Articles

Homelessness and the Crisis of Affordable Housing: The Abandonment of a Federal Affordable Housing Policy

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I. Introduction

It has been almost twenty years since the federal government fundamentally abandoned any pretense of a commitment to grow the stock of affordable housing. And it is clear that the private market is not capable of profitably building housing affordable to low-income families. The time is overdue for the federal government to step in and facilitate the construction of inventories of affordable housing to meet the increasing demands. While affordable housing is a challenge even in a strong economy, it would seem almost impossible in today's political climate with the current pressure on the government to reduce its spending. Nevertheless, it cannot be denied that America is faced with a growing crisis of housing affordability with the real likelihood that continued inaction will result in increases in the already shocking number of low-income individuals and families suffering severe housing cost burdens and at serious risk of homelessness.

Twenty years ago, the National Low Income Housing Coalition reported that approximately 750,000 Americans were homeless each night, and between 1.3 million and 2 million Americans were homeless during

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any twelve-month period.[1] In January 2015, the National Alliance to End Homelessness reported that almost 565,000 Americans are homeless,[2] including the unsheltered homeless: those living on the street, in cars or in abandoned buildings, as well as those in emergency or transitional shelters. In addition to the homeless, it is estimated that approximately seven million households are doubled up with family and friends and, as a result, are at significant risk for homelessness.[3] Although this represents a 9 percent decline from 2013, it reflects a 52 percent increase in such at risk households over 2007.[4] Another factor providing additional risk for homelessness involves households experiencing severe cost burdens: those forced to pay in excess of 50 percent of their incomes on housing. Approximately 6.6 million households were severely cost burdened in 2014, an increase of almost 28 percent over 2007.[5]

As more families experiencing housing indigency struggle to avoid homelessness, the American dream of universal home ownership, which became a nightmare for millions of families in the recent recession, is being reconsidered. In the first quarter of 2015, the national homeownership rate stood at 63.7 percent, the lowest since 1993.[6] This reduction in homeownership has increased the number of households seeking rental housing. While the number of single-family detached homes added to the rental market has increased as a result of the recession and the supply of new multifamily housing has expanded, demand exceeds supply: national vacancy rates are at 7.6 percent, the lowest in twenty years.[7]

While the number of households at serious risk of homelessness grows, the Pew Research Center reports that the median wealth of American's upper-income families is now almost seven times greater than the median wealth of middle-income families, the largest gap in the thirty years that the Federal Reserve has collected such data.[8] The median wealth of upper-

1. National Low Income Housing Coalition, 1996 Advocate's Resource Book 9 (1996). The 2016 *Advocate's Guide* is available at http://nlihc.org/library/guides.

2. National Alliance to End Homelessness, *Media Resource: Trends in Homelessness* (Nov. 19, 2015), http://www.endhomelessness.org/library/entry/media-resource-trends-in-homelessness.

3. National Alliance to End Homelessness, *State of Homelessness in America 2016* (Apr. 18, 2016), http://www.endhomelessness.org/library/entry/SOH2016.

4. *Id.*

5. *Id.*

6. U.S. Census Bureau, Housing Vacancies and Homeownership, Quarterly Homeownership Rates for the US and Regions 1965 to Present, Tbl. 14.

7. *The State of the Nation's Housing 2015* (Joint Ctr. for Housing Studies of Harvard Univ. June 26, 2015).

8. Richard Fry & Rakesh Kochhar, *America's Wealth Gap Between Middle-Income and Upper-Income Families Is the Widest on Record* (Pew Research Ctr. Dec. 17, 2014), http://www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/.

income families is almost seventy times that of the median wealth of lower-income families.[9] This growing disparity is likely attributable in substantial part to the decline in homeownership among middle- and lower-income families, to which eroding household incomes and credit tightening by financial institutions, as well as the inequitable allocation of federal housing subsidies, have contributed.

A source of revenue is available to the federal government that could be applied to facilitate the construction of affordable housing. Those revenues could become available with a reform of the mortgage interest deduction, which subsidizes American families in least need of housing assistance. Estimated to cost the U.S. government approximately $131 billion for fiscal year 2012 alone,[10] 77 percent of the benefit of the deduction is consumed by homeowners with incomes in excess of $100,000 and almost half by homeowners with incomes in excess of $250,000.[11] This reflects a significant increase in the concentration of the subsidy from 1996, when homeowners with incomes in excess of $100,000 accounted for slightly less than half of the mortgage interest deduction.[12] The overwhelming absorption of that subsidy by the wealthiest Americans reflects a disturbing consolidation, resulting in a much broader conversation of the need for reform among persons: progressives, moderates, and conservatives alike.[13]

This Article will explore current trends in homelessness and the growing number of severely cost burdened households at risk for homelessness as a result of limited supply of affordable housing units and the increasing demand for rental housing. It will then propose a source of funds that can be raised and reallocated by the federal government to address the inability of private developers to construct and maintain decent affordable housing to meet the growing crisis.

9. *Id*.

10. Margery Turner, *Who Gets the Biggest Housing Subsidies*, METRO TRENDS BLOG (Urb. Inst. July 22, 2011), http://www.urban.org/urban-wire/who-gets-biggest-housing-subsidies.

11. Alex Ulam, *How a Widely Beloved Tax Deduction Really Just Benefits the Well-Off and Exacerbates Inequality*, AM. PROSPECT (Mar. 18, 2016), http://prospect.org/article/how-widely-beloved-tax-deduction-really-just-benefits-well-and-exacerbates-inequality.

12. Peter Dreier & John Atlas, *U.S. Housing Policy at the Crossroads: A Progressive Agenda to Rebuild the Housing Constituency* 2 n.1 (Occidental Coll., Int'l Pub. Affairs, Int'l Pub. Affairs Ctr. Jan. 1996).

13. Ulam reports that mortgage interest deduction reform proposals were included in President Bush's 2005 Tax Reform Panel of Federal Tax Reform, President Obama's bipartisan National Commission on Fiscal Responsibility and Reform, and the 2013 Congressional Budget Office's Options for Reducing the Deficit.

II. Homelessness Trends

In December 2011, the U.S. Department of Housing and Urban Development refined its definition of homelessness, incorporating the following categories: (1) individuals and families lacking "a fixed, regular and adequate nighttime residence," including those residing in emergency shelters, transitional housing, an abandoned building, a car, or on the street; (2) individuals whose loss of primary residence is "imminent"; (3) "unaccompanied youth and families with children defined as homeless by other federal statutes"; and (4) "individuals and families fleeing domestic violence, sexual assault" and other dangerous or life threatening conditions.[14]

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009,[15] established the Continuum of Care Program to organize community-based homeless assistance program planning networks in an effort to improve the effectiveness and efficiency of local initiatives. On December 9, 2011, HUD published regulations for the Homeless Management Information Systems relating to data collection requirements for Continuum of Care entities.[16] Every January, volunteers organized by Continuum of Care entities count persons experiencing homelessness, including those sleeping outside, in other places not fit for human habitation, and in shelters and transitional housing. The results are transmitted to HUD and included in HUD's Annual Homeless Assessment Report to Congress.

The January 2015 count reflected an estimated homeless population of 564,708 people, of whom 31 percent were unsheltered and the remainder in homeless residential programs.[17] The total number of homeless represents an 11 percent decline from 2010. The *2016 State of Homelessness Report* issued by the National Alliance, based upon the January 2015 count, reported some good news:

- a 35 percent decline in the number of homeless veterans from 2009;
- a 32 percent decline since 2007 in the unsheltered homeless; and
- a 31 percent decline in the number of chronically homeless from 2007.[18]

14. Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless," 76 Fed. Reg. 75994, Dec. 5, 2011.

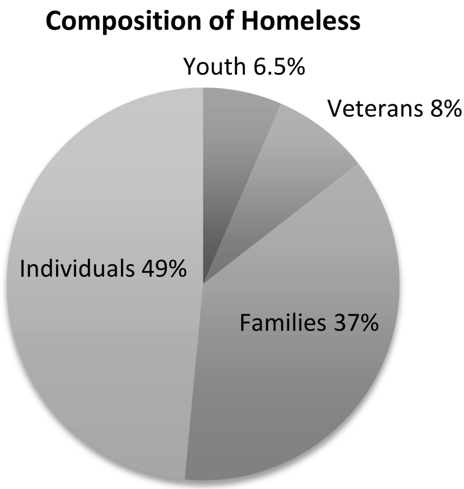
15. Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. Law No. 111-22, 42 U.S.C. § 11313 (signed by President Obama on May 20, 2009).

16. Homeless Management Information Systems Requirements, 76 Fed. Reg. 76917, Dec. 9, 2011.

17. Dep't of Housing & Urb. Dev., Press Release, HUD Reports Homelessness Continues to Decline Nationally (Nov. 19, 2015) (reporting on HUD's 2015 Annual Homeless Assessment Report to Congress, Rep. No. 15-149).

18. *State of Homelessness in America*, *supra* note 3. All of the data included in this paragraph is from this report.

The *2016 State of Homelessness Report* reflects the composition of homeless population as reflected in the following chart:



Approximately 25 percent of the individuals are chronically homeless.[19] The National Alliance report noted that 6.4 percent of homeless families were chronically homeless, one-third of whom are unsheltered. The following states report chronically homeless families of more than 10 percent of their population of homeless families:

- North Dakota 15.4 percent;
- Arkansas 13.6 percent;
- California 13.5 percent;
- Oregon 13 percent; and
- Idaho 10.2 percent.

Unaccompanied youth and children are reported to make up 6.5 percent of the national homeless population, but the National Alliance is skeptical of the accuracy of that count because homeless youth are unlikely to congregate in areas that would be the focus of the Continuum of Care counts, and far fewer shelter beds are available for that population.[20]

19. Chronic homelessness is characterized by a disabling condition, mental and/or physical, and continuous homelessness for a year or more, or having experienced four episodes of homelessness in the last three years.

20. *State of Homelessness in America*, *supra* note 3.

The national rate of homelessness in 2015 was 17.7 per 10,000 people in the general population in comparison to the 2007 rate of 21.5 per 10,000. The District of Columbia and thirty-three states, mostly in the South and the Midwest, reported declines in the number of people experiencing homelessness.[21] However, seventeen states, including California and New York, the states with the largest population of homeless, experienced increases: California reported 115,738 persons experiencing homelessness (29.8 per 10,000 people), a 1.6 percent increase over the prior year, and New York reported 88,250 (44.7 per 10,000 people), a 1.9 percent increase over the prior year.[22]

Perhaps the best news in the 2016 report is the decline in homeless veterans, whose rate of homelessness is 24.8 per 10,000 veterans, down from 32.7 per 10,000 in 2009. HUD attributes this decline to "significant investments made by the U.S. Congress and close collaboration between HUD and the U.S. Department of Veterans Affairs" on a program combining rental subsidies and support services to at risk veterans.[23] However, the news is not so great for the District of Columbia, California, and Hawaii, which reported 145.4, 66.8, and 63 homeless veterans per 10,000, respectively.[24]

Other good news is the narrowing gap between the aggregate number of emergency shelter and transitional housing beds and the total number of people experiencing homelessness. In 2007, that gap was almost 250,000 beds; by 2015, it narrowed to almost 135,000 beds. While more than 98 percent of the emergency shelter beds were occupied, less than 82 percent of transitional housing beds were occupied, figures fairly consistent since 2007 and reflected in the 25.1 percent net growth in emergency shelter beds and 23.4 percent decline in transitional housing beds during that period.[25] This disparity in utilization between emergency shelter and transitional housing reflects a consistent trend from 2007 and argues for increased investments in shelter beds and permanent solutions, rather than transitional housing.[26] Transitional housing, which typically involves coupling housing with a variety of social services (often including mandatory programs), has been criticized as being more expensive than alternative solutions to assist homelessness, including the "housing first" model and permanent supportive housing.[27] Housing first programs prioritize

21. Although the D.C. rate of 110.8 per 10,000 people remains at an unacceptable level. *Id.*

22. *Id.*

23. HUD Rep. No. 15-149, *supra* note 17.

24. *State of Homelessness in America*, *supra* note 3.

25. *Id.*

26. *Id.*

27. Lisa Halverstadt, *San Diego's Big Homeless Housing Problem, in One Chart*, Voice of San Diego, Dec. 17, 2015, http://www.voiceofsandiego.org/topics/government/san-diegos-big-homeless-housing-problem-in-one-chart/.

providing homeless persons and families with permanent housing and thereafter providing access to such social services as needed.[28] Transitional housing has principally focused on the chronic homeless, but given the variety of issues contributing to chronic homelessness and the strings attached to much of the available transitional housing alternatives, it appears to be an imperfect solution.

To get a sense of the methodology of the Continuum of Care homeless count, it may be instructive to review the Los Angeles homeless count for 2016, as published by the Los Angeles Homeless Services Authority (LAHSA), a network of city and county agencies, nonprofits, and civic and community leaders. The count involved the participation of 7,500 volunteers. LAHSA reported that the Los Angeles County homeless population is the largest in the nation.[29] The findings were based upon a street count of unsheltered homeless; a count of homeless in emergency shelters, transitional housing, safe havens, and vouchered motels; a demographic survey of the unsheltered; and a collaborative process with youth stakeholders to get a better understanding and identification of homeless youth. The street count involved 100 percent of the census tracts in the county, an improvement over the 72 percent included in the 2013 count. The count reflected a total homeless population of 46,874, a 6 percent increase over 2015 and a 19 percent increase over 2013. The number of unsheltered homeless identified was almost three times the number of sheltered, and among the unsheltered, those living in tents, makeshift shelters, and vehicles increased by 20 percent over 2015 and 85 percent over the 2013 count. The number of homeless veterans declined by 30 percent, 4,362 in 2015 to 3,071 in 2016.[30]

Although it appears that, at least at the national level, homelessness figures are trending in a positive direction, the unacceptable fact is that more than a half million people in the United States are homeless every night. And that number does not include the potential homelessness iceberg presented by frighteningly large number of families with severe housing cost burdens. The Obama administration's "Opening Doors" program, overseen by the U.S. Interagency Council on Homelessness, and recent initiatives of local communities, such as the City and County of Los Angeles, to address homelessness are positive steps and point to the important role governments must play in addressing the problem. However, without

28. National Alliance to End Homelessness, *Housing First*, http://www.endhomelessness.org/pages/housing_first.

29. Los Angeles Homeless Services Authority, *2016 Results of Los Angeles Continuum of Care* (May 4, 2016), https://documents.lahsa.org/Planning/homelesscount/2016/datasummaries/CoC.pdf (updated July 25, 2016). All of the data included in this paragraph is from this report.

30. *Id*. Unsheltered veterans declined by 44 percent, 1,618 in 2016 from 2889 in 2015.

adequate and affordable housing, there will be no meaningful resolution of homelessness.

III. Crisis of Affordable Housing

It is clear that one of the major factors contributing to homelessness today is the lack of affordable housing and the significant increase in rental demand experienced in the past decade. The Joint Center for Housing Studies of Harvard University reported that, in 2015, 43 million families and individuals reside in rental housing, an increase of 9 million over 2005.[31] As a result, 37 percent of U.S. households rent, up from 31 percent in 2005, and the highest rate of household renters since the mid-1960s.[32] The Joint Center pointed to the loss of approximately 8 million homes to foreclosure, declines in household incomes, and tightening credit as factors contributing to this substantial increase in renters.

In its annual report on the *State of the Nation's Housing 2015*, the Joint Center noted that the nation's homeownership rate fell to 64.5 percent in 2014, the eighth straight year of declining home ownership; for the first quarter of 2015, the homeownership rate continued the decline to 63.7 percent, erasing the gains of homeownership experienced for the prior twenty years.[33] In California, boasting the highest home prices in the United States, homeownership has fallen to 53.8 percent, down from slightly more than 60 percent in 2005.[34]

Homeownership declines have resulted in the addition of 3.2 million single-family detached homes to the rental market for the period from 2004 to 2013, and developers have added 1.2 million apartment units since 2010.[35] Despite these additions to rental markets, the national vacancy rate fell to 7.6 percent, the lowest in twenty years, and national rents rose an average 3.2 percent.[36]

Rising demand outpacing the growth in supply has increased the burden on renter households. The Joint Center reported almost half of all renters experience cost burdens, paying more than 30 percent of their incomes for their housing, and more than a quarter of renters are severely cost burdened, paying more than 50 percent of their incomes for housing.[37] These factors compare unfavorably with the applicable figures for

31. *America's Rental Housing—Expanding Options for Diverse and Growing Demand*, (Joint Ctr. for Housing Studies of Harvard Univ. Dec. 9, 2015).
32. *Id.*
33. *The State of the Nation's Housing 2015*, *supra* note 7.
34. NEXT 10, *The Current State of the California Housing Market—A Comparative Analysis* (Mar. 2016), http://next10.org/sites/next10.huang.radicaldesigns.org/files/current-state-ca-housing-market.pdf.
35. *The State of the Nation's Housing 2015*, *supra* note 7.
36. *Id.*
37. *Id.*

2001 when 41 percent of renters faced cost burdens.[38] The impact of housing cost burdens on low-income families are obvious and will be discussed in more detail below; however, moderate-income families are also suffering from the increasing housing costs. Approximately half of renter families with incomes between $30,000 and $45,000 are cost burdened, as are approximately 21 percent of renter families with incomes between $45,000 and $75,000.[39] In the ten most expensive cities in the country, including Boston, Los Angeles, New York, and San Francisco, 75 percent of renters with incomes between $30,000 and $45,000 and just under half of renters with incomes between $45,000 and $75,000 experience cost burdens.[40]

The number of severely cost burdened renters, 11.2 million as of 2013, represents an increase of four million households from 2000.[41] With the growing number of renters and the limited expansion of the stock of affordable housing, prospects for improvement are not promising, particularly in light of projections of growth in renter households estimated at between 4.2 and 6 million in the next several years.[42] For each 0.25 percentage point in rent growth above income gains, it is estimated that 400,000 more households will suffer severe rent burdens; if rent growth exceeds income growth by one percent annually, the number of severely burdened households will increase by 3 million by 2025.[43] To illustrate the crisis, note that median rents in Los Angeles County increased by 25 percent between 2000 and 2012 while during the same period median income fell by 9 percent.[44]

In 2013, 18.5 million renter household had very low incomes,[45] up to 50 percent of area medians, and there were approximately 18 million units that these households could afford without being cost burdened. Unfortunately, many of these "affordable" units were occupied by households with higher incomes or were severely physically deficient. Taking these factors into account, there were just fifty-eight affordable units available for every 100 very low-income households.[46] In 2014, the 11.2 million extremely low-income renter households, those whose incomes do not

38. *America's Rental Housing*, *supra* note 31.

39. *Id*.

40. *The State of the Nation's Housing 2015*, *supra* note 7.

41. Allison Charette, Chris Herbert, Andrew Jakabovics, Ellen Tracy Marya & Daniel T. McCue, *Projecting Trends in Severely Cost-Burdened Renters: 2015–2025* (Enter. Cmty. Partners, Inc. & Joint Ctr. for Housing Studies of Harvard Univ., Sept. 21, 2015), http://www.enterprisecommunity.com/resources/ResourceDetails?ID=0100886.

42. *Id*.

43. *Id*.

44. *How Los Angeles County's Housing Market is Failing to Meet the Needs of Low-Income Families* (Cal. Housing P'ship Corp. May 2014).

45. An increase of 18 percent from 2007. America's Rental Housing, *supra* note 31.

46. *Id*.

exceed 30 percent of area medians, had 7.3 million affordable units available, a theoretical shortfall of 3.9 million.[47] Since many of these units affordable to extremely low-income households were also occupied by higher income households or otherwise physically deficient, there were only thirty-four affordable units available for every 100 extremely low-income families.[48]

Severely cost burdened low-income families are forced with difficult choices in evaluating other necessary expenditures. It is estimated that these households spend 55 percent less on health care and 38 percent less on food than similar households living in affordable housing.[49] The potential adverse consequences to the health and well-being of the individuals within such households as a result of such reduced expenditures on food and health care are destabilizing and are likely to lead to homelessness. The problems are worse for those suffering from long-term disabilities, whose sole source of income is Supplemental Security Income (SSI). In 2014, the average monthly income of an SSI recipient was $750, making an apartment affordable at a monthly rent of $225. The average monthly rent for a one-bedroom apartment in the United States in 2014 was $780, or 104 percent of an SSI recipient's income.[50]

Private developers are unable to profitably construct affordable housing for low-income families so it is unreasonable to expect the market to solve the affordable housing crisis without governmental assistance. The Low Income Housing Tax Credit (LIHTC) Program has been the principal factor in supporting construction of affordable housing since 1986. However, the tax credits available under the LIHTC program alone are not a sufficient subsidy, and such projects typically include state and local grants and subsidies as well as housing vouchers. While low-income families qualify for federal housing subsidies, and HUD has estimated that approximately 18.5 million very low-income households qualified for such subsidies in 2013, only 26 percent of those households received any housing subsidy that year.[51] That means that approximately 13.7 million very low-income qualified households are unable to secure a housing subsidy because insufficient funds have been appropriated by the federal government. Although appropriations for housing choice vouchers and project-based rental assistance grew in real dollars between 2005 and 2015, most of that increase was applied to rising rents rather than serving more households.[52] There is a clear need to explore additional revenue

47. Charette et al., *Projecting Trends in Severely Cost-Burdened Renters*, *supra* note 41.

48. *America's Rental Housing*, *supra* note 31.

49. *Id.*

50. National Low Income Housing Coalition, *The Gap: The Affordable Housing Gap Analysis 2016*, http://nlihc.org/research/gap-report.

51. *The State of the Nation's Housing 2015*, *supra* note 7.

52. *Id.*

sources to fund subsidies for the almost 14 million very low-income families who qualify but are unable to secure needed assistance.

IV. The Growing Wealth Gap

In December 2014, the Pew Research Center issued a report finding that the median wealth of America's upper-income families of $639,900 exceeded the median wealth of middle-income families of $96,500 by 6.6 times, almost doubling the 1983 wealth gap.[53] Upper-income median wealth exceeded the median wealth of lower-income families of $9,300 by seventy times. For purposes of the study, upper-income families are defined as those whose incomes exceed two times the adjusted area median income ($132,000 for a family of four), middle-income families as those whose incomes are between two-thirds and two times the adjusted area median income ($44,000 for a family of four), and lower-income families are those with incomes of less than two-thirds of the adjusted area income.[54] Approximately one in five families in the United States meets the standard for upper income, while 46 percent comprise middle-income families. It has been reported that the share of national wealth held by the top 0.1 percent of upper-income households increased from 7 percent in 1979 to 22 percent in 2012.[55]

Notwithstanding the wealth gap, the median wealth of each of the three categories of income has fallen from the pre-recession levels of 2007. From 2007 to 2010, upper-income median wealth fell from $718,000 to $595,300, middle-income wealth declined from $158,400 to $96,500, and lower-income wealth declined from $18,000 to $10,500. Unfortunately, the recovery from the recession has benefitted upper-income families only. Middle-income median wealth has remained unchanged from 2010, and the median wealth of lower-income families has continued to decline to $9,300.[56]

The Pew Study calculated wealth as the positive difference between the value of a family's assets, such as its home, automobiles, and investments, and debts. It is likely that the recession and the shift from homeownership to renting described above are significant factors contributing to this growing wealth gap. It is also probable that the growing number of severely cost burdened households prevents meaningful improvements in their particular circumstances. The potential for social instability presented by the wealth gap and the particular role housing may play is just another reason the country needs to address the crisis of affordable

53. Fry & Kochhar, *supra* note 8.

54. *Id.*

55. Patricia Cohen, *Fueled by Recession, U.S. Wealth Gap is Widest in Decades, Study Finds*, N.Y. Times, Dec. 17, 2014.

56. *Id.*

housing and reconsider the inequity presented by the current housing subsidy for the wealthy.

V. Using the Tax Code to Address Housing Affordability

The Internal Revenue Code allows taxpayers to deduct mortgage interest paid on up to $1 million in debt on first and second homes and up to $100,000 in additional debt on home equity credit lines or other loans secured by their homes.[57] The Office of Management and Budget estimated $108 billion in lost revenues as a result of the mortgage deduction in 2010,[58] although reports of the cost of such deductions vary.[59] This represents an increase from the 1986 OMB estimate of $27 billion[60] and its 1996 estimate of $57 billion.[61] The mortgage interest deduction provides a direct housing subsidy to certain taxpayers of at least $108 billion per year, and the subsidy continues to grow.

Not only does the mortgage interest deduction cost the Treasury more than $100 billion a year, the benefits also are increasingly allocated to taxpayers who least need a government housing subsidy. In 2011, approximately 90 percent of the 10.5 million homeowners facing severe cost burdens, and approximately 40 percent of all homeowners, had incomes below $50,000, but the Joint Committee on Taxation estimated that those homeowners received only 3 percent of the benefits of the mortgage interest deduction.[62] At the other end of the spectrum, approximately 77 percent of the benefits, an estimated subsidy of $83.16 billion, went to households with incomes in excess of $100,000, with households with incomes in excess of $200,000 enjoying 35 percent of the benefits.[63] In testimony before the House Committee on Ways and Means on April 25, 2013, Eric Toder, an Institute fellow and co-director of the Urban–Brookings Tax Policy Center, estimated that 47 percent of tax filing units will have some mortgage interest expense in 2015, but only 24 percent will benefit from the mortgage interest deduction.[64]

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57. I.R.C. § 163(h).

58. U.S. Office of Management & Budget, FY 2010 Analytical Perspectives: Budget of the U.S. Government 300 [hereinafter OMB Report].

59. *See* text at *supra* note 10.

60. Joint Committee on Taxation, Estimates of Federal Tax Expenditures for Fiscal Years 1986–1990 at 13 (JCS 8-85 1985).

61. OMB Report, *supra* note 58, at 43.

62. Will Fischer & Chye-Ching Huang, Mortgage Interest Deduction Is Ripe for Reform (Ctr. on Budget & Pol'y Priorities June 25, 2013), http://www.cbpp.org/research/mortgage-interest-deduction-is-ripe-for-reform.

63. *Id.*

64. *Id.* at 3 n.6.

The deduction has been widely justified as critical to encouraging broad levels of home ownership.[65] The disproportionate allocation of the benefits described above questions the legitimacy of that assertion. Those arguing against reform claim that a loss of the deduction will result in a collapse of home prices.[66] However, other commentators disagree—with one characterizing such claims as "overstated."[67] Another asserts that the elimination of the deduction "would lower demand for housing, especially for large houses, which would result in a short-run oversupply of these homes."[68] "The excess supply would result in declining values for these properties until natural growth in demand restored the balance between supply and demand."[69] In this regard, it appears that reform would not likely materially impact most homeowners and would affect other families only until the market for large homes is rebalanced. Even the Congressional Budget Office has sounded in: "Despite the favorable tax treatment that mortgage interest receives in the United States, the rate of homeownership here is similar to that in Australia, Canada and the United Kingdom, and none of those countries currently offers a tax deduction for mortgage interest."[70]

Although challenging the Treasury Department to propose a tax reform package that achieves goals of "fairness, simplicity and incentives for growth,"[71] President Reagan warned against tampering with the deduction to "preserve that part of the American dream which the mortgage interest deduction symbolizes."[72] Presidents Clinton and George W. Bush also encouraged initiatives to facilitate homeownership, including the preservation of the mortgage interest deduction.[73] Even Nancy Pelosi, as House Minority leader, characterized the mortgage interest deduction in 2005 as "untouchable."[74]

65. Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 LAW & CONTEMP. PROBS. 233, 269 (2010).

66. *Id*. at 281 n.417 (citing, among others, Letter from Charles McMillan, President, National Association of Realtors, to President Barack Obama (Feb. 26, 2009)).

67. *Id*. at 281 n.418.

68. *Id*. at 281 n.419.

69. Richard Voith, Does the Federal Tax Treatment of Housing Affect the Pattern of Metropolitan Development?, BUS. REV. FED. RESERVE BANK OF PHILADELPHIA (Mar.–Apr. 1999).

70. CONGRESSIONAL BUDGET OFFICE, REDUCING THE DEFICIT: SPENDING AND REVENUE OPTIONS 147 (Mar. 2011).

71. President Ronald Reagan, State of the Union Address (Jan. 25, 1984).

72. Lou Cannon, *Reagan to Keep Home Mortgage Tax Deduction*, WASH. POST, May 11, 1984.

73. Ventry, *supra* note 65, at 276.

74. Heidi Glenn, *Tax Reform Panel's Ideas Cause Stir in Washington*, 109 TAX NOTES 415, 418 (2005).

Notwithstanding the historic lack of political will to address the inequities and inefficiencies of the mortgage interest deduction, the recent global recession—brought about in part as a result of the Clinton and Bush administrations' challenges to the financial markets to facilitate homeownership for all—has refocused perspectives on the need for reform. U.C. Davis Law professor Dennis J. Ventry, Jr., in his thoughtful and comprehensive critique of the mortgage interest deduction, writes: "Housing tax policies fueled the boom and exacerbated the bust. The [mortgage interest deduction] played a particularly insidious role in the crisis by explicitly promoting overinvestment in housing."[75] Despite claims that homeownership has broad social benefits, including encouraging homeowners to take active roles in their communities and that the mortgage interest deduction promotes homeownership,[76] Professor Ventry concludes that the deduction "encourages suburbanization and decentralization of metropolitan areas, distributes benefits unevenly across different regions of the country, discriminates against minorities and low-income households, raises unemployment, destabilizes the national economy and may even reduce the supply of housing."[77]

On March 26, 2015, Representative Keith Ellison (D-MN) introduced H.R. 1662, the Common Sense Housing Investment Act of 2015.[78] The bill establishes a finding that the two "principal Federal housing goals" are to expand home ownership and make rental housing affordable for low-income families and individuals and finds that "more progress has been achieved on the first goal than on the second goal." The bill proposes a reduction in the cap on the amount of a mortgage for which interest can be deducted from $1 million to $500,000 and converts the deduction to a 15 percent non-refundable mortgage interest tax credit.[79] The changes would be phased in over five years in equal annual increments. The ceiling of the mortgage amount would reduce by $100,000 per year, the amount of the mortgage interest that may be deducted would reduce by 20 percent per year, and the credit would increase 3 percent per year—all over the five-year period. The bill proposes to direct the estimated $196 billion in revenue generated over ten years to the National Housing Trust Fund ($109 billion), the Low-Income Housing Tax Credit ($14 billion), Section 8 ($54 billion), and the Public Housing Capital Fund ($18 billion).

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75. Ventry, *supra* note 65, at 278.

76. Fischer & Huang, *supra* note 62.

77. Ventry, *supra* note 65 at 279.

78. Common Sense Housing Investment Act of 2015, H.R. 1662, 114th Cong., 1st Sess. (2015).

79. A nonrefundable tax credit that is not fully applied expires and is not refunded to the taxpayer. A refundable tax credit can reduce taxes to below zero, and if the credit is more than taxes due, the excess can be returned as a tax refund. U.S. Tax Center, *Refundable vs. Non-Refundable Tax Credits*, https://www.irs.com/articles/refundable-vs-non-refundable-tax-credits.

This bill is based in substantial part on options presented in a study, *Updated Options to Reform the Deduction for Home Mortgage Interest* (2014 TPC Study), issued by the Tax Policy Center on May 7, 2014.[80] The 2014 TPC Study sets forth four options for reforming the mortgage interest deduction. H.R. 1662 essentially adopts the first option. The second option modifies the first only with respect to the amount of the mortgage interest credit, increased to 20 percent from the 15 percent credit contemplated in the first option.[81]

The third option involves a repeal of the deduction of mortgage interest and property taxes, replacing them with a refundable credit based upon 65 percent of property taxes paid, up to a maximum credit for single taxpayers of $1,400 and $2,100 for married taxpayers filing jointly; those maximum credits would be indexed for inflation. Immediate implementation would result in additional revenue of approximately $300 billion over ten years. If phased in over five years, taxpayers would be entitled to a credit starting at 9.9 percent and increasing by that same amount each year until reaching 49.9 percent, with deductions for mortgage interest and property taxes reducing 20 percent each year. The phase in of this option is revenue neutral with the immediate enactment.

The fourth option would replace the mortgage interest deduction with a refundable flat amount of credit for homeowners. If immediately implemented, the credit amount would be $536 for a taxpayer and $804 for married taxpayers filing jointly, resulting in approximately $300 billion in additional revenue over ten years. The credit would be indexed for inflation reaching $654 for taxpayers and $981 for married filing jointly at the tenth year. Phasing in the option over five years would begin the credit at $111 for individuals and $166.50 for married filing jointly, increasing by the same amount for five years reaching $555 and $832.50, respectively, at the fifth year. The phase in would not affect the additional revenue estimate of $300 million.

Implementation of the first option would result in a decrease in the tax burden for 17.7 percent of tax units and an increase for 13.8 percent. Households with annual incomes between $40,000 and $75,000 would

80. This report updates a report authored by Amanda Eng, Harvey Galper, Georgia Ivsin, and Eric Toder entitled *Options to Reform the Deduction for Home Mortgage Interest* (Tax Pol'y Ctr. Mar.18, 2013).

81. The 2014 TPC study reports that if the first option was implemented without a phase-in, the 15 percent credit is estimated to raise approximately $257 billion over ten years; this would decrease to $232 billion if phased in over five years. This compares with approximately $26 billion raised with an immediate effectiveness of the 20 percent credit and approximately $38 billion if phased in. The increased revenue estimated for a phase in of the 20 percent credit results from the fact that if immediately implemented, there would be a net loss of revenue for the first five years. Clearly, the 15 percent credit has a much greater potential impact in reallocating the federal government's housing subsidy.

fare the best, with an average 0.2 percent increase in after-tax income. Those with incomes between $200,000 and $1 million would experience an average 0.8 percent decrease in after-tax income, the largest decrease. The results of the second option, increasing the credit from 15 percent to 20 percent, does not significantly alter the impact upon taxpayers.[82] The proposed property tax credit and the flat credit (options three and four, respectively) provide greater benefits to low-income families, in part because the credits are refundable, and in part based upon the assumption that many lower-income homeowners, particularly the elderly, do not have mortgages. The property tax credit would result in a tax cut of an average of $606 for 36 percent of tax units, and 14.8 percent of tax units would experience an average additional tax burden of $2,589. Households with incomes between $500,000 and $1 million would experience an average decrease of 1.2 percent of after-tax income. The flat credit has a very similar impact.[83]

Following introduction, H.R. 1662 was referred to the Committee on Ways and Means and to the Committee on Financial Services; no action has been taken on the bill. Nevertheless, momentum for reform, and particularly conversion of the deduction into some form of credit, appears to be growing. President Bush's tax reform plan announced in 2005 contemplated a 15 percent nonrefundable credit for owners on mortgages in amounts up to 125 percent of the median price of homes within a market area.[84] In 2010, the Bipartisan Policy Center's Debt Reduction Task Force, chaired by former Congressional Budget Office and Office of Management and Budget Director Alice Rivlin and former Senator Pete Domenici, proposed a 15 percent refundable tax credit to all taxpayers with the mortgage limit lowered to $500,000.[85] That same year, the National Commission on Fiscal Responsibility and Reform, chaired by Erskine Bowles and Alan Simpson, recommended a similar reduction in the mortgage limit and a 12 percent nonrefundable credit.[86] There does appear to be a

82. Households with incomes between $40,000 and $100,000 will receive a 0.3 percent increase in after-tax income, and those with incomes between $500,000 and $1 million will experience an average 0.7 percent decrease in after-tax income.

83. Under the flat credit proposal, 36.8 percent of tax units will benefit by an average tax savings of $604, and 17.1 percent of tax units will experience an average increase of $2,322. Taxpayers with incomes between $500,000 and $1 million will experience an average 1.2 percent decrease in after-tax income.

84. Fischer & Huang, *supra* note 62, at 7, tbl. 1.

85. Bruce Katz, *Cut to Invest, Reform the Mortgage Interest Deduction to Invest in Innovation and Advanced Industries* (Brookings Inst. Nov. 2012), http://www.brookings.edu/~/media/research/files/papers/2012/12/06-federalism/06-mortgage-interest-deduction.pdf. A variation in the Rivlin–Domenici plan would permit the taxpayer to have the credit claimed by the lender in exchange for a lower interest rate.

86. *Id.*

developing consensus that transforming the deduction to a credit is more equitable and will provide more assistance for homeowners in greater need of such assistance and generate substantial sums for the Treasury over time.

Clearly, reform of a tax deduction that benefits only wealthy homeowners—and a commitment to apply revenues realized as a result of such a change to address the twin crises of homelessness and affordable housing—injects fairness and rationality into the federal government's housing subsidy program. There must be a broader public dialogue on the issue because it is inconceivable that the inefficiencies and inequities of the present system should be allowed to continue.

In addition to replacing the mortgage interest deduction with a limited credit based upon a reduced principal amount of mortgage, a renter's credit could be created to reduce housing cost burdens on low-income families. A report issued by the Center on Budget and Policy Priorities in August 2013 advocates congressional authorization and appropriation of funds to be delivered to states to apply a capped amount of renters' credits, covering the gap between moderate housing costs and 30 percent of the annual income of eligible households.[87] Landlords or lenders holding mortgages on rental properties would be allocated the tax credits in exchange for offering lowered rents. The report suggests that eligibility for such credits would be limited to families with incomes below 60 percent of area median incomes or 150 percent of the federal poverty level, with a substantial portion of the credit allocated to extremely low-income households (below 30 percent of area median incomes) or with incomes at the poverty line. Credits could be allocated as a tenant-based subsidy, a project-based subsidy, or a lender-based subsidy.[88] While such a program would likely involve administrative costs that would be allocated by the federal government to the participating states and in turn allocated to involved owners and lenders, as applicable, the amount of the credit could be structured to compensate for the additional administrative burden.

VI. Conclusion

Although the national homeless population appears to have declined in the past twenty years, it is unacceptable that today approximately 565,000 people in the United States remain homeless and more than half of renter households are paying more than 30 percent of their incomes on rent. It is unconscionable that the federal government has abandoned any meaningful effort to encourage the construction or preservation of

87. Barbara Sard & Will Fischer, *Renters' Tax Credit Would Promote Equity and Advance Balanced Housing Policy* (Ctr. on Budget & Pol'y Priorities rev. Aug. 21, 2013), http://www.cbpp.org/research/housing/renters-tax-credit-would-promote-equity-and-advance-balanced-housing-policy.

88. *Id*. at 11.

affordable housing, resulting in more than 11 million households being forced to pay more than 50 percent of their incomes for housing, while continuing to provide housing subsidies aggregating more than $83 billion to families earning more than $100,000. In America, a safe, clean, and stable home should be a human right. Despite improvements in the personal financial circumstances of the wealthiest Americans, the housing problems of the poor have deteriorated, and those problems are spreading to the middle class. Recognizing that, we must revise America's upside down housing subsidy because growing numbers of families are forced to experience housing burdens that adversely impact their health, education, and employment circumstances, and their ability to positively contribute to their communities. The solutions are clear. We must find the will to act.