THE YALE LAW JOURNAL FORUM

NOVEMBER 7, 2022

Can Affordable Housing Be a Safety Net? Lessons from a Pandemic

Noah M. Kazis

ABSTRACT. The COVID-19 pandemic posed an unprecedented challenge to housing stability, with mass unemployment and societal disruption leaving millions of tenants struggling to make rent. Aggressive public intervention avoided the worst outcomes, but the effort to protect renters exposed the mismatch of existing affordable-housing programs to moments of short-term crisis, whether personal or nationwide. These programs are not designed to serve as safety nets or to act nimbly during market upheavals; they are primarily targeted to serve people facing chronically low incomes over the long term. Nor can the new emergency programs created midpandemic straightforwardly be made permanent. But while affordable-housing programs are not currently a safety net—and indeed, cannot easily serve this function—the pandemic also offers valuable insights into what building that housing safety net would take.

INTRODUCTION

The COVID-19 pandemic served as an unprecedented stress test for the nation's welfare policies. More than twenty-two million Americans were abruptly thrown out of work, with the unemployment rate peaking at the highest level since data collection began in 1948.[1] Families were threatened by disease and death, facing challenges physical, spiritual, and financial. The everyday systems on which we all rely, from food access to childcare and education, were significantly disrupted. The welfare state's response—in many ways avoiding the worst possible outcomes—was both remarkable and instructive. These most unusual, disastrous two years offer important lessons about how our laws and policies function during normal times. My goal in this Essay is to explore some of those lessons in one domain: affordable rental housing.

1. CONG. RSCH. SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC 1-2 (2021), https://sgp.fas.org/crs/misc/R46554.pdf [https://perma.cc/PU7N-S2LV].

Protecting renters quickly became—for good reason—one of government's top priorities in responding to the pandemic's economic fallout. By one prominent estimate, after the profound income shocks caused by COVID, ten million renter households were behind on rent and at risk of eviction, owing a collective fifty-seven billion dollars as of December 2020.[2] Black, Latino, and Asian families were disproportionately in arrears.[3] Evictions can be socially disastrous in the best of times, leading not only to ongoing housing instability and perhaps worse housing conditions,[4] but also to cascades of job loss,[5] worse mental and physical health,[6] and worse educational outcomes for children[7]—and concerns about crowding and contagion prompted special concern for housing stability during the pandemic.[8] States, cities, and the federal government each acted aggressively to keep people housed, improvising with both regulatory strategies and public spending. The work to understand these efforts has just begun, with

---

2. Jim Parrott & Mark Zandi, *Averting an Eviction Crisis*, MOODY'S ANALYTICS 2 (Jan. 2021), https://www.moodysanalytics.com/-/media/article/2021/Averting-An-Eviction-Crisis.pdf [https://perma.cc/7FZS-NSDZ].

3. *America's Rental Housing*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV. 30 (2022), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf [https://perma.cc/56G9-NDA6].

4. Robert Collinson, John Eric Humphries, Nicholas S. Mader, Davin K. Reed, Daniel I. Tannenbaum & Winnie van Dijk, *Eviction and Poverty in American Cities* 32-34 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30382, Aug. 2022), https://www.nber.org/system/files/working_papers/w30382/w30382.pdf [https://perma.cc/S5HL-D3ZC] (finding causal impact of eviction on residential mobility and homelessness but not neighborhood quality); Stefanie DeLuca, Holly Wood & Peter Rosenblatt, *Why Poor Families Move (And Where They Go): Reactive Mobility and Residential Decisions*, 18 CITY & CMTY. 556, 579 (2019); Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. SERV. REV. 227, 254-58 (2015).

5. Matthew Desmond & Carl Gershonson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46, 46 (2016). *But see* Collinson et al., *supra* note 4, at 34-35 (finding a statistically significant negative causal impact of eviction on earnings and Black employment, but not on overall employment).

6. *E.g.*, Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship and Health*, 94 SOC. FORCES 295, 316 (2015); Collinson et al., *supra* note 4, at 36-37.

7. *See* Martha Galvez & Jessica Luna, *Homelessness and Housing Instability: The Impact on Education Outcomes*, URB. INST. 1 (Dec. 2014), https://www.tacomahousing.org/wp-content/uploads/2021/06/Urban-Institute-THA-Homelessness-and-Education-2014-12-22.pdf [https://perma.cc/E5LZ-NHSE].

8. *See* Emily A. Benfer, David Vlahov, Marissa Y. Long, Evan Walker-Wells, J.L. Pottenger Jr., Gregg Gonsalves & Danya E. Keene, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1, 2-4 (2021).

scholarship taking stock of the federal programs created,[9] new tenant protections,[10] changes to housing court,[11] the judicial response to eviction moratoria,[12] and critiques of gaps in early relief packages,[13] as well as broader examinations of affordable-housing policies[14] and the overall welfare state.[15]

This Essay asks a different question: whether current affordable-rental-housing programs, and specifically the federal government's largest rental programs, can effectively protect renters from short-term fiscal shocks. Some scholars and policymakers have already observed the mismatch of our current rental-assistance tools to periodic fiscal instability.[16] I argue that the pandemic experience underscored the reality that these programs are focused overwhelmingly on people who are chronically low income. Existing programs are a poor fit for protecting renters from shorter-term fiscal distress—whether a job loss stemming

---

9. *See infra* notes 60-64 and accompanying text; *see also* HOUSING CRISIS RESEARCH COLLABORATIVE, https://housingcrisisresearch.org [https://perma.cc/HBS7-R3F5] (collecting research on pandemic-era housing policy).

10. *See, e.g.*, Emily A. Benfer, Robert Koehler, Alyx Mark, Valerie Nazzaro, Anne Kat Alexander, Peter Hepburn, Danya E. Keene & Matthew Desmond, *COVID-19 Housing Policy: State and Federal Eviction Moratoria and Supportive Measures in the United States During the Pandemic*, 32 HOUS. POL'Y DEBATE (forthcoming 2022), https://www.tandfonline.com/doi/epub/10.1080/10511482.2022.2076713 [https://perma.cc/QXS6-WPP3]; Nino C. Monea, *Tenant Protections in the Covid-19 Pandemic*, 22 J.L. SOC'Y 38, 43 (2022).

11. *See, e.g.*, Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond*, 115 NW. U. L. REV. 1875, 1896 (2021); Daniel W. Bernal, *Pleadings in a Pandemic: The Role, Regulation, and Redesign of Eviction Court Documents*, 73 OKLA. L. REV. 573, 643 (2021).

12. *See, e.g.*, Nino C. Monea, *Eviction Moratorium Litigation: What Courts Said, and What Courts Missed*, 51 U. BALT. L. REV. 185 (2022); Nathan Richardson, *Antideference: COVID, Climate, and the Rise of the Major Questions Canon*, 108 VA. L. REV. ONLINE 174, 185-87 (2022).

13. *See, e.g.*, Sarah Schindler & Kellen Zale, *How the Law Fails Tenants (and Not Just During a Pandemic)*, 68 UCLA L. REV. DISCOURSE 146, 148 (2020); Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Folly of Credit as Pandemic Relief*, 68 UCLA L. REV. DISCOURSE 126, 128 (2020).

14. *See, e.g.*, Michelle D. Layser, Edward W. De Barbieri, Andrew J. Greenlee, Tracy A. Kaye & Blaine G. Saito, *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445 (2021).

15. *See, e.g.*, Andrew Hammond, Ariel Jurow Kleiman & Gabriel Scheffler, *How the COVID-19 Pandemic Has and Should Reshape the American Safety Net*, 105 MINN. L. REV. HEADNOTES 154 (2020).

16. *See, e.g.*, Robert Collinson, Ingrid Gould Ellen & Benjamin J. Keys, *Bolstering the Housing Safety Net: The Promise of Automatic Stabilizers*, HAMILTON PROJECT 1-4, 6-10 (Apr. 2021), https://www.brookings.edu/wp-content/uploads/2021/04/Bolstering-the-Housing-Safety-Net-The-Promise-of-Automatic-Stabilizers.pdf [https://perma.cc/2AKQ-VAUA]; Econ. Pol'y Program: Hous. Comm'n, *Housing America's Future: New Directions for National Policy*, BIPARTISAN POL'Y CTR. 94-95 (2013), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/BPC_Housing-Report_web_0.pdf [https://perma.cc/6M8Q-HJQG].

from a historic pandemic, a more ordinary loss of income like after a divorce or nonpandemic layoff, or an unexpected expense like a medical bill or broken vehicle—but further, they are not easily adapted to serve that purpose.

Put differently, affordable-housing programs do not perform the full set of functions we ask of the welfare state. Theorists have enumerated many overlapping goals for welfare-state programs, including relieving the worst distresses of absolute poverty (as through means-tested and in-kind assistance), promoting economic equality (as through redistributive taxation), promoting social solidarity (as through universal services like public education), and eliminating individual dependence on markets and traditional social structures like church and family (as through certain universal benefits).[17] American affordable-housing policies serve each of these functions to varying degrees, attempting to "limit the domain of inequality"[18] by providing safe, quality housing to people regardless of their income, and even aiming to foster residential integration.

But the welfare state also serves another (overlapping) function: insuring against risk and smoothing incomes in ways the private market cannot.[19] This social-insurance role—which quantitatively dominates federal spending[20]—redistributes across individuals' lifecycles, providing support at moments that are predictably low income (like old age and childhood) and at moments of unexpected need (like after unemployment, poor health, or divorce).[21] The COVID pandemic—an unparalleled moment of unexpected need—makes newly clear that current rental-assistance policies are not designed as social insurance.[22]

---

17. ROBERT E. GOODIN, REASONS FOR WELFARE: THE POLITICAL THEORY OF THE WELFARE STATE 4-5 (1988); GØSTA ESPING-ANDERSON, THE THREE WORLDS OF WELFARE CAPITALISM 21-23 (1990).

18. James Tobin, *On Limiting the Domain of Inequality*, 13 J.L. & ECON. 263, 263 (1970).

19. GOODIN, *supra* note 17, at 4; NICHOLAS BARR, THE WELFARE STATE AS PIGGY BANK: INFORMATION, RISK, UNCERTAINTY, AND THE ROLE OF THE STATE 1 (2001).

20. Jeffrey S. Lehman, *To Conceptualize, To Criticize, To Defend, To Improve: Understanding America's Welfare State*, 101 YALE L.J. 685, 694 (1991).

21. These functions are not a sharp binary. A means-tested redistributive program for the very poorest, like Aid to Families with Dependent Children, can be reconceptualized as insurance against family disruptions. *Id.* at 691 n.20. And insurance programs, like Social Security, can be designed to redistribute; relatively few social-insurance programs are perfectly actuarial. The distinction is one of priorities, and different observers have drawn the lines in very different places. *See* GOODIN, *supra* note 17, at 4-5 (observing disagreement over which programs constitute the welfare state and whether particular aspects of the welfare state are "social assistance," "social insurance," or "transfer" programs).

22. Programs do exist targeting elderly and disabled renters. Additionally, existing programs serve an insurance function for people who are *already* being served (and who are also more likely to be chronically low income): because a household's rent obligation is based on income, a public housing resident or a voucher holder who suffers a loss of income is buffered against that loss.

They are not intended to be a "safety net," in the sense of catching people who stumble.[23]

This focus on long-term redistribution for people facing sustained poverty limits existing policies' impact. Shorter-term spells of poverty are extremely common, even outside a global pandemic. The median poverty spell lasts less than five months – and though some households quickly cycle back into poverty, many others do not.[24] And while most people are not, at any given time, below the poverty line, a majority of Americans will experience poverty before they turn sixty-five.[25] Moreover, income volatility itself, in addition to persistently low incomes, is a major contributor to homelessness.[26]

These forms of deprivation may fundamentally be better addressed by means other than housing assistance.[27] There are inherent, though not insuperable, challenges to protecting households against short-term financial shocks specifically through rental-housing programs. Recognizing what role our rental-assistance programs actually play in protecting tenants and in the broader welfare state allows us to better understand the core competencies and limitations of affordable-housing policy, both as currently constituted and structurally. In turn, that understanding can help us to fill the gaps left for low-income renters, whether by overcoming those challenges to expand and improve on existing programs or by better situating rental assistance among complementary forms of assistance.

---

23. Others use "safety net" to refer to programs for the very poorest. *See, e.g.*, Martha Galvez, Maya Brennan, Brady Meixell & Rolf Pendall, *Housing as a Safety Net: Ensuring Housing Security for the Most Vulnerable*, URB. INST. (Sept. 2017), https://www.urban.org/sites/default/files/publication/93611/housing-as-a-safety-net_1.pdf [https://perma.cc/SC4X-FR96]. In this Essay, though, I will use "safety net" to refer to insurance-type programs to protect against shorter-term hardship.

24. Stephanie Riegg Cellini, Signe-Mary McKernan & Caroline Ratcliffe, *The Dynamics of Poverty in the United States: A Review of Data, Methods, and Findings*, 27 J. POL'Y ANALYSIS & MGMT. 577, 594 (2008).

25. *Id.* at 597; *see also* Mark R. Rank & Thomas A. Hirschl, *The Likelihood of Experiencing Relative Poverty over the Life Course*, 10 PLOS ONE art no. e0133513, at 8 (2015) (finding that 61.8% of Americans will experience one year of income below the twentieth percentile during their adult years).

26. *See* Marah A. Curtis, Hope Corman, Kelly Noonan & Nancy E. Reichman, *Life Shocks and Homelessness*, 50 DEMOGRAPHY 2227, 2229, 2246 (2013); Brendan O'Flaherty, *Homelessness as Bad Luck: Implications for Research and Policy*, *in* HOW TO HOUSE THE HOMELESS 143, 144 (Brendan O'Flaherty & Ingrid Gould Ellen eds., 2010); William N. Evans, James X. Sullivan & Melanie Wallskog, *The Impact of Homelessness Prevention Programs on Homelessness*, 353 SCIENCE 694 (2016) (showing that temporary financial assistance in response to an immediate crisis, like job loss or a medical emergency, significantly decreases the likelihood of homelessness).

27. *See infra* Section III.A.

To that end, I examine how the major federal affordable-rental-housing programs operated during the pandemic. The two most significant preexisting programs[28]—the tenant-based voucher program and the project-based Low-Income Housing Tax Credit—served their beneficiaries well by protecting them from economic disruption but were poor platforms for new, pandemic-specific interventions. And the new Emergency Rental Assistance programs designed specifically for the pandemic, though heroic in their scale and effort, came late and slowly—a predictable result of being built from nothing, on the go—and cannot readily be made permanent. None provides a sturdy foundation for addressing renters' temporary fiscal distress. If the government is to protect people from this form of housing instability, different models are needed.

I. COVID AND TENANT-BASED RENTAL ASSISTANCE

I begin this analysis with housing vouchers. Vouchers are not only a large and effective form of rental assistance, but the most flexible form offered by the federal government—and, therefore, the one that should be most adaptable to this unprecedented moment. In ordinary years, Housing Choice Vouchers (HCVs or, formerly, Section 8) are the primary form of rental assistance that flow to tenants renting on the private market, rather than to designated affordable developments. They support around 2.5 million households, covering the difference between what a household owes in rent and what it can afford to pay towards rent, based on the household's actual income.[29] Vouchers are a cost-effective form of rental subsidy, can serve the very poorest households, and nearly eliminate homelessness for recipients who can successfully use them.[30] Though they have several shortcomings, they are essential as a tool for securing housing for people in poverty.[31] For those who already had vouchers going into the

28. The other largest federal programs support legacy affordable-housing projects (like public housing) where there is no new construction. The operational concerns facing those programs during the pandemic are a separate topic, although the ways in which public housing authorities operate their waitlists also affect the extent to which public housing can serve as a safety net for those with unexpected need.

29. Robert Collinson, Ingrid Gould Ellen & Jens Ludwig, *Reforming Housing Assistance*, 686 ANNALS AM. ACAD. POL'Y & SOC. SCI. 250, 253 (2019).

30. *See* Noah M. Kazis, *The Failed Federalism of Affordable Housing: Why States Don't Use Housing Vouchers*, 121 MICH. L. REV. (forthcoming 2022) (manuscript at 12-17), https://ssrn.com/abstract=3914946 [https://perma.cc/J6KN-KQ38] (summarizing the literature).

31. *See generally* EVA ROSEN, THE VOUCHER PROMISE: SECTION 8 AND THE FATE OF AN AMERICAN NEIGHBORHOOD (2020) (surveying the effects of the Section 8 voucher program).

pandemic, the pandemic's economic shock was substantially cushioned as the value of their vouchers rose along with their increased need.[32]

Given HCVs' power to transform low-income households' ability to afford rent, many advocates have called for expanding or universalizing the voucher system to create a stronger housing safety net. Rental assistance is not currently an entitlement, nor is it funded adequately to provide all eligible households with a voucher. Only one-fourth to one-fifth of eligible households receive federal assistance; vouchers are rationed through lotteries and years-long waitlists.[33] This is an enormous hole in the welfare state and one that is essentially unjustifiable in its utter arbitrariness.[34] No wonder, then, that guaranteeing rental assistance to all eligible households has been a longstanding goal of affordable-housing experts—even crossing partisan and ideological lines[35]—and, more recently, a frequently proposed response to the needs exposed by the COVID crisis.[36]

Expanding the voucher system is a vital reform, one that could make rental assistance simultaneously more equitable and more efficient. It should happen. But HCVs are not especially well suited to acute crises, whether personal or national. And one lesson of the pandemic has been that even with meaningful changes, responding to these crises may not be HCVs' most natural role.

---

32. Jung Hyun Choi & Laurie Goodman, *Housing Vouchers Have Helped Tenants and Landlords Weather the Pandemic*, URB. INST. (Mar. 23, 2021), https://www.urban.org/urban-wire/housing-vouchers-have-helped-tenants-and-landlords-weather-pandemic [https://perma.cc/XM6S-NAAW]; Elizabeth Kneebone, Katherine O'Regan, Hayley Raetz & Quinn Underriner, *Rent Payments in Affordable Housing During the Pandemic: The Role of Rental Subsidies and the Safety Net*, N.Y.U. FURMAN CTR. 10 (Sept. 2021), https://furmancenter.org/files/publications/Rent_Payments_in_Affordable_Housing_During_the_Pandemic_Terner_Center__Final.pdf [https://perma.cc/LE6V-KXKH].

33. Corianne Payton Scalley, Samantha Batko, Susan J. Potkin & Nicole DuBois, *The Case for More, Not Less: Shortfalls in Federal Housing Assistance and Gaps in Evidence for Proposed Policy Changes*, URB. INST. 6 (Jan. 2018), https://www.urban.org/sites/default/files/publication/95616/case-for-more-not-less.pdf [https://perma.cc/LM2Y-9HTC].

34. John J. Infranca, *Housing Resource Bundles: Distributive Justice and Federal Low-Income Housing Policy*, 49 U. RICH. L. REV. 1071, 1073-74 (2015).

35. *Id.*

36. *E.g.*, Elizabeth J. Mueller, Heather K. Way & Jake Wegmann, *Freefall: Why Our Housing Safety Net Is Failing the Lowest-Income Renters During COVID-19*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 257, 266-67 (2020); Layser et al., *supra* note 14, at 508 (recommending deployment of expanded rental assistance through the existing Housing Choice Voucher framework); Sammi Aibinder & Lindsay Owens, *Past Due: How American Housing Policy Leaves Millions Behind*, GROUNDWORK COLLABORATIVE 8-11 (Apr. 2021), https://groundworkcollaborative.org/wp-content/uploads/2021/04/PastDueHousingPolicy_Final.pdf [https://perma.cc/52KA-NQWQ] (describing the need for a housing safety net and proposing making rental assistance an entitlement).

Scholars have identified three primary reasons why HCVs fall short as a safety net.[37] First, their nonentitlement status means that their availability does not automatically increase with need. Indeed, voucher spending was essentially flat for nearly two decades prior to the pandemic, despite the profound economic disruption of the Great Recession.[38] With Congress rarely authorizing more vouchers, households cannot rely on their availability. Second, vouchers' administration divorces the moment of assistance from the moment of need. As noted above, voucher applicants generally must endure long waitlists before receiving assistance. In Los Angeles, the waiting list for a voucher has stretched to eleven years long.[39] These delays are inexcusable for people facing long-term poverty (and are administratively burdensome to boot). But for someone suddenly injured or unemployed, this level of delay renders the program nearly unusable. These established claims on future vouchers also leave governments less able to deploy HCVs in response to new demands, as the targeted beneficiaries would have to jump the line. Third, landlord participation in the voucher program is largely voluntary. Even in the minority of states and cities that prohibit landlords from discriminating against a voucher holder's source of income, landlords can effectively price, maintain, or market their properties to keep them out of the voucher program.[40] The payment standards set by the Department of Housing and Urban Development (HUD) can also limit voucher holders to lower-rent neighborhoods.[41] The limited set of apartments available to voucher holders, paired with other bureaucratic frictions built into the search process, leaves many apartment hunts slow or unsuccessful. The last national study found that thirty percent of voucher recipients failed to use their voucher within the permitted 60- to 120-day limit.[42] The HCV program in its current form cannot be an

37. *See* Collinson et al., *supra* note 16, at 6-7; Mueller et al., *supra* note 36, at 267.

38. Collinson et al., *supra* note 16, at 6.

39. Julia Wick, *The Waiting List for Section 8 Vouchers in L.A. Is 11 Years Long*, LAIST (Apr. 3, 2017, 11:00 PM), https://laist.com/news/section-8-waiting-list [https://perma.cc/Z85W-YUHR].

40. *See* Pam Fessler, *Government Housing Vouchers Are Hard to Get, and Hard to Use*, NPR (May 11, 2021, 5:11 AM), https://www.npr.org/2021/05/11/995446771/government-housing-vouchers-are-hard-to-get-and-hard-to-use [https://perma.cc/LAB9-2X59]; *cf. Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, POVERTY & RACE RSCH. ACTION COUNCIL app. B (Sept. 2022), http://www.prrac.org/pdf/AppendixB.pdf [https://perma.cc/AND9-KYCC] (listing state, local and federal laws barring discrimination in the housing market based on source of income).

41. *See* Establishing a More Effective Fair Market Rent System, 81 Fed. Reg. 80567, 80567 (Nov. 16, 2016).

42. Meryl Finkel & Larry Buron, Off. of Pol'y Rsch., *Study on Section 8 Voucher Success Rates, Volume I*, U.S. DEP'T OF HOUS. & URB. DEV. 2-2 (Nov. 2001), https://www.huduser.gov/PORTAL//Publications/pdf/sec8success.pdf [https://perma.cc/P42K-E5ZP].

effective safety net because it provides no guarantee that a household in need will 1) get a voucher, 2) when they need it, and 3) find somewhere to use it.

One new pandemic program in particular demonstrates just how difficult it would be to retool housing vouchers into a fast-moving safety net. The American Rescue Plan Act (ARPA) created a new tool called Emergency Housing Vouchers (EHVs).[43] Though modeled after HCVs, EHVs incorporated new features to respond to the pandemic (as well as to homelessness) more directly. First, EHVs went around existing voucher waitlists. Housing authorities were not even permitted to select recipients off their waitlist.[44] Instead, housing authorities were to identify eligible households in acute need—people presently or at risk of being homeless—through local antihomelessness systems, which were thought to move more quickly.[45] To give tenants access to more apartments, EHVs allowed for higher payment standards, provided recipients search assistance (a tool that has been shown to improve outcomes[46]), and offered a faster inspection process (addressing one of landlords' most common criticisms of ordinary vouchers[47]). EHVs also permitted tenants to prove their eligibility more easily through self-certification.[48] All told, EHVs partially address each of the ordinary limitations of the HCV system identified above: they infuse new resources in response to new need, are meant to be issued immediately and regardless of waitlists, and include features to encourage broader apartment availability.

Yet these changes were insufficient to generate anything resembling an "emergency" response (their name notwithstanding). Too few EHVs have been used successfully to date. ARPA was signed into law in March 2021, and it took

43. *See* American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3202, 135 Stat. 4, 58-60.

44. *Emergency Housing Vouchers: Frequently Asked Questions (FAQs)*, U.S. DEP'T OF HOUS. & URB. DEV. 2 (May 19, 2021), https://www.hud.gov/sites/dfiles/PIH/documents/EHV_FAQs.pdf [https://perma.cc/GQ4M-8FV9].

45. *Advancing Equity Through the American Rescue Plan*, WHITE HOUSE 180 (May 2022), https://www.whitehouse.gov/wp-content/uploads/2022/05/ADVANCING-EQUITY-THROUGH-THE-AMERICAN-RESCUE-PLAN.pdf [https://perma.cc/3SJP-KBZQ].

46. *See* Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren, Lawrence F. Katz & Christopher Palmer, *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* 34-39, 46 (Nat'l Bureau of Econ. Rsch., Working Paper No. 26164, 2019), https://www.nber.org/system/files/working_papers/w26164/w26164.pdf [https://perma.cc/78VB-S377] (assessing a set of housing-mobility programs, including search assistance); Nicholas Kelly, Can Housing Search Innovations Facilitate Moves to Opportunity? Results from Two Randomized Controlled Trials (Sept. 2022) (unpublished manuscript) (on file with author) (assessing the effect of only search assistance).

47. Philip M. E. Garboden, Eva Rosen, Stefanie DeLuca & Kathryn Edin, *Taking Stock: What Drives Landlord Participation in the Housing Choice Voucher Program*, 28 HOUS. POL'Y DEBATE 979, 993-94 (2018).

48. WHITE HOUSE, *supra* note 45, at 181.

HUD until early June to finalize program details and allocate funds to local authorities.[49] Yet as of mid-April 2022—a year later—just one-quarter of EHVs had actually been used to pay rent.[50] In the biggest cities, where high rents and large numbers of renters create the most pressing need, the numbers were even worse: the city of Los Angeles had been awarded 3,365 EHVs, had issued just 1,807 of those to households, and had only helped 81 households—4.45% of issued vouchers—successfully lease an apartment.[51] In New York City, just 2.68% of vouchers had been successfully used.[52] Nor was the issue limited to these intensely constrained housing markets: many states with ample stocks of lower-rent housing, like Indiana and Arizona, performed just as poorly.[53] In recent months, the rollout has progressed: by mid-October, 51.4% of EHVs had been successfully used to lease an apartment, with that figure at 20.7% in New York City and 15.3% percent in Los Angeles.[54] But still, this leaves almost half of all EHVs as only a promise of benefits, not actual assistance, and means that most relief will arrive after the most acute period of need.

Remarkably, this is in some ways a success story. The EHV rollout marked the fastest-ever utilization of any new federal voucher program, according to HUD officials.[55] It did so while targeting the highest-need households and in the face of pandemic-related logistical and staffing challenges for agencies. Understanding what worked with EHVs will be a fruitful area of research, and the jurisdictions that best managed to quickly turn their vouchers into actual assistance deserve both recognition and further inquiry.

But those successes just emphasize how mismatched the existing voucher model is to making vouchers a true safety net. Even when new vouchers were made available to match new need—and with seemingly successful features to streamline administration and encourage landlord participation—there remained prolonged delays before assistance actually reached tenants. Vouchers

---

49. U.S. DEP'T OF HOUS. & URB. DEV., PIH 2022-06 (HA), EMERGENCY HOUSING VOUCHERS—REALLOCATION OF AWARDS 1-2 (2022), https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-06.pdf [https://perma.cc/F2U5-W4EH].

50. *Emergency Housing Voucher (EHV) Data Dashboard*, U.S. DEP'T OF HOUS. & URB. DEV. https://www.hud.gov/program_offices/public_indian_housing/ehv/dashboard (visited Apr. 13, 2022).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* [https://perma.cc/3DGF-Y8WH] (visited Oct. 25, 2022).

55. Kriston Capps, *Emergency Housing Vouchers for People at Risk Are Going Fast*, BLOOMBERG (July 13, 2022, 10:48 AM), https://www.bloomberg.com/news/articles/2022-07-13/american-rescue-plan-emergency-housing-vouchers-are-going-fast [https://perma.cc/8UML-USLH].

still rely on a slow, multistep process in which tenants must first apply and prove eligibility, receive their voucher, and then find an available, eligible apartment that meets their needs with a willing landlord. An expanded voucher program, even as an entitlement automatically budgeted to meet all need, would likely still move on a timeline of months or years, not days or weeks. Providing a rental-housing safety net would require either a more sweeping transformation of the voucher framework or a separate, complementary policy.[56]

Congress, recognizing this, focused its housing-specific COVID relief on a new program: Emergency Rental Assistance (ERA).[57] Unlike housing vouchers, ERA is primarily intended to pay off rent arrears, not provide long-term prospective assistance. As an emergency program, it primarily aims to keep people in their current homes rather than find them new ones. Importantly, ERA was created while the federal eviction moratorium was in effect, and many states and cities built additional anti-eviction protections into their ERA programs, creating a complementary, two-pronged strategy for keeping people housed.[58] In broad strokes, ERA is a "safety net" program meant to catch renters who have faltered but do not need permanent supports to secure adequate housing; it is most helpful to people who will, with ERA's fresh start, again be able to afford their rent. Incredibly, Congress appropriated over $46.5 billion to ERA, the lion's share of the entire estimated rental arrearage nationwide.[59]

It is still too early to draw many meaningful conclusions about how ERA worked. Existing research has, so far, been limited to noncausal studies examining how quickly different ERA programs distributed funds, preliminary information from self-reported surveys, and some additional data on the demographics and neighborhood characteristics of applicants in New York and California.[60] This research has yielded insights such as the importance of

56. It is possible to imagine a more transformative version of universal vouchers. The widespread availability of vouchers could allow the eligibility process to be made nearly ministerial. And if almost all renters searching in an area had vouchers, few landlords would refuse to participate in the now-dominant, voucher-funded rental market. This is a vision of rental assistance well worth pursuing. But realizing this vision would require far more sweeping changes than merely making vouchers an entitlement, as a quick comparison to Medicaid (an entitlement nonetheless characterized by incomplete provider acceptance and high administrative burdens) indicates.

57. For a summary of the Emergency Rental Assistance (ERA) programs, see WHITE HOUSE, *supra* note 45, at 160-63.

58. *See infra* Part III.B..

59. WHITE HOUSE, *supra* note 45, at 160-62.

60. *See generally Collaborative Research and Insights*, HOUS. CRISIS RSCH. COLLABORATIVE, https://housingcrisisresearch.org [https://perma.cc/HBS7-R3F5] (collecting research). For an example of early, survey-based work, see Vincent Reina, Sydney Goldstein, Asha Bazil &

reducing administrative burdens for applicants (for example, by eliminating extensive documentation requirements),[61] methods of allocating and reallocating funds across jurisdictions,[62] and best practices for governments reviewing applications (using a more bureaucratic "assembly line" process rather than an individualized, "case management" approach).[63] But such data, as the researchers freely acknowledge, show little about how results vary across different legal, political, and economic contexts, and essentially nothing about how those funds impact individual households or larger neighborhood and market conditions.[64] Unpacking these questions will ultimately provide a wealth of information, especially given the independent operation of hundreds of state and local programs.[65]

For now, though, we can observe how inadequate this kind of crisis-moment lawmaking is at providing a housing safety net. Congress demanded that states

Julia Verbrugge, *Housing Trends and the Impact of COVID-19 Rental Assistance in the City of Atlanta*, HOUS. INITIATIVE AT PENN (Apr. 2021), https://www.housinginitiative.org/uploads/1/3/2/9/132946414/hip_atlantareport_final.pdf [https://perma.cc/6XXF-7DVX].

61. Claudia Aiken, Isabel Harner, Vincent Reina, Andrew Aurand & Rebecca Yae, *Treasury Emergency Rental Assistance Programs in 2021: Preliminary Analysis of Program Features and Spending Performance*, HOUS. INITIATIVE AT PENN & NAT'L LOW INCOME HOUS. COAL. 8 (Dec. 2021), https://nlihc.org/sites/default/files/HIP_NLIHC_Brief_121621.pdf [https://perma.cc/Y9AE-DXK5].

62. Hana Schank, Alberto Rodrígues, Aaron Lemon-Strauss & Alexandra Hohenlohe, *Lessons for Congress from Implementation of the Emergency Rental Assistance Program*, NEW AM. 7-12 (May 25, 2022), https://www.newamerica.org/pit/reports/lessons-for-congress-from-implementation-of-the-emergency-rental-assistance-program [https://perma.cc/53K7-DV87].

63. Claudia Aiken, Vincent Reina, Julia Verbugge, Andrew Aurand, Rebecca Yae, Ingrid Gould Ellen & Tyler Haupert, *Learning from Emergency Rental Assistance Programs: Lessons from Fifteen Case Studies*, N.Y.U. FURMAN CTR. ET AL. 7-9, 15 (Mar. 10, 2021), https://furmancenter.org/files/ERA_Programs_Case_Study_-_Final.pdf [https://perma.cc/C9V3-VCUL]. Notably, the staffing experience points towards treating emergency assistance as an exercise in disbursing funds, not in individual care. This has broader implications for housing policy, which has often taken a paternalistic stance to low-income people—especially the homeless—that frames housing issues as rooted in behavioral factors requiring treatment, rather than a mere lack of money. *See* THOMAS J. MAIN, HOMELESSNESS IN NEW YORK CITY 95 (2016).

64. Aiken et al., *supra* note 61, at 12-13. Very preliminary results, based on self-reported well-being, indicate that receiving ERA helped households eliminate rent arrears, avoid borrowing and food insecurity, and experience better mental health. *See* Whitney Airgood-Obrycki, *The Short-Term Benefits of Emergency Rental Assistance*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV. (June 2022), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_short_term_era_benefits_airgood-obrycki_2022.pdf [https://perma.cc/4KK7-EQE2].

65. In particular, a better understanding of the effect of some of the more innovative and aggressive features adopted by ERA programs, like direct-to-tenant payments and categorical eligibility determinations for certain groups of applicants, could have significant implications for future policy.

and cities, with essentially no experience or infrastructure to do so, stand up ERA programs amid a pandemic.[66] Of the programs created in 2020, nearly three-quarters were brand new, while almost all the remainder were dramatic transformations of small-scale programs.[67] Governments launched programs quickly, without adequate staffing or technological capacity, leaving rollouts bumpy.[68] They had to iron out details and learn best practices on the fly, leading to successive rounds of federal guidance that caused confusion on the ground.[69]

Yet despite this haste, the rollouts were still too slow. Of the $25 billion in ERA funds appropriated in December 2020, just 12% had been spent by June 2021.[70] Spending accelerated thereafter, but still, even by March 2022, just $26 billion had made it to households, a bit over half of what was appropriated.[71] While funds have since begun flowing steadily, it took a long time to get to this point. A study published in April 2022 found that one-third of all ERA applicants had received assistance, one-quarter had been denied, and a full 38% were still awaiting a decision.[72] Federal, state, and local officials worked diligently and creatively to build programs from scratch, but that task was a difficult one indeed. States and cities simply lacked the bureaucratic capacity.

It would be one thing if these were necessary, one-time growing pains, with issues now resolved and questions all answered. But they aren't. The COVID ERA programs are set to shut down; many already have.[73] If similar assistance is provided again, new staff will have to be hired and trained, new relationships

---

66. See WHITE HOUSE, *supra* note 45, at 161 (describing the lack of national emergency-rental-payment infrastructure and noting that even federal funds were rarely usable for this purpose, and never at scale).

67. Vincent Reina, Claudia Aiken, Julia Verbugge, Ingrid Gould Ellen, Tyler Haupert, Andrew Aurand & Rebecca Yae, *COVID-19 Emergency Rental Assistance: Analysis of a National Survey of Programs*, HOUS. INITIATIVE AT PENN ET AL. 2 (Jan. 2021), https://www.nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf [https://perma.cc/Z5U3-DME7].

68. Aiken et al., *supra* note 63, at 14.

69. *Id.* at 16-17.

70. Emma Foley, Sophie Siebach-Glover, Andrew Aurand & Sarah Gallagher, *Emergency Rental Assistance: Spending and Performance Trends*, NAT'L LOW INCOME HOUS. COAL. 6 fig.2 (Nov. 2021), https://nlihc.org/sites/default/files/ERA-Spending-and-Performance-Trends.pdf [https://perma.cc/JSF7-C64R].

71. WHITE HOUSE, *supra* note 45, at 161, 172.

72. Alexander Hermann, *Emergency Rental Assistance Has Helped Stabilize Struggling Renters*, JOINT CTR. FOR HOUS. STUD. HARV. UNIV. (Apr. 6, 2022), https://www.jchs.harvard.edu/blog/emergency-rental-assistance-has-helped-stabilize-struggling-renters [https://perma.cc/8FHD-F95W].

73. *See* Jennifer Ludden, *Eviction Filings Are Up Sharply as Pandemic Rental Aid Starts to Run Out*, NPR (May 4, 2022, 8:00 AM EST), https://www.npr.org/2022/05/04/1095559147/eviction-filings-are-up-sharply-as-pandemic-rental-aid-starts-to-run-out [https://perma.cc/E33J-DNFC].

built with nonprofit partners, and new landlords recruited; the infrastructure of assistance will have been disassembled.

Nor could Congress simply choose, now, to keep its ERA programs in place. These were *inherently* temporary. The most difficult questions in designing a permanent program to pay off rent arrears concern how to target those in need. Overbroadly paying off all unpaid rent creates moral hazard for households to unreasonably avoid payments or take on rent obligations they could never afford. Accordingly, an arrears-paying program must carefully determine what types of nonpayment trigger relief, how often such relief should be granted, and how to calibrate households' reliance on this safety net.

For a temporary pandemic program, these issues could largely be avoided. Because COVID was a shared crisis outside anyone's control (with less stigma for those who fell behind), eligibility could be granted broadly to anyone suffering loss of income from this singular event.[74] And because the largest ERA programs were created almost a year into the pandemic—well after the bulk of job losses—moral hazard posed less concern.[75] These features made ERA possible. But they also mean that the COVID-era programs cannot easily be made permanent. Any similar relief could only be created well into a crisis, not beforehand. In creating a permanent safety net for renters, the COVID ERA programs will offer much to study but far less to copy.

This is not to diminish the incredible importance of emergency rental assistance. Early predictions of an "eviction tsunami" throwing millions from their homes were avoided, in part because of the federal infusion of nearly fifty billion dollars (along with continuing state-level eviction moratoria and other tenant protections).[76] People stayed in their homes, and avoided impossible trade-offs between rent and other necessities, because of these funds. But unlike, say, unemployment insurance, which began flowing within weeks of job losses[77] (and

74. Even here, federal policy shifted from allowing eligibility based on loss of income *due to* the pandemic to loss of income *during* the pandemic.

75. These programs may have created moral hazard as to the amount of arrears—with tenants who had already fallen behind opting against making partial repayments, given the availability of assistance—but not to their creation.

76. Peter Hepburn, Olivia Jin, Joe Fish, Emily Lemmerman, Anne Kat Alexander & Matthew Desmond, *Preliminary Analysis: Eviction Filing Patterns in* 2021, EVICTION LAB (Mar. 8, 2022), https://www.evictionlab.org/us-eviction-filing-patterns-2021 [https://perma.cc/Y4MB-72N4].

77. In the unemployment-insurance system, payment within twenty-one days is set as the standard of timely assistance. Greg Iacurci, *Delays for Unemployment Benefits Persist, Over a Year into Pandemic*, CNBC (July 30, 2021), https://www.cnbc.com/2021/07/30/delays-for-unemployment-benefits-persist-over-a-year-into-pandemic.html [https://perma.cc/9CGF-EKKK]. Nationwide, timely payment dipped from over ninety percent prepandemic to still was fairly criticized as a creaky, antiquated system[78]), emergency rental assistance could only come late in the crisis. Neither the standing voucher program, the modified EHVs, nor the new ERA programs—though each served its own function—provides an off-the-shelf model for ensuring housing stability to those facing the next economic shock.

II. COVID AND PROJECT-BASED RENTAL ASSISTANCE

The main federal subsidy for creating new project-based affordable housing (i.e., for specific affordable buildings or units rather than for individual tenants) fared little better as a tool for pandemic-specific relief. The Low-Income Housing Tax Credit (LIHTC) is the primary source of subsidy for new affordable-housing development, supporting approximately 110,000 units a year and serving as the financial platform for most additional federal, state, and local investments in affordable housing.[79] Like other project-based subsidies, LIHTC is meant to increase the stock of affordable homes over the long term; it requires homes to remain affordable for thirty years, though some states require longer affordability periods.[80]

But LIHTC is not meant to increase the affordable-housing stock quickly. Like HCVs, LIHTC funds do not automatically increase based on tenant need. Further, LIHTC deals are cumbersome by design, intentionally layering stakeholders into a deal so that each monitors the others' performance. Whether this complexity is ordinarily a price worth paying has long been debated.[81] But it clearly rendered LIHTC a poor tool for seizing affordable-housing development

between fifty and seventy percent in 2020. Emp. & Training Admin., *Benefits: Timeliness and Quality Reports*, U.S. DEP'T LAB. (July 7, 2022), https://oui.doleta.gov/unemploy/btq.asp [https://perma.cc/HZB3-EX29] (searching for "US Total" and "All First Payment Timeliness" from January 2019 to January 2022). Even then, however, workers were overwhelmingly receiving their benefits within seventy days. *Id.*

78. Hammond et al., *supra* note 15, at 161.

79. Corianne Payton Scally, Amanda Gold & Nicole DuBois, *The Low-Income Housing Tax Credit: How It Works and Who It Serves*, URB. INST. 12 (July 2018), https://www.urban.org/sites/default/files/publication/98758/lithc_how_it_works_and_who_it_serves_final_2.pdf [https://perma.cc/P82A-HQEP].

80. *Id.* at 12-13.

81. *Compare* DAVID J. ERICKSON, THE HOUSING POLICY REVOLUTION: NETWORKS AND NEIGHBORHOODS 86-98 (2009) (offering a positive evaluation of LIHTC's decentralized nature), *with* Elizabeth Kneebone & Carolina Reid, *The Complexity of Financing Low-Income Housing Tax Credit Housing in the United States*, U.C. BERKELEY TERNER CTR. FOR HOUS. INNOVATION (Apr. 26, 2021), https://ternercenter.berkeley.edu/wp-content/uploads/2021/04/LIHTC-Complexity-Final.pdf [https://perma.cc/385B-L37G] (arguing that LIHTC's complexity creates inefficiencies and slows housing production).

opportunities created by the pandemic. As evidence, I examine a specific set of these opportunities: the efforts to convert distressed hotels into affordable housing.

The pandemic sparked significant interest in using hotels as a source of long-term affordable housing.[82] After all, during the early pandemic, hotels were essentially empty as tourism and business travel evaporated. And hotels are already designed to provide shelter, leading many to hope that conversions would require minimal renovations.[83] Hotel-to-housing success stories can be found across the country.[84]

The clear leader in converting hotels into housing was California, whose "Project Homekey" conversion program has been widely celebrated.[85] First enacted in June 2020, Project Homekey primarily funded the conversion of commercial buildings (largely hotels) to affordable housing for people facing homelessness. In its first round of operations, Project Homekey created six thousand units of housing at about half of California's normal affordable-housing costs.[86] This was a remarkably cost-effective program.

California achieved these savings in large part because it designed Project Homekey to act fast. Moving quickly allowed the state to acquire distressed properties before it became clear that the hospitality industry would recover. But more to the point, California *had* to act fast. Homekey was funded through

---

82. Hotel rooms were also rented to temporarily house people, including those needing isolation while sick and those in crowded homeless shelters. *See* Noah Kazis, Elisabeth Appel & Matt Murphy, *Challenges and Opportunities for Hotel-to-Housing Conversions in NYC*, N.Y.U. FURMAN CTR. 6 (Aug. 2021), https://furmancenter.org/files/publications/Challenges_and_Opportunities_for_Hotel-To-Housing_Conversions_in_NYC_Final.pdf [https://perma.cc/ATD9-BU4K]. This Part focuses on efforts to acquire hotels for the long term.

83. Historically, the line between short-term and long-term residences was far blurrier than today, in ways that provided tenants with important benefits. PAUL GROTH, LIVING DOWNTOWN 1-8 (1994).

84. *See Hotels to Housing Case Studies*, NAT'L ALLIANCE TO END HOMELESSNESS (Jul. 20, 2021), https://endhomelessness.org/resource/hotels-to-housing-case-studies [https://perma.cc/QH8X-BF6P].

85. *See* Carolina Reid, Ryan Finnigan & Shazia Manji, *California's Homekey Program: Unlocking Housing Opportunities for People Experiencing Homelessness*, U.C. BERKELEY TERNER CTR. FOR HOUS. INNOVATION 3 (Mar. 2022), https://ternercenter.berkeley.edu/wp-content/uploads/2022/03/Homekey-Lessons-Learned-Final-March-2022.pdf [https://perma.cc/53QJ-DQ4P] ("California has emerged as a national leader in providing funds to convert hotels, motels, and other buildings into [permanent supportive housing].").

86. Erin Baldassari, *Faster, Cheaper: How California Is Revolutionizing Homeless Housing—and Why It Might Not Last*, KCRW (June 9, 2021), https://www.kcrw.com/news/articles/project-homekey-homeless-california [https://perma.cc/77Y5-QRCM]. Another calculation compares total development costs for those Homekey sites operating as permanent supportive housing to only the rehab LIHTC projects in the state, for an average cost of $270,000 and $378,000, respectively. Reid et al., *supra* note 85, at 9.

COVID-relief funds that had to be spent by the year's end; this requirement gave just six months for California to create its program and allocate the funds and for developers to close their financing and complete renovations.[87] Some projects had to move in just three months.[88] Accordingly, California swept aside many of the toughest barriers to affordable-housing development, including many local zoning and environmental reviews.[89] It created an expedited application process, allowing developers to apply first and submit supplementary documents later, rather than all at once.[90] And, of most relevance to this Essay, Project Homekey offered grants that did not rely on LIHTC.

Ordinarily, almost all state and local affordable-housing funds are stacked on top of LIHTC. The average California supportive-housing development—analogous to a Homekey project—uses about six separate sources of funding, of which LIHTC is usually one.[91] Coordination across these different sources of funding—each with its own timelines and independent requirements—is slow and expensive. This is by design. LIHTC is built around a vision of decentralized, public-private governance in which each stakeholder monitors each other's performance: these transaction and compliance costs are the perceived price of avoiding mismanagement. But the longer and more complicated the process, the higher the costs: more fees to lawyers and accountants to structure complex deals, more interest and insurance paid while projects gestate, more of everyone's time, and more uncertainty throughout.[92]

Project Homekey avoided much of that. By providing funds in a single, upfront grant—rather than tax credits that needed to be syndicated and sold after occupancy—Homekey minimized these costs. Developers have highlighted this as one of Homekey's most important advantages over traditional affordable-housing development, sometimes even more so than the regulatory relief provided.[93] As one public housing authority director explained, "If you're doing a project that is just Homekey . . . and doesn't have other tax credits or traditional

87. *Homekey: A Journey Home*, CAL. DEP'T OF HOUS. & CMTY. DEV. 9 (Apr. 1, 2021), https://www.hcd.ca.gov/policy-research/plans-reports/docs/hcd100_homekeyreport_v18.pdf [https://perma.cc/8MA5-HRBW].

88. *Milestone: Bakersfield, Kern County*, CAL. DEP'T OF HOUS. & CMTY. DEV. 3 (2021), https://homekey.hcd.ca.gov/sites/default/files/2021-12/Homekey%20COVID%20Response%20-%20MILESTONE.pdf [https://perma.cc/X44S-ZLXP].

89. Reid et al., *supra* note 85, at 4.

90. CAL. DEP'T OF HOUS. & CMTY. DEV., *supra* note 87, at 6.

91. Kneebone & Reid, *supra* note 81, at 12.

92. *Id.* at 12-17.

93. Kazis et al., *supra* note 82, at 14.

affordable housing resources, it's much cheaper than doing it the traditional route."[94]

Project Homekey could move projects much faster than even aggressively streamlined conversions built on the LIHTC platform. Take, for example, the conversion of a hotel into permanent supportive housing in Brockton, Massachusetts, which has been held up as another successful case study.[95] Like the Homekey projects, the Brockton project could use state law to avoid zoning review and secure a more streamlined administrative process; it also came in dramatically under average costs.[96] But even so, the Brockton project—which included LIHTC funding—took ten months to secure and close on its financing, with more time needed to actually renovate.[97] This was much faster than the two to three years typical for this kind of project,[98] but still much slower than Project Homekey.

And, of course, most LIHTC projects are *not* streamlined. Among other things, the LIHTC statute requires that local governments be given an opportunity to comment on any proposed development in their communities.[99] Many states go further, prioritizing projects with affirmative support from local governments and neighborhood organizations.[100] Such local approvals require time-consuming outreach and negotiations that can stretch for months or years.[101] These core program features—which Project Homekey reversed,

94. Reid et al., *supra* note 85, at 9.

95. *See* Carolina Reid, Shazia Manji & Hayden Rosenberg, *Addressing Homelessness Through Hotel Conversions*, U.C. BERKELEY TERNER CTR. FOR HOUS. INNOVATION & HOUS. CRISIS RSCH. COLLABORATIVE 8 (Dec. 2021), https://ternercenter.berkeley.edu/wp-content/uploads/2021/12/Hotel-Acquisitions-Final-December-2021.pdf [https://perma.cc/NGZ4-88Z3].

96. *Id.* at 13-14; Will Morgan, *Struggling Hotel Becomes Housing for People Experiencing Homelessness*, PLANNING MAG. (Jan. 13, 2022), https://www.planning.org/planning/2022/winter/struggling-hotel-becomes-housing-for-people-experiencing-homelessness [https://perma.cc/5PTP-S4AD]; Lynn Jolicoeur, *Homelessness Nonprofit's Hotel-to-Housing Conversion Welcomes First Tenants*, WBUR (Jan. 14, 2022), https://www.wbur.org/news/2022/01/14/homeless-hotel-permanent-housing-brockton [https://perma.cc/6UN4-6DRS].

97. Reid et al., *supra* note 95, at 14.

98. *Id.*

99. I.R.C. § 42(m)(1)(A)(ii) (2018).

100. Off. of Pol'y Dev. & Rsch., *Effect of QAP Incentives on the Location of LIHTC Properties*, U.S. DEP'T OF HOUS. & URB. DEV. 9-10 (2015), https://www.novoco.com/sites/default/files/atoms/files/pdr_qap_incentive_location_lihtc_properties_050615.pdf [https://perma.cc/4XPN-8RDH].

101. In addition, these requirements impose barriers to locating affordable housing in high-opportunity neighborhoods and, as the IRS has recognized, can run afoul of the Fair Housing Act. *See id.*; Rev. Rul. 2016-29, 2016-52 I.R.B. 875.

waiving local review processes altogether—leave LIHTC ill equipped to create affordable housing quickly.

It remains to be seen whether Project Homekey's speed will come at a long-term cost. LIHTC's design reflects a knowing response to past generations of affordable-housing development, which showed early promise until long-term issues with maintenance and fiscal sustainability overtook them.[102] Moreover, even if California could, at a unique moment, go without LIHTC's monitoring devices, not all places or projects necessarily can.[103] But Homekey's demonstrated ability to create housing faster highlights the stakes of LIHTC's design choice. To avoid long-term risks, we pay more for affordable housing and build it slower. Whatever the merits of that trade-off in normal times, it leaves affordable-housing production—through the conversion of unused properties or otherwise—an especially difficult strategy for responding to sudden needs or opportunities that arise during moments of crisis. In such a moment, California built faster and cheaper by *excluding* what is normally the most significant source of federal funding for affordable housing.

III. IMPLICATIONS

Affordable-housing programs revealed their limitations as safety nets during the pandemic. This is not to slight their profound importance to recipients as long-term income supports, platforms for economic mobility, and protectors against housing instability. It is only to acknowledge that preexisting programs were never designed as safety nets protecting against short-term fiscal shocks, and that the pandemic ERA programs were built fast and not to last. But this experience also points (tentatively) to certain inherent challenges in using redistributive spending to specifically address short-term housing instability—and to when, and how, we should strive to overcome those challenges.

A. The Structural Challenge of Short-Term Housing Assistance

A central shortcoming of each of the programs discussed is their timing. They can take months or years to provide assistance to households in need. This is inefficient, ineffective, and often inhumane for people who are chronically low

102. *See* Alexander von Hoffman, *History Lessons for Today's Housing Policy: The Politics of Low-Income Housing*, 22 HOUS. POL'Y DEBATE 321, 355-56 (2012) (describing criticisms of past affordable-housing-production programs).

103. Arguably, California has an unusually large and active housing bureaucracy that could, in special circumstances, pay close attention to project quality. But other jurisdictions might be less able to screen projects, and many might struggle to sustain such quality control over time without built-in monitoring mechanisms.

income, but it simply does not work for more acute instances of housing instability. And while streamlining reforms and better administration might be able to meaningfully accelerate assistance, to some extent, these slow speeds are inherent to any effort to subsidize *rental housing*, specifically.

For new affordable-housing production, the timing problem is plain: it just takes time to acquire a site and construct a building. New production will only rarely be a plausible response to short-term housing needs, although the allocation of preexisting facilities (whether public housing or homeless shelters) can be.[104] Moreover, since buildings are meant to last decades, taking the time to ensure quality is critical: a building that is badly designed, maintained, or sited can hurt its residents for generations.

But even for tenant-based housing subsidies, the challenges of timing are built into the nature of the rental-housing contract, which governs a noncommodity product leased for the long term. Every apartment is a bit different: its features, its condition, its location, the timing of its availability, and so on. On top of tenants' individual needs and preferences for their home—decisions which must be made for the long term—landlords also assess tenants as individuals: whether they seem likely to damage the unit or fail to pay, whether they seem easy to work with or likely to "fit in" at a building. Rental housing involves a relational aspect between tenant and landlord, not just a one-time transaction.[105] All this necessary idiosyncrasy means that acquiring an apartment involves lengthy and uncertain searches (and for project-based affordable housing, complicated questions of matching across units[106]).

At the same time, once housing is leased, renters are locked into that level of consumption. A renter often cannot cut back on her housing consumption for a month or two: paying less would require either moving (which may cost *more* in a pecuniary sense, not to mention a social one) or risking eviction. That is why, for many, "the rent eats first," with households cutting back on other basic

---

104. Those rare circumstances might include the deployment of trailers to a natural-disaster site or the hasty construction of housing at defense facilities during wartime.

105. Some have identified rental assistance as facing a unique "dual take-up" challenge, requiring the participation of both tenants and landlords. Claudia Aiken, Ingrid Gould Ellen & Vincent Reina, Administrative Burdens in Emergency Rental Assistance Programs 13 (Apr. 2022) (unpublished manuscript) (on file with author). The fact of dual take-up alone, though, does not distinguish housing from other public benefits; medical providers and grocery stores, for instance, also choose, whether to accept, respectively, Medicaid and Supplemental Nutrition Assistance Program benefits. Rather, it is the long-term, individualized relationship each side enters that presents unique challenges in housing—the landlord must accept both the voucher and the particular voucher holder for the lease term. The highly disaggregated nature of the landlord business exacerbates this issue.

106. *See, e.g.*, Daniel Waldinger, *Targeting In-Kind Transfers Through Market Design: A Revealed Preference Analysis of Public Housing Allocation*, 111 AM. ECON. REV. 2660, 2660-61 (2021).

necessities (or taking on burdensome debt) to make rent.[107] Housing is a lumpy good,[108] especially when you care about housing stability. Eviction can happen quickly,[109] and all at once: while some renters can work out an alternative arrangement with a landlord[110] or enter into a probationary status,[111] others just lose their home, whether through formal proceedings or an informal forced move. Even the *beginning* of the eviction process carries serious consequences for renters, including long-term barriers to finding future housing.[112] Ideally, intervention would occur before the eviction is filed. With payment due monthly, any serious disruption in the ability to afford rent can have near-immediate consequences. In other words, housing too often can be lost quickly and acquired slowly. Programs may need to focus on one or the other timescale.

Assistance focused on eviction prevention, moreover, must arrive quite quickly to achieve the desired outcome. Comparing affordable-housing spending to other social programs makes clear the challenge. For example, if nutrition benefits come too slowly, people may go hungry—which, it goes without saying, they should never have to—but the lack of benefits in one month does not affect the ability to provide benefits the next month. For a person who is evicted, though, the receipt of benefits the following month has come too late; the slow rollout of benefits imposes an irreversible long-term consequence and a change in legal status. Likewise, unemployment insurance compensates workers for their loss of income; it doesn't prevent the layoff. Fast payments are critical, but there is no attempt to provide assistance before the employer-employee

---

107. MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 302 (2016). It is worth noting, however, that the same features of the lease, under certain tenant-protection regimes, can turn the lease into a short-term credit facility, with late or nonpayments available as a (costly) form of borrowing. O'Flaherty, *supra* note 26, at 155.

108. *See* Lee Anne Fennell, *Lumpy Property*, 160 U. PA. L. REV. 1955, 1966-67 (2012) (explaining that housing provides value in hard-to-divide "lumps"; four walls are not of much value without a roof, and housing tenures likewise tend to be all-or-nothing affairs).

109. *See, e.g.*, Michael Scott Davidson, *Despite Changes, Nevada Eviction Law Still Favors Landlords*, LAS VEGAS REV.-J. (June 29, 2019, 3:50 PM), https://www.reviewjournal.com/local/local-nevada/despite-changes-nevada-eviction-law-still-favors-landlords-1697301 [https://perma.cc/ZY4J-Z95T] (describing a Nevada eviction on July 27 for rent that became overdue on July 6, and noting that the minimum time legally permitted between rent being due and eviction ranges from five to fifty-three days depending on the state); *see also* Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365, 1378 (2021) ("[T]he dispossessory court process in Georgia is relatively fast—in some cases lasting not much longer than a week . . . .").

110. DESMOND, *supra* note 107, at 46-47.

111. Nicole Summers, *Civil Probation*, 75 STAN. L. REV. (forthcoming 2023) (manuscript at 3-6), https://ssrn.com/abstract=3897493 [https://perma.cc/SGT4-7SC6].

112. *Id.* (manuscript at 10-11, 11 n.48) (collecting sources).

relationship is terminated. Eviction prevention aims to maintain the landlord-tenant relationship, without interruption. This is, structurally, a tough needle to thread.

There is therefore some logic to the existing arrangement of social programs. Affordable-housing policy may be focused on providing long-term benefits to people with chronically low incomes because it is well suited to doing so. Housing is built or rented for the long-term, and housing subsidies more comfortably match those time horizons. Moreover, the goal of setting people up in stable housing makes finding the right housing more important. Much of the argument for providing in-kind housing benefits at all, rather than cash, is to focus on neighborhood effects, whether by helping people move to better homes and neighborhoods or revitalizing distressed areas.[113]

In contrast, safety-net programs focused on keeping people in their current homes largely substitute for savings as a buffer against financial shocks. They are much more readily replaced with income supports. Indeed, income supports (whether unemployment insurance, cash benefits, or even health insurance that covers large expenses) can prevent or mitigate financial distress upstream, whereas short-term rental assistance may come only after that distress has become acute. The policy evolution of our current rental-assistance landscape—which has focused on longer-term supports—may to some extent reflect the underlying nature of housing markets and housing assistance.

B. Building a Housing Safety Net

The difficulties of providing housing as a safety-net program does not mean, though, that it ought not be offered. It should be, at least absent some fuller transformation of the welfare state. Providing a safety net specifically for housing offers political and practical benefits. Politically, in-kind redistribution is usually more popular and politically stable than pure cash transfers.[114] Practically, housing assistance offers a second chance to catch those who fall between the many cracks of our limited, fragmented system of income supports.[115] Even if each

113. *See, e.g.*, Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878, 892 (1990).

114. Zachary Liscow & Abigail Pershing, *Why Is So Much Redistribution In-Kind and Not in Cash? Evidence from a Survey Experiment*, 75 NAT'L TAX J. 313, 323-24 (2022). Housing assistance also has its own well-established set of interest groups, administrators, and legislative committees that constitute a discrete political locus for advocacy.

115. Some individuals might receive insufficient unemployment payments. *Cf.* Katherine Baicker, Claudia Goldin & Lawrence F. Katz, *A Distinctive System: Origins and Impact of U.S. Unemployment Compensation*, *in* THE DEFINING MOMENT: THE GREAT DEPRESSION AND THE AMERICAN

program is incomplete, the overlap helps more people—especially the women, children, and people of color at greatest risk of housing instability[116]—receive some protection. Moreover, there is compelling evidence that short-term assistance, specifically targeting those who do not need permanent supports, can dramatically and cost-effectively reduce homelessness.[117]

To this end, the pandemic experience offers several possible takeaways about how to improve the housing safety net. First, the pandemic has demonstrated that doing so will require creating an ongoing relationship between renters (or landlords) and the government. Certainly, creating new emergency programs only after crises emerge guarantees that relief will come too late. But the same is true of any system that requires establishing eligibility, determining the amount of assistance, and coordinating with landlords in the narrow window after a loss of income or unexpected expense and before rent comes due. Right now, most tenants have no relationship with any affordable-housing program or agency. The state, therefore, may need to become more involved in the landlord-tenant relationship ahead of time, just as employers report their workers' earnings and pay into unemployment insurance on a regular basis.[118]

ECONOMY IN THE TWENTIETH CENTURY 227, 227-28, 235 (Michael D. Bordo, Claudia Goldin & Eugene N. White eds., 1998) (comparing American unemployment insurance to more generous European and Canadian systems). Others might be ineligible for some benefits (but not others) based on immigration status. Others might fail to navigate the hurdles imposed by burdensome state requirements for Medicaid. Others' loss of income might not be compensable by any program, as when a long-term nonmarital relationship ends. In all these cases, rental assistance could serve as a critical backstop. *Cf.* MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA, at ix (10th Anniversary ed. 1996) ("American welfare hardly qualifies as a system. Diffused through every layer of government; partly public, partly private, partly mixed; incomplete and still not universal; defeating its own objectives, American welfare practice is incoherent and irrational.").

116. *See* Kathryn A. Sabbeth & Jessica Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. (forthcoming 2022) (manuscript at 11-15), https://ssrn.com/abstract=3807349 [https://perma.cc/7JS9-KFGD].

117. Evans et al., *supra* note 26, at 698.

118. Leveraging financial institutions as standing intermediaries for rental assistance—since landlords generally have banking relationships, and those banks have existing relationships with the government—offers one alternative approach. Indeed, this was one strategy used to protect employment during the pandemic, through the Paycheck Protection Program. However, even there, the lack of preexisting administrative capacity appears to have made the program inefficient, regressive, and poorly targeted. David Autor, David Cho, Leland D. Crane, Mita Goldar, Byron Lutz, Joshua Montes, William B. Peterman, David Ratner, Daniel Villar & Ahu Yildirmaz, *The $800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?*, 36 J. ECON. PERSPS. 55, 57 (2022). Further analysis of how banks could or could not serve as preexisting pathways for the provision of rental assistance would be quite valuable.

Almost by definition, creating this preexisting relationship would require broadly universalizing assistance. Everyone must be "in the system," even those who, for now, do not need help. Once in place, though, the ongoing nature of that relationship would also offer new levers for social policy. For example, unemployment insurance is priced to discourage layoffs;[119] a rental-assistance program might similarly incentivize landlords to avoid unnecessary evictions or otherwise improve practices.

Precisely how to structure a program is beyond this Essay's scope. Any broad guarantee of assistance raises difficult questions specific to emergency assistance—in particular, how to ensure a safety net is reliably available without creating various moral hazards[120]—as well as all the ordinary complexity of policy design, though various promising concepts have been developed.[121] One notable recent proposal, for example, would offer tenants access to prefunded accounts usable only for rent shortfalls, but otherwise within beneficiaries' control.[122] Regardless of whether this is the right model, though, the broader takeaway is that attempting to establish new relationships between the state, landlords, and tenants at the moment of need—as existing programs do—starts the process already behind.

Second, if the provision of affordable housing can't be made fast enough to outrun the eviction process, eviction must be made slower.[123] More specifically,

---

119. Patricia M. Anderson & Bruce D. Meyer, *The Effects of Unemployment Insurance Payroll Tax on Wages, Employment, Claims, and Denials*, 78 J. PUB. ECON. 81, 102-03 (2000).

120. Ingrid Gould Ellen, Amy Ganz & Katherine O'Regan, *A Renter Safety Net: A Call for Federal Emergency Rental Assistance*, *in* SECURING OUR ECONOMIC FUTURE 178, 196-97 (Melissa S. Kearney & Amy Ganz eds., 2020).

121. For a description of some of these options, along with their advantages and potential pitfalls, see, for example, Ellen et al., *supra* note 120, at 196-98, which describes design proposals for rental-assistance programs; and Collinson et al., *supra* note 16, at 11-15, which outlines three policy reforms to enhance the housing safety net. *See also* Mary Cunningham, Josh Leopold & Pamela Lee, *A Proposed Demonstration of a Flat Rental Subsidy for Very Low Income Households*, URB. INST. 10-15 (Jan. 2014), https://www.urban.org/sites/default/files/publication/22311/413031-A-Proposed-Demonstration-of-a-Flat-Rental-Subsidy-for-Very-Low-Income-Households.PDF [https://perma.cc/5ST4-8Z4T] (discussing options for structuring medium-term rental-assistance programs positioned between existing long-term programs and emergency assistance).

122. Collinson et al., *supra* note 16, at 11, 13.

123. Another implication, related to aligning timelines of housing acquisition, housing loss, and the provision of assistance, is the importance of affordable short-term housing options. In the past, short-term rentals, including single-room occupancy housing (e.g., rooming houses), provided flexibility for people with unreliable incomes. Much of this housing was systematically eliminated over the twentieth century. *See* CHARLES HOCH & ROBERT A. SLAYTON, NEW HOMELESS AND OLD: COMMUNITY AND THE SKID ROW HOTEL 172-98 (1989); Brian J. Sullivan regulatory interventions addressing housing instability should be integrated with rental-assistance programs. This was one of the other successes of pandemic-era housing policy: eviction moratoria bought households the time needed to access emergency rental assistance (or otherwise reorder their affairs). Indeed, expressly linking changes to the eviction process with rental assistance was a hallmark of both federal and state policy. Encouraged by Treasury guidance, many state and local jurisdictions (including state court systems) required landlords to seek rental assistance before filing for nonpayment evictions, provided eviction notices to ERA providers for immediate outreach, and created other important eviction diversion strategies, with promising results.[124] Even Justice Kavanaugh, in declining to enjoin the Center for Disease Control and Prevention's eviction moratorium on its first trip to the Supreme Court, recognized the close link between these two strategies.[125]

Legal scholars and economists sometimes paint regulatory strategies for helping low-income people as misguided substitutes for redistribution, including specifically in low-income housing policy.[126] But redistribution is not a frictionless process. Slowing down the eviction assembly line—a regulatory intervention—can open up possibilities for more effective redistribution. Or, to put it differently, an important benefit of tenant protections, apart from any

& Jonathan Burke, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 CUNY L. REV. 113, 119-32 (2013). Today, extended-stay hotels and motels fill the gap, to some extent (as do formal homeless shelters), but there is much room for reconsideration and improvement.

124. *See Eviction Diversion: Partnerships with Broader Eviction Diversion Programs*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices/eviction-diversion [https://perma.cc/6WXP-MGPX] (collecting guidance and case studies on preventing housing insecurity and helping landlords recover from rental arrearages).

125. *See* Ala. Ass'n of Realtors v. HHS, 141 S. Ct. 2320, 2320 (2021) (Kavanaugh, J., concurring) (noting that delaying the end of the eviction moratorium by "a few weeks . . . will allow for additional and more orderly distribution of the congressionally appropriated rental assistance funds"); *see also In re* Fifth Order Modifying and Extending Declaration of Jud. Emergency in Response to COVID-19 Emergency (Va. 2020), https://www.vacourts.gov/news/items/covid/2020_0608_scv_amendment_to_fifth_order.pdf [https://perma.cc/MF94-ZSRP] (extending moratorium partially to "allow the Commonwealth time to implement its comprehensive rent relief program").

126. *E.g.*, Boaz Abramson, The Welfare Effects of Eviction and Homelessness Policies (July 17, 2022) (unpublished manuscript), http://stanford.edu/~boaza/evictions_abramson.pdf [https://perma.cc/5GMN-HG4Q] (contrasting the welfare effects of regulatory anti-eviction protections with rental assistance, without considering the interaction between these strategies); Louis Kaplow & Steven Shavell, *Why the Legal System Is Less Efficient than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667, 667 (1994).

substantive legal entitlements to remain in a home, is the *time* they provide tenants.[127] That time can be vital for direct financial supports to work effectively.[128] Whatever the merits of slowing evictions as a stand-alone reform—a context-sensitive empirical question[129]—doing so may undergird the successful distribution of rental assistance.[130] In this sense, regulation can be a complement for redistribution, not an alternative to it.

Third, on the project-based side, the pandemic experience underscored the value of speed for keeping down costs and allowing affordable-housing developers to seize market opportunities. Streamlining land-use reviews and other administrative processes and simplifying capital stacks (including through providing more funding upfront) can each help build more affordable housing at a lower cost. The last two years do not speak to the potentially significant costs of such speed—it remains to be seen whether Project Homekey developments, for example, wind up financially unsustainable or poorly maintained—but they demonstrate the magnitude of the benefits.

Finally, in moving toward a stronger housing safety net, cities and states have a valuable role to play. Subnational governments, I have argued elsewhere, are poorly positioned to provide long-term rental assistance because their fiscal cycles leave them unable to sustain that spending during recessions.[131] But housing

---

127. Thinking about time in rental assistance may also suggest the value of pushing the risk of economic instability (and perhaps the targeting of relief) upstream from renters—who are least able to spread the costs of instability over time—to landlords and even lenders. Those latter actors have greater capacity to bear losses while waiting for assistance, which is a valuable resource that should be exploited. *Cf.* Les Shaver, *Lenders Work with Apartment Owners as Moratoriums Stretch On*, GLOBEST (July 7, 2021, 7:10 AM), https://www.globest.com/2021/07/07/lenders-work-with-apartment-owners-as-moratoriums-stretch-on [https://perma.cc/5NB5-M3M7]. I thank Greg Baltz for this point.

128. Notably, providing unrepresented tenants in housing court with attorneys, a common suggestion for promoting housing stability, may function in precisely this way. *See* Mike Cassidy & Janet Currie, The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program 29-30 (Mar. 2022) (unpublished manuscript), https://economics.princeton.edu/wp-content/uploads/2022/03/Currie_Cassidy_UA.pdf [https://perma.cc/2Y4V-QQ2W] (showing that the right to counsel lengthens the time until judgment); Jack Newton, Paula Arboleda, Michael Connors & Vianca Figueroa , *Civil Gideon and NYC's Universal Access: Why Comprehensive Public Benefits Advocacy Is Essential to Preventing Evictions and Creating Stability*, 23 CUNY L. REV. 200, 225-26 (2020) (describing public-benefits receipt as the primary means of resolving eviction cases under New York City's right to counsel in housing court).

129. *Cf.* Abramson, *supra* note 126 (arguing that, in San Diego, the right to counsel in housing court would reduce long-term tenant welfare by increasing rents, while only delaying but not preventing evictions).

130. Further inquiry on this topic might look to lessons from the homeownership market and especially from mortgage-forbearance programs.

131. Kazis, *supra* note 30.

safety-net programs, which do not need the same level of long-term commitment, are a better fit for states and cities—and, indeed, have historically been more prevalent at the subnational level.[132] Meanwhile, state and local experimentation during the pandemic generated notable success stories, from Project Homekey to a slew of creative programs integrating rental assistance with the eviction legal system. Federalist experimentation, it appears, can generate much-needed new ideas here. We do not have an off-the-shelf model for a rental-housing safety net. Cities and states might creatively borrow from the panoply of non-housing-assistance programs created during the pandemic—some of which were structured with far less administrative burden than housing programs were—to improve short-term rental assistance or create something new altogether. The federal government's fiscal capacity remains irreplaceable for any large-scale redistributive scheme, of course, but local policy innovation should be encouraged.[133]

CONCLUSION

The COVID pandemic provided a harrowing reminder of how fragile financial stability can be: how events utterly outside our control can suddenly leave a family without a paycheck or caring for a sick loved one or for a child home from school. For those already vulnerable, such shocks are particularly devastating. But the American welfare state does little specifically to ensure that, in the face of such economic shocks, renters can stay housed. The United States has long-term affordable-housing programs for those who need durable income supports and mechanisms to mitigate economic instability upstream, like unemployment and health insurance. That coverage, however, is incomplete. The pandemic experience has underscored the importance of a safety net for renters facing a sudden economic crisis—and the poor fit of existing programs to that function. For the nation, the next crisis will come eventually; for some renters, it will arrive today. One way or another, we should be ready to catch those who fall.

Assistant Professor of Law, University of Michigan Law School. Thank you to Greg Baltz, Vicki Been, Ingrid Gould Ellen, Suzanne Kahn, and Charlie McNally for their invaluable suggestions on this Essay. Thank you also to the editors of the Yale Law

132. *Id.*

133. The leading federal proposal to create a standing emergency rental-assistance program notably leaves many of the most important program details unresolved, instead establishing a relatively flexible grant program for states, cities, and tribes (along with various avenues for program evaluation and improvement). *See* Eviction Crisis Act of 2021, S. 2182, 117th Cong. § 8 (2021).

Journal—*and particularly Nathan Cummings—for their enormously careful assistance, as well as for assembling this collection of papers on urban law in COVID's wake.*