not easily done.<sup>34</sup> Reducing DCHA's budget would only reduce the current output of public housing. Replacing individual employees might make the issues worse by removing institutional knowledge or inter-governmental links. Particularly when the current issue is a lack of sufficient budgeting for the needs of DCHA-managed properties and the public interest vision, none of these methods would work. However, without an actual punishment for failure to meet the outlined responsibilities in the relevant Code, DCHA is not incentivized to change their procedures or attempt to shift to a new model. DCHA, as well as local political leaders, should push for reforms to DCHA's practices to maximize the existing budget. Any changes would, of course, have their risks. Political leaders likely will refuse to sign their names onto a new program that could backfire. However, without any changes to this structure, the housing authority will continue to underserve its tenants and will be rewarded with additional funding, incentivizing minimal effort to reform or take risks.<sup>35</sup>

*B. Aging Supply and Lack of Investment Causing Inadequate Conditions for Low-Income Residents of DCHA Housing*

DCHA's stock of housing units is aging, and most either currently or will soon require significant maintenance.<sup>36</sup> This comes at a cost to DCHA that will need to be funded by budgetary increases.<sup>37</sup> As DCHA properties age, continual investment will need to be made to ensure that the quality of existing housing units stays at an adequate level. This has not been the case with DCHA and as a result many of their managed properties have become dilapidated and unsafe.<sup>38</sup> Currently, DCHA does not have enough of a budget to keep pace with the full maintenance demands of their properties. As a result, they are forced to conduct minimal repairs with the budget that they do have.

DCHA relies on D.C.'s budgetary process for its funding. While that source of funding is not a problem, the maintenance of properties is reliant upon a

---

33. This includes the cost of physically moving items, application fees, and immaterial costs of readjustment such as to a new learning environment for children.

34. See U.S. DEP'T HOUS. & URBAN DEV., DISTRICT OF COLUMBIA HOUSING AUTHORITY (DC001) ASSESSMENT 36 (2022), [https://oag.dc.gov/sites/default/files/2022-10/DCReview\\_Final%209302022%20%281%29.pdf](https://oag.dc.gov/sites/default/files/2022-10/DCReview_Final%209302022%20%281%29.pdf).

35. See *id.* at 8.

36. See Baskin, *supra* note 4.

37. See TRANSFORMATION PLAN, *supra* note 3.

38. See Baskin, *supra* note 4; *id.*



political budgetary process that is not guaranteed to result in adequate funding. DCHA may be doing the best it can with a limited and uncertain budget, but additional sources of funding or cost-cutting methods for DCHA could improve its ability to accomplish its objectives.

*C. Lack of New Construction Leading to an Imbalance of Supply with Current Demand*

DCHA needs to have more available units to meet the needs of the population they are responsible for serving. There is far more demand for housing for low-income individuals and families than the number of units managed by DCHA can serve.<sup>39</sup> While housing vouchers can serve to reduce some of this demand, eventually more units for this income group will have to be constructed. In the short term, it is unlikely for private sector builders to cater to this specific group and so, absent a change in incentives for private actors or new requirements, DCHA will be responsible for providing this housing. As it is more expensive to construct new housing than make repairs, DCHA will seek to most efficiently use their budget to repair existing properties. While this makes sense, as it keeps more people housed, the lack of new units contributes to the inadequate supply of public housing along with an inability to safely maintain existing properties.

IV. EXPLORING SOLUTIONS TO THE PROBLEMS IDENTIFIED WITH DCHA LOW-INCOME HOUSING

DCHA has a number of models to look towards for charting a new direction and making improvements to the delivery of the public interest purpose detailed in Federal legislation and D.C. Code. That legislation and code grants DCHA an obligation to serve.<sup>40</sup> The rent sought from DCHA tenants is not set by the market and DCHA operates under government oversight.<sup>41</sup> DCHA could work to transition from a public monopoly towards a market regulator of effective competition in a competitive market for low-income affordable housing. Alternatively, DCHA could adopt other models that retain the existing public monopoly or adopt an approach between those models.

*A. Moving Low-Income Housing Provision to a Regulated Competitive Market*

The primary obstacle to attracting market competitive forces is the lack of profitability in the provision of lowest-income housing. When a developer purchases land in Washington, D.C., that developer has already expended a

---

39. See Cuccia, *supra* note 7.

40. See D.C. CODE § 6-202(b).

41. See *Sample Lease*, DIST. OF COLUMBIA HOUS. AUTH. (last visited Dec. 15, 2022), <https://www.dchousing.org/wordpress/wp-content/uploads/2022/05/Sample-Lease-English.pdf> (Section 10.6 details the determination of rent to be paid).



significant cost<sup>42</sup> and, in order to provide a reasonable return to any shareholders and/or to pay for any loans, the developer will seek to construct a property that will yield sufficient profit.<sup>43</sup> This will likely be housing units targeted towards higher income groups. Many of these units may not be targeted to the lowest-income beneficiaries of DCHA, so regulators should seek to incentivize market entrants to compete in the low-income housing market and make participation valuable and profitable. This could reduce some of the demand for DCHA properties even if market entrants do not target the lowest-income bracket. Action could be taken to allow developers to (a) construct properties at a lower cost and (b) to provide developers and landlords with financial incentives for providing low-income affordable housing.

If the per unit costs were to be sufficiently cut for developers, then prices may well be set by the market to be closer to affordable prices for some of the low-income beneficiaries of the public interest vision. The tradeoff for this proposal is that cutting costs would likely mean less space for residents and more communal spaces. The minimum size of each unit could be cut, prioritizing bedrooms and bathrooms. Kitchens and living rooms would likely have to be moved into more communal settings to be shared between several residents. These forms of residences, similar to some forms of student accommodation, would allow for the cost of construction, maintenance, and utilities to go down for the developer and the landlord. It would also allow the developer to construct more units per building, further reducing the per-unit cost.<sup>44</sup> Those savings would, in theory, be passed to the tenants.

Currently, D.C. does allow for the construction of such units and residential structures for large numbers of residents in locations with R-2 zoning designation. These are known as “congregate living facilities” that consist of sleeping units with “shar[ed] bathroom or kitchen facilities, or both.”<sup>45</sup> As these are currently allowed by D.C. Building Code, there is no reason why they cannot or should not be used by DCHA or developers, at the very least in a pilot format to test whether or not the conditions are acceptable, appropriate, and overall safe for DCHA to manage and promote to low-income residents. These forms of housing would likely be best suited for individuals or couples without families, although families may still end up as residents, and congregate living facilities be envisioned as a temporary step to more traditional housing units. Assuming any and all

---

42. See Richard Florida, *The Staggering Value of Urban Land*, BLOOMBERG (Nov. 2, 2017), <https://www.bloomberg.com/news/articles/2017-11-02/america-s-urban-land-is-worth-a-staggering-amount>.

43. See Alby Gallun, *Why Developers Grumble about Affordable Housing Rules*, CRAIN'S CHICAGO BUS. (Jan. 17, 2020), <https://www.chicagobusiness.com/commercial-real-estate/why-developers-grumble-about-affordable-housing-rules>.

44. See Hannah Hoyt & Jenny Schuetz, *Making Apartments More Affordable Starts with Understanding the Costs of Building Them*, BROOKINGS INST. (May 5, 2020), <https://www.brookings.edu/research/making-apartments-more-affordable-starts-with-understanding-the-costs-of-building-them/>.

45. D.C. BUILDING CODE 3 § 202 (2017); D.C. Building Code 3 § 310.4 (2017). [https://dob.dc.gov/sites/default/files/dc/sites/dob/publication/attachments/2017%20District%20of%20Columbia%20Building%20Code\\_Part%201.pdf](https://dob.dc.gov/sites/default/files/dc/sites/dob/publication/attachments/2017%20District%20of%20Columbia%20Building%20Code_Part%201.pdf).

congregate living facility pilot locations prove successful, D.C. should look into expanding permissible zoning designations to allow for additional development of these unit types.

There are three primary criticisms of this plan: privacy, safety, and adequacy. With smaller tenant residences and greater reliance on communal spaces, tenants will be forced to interact with each other at a greater frequency. While this could be viewed positively as building community, it also reduces the ability for tenants to have their own space. Any tenant, whether a family or an individual, would be in a more difficult position to have time fully to themselves in their own home. This is the same reasoning for the safety concerns. Not only are the others in the communal spaces strangers who may or may not be safe to be around, especially a concern for those tenants with children, but they also may more easily spread diseases, especially airborne and surface transmitted illnesses. Residents will be in smaller spaces and will be closer to one another in the communal spaces. It would not be too difficult to imagine an epidemic where these locations become dangerous.<sup>46</sup> As for the question of adequacy, is this form of housing acceptable for families or individuals? The needs and wants of families and working individuals may differ significantly from those of college students, and it may be against the statutorily mandated public interest vision to endorse such conditions for these low-income renters. This is a question best answered by the political process and any potential pilot program residents.

The above concerns, while legitimate, are not sufficient to merit a denunciation of the congregate living facility solution at this point. All of the issues may be raised with traditional apartments and, even if the smaller and more communal nature of congregate living facilities exacerbates each concern, that does not mean that these facilities would make any problem worse. Especially as a temporary solution, these housing units would be better for prospective residents than having only cost-prohibitive housing available.

Financial incentives play a significant role in reducing prices and shaping actor behavior in a market environment.<sup>47</sup> In order to induce market entrants to build and maintain low-income units and rent those units out at low-income prices, it has to be profitable for the builder and the landlord. There are few ways around that. Accordingly, these units may either be rented using housing vouchers or to provide developers and landlords with tax benefits in exchange for the provision of low-income affordable housing. As the provision of housing vouchers still directly involves the government in the provision of and rental of units in this market, this Note focuses on the indirect financial incentives that D.C. may grant

---

46. See Terri Peters & Anna Halleran, *How Our Homes Impact Our Health: Using a COVID-19 Informed Approach to Examine Urban Apartment Housing*, 15 INT'L J. ARCHITECTURAL RSCH. 10 (2021), <http://dx.doi.org/10.1108/ARCH-08-2020-0159>.

47. See Buzz Roberts, *The Role of Tax Incentives in Affordable Housing*, NAT'L HOUS. CONF. (2022), <https://nhc.org/the-role-of-tax-incentives-in-affordable-housing/>.

to developers and landlords.<sup>48</sup> This is not to dismiss the importance of housing vouchers in the provision of low-income housing. The details of the tax benefits to be provided would be best left to negotiations within the local government and between D.C. and interested market parties. The effect, however, would be to provide market entrants with sufficient incentives to have them choose to build and rent apartments for low-income renters. For the fiscal year of 2022, the D.C. budget allocated \$175 million as a subsidy for DCHA.<sup>49</sup> That subsidy includes funding for rental assistance programs and for rehabilitation and maintenance. If the market can move towards a competitive model, some of that \$175 million may instead be spent on incentivizing market participation in the provision of low-income housing. Combined with the cost-cutting strategy described in section (a), that may be enough to kickstart market action.

The primary concern with the strategy of shifting towards a competitive market is that it may not be enough to incentivize a change in behavior. If it is still more profitable for developers to construct luxury units for high-income renters, then their behavior will not shift. While the new luxury units may eventually cause a reduced monthly rate in older luxury units due to the increased supply of available units and the demand for more modern amenities, a process that, in theory, would reduce the monthly rate for all housing units, the impact would be negligible on lowest-income households. In such a case, the status quo of public housing would be preferable to a major market shift as bad housing is better than no housing.

Another method to circumvent the profitability requirement for private developers would be to expand affordable housing requirements in each new development. This would set aside a legislatively specified percentage of the total unit count to be designated as affordable housing. In effect, this housing would be subsidized by the market-rate units within that development. This requirement, referred to as “inclusionary zoning,” already exists and could be expanded to cover a greater percentage of units in qualifying developments.<sup>50</sup> There would likely not be a downside to pursuing expansion of inclusionary zoning as it would be unlikely to stifle the construction of new housing developments unless set at a high enough percentage. This could be pursued in tandem with the above strategy, moving to providing the tax breaks only for those units above the minimum requirement set by inclusionary zoning.

### *B. The Problems with a Competitive Low-Income Housing Market*

If market participation in low-income housing is achieved, several problems may remain or emerge. Entrants to the market may be limited to one or only a few

---

48. See *Housing Choice Vouchers Fact Sheet*, U.S. DEP’T HOUS. & URB. DEV., [https://www.hud.gov/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://www.hud.gov/topics/housing_choice_voucher_program_section_8) (last visited Dec. 15, 2022).

49. COUNCIL OF THE DISTRICT OF COLUMBIA, BUDGET OF THE DISTRICT OF COLUMBIA GOVERNMENT, FISCAL YEAR 2022 (2021), <https://lms.dccouncil.gov/Legislation/B24-0275>.

50. *Inclusionary Zoning for Residential Developers*, D.C. DEP’T HOUS. & CMTY. DEV., <https://dhcd.dc.gov/service/inclusionary-zoning-residential-developers> (last visited Dec. 15, 2022).

developers/landlords, and/or maintenance of the properties may be limited. Additionally, some low-income renters would not be able to pay any amount of rent and could be fully excluded from housing by a shift to a private competitive market. Regulators should seek to avoid these conditions to ensure that the market, if transitioned into a more competitive structure, provides better services than the current system.

If market entrants are limited to only one or a few large providers, then those providers will each have significant market power. While that is not necessarily a problem, and nothing that could be initially dealt with by antitrust law prior to anticompetitive conduct,<sup>51</sup> market power allows for market manipulation and, eventually, worse conditions for consumers.<sup>52</sup> A market actor with sufficient market power might use that power to squeeze additional revenue from consumers or to provide worse conditions for the target market. As this market would be predicated upon either the local tax incentives or inclusionary zoning requirements, price would be more easily regulated compared to other markets. If prices become too high, then the tax benefits would be revoked, or legal action taken. The problem, if a transition from public low-income housing to private low-income housing is made, is that there is less pressure to keep the market entrants within the bounds of the market. This is because they will exit the market if it becomes more economical for them to leave, and the low-income tenants would be left without any options. This highlights the importance of retaining at least some direct involvement by DCHA. A full transition to a private market could quickly become predatory for low-income tenants or could evaporate entirely, potentially eliminating any fulfillment of DCHA's public interest vision.

Providers, even if numerous, may seek to neglect their less profitable tenants in favor of others. If the apartment of a low-income resident has mold, and that resident is not, by themselves, profitable for the apartment or irreplaceable due to the high number of low-income people and families searching for housing, market providers will likely prioritize the higher income tenants who may be able to afford moving and who have greater political and financial resources. While prioritizing may not be unreasonable or dangerous, if providers neglect their low-income tenants, that can leave those tenants in worse conditions than if the public monopoly model was preserved, as a private actor may not even pursue a temporary solution to improve conditions for low-income tenants.

### *C. Monitoring the Market for Anticompetitive Behavior and Neglectful Conduct*

If competition is made effective, regulators must still ensure that it remains competitive and act to block and punish anticompetitive behavior. For the

---

51. See *The Antitrust Laws*, FED. TRADE COMM'N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Dec. 15, 2022).

52. See GLOB. COMPETITION REV., *THE GUIDE TO ENERGY MARKET MANIPULATION* 178–81, 183 (Gordon Kaiser ed., 2018), <https://media.crai.com/wp-content/uploads/2020/09/16164449/Economic-Evidence-of-Market-Power-and-Market-Manipulation-in-Energy-Market.pdf>.

purposes of this market, pricing is of the utmost importance, and regulators should aim to ensure that no market player squeezes competition out of the market. The more entrants who stay in the market, the greater supply will be available, and the more pressure will be on developers and landlords within the market to maintain each property and retain a competitive edge. As monthly rates for these low-income units will already be low and must be kept low to stay within the market, there is less concern for price increases by market actors with significant market power. This is especially true if an expansion of inclusionary zoning requirements is undertaken, as those affordable units would be legally required as opposed to voluntary.

Additionally, market entrants must be monitored to ensure adequate accommodation for all residents. Not only should each market entrant provide reasonable housing for the elderly and those with disabilities, but they should also maintain the properties in reasonable condition. Monitoring of market entrants should include DCHA inspections, access to tenants for interviews, the ability for tenants to report their landlords without fear of reprisal, and reports from the market entrant as to the conditions of their properties. The market must be prevented from taking advantage of their low-income tenants, and failure to provide reasonably adequate housing must be a legally actionable offense. One potential issue is that the market entrants would be a necessity for the public interest purpose. If they fail to adhere to the monitoring set forth above or fail to maintain adequate properties, it would be difficult to shut down their participation. Any fines or other punishments applied would not be able to go above an amount where the market entrant would decide to no longer participate in the low-income market beyond the legal requirement. This could make enforcement of standards difficult for regulators and may be the most significant issue within this privatization effort.

#### *D. Using Modular Construction Methods to Offload and Replace Existing DCHA Housing Assets*

DCHA's existing stock of housing and the costs of maintenance and refurbishment remains a pressing issue regardless of reforms to the low-income housing market. The estimate of more than \$2 billion to keep 6,803 units in adequate condition is significant and cost prohibitive.<sup>53</sup> Most properties that require maintenance work are around 50 years old, and if we assume this will be a trend, a cost of around \$2 billion might be required at that time again.<sup>54</sup> Instead of providing a band-aid solution and repairing the existing deficiencies, DCHA could implement a plan to construct new and safe housing for current tenants and to either demolish and rebuild or offload their existing properties.

The construction of new properties, while expensive, can be cost minimized through using modular construction methods. These cost reductions would allow

---

53. See TRANSFORMATION PLAN, *supra* note 3, at 14.

54. See Baskin, *supra* note 4.

DCHA to maximize its output under its existing budget. Modular construction cuts down on the time that a project will be completed and the cost of a project. In Philadelphia, a multifamily project of a size which typically takes two years to complete ended up taking only 11 months using a modular construction framework.<sup>55</sup> That reduces the costs of labor and decreases the wait time for future residents. In Los Angeles, the per unit costs of a modular housing project were between \$200,000 and \$225,000, while the typical cost was around \$475,000.<sup>56</sup> That would potentially reduce the cost of a DCHA project by about half. If 6,803 current units were to be replaced at the highest cost from the LA modular example, that would come out to roughly \$1.5 billion, still a significant amount but it could save a significant amount from the current plan, not including land costs and assuming that the per unit cost for low-income housing could not go lower. That would make it more economical to provide new housing for existing tenants and to reduce the overall cost of refurbishment by constructing new properties which would likely have less problems and would not need another round of significant refurbishment for some time.<sup>57</sup>

After new residential properties are developed for existing tenants, the decision over the current aging stock can be made. Those currently living within these unsafe properties could move to new units. DCHA would then have the option to expand the size of its housing stock either by refurbishing existing stock, by demolishing the existing units housing and building new ones, or by selling the land to private developers. As DCHA's public interest vision would be best served by providing more housing, any option that would cause an expansion of housing stock would be preferable. If DCHA chose to sell the properties, they could then be run by new market entrants and continue to provide housing for at least some portion of the population served by DCHA, particularly if combined with market incentivization. If not sold, DCHA could operate them as normal or in a way similar to a new market entrant. If the latter option were chosen, the property ownership and management would need to be sufficiently divested from the regulatory side of DCHA in order to ensure a competitive market.<sup>58</sup>

Taking these steps to address the current stock of housing owned and operated by DCHA is imperative to the overall success of the public interest vision. Without seeking an option that will, in the shortest term possible, allow current residents to escape the subpar conditions on existing DCHA properties while not causing significant displacement, the very people DCHA was created to help will be harmed. The current residents may face negative health outcomes due to their

---

55. Jennifer Castenson, *Forget Everything You Know, Modular Will Be Worth It*, FORBES (Apr. 16, 2021), <https://www.forbes.com/sites/jennifercastenson/2021/04/16/forget-everything-you-know-modular-will-be-worth-it/?sh=195c69af5193>.

56. *Id.*

57. See *New Construction vs Existing Homes: The Pros and Cons of Both*, ZILLOW, [https://www.zillow.com/home-buying-guide/buying-a-new-home/\(last visited Dec. 15, 2022\)](https://www.zillow.com/home-buying-guide/buying-a-new-home/(last%20visited%20Dec.%2015,%202022)) (highlighting energy efficiency and less costs for maintenance of new(er) systems and structures).

58. See Baskin, *supra* note 4; TRANSFORMATION PLAN, *supra* note 3.



residency in these units, or they may eventually have to leave their housing without having other options. The options presented in this section would not only follow the public interest vision, but also allow DCHA to use their budget more effectively, improve output, and serve their beneficiaries more efficiently.

#### *E. Entering DCHA Into the Housing Development Market*

DCHA currently operates as a manager of low-income housing in D.C. as a branch of local government. However, a significant method of reducing housing costs overall, not just for low-income tenants, is to construct more supply.<sup>59</sup> Differing from the approach described in the above section, rethinking DCHA operations would see the housing authority utilize the power of eminent domain at an enhanced rate for the purpose of economic development.<sup>60</sup> Lots that are currently undeveloped or properties that have been vacant for too long should be considered for this process. DCHA should act, with D.C. Council permission, to take ownership of those lands and to either construct low-income housing themselves or sell the property directly to a developer under the condition that the property be used for low-income housing projects. Even choosing to undertake this option without the condition for low-income housing use would, overall, improve the housing market by increasing supply and reducing the demand for the existing units in the market.<sup>61</sup> This would, however, be unlikely to have a meaningful and immediate impact on the cost and availability of low-income housing and may be frowned upon for the methods used by DCHA to obtain the property.

One additional benefit from this option would be to induce greater employment opportunities for low-income D.C. residents through increasing employment opportunities in construction. D.C. has a law known as “First Source” which requires a certain percentage of workers in construction projects that are, at least partially, funded by the local government to be D.C. residents.<sup>62</sup> For those low-income residents able to work but unable to find employment, this would provide jobs and skills training opportunities for residents and could lead to a bettering of their circumstances. While likely not taking beneficiaries directly or quickly out of low-income status, it could lead to some lowered demand for DCHA’s public housing, improving DCHA’s overall coverage of qualifying individuals without needing to change their bureaucratic structure or the structure of the low-income housing market and while staying within the designated responsibility of providing more housing.

---

59. Lexi Wilson, ‘*This Is the First Time We’ve Seen Declines Like This*’ | *Charlotte Sees Decrease in Rent Prices*, WCNC (Nov. 28, 2023, 6:33 PM), <https://www.wcnc.com/article/money/charlotte-nc-apartment-cost-local-money/275-59215fa2-67e5-4b60-8a0f-cb3c3ac3248c>.

60. See *Kelo v. City of New London*, 545 U.S. 469, 478 (2005) (finding that taking private property for economic development purposes is not a violation of the Takings Clause as the general economic benefits would qualify as “public use”).

61. See generally Xiaodi Li, *Do New Housing Units in Your Backyard Raise Your Rents?*, 22 J. ECON. GEOGRAPHY 1309 (2022).

62. D.C. Code § 2-219 (2012).



*F. Incentivizing Social Enterprises to Provide Low-Income Affordable Housing to D.C.*

One final option to consider is the establishment of social enterprises to handle at least some low-income housing in the District of Columbia. A social enterprise would be uniquely able to operate in this market. The business model of a social enterprise differs from a traditional profit-seeking company.<sup>63</sup> Social enterprises are created to address a societal problem, not to make profits for owners or shareholders. This makes them more analogous to the approach taken by public monopolies in that they seek to maximize output while almost being subject to the zero profit, zero loss constraint of a public monopoly. They differ in that they may seek to make some profit.<sup>64</sup> However, their profits would likely go either into making costs for their beneficiaries go down or for expanding their operations. If D.C. were able to fund the creation of these enterprises, either from their budget or through a variety of fundraisers or both, the low-income tenants served by DCHA may be better served.

A possible model pursued by a social enterprise could be to seek a higher rate from those who can afford to pay in order to subsidize those whom they seek to benefit. Their apartments would likely take the form of a multi-class dwelling where middle- and high-income tenants pay market rate costs while the lowest-income tenants are able to live without an undue financial burden. There would likely not be a difficulty in finding the subsidizing tenants as the objective would be to break even, and it is possible that the subsidizing rents would be similar to or less than other rental opportunities. The benefits to this structure can be condensed to landlord behavior and to tenant interactions.

Landlord behavior will be constrained by the presence of middle- and/or high-income tenants. Conditions on the property would need to be kept at an adequate level or those tenants would seek to live elsewhere. This, along with the differing objective of a social enterprise in pursuing the public interest vision, will ensure that low-income tenants are far less likely to live in accommodations requiring “extremely urgent” repair as some in DCHA managed properties face today.<sup>65</sup>

Tenant interactions, as the likely model would be a multi-class dwelling, would allow for low-income tenants to meet and interact with middle-income and high-income tenants, potentially opening doors for those low-income tenants to find more opportunities for financial stability and social mobility. The possibility to interact with those who may have stronger and more beneficial connections in the job market could lead to low-income tenants finding and securing new

---

63. See Myles Ng, *Social Enterprise and Private Business: What's The Difference?*, LINKEDIN (Dec. 22, 2019), <https://www.linkedin.com/pulse/social-enterprise-private-business-whats-difference-ng/>.

64. See Rhea Mehta, *Should Nonprofit Organizations be Considered as Social Enterprises?*, LINKEDIN (Nov. 12, 2019), <https://www.linkedin.com/pulse/should-nonprofit-organizations-considered-social-rhea-mehta/>.

65. Baskin, *supra* note 4.

employment opportunities.<sup>66</sup> Those jobs could even pay at a significantly higher rate and allow that individual and their family to leave the low-income bracket and participate in the traditional housing market. This would allow for some families and individuals to leave the program and open up their unit to another qualifying individual or family.

As social enterprises do not function in the same manner as traditional enterprises, the metrics of determining effective competition do not apply as stringently. While certainly requiring oversight from a regulatory body to ensure that their approach does not become predatory to beneficiaries, their presence would likely not cause a disruption to the wider housing market due to the explicit subsidization of their low-income units by their middle- and high-income units. While those units could end up being somewhat less than market-rate, it is more likely that the costs will be the same or somewhat higher than market-rate costs and will not confer these organizations an undue advantage as compared to other actors in the D.C. housing market.

This approach is the one this Note most strongly endorses, as there is little potential for unforeseen negative consequences, and it may be pursued independently of government action. If local businesses, residents, and others with available resources are serious about reducing homelessness and cost burdens on those with low incomes, investing in a social enterprise with this mission would be ideal and could significantly improve the situations of all beneficiaries.

## V. A REVIEW OF AVAILABLE OPTIONS AND FINAL RECOMMENDATIONS

There are means of solving the current issues facing DCHA without seeking increases to its budget. While budgetary increases may maintain an inadequate system, it would likely not lead to expansion or improvement. This would not see their output increase significantly. It seems unlikely that DCHA managed properties will not fall into disrepair again unless something changes. That being said, there are many potential problems that could arise from attempting to move wholly into the private sector for low-income housing. Not every tenant served by DCHA can afford to pay anything for their housing. Additionally, there is nothing keeping market entrants from leaving the market. Fines levied against market entrants for misbehavior would have to be relatively low to ensure the fine would not drive them out of the low-income rental market. A full transfer to a privatized system would not be advisable, but some of the population currently served by DCHA may benefit from encouraging private actors. Even without pursuing any of those options, there still remain several opportunities for the Authority to explore. These include changes to DCHA operations and behavior to potentially replace current unsafe housing options and to move towards the construction of new low-income rental properties. Social enterprise models could be adopted, and the Authority could encourage their creation to supplement low-income

---

66. See The Indicator from Planet Money, *The Secret to Upward Mobility: Friends*, NAT'L PUB. RADIO (Aug. 8, 2022, 6:40 PM), <https://www.npr.org/transcripts/1116398427>.

housing options. The pursuit of these options would likely lead to a better fulfillment of the public interest vision of DCHA through serving more people and improving the quality of the homes provided.

A federal audit of DCHA identified many of the same issues facing the Authority as this paper has.<sup>67</sup> DCHA, as it currently operates, does not have these issues under control and the current conditions of DCHA managed properties are not at an acceptable quality. Local policymakers and those in other municipalities and other governments facing similar issues would do well to consider some of the solutions presented in this paper, as well as other potential avenues of reform. Failure to do so would not only be a disservice to beneficiaries but may result in greater federal management and oversight of DCHA.<sup>68</sup> This would be a setback for D.C. self-governance and would further restrict the potential for experimentation and for D.C. to be recognized as a leader in local housing authority reforms and results.

---

67. See *District of Columbia Housing Authority (DC001) Assessment*, U.S. DEP'T HOUS. & URB. DEV. (2022), [https://oag.dc.gov/sites/default/files/2022-10/DCReview\\_Final%209302022%20%281%29.pdf](https://oag.dc.gov/sites/default/files/2022-10/DCReview_Final%209302022%20%281%29.pdf).

68. See *id.* at 4.