

**The Promise of the Nonprofit Housing Sector: A View from New Haven**

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## **TABLE OF CONTENTS**

<b>Introduction .....</b>	<b>1</b>
<b>I. Setting the Stage .....</b>	<b>10</b>
A. The Growing Problem of Affordable Housing, and Its Widespread Effects .....	10
B. Current Policy Responses .....	15
<b>II. An Empirical Overview of Nonprofits and Affordable Housing in New Haven .....</b>	<b>20</b>
A. The Five Main Kinds of Nonprofit Developers .....	20
<i>i.</i> Community Development Corporations (CDCs) .....	20
<i>ii.</i> Local Branches of National Organizations .....	28
<i>iii.</i> Large, Regional Nonprofits .....	32
<i>iv.</i> Supportive Housing Providers .....	36
<i>v.</i> Subsidiaries of Public Housing Authorities .....	37
B. How Policymakers Treat Nonprofit Housing Developers .....	39
<i>i.</i> Federal .....	39
<i>ii.</i> Connecticut .....	44
<i>iii.</i> New Haven .....	47
C. How Nonprofits Fund Individual Projects .....	49
D. The Overall Contribution of the Nonprofit Sector to Affordable Housing Development .....	54
<b>III. Making the Case for Nonprofit Housing Developers .....</b>	<b>57</b>
A. A Threshold Argument: Why We Need Production Subsidies .....	57
B. Comparative Advantages of Nonprofit Housing Developers, and What New Haven's Neighborhoods Would Lose Without Them .....	63
<i>i.</i> Structural Incentives: How the Nonprofit Corporate Form Provides a Broad Comparative Advantage .....	64
<i>ii.</i> Flexibility and Creativity: Comparing Nonprofit Developers to Public Housing Authorities .....	67
<i>iii.</i> Compassion and Community: Comparing Nonprofit Developers to For-Profit Developers .....	74
<i>iv.</i> Neighborhood and Spillovers: Comparing Nonprofit Developers to Housing Choice Vouchers .....	84

<b>IV. Combating the Critics: What Connecticut and New Haven Can Teach Us</b>	
<b>About Overcoming the Negative Aspects of Nonprofit Housing Development .....</b>	<b>88</b>
<b>A. Keeping High Nonprofit Costs in Check .....</b>	<b>88</b>
<b>B. Imposing Accountability through Competition and Standards .....</b>	<b>90</b>
<b>C. Cultivating Expertise in Organizations with High Turnover .....</b>	<b>92</b>
<b>Conclusion .....</b>	<b>93</b>

## Introduction

New Haven's Dwight neighborhood lies along the western edge of Yale University's campus. Once considered one of New Haven's wealthiest neighborhoods,<sup>1</sup> Dwight's standing has since diminished.<sup>2</sup> Still, the neighborhood remains home to a bevy of beautiful nineteenth century houses and, by all accounts, constitutes a standard working class New Haven neighborhood. With its long rows of two-story homes, punctuated by the occasional low-rise apartment building, Dwight appears void of public housing or any other "affordable housing" developments. A smattering of Section 8 vouchers are probably floating around, an informed passerby might surmise, but the neighborhood's housing market likely functions the way most residential housing markets function in America: the private sector built the housing, leaving private homeowners to own and private landlords to rent.

In some sense, this description is correct. Private real estate developers built much of Dwight's housing, and most current residents either rent from private landlords or own their home. The Housing Authority of New Haven owns or operates no buildings in Dwight,<sup>3</sup> though a number of Section 8 vouchers do indeed dot Dwight's streets.<sup>4</sup> Yet the passerby's description misses an important, albeit often unnoticed, purveyor of affordable housing: the nonprofit sector.

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<sup>1</sup> See DOUGLAS W. RAE, CITY: URBANISM AND ITS END 167-68 (2003) (calling early twentieth century Dwight "upscale").

<sup>2</sup> See CITY OF NEW HAVEN, 5 YEAR CONSOLIDATED PLAN 2015-2019, 114 (2015), <http://www.cityofnewhaven.com/Finance/pdfs/Con%20Plan%20final%202015-2019.pdf> (describing Dwight as one of the six neighborhoods in New Haven with the "highest concentrations of housing in need of rehabilitation").

<sup>3</sup> I base this conclusion on my own analysis of the Housing Authority of New Haven's most recent annual report. (For clarity, I note here that the Housing Authority of New Haven also does business as "Elm City Communities.") See ELM CITY COMMUNITIES/HOUSING AUTHORITY OF NEW HAVEN, 2016 MOVING TO WORK ANNUAL REPORT 21-22 (2017), <http://www.elmcitycommunities.com/Data/AnnualReports/New%20Haven%20FY%202016%20Report%201%205%2017%20-%20final%20PDF.pdf>. I temper my conclusion that the Housing Authority owns no buildings in Dwight by noting that the Housing Authority owns 190 scattered-site units across New Haven; some of those scattered-site units may very well be in Dwight.

<sup>4</sup> While it is notoriously challenging to keep track of the approximately 3,500 tenant-based housing choice vouchers administrated by the Housing Authority of New Haven, see Interview with Dr. Karen DuBois-Walton, Executive Director, New Haven Housing Authority, in New Haven, Conn. (Oct. 21, 2016), a recent New Haven fair housing compliance report stated that 187 voucher holders reside in Dwight's census tract, #1407; these voucher holders

To be more specific, nonprofits are (or were) involved in at least five major aspects of Dwight’s housing. (1) Along Dwight Street, near the corner of Elm Street, Fellowship Place, a local nonprofit, owns several well-integrated buildings that collectively provide 26 permanent apartments for chronically homeless individuals with mental disabilities.<sup>5</sup> Fellowship Place also offers mental health and career enhancement services to a broad range of clients. (2) Moving west on Elm Street, one stumbles upon three houses that were completely refurbished and then sold at below-market rates by Neighborhood Housing Services, a local outlet of the congressionally-chartered nonprofit NeighborWorks America. Neighborhood Housing Services has “gut rehabbed” 13 houses in Dwight alone.<sup>6</sup> (3) Hopping one block south to Edgewood Avenue, we find the Greater Dwight Development Corporation. This nonprofit has not only refurbished over 200 homes in the neighborhood, but also serves as the parent organization of New Haven’s first publically supported Montessori School, which sits next door to the development corporation’s office. GDDC owns the nearby Stop and Shop grocery store, too.<sup>7</sup> (4) On the streets surrounding GDDC, The Community Builders, a national nonprofit housing developer, owns and manages a scattered set of buildings, collectively titled “Kensington Square.” Kensington Square houses over 200 tenants at affordable rates.<sup>8</sup> (5) Finally, in Dwight

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account for about 5.5 percent of New Haven’s voucher population. See CITY OF NEW HAVEN, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE 84 (2015), <http://www.cityofnewhaven.com/Finance/pdfs/Impediments%20to%20Fair%20Housing%20Update%202015%20June.pdf>.

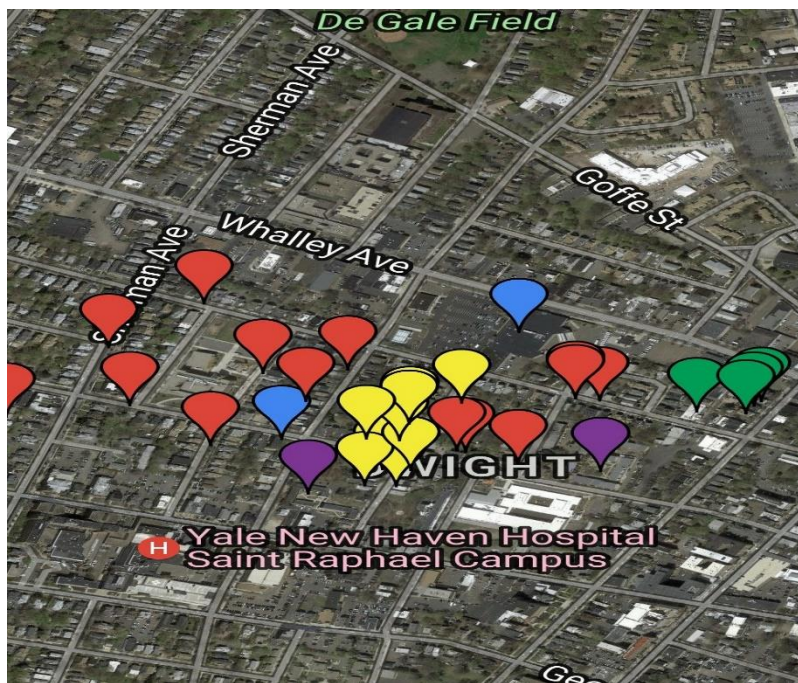
<sup>5</sup> See *Supportive Housing*, FELLOWSHIP PLACE, <http://fellowshipplace.org/supportive-housing/>. For recent news coverage of Fellowship Place’s work, see Allan Appel, *Now There’s Room at The “Inn”*, NEW HAVEN INDEPENDENT (Sept. 15, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/fellowship\\_place2/](http://www.newhavenindependent.org/index.php/archives/entry/fellowship_place2/).

<sup>6</sup> For a complete database of Neighborhood Housing Services’ work in New Haven, see *A Map of Our Completed Projects*, NEIGHBORHOOD HOUSING SERVICES, <http://www.nhsfnewhaven.org/ahd/map-completed-properties>.

<sup>7</sup> Linda Maier-Townsend recounted the Greater Dwight Development Corporation’s history to me in an interview. See Interview with Linda Maier-Townsend, Executive Director, Greater Dwight Development Corporation, in New Haven, Conn. (Nov. 10, 2016). For a good news article on the Greater Dwight Development Corporation, see *The Grocery Store of New Haven’s Dwight Neighborhood*, YALE HERALD (Mar. 26, 2010), <http://yaleherald.com/featured/the-grocery-story-of-new-haven%E2%80%99s-dwight-neighborhood/>.

<sup>8</sup> For reasons described in more detail below, see *infra* Section II.A.iii, the Dwight community does not hold Kensington Square in high regard.

Gardens and Ethan Gardens, Dwight houses two classic models of nonprofit housing development. These two low-rise apartment complexes grew out of the mid-twentieth century “nonprofit cooperative movement,” in which HUD provided below-market mortgage financing to tenant collectives, and allowed the tenants to organize and manage the housing themselves. Unfortunately this particular nonprofit model did not work out well in the long-run; both buildings were bought by major private investors in the 2000s and are undergoing considerable rehabilitation.<sup>9</sup>



*Map of nonprofit development in the Dwight neighborhood: Neighborhood Housing Services (Red); Greater Dwight Development Corporation (Blue); Kensington Square (Yellow); Fellowship Place (Green); Dwight Gardens/Etan Gardens (Purple).*

<sup>9</sup> For more on Dwight Gardens, see Paul Bass, *Dwight Gardens Rescue Deal Reached*, NEW HAVEN INDEPENDENT (Jan. 24, 2014), [http://www.newhavenindependent.org/index.php/archives/entry/dwight\\_gardens\\_rescue\\_deal\\_reached/](http://www.newhavenindependent.org/index.php/archives/entry/dwight_gardens_rescue_deal_reached/); Paul Bass, *On Verge of a Dream, Co-op Faces Foreclosure*, NEW HAVEN INDEPENDENT (Mar. 10, 2010), [http://www.newhavenindependent.org/index.php/archives/entry/on\\_the\\_verge\\_of\\_a\\_dream\\_co-ops\\_face\\_foreclosure/](http://www.newhavenindependent.org/index.php/archives/entry/on_the_verge_of_a_dream_co-ops_face_foreclosure/). Ethan Gardens shares a similar history to Dwight Gardens and its history was explained to me by the president of Pike International, the current owner of Ethan Gardens. See Interview with Schmully Hecht, President, Pike International, in New Haven, Conn. (Dec. 6, 2016); see also Allan Appel, *Co-op Has New Owner, New Rules*, NEW HAVEN INDEPENDENT (Mar. 25, 2010), [http://www.newhavenindependent.org/index.php/archives/entry/new\\_rules\\_and\\_new\\_owner\\_at\\_ethan\\_gardens/](http://www.newhavenindependent.org/index.php/archives/entry/new_rules_and_new_owner_at_ethan_gardens/).

What's my point? Although nonprofit housing developers do much more than what I highlight in Dwight, the neighborhood neatly introduces the arguments of this paper: **(I)** that the nonprofit sector constitutes an important, yet oft unnoticed, facet of affordable housing policy; **(II)** that an examination of New Haven nonprofit developers can shed light on the positive *and* negative attributes of this sector; and **(III)** that, on balance, lawmakers should support nonprofit housing developers (and the government subsidies that they rely on) because such developers fill an essential policy niche occupied by neither the public nor private sectors. On that last point, I am particularly referring to nonprofits' unique focus on generating positive neighborhood externalities in underserved communities.<sup>10</sup>

"But nonprofit housing developers," even the most enthusiastic of housing wonks might grimace, "what a *narrow* topic." And the grimace is not without justification – most of today's major housing policy debates revolve around two major arguments: the extent to which government should subsidize high housing costs through supply-side production programs versus demand-side voucher programs,<sup>11</sup> and the extent to which government should use housing policy to disperse families to wealthier neighborhood with good schools versus stabilize urban areas undergoing either disinvestment or gentrification.<sup>12</sup> Yet, to my mind, a defense of the nonprofit housing sector connects to both of these contemporary debates. It connects to the first question

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<sup>10</sup> When I say "underserved community," I mean both underserved populations (e.g., the poorest of the poor; people with disabilities) and underserved geographic areas (e.g., high-poverty census tracts).

<sup>11</sup> *Compare, e.g.,* JANET CURRIE, THE INVISIBLE SAFETY NET: PROTECTING THE NATION'S POOR CHILDREN AND FAMILIES 111-12 (2006) (calling for the elimination of all government production programs in favor of a universal voucher system) *with* EDWARD GOETZ, NEW DEAL RUINS: RACE, ECONOMIC JUSTICE, AND PUBLIC HOUSING POLICY 186-90 (2013) (calling for increased public housing funding).

<sup>12</sup> *Compare, e.g.,* Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AMERICAN ECON. REV. 855 (2016) (emphasizing the importance of moving children from impoverished neighborhoods to wealthier suburban neighborhoods at a young age) *with* Rebecca Diamond & Tim McQuade, *Who Wants Affordable Housing in their Backyard? An Equilibrium Analysis of Low Income Property Development* (Nat'l Bureau of Econ. Research, Working Paper No. 22204, 2016) (emphasizing the widespread spillover effects of building Low Income Housing Tax Credit developments in poor neighborhoods).

because a defense of nonprofit housing developers inherently involves a defense of supply-side interventions, and a traditionally more expensive supply-side intervention at that. It connects to the second question because the most potent nonprofit housing development has historically occurred within the inner city – not the wealthier suburbs. A defense of nonprofit housing developers thus entails an argument that focused investment in poorer neighborhoods constitutes a useful governmental (and philanthropic) expense.

Moreover, a defense of the nonprofit sector’s role in affordable housing development pushes against the most popular answers to the aforementioned questions. Nowadays, a growing chorus of academics heralds vouchers as the only solution to America’s affordable housing woes.<sup>13</sup> Most notably, Matthew Desmond, whose best-selling masterpiece “Eviction” put housing policy on the map for a whole generation of Americans, prizes vouchers over production programs. In “Eviction,” Desmond argued that “vouchers are more cost-effective than new construction,” and that production programs risk “drawing the nation’s poorest citizens under the same roof and contributing to racial segregation and concentrated poverty.”<sup>14</sup> Vouchers are also in vogue because of their purported ability to disperse families into “high opportunity” neighborhoods, a policy goal that production subsidies have too rarely attained.

I do not discount any of the arguments made in support of vouchers and dispersion policies – in fact, I find many of their economic analyses quite convincing. Yet voucher proponents have often ignored the more particular benefits of *nonprofit* developers – possibly

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<sup>13</sup> Besides the aforementioned Janet Currie and Raj Chetty, see, e.g., *Housing Vulnerable Families and Individuals: Is There a Better Way?: Hearing Before the S. Subcomm. On Transportation, Housing and Urban Development, and Related Agencies*, 114th Cong. 11-12 (2016) (statement of Edgar Olsen, Professor of Economics, University of Virginia); JOHN WEICHER, HOUSING POLICY AT A CROSSROADS: THE WHY, HOW, AND WHO OF ASSISTANCE PROGRAMS 250-58 (2012); Robert Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. REV. 983, 1019-20 (2010); EDWARD GLAESER & JOSEPH GYOURKO, RETHINKING FEDERAL HOUSING POLICY: HOW TO MAKE HOUSING PLENTIFUL AND AFFORDABLE 12-15, 142-44 (2008).

<sup>14</sup> MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 301-13 (2016).



because such developers are rarely discussed in housing policy literature – focusing instead on the shortcomings of production programs more broadly. As such, I offer this paper as both a defense of the nonprofit sector and as a corrective to the sector’s absence in the literature.<sup>15</sup>

One final reason I think a detailed discussion of nonprofit housing developers merits consideration: the subsidies these nonprofits rely on have dwindled in the last decade, and face further cuts in the coming years. At the federal level, Congress has halved the budgets of the two housing block grants that most benefit nonprofit developers, the Community Development Block Grant and the HOME Investment Partnerships, since 2000.<sup>16</sup> Earlier this year, President Trump’s Office of Management and Budget also proposed significant cuts to the Neighborhood Reinvestment Corporation, which funds nonprofits like the aforementioned Neighborhood

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<sup>15</sup> But see Brandon M. Weiss, *Residual Value Capture in Subsidized Housing*, 10 HARV. L & POL’Y REV. 521 (2016) (arguing that nonprofit developers should play the preeminent role in Low Income Housing Tax Credit development); Megan J. Ballard, *Profiting from Poverty: The Competition Between For-Profit and Nonprofit Developers for Low-Income Housing Tax Credits*, 55 HASTINGS L.J. 211 (2003) (arguing that Congress should ensure by statute that nonprofits play a role in Low Income Housing Tax Credit development); John J. Ammann & Peter W. Salsich, Jr., *Nonprofit Housing Providers: Can They Survive the “Devolution Revolution”?*, 16 ST. LOUIS U. PUB. L. REV. 321 (1997) (calling for “regulatory flexibility” to support nonprofit developers); cf. William H. Simon, *The Community Economic Development Movement*, 2002 WIS. L. REV. 377 (2002) (discussing nonprofit housing providers in the broader context of community economic development). In public policy and economics journals, though, nonprofit housing providers have received more detailed coverage. See, e.g., Kelly D. Edmiston, *Nonprofit Housing Investment and Local Area Home Values*, 2012 FEDERAL RESERVE BANK OF KANSAS CITY ECON. REV. 67 (finding that community development corporation investment in low and moderate income neighborhoods generally increased nearby housing prices); RACHEL G. BRATT, JOINT CTR. HOUSING STUDIES, HARVARD UNIVERSITY, *SHOULD WE FOSTER THE NONPROFIT SECTOR AS DEVELOPERS AND OWNERS OF SUBSIDIZED RENTAL HOUSING?* (2007) (defending the nonprofit sector’s role in housing policy and making further policy recommendations to enhance the sector’s capacity); Ingrid Gould Ellen & Ioan Voicu, *Nonprofit Housing and Neighborhood Spillovers*, 25 J. POL’Y ANALYSIS & MANAGEMENT 31 (2006) (finding that larger nonprofit housing developments produced longer lasting spillover benefits than for-profit developers).

<sup>16</sup> See ALEX SCHWARTZ, *HOUSING POLICY IN THE UNITED STATES* 59, tb. 2.17 (3d ed. 2014) (showing that, in inflation-adjusted dollars, Community Development Block Grant funding decreased by 51 percent between 2000 and 2013 [\$5.7 billion to \$2.9 billion] and HOME Investment Partnership funding decreased by 46 percent over the same period [\$2.2 billion to \$990 million]). In New Haven, for example, the City received \$4.5 million in CDBG funding and \$1.8 million in HOME funding in 2004; in 2015 the City received \$3.5 million for CDBG and \$640,000 for HOME. Compare CITY OF NEW HAVEN, CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT 2004-2005, 3, <http://www.cityofnewhaven.com/Finance/pdfs/2004-2005CAPER.pdf> with CITY OF NEW HAVEN, CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT 2015-2016, 3, <http://www.cityofnewhaven.com/Finance/pdfs/CAPER%202015-16.pdf>. In fairness, public housing authorities have also been hit with aggressive budget cuts for public housing capital and operating expenses (though far less so for housing voucher expenses). See SCHWARTZ, *supra*.

Housing Services.<sup>17</sup> In addition, while the federal government's largest subsidy for affordable housing development, the Low Income Housing Tax Credit, has increased in size since 2000,<sup>18</sup> the tax credit could face extinction under the new Republican administration – and without offsetting increases in direct grants.<sup>19</sup> The Executive Director of New Haven's largest nonprofit housing developer – Seila Mosquera of NeighborWorks New Horizons – told me that at least one group of her LIHTC investors had temporarily backed out of a development project in response to President Trump's victory, citing tax reform fears.<sup>20</sup>

Connecticut has done its best to make up the shortfall: Governor Dannel Malloy has poured additional funds into affordable housing since 2011, both offsetting federal cuts and turning Connecticut into a leader in affordable housing development.<sup>21</sup> Connecticut also offers several programs that specifically benefit nonprofit housing developers.<sup>22</sup> As one Department of

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<sup>17</sup> See Sharon LaFraniere & Alan Rappeport, *Popular Domestic Programs Face Ax Under First Trump Budget*, N.Y. TIMES (Feb. 17, 2017), [https://www.nytimes.com/2017/02/17/us/politics/trump-program-eliminations-white-house-budget-office.html?\\_r=0](https://www.nytimes.com/2017/02/17/us/politics/trump-program-eliminations-white-house-budget-office.html?_r=0).

<sup>18</sup> CONGRESSIONAL BUDGET OFFICE, FEDERAL HOUSING ASSISTANCE FOR LOW-INCOME HOUSEHOLDS 8-9 (2015) (noting that “since 2000, tax expenditures for the LIHTC have increased by \$1.7 billion (in real terms)”).

<sup>19</sup> See Jim Nunns, et al., URBAN INSTITUTE/BROOKINGS INSTITUTION, TAX POLICY CENTER, AN ANALYSIS OF DONALD TRUMP'S TAX PLAN (2015) <https://www.taxpolicycenter.org/sites/default/files/publication/128726/2000560-an-analysis-of-donald-trumps-tax-plan.pdf> (evaluating President Donald Trump's tax plan under the assumption that the LIHTC would be repealed); *but cf.* Michael Novogradac, *Washington Wire: How Will Tax Credits Fare Under President Trump?*, NOVOCO.COM (Dec. 1, 2016), <https://www.novoco.com/periodicals/articles/washington-wire-how-will-tax-credits-fare-under-president-trump> (noting that Republic Rep. Dave Camp's tax reform proposal retain the LIHTC, albeit without the tax-exempt private activity bonds essential for the LIHTC's operation). It also bears mentioning that tax rate reduction will reduce the value of the LIHTC; Erik Johnson of the HANH argued that federal tax reform portended ill for affordable housing. See Interview with Erik Johnson, Senior Director, Strategic Policy & Innovation, New Haven Housing Authority, in New Haven, Conn. (Dec. 9, 2016).

<sup>20</sup> Interview with Seila Mosquera, Executive Director, NeighborWorks New Horizons, in New Haven, Conn. (Nov. 29, 2016).

<sup>21</sup> See CONNECTICUT OFFICE OF POLICY & MANAGEMENT, REPORT OF THE INTERAGENCY COUNCIL ON AFFORDABLE HOUSING 22 (2014) (showing that Governor Dannel Malloy increased bond authorizations for housing programs from around \$30 million annually to around \$90 million annually); *see also* Telephone Interview with Terry Nash, Manager of Policy Development, Connecticut Housing Finance Agency (Jan. 11, 2017) (calling Connecticut a national leader on state-level affordable housing policy); Mary O'Leary, *New Haven Housing Developments to Benefit From State Funds*, NEW HAVEN REGISTER (Oct. 25, 2015) (“Since 2011, when Gov. Dannel P. Malloy assumed office, the state has created 6,958 affordable housing units. There are 2,517 affordable units under construction and funding is in place to create another 5,255 affordable units. The investment totals almost \$1 billion, according to the state.”).

<sup>22</sup> See, *infra*, Section III.C.ii.

Housing official boasted to me, Governor Malloy’s administration has channeled “unprecedented amounts of bond funding” to affordable housing.<sup>23</sup> Still, given Connecticut’s unfavorable budget outlook and looming gubernatorial election, nonprofit housing leaders in Connecticut told me that drastic cuts at the state level are one issue that keeps them up at night.<sup>24</sup>

All of this matters because, unlike cultural nonprofits that receive the bulk of their funding from individual donors and large-scale philanthropy, nonprofit housing developers rely heavily on subsidies enacted through direct grants or tax policy.<sup>25</sup> Additionally, unlike the private real estate market, nonprofits cannot look to their investors for sudden infusions of equity. Nonprofits could sustain themselves by scaling back their work in response to budget cuts or tax reform, of course. But, given the positive benefits nonprofits offer, a handicapped nonprofit housing sector represents a missed opportunity for America’s most needy residents and neighborhoods.

Hence, using New Haven as my context, I make an argument both local and global.<sup>26</sup> Namely, that the nonprofit sector not only plays (and has played) an important and underappreciated role in housing America’s urban poor, but that the sector offers unique benefits

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<sup>23</sup> See Telephone Interview with Michael Santoro, Community Development Specialist, Connecticut Dep’t Housing (Oct. 31, 2016).

<sup>24</sup> See, e.g., Telephone Interview with Elizabeth Torres, Executive Director, Bridgeport Neighborhood Trust (Jan. 13, 2017) (stating that Bridgeport city tax policy and Connecticut affordable housing budget cuts worried her more than impending federal policy changes).

<sup>25</sup> See Telephone Interview with Andrea Pereira, Executive Director, LISC Connecticut (Nov. 18, 2016) (arguing that foundation funding has been shifting away from housing nonprofits to nonprofits that do work in early childhood education or other policy arenas); Telephone Interview with Terry Nash, *supra* note 21 (“there’s no flood of private money for safe, decent, affordable housing”).

<sup>26</sup> Interestingly, housing law scholarship and New Haven share a rich history. See, e.g., Valerie Jaffee, Note, *Private Law or Social Norms? The Use of Restrictive Covenants in Beaver Hills*, 116 YALE L.J. 1302 (2007); Robert A. Solomon, *Building a Segregated City: How We All Worked Together*, 16 ST. LOUIS UNIV. L. REV. 265 (1997); Andrew J. Cappel, Note, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 YALE L.J. 617 (1991). Recent reports suggesting that New Haven contains one of the most representative demographic mixes in the country perhaps provides a rational basis for this trend. See Jed Kolko, “‘Normal America’ Is Not a Small Town of White People,” FIVE THIRTY EIGHT (Apr. 28, 2016), <https://fivethirtyeight.com/features/normal-america-is-not-a-small-town-of-white-people/> (finding that, based on age, educational attainment, and race, the New Haven metropolitan area most resembles the U.S. overall). Or, at the least, a more rational basis than the presence of Yale Law School.

that cannot be easily replaced by public housing or vouchers, much less the free market.

Compared to these other housing development models, moreover, nonprofits have the most to lose in the current political and academic environment. Accordingly, we should tread carefully before winnowing away subsidies that these organizations depend upon to do their work.

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I will lay out my argument in the following manner. Section I will briefly describe the state of America's affordable housing problem and the prevailing policy responses. Section II will offer a descriptive account of the nonprofit sector's role in affordable housing, with a focus on how the sector operates in New Haven and in Connecticut. I will start by exploring the five primary forms of nonprofit housing developers. I will then recount the ways in which governments at the federal, state, and local level treat nonprofits, with a particular focus on the special carve-outs (or lack thereof) bestowed upon nonprofits by lawmakers. Through examples, I will also highlight how nonprofits "piggyback" these subsidies and benefits in developing their housing projects. Section II will conclude by discussing the numerical contribution of nonprofit developers to America and New Haven's housing markets.

Section III and Section IV will contain the meat of my normative argument, and will draw liberally upon my observations and interviews in New Haven. Section III will first address the threshold question of whether government should subsidize affordable housing construction at all. After answering that question in the affirmative, I will argue that the nonprofit corporate form offers nonprofit developers a fundamental advantage over other developers. Then, I will address the three major "competitors"<sup>27</sup> to nonprofit housing (*i.e.*, public housing, subsidized private developers, and vouchers). Here, I will focus on how the nonprofit housing sector

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<sup>27</sup> I place competitors in quotes because this paper contends that public housing, affordable private developments, and voucher programs each of have something meaningful to contribute to effective housing policy.

provides unique benefits that the other three approaches could not provide, either individually or collectively. Section IV will contend, in turn, that three major criticisms of nonprofit developers (*i.e.*, nonprofit developers are expensive, unskilled, and unaccountable), while not without merit, are either overstated or can be counteracted by good policy. I will conclude the paper by emphasizing that, though nonprofits only constitute one aspect of an effective, multi-faceted housing policy, experience in New Haven and broader national data both offer reasons to protect this underappreciated sector from political and academic headwinds.

## **I. Setting the Stage**

### **A. The Growing Problem of Affordable Housing, and Its Widespread Effects**

While it is not the intention of this paper to engage in hyperbolic discussion, a reasonable individual could conclude that America's poorest residents face an affordable housing crisis.<sup>28</sup>

Consider the data:

- The median renter household in 1960 spent about 18 percent of their income on rent; today they spend 29 percent. More importantly, renters who were in the bottom fifth of the income distribution devoted about 47 percent of their income to rent in 1960, compared to 63 percent today.<sup>29</sup>

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<sup>28</sup> For context, HUD deems housing "unaffordable" once a family unit spends over 30 percent of their gross income on housing costs. See U.S. DEP'T HOUSING & URBAN DEVELOPMENT, AFFORDABLE HOUSING, [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/](https://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/) (2017). For a detailed discussion on the complications of adopting HUD's thirty percent framework, see Michael E. Stone, *Housing Affordability: One-Third of a Nation Shelter-Poor*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA (Rachel G. Bratt, et al. eds., 2006) (arguing for a "shelter-poor" standard that takes into account family size and ability to pay, and finding even more dire results than the standard HUD calculations used below).

<sup>29</sup> See Robert Collinson et al., *Low Income Housing Policy* 16 (Nat'l Bureau of Econ. Research, Working Paper No. 21071, 2015); see also *id.* (adding that, though this trend is "at least in part due to stagnant real incomes for renters over this period . . . housing expenses seem to have risen in real terms as well"). There is an interesting side debate about the degree to which higher housing costs for the poor are reflected in higher quality living conditions. Compare Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. REV. 983, 987-88 (2010) ("The quality of U.S. housing stock has improved markedly since the beginning of the twentieth century. Despite the relative stinginess of U.S. housing aid, U.S. housing compares favorably in quality, even at the low end, to that found abroad.") with DESMOND, *supra* note 14, at 354-55 ("In the 1970s and 1980s, rents increased

- According to the U.S. Department of Housing & Urban Development, in 2013 almost two-thirds of poor renters spent over half of their income on rent; the same held true for almost one-quarter of *all* renters.<sup>30</sup> Even worse, Matthew Desmond found that, of renting households below the poverty line, at least one-quarter were dedicating *70 percent or more* of their income to housing.<sup>31</sup>
- In theory, public housing and section 8 vouchers should prevent these extravagant cost burdens by capping rents at 30 percent of a family's adjusted gross income. Yet in 2013 less than one out of four eligible families received housing assistance.<sup>32</sup> Moreover, some housing assistance programs, such as developments funded with the LIHTC or HOME funds, do not cap rent at 30 percent of income. Rather, these developments merely provide below-market rents.
- Low housing supply also presents a significant barrier. The aforementioned U.S. Department of Housing & Urban Development report concluded its executive summary with the following line: "*Even with rental assistance*, 6 of 10 extremely low-income renters and 3 of 10 very low-income renters do not have access to affordable and available housing units."<sup>33</sup> A recent Urban Institute report added that "[n]ationwide, only 28 adequate and affordable units are available for every 100 renter households with

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primarily because housing quality did . . . But since then, housing quality across America had remained virtually unchanged – if anything, the 2000s saw small declines in quality nationwide – while rents shot up.”).

<sup>30</sup> See U.S. DEP'T HOUSING & URBAN DEVELOPMENT, WORST CASE HOUSING NEEDS: 2015 REPORT TO CONGRESS (2015), Table A-1A, [https://www.huduser.gov/portal/Publications/pdf/WorstCaseNeeds\\_2015.pdf](https://www.huduser.gov/portal/Publications/pdf/WorstCaseNeeds_2015.pdf).

<sup>31</sup> See DESMOND, *supra* note 14, at 4 fn.3 (with detailed explanation in the footnote on pages 343-344).

<sup>32</sup> As a rule of thumb, eligible household is defined as any family making below 50 percent of Area Median Income. See *id.*; see also CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 14-16 (putting HUD's numbers into charts); Collinson, *Low Income Housing Policy*, *supra* note 29, at 16-17 (finding same result from Census data).

<sup>33</sup> See WORST CASE HOUSING NEEDS, *supra* note 30, at viii (emphasis added).

incomes at or below 30 percent of the area median income. Not a single county in the United States has enough affordable housing for all its extremely low-income renters.”<sup>34</sup>

- Single women and minorities have borne the brunt of the affordable housing crisis. HUD data shows that, of the 11 million extremely-low-income<sup>35</sup> renters in America, 7 million are female-headed households and 6.3 million are minority-headed households.<sup>36</sup> On the particular note of evictions – one of the major underappreciated costs of housing unaffordability – Matthew Desmond colorfully compared mass eviction to mass incarceration: “If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out.”<sup>37</sup>

Admittedly, these studies often rely on uncertain definitions of “income.” For instance, measured income often does not include governmental benefits.<sup>38</sup> It is also unclear whether comparisons of rent to gross income constitute “rent paid” or merely “rent owed.”<sup>39</sup> Even acknowledging HUD and the Census Bureau’s muddled definitions of “income,” though, it is undisputed that growing housing costs are a matter of public concern. Commentators on the right

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<sup>34</sup> See JOSH LEOPOLD, ET AL., URBAN INSTITUTE, THE HOUSING AFFORDABILITY GAP FOR EXTREMELY LOW-INCOME RENTERS IN 2013, 1 (2015), [http://www.urban.org/research/publication/housing-affordability-gap-extremely-low-income-renters-2013/view/full\\_report](http://www.urban.org/research/publication/housing-affordability-gap-extremely-low-income-renters-2013/view/full_report).

<sup>35</sup> Extremely low income (“ELI”) is a HUD term of art. It stands for families making 30 percent or less of Area Median Income. Very low income (“VLI”) renters, by contrast, make 50 percent of AMI, and low income renters make 80 percent of AMI.

<sup>36</sup> See WORST CASE HOUSING NEEDS, *supra* note 30, at 44-45, tb. A-6B.

<sup>37</sup> See DESMOND, *supra* note 14, at 98.

<sup>38</sup> See Collinson, *Low Income Housing Policy*, *supra* note 29, at 15 (noting that HUD excludes SNAP benefits, Medicaid, and Earned Income Tax credit refunds in determining income); Robert C. Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 HARV. J. L. & PUB. POL’Y 17, 29-30 (1992) (suggesting that, after accounting for in-kind benefits, rent burdens may be approximately one-third of their current reporting levels, though admitting that there is a “scarcity of reliable data” on poor households); cf. Christopher Jencks, *The War on Poverty: Was it Lost?*, N.Y. REV. BOOKS (Apr. 2, 2015), <http://www.nybooks.com/articles/2015/04/02/war-poverty-was-it-lost/> (noting that the Office of Management and Budget does not allow the Census Bureau to incorporate the value of in-kind food, medical, or housing benefits, or EITC refunds, into poverty thresholds, thus making the poverty rate appear higher than it may be).

<sup>39</sup> Thanks to Professor Ellickson for this insight.



and the left have generally accepted the underlying problem of housing unaffordability (unlike, say, climate change). An authoritative 2013 report by the Bipartisan Policy Center, for example, recited the same facts outlined above, before then blaming this sordid state of affairs on stagnating incomes, volatile wages, and a truncated supply of affordable housing units.<sup>40</sup>

New Haven's housing market, in turn, presents a local manifestation of this national predicament. According to a Data Haven report, in 2014 almost one-third of New Haven's renters spent over half of their income on rent, and another 23 percent spent over 30 percent of their income on rent.<sup>41</sup> Homeowners were not immune from the affordable housing crisis either: 14 percent of homeowners spent over half of their income on rent, with an additional 20 percent spending over 30 percent of their income on rent.<sup>42</sup> These numbers have all increased by around 60 percent since 2000, with the effect particularly felt in New Haven's poorest blocks: 35 percent of households in the city's low-income neighborhoods pay more than 50 percent of income on housing.<sup>43</sup>

The news from the supply side is equally grim. While somewhere between 20 and 30 percent of New Haven's housing stock consists of either public housing, subsidized affordable developments, housing voucher users (both federal and state voucher programs), special subsidized mortgagors, or deed-restricted units,<sup>44</sup> supply still falls short of demand. According to

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<sup>40</sup> See BIPARTISAN POLICY CENTER, *HOUSING AMERICA'S FUTURE: NEW DIRECTIONS FOR NATIONAL POLICY* 84 (2013).

<sup>41</sup> See DATA HAVEN, *Greater New Haven Community Index 2016*, at 19 (2016), [http://www.ctdatahaven.org/sites/ctdatahaven/files/DataHaven\\_GNH\\_Community\\_Index.pdf](http://www.ctdatahaven.org/sites/ctdatahaven/files/DataHaven_GNH_Community_Index.pdf).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See CONNECTICUT DEP'T HOUSING, 2015 AFFORDABLE HOUSING APPEALS LIST (2015), [http://www.ct.gov/doh/lib/doh/2015\\_sort\\_.pdf](http://www.ct.gov/doh/lib/doh/2015_sort_.pdf) (finding that 16,620 of New Haven's 54,967 housing units were "assisted" through one of the programs mentioned in the text preceding this footnote). Each year, the Connecticut Department of Housing is required to call municipalities and inquire into the amount of "affordable housing" each municipality provides. See CONN. AGENCIES REG. § 8-30g-2 (2017). This provision is part of Connecticut's 8-30g inclusionary zoning scheme. If less than 10 percent of the housing in a town is "affordable housing," then certain developers whose housing development plans have been rejected by the town have the right to sue the town. Once in court, the town must prove that its rejection of the proposed development was for legitimate reasons. See generally



the Urban Institute, New Haven's supply of "adequate, affordable, and available" units for extremely-low-income households dropped from 41 per 100 households in 2000 to 31 per 100 households in 2013.<sup>45</sup> More generally, with a vacancy rate of 2.2 percent and an average rent of \$1,154, New Haven is one of the tightest rental markets in the country.<sup>46</sup> One advocacy group found that, in order to afford a one bedroom fair market value apartment in the New Haven area (they put it at \$1,033/month), a minimum wage worker would need to clock 83 hours per week.<sup>47</sup>

The problem of unaffordable housing is not one that solely hits people's pocketbooks. Unaffordable housing leads to foreclosures, evictions, and blighted properties – all of which damage neighborhoods, not just individuals.<sup>48</sup> Unaffordable housing also results in *de facto* segregation and loss of economic opportunity. Given America's history of funding schools and social services at the local level, families may find their avenues for upward mobility limited solely because they cannot afford to live in neighborhoods with better schools, lower crime, and cleaner environments.<sup>49</sup> Indeed, America's affordability woes have grown hand-in-hand with re-

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C.G.S.A. § 8-30g (2013); Matt A.V. Chaban, *In Wealthy Pocket of Connecticut, an Innovative Approach to Affordable Housing*, N.Y. TIMES (Apr. 25, 2016), [https://www.nytimes.com/2016/04/26/nyregion/in-wealthy-pocket-of-connecticut-an-innovative-approach-to-affordable-housing.html?\\_r=0](https://www.nytimes.com/2016/04/26/nyregion/in-wealthy-pocket-of-connecticut-an-innovative-approach-to-affordable-housing.html?_r=0) (describing 8-30g appeals process in context of Fairfield County). However, New Haven's City Plan Department issued a report in 2010 disputing the Connecticut Department of Housing's numbers. They concluded that only 21 percent of New Haven's housing in 2010 was assisted. See Memorandum from Karyn M. Gilvarg & Susmitha Attota to Kelly Murphy, Re: DECD Housing Affordable Appeals List (Mar. 15, 2012) (on file with author). For a public version of the City Plan's overall numbers, see CITY OF NEW HAVEN, NEW HAVEN CITY PLAN DEPARTMENT, COMPREHENSIVE PLAN UPDATE: DATABOOK 3.12-3.13 (2013), <http://www.cityofnewhaven.com/cityplan/pdfs/Draft%20Databook%20Narrative/Full%20Document.pdf>.

<sup>45</sup> See URBAN INSTITUTE, HOUSING AFFORDABILITY GAP, *supra* note 34, at 22.

<sup>46</sup> See Kenneth R. Gosselin, *Report: New Haven Area Tightest U.S. Rental Market*, HARTFORD COURANT (Jan. 7, 2014), [http://articles.courant.com/2014-01-07/business/hc-new-haven-rental-market-20140107\\_1\\_apartment-vacancy-rate-1-percent-2-8-percent](http://articles.courant.com/2014-01-07/business/hc-new-haven-rental-market-20140107_1_apartment-vacancy-rate-1-percent-2-8-percent) (citing a report from Reis, Inc., a real estate research firm).

<sup>47</sup> The National Low Income Housing Coalition provides this information through the interactive "Out of Reach" report on their website. See NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH 2016, <http://nlihc.org/oor>.

<sup>48</sup> See, e.g., Ingrid Gould Ellen & Johanna Lacoe, *The Impact of Foreclosures on Neighborhood Crime* (working paper) (2015) (foreclosures linked to higher neighborhood crime rates); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AMER. J. SOCIO. 88, 121 (2012) ("[T]he eviction of thousands of women from black neighborhoods not only contributes to their homelessness and poverty but also disrupts community stability, a disruption itself linked to higher crime rates and neighborhood disorganization").

<sup>49</sup> See, e.g., Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects* (working paper) (2016); Raj Chetty & Nathaniel Hendren, *The Impacts of*

segregation. Recent research from Stanford University demonstrates that 35 percent of families live in neighborhoods of concentrated affluence or concentrated poverty, up from 15 percent in 1970; the percentage of families living in middle-income neighborhoods has correspondingly fallen from 65 percent to 41 percent.<sup>50</sup> Similar trends have been documented in New Haven.<sup>51</sup>

### B. Current Policy Responses

So what is our government's current response to this problem? Before dipping our spoon into the alphabet soup of housing policy acronyms, it bears reviewing the goals undergirding the federal government's housing policy. HUD's mission statement reads as follows:

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination, and transform the way HUD does business.<sup>52</sup>

Similarly, the oft-quoted preamble to the 1949 Housing Act articulates this simple goal: “a decent home in a suitable living environment for every American family.”<sup>53</sup> Point being, high housing costs are perhaps the chief ill American housing policy seeks to cure, but they are not the only ill. Inordinate housing costs are balanced with issues of racial and economic segregation, barriers for people with disabilities, neighborhood blight, and upward mobility.

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*Neighborhoods on Intergenerational Mobility II: County-Level Estimates* (working paper) (2016). Economist Justin Wolfers called these two studies “the most powerful demonstration yet that neighborhoods — their schools, community, neighbors, local amenities, economic opportunities and social norms — are a critical factor shaping your children's outcomes.” Justin Wolfers, *Why the New Research on Mobility Matters: An Economist's View*, N.Y. TIMES (May 4, 2015).

<sup>50</sup> See SEAN F. REARDON & KENDRA BISCHOFF, STANFORD CTR. EDUC. POL'Y ANALYSIS, THE CONTINUING INCREASE IN INCOME SEGREGATION, 2007-2012, at 7 (2016).

<sup>51</sup> See DATA HAVEN, *supra* note 41, at 16 tb. 2.7 (finding growing neighborhood economic segregation between 1980 and 2014).

<sup>52</sup> U.S. DEP'T HOUSING & URBAN DEVELOPMENT, MISSION, <https://portal.hud.gov/hudportal/HUD?src=/about/mission> (2017).

<sup>53</sup> SCHWARTZ, *supra* note 16, at 1 (quoting the 1949 Act's preamble).

With that in mind, we turn to policy. Last year, the federal government spent around \$50 billion on the following housing programs for low-income persons:<sup>54</sup>

- In fiscal year 2016, HUD spent \$19.5 billion on *housing choice vouchers*, or, in the budget’s parlance, “tenant-based rental assistance.”<sup>55</sup> Voucher holders may choose where to live, so long as the rent is within “fair market rates” and the landlord is willing to rent to them. In return, the government will pay any portion of the rent above 30 percent of the voucher holder’s income.<sup>56</sup> According to HUD’s most recent budget justification, housing vouchers serve around 2.2 million households, or around 5.2 million individuals.<sup>57</sup> Like all housing programs, the voucher program is consistently oversubscribed.<sup>58</sup>
- In fiscal year 2016, HUD spent \$10.7 billion on *project-based rental assistance* contracts. These so-called “section 8 projects” are vestiges of the three non-public housing production programs that existed before 1983.<sup>59</sup> While the original contracts expired without renewal for many of these developments, a number of private developers (both for-profit and nonprofit) continue to contract with HUD on a year-to-year basis.<sup>60</sup> HUD

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<sup>54</sup> See CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 7-9. This number includes HUD’s direct spending programs as well as the IRS’ LIHTC tax expenditures.

<sup>55</sup> See U.S. DEP’T HOUSING & URBAN DEVELOPMENT, FISCAL YEAR 2017: CONGRESSIONAL JUSTIFICATIONS 1-9.

<sup>56</sup> See U.S. DEP’T HOUSING & URBAN DEVELOPMENT, HOUSING CHOICE VOUCHERS FACT SHEET (2017), [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet).

<sup>57</sup> See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 6-11.

<sup>58</sup> A 2012 survey covering about 85 percent of public housing authorities found that 4.9 million households are on a voucher wait-list. See Collinson, *Low Income Housing Policy*, *supra* note 29, at 16-17. The average time that a household spends on the wait-list before receiving a voucher is 30 months – almost twice as long as the wait for public housing. See U.S. DEP’T HOUSING & URBAN DEVELOPMENT, PICTURE OF SUBSIDIZED HOUSING, *accessible at* <https://www.huduser.gov/portal/datasets/assths.html>.

<sup>59</sup> See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 1-9. For a history of the Section 8 production program and an overview of its current status, see generally SCHWARTZ, *supra* note 16, chap. 7.

<sup>60</sup> See SCHWARTZ, *supra* note 16, at 207-09. HUD has enacted various policies to either raise or lower contract rents (depending on the location) in order to protect the federal fisc, the developers’ profit motive, and low-income tenants. See *id.* at 213-17. In addition, since the Reagan government dramatically slashed HUD’s *budget authority* in the 1980s – a distinct metric than HUD’s *outlays* – HUD has been forced to renew these contracts on an annual basis, thus increasing the difficulty of keeping these private developments affordable. See *id.* at 55-57.

currently has 1.2 million units under contract; these units benefit 1.17 million households (or around 2 million individuals).<sup>61</sup>

- In fiscal year 2016, the IRS expended around \$8 billion on *Low Income Housing Tax Credits*.<sup>62</sup> The LIHTC offers affordable housing developers equity; developers receive the tax credit from the state housing finance agency and, in turn, sells the tax credit for cash to investors.<sup>63</sup> The LIHTC funds almost one-third of affordable housing in this country; as of 2012 LIHTC-funded developers have built between 2 and 2.5 million below-market-rent units. About 40 percent of tenants in affordable LITHC units also rely on a voucher or some other form of direct assistance.<sup>64</sup>
- In fiscal year 2016, HUD spent \$5.6 billion on *public housing*.<sup>65</sup> While the federal government funds public housing, local Public Housing Authorities (“PHAs”) are responsible for project development and day-to-day management.<sup>66</sup> Over 3,000 PHAs own and operate public housing in the United States and its territories for 1.08 million households (or 2.3 million individuals), though almost half of PHAs provided fewer than

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<sup>61</sup> See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 24-3, 24-8.

<sup>62</sup> See JOINT COMMITTEE ON TAXATION, ESTIMATE OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2015-2019, p. 32 (2015).

<sup>63</sup> For an overview of the LITHC, see Weiss, *Residual Value Capture*, *supra* note 15, Section II.

<sup>64</sup> See CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 4-6.

<sup>65</sup> See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 1-9. This \$6.4 billion number excludes family self-sufficiency program funds as well as certain funding for Native American and Native Hawaiian housing.

<sup>66</sup> See SCHWARTZ, *supra* note 16, at 170.

100 housing units.<sup>67</sup> Since reaching a peak of 1.41 million units in 1991, the number of public housing units has fallen by about 300,000, or around 18 percent.<sup>68</sup>

- Most of HUD’s remaining budget flows to other production-based programs. For the purposes of this paper the three most important are:
  - (i) *Section 202 & Section 811 housing* for the elderly and disabled. These programs fund nonprofits that build housing for the elderly (Section 202) and the disabled (Section 811). HUD spent \$916 million on these programs in fiscal year 2016, and, as of 2012, 391,000 units of this housing exist.<sup>69</sup>
  - (ii) The *HOME investment partnerships program*, which is the “nation’s largest federal block grant program that focuses exclusively on affordable housing for low and moderate income households.”<sup>70</sup> HOME received \$1 billion last year and, as of 2012, had helped cities and states fund 267,000 units of affordable housing.<sup>71</sup> HOME is often used as gap funding for LIHTC developments.
  - (iii) The *Community Development Block Grant*, which offers localities broad monies to fund community development in poorer neighborhoods.<sup>72</sup> Of the \$7.2

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<sup>67</sup> *Id.* at 164-66; CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 5 box 1. Also, reputable sources do not agree on the number of PHAs in the United States. Schwartz puts the number at 3,095; the CBO report references “the country’s nearly 4,000 PHAs”; and the official HUD website puts the number at “some 3,300” PHAs. *See* U.S. DEP’T HOUSING & URBAN DEVELOPMENT, HUD’S PUBLIC HOUSING PROGRAM, [https://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](https://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog). For the number of residents served by public housing, see CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 11 box 3; PICTURE OF SUBSIDIZED HOUSING, *supra* note 58; *cf.* CONGRESSIONAL JUSTIFICATION, *supra* note 55, at 9-7 (stating that 2.6 million Americans benefit from public housing).

<sup>68</sup> *See* Collinson, *Low Income Housing Policy*, *supra* note 29, at 68 tb.2; SCHWARTZ, *supra* note 16, at 161 tbs. 6.1, 6.7.

<sup>69</sup> *See* CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 1-9 (budget); SCHWARTZ, *supra* note 16, at 9 (unit numbers).

<sup>70</sup> *See* SCHWARTZ, *supra* note 16, at 272.

<sup>71</sup> *See* CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 1-9, 18-1 to 18-7 (budget); SCHWARTZ, *supra* note 16, at 272 (unit numbers).

<sup>72</sup> The program’s requirements are vague (“benefit low-income and very-low-income persons, prevent or eliminate slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available”) and, accordingly, states and cities have discretion in how they spend their grant. *See* U.S. DEP’T

billion HUD spent on the CDBG last year, around 25 percent went to housing activities (\$1.8 billion), which is typical.<sup>73</sup> From 2005 to 2015, CDBG, often in conjunction with other grants like HOME, helped house around 1.3 million people.<sup>74</sup>

States and localities play an essential role in affordable housing policy, too. Not only are public housing authorities operating at the local level (PHAs both build public housing and distribute housing vouchers), but the LIHTC is administered by state housing finance agencies, and CDBG and HOME are distributed through city and state governments. Moreover, states occasionally fund additional affordable housing programs through levies on real estate transactions and through bond issuances.<sup>75</sup> At the municipal level, cities may grant affordable housing developers special tax and zoning treatment.<sup>76</sup> State and localities also control zoning codes. Many commentators argue that exclusionary zoning rules, especially in the suburbs, limit the nation's supply of affordable housing.<sup>77</sup> Some states and cities have even gone so far as to create "inclusionary zoning" policies.<sup>78</sup> That is, policies that incentivize (or require) private

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HOUSING & URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/programs](https://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs).

<sup>73</sup> See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 1-9, 15-1 to 15-7; accord MEETING OUR NATION'S HOUSING CHALLENGES: REPORT OF THE BIPARTISAN MILLENNIAL HOUSING COMMISSION 112-13 (2002). It is also worth noting that CDBG funding is at about one-fifth of its original level in 1974. See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 15-1; see also SCHWARTZ, *supra* note 16, at 58-59 (showing declining CDBG funding between 2000 and 2013).

<sup>74</sup> See CONGRESSIONAL JUSTIFICATIONS, *supra* note 55, at 15-7.

<sup>75</sup> For a good overview, see SCHWARTZ, *supra* note 16, chap. 9.

<sup>76</sup> *Id.*

<sup>77</sup> See, e.g., Jason Furman, Chairman, Council of Economic Advisors, *Barriers to Shared Growth: The Case of Land Use Regulation and Economic Rents*, Remarks at the Urban Institute (Nov. 20, 2015) (describing land use regulations as a significant barrier to equality, productivity, and mobility); Edward Glaeser, *Rethinking the Federal Bias toward Homeownership*, 13 CITYSCAPE 5, 29-30 (2011) (calling for the federal government to disincentivize exclusionary zoning policies through grant restrictions).

<sup>78</sup> For an overview of (and positive take on) inclusionary zoning, see PAMELA BLUMENTHAL & JOHN MCGINTY, URBAN INSTITUTE, HOUSING POLICY LEVERS TO PROMOTE ECONOMIC MOBILITY 35-38 (2015). But see Robert C. Ellickson, *The Irony of Inclusionary Zoning*, 54 SO. CAL. L. REV. 1167, 1170 (1981) (arguing that "despite the assertions of inclusionary zoning proponents, most inclusionary ordinances are just another form of exclusionary practice").

developers to include affordable units in their market-rate developments<sup>79</sup> or to build in municipalities that currently have minimal affordable housing.<sup>80</sup>

Since all of these data points and policy responses are widely discussed in the literature, though, this paper will dawdle on the topic no longer. Suffice it to say, housing policy constitutes an essential feature of America's anti-poverty and anti-segregation agenda, and the programs we choose to enact make a substantial impact on many American communities.

## **II. An Empirical Overview of Nonprofits and Affordable Housing in New Haven**

This section will filter global descriptions of the nonprofit housing sector through a local lens. That is, I will supplement broad, staid statistics with anecdotes and soft data gleaned from my interviews and experiences in New Haven.

### *A. The Five Main Kinds of Nonprofit Developers, With Examples from New Haven*

I will start by organizing nonprofit housing developers into a unique taxonomy that expands upon categories used in Alex Schwartz's work.<sup>81</sup>

#### *i. Community Development Corporations (CDCs)*

Perhaps the best known, and certainly the most studied,<sup>82</sup> of nonprofit housing developers are community developments corporations. These entities arose out of "frustration at the inability

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<sup>79</sup> See, for example, New York City's recent Mandatory Inclusionary Housing program, as described in J. David Goodman & Mireya Navarro, *New York City Council Backs Affordable Housing Plan*, N.Y. TIMES (Mar. 14, 2016), [https://www.nytimes.com/2016/03/15/nyregion/housing-plan-gains-new-york-councils-backing-with-expanded-affordability-rules.html?\\_r=0](https://www.nytimes.com/2016/03/15/nyregion/housing-plan-gains-new-york-councils-backing-with-expanded-affordability-rules.html?_r=0).

<sup>80</sup> See, for example, Connecticut's 8-30g statute, described, *supra*, at note 44.

<sup>81</sup> See SCHWARTZ, *supra* note 16, at 293-301 (dividing nonprofit housing providers into "community development corporations," "large citywide and regional housing organizations," and "supportive housing and other special-needs housing providers").

<sup>82</sup> See, e.g., Edwin Melendez & Lisa J. Servon, *Reassessing the Role of Housing in Community-Based Urban Development*, 18 HOUSING POL'Y DEBATE 751 (2007); Rachel G. Bratt, *Community Development Corporations: Challenges in Supporting a Right to Housing*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA (Rachel Bratt, et al., eds. 2006); Brent C. Smith, *The Impact of Community Development Corporations on Neighborhood Housing Markets*, 39 URB. AFFAIRS REV. 181 (2003); WILLIAM M. ROHE ET AL., CTR. URBAN & REGIONAL STUDIES, UNIV. NORTH CAROLINA, EVOLVING CHALLENGES FOR COMMUNITY DEVELOPMENT CORPORATIONS: THE CAUSES AND IMPACTS OF FAILURES, DOWNSIZINGS AND MERGERS (2003); CHRISTOPHER

or unwillingness of government to assist struggling neighborhoods beset with arson, abandonment, redlining, and in some cases the bulldozing of affordable housing under the banner of urban renewal.”<sup>83</sup> In its purest form, a CDC is a small, locally-rooted organization that strives to improve and empower a poor neighborhood through affordable housing (both for homeowners and tenants). CDCs have subsisted on a combination of neighborhood support, governmental funding, and philanthropic funding since Robert Kennedy and the Ford Foundation first put substantial money into the organizations during the War on Poverty.<sup>84</sup> Unlike traditional real estate or public housing development, though, CDC work almost always extends beyond construction. While a CDC’s size affects its ability to take on a variety of activities,<sup>85</sup> CDCs may involve themselves in one or more of the following areas: housing counseling; education and training; commercial development; advocacy and community organizing; and youth programs.<sup>86</sup> A handful of studies have found that CDC activities benefit the neighborhoods they operate in.<sup>87</sup>

Admittedly, CDCs are not without problems. For example, tensions arise between, on the one hand, advocating on behalf of the community and, on the other hand, courting governments

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WALKER, URBAN INSTITUTE, COMMUNITY DEVELOPMENT CORPORATIONS AND THEIR CHANGING SUPPORT SYSTEMS (2002).

<sup>83</sup> SCHWARTZ, *supra* note 16, at 295.

<sup>84</sup> See Bratt, *Community Development Corporations*, *supra* note 82, at 340-41 (detailing history of CDCs). For additional, albeit dated, history on CDCs, see Paul S. Grogan, *Proof Positive: A Community-Based Solution to America's Affordable Housing Crisis*, 2 STAN. L. & POL’Y REV. 159 (1996).

<sup>85</sup> See SCHWARTZ, *supra* note 16, at 295-96 (noting that, while the median number of CDC employees is 7.5, 10 percent of CDCs have staffs of 125 or more).

<sup>86</sup> *Id.*

<sup>87</sup> See, e.g., Esteban Rossi-Hanberg et al., *Housing Externalities*, 118 J. POLITICAL ECONOMY 485 (2010) (quantifying positive effects of targeted CDC-led development in Richmond, VA); Smith, *Impact of Community Development Corporations*, *supra* note 82, at 182 (finding that “amid the numerous negative social factors contributing to the continued deterioration of CDC-designated neighborhoods, appreciation of the CDC zones is superior to those neighborhoods in the city not represented by CDCs”); EDWARD G. GOETZ ET AL., CTR. URBAN & REGIONAL AFFAIRS, THERE GOES THE NEIGHBORHOOD? THE IMPACT OF SUBSIDIZED MULTI-FAMILY HOUSING ON URBAN NEIGHBORHOODS (1996) (finding that scattered-site, multifamily CDC developments in inner-city Minneapolis had positive effects on neighborhood property values and crime rates); cf. Julissa Reynoso, *Putting Out Fires Before They Start: Community Organizing and Collaborative Governance in the Bronx, U.S.A.*, 24 LAW & INEQ. 213 (2006) (providing anecdotal evidence that CDC collaboration with local government played a crucial role in stabilizing parts of the Bronx in the 1990s).



and local banks for money.<sup>88</sup> Moreover, some scholars criticize CDCs for being small and ineffective; “an expensive blind alley,” as one law professor put it.<sup>89</sup> Still, CDCs constitute the largest portion of nonprofit affordable housing developers,<sup>90</sup> operate under charitable auspices,<sup>91</sup> and, in the words of one scholar, “tie together a social mission with capitalist realities.”<sup>92</sup>

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Since over 90 percent of American cities house CDCs,<sup>93</sup> it is not surprising that New Haven has seen a fair number of CDCs over the years. Some failed, others succeeded; there are lessons to be gleaned from both paths. As such, I will first describe a longstanding set of neighborhood-based CDCs that went belly up in the 2000s, before then describing three CDCs – two faith-based, and one neighborhood-based – that continue to effectively serve the community.

For decades at least five neighborhood-based CDCs, in addition to other nonprofits described below, operated in New Haven: the Hill Development Corporation, the Dixwell Development Corporation, the Newhallville Restoration Corporation, the Fair Haven Development Corporation, and the West Rock Neighborhood Corporation. Given New Haven’s

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<sup>88</sup> See Randy Stoecker, *The CDC Model of Urban Redevelopment: A Critique and an Alternative*, 19 J. URB. AFF. 1 (1997) (arguing that CDCs should be split up into organizing CDCs and development CDCs). *But see* Bratt, *Community Development Corporations*, *supra* note 82, at 351-53 (arguing that most scholars agree that CDCs are capable of both community organization and economic development).

<sup>89</sup> Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 DUKE L.J. 75, 87 (1998) (comparing CDCs unfavorably with block improvement districts on the assumption that CDCs, in general, do not provide public goods such as street lighting and community gardens); *cf.* Nicholas Lemann, *The Myth of Community Development*, N.Y. TIMES MAG. (Jan. 9, 1994), <http://www.nytimes.com/1994/01/09/magazine/the-myth-of-community-development.html?pagewanted=all> (arguing that CDCs “are often run by inexperienced people, [and] are incompetent or even corrupt; they fizzle out, or limp along for years,” before noting that “[t]he most impressive thing about the hundreds of good Community Development Corporations . . . is almost always their housing work”).

<sup>90</sup> Although their number appears to have tapered off following a boom in the 1980s and 1990s. *See* ROHE, *supra* note 82 (describing the factors undergirding CDC closures and consolidations). As of 2005, though, around 4,500 CDCs exist. *See* SCHWARTZ, *supra* note 16, at 295.

<sup>91</sup> *See* Matthew J. Rossman, *Evaluating Trickle Down Charity: A Solution for Determining when Economic Development Aimed at Revitalizing America’s Cities and Regions Is Really Charitable*, 79 BROOK. L. REV. 1455, 1463-66 (2014) (comparing CDCs favorably to regional economic development organizations, writing that CDCs focus on poverty alleviation and blight amelioration in distressed areas and, thus, are “firmly charitable”).

<sup>92</sup> *See* Bratt, *Community Development Corporations*, *supra* note 82, at 350 (quoting Herbert Rubin).

<sup>93</sup> *See* Katherine M. O’Regan & John M. Quigley, *Federal Policy and the Rise of Nonprofit Housing Providers*, 11 J. HOUSING RESEARCH 297, 302 (2000).

size – each of these neighborhoods only house between 15,000 and 20,000 residents<sup>94</sup> - the number of CDCs was perhaps excessive. More than one person suggested to me that the city would have benefited from fewer, larger CDCs, rather than a “one CDC per neighborhood” model.<sup>95</sup> In my interviews, people traced New Haven’s high CDC count to New Haven’s high aldermanic count (New Haven has 30 alders); each alder took a piece of the city’s block grant funding and distributed it to their neighborhood CDC.<sup>96</sup> “They [the CDCs] were used to buy off minority neighborhoods,” Jim Paley of Neighborhood Housing Services told me. “They became playgrounds for people to self-aggrandize.”<sup>97</sup> The City Plan Director likewise described them as “inept at best, and corrupt at worst.”<sup>98</sup> While one current New Haven politician argued that the purpose of the CDCs was empowerment – not high-quantity economic development – and that the CDCs fulfilled an important political role in that regard,<sup>99</sup> the majority of my interviewees suggested that, despite occasional successes,<sup>100</sup> New Haven’s neighborhood-based CDCs in the 1980s and 1990s fulfilled the worst stereotypes of nonprofits: ineffective, wasteful, unaccountable.

In the late 1990s to mid-2000s, though, John DeStefano and Henry Fernandez – DeStefano’s housing policy point person – began to defund the neighborhood CDCs. In response

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<sup>94</sup> See NEW HAVEN DATABOOK, *supra* note 44, at 2.10.

<sup>95</sup> See, e.g., Interview with Jim Farnham, Farnham Associates, LLC, in New Haven, Conn. (Nov. 4, 2016) (describing his “dream” for 2-3 large, effective nonprofit developers in the city).

<sup>96</sup> See, e.g., Telephone Interview with Robert Solomon, former Clinical Professor of Law, Yale Law School (Oct. 11, 2016) (called these CDCs “corrupt and a waste of money” and added that “everything in City Hall is done for 16 alder votes”).

<sup>97</sup> See Interview with Jim Paley, Executive Director, Neighborhood Housing Services, in New Haven, Conn. (Oct. 31, 2016).

<sup>98</sup> See Interview with Karyn Gilvarg, Executive Director, New Haven City Plan Department, in New Haven, Conn. (Nov. 14, 2016).

<sup>99</sup> See Interview with Jorge Perez, Commissioner, Connecticut Dep’t Banking, in New Haven, Conn. (Nov. 8, 2016) (said that as a businessman he understands the desire for fewer, more efficient organizations, but “as an activist” he knows the CDCs fulfill an essential political purpose).

<sup>100</sup> See, e.g., Josh Kovner, *This Time, a Condo Success Story*, NEW HAVEN REGISTER (Dec. 9, 1991) (highlighting Dixwell Development’s successful McCabe Manor condo project and Newhallville Restoration Corporation’s successful Ivy Street project).

to various scandals, both real and perceived, the New Haven government audited the CDCs through its housing bureaucracy – called the Livable City Initiative (LCI) – and eventually withdrew the CDBG money these organizations depended on.<sup>101</sup> In one particularly acrimonious example, Fernandez called out Pete Gray – the longstanding head of Dixwell Development Corporation – for practicing “plantation politics.”<sup>102</sup> Fair Haven Development Corporation also (unsuccessfully) sued New Haven in an attempt to win back its CDBG funding.<sup>103</sup> The one neighborhood CDC that initially withstood the defunding – Hill Development Corporation – enjoyed a better reputation for productivity and cooperation, especially in the area surrounding Yale – New Haven Hospital.<sup>104</sup> Still, following a series of scandals Hill Development imploded in 2010, too; LCI had to swoop in to buy the nonprofit’s unfinished properties.<sup>105</sup>

Reflecting on these events several years later, Henry Fernandez argued that the neighborhood CDC model was not sustainable in New Haven, especially amid continual cuts to federal housing block grants. “At the end of the day,” Hernandez said, “the CDCs were operating

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<sup>101</sup> See Telephone Interview with Henry Fernandez, Senior Fellow, Center for American Progress (Oct. 27, 2016) (recounting this history); see also Interview with John DeStefano, former Mayor, City of New Haven, in New Haven, Conn. (Nov. 1, 2016) (“There were five CDCs when I came into office [in 1994]. There were none when I left [in 2014].”).

<sup>102</sup> See Paul Bass, *Easy Target: Pete Gray’s Lonely Fight to Save His Name—and Old-Time Ethnic Politics*, NEW HAVEN ADVOCATE (Aug. 12, 1999).

<sup>103</sup> See *Fair Haven Development Corporation v. DeStefano*, 528 F. Supp. 2d 25 (2007). Judge Thompson’s decision also describes the process by which most of the CDCs lost their funding. Fair Haven Development’s lawsuit did not succeed, as Judge Thompson noted that FHDC held “no constitutionally-protected property interest in CDBG funding.” *Id.* at 31.

<sup>104</sup> See, e.g., Interview with Jim Farnham, *supra* note 95 (recalling that Hill Development was “the best of the bunch” and “actually did significant housing work”); Editorial, *Not a Penny to Dixwell Corporation*, NEW HAVEN REGISTER (Mar. 28, 1999) (arguing that grant money should go to Hill Development instead of Dixwell Development or Newhallville Restoration); see also Melissa Bailey, *Hospital’s Impact on Hill Debated*, NEW HAVEN INDEPENDENT (Aug. 7, 2007), [http://www.newhavenindependent.org/index.php/archives/entry/hospitals\\_impact\\_on\\_hill\\_debated/](http://www.newhavenindependent.org/index.php/archives/entry/hospitals_impact_on_hill_debated/) (briefly noting HDC and the Hospital’s positive collaboration on a housing project).

<sup>105</sup> After its charismatic founder, Courtland Seymour Wilson, passed away, Hill Development became embroiled in a misuse of federal funds scandal that brought in the FBI and the HUD Inspector General. Employees of HDC apparently also received illicit loans from city government. See Interview with Henry Fernandez, *supra* note 101; accord Interview with Jorge Perez, *supra* note 99. For coverage of HDC’s final days, see Thomas MacMillan, *Hill Development on Life Support*, NEW HAVEN INDEPENDENT (Mar. 16, 2010), [http://www.newhavenindependent.org/index.php/archives/entry/hill\\_development\\_corp.\\_on\\_life\\_support/](http://www.newhavenindependent.org/index.php/archives/entry/hill_development_corp._on_life_support/).

at an inefficient scale; we took an idea from New York City and tried to implement it without regard to New Haven's size."<sup>106</sup> Jorge Perez, the former New Haven alderman and current state Banking Commissioner, put it less charitably, saying Fernandez and DeStefano "killed" the CDCs, before then negatively comparing their efforts to the more community-centric Mayor Biago DiLieto (DiLieto was New Haven's mayor from 1979 to 1989).<sup>107</sup> It is unclear how many housing units the neighborhood-based CDCs produced during their time in New Haven.



*Three uncompleted Hill Development Corporation projects. These units were later bought and refurbished by the City of New Haven.*

Yet three classic CDCs<sup>108</sup> continue to operate in New Haven: Greater Dwight Development Corporation, Beulah Land Development Corporation, and St. Luke's Development Corporation. The first of these organizations – the Greater Dwight Development Corporation – I discussed earlier.<sup>109</sup> What is most notable about their work, though, is that they are a neighborhood-based CDC and yet survived the Fernandez/DeStefano defunding. Why? For one,

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<sup>106</sup> See Interview with Henry Fernandez, *supra* note 101.

<sup>107</sup> Interview with Jorge Perez, *supra* note 99.

<sup>108</sup> I say "classic CDCs" because some New Haven organizations act similarly to CDCs even though they are affiliated with a larger national organization (I will cover these groups in the Section II.A.ii); the classic CDC does not hold any such national affiliation.

<sup>109</sup> See, *supra*, at 2.

Greater Dwight entered the CDC scene as the other CDCs were departing; GDDC was founded in 1995. In addition to refurbishing over 200 homes, moreover, GDDC carried a more diverse set of objectives than its CDC predecessors, such as investing in a grocery store and a Montessori school. Finally, GDDC developed strong relationships with New Haven institutions beyond the Dwight alderpersons. When asked why GDDC is the only remaining neighborhood-based CDC in New Haven, Linda Maier-Townsend, GDDC's Executive Director, stated point blank, "Yale, and especially the law school."<sup>110</sup>

The other two CDCs are faith-based. That is, they were formed by a church community to improve the area around their church. The purveyors of a faith-based CDC may not live in the neighborhood they are working in, but they nonetheless harbor an interest in improving the neighborhood. With the Beulah Heights First Pentecostal Church, for example, the impetus to improve the neighborhood arose out of a series of shootings that took place around the church in the 1990s.<sup>111</sup> The majority of Beulah Heights' work occurred after 2000 – when the other CDCs lost funding – and has taken the form of individual homeownership projects in a three block radius around the church. Beulah Heights buys houses that are either vacant or foreclosed, rehabilitates them with subsidized funds, and then sells the houses at a below-market rate to parishioners or other neighborhood residents.<sup>112</sup> Slowly but surely, Beulah Heights has rehabbed over 30 homes (as well as developed 12 units for the elderly on the same block), and they plan to develop a pharmacy on a vacant lot adjacent to the elderly housing.<sup>113</sup> After walking around the neighborhood with the Executive Director, Darrell Brooks, it became apparent that, while the

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<sup>110</sup> Interview with Linda Maier-Townsend, *supra* note 7.

<sup>111</sup> See Interview with Darrell Brooks, Project Director, Beulah Heights Development Corporation, in New Haven, Conn. (Nov. 22, 2016); accord Allan Appel, *Beulah Revamps Dixwell Block*, NEW HAVEN INDEPENDENT (July 16, 2010), [http://www.newhavenindependent.org/index.php/archives/entry/church\\_revitalizes\\_orchard/](http://www.newhavenindependent.org/index.php/archives/entry/church_revitalizes_orchard/).

<sup>112</sup> See *id.*

<sup>113</sup> See Interview with Darrell Brooks, *supra* note 111; accord BEULAH LAND DEVELOPMENT CORPORATION BROCHURE (on file with author).



neighborhood is far from experiencing gentrification, the CDC's work has made a strikingly positive impact on the community; John DeStefano, who did not speak highly of most CDCs, concurred in this assessment.<sup>114</sup>



*Three single-family homes developed by Beulah Land Development Corporation on Orchard Street, in the Dixwell neighborhood.*

St. Luke's Development Corporation operates similarly to Beulah Land Development, albeit on an even smaller scale. St. Luke's built 34 units of senior housing a few units down from the church (located on the corner of Whalley Avenue and Sperry Street), and is in the process of building mixed-income housing on another nearby lot.<sup>115</sup> Like GDDC, a St. Luke's director cited Yale, and especially Yale's legal clinics, for helping the CDC navigate the confusing world of government subsidies and zoning variances.<sup>116</sup> Taken together, New Haven's CDC experience

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<sup>114</sup> See Interview with John DeStefano, *supra* note 101; see also Interview with Karyn Gilvarg, *supra* note 98 (saying that Beulah is a little slow but "they get the job done").

<sup>115</sup> See Interview with Dr. Sam Andoh, Board of Directors, St. Luke's Development Corporation, in New Haven, Conn. (Dec. 13, 2016); accord LUDWIG CTR. FOR COMMUNITY & ECON. DEV., YALE LAW SCHOOL, *St. Luke's Development Corporation*, <https://www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/ludwig-center-community-economic-development/st-lukes-development-corporation>.

<sup>116</sup> See Interview with Dr. Sam Andoh, *supra* note 115.

shows the promise of carefully-targeted and well-assisted CDC work, as well as the pitfall of intermeshing affordable housing with politics.

*ii. Local Branches of National Organizations*

Yet an even more important source of nonprofit affordable housing development, at least in New Haven, comes from *affiliated* nonprofit developers. When I say “affiliated,” I mean local organizations that maintain an affiliation with a national nonprofit developer. The most well-known of these groups is Habitat for Humanity, of which New Haven has an affiliate. According to its official statements, Habitat for Humanity works in 1,400 American communities and 70 countries, and has provided affordable homes to 6.8 million people since its founding in 1976.<sup>117</sup> New Haven’s Habitat chapter has built and refurbished over 85 homes since 1986.<sup>118</sup>

Another national nonprofit developer that employs an affiliate-based model is NeighborWorks America (officially the Neighborhood Reinvestment Corporation). Congress incorporated this public nonprofit in 1978, and they currently build affordable homes (and occasional rental units) through 225 affiliate organizations.<sup>119</sup> NeighborWorks groups also provide homeownership counseling and community-building services. Two affiliates operate in New Haven: Neighborhood Housing Services of New Haven (“NHS”) and NeighborWorks New Horizons. NHS and NeighborWorks constitute the two premier nonprofit developers in New Haven, though they hold somewhat different approaches.

NHS operates like an ideal CDC: it refurbishes houses in New Haven’s poorest neighborhoods; it holds high quality standards, with a focus on historic preservation and energy

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<sup>117</sup> See *Habitat’s History*, HABITAT FOR HUMANITY, <http://www.habitat.org/about/history> (last accessed Feb. 11, 2017).

<sup>118</sup> See Allan Appel, *Habitat Hails New Houses in the Hill*, NEW HAVEN INDEPENDENT (June 18, 2012), [http://www.newhavenindependent.org/index.php/archives/entry/habitat\\_celebrates\\_4th\\_and\\_5th\\_ne/](http://www.newhavenindependent.org/index.php/archives/entry/habitat_celebrates_4th_and_5th_ne/).

<sup>119</sup> See SCHWARTZ, *supra* note 16, at 299.

efficiency; it works on a targeted, block-by-block basis; its office is far from downtown; it places community residents on its board of directors; and it provides public goods like homeownership counseling, community gardens, street lighting, and neighborhood activities. NHS also played an essential role in the City of New Haven's plan to stanch the foreclosure crisis<sup>120</sup> as well as turned one of New Haven's most underserved neighborhoods, Newhallville, into a state-approved historic district, which allowed home developers to access much-needed tax credits.<sup>121</sup> Furthermore, NHS recently became Connecticut's first nonprofit real estate brokerage.<sup>122</sup> Despite the great respect most New Haveners hold for NHS and its longtime executive director Jim Paley, NHS' output is small: the group averages around 10-12 projects per year, and has only developed 450 some homes since 1979.<sup>123</sup> This low output probably stems from NHS' reliance on subsidies; the group puts \$300,000 of repairs into a house that needs to sell for around \$170,000 to remain affordable.<sup>124</sup> Still, the group assists many more people with their non-development services, and their work undoubtedly produces positive spillover effects.

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<sup>120</sup> See Thomas MacMillan, *HUD's Donovan, "Help is on the Way"*, NEW HAVEN INDEPENDENT (Apr. 13, 2009), [http://www.newhavenindependent.org/archives/2009/04/dodd\\_hud\\_head\\_v.php](http://www.newhavenindependent.org/archives/2009/04/dodd_hud_head_v.php) (describing NHS' participation in programs that funded nonprofit foreclosure sale purchases; "neighborhood housing organizations do a better job with rehabbing and property management than investors, who are often looking to flip houses for profit," said NHS Executive Director Jim Paley).

<sup>121</sup> See Thomas MacMillan, *Newhallville up for "Historic" Boost*, NEW HAVEN INDEPENDENT (June 13, 2013), [http://www.newhavenindependent.org/index.php/archives/entry/historic\\_lilac\\_street\\_sought/](http://www.newhavenindependent.org/index.php/archives/entry/historic_lilac_street_sought/) (detailing NHS' efforts to petition the State Historic Commission and NHS' use of \$700,000 in tax credits for 14 rehabbed homes).

<sup>122</sup> See ANNUAL REPORT 2015-16, NEIGHBORHOOD HOUSING SERVICES OF NEW HAVEN (Oct. 31, 2016), [https://issuu.com/nhsfnhnewhaven/docs/nhs\\_ar\\_15](https://issuu.com/nhsfnhnewhaven/docs/nhs_ar_15) (describing NHS' HOC Realty operation, which closed 27 transactions and secured \$54,000 in fees in its first year); see also J. MICHAEL COLLINS ET AL., NATIONAL HOUSING INSTITUTE, *TOES IN THE WATER: NONPROFIT COMMUNITY DEVELOPMENT REAL ESTATE AND MORTGAGE BROKERAGE PROGRAMS, IDENTIFYING STATE REGULATORY OBSTACLES AND ASSESSING THE FUTURE OF A NEW DIRECTION IN PROMOTING HOMEOWNERSHIP* (2008) (describing nonprofit entry into brokering first mortgages for home purchase and brokering real-estate sales).

<sup>123</sup> Interview with Jim Paley, *supra* note 97; see also David Sepulveda, *Kym Comes Back to Lilac*, NEW HAVEN INDEPENDENT (June 14, 2015), [http://www.newhavenindependent.org/index.php/archives/entry/newhallville\\_celebration\\_dramatic\\_revitalization/](http://www.newhavenindependent.org/index.php/archives/entry/newhallville_celebration_dramatic_revitalization/) (reciting these same numbers, but adding that NHS' Newhallville homes, as "beacons of hope and progress," "are emblematic of an entire neighborhood that, like the city itself, is working to shed its old reputation as an unlivable community").

<sup>124</sup> Interview with Jim Paley, *supra* note 97; see also Interview with Jorge Perez, *supra* note 99 (calling NHS "the most expensive developer in New Haven"); Paul Bass, *8 Vie To Buy City-Foreclosed Homes*, NEW HAVEN INDEPENDENT (Aug. 8, 2014), [http://www.newhavenindependent.org/index.php/archives/entry/lci\\_houses\\_for\\_sale/](http://www.newhavenindependent.org/index.php/archives/entry/lci_houses_for_sale/)





*NHS-rehabbed houses in the Dwight neighborhood (the two multi-family complexes on the left).*

New Horizons, by contrast, acts like both a CDC and a regional developer. While the group does substantial block-focused community homeownership in Fair Haven – New Haven’s largest Hispanic neighborhood – it also builds large rental housing developments in nearby suburbs. According to the organization’s most recent annual report, New Horizons built 113 new and rehabbed housing units in 2015 alone, making it far and away New Haven’s most productive nonprofit developer.<sup>125</sup> The annual report also indicated that New Horizons currently has 37 employees, manages 573 units, and holds assets worth \$85 million (NHS, by contrast, has 25 employees and holds assets worth around \$6 million, though it does not own the houses it builds).<sup>126</sup> New Horizons also participates in cutting edge affordable housing projects, like a

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(explaining that NHS planned to buy a foreclosed house for \$11,500, spend \$275,000 gut-rehabbing it, and then, with subsidies, sell the house to a worthy homebuyer for \$140,000).

<sup>125</sup> See 2015 ANNUAL REPORT, NEIGHBORWORKS NEW HORIZONS, <http://www.nwnh.net/files/8314/7129/0582/Annual20Report20Rev2082042016.pdf>.

<sup>126</sup> Compare *id.* with ANNUAL REPORT, *supra* note 122.

“small houses” project with Yale’s School of Architecture<sup>127</sup> and a rescue project for a failing HUD housing cooperative.<sup>128</sup>

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In addition to national nonprofit developers, national organizations provide technical assistance to nonprofits vis a vis local affiliates. The most prominent example of this kind of organization in Connecticut is the Local Initiatives Support Corporation, an organization founded by the Ford Foundation in 1979 to assist CDCs. LISC assists thousands of CDCs and affiliated nonprofit developers across the country each year, to the tune of \$1 billion annually.<sup>129</sup> LISC’s Connecticut branch supports Beulah Land Development Corporation, Greater Dwight Development Corporation, NHS of New Haven, and New Horizons. To give an example of a project, in 2015 LISC helped New Horizons finance and develop high-quality property management software.<sup>130</sup>

On the whole, my interviewees took a higher view of nationally-affiliated nonprofits than of purely local CDCs.<sup>131</sup> Indeed, recent research has demonstrated that CDCs with a national affiliation are more productive than CDCs without such an affiliation.<sup>132</sup> It is no surprise that,

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<sup>127</sup> See Allan Appel, “McMansion of Micro Houses” Debuts, NEW HAVEN INDEPENDENT (Oct. 3, 2014), [http://www.newhavenindependent.org/index.php/archives/entry/micro\\_mcmansion\\_debuts/](http://www.newhavenindependent.org/index.php/archives/entry/micro_mcmansion_debuts/) (detailing the collaboration between city government, New Horizons, and Yale and describing the house as such: “the house is divided into two units for an owner and a tenant. The idea is for the first and second floors, comprising about 550 square feet each, to be owner occupied, and the third floor to be for a tenant.”).

<sup>128</sup> See Paul Bass, *Canterbury Gardens Reborn*, NEW HAVEN INDEPENDENT (June 22, 2009), [http://www.newhavenindependent.org/index.php/archives/entry/canterbury\\_gardens\\_reborn/](http://www.newhavenindependent.org/index.php/archives/entry/canterbury_gardens_reborn/) (after a 34 unit cooperative, Canterbury Gardens, fell behind on its payments, “A not-for-profit builder in town, NeighborWorks New Horizons, came to the rescue. It performed a \$5 million renovation, transforming Canterbury into a spanking new, energy-efficient complex. It’s no longer a co-op. But it retains idealistic missions [of combining low-income units with supportive housing units]”).

<sup>129</sup> See SCHWARTZ, *supra* note 16, at 298-99.

<sup>130</sup> See Telephone Interview with Andrea Pereira, *supra* note 25.

<sup>131</sup> See, e.g., Interview with Henry Fernandez, *supra* note 101 (favorably comparing NHS with Hill Development Corporation because NHS “worked in more than one neighborhood” and “got creative” by connecting with Yale and local institutions).

<sup>132</sup> See Edwin Melendez & Lisa J. Servon, *Reassessing the Role of Housing in Community-Based Urban Development*, 18 HOUSING POL’Y DEBATE 751, 772-74 (2007) (“Affiliation with national intermediaries and the

during the DeStefano-Fernandez crackdown on underperforming CDCs, New Haven government channeled funds from the erstwhile CDCs to groups like Habitat for Humanity, NHS of New Haven, and New Horizons.



*Nonprofits being innovative: a “tiny house” built by New Horizons and the Yale School of Architecture in the West River neighborhood.*

### *iii. Large, Regional Nonprofits*

Yet another category of nonprofit, albeit one not particularly well represented in New Haven, is the large regional (and sometimes national) affordable housing developer. In contrast to the CDCs discussed above, regional and national nonprofit developers build large rental complexes with government subsidies and focus exclusively on housing. The country’s largest

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housing stock of the service areas targeted by the organizations (with odds ratio of 2.800 and 1.322, respectively) also improve the odds of belonging to the high group.”).

nonprofit developer, Mercy Housing, works in 41 states and completed 436 units in 2015 alone; Mercy Housing has developed, preserved, or financed some 60,000 units of affordable housing since 1982.<sup>133</sup> Developers like Mercy Housing are members of the Housing Partnership Network, a trade group founded in 1992 for the “new breed of entrepreneurial nonprofit[s] interested in creating a peer network from the affordable housing and community development sector.”<sup>134</sup> Yet most of these developers still maintain 501(c)(3) status and operate as mission-orientated groups.

Regional nonprofits have accomplished impressive feats in Connecticut. In Hartford, for example, the national nonprofit Preservation of Affordable Housing (POAH) worked with local nonprofits to develop affordable housing in one of Hartford’s poorest neighborhoods. The project, titled Billings Forge, resulted in 101 affordable units, 11 market rent units, a farmer market, and a restaurant, all in a previously vacant factory building.<sup>135</sup>

Interestingly, though, New Haven has not had a good experience with this kind of developer, albeit with a limited sample size. The most prominent regional developer to work in New Haven is The Community Builders (TCB). While TCB received accolades for one project it did with the YMCA in the mid-2000s,<sup>136</sup> the organization botched the purchase of a troubled

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<sup>133</sup> See MERCY HOUSING, STRATEGIC PLAN 2015-2019: BUILDING HEALTH COMMUNITIES, [https://www.mercyhousing.org/file/MH175\\_strategicBrochure\\_web.pdf](https://www.mercyhousing.org/file/MH175_strategicBrochure_web.pdf); *Top 50 Affordable Housing Developers of 2015*, AFFORDABLE HOUSING FINANCE (Apr. 18, 2016), [http://www.housingfinance.com/management-operations/top-50-affordable-housing-developers-of-2015\\_o](http://www.housingfinance.com/management-operations/top-50-affordable-housing-developers-of-2015_o) (listing Mercy Housing as the tenth most productive affordable housing developer, the only nonprofit in the top ten).

<sup>134</sup> *History*, HOUSING PARTNERSHIP NETWORK, <http://housingpartnership.net/about-us/history/>; see also SCHWARTZ, *supra* note 16, at 300 (describing HPN).

<sup>135</sup> See Interview with Janice Elliot, Executive Director, Melville Charitable Trust, in New Haven, Conn. (Nov. 17, 2016) (explaining the Billings Forge project, which Melville financed with POAH, and highlighting that Melville picked POAH because they found nonprofits “particularly trustworthy and dedicated to the project’s goals”); Mark Treskon & Sara McTarnaghan, URBAN INSTITUTE, BILLINGS FORGE, HARTFORD: ANATOMY OF A PRESERVATION DEAL (Aug. 2016), <http://www.urban.org/sites/default/files/preservation-hartford.pdf> (describing the project in more detail).

<sup>136</sup> See Interview with Janice Elliot, *supra* note 134; Interview with Jorge Perez, *supra* note 99 (both describing TCB’s work with the YMCA as “good”).



apartment complex, Church Street South,<sup>137</sup> and has undergone withering community criticism for its management of the Kensington Square apartments (mentioned in the Introduction).<sup>138</sup> Community members tend to think of TCB, not as a nonprofit, but as a money-motivated “Boston developer” who gets their subsidies and only cares about New Haven if somebody gets shot on one of their properties.<sup>139</sup> TCB holds a lackluster reputation in other cities, too.<sup>140</sup> Some interviewees suggested that TCB grew too fast in the 2000s and subsequently lost control of its projects.<sup>141</sup> Betsy Crum, the Executive Director of the Women’s Institute for Housing and Economic Development, another regional nonprofit developer, noted that TCB outsourced their property management to a third party, which is not good practice for a nonprofit interested in community relations.<sup>142</sup> In recent months, though, TCB has worked with the City of New Haven

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<sup>137</sup> See Carrie Melago, *Failed Vision: Life at Church Street South Housing Complex Goes on Despite Problems*, NEW HAVEN REGISTER (Apr. 22, 2001) (describing TCB’s failed efforts to manage Church Street South); accord Interview with John DeStefano, *supra* note 101 (saying that the City was “happy to show [TCB] the door after Church Street South”).

<sup>138</sup> See, e.g., Markeshia Ricks, *Fed Up With Slumlord, Dwight Neighbors Quash \$2 Million Grant Quest*, NEW HAVEN INDEPENDENT (Feb. 4, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/dwight\\_neighbors\\_quash\\_grant\\_hopes/](http://www.newhavenindependent.org/index.php/archives/entry/dwight_neighbors_quash_grant_hopes/) (“[The Community Builders] have been very unresponsive,” [neighbor Kate] Walton said of Kensington Square. “It’s literally been the focal point of the crime in the neighborhood for the time that they’ve been here, with the exception of when they first came in, they had an excellent manager. But since then it’s a concern that they have been a crime magnet.”); accord Interview with John DeStefano, *supra* note 101 (describing TCB’s work at Kensington Square as “lousy”).

<sup>139</sup> See, e.g., Interview with Linda Townsend-Maier, *supra* note 7 (arguing that TCB cares more about their “connections in Washington, D.C. than the Dwight neighborhood,” and that “all they care about is their 97% occupancy rate . . . they just want warm bodies in the buildings, even if they are troublemakers”); Interview with Jim Farnham, *supra* note 95 (noting that TCB’s reputation is that they “take all the revenue from subsidies with their neighborhood ‘partner’ but then don’t do anything for the neighborhood”). Tragically, in 2012 a young child, Tramire Miller, was shot on Kensington Square property. See Paul Bass, *Tramire’s Landlord Comes Under Fire*, NEW HAVEN INDEPENDENT (Oct. 12, 2012), [http://www.newhavenindependent.org/index.php/archives/entry/dwight\\_kensington\\_community\\_builders/](http://www.newhavenindependent.org/index.php/archives/entry/dwight_kensington_community_builders/).

<sup>140</sup> See, e.g., Dan Monk, *Owner of Madisonville Apartment Complex Where Firefighter Died Among Worst for Service Calls*, WCPO CINCINNATI (Mar. 28, 2015), <http://www.wcpo.com/news/local-news/hamilton-county/cincinnati/madisonville-apartments-where-firefighter-died-among-worst-for-service-calls> (“The owner of a Madisonville building that caught fire and took the life of a firefighter Thursday morning is among the worst in the city in terms of calls for service and code violations since 2013, a WCPO analysis shows. The Community Builders Inc., a Boston-based nonprofit, has owned the building since 2012.”).

<sup>141</sup> See, e.g., Interview with Henry Fernandez, *supra* note 101.

<sup>142</sup> Telephone Interview with Betsy Crum, Executive Director, Women’s Institute for Housing & Economic Development (Jan. 6, 2017).

to improve Kensington Square.<sup>143</sup> Yet, perhaps because of this experience with TCB, New Haven has tended to work with large for-profit developers on its most significant affordable housing projects, *e.g.*, McCormack Baron Salazar, as opposed to Housing Partnership Network nonprofits.<sup>144</sup>



*The Community Builders and the City of New Haven worked in tandem during the summer of 2016 to repair the oft-maligned Kensington Square apartments in the Dwight neighborhood.*

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<sup>143</sup> See Paul Bass, *Bricks Buffed; No Vampires Spotted*, NEW HAVEN INDEPENDENT (Aug. 19, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/kensington\\_square/](http://www.newhavenindependent.org/index.php/archives/entry/kensington_square/) (noting TCB efforts to rehab their buildings in Kensington Square).

<sup>144</sup> For a description of McCormack Baron Salazar's work in the Ninth Square, see Christopher Miller, *Diffuse Aspirations: Mixed-Income Housing in the Context of For-Profit Urban Revitalization* (2011), [http://digitalcommons.law.yale.edu/student\\_legal\\_history\\_papers/12](http://digitalcommons.law.yale.edu/student_legal_history_papers/12).

#### *iv. Supportive Housing Providers*

Supportive housing is permanent housing that combines affordable rents with support services. Such housing is aimed at providing permanent housing (as opposed to ad hoc shelter housing) to the chronically homeless, the elderly, and people with mental health needs. While this form of housing is not the focus of this paper, it bears mentioning because nonprofits develop and operate almost all supportive housing.<sup>145</sup> According to the United States Interagency Council on Homelessness, 285,000 beds of permanent supportive housing exist in America.<sup>146</sup> As of 2014, New Haven and the surrounding suburbs had around 400 units of permanent supportive housing, provided primarily by six nonprofits.<sup>147</sup>

One prominent developer of affordable housing in New Haven is Columbus House. In addition to running homeless shelters and employment programs, Columbus House provides vouchers and in-home services to 250 clients. The organization has also developed 150 units of permanent supportive housing.<sup>148</sup> One noteworthy example of this housing is Whalley Terrace, a 22 unit project for disabled and homeless senior citizens. The project not only fit into Connecticut's long-term plan for ending chronic homelessness, but it also redeveloped a dilapidated office building in New Haven's working class Edgewood neighborhood.<sup>149</sup> Whalley Terrace's residents receive "counseling, drug treatment, or whatever long-term help they need to

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<sup>145</sup> See SCHWARTZ, *supra* note 16, at 300.

<sup>146</sup> See UNITED STATES INTERAGENCY COUNCIL ON HOMELESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESS 25 (June 2015).

<sup>147</sup> I compiled these numbers from a local homeless advocates guide listing all permanent supportive housing in the area. See GREATER NEW HAVEN OPENING DOORS, REGIONAL HOUSING RESOURCE GUIDE 2014 EDITION, <http://www.cityofnewhaven.com/DisabilityServices/pdfs/Housing%20Resource%20Guide%202010.pdf>.

<sup>148</sup> See *Housing Services*, COLUMBUS HOUSE, <http://www.columbushouse.org/programs/housing-services/> (last accessed Feb. 11, 2017).

<sup>149</sup> See Paul Bass, *Whalley Terrace Opens Doors*, NEW HAVEN INDEPENDENT (Mar. 25, 2008), [http://www.newhavenindependent.org/index.php/archives/entry/whalley\\_terrace\\_opens\\_doors/](http://www.newhavenindependent.org/index.php/archives/entry/whalley_terrace_opens_doors/); see also Interview with Alison Cunningham, Executive Director, Columbus House, in New Haven, Conn. (Dec. 14, 2016) (claiming that property values rose in the area surrounding Whalley Terrace and that the neighborhood came to fully support the building).

stay there instead of on the streets.”<sup>150</sup> As such, almost everyone I interviewed agreed that supportive housing showed the necessity of nonprofit participation in the housing market.<sup>151</sup>



*Columbus House's Whalley Terrace project.*

#### *v. Subsidiaries of Public Housing Authorities*

The final place one can find nonprofit housing developers is, perhaps oddly, *within* public housing authorities. In the last decade or two, more entrepreneurial PHAs, especially those with Moving to Work status,<sup>152</sup> have responded to declining budgets by incorporating their own nonprofit developers. These nonprofit developers compete for LIHTCs and other subsidies not

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<sup>150</sup> *Whalley Terrace Opens Doors*, NEW HAVEN INDEPENDENT, *supra* note 148.

<sup>151</sup> See, e.g., Interview with Terry Nash, *supra* note 21 (noting that, even if for-profit affordable housing developers occasionally partner with nonprofit service providers on tenant assistance, “for-profits just aren’t interested in this kind of work”).

<sup>152</sup> Since 1996 HUD has had the ability to bestow “Moving to Work” status on a PHA, which allows a PHA greater budgetary freedom as well as the ability to experiment with eligibility requirements. About 40 PHAs, including the Housing Authority of New Haven, currently hold Moving to Work status. See SCHWARTZ, *supra* note 16, at 448; CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 16 fn.25; see also *id.* at 6-7 (general description of public housing funding)



typically available to PHAs. While these “public sector nonprofits” can lead to corruption scandals,<sup>153</sup> many public housing directors see them as an important way to keep PHAs relevant in the twenty-first century.

To give a concrete example, in the early 2000s the Housing Authority of New Haven founded the Glendower Group. According to HANH officials, they did this for several reasons: a nonprofit can take out far more debt than a PHA can (government entities cannot borrow money against their own properties); a nonprofit can obtain project-based section 8 vouchers more easily, and then leverage that money through HUD’s Rental Assistance Demonstration program; a nonprofit can earn developer fees (fees that the HANH previously paid to out-of-state private companies on many of their largest projects); a nonprofit can take charitable donations from individuals and foundations; a nonprofit can shield the PHA from liability; and a nonprofit can get around some, but not all, federal procurement rules.<sup>154</sup> Since 2005, the Glendower Group has been involved with many of the HANH’s largest redevelopment projects. In 2017, moreover, the HANH founded 360 Management Group, a nonprofit that will “manage properties completed by the Glendower Group and ultimately compete for contracts to manage properties not affiliated with the housing authority.”<sup>155</sup> Karen DuBois-Walton, HANH’s Executive Director, is also

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<sup>153</sup> See, e.g., Jaquetta White, *HANO Uses a Nonprofit Arm to Skirt Public Bid Laws*, NEW ORLEANS ADVOCATE (July 17, 2014), [http://www.theadvocate.com/new\\_orleans/news/politics/article\\_af9a3d27-305a-535a-ae06-01ed54de8fc6.html](http://www.theadvocate.com/new_orleans/news/politics/article_af9a3d27-305a-535a-ae06-01ed54de8fc6.html) (“Toward the end of his five years as executive director and one-man board of the Housing Authority of New Orleans, federal contractor David Gilmore made a practice of authorizing thousands of dollars in professional-services contracts to companies, some with ties to his private consulting firm, through a little-known nonprofit subsidiary of the authority.”); EDGAR MOORE, OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T HOUSING & URBAN DEVELOPMENT, *TRANSACTIONS BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PERTH AMBOY, NJ, AND ITS NONPROFIT SUBSIDIARY DID NOT ALWAYS COMPLY WITH HUD REGULATIONS* (June 1, 2012), <https://www.hudoig.gov/sites/default/files/documents/audit-reports/2012-ny-1008.pdf> (reminding PHA that nonprofit subsidiaries must receive money through open bids and that they must engage in charitable work to receive 501(c)(3) status).

<sup>154</sup> See Interview with Karen DuBois-Walton, *supra* note 4; Interview with Erik Johnson, *supra* note 19. See generally STEVEN J. REIKES, HOUSING & DEVELOPMENT LAW INSTITUTE, *NONPROFIT SUBSIDIARIES: HOW AND WHEN A HOUSING AUTHORITY SHOULD USE THEM* (2002).

<sup>155</sup> Markeshia Ricks, *HANH Spinning off Management Arm*, NEW HAVEN INDEPENDENT (Feb. 1, 2017), [http://www.newhavenindependent.org/index.php/archives/entry/housing\\_authority\\_story/](http://www.newhavenindependent.org/index.php/archives/entry/housing_authority_story/).

considering starting a nonprofit that provides support services in public housing.<sup>156</sup> Given their public nature – the Executive Director of the HANH is listed as the Executive Director of the Glendower Group, for example<sup>157</sup> – these nonprofits differ from the nonprofits discussed above. But the benefits of the nonprofit corporate form still accrue to organizations like the Glendower Group. Looking ahead, it remains unclear if these nonprofits will subsume and replace their public housing authority founders, as some scholars have encouraged them to do in recent the years.<sup>158</sup>

*B. How Policymakers Treat Nonprofit Housing Developers, With a Focus on Connecticut and New Haven*

Since every nonprofit developer, from the smallest of CDCs to the largest of national organizations, relies on government subsidy, it is worth examining how the law treats nonprofit developers.<sup>159</sup>

*i. Federal*

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<sup>156</sup> *Id.* (“The new management group might not be the last not-for-profit that the housing authority creates, DuBois-Walton said. She said HANH has taken the fundamental position that low-income people should have not only adequate, safe and affordable housing, but also access to supportive services that help move them out of poverty. The housing authority has to find other means to fund that.”).

<sup>157</sup> The Glendower Group’s publically available Form 990 lists Dr. Karen DuBois-Walton as the President of the organization and leading HANH members as the nonprofit’s other Directors. *See* GLENDOWER GROUP, 2013 FORM 990, available at [http://990s.foundationcenter.org/990\\_pdf\\_archive/061/061637790/061637790\\_201409\\_990.pdf?\\_ga=1.113814017.724854923.1483721538](http://990s.foundationcenter.org/990_pdf_archive/061/061637790/061637790_201409_990.pdf?_ga=1.113814017.724854923.1483721538).

<sup>158</sup> *See, e.g.,* John Landis & Kirk McClure, *Rethinking Federal Housing Policy*, 76 J. AM. PLANNING ASSOCIATION 319, 343 (2010) (“Once this new generation of HOPE VI projects is initiated, HUD should begin the process of selling viable public housing projects to qualified nonprofit sponsors. The typical PHA remains far less efficient or competent than the typical LIHTC sponsor. The nonprofit housing sector has been substantially professionalized over the last twenty years while many PHAs remain hidebound bureaucracies. There are certainly some current PHAs that do not fit this description, and they should be allowed to remain in business, reconstituted as nonprofit housing corporations.”).

<sup>159</sup> 88 percent of CDCs, for example, report receiving at least \$50,000 from the federal government. *See* BRATT, *supra* note 15, at 10.

Because of their public purposes, nonprofits receive favorable tax and regulatory treatment. After meeting certain requirements under state<sup>160</sup> and federal<sup>161</sup> law, the federal government bestows the following benefits, among others, upon nonprofits: (1) exemption from federal income tax (and, by extension, from many other types of federal, state, and local taxes and regulatory laws), (2) eligibility to receive contributions that are tax-deductible by individual and corporate donors from their federal income taxes, (3) eligibility for funding from government and foundation sources that are either not available to or harder to obtain for non-501(c)(3) organizations, and (4) the public credibility associated with having been scrutinized by the IRS and recognized as a charity.<sup>162</sup> This is all well understood.

Most notable for our purposes, though, are the ways in which the federal government singles out nonprofit *housing providers* for assistance. These particularized policies demonstrate that the federal government recognizes (a) that nonprofits offer unique benefits to affordable housing policy and (b) that these unique nonprofit benefits would be diminished without statutory or regulatory protections.

First, in recognition that nonprofit housing developers specialize in assisting our most vulnerable populations, the two primary federal grants for elderly housing (Section 202) and supportive housing for people with disabilities (Section 811) flow exclusively to nonprofit

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<sup>160</sup> See, e.g., James R. Hines Jr. et al., *The Attack on Nonprofit Status: A Charitable Assessment*, 108 MICH. L. REV. 1179, 1185 (2010) (“state law generally requires nonprofits to identify a charitable mission in their organizing documents and operate in furtherance of that mission, restricts distribution of assets to other charities upon dissolution, and invests oversight authority in the state attorney general”). See generally BETSY SCHMIDT, NONPROFIT LAW: THE LIFE CYCLE OF A CHARITABLE ORGANIZATION 41-87 (2011) (outlining the requirements of nonprofit bylaws and articles of incorporation).

<sup>161</sup> The IRS requires organizations to complete Form 1023 to receive tax exemption. See *id.* at 249-51.

<sup>162</sup> See Rossman, *Evaluating Trickle Down*, *supra* note 91, at 1458 (citing sources for all four of these benefits). But cf. HENRY HANSMANN, *THE OWNERSHIP OF ENTERPRISE* 244 (1996) (noting that subsidies for nonprofits peaked in the 1950s and have “steadily eroded” ever since).

organizations.<sup>163</sup> The Section 202 program has relied on nonprofits since 1959, and Congress modeled Section 811 off of Section 202 when they enacted Section 811 in 1990.

Second, the federal government's largest program for affordable housing development, the LIHTC, requires states to set aside 10 percent of all funds for qualified nonprofits.<sup>164</sup> While states regularly allocate more than 10 percent of their LIHTCs to nonprofits,<sup>165</sup> this provision proves that, even as Congress turned away from public housing in the late 1980s, nonprofits were seen as an essential element of housing policy. In 1990, the LIHTC was also amended to allow nonprofits to "negotiate below-market purchase options during the development of a project, options that would facilitate nonprofit acquisition of the housing project at the end of the fifteen-year compliance period, but would not compel a for-profit owner to sell at that time."<sup>166</sup> This provision, titled the "right of first refusal," also applies to tenants' organizations and the government. Moreover, Mihar Desai has argued that, by using investible tax credits instead of nonrefundable credits or deductions, the very structure of the LIHTC is geared toward ensuring government support for nonprofits (who face no tax liability).<sup>167</sup>

Third, the Cranston-Gonzalez National Affordable Housing Act of 1990, the most significant affordable housing legislation of the last thirty years, provided nonprofits special

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<sup>163</sup> See 12 U.S.C.A. § 1701q (2014) (providing private nonprofit organizations and consumer cooperative with capital advances to develop supportive housing for the elderly); 42 U.S.C.A. § 8013 (2011) (same, except for persons with disabilities).

<sup>164</sup> See 26 U.S.C.A. § 42(h)(5) (2013). A qualified nonprofit must meet three criteria under the statute: "(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a); (ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and (iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing." *Id.*

<sup>165</sup> The rate is currently somewhere around 25 percent. See BRATT, *supra* note 15, at 11-12.

<sup>166</sup> Ballard, *Profiting from Poverty*, *supra* note 15, at 224 fn.60 (describing 26 U.S.C.A. § 42(i)(7)(A)(2015)).

<sup>167</sup> MIHAR DESAI ET AL., HARVARD KENNEDY SCHOOL WORKING PAPER, INVESTIBLE TAX CREDITS: THE CASE OF THE LOW-INCOME HOUSING TAX CREDIT 17 (2008) ("To summarize, investable tax credits neutralize the bias toward for-profit providers inherent in a non-refundable tax credit and this feature is particularly critical if the dominant organizational form for delivering the production is nonprofit.").

treatment under both the HOME Investment Partnerships Program and the priority purchase program for Section 8 properties with expiring affordability restrictions.

HOME mandates that 15 percent of all funding go to “Community Housing Development Organizations” (CHDOs).<sup>168</sup> CHDOs are nonprofits that must demonstrate an expertise in housing development, maintain a board of directors that includes community members, and have a history of working in a certain region.<sup>169</sup> CHDOs can also not be controlled by any government entity or for-profit, though they can be “sponsored or created” by a for-profit.<sup>170</sup> If states or cities cannot find CHDOs to fund, those states or cities may either spend a small portion of the 15 percent set-aside on CHDO capacity-building or return their HOME money to HUD.<sup>171</sup>

In response to the “expiring use crisis,” the Act also grants nonprofits “the first right to make a bona fide offer to purchase a federally subsidized development whose owner has announced an interest in pre-paying the mortgage.”<sup>172</sup> This policy likely stemmed from HUD reports showing that nonprofits were far more likely to keep their buildings affordable beyond the initial 15 or 30 year contract with HUD than were for-profits.<sup>173</sup>

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<sup>168</sup> See 42 U.S.C.A. § 12771 (2016).

<sup>169</sup> See 24 C.F.R. § 92.2 (2017).

<sup>170</sup> *Id.*

<sup>171</sup> See 42 U.S.C.A. § 12771(b).

<sup>172</sup> BRATT, *supra* note 15, at 11 (describing 12 U.S.C.A §§ 4110 & 4121 (2016)). For a greater exploration of the expiring use crisis as it relates to the LIHTC, see Weiss, *Residual Value Capture*, *supra* note 15, at 543-48 (estimating that some two million affordable apartments are at risk of their owners pushing rents to market rates once their LIHTC contract expires and recommending that the government give more LIHTCs to nonprofits to ameliorate this problem).

<sup>173</sup> See U.S DEP’T HOUSING & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, MULTIFAMILY PROPERTIES: OPTING IN, OPTING OUT, AND REMAINING AFFORDABLE 19, 24 (2006) (noting differences between nonprofit and for-profit owners in rates of opting-out of the project-based Section 8 program and terminating certain use restrictions, and concluding, “Properties operated by nonprofit organizations were much less likely to opt out than were properties operated by for-profit owners.”).

Additionally, the Cranston-Gonzalez Act's purposes and findings, as well as its legislative history, evince a Congressional desire for substantial nonprofit participation in affordable housing policy.<sup>174</sup>

Fourth, during the recent foreclosure crisis HUD enacted policies that gave nonprofits and some local governments the first right to purchase both mortgage loans in default and houses in foreclosure.<sup>175</sup> These policies arose out of the 2008 Housing and Economic Recovery Act's "Neighborhood Stabilization Program," and gave nonprofits two weeks to submit a bid at the property's appraised value before giving private investors an opportunity to purchase the loan or property.<sup>176</sup> The program appears to have produced mixed results.<sup>177</sup>

Fifth, the Federal Home Loan Banks' Affordable Housing Program, a program that has awarded more than \$5 billion in affordable housing funds since 1990, bestows extra points upon nonprofit developer applications.<sup>178</sup>

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<sup>174</sup> See, e.g., 42 U.S.C.A. § 12721(11) (2016) (finding that "nonprofit community housing development organizations, despite severe obstacles caused by inadequate funding, have played an increasingly important role in the production and rehabilitation of affordable housing in communities across the Nation"); 136 CONG. REC. H13601-01 (Oct. 25, 1990) (statement of Rep. Kennedy) ("For the first time, Federal funds will be set aside solely for local nonprofits to build and renovate housing. Over the last 10 years, nonprofits have proven that they are worthy of our help. As the Federal Government and private developers reduced their commitment to housing, nonprofits took up the challenge. Operating only on sweat and shoestring budgets, they have built over 150,000 units of affordable housing in the last few years.").

<sup>175</sup> See Federal Housing Administration (FHA) First Look Sales Method for Grantees, Nonprofit Organizations, and Subrecipients Under the Neighborhood Stabilization Programs (NSP), 75 Fed. Reg. 41225 (July 15, 2010) (outlining the process by which governmental entities, nonprofit organizations, and subrecipients participating in the Neighborhood Stabilization Program (NSP) (eligible NSP purchasers) are provided a preference to acquire FHA real estate-owned (REO) properties under FHA's temporary NSP First Look Sales Method); LAURIE GOODMAN & DAN MAGDER, URBAN INSTITUTE, SELLING HUD'S NONPERFORMING LOANS: A WIN-WIN FOR BORROWERS, INVESTORS, AND HUD (Jan. 2016) (describing the FHA's Distressed Asset Stabilization Program and its special NGO loan pools).

<sup>176</sup> See 75 Fed. Reg. 41225, *supra* note 174.

<sup>177</sup> See, e.g., John Gittelsohn et al., *Hedge Funds Reap Gains on FHA Loans Sideline Nonprofits*, BLOOMBERG (Sept. 8, 2014), <https://www.bloomberg.com/news/articles/2014-09-08/hedge-funds-reap-gains-on-fha-loans-sideline-nonprofits> (noting that most distressed loan sales have gone private investors, but that some larger nonprofits, like New Jersey Community Capital, were able to purchase the loans, too).

<sup>178</sup> See, e.g., *Affordable Housing Program – Scoring*, FEDERAL HOME LOAN BANK OF BOSTON, [http://www.fhlbboston.com/communitydevelopment/ahp/03\\_01\\_02\\_scoring.jsp](http://www.fhlbboston.com/communitydevelopment/ahp/03_01_02_scoring.jsp) (last accessed Feb. 12, 2017).

Finally, while fair housing enforcement lies outside the realm of affordable housing development, it bears mentioning that the Fair Housing Act includes provisions for grants to nonprofit organizations that work to prevent and eliminate housing discrimination through enforcement and education.<sup>179</sup> In 2015, nonprofits investigated 70 percent of the nation’s fair housing cases, twice as much as all of the other agencies that process housing discrimination complaints combined.<sup>180</sup>

*ii. Connecticut*

Connecticut’s two primary housing bureaucracies – the Department of Housing (DOH) and the Connecticut Housing Finance Authority (CHFA) – both offer affordable housing programs geared substantially toward nonprofit developers.

At the beginning of DOH’s most recent “consolidated plan” – a report mandated by HUD in exchange for federal fund – DOH calls nonprofits an “essential part of the state’s institutional structure” and states that they play an “important role in the provision of affordable housing, supportive housing and social services, and economic development activities.”<sup>181</sup> The report later recognizes that Connecticut contains over 160 nonprofit housing developers and that “the state has a clear commitment to supporting and preserving community-based, non-profit housing development capacity.”<sup>182</sup> More specifically, DOH funds its elderly housing exclusively through nonprofits,<sup>183</sup> provides special tax abatements for nonprofit-owned housing projects,<sup>184</sup> allows nonprofits to refinance their debt through HOME funds,<sup>185</sup> runs a land bank and land trust fund

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<sup>179</sup> See 42 U.S.C.A. § 3616a (2016).

<sup>180</sup> See NATIONAL FAIR HOUSING ALLIANCE, A LANDMARK YEAR: 2016 FAIR HOUSING TRENDS REPORT 8 (2016).

<sup>181</sup> STATE OF CONNECTICUT, DEP’T HOUSING, 2015-19 CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT 92 (July 2015).

<sup>182</sup> *Id.* at 135.

<sup>183</sup> *Id.* at 93-94.

<sup>184</sup> *Id.* at 95.

<sup>185</sup> See STATE OF CONNECTICUT, DEP’T HOUSING, 2015-19 ACTION PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT 20-21 (July 2015).



exclusively for nonprofits and limited equity cooperatives,<sup>186</sup> and runs an affordable homeownership program that primarily flows to homeownership-centric nonprofits.<sup>187</sup>

While CHFA and DOH work in tandem to fund Connecticut's affordable housing – for example, DOH's Commissioner is CHFA's Chairperson – DOH focuses on providing gap funding through loans and grants and CHFA focuses on issuing bonds to fund low-cost mortgages and affordable housing developments as well as on operating tax credit programs such as the LIHTC. As a result, CHFA tends to be the more substantial equity provider of the two bureaucracies, at least when it comes to rental projects.<sup>188</sup> Like DOH, CHFA provides targeted subsidies for nonprofit developers. Besides doling out \$60-70 million in LIHTCs each year – a substantial number of which have historically gone to nonprofits<sup>189</sup> – CHFA operates a \$10 million a year state housing tax credit program exclusively for nonprofits. Under this program, “a non-profit corporation can receive up to \$500,000 annually in state tax credits which can then be sold to state business firms in return for cash contributions to the non-profit corporation's housing program.”<sup>190</sup> While the LIHTC program tends to fund developments of 50 or more units, this state tax credit program funds nonprofit developers of any size. CHFA also runs a

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<sup>186</sup> See C.G.S.A. § 8-214c-d (2016).

<sup>187</sup> See STATE OF CONNECTICUT, DEP'T HOUSING, AFFORDABLE HOMEOWNERSHIP DEVELOPMENT PROJECTS, <http://www.ct.gov/doh/cwp/view.asp?a=4513&Q=561724&PM=1>. For a story of these funds going to New Haven housing nonprofits, see Markeshia Ricks, *Neighborhoods Get Housing Boost from State*, NEW HAVEN INDEPENDENT (July 19, 2015), [http://www.newhavenindependent.org/index.php/archives/entry/homeownership\\_gets\\_boost\\_from\\_state/](http://www.newhavenindependent.org/index.php/archives/entry/homeownership_gets_boost_from_state/).

<sup>188</sup> Homeownership-based affordable housing like NHS and Habitat for Humanity rely more on grants and smaller tax credits. See Interview with Jim Paley, *supra* note 97.

<sup>189</sup> According to my own analysis of LIHTC grants over the last five years, 28 percent of 9% LIHTC applicants were nonprofits and 40 percent of awardees were nonprofits. See *Federal Low-Income Housing Tax Credit (LIHTC) Program*, CONNECTICUT HOUSING FINANCE AUTHORITY, <http://www.chfa.org/Rental%20Housing/for%20Developers%20and%20Sponsors/Funding%20Initiatives/Tax%20Credit%20Programs/LIHTC%20Program.aspx> (listing data for LIHTC applicants and awardees).

<sup>190</sup> *State Housing Tax Credit Contribution (HTCC) Program*, CONNECTICUT HOUSING FINANCE AUTHORITY, <http://www.chfa.org/Rental%20Housing/for%20Developers%20and%20Sponsors/Funding%20Initiatives/Tax%20Credit%20Programs/HTCC%20Program.aspx>.

collaborative funding initiative designed to pair state agencies and nonprofits interested in developing and managing supportive housing and/or group homes.<sup>191</sup>

Once a nonprofit receives this funding, moreover, CHFA's guidelines provide a hodgepodge of benefits intended to help nonprofits overcome the traditional challenges facing their work, *i.e.*, limited access to capital; tight budgets; reliance on a multitude of subsidies; minimal staffing. To name just a few examples, CHFA's guidelines allow the agency to waive mandatory market studies for nonprofits, to fund nonprofit-sponsored projects with higher loan-to-value and lower debt-service cost ratios, and to waive the "two percent minimum required interest in the development" requirement.<sup>192</sup> A longtime CHFA employee told me that she finds these exceptions necessary and that she prefers working with nonprofits, as "they are willing to learn, grow, evolve, and have a social mission." "It's very different than working with an organization trying to maximize shareholder value," she said.<sup>193</sup>

Finally, Connecticut's Department of Revenue also offers a "neighborhood assistance tax credit program." This program allows businesses to write down their corporate tax in exchange for contributing up to \$150,000 to approved community organizations.<sup>194</sup> Of the \$4 million distributed to New Haven nonprofits under this program last year, for example, \$1.68 million flowed to housing-centric nonprofits.<sup>195</sup>

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<sup>191</sup> See *Collaborative Funding Initiatives*, CONNECTICUT HOUSING FINANCE AUTHORITY, <http://www.chfa.org/Rental%20Housing/for%20Developers%20and%20Sponsors/Funding%20Initiatives/Collaborative%20Funding%20Initiatives/default.aspx>.

<sup>192</sup> See CONNECTICUT HOUSING FINANCE AUTHORITY PROCEDURES 14-19 (2016), <http://www.chfa.org/content/Legal%20Document%20Library/CHFA%20PROCEDURES%20EXCERPT%20rev%2006-30-16doc.pdf>.

<sup>193</sup> Interview with Terry Nash, *supra* note 21.

<sup>194</sup> See *Neighborhood Assistance Tax Credit Program*, CONN. DEP'T REVENUE SERVICES, <http://www.ct.gov/drs/cwp/view.asp?a=1447&q=266058> (last accessed Feb. 12, 2017).

<sup>195</sup> I deduced this number from the list of New Haven organizations listed in the New Haven Independent. See Markeshia Ricks, *Tax-Break Gifts Could Boost 34 Nonprofits*, NEW HAVEN INDEPENDENT (May 18, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/neighborhood\\_assistance\\_act/](http://www.newhavenindependent.org/index.php/archives/entry/neighborhood_assistance_act/).

### *iii. New Haven*

Although the lion's share of nonprofit development financing comes from state and federal sources, large municipalities like New Haven also influence nonprofit housing in two primary ways: through the provision of HOME and CDBG funds and through the provision of property tax abatements.<sup>196</sup>

On the first issue – the provision of HOME and CDBG funds – New Haven directs almost all of its HOME funds to nonprofit developers and a significant portion of its CDBG funds to nonprofit developers. Between 2013 and 2015, for example, the City of New Haven gave almost all of its \$3.05 million in HOME grants to nonprofit housing developers, *i.e.*, NHS, Beulah Heights Land Development Corporation, New Horizons, Habitat for Humanity, and The Community Builders.<sup>197</sup> Over the same period of time, the City of New Haven spent \$2.3 million of its \$10.21 million in CDBG grants (23 percent) on housing rehabilitation. These funds often flowed to the same nonprofit development projects that received HOME money. Together, these funds led to the completion of 83 rental units and 38 homeownership units, as well as assisted dozens of homeowners with down payment costs and green energy rehab work.<sup>198</sup> Almost all of these projects relied on additional subsidies, too.

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<sup>196</sup> Zoning is also an important local issue for affordable housing, but the nonprofit developers I spoke with stated that financing and tax issues concerned them far more than zoning issues. This is perhaps because most of the nonprofit developers I spoke with work in the City of New Haven – not in the surrounding suburbs, where exclusionary zoning plays a far greater role in determining the fate of subsidized housing projects.

<sup>197</sup> I calculated these numbers by reference to the 2013-14, 2014-15, and 2015-16 Consolidated Annual Performance Evaluation Reports – a HUD mandated report – all of which can be found on the website of New Haven's Department of Finance, <http://www.cityofnewhaven.com/Finance/BudgetsFinances.asp>. It also bears noting that nonprofit developers and CHDOs (described earlier in the piece) are not one and the same. For unclear reasons, only two New Haven nonprofit developers qualify as CHDOs: New Horizons and the Beulah Heights Land Development Corporation. Still, enough HOME funds flowed to those two organizations that New Haven did not violate its statutory mandate to devote 15 percent of its HOME funds to CHDOs.

<sup>198</sup> I gleaned this information from the same reports described in the previous footnote.

On the second issue – property tax abatements – New Haven offers nonprofit-sponsored affordable housing more favorable abatements than for-profit-sponsored affordable housing. New Haven has provided 39-year tax abatements for low-and-moderate income housing since 1968.<sup>199</sup> As of 2011, around 20 percent of New Haven’s affordable housing (2,400 units out of 12,300 total subsidized units) benefit from these tax abatements.<sup>200</sup> At then-Mayor DeStefano’s behest, the City worked to rationalize this abatement structure through the Low Income Supportive Housing Tax Abatement committee, and ultimately came to the conclusion that, while affordable housing developers should each pay a flat, annual tax per each affordable unit, nonprofits should receive greater tax support than for-profits. More specifically, the committee proposed that taxes should differ based on the percentage of affordable units, but that, for either affordable or market units, nonprofits should pay around \$400 less per unit than for-profits. Since nonprofits often generate a far lower net operating income than for-profits, lower taxes appeared a sensible way to keep them in business.<sup>201</sup> While affordable housing tax breaks have proved controversial in New Haven, especially with respect to out-of-town for-profit developers,<sup>202</sup> at least one person I interviewed, Liz Torres of Bridgeport Neighborhood Trust,

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<sup>199</sup> NEW HAVEN, CONN., ORDINANCES tit.III, ch. 28, § 28-4 (1969), available at [https://www.municode.com/library/ct/new\\_haven/codes/code\\_of\\_ordinances?nodeId=TITIICOGEOOR\\_CH28TA\\_S28-4TAABLOMOINHO](https://www.municode.com/library/ct/new_haven/codes/code_of_ordinances?nodeId=TITIICOGEOOR_CH28TA_S28-4TAABLOMOINHO).

<sup>200</sup> See Melissa Bailey, *Mayor Calls For Tax-Break Moratorium*, NEW HAVEN INDEPENDENT (Nov. 24, 2011), [http://www.newhavenindependent.org/index.php/archives/entry/mayor\\_calls\\_for\\_moratorium\\_on\\_affordable\\_housing\\_tax\\_breaks/](http://www.newhavenindependent.org/index.php/archives/entry/mayor_calls_for_moratorium_on_affordable_housing_tax_breaks/) (noting the 30 agreements currently in place, including with a number of nonprofits, and highlighting Mayor DeStefano’s desire to limit these abatements).

<sup>201</sup> All of this information comes from an interview with Jim Farnham and a memo written by Jim Farnham. He advised the Board of Alders on their tax reform efforts. See JAMES FARNHAM, FARNHAM ASSOCIATES LLC, MEMO ON ASSESSMENT AND TAXATION OF LOW AND MODERATE INCOME HOUSING IN NEW HAVEN (Oct. 16, 2014) (on file with author); Interview with Jim Farnham, *supra* note 95.

<sup>202</sup> See, e.g., Paul Bass, *Monterey Owner Seeks 2d 20-Year Break*, NEW HAVEN INDEPENDENT (Jun. 28, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/bcj\\_tax\\_break/](http://www.newhavenindependent.org/index.php/archives/entry/bcj_tax_break/) (describing the controversy wrought by Beacon Partners’, a Boston-based for-profit developer that owns a refurbished public housing complex in Dixwell, attempts to secure tax breaks).

supported New Haven’s efforts to assist nonprofit housing developers through the tax code and thought Bridgeport (a neighboring city of New Haven) would benefit from a similar program.<sup>203</sup>

Interviews and government statements further demonstrate that New Haven’s housing department – the aforementioned Livable City Initiative – harbors an interest in supporting nonprofit developers. For example, when New Haven sells houses foreclosed through municipal tax liens, it gives nonprofits like Habitat for Humanity, New Horizons, and NHS a “special nonprofit price.” This price is usually \$1,000 a property.<sup>204</sup> The Executive Director of New Haven’s City Plan Department also expressed support for nonprofit developers, and added that “it was a mystery” to her “why a more robust city-based CDC had not arisen earlier in New Haven’s history,” as opposed to the neighborhood-based CDCs discussed above.<sup>205</sup> New Haven’s current LCI Director, Serena Neal-Janjurjo, has also spoken publically about the importance of fostering nonprofit housing developers.<sup>206</sup>

### C. How Nonprofits Fund Individual Projects, with Specific Examples from New Haven

With all this general discussion of nonprofit developers and subsidy sources it mind, it is worth diving into the weeds for a moment to discuss how, exactly, a nonprofit goes about funding an individual project. Before delving into these examples, though, I note a recurring theme from my interviews with nonprofit developers: nonprofits rely on *many* unique subsidies

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<sup>203</sup> See Telephone Interview with Elizabeth Torres, *supra* note 24.

<sup>204</sup> This information was gleaned through an examination of LCI meeting minutes, where this phrase and price were mentioned repeatedly by LCI directors. On September 28, 2016, for example, LCI approved a \$1,000 property sale to Beulah Heights Land Development Corporation so that Beulah could construct a two-family owner-occupied property. See LIVABLE CITY INITIATIVE, MEETING MINUTES (Sept. 28, 2016), [http://www.cityofnewhaven.com/Government/pdfs/LCI%20Board%20Minutes\\_September\\_28\\_2016.pdf](http://www.cityofnewhaven.com/Government/pdfs/LCI%20Board%20Minutes_September_28_2016.pdf).

<sup>205</sup> See Interview with Karyn Gilvarg, *supra* note 98. But see Interview with Matthew Nemerson, Economic Development Administrator, City of New Haven, in New Haven, Conn. (Dec. 6, 2016) (noting that, as the City’s chief economic official, he did not view nonprofits as particularly useful housing developers).

<sup>206</sup> See, e.g., Paul Bass & David Yaffe-Bellany, *Shumlord’s Successors Vow to Do It Right*, NEW HAVEN INDEPENDENT (July 1, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/mendy\\_katz/](http://www.newhavenindependent.org/index.php/archives/entry/mendy_katz/) (“Neal-Sanjurjo wants LCI to start competing with those [out-of-state private investors] to purchase blighted properties from foreclosure so the city or not-for-profit builders can renovate them and sell them to homeowners rather than cede them to large-portfolio absentee landlords.”).

to do their work, and balancing these varying subsidies often requires “piggy backing” each subsidy on top of the other. Indeed, Rachel Bratt has noted that, on average, a nonprofit developer will require 7-8 funders per project.<sup>207</sup> In my interview with Terry Nash of CHFA, she described the challenge of lining up Department of Housing grants and CHFA tax credit grants simultaneously. That is, a nonprofit does not simply apply to the state government for all of their funding at the same time. It might have to apply for HOME funding in one month, and then tax credits a few months after that, and then CDBG funding another few months after that.<sup>208</sup> While many interviewees acknowledged that Connecticut has a more streamlined application process than other states, Liz Torres of the Bridgeport Neighborhood Trust lamented the years-long gap between receiving your first award and closing your deal.<sup>209</sup>

For a specific example of the challenge of nonprofit funding, consider a 33 unit project called “Safe Haven” by Liberty Community Services, a New Haven-based nonprofit that provides supportive housing to the chronically homeless.<sup>210</sup> The Safe Haven project was notable at the time because it employed a “low demand” policy response to homelessness. That is, rather than requiring chronically homeless individuals to “progress” from shelter to transitional housing to permanent housing, Safe Haven offered high-quality, permanent housing from the onset.<sup>211</sup> I obtained financial worksheets from John Bradley, Liberty’s CEO, and learned that the \$8 million, six-year project relied on at least eight funding sources: ~\$3 million in state Department of Housing “flex” funds for construction; ~\$2.2 million in LIHTC equity, which funded costs

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<sup>207</sup> See BRATT, *supra* note 15, at 29-30.

<sup>208</sup> See Interview with Terry Nash, *supra* note 21.

<sup>209</sup> See Telephone Interview with Elizabeth Torres, *supra* note 24.

<sup>210</sup> See Catharine Livingston, *Liberty Safe Haven to Help Combat Homelessness*, YALE DAILY NEWS (Apr. 4, 2003), <http://yaledailynews.com/blog/2003/04/04/liberty-safe-haven-to-help-combat-homelessness/> (contemporary article describing the Safe Haven project).

<sup>211</sup> *Id.* This “housing first” response to homelessness is now considered a common best practice. See, e.g., UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS, *supra* note 145, at 25 (endorsing “housing first” model).

ranging from design consultant salaries to property taxes and insurance; a \$20,000 City of New Haven “façade grant” for the building’s exterior; \$1.7 million in grants from the state Department of Social Services, the Melville Charitable Trust, and United Illuminating for acquisition costs; a \$650,000 internal loan from the state Department of Housing; and a \$500,000 graduated payment mortgage.<sup>212</sup> John Bradley noted that Liberty’s nonprofit status was helpful in securing funding. For example, a portion of LIHTC funds that year were particularly targeted at nonprofits working with the homeless.<sup>213</sup> The project also requires ongoing operating funding from the state and federal government; HUD’s Continuum of Care funds, which are targeted at nonprofit housing providers, constituted the most important source of annual income.<sup>214</sup> Still, despite the complexity of the funding, most of my interviewees considered projects like Safe Haven to be a good use of government funds.<sup>215</sup> The general attitude seemed to be that private sector would simply not undertake a project like this one and that, in a federalist society like America’s, multitudinous subsidy programs were inevitable.



*The exterior of the Safe Haven project on State Street, in downtown New Haven.*

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<sup>212</sup> Safe Haven development worksheet dated November 22, 2005 is on file with the author.

<sup>213</sup> See Interview with John Bradley, Executive Director, Liberty Community Services, in New Haven, Conn. (Nov. 3, 2016).

<sup>214</sup> *Id.*

<sup>215</sup> See, e.g., Interview with John DeStefano, *supra* note 101 (speaking highly of Safe Haven project).



The finances of Neighborhood Housing Services showcase a different kind of nonprofit development: affordable homeownership projects. Homeownership project financing differs from rental project financing because, in homeownership projects, developers must match all of their sources to all of their uses. That is, because groups like NHS sell their houses after making their repairs, they cannot pay off any debts they take out through ongoing rental income.<sup>216</sup> So, for example, NHS bought a house on Winchester Avenue in Newhallville for \$11,500. NHS then spent around \$275,000 gutting and rebuilding it. This money covered hard construction costs, lead abatement, and soft costs (like permits and legal fees). To achieve affordability, though, NHS listed the house at \$140,000 (with a deed restriction, of course, to ensure the homeowner did not receive a windfall profit by immediately selling the house upon purchase).<sup>217</sup> NHS paid for the \$146,500 difference with a variety of subsidies: the Federal Home Loan Bank of Boston's Affordable Homeownership Program; state-level tax credits for nonprofits that NHS sold to a large local utility company; lead hazard abatement grants from the City of New Haven; HOME funds; CDBG funds; and favorable financing from local bank partners.<sup>218</sup> Most important for this particular home, though, NHS used \$30,000 of state historic tax credits.<sup>219</sup> While this haphazard financing might seem outrageous to some, many of my interviewees praised NHS for doing such high-quality work in lower-income neighborhoods.<sup>220</sup>

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<sup>216</sup> See Interview with Jim Paley, *supra* note 97.

<sup>217</sup> See Paul Bass, *8 Vie To Buy City-Foreclosed Homes*, NEW HAVEN INDEPENDENT (Aug. 8, 2014), [http://www.newhavenindependent.org/index.php/archives/entry/lci\\_houses\\_for\\_sale/](http://www.newhavenindependent.org/index.php/archives/entry/lci_houses_for_sale/).

<sup>218</sup> See Interview with Jim Paley, *supra* note 97 (describing his "Bible of subsidies").

<sup>219</sup> This particular home had been built in 1900. See Thomas MacMillan, *Newhallville Up For "Historic" Boost*, NEW HAVEN INDEPENDENT (June 13, 2013), [http://www.newhavenindependent.org/index.php/archives/entry/historic\\_lilac\\_street\\_sought/](http://www.newhavenindependent.org/index.php/archives/entry/historic_lilac_street_sought/) (describing NHS's work in securing state historic tax credits in Newhallville; Paley estimated that NHS used almost \$700,000 in historic tax credits on 23 housing units).

<sup>220</sup> See, e.g., Telephone Interview with Robert Solomon, *supra* note 96 (saying that NHS "does God's work").

As both of these projects demonstrate, nonprofit development can be an expensive and complicated endeavor. One interviewee, Jim Farnham, expressed nostalgia for the old Urban Development Action Grants, which could be used as a single source of funding for an entire nonprofit housing project.<sup>221</sup> Given present political realities, though, most nonprofit developers are more focused on protecting their current subsidies than on re-imagining the status quo, as current programs face potential extinction under fiscally-strapped city, state, and federal governments.<sup>222</sup> More importantly, these projects show that nonprofits often come up with creative and multi-faceted ways to finance their projects, and that inefficient government processes do not stop nonprofit developers from breaking ground on new projects.



*The final product of the Winchester Avenue project, as shown on NHS's website.*

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<sup>221</sup> See Interview with Jim Farnham, *supra* note 134. Congress stopped funding UDAG in 1988. See Ingrid W. Reed, *The Life and Death of UDAG: An Assessment Based on Eight Projects in Five New Jersey Cities*, 19 PUBLIUS 93 (1989).

<sup>222</sup> See *supra* at 7-9.

#### D. The Overall Contribution of the Nonprofit Sector to Affordable Housing Development

Finally, it bears discussing the substantial contribution that nonprofits have made to affordable housing nationwide. According to Rachel Bratt, nonprofits own about one-third of all subsidized housing. More specifically, she credits 1.5 million of the country's 4.6 million subsidized units to nonprofit developers (including both CDCs and regional developers).<sup>223</sup> By comparison, public housing authorities only own around 1.1 million units – a number that has been on a steady decline the last 30 years. (Importantly, though, Bratt's tally of subsidized units does *not* include the 2.2 million households assisted by federal vouchers.)<sup>224</sup> In the context of New York City, William Simon noted that, while "PHAs account for about 3,000 units per year and conventional for-profit developers account for another 1,500 to 2,000, 6,000 to 10,000 units are produced by 'an infrastructure of nonprofit development groups, intermediaries, community development lending institutions, small private developers, homebuilders, and contractors--all of whom share a neighborhood focus, work on a small scale, and utilize a blend of public and private resources.'"<sup>225</sup> Bratt also demonstrates that the annual output of CDCs has increased over time, rising from 27,000 units a year in the early 1990s to 86,000 units a year by the mid-2000s.<sup>226</sup> While affordable housing generation pales in comparison to the 1.05 million private

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<sup>223</sup> See BRATT, *supra* note 15, at 8-9. Bratt reached the 1.5 million number by adding CDC total production from a CDC trade group census, plus self-reported numbers from two trade groups of regional nonprofit developers (the Housing Partnership Network, described above, and Stewards of Affordable Housing for the Future). This result also coheres with Katherine O'Regan and John Quigley's research from 2000. While O'Regan and Quigley found that nonprofits provided only 15 percent of all affordable housing, their numbers did not include LIHTC developments or developments funded at the state level through tax-exempt bonds. Given this, and the increasing annual production output of nonprofit developers, Bratt's claim that nonprofits own one-third of the nation's affordable housing appears reasonable. See O'Regan & Quigley, *Federal Policy and the Rise of Nonprofit Housing Providers*, *supra* note 93, at 299.

<sup>224</sup> See *supra* at pages 17-19.

<sup>225</sup> Simon, *The Community Economic Development Movement*, *supra* note 15, at 398 (quoting Kathryn Wylde, *The Contribution of Public-Private Partnerships to New York's Assisted Housing Industry*, in HOUSING AND COMMUNITY DEVELOPMENT IN NEW YORK CITY: FACING THE FUTURE 73, 78 (Michael H. Schill ed., 1999)).

<sup>226</sup> See BRATT, *supra* note 15, at 9.

housing units completed in 2016 (300,000 of which hold five or more units)<sup>227</sup> and the 135 million housing units in America,<sup>228</sup> the role of the nonprofit sector in affordable housing production is nonetheless impressive.

Moreover, Bratt's numbers likely understate the impact of the nonprofit sector. When one includes the houses rehabbed and sold by NeighborWorks affiliates and Habitat for Humanity (which are not always included in CDC production counts) the nonprofit production number rises. NeighborWorks currently owns over 140,000 rental homes and builds/rehabs around 22,000 homes a year on average<sup>229</sup>; Habitat has built millions of homes since 1970. When one also considers the 285,000 beds of permanent supportive housing provided by nonprofits, the total nonprofit contribution rises further still.<sup>230</sup> And production output does not even account for other housing-related services provided by nonprofit developers. For instance, NeighborWorks affiliates provided 115,000 consumers with homeownership counseling and assistance in 2016 alone.<sup>231</sup>

The nonprofit housing sector has played a substantial role in affordable housing development in New Haven as well. New Haven contains 55,000 housing units, 9,726 units of which are either subsidized by the government or carrying an affordability deed restriction (again, this number does not include voucher recipients).<sup>232</sup> Based on a cursory analysis of the housing data accumulated by Connecticut's Department of Housing for their 8-30g appeals

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<sup>227</sup> See U.S. CENSUS BUREAU, NEW RESIDENTIAL CONSTRUCTION, <https://www.census.gov/construction/nrc/index.html> (last accessed Feb. 26, 2017).

<sup>228</sup> See FEDERAL RESERVE BANK OF ST. LOUIS, HOUSING INVENTORY ESTIMATE: TOTAL HOUSING UNITS FOR THE UNITED STATES, <https://fred.stlouisfed.org/series/ETOTALUSQ176N> (last accessed Feb. 26, 2017).

<sup>229</sup> See *NeighborWorks Impact*, NEIGHBORWORKS AMERICA, <http://www.neighborworks.org/Our-Impact/NeighborWorks-Impact> (last accessed Feb. 26, 2017).

<sup>230</sup> See, *supra*, at pages 36-37.

<sup>231</sup> See *Annual Infographics*, NEIGHBORWORKS AMERICA, <http://www.neighborworks.org/Our-Impact/Annual-Infographics> (last accessed Feb. 26, 2017).

<sup>232</sup> See, *supra*, note 44.

list,<sup>233</sup> at least 1,600 of the roughly 9,000 governmentally-assisted units are owned by nonprofits (18 percent).<sup>234</sup> 2,310 units, by contrast, are owned by New Haven’s Housing Authority, which remains more active than the average mid-sized city housing authority.<sup>235</sup> A higher (though indeterminate) percentage of the 600 deed-restricted units were developed by nonprofits, too, as most of the homeownership work accomplished by groups like Neighborhood Housing Services, Habitat for Humanity, and Beulah Heights Development Corporation falls within the Connecticut government’s “deed-restricted” category rather than the “governmentally-assisted” category.<sup>236</sup> Over the last 40 years, NHS and Habitat have built around 550 affordable homes in New Haven, most of which contain deed restrictions as a result of the projects receiving government subsidies.<sup>237</sup> Finally, as mentioned above, any listing of properties owned or developed by nonprofits does not do justice to the scope of these organizations’ work. These additional programs include homebuyer counseling and neighborhood watch groups organized by NHS, after-school daycare coordinated by New Horizons, and income and employment services offered by Columbus House, to name just a few examples.

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<sup>233</sup> For a description of the 8-30g appeals list, see *id.*

<sup>234</sup> I gleaned this number by combing through raw data sent to me by Michael Santoro, a Department of Housing analyst responsible for putting together the 8-30g appeals list. While many properties were missing precise data as to owners and managers, the information was reliable enough to posit a rough estimate.

<sup>235</sup> See ANNUAL REPORT, *supra* note 3, at 21-22.

<sup>236</sup> I say indeterminate because the deed-restricted raw data only contained addresses for single-family homes. Without additional data from Habitat, NHS, Beulah, etc, to cross-reference, the task of even finding a rough estimate would prove challenging. Based off my conversations with Michael Santoro, though, I feel confident in claiming that a substantial number of the deed-restricted units in the 8-30g list relate to nonprofit homeownership work. See Phone Interview with Michael Santoro, *supra* note 22.

<sup>237</sup> Jim Paley informed me of the deed restrictions often coupled with affordable homeownership projects. While these deed restrictions prevent the homeowner from gaining unlimited equity in their homes, they also prevent the homeowner from unfairly profiting at taxpayer expense if they pay off their low-cost mortgage and home values rise rapidly. See Interview with Jim Paley, *supra* note 97. For a discussion of deed restriction policy and affordable homeownership, see J. MICHAEL COLLINS, JOINT CTR. FOR HOUSING STUDIES, HARVARD UNIVERSITY, DEVELOPING EFFECTIVE SUBSIDY MECHANISM FOR LOW-INCOME HOMEOWNERSHIP 24 (2013).

### III. Making the Case for Nonprofit Developers

#### A. A Threshold Argument: Why We Need Production Subsidies

I must start my defense of nonprofit housing developers by addressing a major threshold question: why do we need the government to subsidize housing construction at all? If vouchers can resolve America's housing woes on their own, then my larger argument about the nonprofit sector is moot. Although I support vouchers in many circumstances, I nonetheless argue that the government *should* be in the business of subsidizing housing development. More particularly, I contend that vouchers alone cannot ameliorate housing unaffordability while combating the other ills housing policy seeks to cure, (*i.e.*, segregation, neighborhood blight, homelessness. Even with the carrot of voucher payments dangling before private developers, the market will not provide essential forms of housing in certain geographic locations.

On the surface, the argument for vouchers is straightforward enough. Since “almost all people are currently housed,”<sup>238</sup> Professor Edgar Olsen maintains, the cheapest solution to the affordable housing problem is “for the government to pay a part of the rent.”<sup>239</sup> And, moreover, research demonstrates that (a) voucher programs deliver equal or superior housing quality for tenants at a lower cost than production programs<sup>240</sup> and (b) that vouchers result in somewhat less

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<sup>238</sup> Although it is notoriously difficult to accurately count the homeless population, one reputable HUD assessment claims that, on any given night, over half a million Americans are staying in a shelter or on the street. *See* U.S. DEP'T HOUSING & URBAN DEVELOPMENT, 2015 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS (2015), <https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf>.

<sup>239</sup> *Housing Vulnerable Families and Individuals: Is There a Better Way?: Hearing Before the S. Subcomm. On Transportation, Housing and Urban Development, and Related Agencies*, 114th Cong. 11-12 (2016) (statement of Edgar Olsen, Professor of Economics, University of Virginia).

<sup>240</sup> *See, e.g.*, Collinson, *Low Income Housing Policy*, *supra* note 29, at 32 (“empirical research is fairly consistent in suggesting that tenant-based programs are able to deliver a given level of housing quality at a lower cost compared to project-based programs, or at least compared to HUD-sponsored project-based programs such as public housing.”); Denise DiPasquale, et al., *Comparing the Costs of Federal Housing Assistance Programs*, FRBNY ECON. POLICY REV. 147, 158 (2003) (“If costs were the only consideration, our estimates would suggest that the production programs should be replaced with vouchers.”).



segregated housing (economically speaking) than production programs.<sup>241</sup> If we acknowledge that the U.S. government will never spend an adequate amount of money on social welfare programs, why not channel all of our limited resources into the program that would help the most people and that, in theory, would give families the freedom to move wherever they'd like? To again quote Professor Olsen, "a shift of all discretionary resources from programs of project-based assistance to tenant-based vouchers would enable us to provide several million additional households with adequate housing at an affordable rent without any increase in government expenditure."<sup>242</sup>

Yet this argument falls short for three reasons. First, while voucher programs perform noticeably better than public housing on several metrics,<sup>243</sup> the evidence has not shown that vouchers are particularly effective when compared to other forms of subsidized development, on either poverty/racial concentration<sup>244</sup> or any other measure of success. For example, studies show that vouchers do not yield many educational, health, or crime benefits, and in some cases

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<sup>241</sup> On the question of economic segregation, Alex Schwartz shows that voucher holders live in slightly wealthier census tracts than public housing residents; he does not find much difference, though, between where voucher holders live and where residents of LIHTC and privately-owned section 8 projects live. On the question of racial segregation, Schwartz finds only small differences between where voucher holders live and where project subsidy recipients live. See SCHWARTZ, *supra* note 16, at 240 tb. 8.6; accord LISA SANBONMATSU ET AL., U.S. DEP'T HOUSING & URBAN DEVELOPMENT, MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM: FINAL IMPACTS EVALUATION xvi (2011) (finding that voucher holders moved to less distressed neighborhoods than public housing but to only slightly less minority-centric neighborhoods); Michelle Wood et al., *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*, 19 HOUSING POLICY DEBATE 367, 393-94 (2008) (finding that, while voucher families moved to neighborhoods with "slightly lower rates of poverty" than a control group, "the differences in the neighborhoods of voucher users and those without vouchers . . . were not very large"). As Matthew Desmond accurately opined: when given their voucher after years of waiting, the average voucher holder simply "upgrade[s] to [a] slightly nicer trailer park or . . . [a] quieter ghetto street." DESMOND, *supra* note 14, at 148.

<sup>242</sup> Edgar Olsen, *Housing Programs for Low-Income Households*, in MEANS-TESTED PROGRAMS IN THE UNITED STATES 437 (Robert Moffitt ed., 2003); accord JANET CURRIE, THE INVISIBLE SAFETY NET: PROTECTING THE NATION'S POOR CHILDREN AND FAMILIES 111-12 (2006) (suggesting that a universal voucher program could be paid for by the elimination of all project-based subsidies and most homeowner tax breaks).

<sup>243</sup> But see Fredrik Andersson et al., *Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing* (Nat'l Bureau of Econ. Research Working Paper No. 22,721, 2016) (looking at measures of future earnings and future rates of incarceration and finding no evidence that children who grow up in voucher housing do better than children who grow up in public housing as adults).

<sup>244</sup> See, *supra*, note 241.

perform worse than production programs.<sup>245</sup> While some widely-cited studies based on HUD’s Moving to Opportunity demonstration show that people living in impoverished neighborhoods, and especially young children, benefit from voucher programs,<sup>246</sup> those studies *required* families to move into low-poverty neighborhoods – they do not present the voucher program as it currently operates (or would likely operate, were vouchers to become a universal entitlement). The positive results, moreover, are based on *neighborhood*, and hence could be achieved with either production programs or voucher programs. All of this is to say, even acknowledging current efforts to improve upon the voucher program’s aforementioned weaknesses,<sup>247</sup> it is not an inherently more effective approach than affordable housing development.

“Fair enough,” a voucher proponent might respond, “but that doesn’t change the fact that vouchers cost less than developments. So even if vouchers achieve equal results to production

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<sup>245</sup> See, e.g., Brian Jacob et al., *The Impact of Housing Assistance on Child Outcomes: Evidence From a Randomized Housing Lottery*, 130 Q.J. ECON. 465, 503 (2015) (finding no significant impacts on education, crime, or health outcomes and noting that “our results imply that each \$1,000 (in 2013 dollars) spent on the housing voucher program increases children’s test scores by not more than 0.02 standard deviations, much less than the estimated effects per dollar spent on a number of educational interventions”); Keren Mertens Horn et al., *Do Housing Choice Vouchers holders live near good schools?*, 23 J. HOUSING ECON. 28, 39 (2014) (finding that, while voucher holders live in neighborhoods with higher performing schools than households living in public housing developments, they live in neighborhoods with lower performing schools than households living in LIHTC developments and poor households overall); Brian A. Jacob & Jens Ludwig, *The Effects of Housing Assistance on Labor Supply: Evidence from a Voucher Lottery*, 102 AM. ECON. REV. 272, 274 (2012) (finding that vouchers exert a persistent, though modest, negative impact on earnings and employment); Wood, *Housing Affordability*, *supra* note 82, at 403 (finding “no clear evidence to support any particular pattern of effects of voucher assistance on child well-being, with a small number of significant estimates divided nearly equally between favorable and unfavorable effects”).

<sup>246</sup> See, e.g., Chetty, *Effects of Exposure*, *supra* note 12, at 859-60 (“moving a child out of public housing to a low-poverty area when young (at age 8 on average) using an MTO-type experimental voucher will increase the child’s total lifetime earnings by about \$302,000”); Jens Ludwig, et al., *Long-Term Neighborhood Effects on Low-Income Families: Evidence from Moving to Opportunity*, 103 AM. ECON. REV. 226, 227, 231 (2015) (finding, 10-15 years out, that MTO moves improved several key adult mental and physical health outcomes, especially those related to extreme obesity and diabetes).

<sup>247</sup> One notable way vouchers could be improved is by adjusting HUD’s fair market rents to a smaller geographic area, thus preventing slumlords from receiving excess profits and suburban landlords from refusing tenants based on low voucher value. See Robert Collinson & Peter Ganong, *The Incidence of Housing Voucher Generosity* (working paper, 2016). In addition, more states should pass anti source-of-income discrimination laws. For a deeper examination of how “source of income discrimination” affects HCV recipients, see LANCE FREEMAN, U.S. DEP’T HOUSING & URBAN DEVELOPMENT, *THE IMPACT OF SOURCE OF INCOME LAWS ON VOUCHER UTILIZATION AND LOCATIONAL OUTCOMES* (2011), which argues that source of income laws “have the potential to make a substantial difference in voucher utilization rates and a modest difference in locational outcomes.”

programs, at least we'll be able to help more people with vouchers." This argument leads to my second point: comparative cost studies exclude both the positive externalities spurred by development programs *and* the hidden costs of vouchers. Recent studies demonstrate that contemporary affordable housing development – which is often vastly superior to the stereotypical high-rise or barracks-style public housing – produces positive spillover benefits.<sup>248</sup> Vouchers will rarely achieve these kinds of spillover effects because voucher holders do not concentrate on certain blocks.<sup>249</sup> Now, it is challenging to know if neighborhood spillover benefits outweigh the higher costs of production programs, but at least one set of scholars found that building in low-income areas produced four times more net benefits than moving poor families into high-income neighborhoods, ala the Moving to Opportunity voucher demonstration.<sup>250</sup>

In addition, voucher programs carry hidden costs that, as far as I can tell, comparative studies do not account for. Effective voucher programs require vigorous enforcement to ensure

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<sup>248</sup> See, e.g., Diamond & McQuade, *Who Wants Affordable Housing*, *supra* note 12 (finding that LIHTC developments in low-income areas cause aggregate welfare benefits of \$116 million); Rossi-Hanberg, *Housing Externalities*, *supra* note 87, at 528 ("On average, land prices in neighborhoods targeted for revitalization rose by 2–5 percent at an annual rate above those in a control neighborhood. These increases translate into land value gains of between \$2 and \$6 per dollar invested in the program over a 6-year period"); INGRID GOULD ELLEN, JOINT CTR. FOR HOUSING STUDIES, HARVARD UNIVERSITY, *SPILLOVERS AND SUBSIDIZED HOUSING: THE IMPACT OF SUBSIDIZED RENTAL HOUSING ON NEIGHBORHOODS* (2007) (finding that New York City's housing investments delivered a tax benefit to the city that exceeded the cost of the city's subsidies and amounted to some 75 percent of total public investment, which includes both state and federal dollars, and that LIHTC and Section 202 developments had more positive neighborhood effects than public housing and section 8 developments); cf. Chris Kirkham, *Low-Income Housing Shown to Not Weigh on Nearby Property Values*, WALL ST. J. (Nov. 28, 2016), <http://www.wsj.com/articles/low-income-housing-shown-to-not-weigh-on-nearby-property-values-1480361327> (citing a Trulia study of 20 metropolitan areas that showed affordable housing development did not lower neighboring property values, and sometimes raised them).

<sup>249</sup> See DEBORAH J. DEVINE, ET AL., U.S. DEP'T HOUSING & URBAN DEVELOPMENT, *HOUSING CHOICE VOUCHER LOCATION PATTERNS: IMPLICATIONS FOR PARTICIPANTS AND NEIGHBORHOOD WELFARE* 12, 71 (2003) ("in almost 90 percent of all neighborhoods with [voucher] units, the program represents less than five percent of the occupied housing stock. And in two-thirds of all neighborhoods, the program is less than two percent of the stock."); accord Kirk McClure et al., *Housing Choice Voucher Location Patterns a Decade Later*, 25 HOUSING POLICY DEBATE 215 (2014) (verifying that the results of the 2003 study still held true in 2013).

<sup>250</sup> See Diamond & McQuade, *Who Wants Affordable Housing*, *supra* note 12, at 32 (directly comparing their study on LIHTC developments with Raj Chetty's study on housing vouchers).

that landlords maintain the program's quality measures. But, as the head of New Haven's City Plan department told me, HUD and local officials struggle to keep up with the cost of enforcement. Without significantly more resources, then, enforcing a larger voucher program would present a major impediment to the program's success.<sup>251</sup> In tight housing markets like New Haven's, moreover, vouchers may have negative spillover benefits, especially on poorer residents. That is, landlords may charge the voucher recipient the maximum "fair market rent" paid by HUD, which then raises all rents in the neighborhood. Both empirical research<sup>252</sup> and experience in New Haven<sup>253</sup> demonstrate that this negative spillover effect is not illusory. Thus, when both the positive spillover benefits of housing developments and the hidden costs of vouchers are added to the mix, cost comparisons between vouchers and production programs become a closer call.

Vouchers' limited ability to achieve the broader goals of housing policy provides the third reason to maintain development subsidies. While vouchers solve the immediate problem underlying unaffordability – lack of income – they make no attempt to ameliorate additional problems plaguing America's poorest residents: economic and racial segregation, blighted neighborhoods, poor health, and on-and-off homelessness, to offer just a few examples. As HUD's mission statement demonstrates, wisely-invested taxpayer dollars can do more than pay

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<sup>251</sup> See Interview with Karyn Gilvarg, *supra* note 98; accord Neena Satija, *Slumlords Stiff Banks – and Rake in Section 8 Bucks*, NEW HAVEN INDEPENDENT (Nov. 2, 2011), [http://www.newhavenindependent.org/index.php/archives/entry/government\\_paying\\_slumlords\\_for\\_for/](http://www.newhavenindependent.org/index.php/archives/entry/government_paying_slumlords_for_for/) (investigative report highlighting the difficulties of voucher enforcement).

<sup>252</sup> See, e.g., Michael D. Eriksen & Amanda Ross, *Housing Vouchers and the Price of Rental Housing*, 7 AMERICAN ECONOMIC J. 154 (2015) (arguing that, while vouchers do not generally drive up rents, in certain inelastic markets and among certain high-quality units vouchers inflate area rents).

<sup>253</sup> See Interview with Matthew Nemerson, *supra* note 204 (stating that vouchers are causing rents to rise in poorer neighborhoods); see also Aliyya Swaby, *Affordable Housing Elusive in Boom*, NEW HAVEN INDEPENDENT (Mar. 11, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/affordable\\_housing\\_brainstorm/](http://www.newhavenindependent.org/index.php/archives/entry/affordable_housing_brainstorm/) ("One unintended consequence is that rents spike for houses nearby without Section 8 certificates, [Nemerson] said. "We're seeing a strange impact where the [federal Department of Housing and Urban Development] rents are becoming the market rent, not the other way around," he said."). In my interview with him, however, Mr. Nemerson still described housing vouchers as a better investment than production programs.

peoples' rents – they can be leveraged to build quality, affordable housing in places the market will not go and to rent to populations the market is not interested in. To quote from a widely-cited research paper on affordable housing program comparative costs:

[F]ederal housing programs deliver additional benefits that must be taken into account when addressing costs. . . . [I]n many markets, production programs are the only sources of new affordable rental units, and restrictions on use will keep these units affordable for decades to come, limiting the impact of market forces. These units can be crucial, especially when housing markets are tight or landlords are unwilling to rent to voucher recipients. . . . As a matter of public policy, the benefits of mobility, increasing the supply of affordable units, providing additional services for special-needs populations, or revitalizing distressed communities must be weighed against the costs of these efforts.<sup>254</sup>

Alex Schwartz also finds various “fundamental limitations” with vouchers, such as their inability to (a) change the skewed geographic distribution of affordable housing, (b) provide maximum assistance to the elderly and the disabled, (c) function well in tight rental markets, and (d) receive an equivalent level of political support to project-based subsidies.<sup>255</sup>

This sentiment rang true during my interviews. Most interviewees expressed bafflement at the idea that vouchers and production programs should be seen as an “either/or” proposition; the two approaches fulfill different needs and suit different populations. For instance, the Executive Director of the Housing Authority of New Haven told me that, despite the exceedingly long wait list for vouchers, many Housing Authority clients wouldn't give up their public housing unit for a voucher; they prefer the simplicity of renting from the Housing Authority as well as the support services the Housing Authority could bring on site.<sup>256</sup>

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<sup>254</sup> DiPasquale, *Comparing the Costs*, *supra* note 239, at 158-59.

<sup>255</sup> SCHWARTZ, *supra* note 16, at 260-61.

<sup>256</sup> *See* Interview with Dr. Karen DuBois-Walton, *supra* note 4.

For all the reasons outlined above, most housing policy reform proposals make room for both vouchers and development subsidies.<sup>257</sup> Indeed, the two subsidies often complement each other, with tax credit equity or grants providing project capital funds and vouchers providing project operating funds.<sup>258</sup>

*B. Comparative Advantages of Nonprofit Housing Developers, and What New Haven's Neighborhoods Would Lose Without Them*

With that threshold question addressed, I will now transition to defending the nonprofit affordable housing sector on its own terms. In this section, I hope to illuminate the unique comparative advantages of the nonprofit sector with respect to each of its “competitors,” both individually and collectively, and to articulate what would be lost were subsidies slashed or nonprofit benefits eliminated. Namely, I contend, the private sector is not willing (and public housing authorities are not able) to offer high-quality, affordable developments and community services to America’s neediest residents in America’s poorest neighborhoods, with corresponding spillover effects, to the degree the nonprofit sector is. While I fully subscribe to the Bipartisan Policy Center’s common sense argument that the federal government must “leverage[e] to the maximum extent possible the resources of the private and nonprofit sectors as well as state and local governments” to secure a more efficient system of affordable housing,<sup>259</sup> I suggest that the nonprofit sector receive particular assistance in this era of fiscal restraint.

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<sup>257</sup> See, e.g., URBAN INSTITUTE, *supra* note 78; BIPARTISAN POLICY CENTER, *supra* note 40; John Landis & Kirk McClure, *Rethinking Federal Housing Policy*, 76 J. AM. PLANNING ASSOCIATION 319 (2010).

<sup>258</sup> See CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 7-8 (finding that about 40 percent of tenants in affordable LITHC units must also rely on a voucher or some other form of direct assistance). This mixed development/voucher model also undergirds HUD’s newest policy for public housing revitalization: the Rental Assistance Demonstration. Under RAD, public housing authorities often convert their buildings to project-based vouchers in exchange for rehabilitation funded by the LIHTC or a subsidized mortgage. See SCHWARTZ, *supra* note 16, at 181-83, 448-49.

<sup>259</sup> BIPARTISAN POLICY CENTER, *supra* note 40, at 25.

*i. Structural Incentives: How the Nonprofit Corporate Form Provides a Broad Comparative Advantage*

At first blush it appears that nonprofits are simply organizations that engage in generous behavior (or at least convince the government they are engaging in generous behavior) in return for lower taxes and the promise to hold all residual earnings within the organization. In other words, their function seems ethical and amorphous, rather than economic and functional. Yet corporate law literature demonstrates that nonprofits function differently than other kinds of organizations, and that this difference holds real world consequences. Henry Hansmann's groundbreaking work in the 1980s showed that nonprofits are actually "a reasonable response to a relatively well-defined set of social needs that can be described in economic terms."<sup>260</sup> To be more specific, Hansmann argued that nonprofits receive funding from donors and customers when "contract failure" arises. "Contract failure" refers to situations when people cannot control and police services using ordinary contractual devices, when trust and information are scarce, and when assessing the value of the services people receive for their money is difficult.<sup>261</sup> In such circumstances, donors and customers turn to nonprofits because the "nondistribution constraint" (*i.e.*, the inability to distribute profits to shareholders or investors) creates an additional level of trust that one's money will not be channeled into pure profit for the businessperson.<sup>262</sup> Of course, Hansmann acknowledges that, in the moment, governments and donors and customers do not necessarily think about nonprofits in this manner. And, moreover,

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<sup>260</sup> Henry B. Hansmann, *The Role of Nonprofit Enterprise*, 89 YALE L.J. 835, 898 (1980).

<sup>261</sup> See generally *id.*

<sup>262</sup> *Id.*; see also Henry Hansmann, *Economic Theories of Nonprofit Organization*, in THE NONPROFIT SECTOR 27, 29 (Walter W. Powell ed., 1987) ("A nonprofit firm . . . offers consumers the advantage that, owing to the nondistribution constraint, those who control the organization are constrained in their ability to benefit personally from providing low-quality services and thus have less incentive to take advantage of their customers than do the managers of a for-profit firm. Nonprofits arise (or, rather have a comparative survival advantage over for-profit firms) where the value of such protection outweighs the inefficiencies that evidently accompany the nonprofit form, such as limited access to capital and poor incentives for cost minimization").



some longstanding nonprofits survive through inertia; their services could be assessed by contemporary contractual devices and barometers of success in a way they could not have been a few decades ago.<sup>263</sup>

Still, when ones take a global view, Hansmann's theory helps explain why nonprofits exist at all in well-developed capitalist economies like America's. Indeed, the nonprofit sector has grown hand-in-hand with globalization and marketization.<sup>264</sup> Thus, though Hansmann's theory is certainly idealized – nonprofit employees wield enormous control in their organizations because there are no investors or owners, and this control can be abused<sup>265</sup> – it is widely accepted<sup>266</sup> and demonstrates that, far from being fanciful creations of the government or the philanthropic class, nonprofits fulfill a rational niche in a modern economy.

But, while people and institutions support nonprofits because of the “additional layer of trust” that the “non-distribution constraint” inures, one wonders: are nonprofits providing value commiserate with that trust? According to recent studies comparing for-profit and nonprofit hospitals, the answer may be yes. In a series of articles, Jill R. Horwitz showed that hospitals under nonprofit ownership provided more unprofitable (and important) medical services than

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<sup>263</sup> See HENRY HANSMANN, *THE OWNERSHIP OF ENTERPRISE* 241 (1996) (arguing that medical nonprofits, for example, thrive in the present day even though the “severe informational problems and the supply-side subsidies that initially prompted the use of the nonprofit form have been mitigated”).

<sup>264</sup> The real assets and revenues of the nonprofit sector have more than tripled since the 1970s. See LESTER M. SALAMON, *AMERICA'S NONPROFIT SECTOR: A PRIMER*, reprinted in JAMES J. FISHMAN & STEPHEN SCHWARZ, *NONPROFIT ORGANIZATIONS: CASES AND MATERIALS* 17, 17 (3d ed. 2006); HANSMANN, *supra* note 262, at 227 (noting that nonprofits grew from 1.1 percent of gross national product in 1929 to 3.6 percent by 1988). For a worthwhile, albeit dated, overview of international nonprofit growth, see Lester M. Salamon, *The Rise of the Nonprofit Sector*, FOREIGN AFFAIRS (July/Aug. 1994), <https://www.foreignaffairs.com/articles/1994-07-01/rise-nonprofit-sector>.

<sup>265</sup> See Edward L. Glaeser, *Introduction*, in *THE GOVERNANCE OF NOT-FOR-PROFIT ORGANIZATIONS* (Edward Glaeser ed. 2003) (writing that a nonprofit's CEO and board of directors have an “almost unmatched degree of autonomy” and that “nonprofits are not organizations that selfishly maximize the income of their workers, but they are organizations where the preferences of elite workers come to have a very large and perhaps undue amount of influence”).

<sup>266</sup> *But cf.* PETER FRUMKIN, *ON BEING NONPROFIT: A CONCEPTUAL AND POLICY PRIMER* 67-69 (2002) (criticizing Hansmann's theory for turning creative nonprofits into “passive” entities that merely “fill gaps in the service delivery system of government and the market”).

for-profits; the for-profits tended to provide a service when profitable and then divest from that service when it no longer earned the hospital money.<sup>267</sup> Horwitz attributed this difference to the nonprofits' unique ownership structure, *i.e.*, the absence of equity investors. "The[se] findings," Hurwitz wrote, "are consistent with the idea that nonprofits are more likely than for-profits to think about quality over profits."<sup>268</sup> In addition, Ryan Bubb and Alex Kaufman's research has found that credit unions – a form of nonprofit organization – issue credit cards under fairer and less deceptive terms than investor-owned credit card issuers.<sup>269</sup> Building off Henry Hansmann's work, Bubb and Kaufman argue that "the inability of investor-owned firms to commit to not take advantage of consumer biases is [an] important motivation for ownership of the firm by its customers and for nonprofit status."<sup>270</sup> John Morley has similarly found that nonprofit corporate status changes the way charter schools behave.<sup>271</sup>

But what does this literature say of *housing* and the nonprofit corporate form? In one of the only academic studies addressing this question, Ingrid Gould Ellen and Ioan Voicu specifically noted that, as a "good for which quality can be difficult to monitor, especially by government funders," "housing is precisely the kind of good that Hansmann's theory

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<sup>267</sup> See Jill R. Horwitz, *Does Nonprofit Ownership Matter?*, 24 YALE J. REG. 139, 171-73 (2007) (recapping findings); see also Jill R. Horwitz, *Does Corporate Ownership Matter? Service Provision in the Hospital Industry* (Nat'l Bureau of Econ. Research, Working Paper No. 11,376, 2005); Jill R. Horwitz, *Why We Need the Independent Sector: The Behavior, Law, and Ethics of Not-for-Profit Hospitals*, 50 UCLA L. REV. 1345 (2003).

<sup>268</sup> Horwitz, *Nonprofit Ownership*, *supra* note 266, at 193; see also *id.* at 191 ("profit-making is likely lower on the list of objectives for nonprofit than for-profit hospitals. Controlling parties--be they managers, directors, doctors, or consumers--are making different choices that vary systematically by ownership.").

<sup>269</sup> See Ryan Bubb & Alex Kaufman, *Consumer Biases and Mutual Ownership*, 105 J. PUB. ECON. 39, 39-40 (2013). More particularly they found that the teaser rates so common among investor-owned credit card issuers are rarely employed by mutual firms. Moreover, the default APR used by mutual is only 2.5 percentage points higher (on average) than the standard APR, whereas the default APR used by investor-owned credit card issuers is 12.2 percentage points higher. *Id.* at 46 tb.3.

<sup>270</sup> *Id.* at 39-40.

<sup>271</sup> See John Morley, Note, *For-Profit and Nonprofit Charter Schools: An Agency Costs Approach*, 115 YALE L.J. 1782, 1821 (2006) (finding that nonprofits tend to better achieve the goals of charter schools because "(1) legal restraints on profit distribution reduce the schools' ability to exploit parents and governments' inability to monitor, and (2) nonprofit charter schools tend to attract capable administrators and teachers personally devoted to charter schools' missions.").

addresses.”<sup>272</sup> Because of the nondistribution constraint, nonprofit housing developers have “less to gain from economizing on construction and maintenance costs.”<sup>273</sup> While for-profit firms have an incentive to initially develop affordable housing well so as to recoup developer fees and gain repeat business, they do not have a similar incentive to engage in the kind of ongoing maintenance necessary to produce neighborhood spillover effects, such as grounds upkeep and preservation of community space. While I will discuss the results of this study in more detail *infra*, in short Ellen and Voicu found that, consistent with Hansmann’s theory and the empirical work described above, nonprofit projects of 100 or more units produced longer lasting neighborhood spillover benefits than similar for-profit projects.<sup>274</sup> Brandon Weiss has likewise argued that nonprofits’ willingness to keep affordable housing rents for longer than their private sector counterparts provides empirical backing to Hansmann’s claims about the “functional efficacy of the nondistribution constraint.”<sup>275</sup>

All of this is to say, nonprofit corporate structure incentivizes different behavior (for both the nonprofit itself and those that interact with the nonprofit) than other organizational structures.

*ii. Competition and Creativity: Comparing Nonprofit Developers to Public Housing Authorities*

Turning to the first of the three nonprofit housing developers’ competitors, nonprofits hold a comparative advantage over public housing authorities in three respects. First, unlike the monopolistic public sector, nonprofit developers compete with one another for funding, an attribute that (usually) exerts a check on wasteful spending and bad management. Second, in the current subsidy environment, nonprofits can better leverage funds, experiment with new ideas,

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<sup>272</sup> Ingrid Gould Ellen & Ioan Voicu, *Nonprofit Housing and Neighborhood Spillovers*, *supra* note 15, at 5-6.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at 31.

<sup>275</sup> See Weiss, *Residual Value Capture*, *supra* note 15, at 550-51.

and connect their housing work to other community needs than PHAs can. Finally, at the level of practical politics, nonprofits developers receive greater support from across the political spectrum than public housing and, as such, offer a positive public face for affordable housing programs.

(1) For starters, unlike housing developed directly through the public sector, nonprofit developers must compete with each other for limited funds – and face potential extinction if they do not prove their keep. Most scholars and practitioners agree that this “nonprofit market” offers a decided advantage over public housing authorities. For example, after noting that the United States could not “rely solely upon demand-orientated housing subsidies,” Michael Schill argued that “only the nonprofit sector combines competition, some insulation from the political process, and a legal guarantee that public largesse will not be siphoned off for private benefit.”<sup>276</sup> Similarly, in his work on the costs and benefits of nonprofits Edward Glaeser suggested that nonprofits succeed for reasons beyond corporate governance or altruistic motives. Instead, Glaeser posited:

In many cases, [nonprofit success] probably comes from the need for nonprofits to compete in product markets and in the market for donations. Just as the model suggests, competition proves to be a powerful check on managerial whimsy. Ultimately, the lesson of nonprofits is that competition tends to keep organizations in line, even if their governance structure is weak. Perhaps this is ultimately the virtue of delegating social services to the nonprofit sector instead of having these services provided by the government.<sup>277</sup>

Ingrid Gould Ellen and Ioan Voicu made substantially similar points in their seminal empirical study comparing governmental, nonprofit, and for-profit development projects.<sup>278</sup>

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<sup>276</sup> Michael H. Schill, *The Role of the Nonprofit Sector in Low-Income Housing Production: A Comparative Perspective*, 30 URB. AFF. Q. 74, 93 (1994).

<sup>277</sup> Glaeser, *Introduction*, *supra* note 264, at 40.

<sup>278</sup> See Ellen & Voicu, *Nonprofit Housing and Neighborhood Spillovers*, *supra* note 15, at 1 fn.1 (arguing that “competition for government subsidies can help to promote some discipline,” but adding that “fundors may ultimately be less successful than stockholders in monitoring performance, because they lack the financial incentives”).

Experience in New Haven buttresses this concept. As described above, in the 2000s Mayor John DeStefano and lead housing official Henry Fernandez stopped funding underperforming CDCs and instead directed HUD money to more successful nonprofit developers. A similar dynamic unfolded when a local housing nonprofit, Casa Otonal, engaged in financial misconduct.<sup>279</sup> Although one could argue that these policy changes were too little, too late, such accountability measures are virtually unobtainable for the public sector. My interviews confirmed the essential nature of nonprofit competition, too. Even though some nonprofit developers acknowledged the popular perception that you “can’t kill a nonprofit,” the general sentiment was that funding was genuinely competitive and that a nonprofit developer could not expect to win subsidies without substantial effort (and some luck).<sup>280</sup> Alison Cunningham, Executive Director of Columbus House, expressed frustration with the mercurial nature of the state funding rounds, but ultimately described the competition between nonprofits as “beneficial,” without being “cut throat.”<sup>281</sup> Brett Hill of HOME, Inc., a relatively small New Haven nonprofit developer and property manager, also spoke highly of the “entrepreneurial” nature of nonprofits when compared to the government.<sup>282</sup>

(2) On the note of entrepreneurialism, I also contend that nonprofit developers exhibit a creativity and dynamism lacking in the public sector. This creativity, coupled with the competition described above, usually results in higher-quality work, lower costs, and greater spillover benefits than PHA projects. Consider a Minneapolis comparative study conducted by Edward Goetz in the 1990s. Goetz and his colleagues found that public housing owned and

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<sup>279</sup> See Thomas MacMillan, *Shakeup at Casa Otonal*, NEW HAVEN INDEPENDENT (Jan. 28, 2010), [http://www.newhavenindependent.org/index.php/archives/entry/shakeup\\_at\\_casa\\_otonal/](http://www.newhavenindependent.org/index.php/archives/entry/shakeup_at_casa_otonal/) (after a federal audit found the organization misused \$250,000, the director was fired and a new organization was brought in to manage the housing development).

<sup>280</sup> See, e.g., Interview with John Bradley, *supra* note 212.

<sup>281</sup> See Interview with Alison Cunningham, *supra* note 148.

<sup>282</sup> See Interview with Brett Hill, Executive Director, HOME, Inc., in New Haven, Conn. (Dec. 12, 2016).

operated by the Minneapolis housing authority was negatively associated with property values, where housing owned and operated by community-based nonprofits was positively correlated with property values.<sup>283</sup> Similarly, Ingrid Gould Ellen and her colleagues have noted that, in New York City, LIHTC, Section 202, and localized projects deliver significant neighborhood benefits. Public housing, by contrast, was associated with reductions in property value, especially the largest public housing projects.<sup>284</sup> In addition, Esteban Rossi-Hanberg's 2010 study of CDCs in Richmond, Virginia found that nonprofit-led development led to land prices rising at 2 to 5 percent higher than a control neighborhood, which translated to land value gains of between \$2 and \$6 per dollar invested in the program over a 6-year period.<sup>285</sup> Because nonprofits are more cost-effective than public housing and tend to produce greater spillover benefits than public housing, scholars like John Landis and Kirk McClure have argued that:

HUD should begin the process of selling viable public housing projects to qualified nonprofit sponsors. The typical PHA remains far less efficient or competent than the typical LIHTC sponsor. The nonprofit housing sector has been substantially professionalized over the last twenty years while many PHAs remain hidebound bureaucracies. There are certainly some current PHAs that do not fit this description, and they should be allowed to remain in business, reconstituted as nonprofit housing corporations.<sup>286</sup>

Meghan Ballard has also argued that policymakers turned away from public housing and toward nonprofits in the 1990s because “[p]olicymakers likely recognized that nonprofit housing avoids some of the drawbacks of the earlier government PHA-sponsored ‘projects’ inasmuch as nonprofits are often more closely integrated into the community they serve and they are subject to market pressures.”<sup>287</sup>

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<sup>283</sup> See EDWARD G. GOETZ ET AL., CTR. URBAN & REGIONAL AFFAIRS, *THERE GOES THE NEIGHBORHOOD? THE IMPACT OF SUBSIDIZED MULTI-FAMILY HOUSING ON URBAN NEIGHBORHOODS* (1996).

<sup>284</sup> See Ingrid Gould Ellen, et al., *Does Federally-Subsidized Rental Housing Depress Property Values?*, 26 J. POL. ANALYSIS & MANAGEMENT 257 (2007).

<sup>285</sup> See Rossi-Hanberg, *Housing Externalities*, *supra* note 87, at 528-29.

<sup>286</sup> See Landis & McClure, *Rethinking Federal Housing Policy*, *supra* note 256, at 343.

<sup>287</sup> See Ballard, *Profiting from Poverty*, *supra* note 15, at 224.

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This dynamism is particularly present in New Haven, where nonprofits have often taken over land and properties from the Housing Authority of New Haven at the government's behest. For instance, in recent years the Housing Authority has sold vacant or distressed properties to Habitat for Humanity, Columbus House, and Beulah Heights Development Corporation.<sup>288</sup> In 2009, the housing authority also facilitated a nonprofit takeover of a failing cooperative.<sup>289</sup> When nonprofits take over such land and properties, they often engage in fine-grain development beyond the ken of public housing authorities.<sup>290</sup> In my interviews, John DeStefano and Karyn Gilvarg (Director of the City Plan Department) particularly praised the block-by-block work of groups like the Beulah Heights Development Corporation.<sup>291</sup> The public sector would likely not engage in such neighborhood-centric work, both DeStefano and Gilvarg admitted. An analogous effect can be seen in NeighborWorks New Horizons' work during the foreclosure crisis of 2008 to 2012, in which local officials and New Horizons identified "tipping point" blocks in certain neighborhoods and worked to prevent foreclosures on those blocks.<sup>292</sup> In another example of a fine-grain revitalization effort that that a public housing authority would probably not undergo,

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<sup>288</sup> See Allan Appel, *5 Vacant Lot Sales Advance*, NEW HAVEN INDEPENDENT (Dec. 23, 2016), <http://www.newhavenindependent.org/index.php/archives/entry/lci/> (describing the sale of vacant lot to Habitat for Humanity); Melissa Bailey, *Housing Complex Gets a Second Chance*, NEW HAVEN INDEPENDENT (July 16, 2012), [http://www.newhavenindependent.org/index.php/archives/entry/val\\_macri/](http://www.newhavenindependent.org/index.php/archives/entry/val_macri/) (describing the sale of an distressed public housing building to Columbus House); Allan Appel, *Beulah & Columbus Buy HANH Lots*, NEW HAVEN INDEPENDENT (Apr. 25, 2011), [http://www.newhavenindependent.org/index.php/archives/entry/beulah\\_buys/](http://www.newhavenindependent.org/index.php/archives/entry/beulah_buys/).

<sup>289</sup> See, *supra*, at note 128 (describing New Horizons's takeover of Canterbury Gardens).

<sup>290</sup> See John P. Elwood, *Rethinking Government Participation in Urban Renewal: Neighborhood Revitalization in New Haven*, 12 YALE L. & POL. REV. 138, 140-42 (1994) (finding that fine-grained development efforts (*i.e.*, when developers undertake the redevelopment of single structures within an area, independently arranging the financing and rehabilitation of each structure, with minimal formal coordination) produced more efficient development and fewer blighted neighborhoods than coarse-grained development efforts (*i.e.*, when an entire area is redeveloped by one entity or group of entities according to a single master plan)).

<sup>291</sup> See Interview with John DeStefano, *supra* note 101; Interview with Karyn Gilvarg, *supra* note 98.

<sup>292</sup> See Allan Appel, *15 "Tipping Point" Houses Rescued, Rehabbed*, NEW HAVEN INDEPENDENT (Oct. 26, 2011), [http://www.newhavenindependent.org/index.php/archives/entry/city\\_marks/](http://www.newhavenindependent.org/index.php/archives/entry/city_marks/).



in 2013 Neighborhood Housing Services worked to designate a low-income neighborhood as a historic tax credit district, and then used those tax credits to redevelop the neighborhood.<sup>293</sup>

Furthermore, New Haven nonprofits highlight the willingness of nonprofits to partner with other institutions for the public good – a local university, for example. As mentioned above, two of New Haven’s remaining CDCs – the Greater Dwight Development Corporation and St. Luke’s Development Corporation – rely on relationships with Yale University’s experts and donors.<sup>294</sup> When Hill Development Corporation existed, a similar relationship existed between Yale New Haven Hospital and the CDC.<sup>295</sup> Based on my interviews, government agencies are less likely to form such partnerships within the community.

With respect to financing, nonprofits also exhibit dynamism in their ability to pull together multiple resources from donors, tax credit investors, and governments, and then leverage those funds to the advantage of limited taxpayer resources. In their interviews, Seila Mosquera of New Horizons and Betsy Crum of the Women’s Institute for Housing and Economic Development noted the enhanced ability of nonprofits to leverage funds, as compared to the public sector. For example, a nonprofit can “take a \$500,000 HOME grant and turn it into \$10 million” through additional subsidies, loans, tax credit investors, donations, and support from intermediary groups like LISC.<sup>296</sup> The Billings Forge project in Hartford offers a particularly positive example of creative nonprofit financing.<sup>297</sup> There, the nonprofit developer secured seed money from The Melville Foundation – a philanthropic organization dedicated to

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<sup>293</sup> See, *supra*, at note 218.

<sup>294</sup> See, *supra*, at pages 27-28.

<sup>295</sup> See, e.g., Melissa Bailey, *Hospital’s Impact on Hill Debated*, NEW HAVEN INDEPENDENT (Aug. 7, 2007), [http://www.newhavenindependent.org/index.php/archives/entry/hospitals\\_impact\\_on\\_hill\\_debated/](http://www.newhavenindependent.org/index.php/archives/entry/hospitals_impact_on_hill_debated/) (“The hospital is donating three vacant homes to the Hill Development Corp, and contributing up to 20 percent of the costs of renovation and construction of those properties . . . The rehab project is part of the community benefits agreement worked out between the hospital and neighborhood surrounding the Yale-New Haven Cancer Center”).

<sup>296</sup> Interview with Seila Mosquera, *supra* note 20; see also Interview with Betsy Crum, *supra* note 141.

<sup>297</sup> See, *supra*, at page 34 and accompanying footnotes.

ended homelessness – and from Massachusetts’s equivalent of CHFA, before then securing additional capital from the state government, city government, and tax credit investors.<sup>298</sup> The ability of nonprofits to engage in such creative financing partly explains why housing authorities like the Housing Authority of New Haven have turned to nonprofit subsidiaries in recent years.<sup>299</sup>

(3) Finally, nonprofits receive greater public and political support than public housing authorities, a practical benefit that should not be underestimated in the present fiscal environment. While most affordable housing projects face negative perceptions, especially when they are built in upper-income neighborhoods, public housing seems particularly reviled (though not often not with empirical justification<sup>300</sup>). It is no surprise, then, that when affordable housing advocates lobby for funding like HOME Investment Partnerships they plaster their advocacy documents with groups like Habitat for Humanity and similar neighborhood-based nonprofits.<sup>301</sup> Groups like Habitat for Humanity have even received support from conservative stalwarts like Howard Husock, who supports a minimal governmental role in housing development.<sup>302</sup> Indeed, when Congress passed its last major affordable housing legislation in the 1990s, nonprofit developer benefits received bipartisan support.<sup>303</sup> These perceptions not only make nonprofit sources of funding more likely to be preserved than public housing-centric sources of funding,

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<sup>298</sup> See URBAN INSTITUTE, *supra* note 134.

<sup>299</sup> See, *supra*, Section II.A.v.

<sup>300</sup> See, e.g., JANIE CURRIE & AARON YELOWITZ, NATIONAL BUREAU OF ECONOMIC RESEARCH, ARE PUBLIC HOUSING PROJECTS GOOD FOR KIDS? 27 (1999) (suggesting that, despite the authors’ preference for vouchers, “public housing as a group has been wrongly vilified”).

<sup>301</sup> See, e.g., BUILDING HOME: THE HOME INVESTMENT PARTNERSHIPS PROGRAM’S IMPACT ON AMERICA’S FAMILIES AND COMMUNITIES, THE HOME COALITION (2015), [https://s3.amazonaws.com/KSPProd/ERC\\_Upload/0100911.pdf](https://s3.amazonaws.com/KSPProd/ERC_Upload/0100911.pdf).

<sup>302</sup> See HOWARD HUSOCK, AMERICA’S TRILLION-DOLLAR HOUSING MISTAKE: THE FAILURE OF AMERICAN HOUSING POLICY 110-129 (2003). Strangely, Husock does not seem aware that Habitat receives many millions of dollars in government subsidies annually.

<sup>303</sup> See generally John J. Ammann & Peter W. Salsich, Jr., *Nonprofit Housing Providers: Can They Survive the “Devolution Revolution”?*, 16 ST. LOUIS U. PUB. L. REV. 321 (1997) (describing this bipartisan support for nonprofits amid a general policy of devolution).

but they also influence the quality of housing itself. In the aforementioned Edward Goetz comparative study from Minneapolis, he and his colleagues found that stigmatization of public housing fed into underfunding of public housing, physical decline of public housing, and poor management of public housing, which in turn led to further stigmatization.<sup>304</sup>

On the whole, then, research and experience demonstrate that nonprofits offer benefits that the public sector cannot offer.

*iii. Compassion and Community: Comparing Nonprofit Developers to For-Profit Developers*

Of course, a natural response to the previous section is that private sector developers also benefit from competition, entrepreneurialism, and less constrained financing – except at a much higher level than nonprofits. For-profits can raise more money more efficiently than nonprofits can and, if one is taking a narrow view of costs and benefits, for-profits also provide a better bang for the taxpayer buck.<sup>305</sup> Yet that rendering of affordable housing development, which focuses primarily on financial efficiencies, is incomplete. The nonprofit sector retains at least three significant advantages over the for-profit sector. First, acting under their “nondistribution constraint,” nonprofit developers (and property managers) serve needy populations that the for-profit sector is usually not willing to serve, as well as build quality housing in neighborhoods where for-profits are usually reluctant to invest. Second, nonprofits are more likely than for-profits to connect their housing to services beyond the housing itself and to provide community-wide positive externalities. Finally, nonprofit developers often engage in productive joint

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<sup>304</sup> See GOETZ, *supra* note 282, at 53-54.

<sup>305</sup> The primary study cited for this proposition is a GAO study from 1999, which found that, on average, units built by nonprofit developers cost \$18,000 more per unit than for-profit developers, although great variations existed among nonprofits. See U.S. GENERAL ACCOUNTING OFFICE, TAX CREDITS: REASONS FOR COST DIFFERENCES IN HOUSING BUILT BY FOR-PROFIT AND NONPROFIT DEVELOPERS (1999). But Rachel Bratt and Brandon Weiss both dispute the conclusion that nonprofits are generally more expensive developers than for-profits. See BRATT, *supra* note 15, at 30-31; Weiss, *Residual Value Capture*, *supra* note 15, at 554 fn.141 and accompanying text.

policymaking with governments, an activity that private developers tend to engage in only when pushed.

(1) First, nonprofits provide quality, affordable housing for people the private sector usually does not assist, and in neighborhoods the private sector usually does not go (at least the portion of the private sector interested in quality work). The question about nonprofits serving needy populations is undisputed. For instance, Rachel Bratt found that, because of their nondistribution constraint, nonprofits are willing to invest in certain projects that for-profits with a legal obligation to maximize earnings for shareholders would not. To wit, developments “with less than about 40 units and/or targeted to at-risk populations, such as the formerly homeless or to people with physical or mental disabilities.”<sup>306</sup> Indeed, it is not surprising that federal and state programs (*e.g.*, supportive housing programs) geared toward the elderly, the disabled, the formerly homeless, and the mentally ill often channel funds exclusively to nonprofit organizations. Similarly, John Ammann and Peter Salsich note that “one reason Congress turns to nonprofits in drafting housing policy is that nonprofits are more willing to accept subsidized tenants than private landlords,” before then citing a HUD survey showing that almost one-half of the owners of the nation’s privately owned housing units would not accept voucher tenants.<sup>307</sup> Meryl Finkel and his colleagues also found that nonprofits, because of their mission to provide affordable housing, are far less likely to opt out of expiring 15 or 30 year HUD contracts than for-profit owners.<sup>308</sup>

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<sup>306</sup> BRATT, *supra* note 15, at 35; *see also* Ellen & Voicu, *Nonprofit Housing and Neighborhood Spillovers*, *supra* note 15, at 5 (reaching same conclusion).

<sup>307</sup> Ammann & Salsich, *Nonprofit Housing Providers*, *supra* note 302, at 326.

<sup>308</sup> *See* MERYL FINKEL ET AL., U.S. DEP’T HOUSING & URBAN DEVELOPMENT, MULTIFAMILY PROPERTIES: OPTING IN, OPTING OUT AND REMAINING AFFORDABLE (2006).

This data resonates with my interviews in Connecticut. Brett Hill of HOME, Inc., told me that nonprofits take all the tenants that the for-profit landlords do not want to deal with.<sup>309</sup> When these tenants arrive, Hill added, the nonprofits are less likely to evict at the first problem, and will be more forgiving with tenants, especially disabled tenants, than private landlords. Terry Nash of CHFA and Alison Cunningham of Columbus House were also both adamant that, but for the nonprofit sector and the government funding directed toward the nonprofits, the aforementioned populations would not have decent housing.<sup>310</sup>

Given that elderly, disabled, and chronically homeless people do not constitute the majority of lower-income renters and homeowners, though, the question of *where* nonprofits and for-profits build is of paramount importance. In defending the importance of the nonprofit sector, Katherine O'Regan and John Quigley have argued that nonprofits “supply the housing that is most difficult to induce from for-profit firms” and that nonprofits serve a critical function because of their “willingness to serve poorer tenants, who live in poorer neighborhoods and in projects with less financial security in economic returns.”<sup>311</sup> On a more empirical note, Rachel Bratt found that, “between 1995 and 2003 nonprofit sponsors located their properties in more difficult neighborhoods than the total universe of low income housing tax credit properties, the bulk of which were developed by for-profit sponsors.”<sup>312</sup> And this housing was of equal or higher quality, too, with nonprofits being “more likely to build units of over 1,000 square feet than for-profit developers.”<sup>313</sup> Ellen and Voicu also found that nonprofits are more likely to develop housing in formerly vacant, abandoned buildings.<sup>314</sup> To give a specific neighborhood

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<sup>309</sup> See Interview with Brett Hill, *supra* note 281.

<sup>310</sup> See Interview with Terry Nash, *supra* note 21; Interview with Alison Cunningham, *supra* note 148.

<sup>311</sup> O'Regan & Quigley, *Federal Policy and the Rise of Nonprofit Housing Providers*, *supra* note 93, at 300.

<sup>312</sup> BRATT, *supra* note 15, at 19.

<sup>313</sup> *Id.*

<sup>314</sup> See Ellen & Voicu, *Nonprofit Housing and Neighborhood Spillovers*, *supra* note 15, at 18 (67.7 percent of the surveyed nonprofit units were in formerly vacant, abandoned buildings, compared to 57.6 percent of private units).

example, the Rossi-Hanberg Richmond study, described above, explicitly stated that, even with government subsidies, the private sector would probably not have built equally high-quality housing in equally poor neighborhoods as the CDCs did. “While the return from external effects alone would have come to roughly 3.8 percent at an annual rate . . . a reasonable excess rate of return,” Rossi-Hanberg noted, “it is not one that obviously dominates other investment opportunities given the initial investment of \$101.1 million.” He concluded that, “obtaining this return involves a degree of community participation that would be difficult for private developers to elicit.”<sup>315</sup> This study rings true for New Haven nonprofits like Neighborhood Housing Services, which poured resources into poor neighborhoods like Newhallville in the midst of the foreclosure crisis.<sup>316</sup> Given the disparate impact that mass foreclosure has on poorer communities, the willingness of nonprofits to work in such communities is essential to avoiding out-of-control negative feedback loops.<sup>317</sup>

All of this is not to say that the private sector ignores disadvantaged neighborhoods. Of course they do not. However, judging from New Haven’s experience, unsavory landlords constitute a disconcertingly high portion of the private sector in such neighborhoods. In the last six years alone, New Haven’s local media has run a welter of stories on misbehaving private landlords. Their actions include: collecting rents while purposefully falling behind on mortgage payments, leading their tenants to unexpectedly end up in a foreclosed building<sup>318</sup>; accepting section 8 tenants and then neglecting to keep buildings up to code, before then selling the

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<sup>315</sup> Rossi-Hanberg, *Housing Externalities*, *supra* note 87, at 529.

<sup>316</sup> See, e.g., *supra*, note 165.

<sup>317</sup> For an account of how mass foreclosures lead to spillover neighborhood problems, see Ingrid Gould Ellen & Johanna Lacoe, *The Impact of Foreclosures on Neighborhood Crime* (working paper) (2015). A recent class action lawsuit also alleged substantial disparate impact in how Fannie Mae – one of the nation’s two largest owners of residential mortgages – handle properties once they have fallen into foreclosure. See Compl., *National Fair Housing Alliance, et al. v. Fannie Mae*, 3:16-cv-06969 (N.D. Cal. Dec. 5, 2016).

<sup>318</sup> See Neena Satija, *Slumlords Stiff Banks – and Rake in Section 8 Bucks*, NEW HAVEN INDEPENDENT (Nov. 2, 2011), [http://www.newhavenindependent.org/index.php/archives/entry/government\\_paying\\_slumlords\\_for\\_for/](http://www.newhavenindependent.org/index.php/archives/entry/government_paying_slumlords_for_for/).

buildings for a large profit<sup>319</sup>; and keeping a building with nine tenants in such bad condition that it lit on fire.<sup>320</sup> Based on my interviews with government officials and my examination of recent media coverage, nonprofits, whether they are involved with rental or homeownership projects, have not engaged in analogous behaviors (with the notable exception of The Community Builders, described above).<sup>321</sup>

I hasten to add, though, that many private landlords in New Haven's poorest neighborhoods exhibit positive attributes. Consider Pike International and its CEO, Schmully Sam Hecht. Pike took over a failing co-op in the Dwight neighborhood,<sup>322</sup> accepted tenants from a failing housing project,<sup>323</sup> and generally builds quality buildings.<sup>324</sup> Based on my interviews with Hecht, moreover, he speaks passionately about his property development as "community building," advocates for better transportation to poorer neighborhoods, and works to reign in the gang violence around The Community Builders' Kensington Square site (a nonprofit, as he was quick to point out).<sup>325</sup> Still, Hecht would be the first to admit that his "investors come first," that he would like to see substantial gentrification in neighborhoods near Yale like Dwight, and that he is willing to leave a neighborhood if the economic returns are not present. In fact, on the last

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<sup>319</sup> See Paul Bass, *Slumlord Doc Bails, Profits*, NEW HAVEN INDEPENDENT (Apr. 22, 2016),

[http://www.newhavenindependent.org/index.php/archives/entry/slumlord\\_yale\\_doc/](http://www.newhavenindependent.org/index.php/archives/entry/slumlord_yale_doc/).

<sup>320</sup> See Aliyya Swaby, *House Condemned; 9 Families Displaced*, NEW HAVEN INDEPENDENT (Nov. 20, 2015), [http://www.newhavenindependent.org/index.php/archives/entry/illegal\\_mandy\\_repair\\_shop\\_sparks\\_garage\\_fire/](http://www.newhavenindependent.org/index.php/archives/entry/illegal_mandy_repair_shop_sparks_garage_fire/).

<sup>321</sup> See, e.g., Paul Bass, *Gentrification Vampires, Beware!*, NEW HAVEN INDEPENDENT (Oct. 27, 2015), [http://www.newhavenindependent.org/index.php/archives/entry/gentrification\\_vampires\\_beware/](http://www.newhavenindependent.org/index.php/archives/entry/gentrification_vampires_beware/) (describing NHS getting into the landlord business to combat bad landlords having negative spillover effects). *But see, supra*, pages 34-35 and accompanying notes (detailing the Community Builders' problems in New Haven).

<sup>322</sup> See Allan Appel, *Co-op Has New Owner, New Rules*, NEW HAVEN INDEPENDENT (Mar. 25, 2010), [http://www.newhavenindependent.org/index.php/archives/entry/new\\_rules\\_and\\_new\\_owner\\_at\\_ethan\\_gardens/](http://www.newhavenindependent.org/index.php/archives/entry/new_rules_and_new_owner_at_ethan_gardens/).

<sup>323</sup> See Paul Bass, *HUD, Pike Step In*, NEW HAVEN INDEPENDENT (Aug. 27, 2015), [http://www.newhavenindependent.org/index.php/archives/entry/hud\\_pike\\_step\\_in/](http://www.newhavenindependent.org/index.php/archives/entry/hud_pike_step_in/).

<sup>324</sup> See Paul Bass, *Pike Builds an Empire – and Rebuilds a City*, NEW HAVEN INDEPENDENT (July 8, 2011), [http://www.newhavenindependent.org/index.php/archives/entry/pike\\_builds\\_an\\_empire\\_-\\_rebuilds\\_city/](http://www.newhavenindependent.org/index.php/archives/entry/pike_builds_an_empire_-_rebuilds_city/). For a more negative take on Pike International, see *For Rent*, YALE DAILY NEWS (Apr. 18, 2014), <http://yaledailynews.com/blog/2014/04/18/for-rent/>.

<sup>325</sup> See Interview with Schmully Sam Hecht, President, Pike International, in New Haven, Conn. (Dec. 6, 2016).



point, Pike did exactly that in the Hill and Newhallville, two other poor neighborhoods in New Haven.<sup>326</sup> Randy Salvatore, a major private developer, took a similar attitude in a recent newspaper article, where he said he would only build affordable housing “as long as the economics work.”<sup>327</sup> Compare these attitudes with what Dr. Sam Adoh of St. Luke’s Development Corporation told me, after describing his desire to invest in the neighborhood around his church: “We’re in this to create a nice, habitable place for the people already living here – we do not want to displace anybody. . . . I’m an economist, but some things are more important than money.”<sup>328</sup> These divergent attitudes offer a verbal encapsulation of the different goals undergirding for-profit investors (*i.e.*, maximizing returns) and nonprofit directors (*i.e.*, fulfilling a mission).

The importance of nonprofit investment in poorer urban neighborhoods – a form of development that has endured criticism from “place-based” scholars in recent years – receives further empirical support from Rebecca Diamond and Tim McQuade. In their study, which employed a massive national data set, Diamond and McQuade looked at the benefits of developing LIHTC-funded affordable housing in census tracts where the median income is below \$54,000. They found that, compared to similar investments in high-income neighborhoods, LIHTC development in poorer census tract “revitalize[d] low-income neighborhoods, increas[ed] house prices 6.5%, lower[ed] crime rates, and attract[ed] racially and income diverse populations,” whereas developments in high-income neighborhoods lowered housing prices by 2.5 percent.<sup>329</sup> Diamond and McQuade concluded that building quality

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<sup>326</sup> *Id.*

<sup>327</sup> Paul Bass, *Builder, City Try To Get To 30 Percent*, NEW HAVEN INDEPENDENT (Mar. 4, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/builder\\_city\\_try\\_to\\_get\\_to\\_30/](http://www.newhavenindependent.org/index.php/archives/entry/builder_city_try_to_get_to_30/).

<sup>328</sup> See Interview with Dr. Sam Adoh, *supra* note 115.

<sup>329</sup> See Diamond & McQuade, *Who Wants Affordable Housing*, *supra* note 12, at 1-2.

developments in poorer neighborhoods generated much larger spillover benefits than a development focusing on moving families to wealthier neighborhoods. One popular economics commentator explained the logic behind the study's results as follows:

In an affluent area where housing is already expensive, adding LIHTC developments will likely crowd out market rate developments. But in poorer areas there may be nobody interested in investing in market-rate development. LIHTC development helps *because it is development*, leading to a higher local population, more vibrant streets, more retail, and a general sense of increased activity.<sup>330</sup>

While this study is certainly provocative, and should not be taken as ignoring America's longstanding struggle with racial and economic segregation, I include it in this paper because Diamond and McQuade's research demonstrates that nonprofit housing development in poor urban neighborhoods do not represent a Quixotic cause. Rather, such development constitutes a useful element of affordable housing policy that we risk losing were we to shift limited production resources to for-profits that have far less incentive to build high-quality housing in such geographic areas.

(2) In addition to serving the neediest communities and neighborhoods, nonprofits often connect their housing mission to other anti-poverty work. This anti-poverty work might range from building community gardens, to providing after-school camps for kids, to offering in-house employment and health related services. Neighborhood Housing Services, for example, offers not only homeowner counseling and landlord workshops, but also neighborhood watch groups, environmental classes for kids, community gardens, street festivals, and resident leadership programs that may result in residents being placed on NHS' board. The initiative to provide such services stems from the nondistribution constraint and the kinds of individuals attracted to

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<sup>330</sup> Matt Yglesias, *Study: Adding Low-Income Housing to Poor Neighborhoods Lowers Crime and Boosts Property Values*, VOX, (May 2, 2016), <http://www.vox.com/2016/5/2/11568262/low-income-housing-impact> (emphasis in original).

work at nonprofits. For example, Seila Mosquera, the Executive Director of New Horizons, told me that she started working at New Horizons as an adult volunteer because she was interested in education. As she has risen through the organization's ranks, she has made it a priority to provide after-school classes and daycare for the many single mothers New Horizons helps house, as well as assist neighborhood children dealing with asthma.<sup>331</sup> Producing a holistic housing product, in turn, leads to more substantial spillover benefits and positive externalities than could be provided by for-profits lacking analogous services. Indeed, in Ellen and Voicu's study finding that nonprofit projects produce longer-lasting spillover benefits than similarly sized for-profit projects, the authors hypothesized that this result occurred because "nonprofit developers [especially large and experienced nonprofit developers] may be more apt to offer services and incorporate features into their housing like community rooms or other public spaces that all community residents—not just tenants—can enjoy."<sup>332</sup> On the particular topic of community gardens, which nonprofits are far more likely to offer in conjunction with affordable housing projects than for-profits, a different Ioan Voicu study found that a higher-quality garden can "raise neighboring property values by as much as 9.4 percentage points within five years of the garden's opening" and "can lead to increases in tax revenues of about half a million dollars per garden over a 20-year period."<sup>333</sup>

This kind of broad community engagement is important because experience in New Haven shows that, when for-profits develop in neighborhoods without sufficient community engagement, they incur hidden costs not included in the traditional cost per square foot metric.

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<sup>331</sup> See Interview with Seila Mosquera, *supra* note 20. For a recounting of the heavily disparate differences in childhood asthma rates across New Haven's neighborhoods by class, see Data HAVEN, *supra* note 41, at 33-34.

<sup>332</sup> See Ellen & Voicu, *Nonprofit Housing and Neighborhood Spillovers*, *supra* note 15, at 6.

<sup>333</sup> Ioan Voicu & Vicki Been, *The Effect of Community Gardens on Neighboring Property Values*, 36 REAL ESTATE ECON. 241, 277 (2008).

For example, the Goetz study, which found that CDCs generated more positive effects on neighboring property values than for-profit projects, partially attributed the difference to CDC projects “fitting in with neighborhood plans” and the “objectives of existing neighborhood organizations,” especially when the CDCs had local residents on its board of directors.<sup>334</sup> Private sector developers, by contrast, built “primarily for the tax benefits,” most of which are offered up-front.<sup>335</sup> Rossi-Hanberg likewise noted that obtaining a reasonable return on investments in poor neighborhoods often “involves a degree of community participation that would be difficult for private developers to elicit.”<sup>336</sup>

New Haven illustrates the cost of community tension. Compare two recent developments that occurred in New Haven’s Fair Haven neighborhood. One developer, the nonprofit senior housing center Mary Wade Homes, contacted neighbors and gave them a chance to respond both before and during the zoning approval process, and even solicited an approving vote from the local neighborhood association. In turn, the senior center faced a straightforward (and cheaper) development process.<sup>337</sup> By contrast, another developer – an outside for-profit housing provider brought in by the city government – did not incorporate community group ideas, declined to meet with local groups, and generally proposed a different vision for a property than immediate neighbors desired. The project was slowed by intransigent community groups and negative press coverage.<sup>338</sup> Of course, a for-profit could be a conscientious developer and a nonprofit could be despised by locals. On the whole, though, it seems likelier that nonprofit developers would

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<sup>334</sup> GOETZ, *supra* note 282, at 53.

<sup>335</sup> *Id.*

<sup>336</sup> Rossi-Hanberg, *Housing Externalities*, *supra* note 87, at 529.

<sup>337</sup> See Markeshia Ricks, *Mary Wade Set To Expand*, NEW HAVEN INDEPENDENT (Oct. 23, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/mary\\_wade\\_set\\_to\\_expand/](http://www.newhavenindependent.org/index.php/archives/entry/mary_wade_set_to_expand/).

<sup>338</sup> See Paul Bass, *Builder Starts at Odds With Neighbors*, NEW HAVEN INDEPENDENT (Oct. 28, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/fair\\_haven\\_strohng/](http://www.newhavenindependent.org/index.php/archives/entry/fair_haven_strohng/). For follow-up coverage, see Markeshia Ricks, *Developer, Fair Haven Square Off*, NEW HAVEN INDEPENDENT (Nov. 15, 2016), [http://www.newhavenindependent.org/index.php/archives/entry/strong\\_school2/](http://www.newhavenindependent.org/index.php/archives/entry/strong_school2/).

internalize the costs of community involvement early, rather than suffer the consequences later.<sup>339</sup>

(3) Finally, my interviewees, both in and out of government, emphasized an important, though often overlooked, benefit of nonprofit developers: because of their mission-orientated focus, nonprofit developers will often work hand-in-hand with government to resolve thorny policy problems, and will exhibit more patience with their bureaucratic funders. This benefit can be difficult to quantify, but Terry Nash from CHFA told me that she enjoys working with nonprofits for precisely this reason.<sup>340</sup> Brett Hill also extolled the working relationship between governments and nonprofits as “collaborative” and “innovative,” and particularly praised work between nonprofits and government in making Connecticut a national leader on homelessness prevention.<sup>341</sup> Robin Golden, a former Yale clinical professor and New Haven Housing Authority administrator, even wrote an article about the positive collaborations between government and nonprofits in New Haven during the foreclosure crisis.<sup>342</sup> In her article, Golden argued that a collaborative response to the foreclosure crisis between “on-the-ground service organizations, city government, a local community development financial institution (CDFI), and the local law school clinic” enabled “quick responses to new and changing needs.”<sup>343</sup> This nonprofit benefit finds some support in contract law, too. In particular, Nestor Davidson has

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<sup>339</sup> For example, one prominent community support initiative that Wells Fargo entered into with NeighborWorks, the HOMELift program designed to help low-income citizens on initial down payments, stemmed from a settlement Wells Fargo reached with the government – not from the organization’s inherent good will. See Nicholas Phillips, *Of Course Wells Fargo Is Helping St. Louis Homeowners. Legally, It Has To*, RIVERFRONT TIMES (Sept. 3, 2015), <http://www.riverfronttimes.com/newsblog/2015/09/03/of-course-wells-fargo-is-helping-st-louis-homebuyers-legally-it-has-to>.

<sup>340</sup> See Interview with Terry Nash, *supra* note 21.

<sup>341</sup> See Interview with Brett Hill, *supra* note 281. For a description of Connecticut’s recent success in (purportedly) ending chronic veterans’ homelessness, see Gregory B. Hladky, *Connecticut Says It Has Ended Chronic Homelessness for Veterans*, HARTFORD COURANT (Aug. 27, 2015), <http://www.courant.com/news/connecticut/hc-veterans-malloy-0828-20150827-story.html>.

<sup>342</sup> See Robin S. Golden, *Building Policy Through Collaborative Deliberation: A Reflection on Using Lessons from Practice to Inform Responses to the Mortgage Foreclosure Crisis*, 38 FORDHAM URB. L.J. 733 (2011).

<sup>343</sup> *Id.* at 742-43.

argued that “relational contracting” (*i.e.*, longer-term, often repeat-player arrangements, that foster a sense of mutual responsibility over program goals and attempt to engender shared norms of reciprocity between the government and the private agent) can improve the quality of social services. “Mission-driven nonprofit entities,” Davidson maintained, “may have distinct advantages in this regard over for-profit entities.”<sup>344</sup>

This section is not intended to suggest that the private sector play no role in affordable housing. Far from it, as nonprofits and for-profits have great potential to work together on housing development, especially through tax credit programs.<sup>345</sup> Moreover, per Ellen and Voicu, some competition between for-profits and nonprofits for scarce government dollars is likely beneficial.<sup>346</sup> Still, given the unique benefits derived from nonprofit developers, it seems prudent to ensure that nonprofits receive particularized funding streams.

*iv. Neighborhood and Spillovers: Comparing Nonprofit Developers to Housing Choice Vouchers*

Without belaboring the arguments articulated in Section III.A, *supra*, it bears briefly discussing what *nonprofit* developers provide that vouchers cannot, rather than what general production subsidies provide that vouchers cannot. Two positive traits stand out. First, recent empirical research demonstrates that nonprofit developers provide spillover benefits beyond what for-profit or governmental developments could provide, and certainly beyond what vouchers could provide. Second, vouchers cannot match the nonprofit developers’ willingness to work at length in underserved neighborhoods, if not on particular blocks in those neighborhoods.

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<sup>344</sup> Nestor M. Davidson, *Relational Contracts in the Privatization of Social Welfare: The Case of Housing*, 24 YALE L. & POL’Y REV. 263, 314 (2006).

<sup>345</sup> See, *e.g.*, Weiss, *Residual Value Capture*, *supra* note 15, at 561.

<sup>346</sup> See Ellen & Voicu, *Nonprofit Housing and Neighborhood Spillovers*, *supra* note 15, at 4.

(1) As I have already discussed, nonprofit housing developments offer particularly positive community externalities. In addition to the aforementioned Ellen and Voicu, and Rossi-Hanberg, studies, two other studies merit discussion. First, a 2012 study by a senior economist at the Federal Reserve Bank of Kansas City, provided evidence that CDC housing investments in low and moderate income neighborhoods generally increased the values of nearby homes, which in turn “suggested that the investments engender quality improvements in the neighborhood.”<sup>347</sup> More particularly, the study found that, on average, homes within 500 feet of the development projects appreciated at an 11.8 percent greater rate than homes further away from the projects between the first and second sales of the homes.<sup>348</sup> Second, a 2003 study out of Indianapolis compared neighborhoods with active CDC development with neighborhoods without such development. The authors found that neighborhoods with CDCs performed better than their counterparts on several metrics, ranging from higher occupancy rates and lower vacancy rates to higher mean housing values.<sup>349</sup>

While there is some evidence that voucher might incentivize landlords to invest more in their property than they would otherwise,<sup>350</sup> vouchers, on the whole, cannot offer the same kind of neighborhood-wide spillover effects that quality nonprofit development can. If anything, vouchers may be responsible for rent increases in poor neighborhoods, an effect that would be exacerbated by a universal voucher program. Robert Solomon, a longtime Yale clinical professor and former head of the New Haven Housing Authority, described the voucher effect as follows:

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<sup>347</sup> See Edmiston, *Nonprofit Housing Investment*, *supra* note 15, at 68.

<sup>348</sup> *Id.* at 87.

<sup>349</sup> Smith, *The Impact of Community Development Corporations*, *supra* note 82.

<sup>350</sup> See, e.g., JANET CURRIE, THE INVISIBLE SAFETY NET: PROTECTING THE NATION’S POOR CHILDREN AND FAMILIES 106-07 (2006) (arguing that, since HUD sets a floor on apartment quality through inspections, landlords are motivated to fix their apartments to qualify for voucher holders). *But see* Interview with Karyn Gilvarg, *supra* note 98 (noting that HUD’s voucher inspection program is underfunded and that, in reality, most section 8 landlords do not meet HUD’s minimum standards).



“I am leery about replacing supply-side public housing with demand-side section 8-type tenant subsidies. Section 8 has been poorly managed, has not decentralized poverty, and has destabilized many urban neighborhoods. In my own community, I feel confident stating that much of section 8 housing is less decent, safe, and sanitary than public housing.”<sup>351</sup> The salient question is, of course, whether the spillover benefits and other positive externalities of nonprofit development outweigh the lower costs of vouchers. Ed Olsen has estimated, for instance, that nonprofit-centric production programs like Section 202 and Section 811 cost approximately 15 percent more over the lifetime of a project than an equivalent number of vouchers.<sup>352</sup> It remains unclear if nonprofits’ positive spillover benefits match that difference. But, in either event, it seems clear that, though vouchers provide many benefits, the nonprofit developers’ most potent benefit – positive spillover effects in poorer neighborhoods – would be diminished without housing production subsidies for nonprofit organizations.

(2) On a less empirical level, vouchers also offer no substitute for the fine-grain, localized, community-driven housing developments associated with nonprofits. Robert Solomon, the Yale clinical professor, has highlighted the necessity of preserving urban neighborhoods through this kind of development.<sup>353</sup> Any program focused on individual mobility out of poor neighborhoods, Solomon contends, should be coupled with a program focused on neighborhood revitalization. While he mainly focuses on how public housing authorities could induce neighborhood revitalization, Solomon’s argument (perhaps unintentionally) makes the case for nonprofit developers. That is, by focusing on preservation over renewal, and on community

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<sup>351</sup> Robert A. Solomon, *Notes from the Inside: Thoughts About the Future of Public Housing*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEVELOP. LAW 34, 38 (2000).

<sup>352</sup> See Edgar O. Olsen, *The Cost-Effectiveness of Alternative Methods of Delivering Housing Subsidies* 32-36 (working paper) (2009) (citing U.S. GENERAL ACCOUNTING OFFICE, FEDERAL HOUSING ASSISTANCE: COMPARING THE CHARACTERISTICS AND COSTS OF HOUSING PROGRAMS (2002)).

<sup>353</sup> See Robert A. Solomon, *Building a Segregated City: How We All Worked Together*, 16 ST. LOUIS UNIV. L. REV. 265 (1997).

leadership over top-down leadership, nonprofit developers constitute the antithesis of the mid-twentieth century “Urban Renewal” program criticized by many scholars, Solomon among them.

New Horizons’ work on Poplar Street in Fair Haven presents an ideal example of this fine-grain, localized nonprofit development that vouchers could not offer on their own. In its Poplar Street project, New Horizons focused on two touchpoint blocks that had become increasingly crime-ridden. Over a few years, New Horizons purchased the blighted buildings and turned them into 70 units of rent-capped housing (including supportive housing units) as well as a community center with social service offices.<sup>354</sup> Crime has since fallen in that area and the waitlist for the housing is oversubscribed.<sup>355</sup> Seila Mosquera of New Horizons and Andrea Pereira of LISC both stated that the private sector would not have taken on this project, and that private landlords would not have made a concerted effort to revitalize the neighborhood through voucher profits.<sup>356</sup> While vouchers have their upsides, Pereira said, they ultimately represent a “housing strategy divorced from a community development strategy.”<sup>357</sup> Many scholars agree with this analysis.<sup>358</sup> As such, neighborhoods like Fair Haven would lose out were nonprofit housing developers like New Horizons to lose governmental support.

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<sup>354</sup> For a good encapsulation of this story over six years, see Melissa Bailey, “*You Don’t See Affordable Housing Like This!*”, NEW HAVEN INDEPENDENT (Oct. 5, 2006), [http://www.newhavenindependent.org/index.php/archives/entry/you\\_dont\\_see\\_affordable\\_housing\\_like\\_this/](http://www.newhavenindependent.org/index.php/archives/entry/you_dont_see_affordable_housing_like_this/), and Melissa Bailey, *Two Fair Haven Blocks Revamped*, NEW HAVEN INDEPENDENT (Apr. 13, 2012), [http://www.newhavenindependent.org/index.php/archives/entry/grand\\_avenue\\_redo/](http://www.newhavenindependent.org/index.php/archives/entry/grand_avenue_redo/).

<sup>355</sup> *Id.*

<sup>356</sup> See Interview with Seila Mosquera, *supra* note 20; Interview with Andrea Pereira, *supra* note 25.

<sup>357</sup> *Id.*

<sup>358</sup> See, e.g., Christopher Walker, *Nonprofit Housing Development: Status, Trends, and Prospects*, 4 HOUSING POLICY DEBATE 369, 404 (1993) (“The nonprofit advantage lies in linking housing production and preservation to community development.”).

#### **IV. Combating the Critics: What Connecticut and New Haven Can Teach Us About Overcoming the Negative Aspects of Nonprofit Housing Development**

All that being said, I do not suggest turning a blind eye to the shortcomings of nonprofit developers, including the failed projects and nonprofit organizations detailed in Section II.A. Rather, I suggest that governments and nonprofits learn from past failures. More particularly, I argue that New Haven offers examples for nonprofit cost control, outcome accountability, and managerial consistency, all areas where the nonprofit sector can improve.

##### *A. Keeping High Nonprofit Costs in Check*

As mentioned before, the most common attack on nonprofits is their comparatively high costs. Grumbings about high nonprofit costs occasionally arose in my interviews. For example, Jorge Perez – the former alderman and current state banking commissioner – lambasted Neighborhood Housing Services for being “the most expensive developer in town.”<sup>359</sup> Similarly, Betsy Crum – the Executive Director of a prominent regional nonprofit developer – stated that government money would be better spent on individual vouchers than on targeted subsidies to nonprofits. She thought that, too often, nonprofits did not use subsidies efficiently.<sup>360</sup> Even among strong supporters of nonprofit housing, like Rachel Bratt, there is a sense that nonprofits, particularly small nonprofits, should do more to control costs.<sup>361</sup>

Setting aside my prior criticism of simplistic cost-benefit analyses for the moment, experience suggests that, even on the traditional cost-benefit metrics, nonprofits are capable of both reducing costs and/or increasing their revenues (so as to reduce the need for taxpayer

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<sup>359</sup> See Interview with Jorge Perez, *supra* note 99. Although, in the same interview, Perez praised Habitat for Humanity, suggesting that his issue is with NHS – not with nonprofits more generally.

<sup>360</sup> See Interview with Betsy Crum, *supra* note 141. Again, though, Crum was in favor of nonprofits developing affordable housing – she just suggested using the government rent subsidy to leverage private financing, rather than using separate government funds for construction.

<sup>361</sup> See BRATT, *supra* note 15, at 32-33 (detailing the “significant financial problems” associated with nonprofit developments).

subsidies). New Haven provides examples of both approaches. On the cost reduction front, nonprofits can reduce their land acquisition costs by partnering with churches, governments, or community land trusts in exchange for cheap land. Indeed, Beulah Heights Land Development Corporation, Habitat for Humanity, and Columbus House have all structured deals that do just that.<sup>362</sup> In addition, government can streamline and simplify application processes whenever possible, thus reducing the need for nonprofits to hire consultants to help them write grant application after grant application; Terry Nash of CHFA told me that complex state funding applications can cost a developer around \$1 million.<sup>363</sup> Government could also take steps to relieve nonprofits of costly compliance requirements like the Davis-Bacon Act, which requires any organization receiving government funding to, among other things, pay higher wages to construction workers and hire a certain amount of local, women, or minority contractors.<sup>364</sup> Connecticut has made advances on both of these “cost relief” fronts: Connecticut has streamlined multiple housing subsidy applications into the CHAMP funding program<sup>365</sup>, and Connecticut’s housing finance agency, CHFA, has explicitly excluded nonprofits from a handful of costly requirements.<sup>366</sup>

Revenue enhancement presents a thornier issue. On the one hand, nonprofits should strive to reach an accounting profit on all of their projects, and should find ways to make money whenever possible. On the other hand, nonprofits should not be miserly landlords, or charge the excessive fees and costs associated with the for-profit sector. As such, perhaps the most

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<sup>362</sup> See note 290, *supra*, and accompanying text. J. Michael Collins has praised community land trusts for exactly this reason. See COLLINS, *supra* note 238, at 22.

<sup>363</sup> See Telephone Interview with Terry Nash, *supra* note 21.

<sup>364</sup> See Interview with Brett Hill, *supra* note 281 (lamenting the costs of these requirements); see also Ballard, *Profiting from Poverty*, *supra* note 15, at 237-38 (noting that “the Davis-Bacon Act may require some nonprofits to pay higher wages to construction workers”).

<sup>365</sup> See Interview with Alison Cunningham, *supra* note 148 (praising Connecticut for CHAMP and for other attempts at streamlining).

<sup>366</sup> See Section II.B.ii, *supra*.

promising path toward revenue enhancement comes from internal nonprofit cross-subsidization. That is, rather than charge their needy customers more for the housing product, nonprofits could run other businesses that attract paying customers.<sup>367</sup> For example, Neighborhood Housing Services recently started an in-house real estate brokerage, which it hopes will cross-subsidize its housing project in the future.<sup>368</sup> Likewise, the Greater Dwight Development Corporation earns revenue from its ownership of the Stop and Shop grocery store.<sup>369</sup> In Hartford, moreover, the nonprofit-sponsored Billings Forge affordable housing project included commercial space on the first floor of the building, which the nonprofit turned into a popular farm-to-table restaurant called Firebox.<sup>370</sup> On a smaller scale, Fellowship Place in New Haven cultivates a small batch of artists among its homeless and disabled clientele, and then sells their clients' artwork.<sup>371</sup> All of this is to say, nonprofits are not inherently more expensive ventures than other kinds of housing development, and nonprofit funders (*i.e.*, the government) should exhibit creativity in helping nonprofits lower costs and increase revenues.

### B. Imposing Accountability through Competition and Standards

Another common critique of nonprofit developers is that their funders and clients have no way of holding them accountable when they waste taxpayer resources. Housing nonprofits face no recourse from irate investors, as well as comparatively little scrutiny from clients who are grateful to have the subsidized housing and community programs. The government constitutes the primary bulwark against nonprofit waste, but government officials are often loath to de-fund

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<sup>367</sup> Erik B. Bluemel, *The Nonprofit Implications of For-Profit Community Development*, 16 U. FLA. J. L. & PUB. POL'Y 103 (2005) (describing this kind of approach).

<sup>368</sup> See page 30, *supra*, and accompanying footnotes.

<sup>369</sup> See page 2, *supra*, and accompanying footnotes.

<sup>370</sup> See page 34, *supra*, and accompanying footnotes; see also Jan Ellen Spiegel, *Serving the Community, Satisfying the Palate*, N.Y. TIMES (Jan. 22, 2010) (describing the Firebox restaurant at Billings Forge).

<sup>371</sup> See *Artship*, FELLOWSHIP PLACE, <http://fellowshipplace.org/artship/>; see also page 2, *supra*, and accompanying footnotes.

nonprofits performing services that many for-profit developers would be unwilling to perform. As such, some of my interviewees questioned whether one “can kill a nonprofit.”<sup>372</sup>

Competitive grants offer the most obvious way to hold nonprofits accountable. The LIHTC process in Connecticut operates on a competitive basis now, with around 15-20 groups competing for 4-6 allocations of LIHTCs.<sup>373</sup> As noted above, nonprofits have fared well in this competitive process, suggesting that nonprofits should not fear competition.<sup>374</sup> However, New Haven’s Chief of Economic Development Matthew Nemerson astutely noted that sometimes local funding through HOME and CDBG is not as amenable to competition. “Because there are only a handful of nonprofits that do housing work in New Haven – and they come back year after year – it is often a foregone conclusion which ones will receive funds,” he said.<sup>375</sup> Thus city governments might find themselves in the situation John DeStefano and Henry Fernandez did in the mid-2000s, when they pulled money from ineffective nonprofits in a relatively *ad hoc* fashion.

Perhaps a more reliable way to ensure accountability for nonprofits, then, is through standards. If a nonprofit does not meet certain indicia of competence, which would be laid out in advance of a grant distribution, it should not be given taxpayer money. Indeed, HUD has already taken steps to bake stronger standards into HOME funding. In July 2013, HUD issued a new rule through notice-and-comment that requires any organization receiving HOME money to have paid staff whose experience qualifies them to undertake housing development; this capacity

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<sup>372</sup> See Interview with John Bradley, *supra* note 212. Bradley ultimately concluded that it is possible to “kill” a nonprofit, but that it is difficult.

<sup>373</sup> See *Federal Low-Income Housing Tax Credit (LIHTC) Program*, CONNECTICUT HOUSING FINANCE AUTHORITY, <http://www.chfa.org/Rental%20Housing/for%20Developers%20and%20Sponsors/Funding%20Initiatives/Tax%20Credit%20Programs/LIHTC%20Program.aspx> (listing data for LIHTC applicants and awardees).

<sup>374</sup> See, *supra*, note 188 and accompanying text.

<sup>375</sup> See Interview with Matthew Nemerson, *supra* note 204.

cannot be demonstrated by use of a consultant, except in the first year that a CHDO is operational.<sup>376</sup> While legitimate worries exist as to whether an increase in nonprofit regulations like these will raise costs and be overinclusive, such standards are necessary in the absence of shareholders or similarly situated actors. Standards without enforcement, though, would be meaningless. When it comes to enforcement, then, government agencies across the country should emulate John DeStefano and Henry Fernandez. By pruning the City of excessive nonprofit housing developers, DeStefano and Fernandez channeled more money to higher-performing nonprofits and arguably strengthened the nonprofit sector.

### C. Cultivating Expertise in Organizations with High Turnover

Finally, many of my interviewees noted a perennial problem with nonprofit developers: the struggle to maintain talented staff for long periods of time, and the resulting organizational atrophy. For instance, Henry Fernandez noted that the decline of the Hill Development Corporation was directly correlated with the death of its charismatic founder, Courtland Seymour Wilson.<sup>377</sup> Similarly, John DeStefano asked what would happen to Neighborhood Housing Services once Jim Paley retired; Jim Paley has led the organization for over 20 years and is considered one of the key factors behind the organization's success.<sup>378</sup> Indeed, one recent study provided empirical backing for the common sense intuition that CDCs with high staff turnover are correlated with lower productivity rates, whereas CDCs with a long-lasting Executive Director are correlated with higher productivity rates.<sup>379</sup>

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<sup>376</sup> See HOME Investment Partnerships Program: Improving Performance and Accountability; Updating Property Standards, 78 Fed. Reg. 44627 (July 24, 2013) (final rule published at 24 C.F.R. §§ 91-92).

<sup>377</sup> See Interview with Henry Fernandez, *supra* note 101.

<sup>378</sup> See Interview with John DeStefano, *supra* note 101.

<sup>379</sup> See Edwin Melendez & Lisa J. Servon, *Reassessing the Role of Housing in Community-Based Urban Development*, 18 HOUSING POL'Y DEBATE 751, 772 (2007) ("High professional staff turnover reduces the odds of being a high producer (0.964), while the tenure of the executive directors increases the odds (1.033).").



Admittedly, many business organizations suffer from this problem, and it is not a problem well-suited to a governmental fix. However, two avenues for ameliorating this issue arose out of my interviews. First, Connecticut is fortunate to have strong LISC and NeighborWorks programs, as described *supra* in Section II.A.ii. These kinds of intermediaries, which also include groups like the Melville Foundation and Enterprise Community Partners, provide institutional support and training, and can help ensure that staff are well-prepared for their roles in nonprofit housing development and that organizations do not suffer when a key employee decamps for another position.<sup>380</sup> Of course, these organizations all rely on government funding, too, and drastic cuts to housing programs will also produce second-order effects on these intermediaries. Second, New Haven shows that nonprofits thrive when there are a few strong nonprofits rather than a multitude of weak nonprofits.<sup>381</sup> Executive Directors and staff benefit from an organization that can operate at a scale, pay them higher wages, and work hand-in-hand with government and private sector partners. While I do not know the Goldilocks ratio for a nonprofit developer that is neither too big nor too small, it seems evident that larger, well-established nonprofits can retain staff longer than smaller organizations barely surviving on a year-to-year basis.

## **Conclusion**

Nonprofits only constitute one aspect of an effective, multi-faceted housing policy. However, nonprofits provide benefits that public housing, private housing, and voucher programs could not provide, either individually or collectively. Experience in New Haven and

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<sup>380</sup> See Telephone Interview with Andrea Pereira, *supra* note 25 (discussing LISC's role in Connecticut). *But cf.* SCHWARTZ, *supra* note 16, at 299 (noting that, while the intermediary system is superlative in some parts of the country, "elsewhere the amount and variety of support available for [nonprofit housing developers] is far more limited").

<sup>381</sup> See, *supra*, at 25-26 (describing how New Haven's CDC sector grew too bloated and how cutting it down to size produced better results for the remaining nonprofits).

broader national data accordingly suggest that we, as a society, should protect this underappreciated sector from political and academic headwinds.