



**Inclusionary Housing
in the United States:**

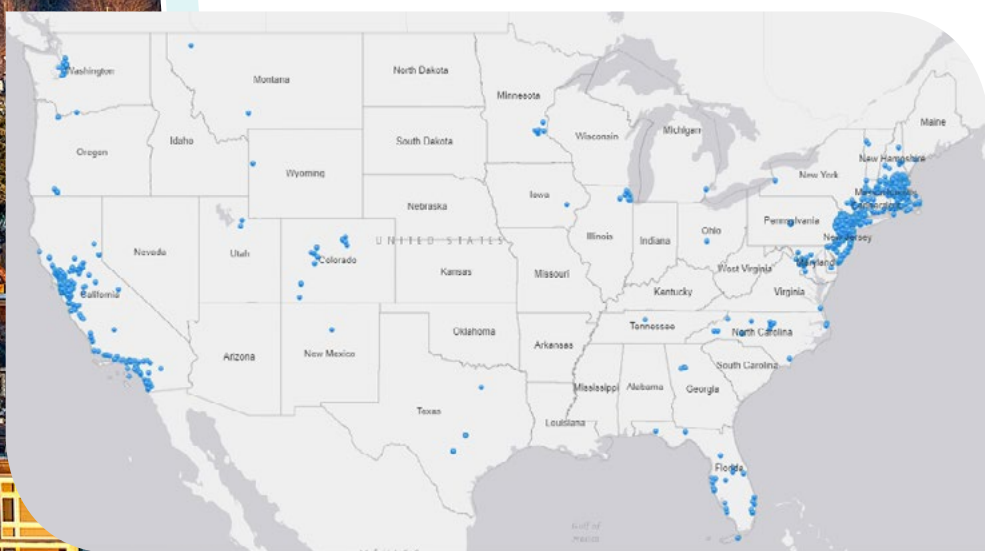
Prevalence, Practices,
and Production in
Local Jurisdictions
as of 2019

Executive Summary
December 2020



The following report is based on excerpts from the recently published working paper *Inclusionary Housing in the United States: Prevalence, Practices, and Production in Local Jurisdictions as of 2019*, produced by Grounded Solutions Network in partnership with Fannie Mae in 2020.

In conjunction with this working paper, and with Fannie Mae support, Grounded Solutions Network created a webpage (inclusionaryhousing.org/map) that provides program-level information based on ordinance review and survey responses. This webpage also enables users to visualize the distribution of inclusionary housing (IH) programs across the country and allows users to download the database used in this study. The webpage also provides a channel for program administrators to report new and/or amended IH programs, as well as to populate missing and incorrect information.



Location of inclusionary housing programs in the United States



Introduction to the Project

With a general decline in the affordability of housing and a rise in construction costs over the past decade, many state and local governments have been looking for solutions to increase the supply of new affordable housing. Inclusionary housing (IH) ties the creation of affordable, below-market-rate units with new development, and it is a means for creating affordable housing and inclusive communities. Yet, limited research circumscribes our understanding about the similarities and variations of inclusionary housing programs across the nation. To this end, Grounded Solutions Network (GSN) embarked on a large-scale data collection effort between 2018 and 2019 to study inclusionary housing programs¹ in local jurisdictions. The study covered two main types of IH programs: *traditional IH programs*, which create affordable units directly or indirectly through payments of in-lieu fees, and *linkage/impact fee programs*, which generate fees for the development of affordable housing from commercial development, residential development, or both.

Results were compiled from a combined review of local housing ordinances along with an online survey completed by local housing agencies. The project had

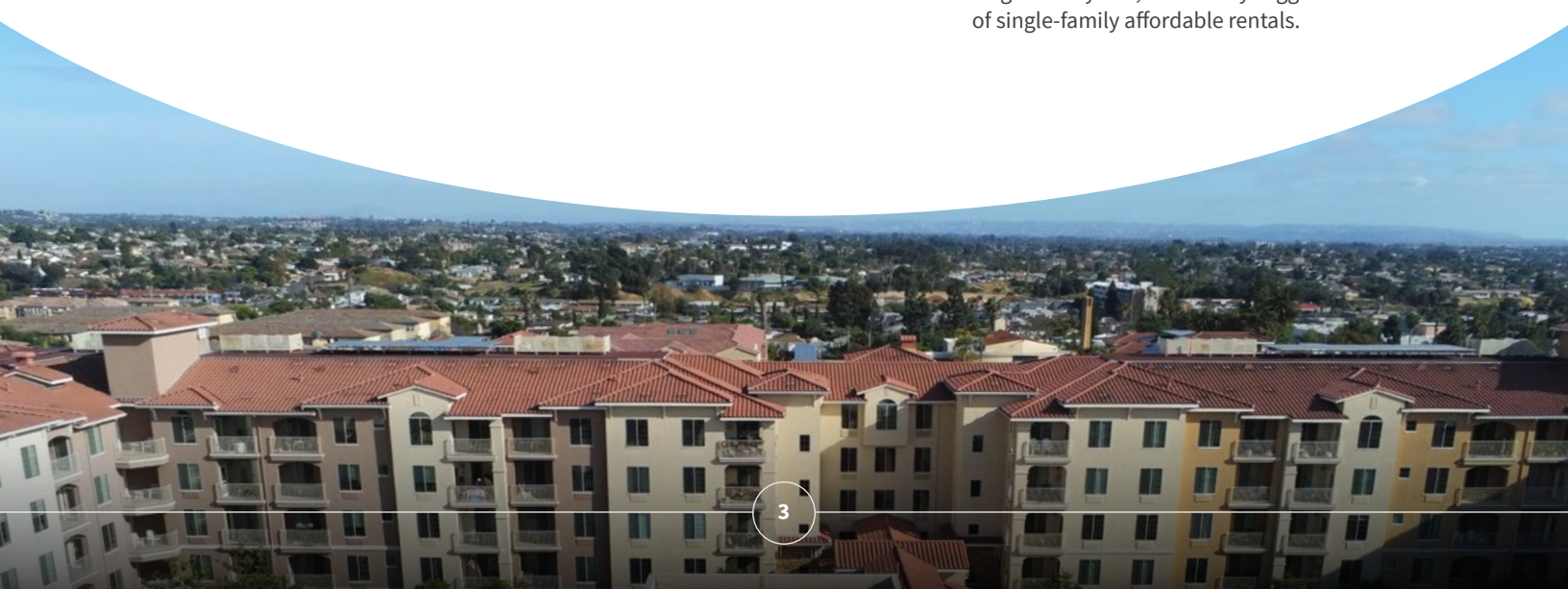
three goals: to create a database of IH programs; to study the prevalence, practices, and production from programs in the resulting database; and to identify potential Duty to Serve (DTS) eligible programs.

Inclusionary housing is a means for creating affordable housing and inclusive communities.

This report summarizes patterns and trends in the inclusionary housing programs identified and includes breakouts for the three states with the highest number of programs. While the data provided is labeled *for sale* and *for rent*, these categories are largely synonymous with *single-family homeownership* and *multifamily rentals*.²

¹ Among other reasons, since some state mandates are codified in local ordinances, the study excluded a separate count of state programs to avoid double counting.

² Rental programs apply to multifamily properties with five or more units. A small minority of rental programs may apply to planned unit developments (PUD) occurring in multiple single-family lots, which may trigger inclusion of single-family affordable rentals.





Discussion of Key Findings

In total, the study identified 1,019 IH programs in 734 jurisdictions at the end of 2019. Of these, 685 IH programs were traditional programs and 99% offered the option to complete affordable units on the site of a new development. Nine out of 10 programs applied to both single-family homeownership and multifamily rental programs. Although the GSN-identified programs are in 31 states and the District of Columbia, nearly three-quarters of programs are in New Jersey, Massachusetts, and California alone.

This study finds that, while adoption of new programs has slowed somewhat since 2010, overall, IH programs in the nation are growing more numerous and evolving, which reflect a growing willingness by local governments nationwide to ask for greater affordability from developers. Since 2011, an average of 19 new IH programs have been adopted annually. In addition, IH policy strengthening and adaptation to market dynamics is common, as the GSN study found that two out of five policies have undergone significant legislative updates in the past three years, and one in five was under review at the time of survey.

The predominant option for developers to contribute to affordable housing is to build affordable units on-site, with the second most offered option allowing developers to contribute in-lieu fees to an affordable housing fund. A majority of IH programs target low-income households earning 50% – 80% of area median income (AMI), and rental programs generally serve lower-income levels than homeownership programs.

Overall, inclusionary housing programs in the nation are growing more numerous and evolving.

Most IH programs have affordability requirements that last for 30 years or longer, and it is common for programs to restart the affordability term upon resale. This necessitates updating and preserving these units so that they may remain viable affordable homes long-term.

This study also sheds light on patterns of program design. For example, the average set-aside for affordable units is 16% of housing units, and 29% of IH programs require 20% or more of housing units to be set aside at affordable prices on-site. For linkage/impact fee programs, fee rates vary widely across programs, but the fee rate is often set too low to build the same number of affordable units through a fund receiving fees as an on-site option can build. California, Massachusetts, and New Jersey show distinct patterns in some program features in comparison to IH programs outside of these three states.

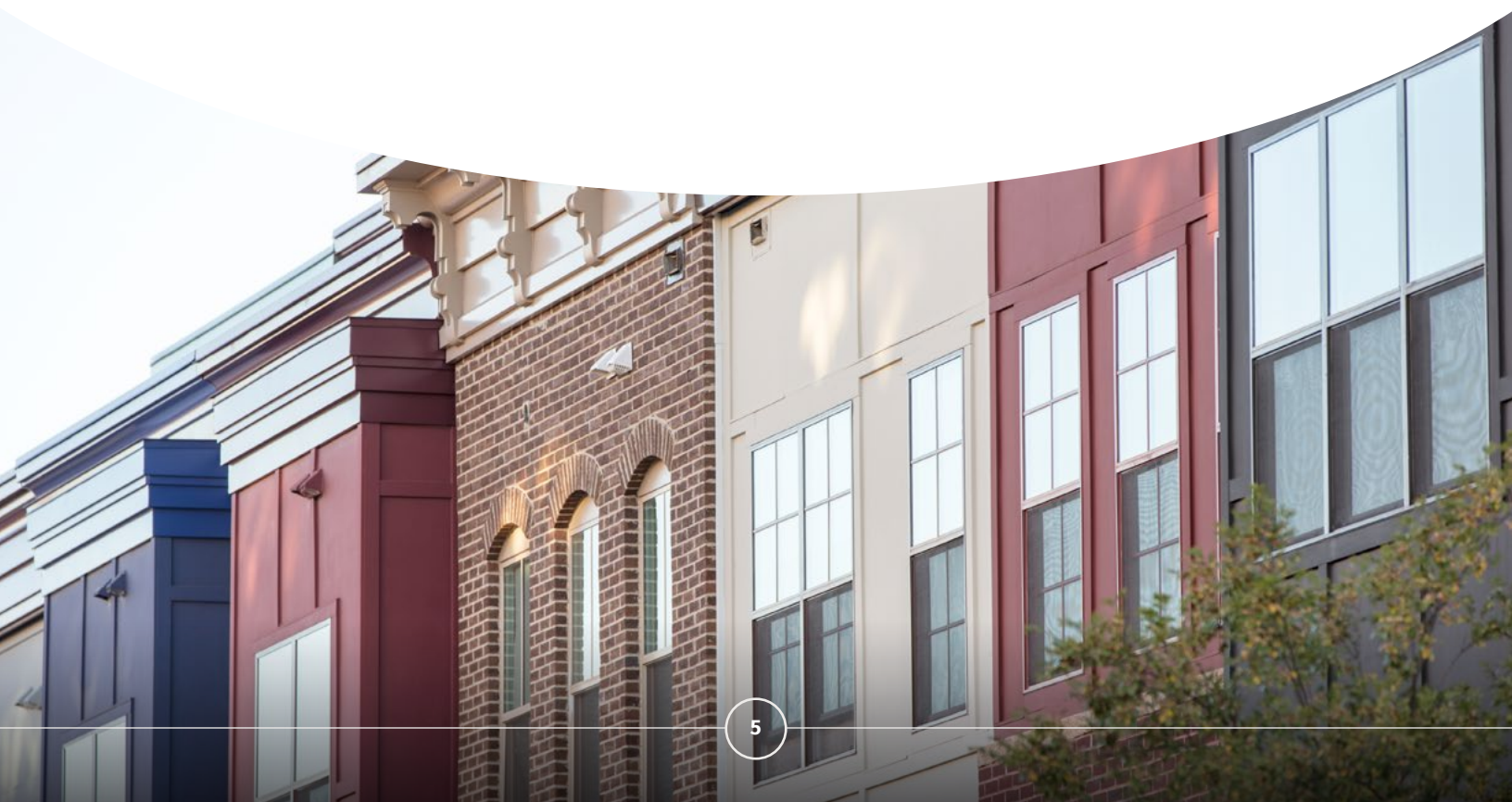


This study also addresses [Duty to Serve](#). Driven by the Housing and Economic Recovery Act (HERA) of 2008, in December 2016, the Federal Housing Finance Agency (FHFA) issued the Duty to Serve Underserved Markets rule. It directs Fannie Mae and Freddie Mac to improve access to mortgage financing for those of modest means in three housing markets posing persistent challenges and significant opportunities: manufactured housing, rural housing, and affordable housing preservation. The affordable housing preservation market includes shared equity programs, which provide access to homeownership for low- and moderate-income households. Shared equity programs are often run by government or nonprofit organizations for the express purpose of providing homeownership opportunities for lower-income families at prices substantially lower than otherwise available in a market and then keeping those homes affordable for future buyers through resale restrictions. Inclusionary housing programs are a primary source of new inventory for shared equity programs. As a component of its [Underserved Market Plan](#) for affordable housing in the single-family segment, Fannie Mae has sought to increase its mortgage purchase activity for loans to buyers in shared equity programs. This study identified 314 IH programs that appear to meet the Duty to Serve definition for shared equity programs.

In addition to single-family shared equity programs, inclusionary housing programs for the preservation or creation of multifamily rental properties may qualify for credit under Fannie Mae's activity "Other Comparable State or Local Affordable Housing Programs." This study identified 180 IH programs that appear to meet all criteria, indicating that they meet the Duty to Serve criteria for state and local programs.

Fannie Mae has sought to increase its mortgage purchase activity for loans to buyers in shared equity programs.

There remains a big gap in the literature in unveiling the administrative practices of IH programs. Only about one-third of local governments partnered with external agencies to manage IH programs, and the study finds that many programs report either not having a tracking system in place or not knowing if such a system exists. Ultimately, inclusionary housing programs must track the units they have produced and preserve them in order to maintain affordable housing opportunities for members of their community.





Highlights of the Working Paper

State legal frameworks affect adoption. According to GSN, states vary in their acceptance of IH programs, which affects the ability of local jurisdictions to create IH programs or impacts the design of IH programs. In some states, such as California, Maryland, and Oregon, all types of IH programs are explicitly permitted by legislation (**Figure 1**). In other states, such as New York, Ohio, and Minnesota, there are no explicit barriers in state laws to deter local jurisdictions from adopting IH programs. In a third group of states, such as Virginia, Missouri, and Utah, local jurisdictions

attempting to create IH programs face legal barriers, especially jurisdictions that attempt to adopt mandatory policies that do not allow developers to “opt out” of the program.

Finally, six states have laws that prohibit at least some form of local IH programs, either by statute or by court decision. These states, which include Texas, Tennessee, Indiana, Arizona, Idaho, and Kansas, are the least likely to have IH programs in local jurisdictions, if any.

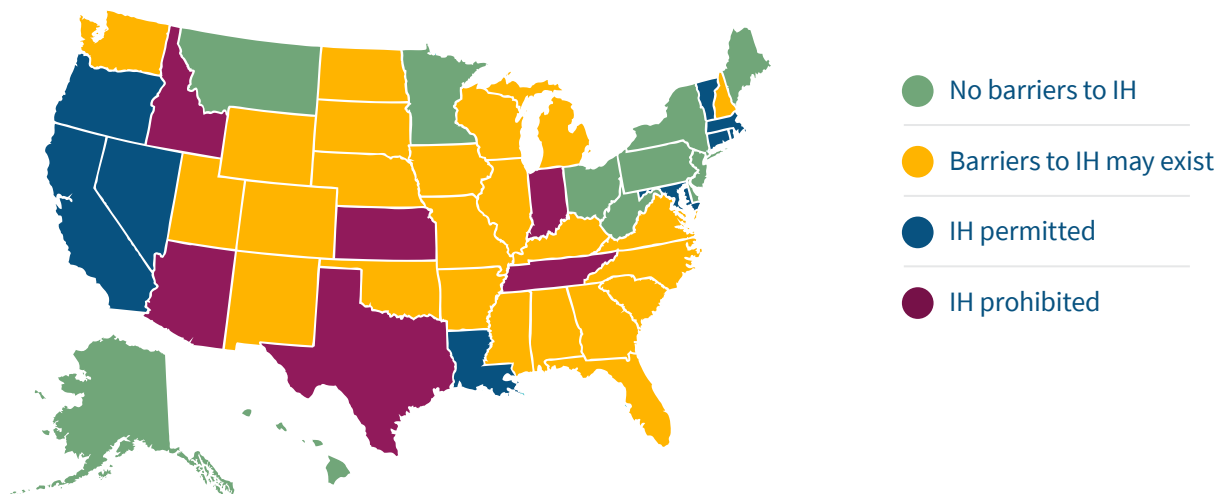


Figure 1. State legal frameworks for local IH programs*

* For states where barriers may exist, they may exist for several reasons: 1) In some states with prohibitions against rent control, IH may be considered to be a form of rent control, and/or 2) some states are subject to Dillon's Rule, which requires express state authorization in order for a city to adopt inclusionary housing.

Source: Grounded Solutions Network (2018). *Inclusionary Housing Database*. Retrieved from inclusionaryhousing.org/map.



Programs are increasing and evolving. While adoption of new programs has slowed somewhat since 2010, IH programs are on the rise and evolving, reflecting a growing willingness by local governments to seek greater affordability from developers. Since 2011, an average of 19 new IH programs have been adopted annually (**Figure 2**). In addition, IH policy strengthening and adaptation to market dynamics is common, as GSN found that two out of five programs have undergone significant legislative updates in the past three years, and one in five was under review at the time of survey. Nine out of 10 IH programs apply to both for-sale developments, predominantly single-family homeownership programs, and for-rent developments, which are predominantly multifamily rentals.

Methods of creating affordable units: Of the total 1,019 IH programs, 741 (or 73%) can create affordable units directly, as opposed to indirect programs that collect fees in an affordable housing fund and use those fees to create affordable units. These 741 programs include both traditional programs and linkage/impact fee programs that offer one or more of the following compliance options: 1) building on-site affordable units; 2) building off-site affordable units; 3) preserving/rehabilitating regulated units; and 4) purchasing/renovating unregulated units.

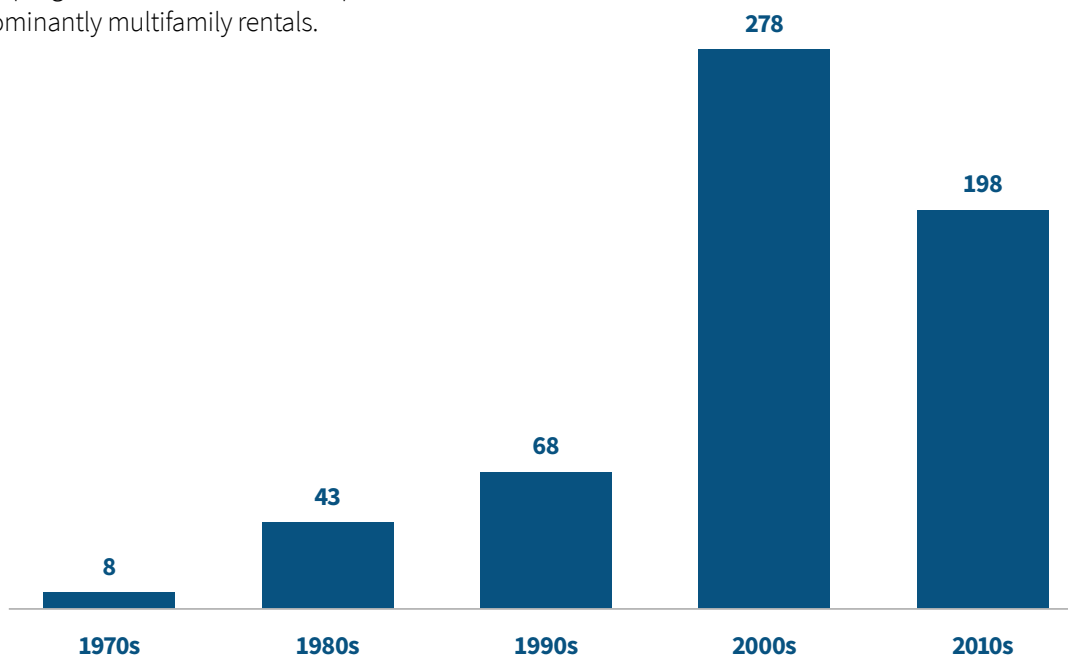


Figure 2. New program count by decade (n = 595, or 58% of all programs)

Mandatory programs outnumber voluntary.

Some IH programs are voluntary, and a developer can choose to include affordable housing units in a new market rate development, generally in exchange for development-related benefits. Other programs are mandatory, and developers are required to include affordable housing units in a new development but may still receive development-related benefits in exchange as an economic offset.

Mandatory programs may arise from a statewide law, a court case, or from state regulations. According to the GSN study, mandatory programs far outnumber voluntary programs, with two-and-a-half times as many mandatory programs as voluntary programs. Out of 681 traditional IH programs that reported, 65% were mandatory, 25% were voluntary, and all applied to both to single-family-owned and multifamily rental programs.



Considerable variations exist across states. IH programs vary in design when addressing the program type (mandatory or voluntary), maximum income level, the length of time units must remain affordable, and the share of units that must be set aside to remain affordable. States that mandate IH show similarities among IH programs in local jurisdictions within those states, but not necessarily across states. In particular, programs in California, Massachusetts, and New Jersey, the three states with the highest number of programs, show distinct patterns within each state about program type, the income targeting requirement, and the affordability term.

Average set-aside for affordable units: By definition, the vast majority of traditional IH programs impacting new developments of single-family homes and multifamily rentals offer developers the option to build affordable units on-site. In fact, building on-site affordable units is the only option offered by 41% of IH programs. The average set-aside for affordable units across the 652 programs that reported an on-site option is 16% of housing units, and 29% of IH programs require 20% or more of housing units to be set aside at affordable prices on-site (Figure 3).

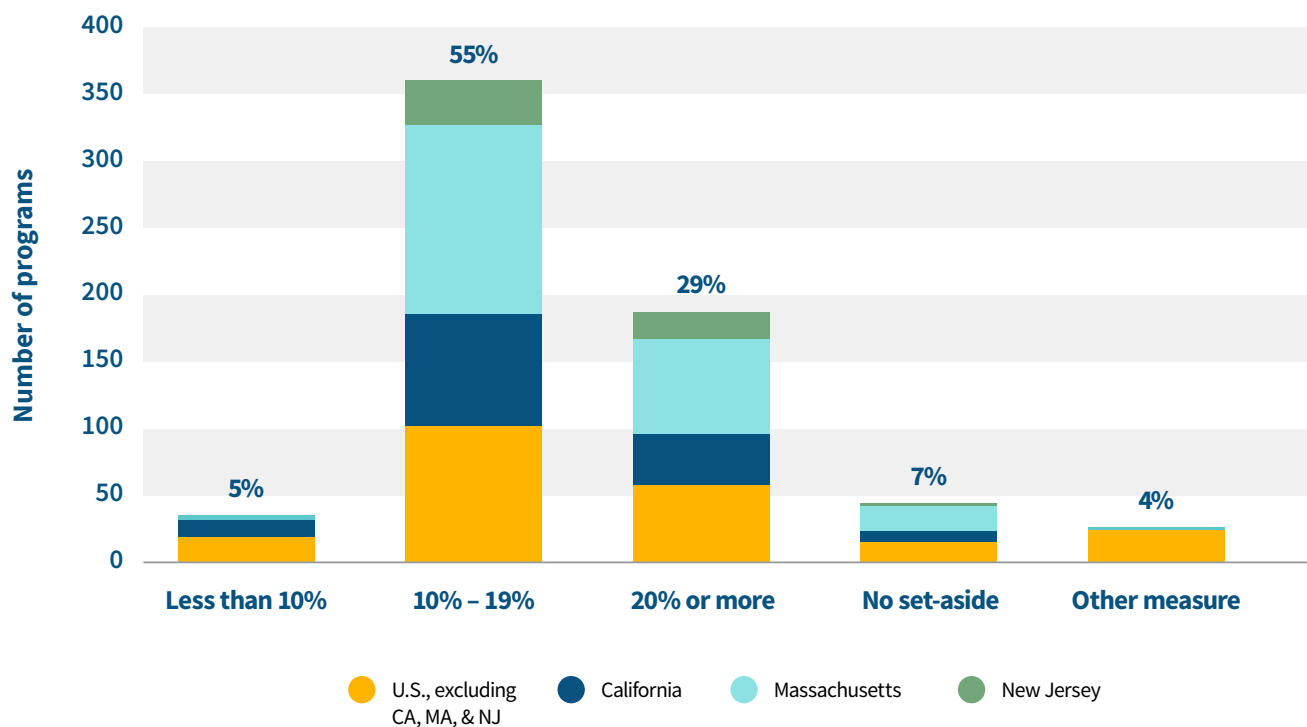


Figure 3. Program count and program share of minimum percentage of affordable housing required (affordable housing set-aside) (n = 652, or 97% of all programs with on-site option)



Most IH programs predominantly serve low-income households with annual incomes between 50% and 80% of AMI. Rental inclusionary housing programs generally serve lower-income levels than homeownership programs (**Figure 4**).

For example, 87% of for-rent programs, which apply to multifamily rental developments, serve households earning between 51% and 80% of AMI. Only 11% of IH rental programs serve households earning more than 80% of AMI, compared to 23% of for-sale programs.

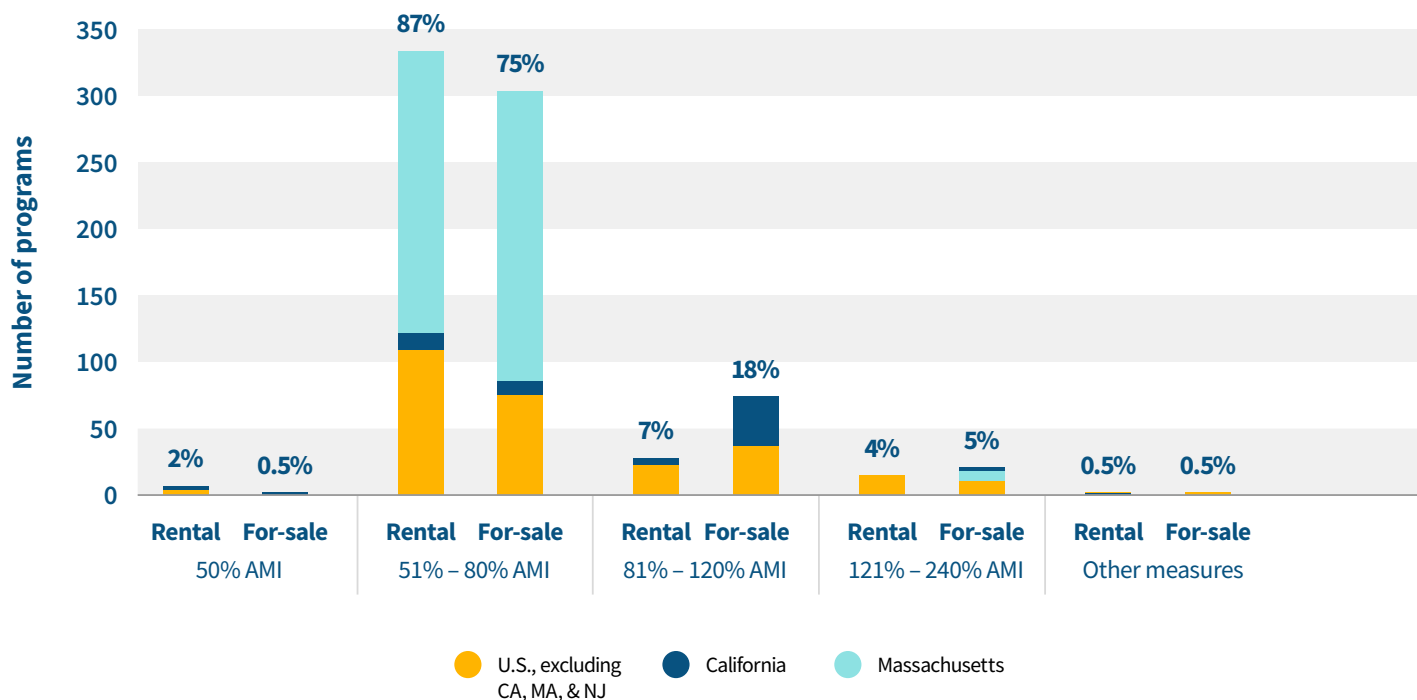


Figure 4. Program count and percentage by the range of maximum income level (n = 386, or 98% of all rental programs with single-income targeting requirements; n = 403, or 98% of all for-sale programs with single-income targeting requirements)



Affordability generally preserved long-term. The survey found that 93% of programs have affordability requirements that last for 30 years or longer (Figure 5). In California, most programs for rental developments (n = 69, or 57%) follow the state’s standard minimum affordability period of 55 years. Further, it is a common practice for both homeownership

and rental programs to restart the affordability term upon resale.³ Given the long-term affordability of units created under these programs, these units must undergo preservation in order to remain both affordable and in good working order.

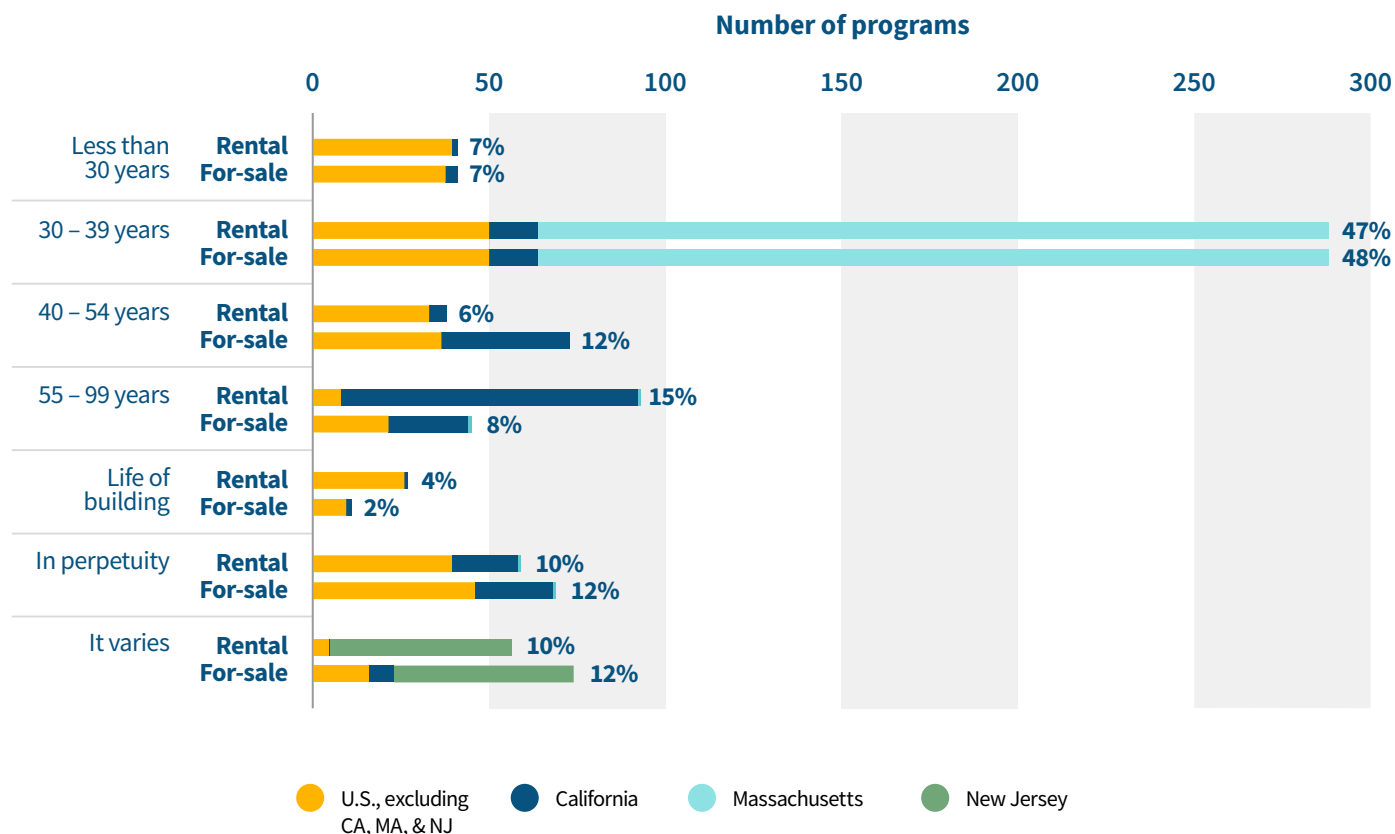


Figure 5. Program count and percentage by the range of maximum income level (n = 386, or 98% of all rental programs with single-income targeting requirements; n = 403, or 98% of all for-sale programs with single-income targeting requirements)

³ For programs that have affordability terms reported in a definite number of years (99 years or less), the survey further asked whether the affordability term restarts upon resale. Seventy-two percent of rental programs and 75% of for-sale programs report that the affordability term would restart upon the resale of the building.



Incentives reduce financial impact of requirements.

IH programs offer a variety of incentives to both voluntary and mandatory programs to encourage the production of affordable units, to offset the cost of providing affordable housing units, and to minimize potential lawsuits in the case of mandatory programs. Density bonuses are offered most frequently, with 382 out of 671 programs (57%) providing this incentive (Figure 6). In addition, 24% of programs offer other zoning variances, such as a reduction in site development standards, modification of architectural design requirements, and reduction in parking requirements. A less commonly used incentive includes waivers or the reduction of administrative fees. Other incentives include expedited processing,

concessions on the size and cost of finishes of affordable units, tax relief abatement, and direct public subsidy. Notably, 29% of programs do not offer any incentives, whereas 35% of programs — including some mandatory programs — offer more than one type of incentive.

Programs in California generally offer incentives other than a density bonus. In Massachusetts, nearly half of programs, 48%, do not offer any incentives, but for those that do, density bonuses and other zoning variances are the most common (48% and 20%, respectively). In New Jersey, two in three programs, or about 68%, do not offer any incentives, and only about one in four programs, 27%, offer a density bonus. Other types of incentives are almost never offered in New Jersey.

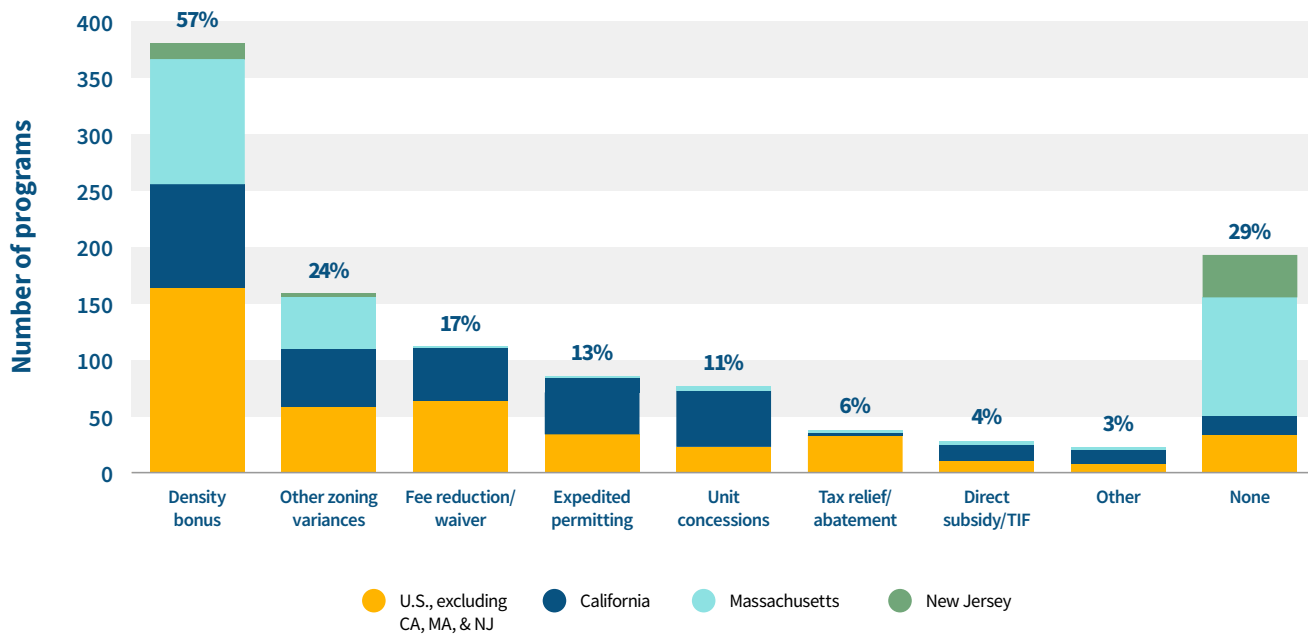


Figure 6. Program count and percentage by incentive (n = 673, or 98% of all)

Most programs have resale/rent restrictions: Almost all IH programs have some form of legal agreement in place to establish price/rent restrictions. These restrictions help keep inclusionary units affordable to targeted income-eligible groups. Legal agreements

can be in the form of deed restrictions, deed covenants, ground leases, development agreements, or affordable housing agreements. Overall, 99% of 603 rental programs and 98% of 612 for-sale programs for which data is available have legal agreements in place to preserve affordability long-term. This pattern is consistent across states and regions.



Tracking of affordable units remains inconsistent.

There remains a big gap in knowledge about the administrative practices of IH programs. While about one-third of local governments reported partnering with external agencies to manage IH programs, the GSN study found that many programs report either not having a tracking system in place or not even knowing if such a system exists.

Survey respondents were asked whether inclusionary units and fees generated by IH programs were tracked systematically in a database (**Figure 7**). Based on available responses, it appears that 241 programs, 57% of traditional IH programs, report outcome tracking in place. However, 180 programs, 43%, do not track units/fees generated by IH programs.

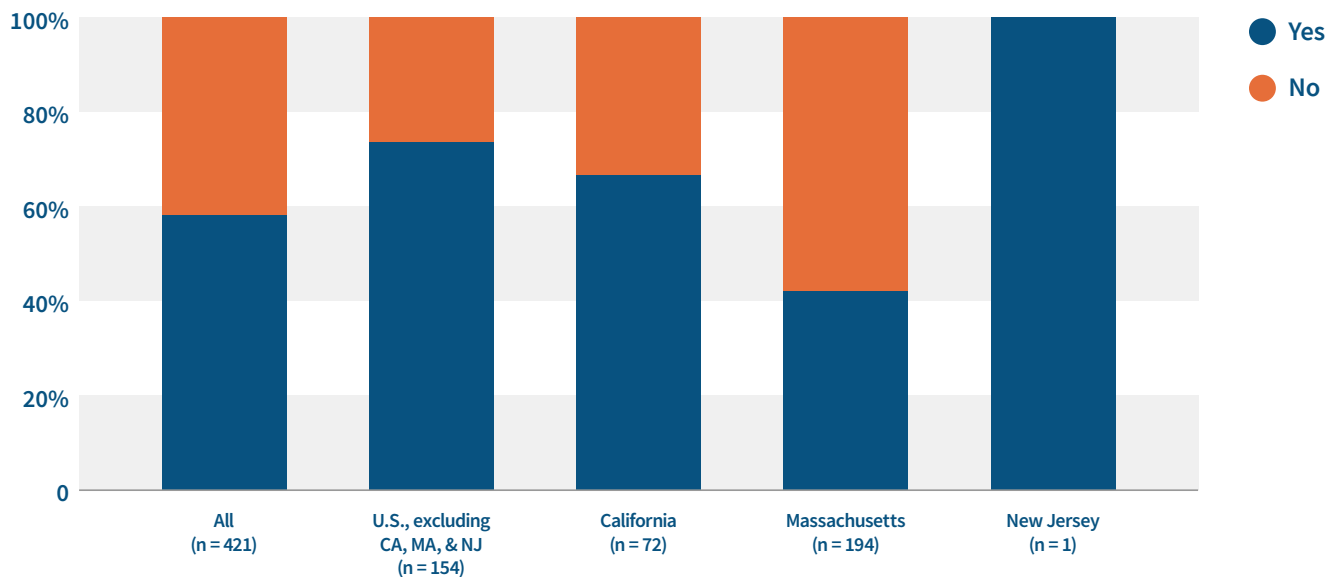


Figure 7. Breakdown of whether outcome-tracking exists (n = 421, or 61% of all)



Affordable units created: Given the fact that 43% of IH programs do not track either fees or units generated by IH programs, it is not possible to accurately ascertain the market size for affordable units created under IH programs. However, a subset of 258 programs created a total of about 110,000 affordable units, including 70,000 affordable rentals, 31,000 single-family homes, and 9,000 units with tenure unknown (**Table 1**). For these programs, the average unit count is 426, and the median

unit count is 61. For the 221 programs that report at least one affordable unit and with known program age, a program produced 27 affordable units per year on average. However, inclusionary housing is not a panacea, as 125 programs, 33%, report that no affordable units have been created since program adoption.

			Program with at least one affordable unit				
State/ region	Unit type	Program count (%)	Average	Median	Min.	Max.	Total units
All	Rental units	165 (27%)	426	80	1	10,123	70,101 – 70,600
	For-sale units	159 (26%)	198	19	1	10,000	31,401 – 31,586
	All units	258 (35%)	426	61	1	15,000	109,488 – 110,172

Table 1. Summary of affordable units produced by IH programs (n = 258)

Notes:

1. The percentages sum up to 100% in the rows.
2. For programs reporting a range of units, the middle point of the range was used to calculate the average, median, minimum, and maximum values.
3. In New Jersey, unit counts were obtained through the latest COAH petitions between December 2008 and August 2010. The research team could not differentiate programs with zero affordable units created from those with unknown number of affordable units.
4. There were 18 California IH programs that did not report unit count. Instead, such information was derived from 2017 Grounded Solutions Network membership data.
5. The discrepancy between the summation of rental and for-sale units and all units is because some units don't have tenure information.
6. Affordable unit count for section New York's 421-a program was received after the survey deadline and was not included in totals. Including the 421,000 units from the 421-a program increases total affordable units to an estimated 152,000 units.



Some states produce more affordable units.

California has some of the most prolific programs, as 57 programs report creating about 29,000 units with an average of 510 and median of 189 affordable units created per program. Massachusetts has more programs that are less prolific. Eighty-four programs have produced approximately 9,000 affordable units, with an average of 107 units. In New Jersey, 31 programs together created about 4,700 affordable units through

2010, with an average of 150 units per program. There are consistently more affordable rental units created through programs than homeownership units. Some of the most prolific programs in the country are shown in **Table 2**. In addition, 123 of the programs surveyed tracked and reported fees collected through their inclusionary housing programs (including linkage/impact fee programs). This subset of inclusionary programs collected at least \$1.76 billion in fees.

Program name	Jurisdiction	State	Minimum set-aside	Rental units	For-sale units	Total units
421-a Exemption	New York	NY	25%	Not available	Not available	At least 42,406 through 2016
Moderately Priced Dwelling Unit Program	Montgomery County	MD	13%	5,000	10,000	15,000
Voluntary Inclusionary Housing	New York	NY	Varies	10,123 since FY2010	152 since FY2010	13,590
Affordable Housing Density Bonus Program	Collier County	FL	10%	6,000	500	6,500
Multifamily Tax Exemption (MFTE)	City of Seattle	WA	20%	5,702	178	5,920
Inclusionary Affordable Housing Program	San Francisco	CA	Varies	1,210	2,793	4,003
Inclusionary Housing	Boulder	CO	20%	2,831	794	3,625
Affordable Dwelling Unit (ADU) Program	Loudoun County	VA	12%	400	2,700	3,100
Affordable Dwelling Unit Ordinance	Fairfax County	VA	5%	1,389	1,418	2,807
Affordable Purchase and Rental Program	Roseville	CA	10%	1,942	702	2,644
Inclusionary Development Policy	City of Boston	MA	13%	1,950	649	2,599

Table 2. Select IH programs producing more than 2,500 units with affordability* restrictions

* Affordability level varies by program and some programs have multiple levels. For greater detail on programs including income limits for affordable units, please visit inclusionaryhousing.org/map.



Survey results related to single-family shared equity programs: The [Duty to Serve rule](#) delineates specific eligibility criteria for shared equity programs associated with mortgage loans purchased by Fannie Mae and for which it seeks to receive credit under its [Underserved Market Plan](#). The GSN study also evaluated the compliance of shared equity programs with those criteria to provide a better understanding of programs that comply with the rule's requirements.

Legal mechanism to preserve affordability: One of the eligibility criteria under the [Duty to Serve rule](#) applying to the single-family segment is that some form of legal agreement must be in place to establish price restrictions that keep inclusionary units affordable to income groups targeted by an IH program. The GSN study finds that almost all IH programs, 98%, applying to for-sale developments have an appropriate form of legal agreement.

Resale formulas: Another of the eligibility criteria is that the legal agreement needs to have a resale formula that limits homeowners' proceeds at resale. Overall, 93% of 511 programs report that resale formulas exist.

Review and pre-approval of refinances: A third criterion requires clauses for review and pre-approval of refinances and home equity lines of credit in legal documents. Overall, 66% of 454 programs that provided an answer to this question report the existence of such clauses. However, for IH programs located in states other than California, Massachusetts, and New Jersey, 72% of programs did not have such a requirement (**Figure 8**). In addition, such a requirement is absent at the state level in New Jersey, and the study did not find this requirement in any local IH ordinances.

In contrast, the majority of IH programs in California (n = 48, or 86%) and all of the programs in Massachusetts (owing to state mandates) have such a requirement.

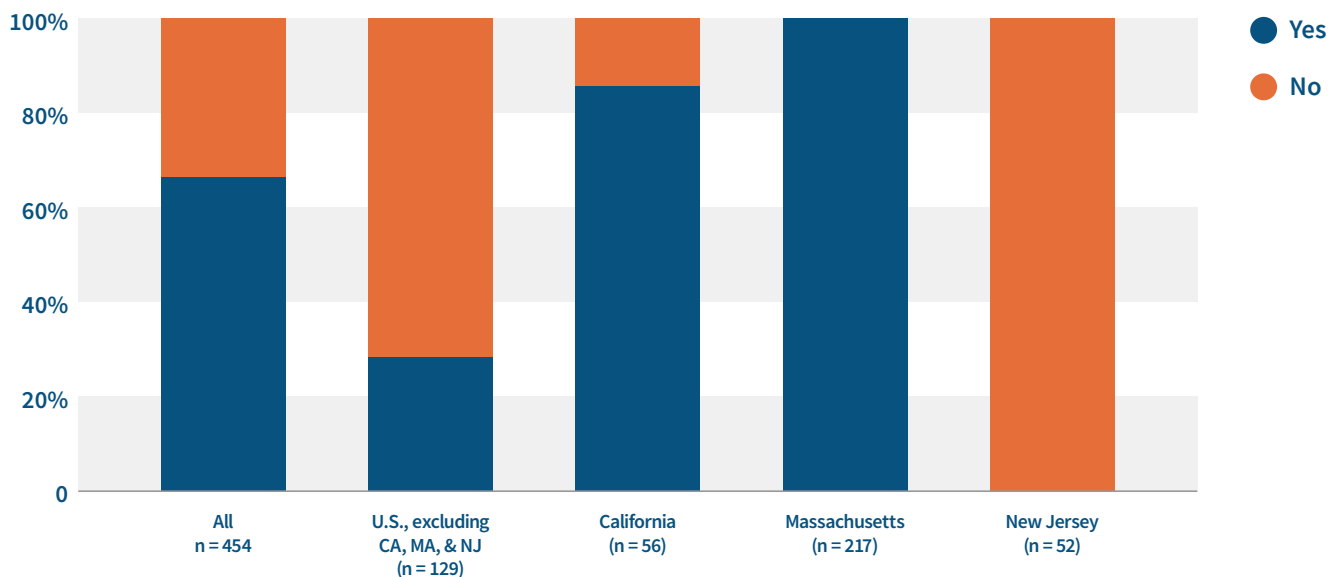


Figure 8. Share of IH programs that review and pre-approve any refinances/home equity lines of credit (n = 454, or 69% of all for-sale programs)



Right of first refusal: A fourth requirement for shared equity programs under Duty to Serve is the right for programs to elect to repurchase homes at resale, usually called the right of first refusal. Overall, 319 out of 480 IH programs with known information or about 66%, retain a preemptive right to purchase inclusionary units at the time of resale. The majority of IH programs in states outside of California, Massachusetts, and New Jersey, or about 61%, do not provide IH programs with the right of first refusal (**Figure 9**). Two-thirds of programs in California retain the right. All IH programs in Massachusetts retain the right barring the existence of the state’s right of first refusal. In contrast, there are no for sale IH programs in New Jersey with the right of first refusal.

A variety of programs meet Duty to Serve criteria.

As a component of its [Underserved Market Plan](#) for affordable housing preservation in the single-family segment, Fannie Mae has sought to increase mortgage purchase activity for loans to buyers in shared equity

programs. As IH programs are a primary mechanism for the creation of new shared equity housing supply, it is important to know to what extent IH programs meet the definition for shared equity homeownership under the DTS rule. Most of the programs with a legal mechanism to preserve affordability, 93%, also require a resale formula in the legal agreement to limit homeowners’ proceeds at resale. On the other hand, fewer programs — about two-thirds — require review and pre-approval of any refinances and home equity lines of credit. Also, about two-thirds require a right of first refusal. Given all four eligibility criteria, the study identified 314 IH programs that would qualify under Duty to Serve as shared equity programs.

Some examples of programs that meet the specific eligibility criteria for shared equity programs under the Duty to Serve rule include the City of West Hollywood, CA, 20% Inclusionary Requirement Program; the New Castle County, DE, Workforce Housing Program; and the City of Cambridge, MA, Inclusionary Housing Program.

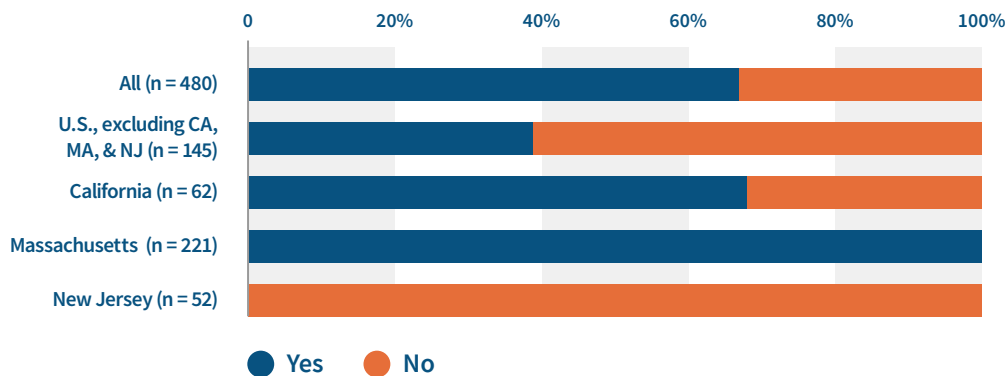


Figure 9. Breakdown of whether “right of first refusal” exists (n = 480, or 70% of all)

Survey results related to multifamily rental programs:

The [Duty to Serve](#) rule also delineates specific eligibility criteria for multifamily rental programs associated with mortgage loans purchased by Fannie Mae and for which it seeks to receive credit under its [Affordable Housing Preservation Plan](#). The GSN study also evaluated the compliance for multifamily rental IH programs with those criteria to provide a better understanding of programs that comply with the rule’s requirements.

Fannie Mae Multifamily loan purchases financing the creation or preservation of multifamily rentals developed under IH programs may qualify for credit under the activity “Other Comparable State or Local affordable Housing Programs.” For Duty to Serve credit, properties in state or local affordable housing programs must require at least 20% of units to be affordable at 80% AMI and have rent and income restrictions. The study identified 180 IH programs that appear to meet all four requirements, indicating that they meet the Duty to Serve criteria for state and local programs.



Spotlight on Seattle, Washington: Multifamily Tax Exemption Program⁵

As a booming technology sector has attracted more people to Seattle, affordability across the city declined rapidly. According to the National Low Income Housing Coalition, there is a deficit of 112,678 affordable and available units for renters at or below 50% AMI in the Seattle-Tacoma-Bellevue MSA.⁶ Of renters between 51% and 80% AMI, 47% are cost-burdened, meaning they spend more than 30% of their income on housing costs and utilities.

To address this, Seattle developed the Multifamily Tax Exemption Program (MFTE). The City of Seattle's MFTE program provides a property tax exemption of up to 12 years to owners of multifamily rental and for-sale residential projects. For rental properties, the property owner is excused from paying property tax on residential improvements in exchange for rent-restricting at least 20% of the units for income-qualified households during the period of exemption.

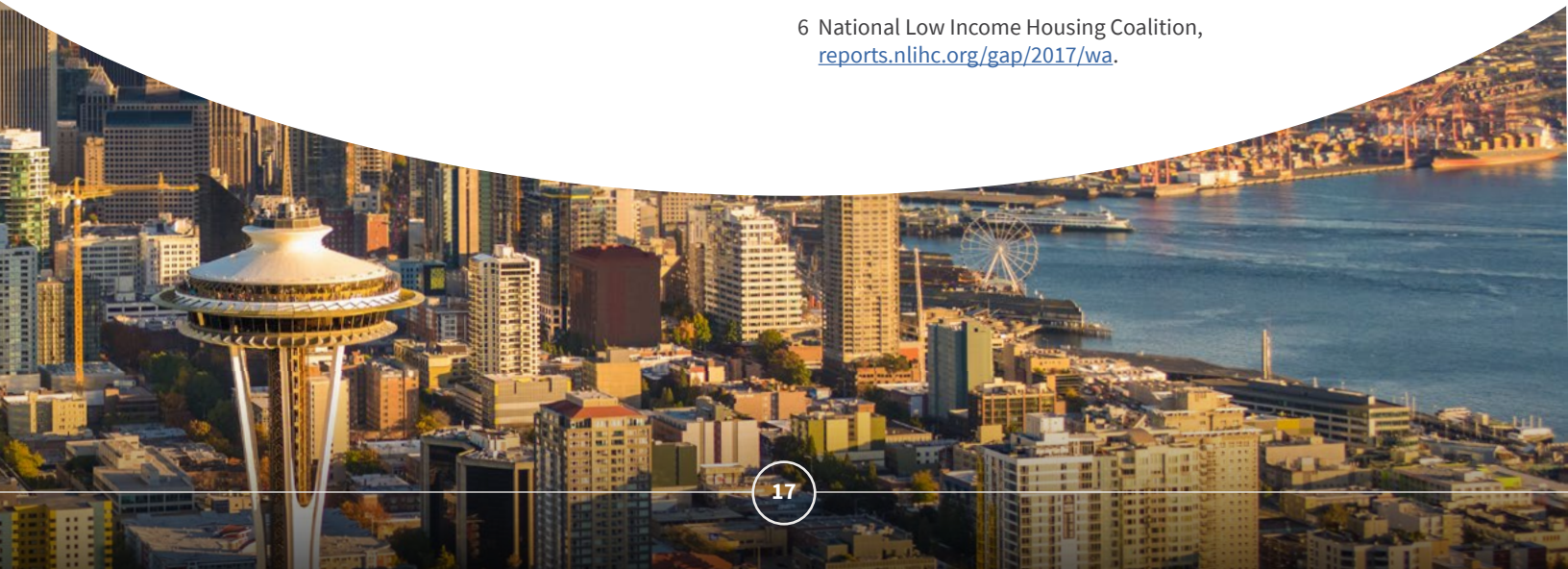
The Roost

A co-living artists' community in Seattle's vibrant Rainier Valley neighborhood, The Roost was completed in 2018 and offers 33 apartments, 24 of which house working artists and nine of which are subsidized by the Seattle Homes Within Reach Incentive program, a sub-program of the MFTE program, to assist households earning below 40% AMI. All 33 of the units are affordable at 80% AMI. In 2019, Fannie Mae refinanced the property with First Mortgage Debt of over \$4,000,000.

The annual income and restricted rent levels for the MFTE are published by the Seattle Housing Authority. By participating in the MFTE program, The Roost is required to implement an Affirmative Marketing Plan, which will help individuals and households otherwise unlikely to apply for housing 1) know about the vacancies; 2) feel welcome to apply; and 3) have the opportunity to rent units.

⁵ Fannie Mae's involvement with The Roost project is beyond the scope of the underlying working paper.

⁶ National Low Income Housing Coalition, reports.nlihc.org/gap/2017/wa.





Conclusion: More Research – and Data – Is Needed

The GSN study significantly advances the understanding of prevalence, practices, and production of inclusionary housing programs in local jurisdictions in the United States. Through an extensive data collection effort and ordinance review, GSN identified a total of 1,019 local IH program in 734 jurisdictions. This included identifying IH programs in New Jersey across all local jurisdictions and documenting more complete information in California and Massachusetts.

However, GSN's IH study also shows that a significant gap remains in understanding the administrative practices of these programs. For instance, just over 40% of programs reported that they did not track units or fees. In addition, little is known about the transaction/lease details for units, such as in which neighborhoods the affordable units are located, or the socio-demographic characteristics of participating households. This indicates the need to find better ways to track the units created in connection with more research of IH processes and outcomes. Research in these areas could help make inclusionary housing an even more effective tool in the affordable housing toolbox to not only create more affordable housing, but to create more mixed-income and inclusive communities.