Inclusionary Housing in the United States

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

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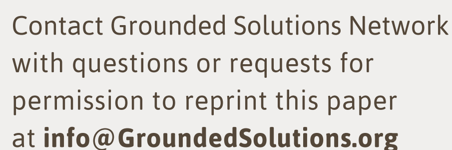

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Table of Contents

About the Authors 3

About Grounded Solutions Network 3

Acknowledgements 4

Executive Summary 5

Introduction and Background 8

Data and Methodology 10

IH Definition and Scope 10

Questionnaire Design and Variations 12

Administration of Data Collection 12

Data Limitations 14

Findings 15

Distribution and Growth 15

Program Count by State 15

Program Count by Government Type 17

Program Count by Area Coverage 18

Program Adoption by Decade 19

Program Amendment 20

Practices 21

Traditional IH Programs 23

Linkage/Impact Fee Programs 38

Outcomes 44

Units 44

Fee Revenue 47

Discussion 48

Comparison With the 2016 Survey 48

Discussion of Key Findings and Recommendations 49

Conclusion 51

References 52

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About Grounded Solutions Network

Grounded Solutions Network supports strong communities from the ground up. We are a national nonprofit membership organization consisting of community land trusts, inclusionary housing programs, and nonprofits that support affordable housing that lasts. We provide our members and cities with training, technical assistance, program design and management resources, research, and advocacy. Grounded Solutions Network champions evidence-based policies and strategies that work. We promote housing solutions that will stay affordable for generations, so communities can stabilize and strengthen their foundation, for good. We help our members, partners, and elected officials use them to establish inclusive communities that have diverse housing options for a variety of incomes, offering choice and opportunity for all residents — both today and for future generations.

Acknowledgements

We are **extremely grateful to government staff** who generously contributed their time and knowledge in completing the survey.

We owe a **huge debt of gratitude to the research team** from partnering organizations who did tremendous work and successfully collected data for this project in their respective states, including **Katharine (Katy) Lacy**, **Calandra (Callie) Clark**, **Phillip (Phil) Crean**, and **Layheab Ly from the Massachusetts Housing Partnership (MHP)**; **Pedro Galvao** and **Anna Blumstein from the Non-Profit Housing Association of Northern California**; **Rob Wiener** and **Luisa Café Figueiredo Facanha from the California Coalition for Rural Housing**; and **Moses Gates** and **Arvind Sindhwani from the Regional Plan Association**.

We greatly appreciate all state and regional inclusionary housing experts who have shared their experience and knowledge with us in respective areas, especially **Adam Gordon at Fair Share Housing Center** in New Jersey, **Ashon Nesbitt at Florida Housing Coalition**, and **Mike Stanger at A Regional Coalition for Housing** (ARCH) in Washington.

We gratefully acknowledge the support of our current and former **colleagues at Grounded Solutions Network**, particularly **Adam Abraham**, **Amanda Bennett**, **Brandon Frazier**, **Emily Thaden**, **Hong Ly**, **Larry Rose**, **Matt Weber**, **Namon Freeman**, **Rachel Silver**, **Sasha Hauswald**, and **Stephanie Reyes**. We are also extremely thankful to **current and former colleagues at Fannie Mae** who have supported this study, including **Angela Kelcher**, **Bob Simpson**, **Crystal Bergemann**, **Kim Betancourt**, **Mark Palim**, **Nathan Shultz**, **Rita Ballesteros**, and **Tatyana Zahalak**.

This work[1] was made possible through a services agreement with Fannie Mae in furtherance of Fannie Mae's Duty to Serve initiative. For more information of Fannie Mae's Duty to Serve initiative see fanniemae.com "Duty to Serve: Housing affordability is at the core of our mission" pages here[2].

Fannie Mae®

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[1] The views expressed in this paper are those of the authors only and not those of the contributors listed above or their respective employers.

[2] https://www.fanniemae.com/about-us/what-we-do/homeownership/duty-serve

Executive Summary

Inclusionary housing (IH) ties the creation of affordable, below-market-rate units with new development, and it is a means for creating affordable housing and inclusive communities. Yet, limited research circumscribes our understanding about the similarities and variations of inclusionary housing programs across the nation. To this end, Grounded Solutions Network embarked on a large-scale data collection effort between 2018 and 2019 to study inclusionary housing programs in local jurisdictions. This report summarizes patterns and trends in inclusionary programs, which not only shed light on previously un-examined program features and administrative aspects, but also reinforce existing knowledge with a much greater number of programs. The term "inclusionary housing program" (as opposed to "inclusionary zoning policy") is used to include a comprehensive coverage of market-based affordable housing solutions that go beyond legislative provisions. **Highlights of this study include:**

Count of the nation's local inclusionary housing programs

This study identifies a total of 1,019 inclusionary housing programs in 734 jurisdictions at the end of 2019. These programs are in 31 states and the District of Columbia. Nearly three-quarters of programs are in New Jersey (28%), Massachusetts (23%), and California (22%), all of which have statewide mandates. These new counts are based on a comprehensive data collection strategy, including a thorough municipality by municipality identification of inclusionary housing programs in New Jersey and Massachusetts.

Programs are growing and evolving

Inclusionary housing programs are growing substantially with an annual average growth rate of 19 programs between 2011 and 2019. This growth trend followed a spike of program expansions with an average of 33 programs per year between 2003 and 2010. Meanwhile, the study finds that two out of five policies have undergone significant legislative updates in the past three years, and one in five was under review when the survey was conducted in 2019.

Renewed understanding of program outcomes

A subset of 258 programs provided detailed information about outcomes. These programs report creating a total of about 110,000 affordable units, including 70,000 affordable rental units, 31,000 for-sale units, and 9,000 units with tenure unknown. For the 221 programs that report at least one affordable unit and with known program age, a program produced 27 affordable units per year on average. In addition, 123 of the programs surveyed tracked and reported fees collected through their inclusionary housing programs (including linkage/ impact fee programs). In total, this subset of inclusionary programs has collected at least $1.76 billion in fees.

Programs hold their promise in addressing local affordable housing needs for low-income households

The average set-aside for affordable units is 16% and 29% of IH programs require 20% or more of housing units to be set aside at affordable prices on-site. These affordable units predominantly serve low-income households with annual incomes between 50% and 80% of area median income (AMI). Rental inclusionary housing programs generally serve lower income levels than homeownership programs. Many programs provide deeper affordability by requiring affordable units created to be allocated across multiple income tiers, and/or offering developers different options to serve lower-income residents.

Most units created through inclusionary housing programs have long-term affordability

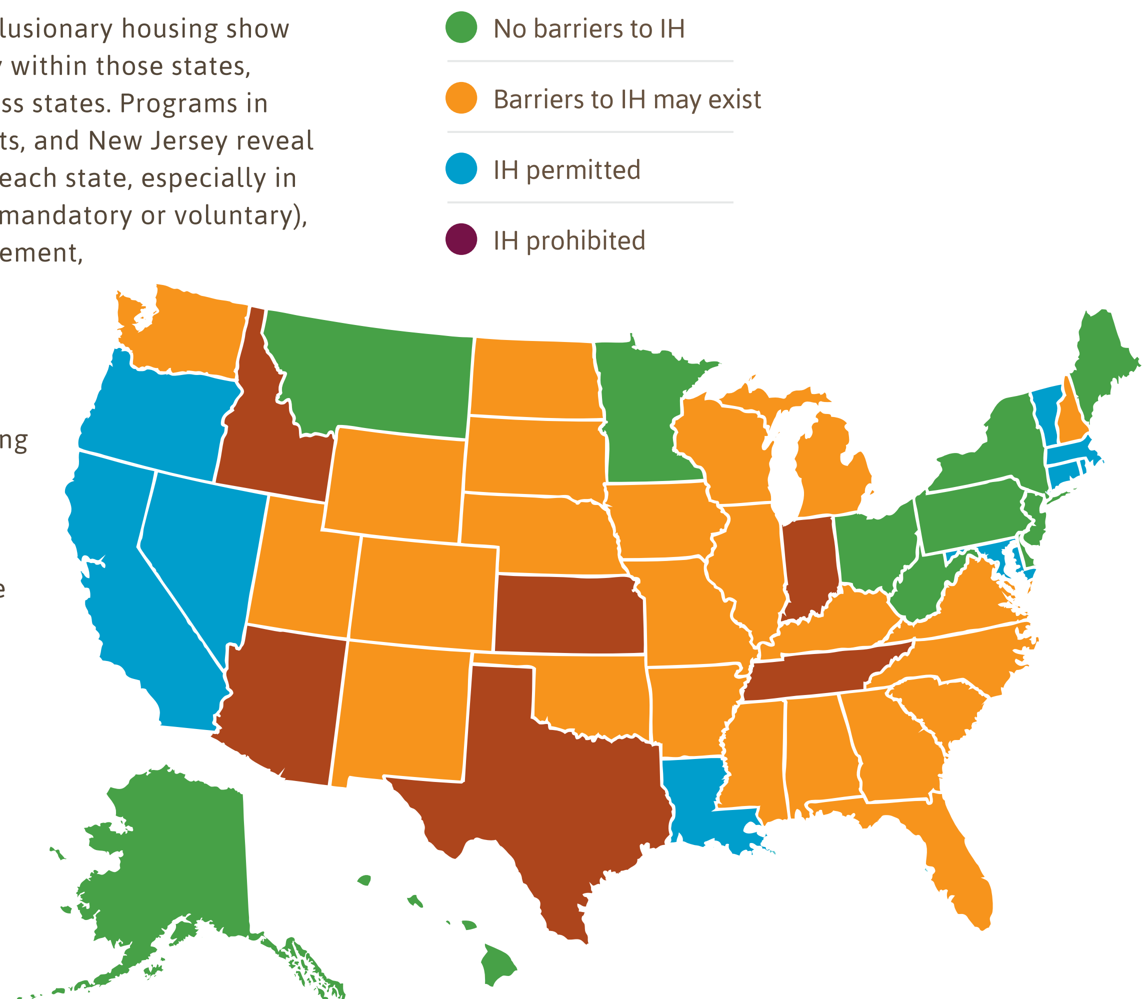
The survey found that 93% of programs have affordability requirements that last for 30 years or longer. It is a common practice for programs to restart the affordability term upon resale, which provides another layer of affordability insurance. Most homeownership programs are using shared equity homeownership models, whereby resale restrictions apply to subsequent homeowners in order to keep property permanently affordable.

Tracking of Affordable Units Remains Inconsistent

There remains a big gap in the literature in unveiling the administrative practices of IH programs. While about one-third of local governments reported partnering with external agencies to manage IH programs, we find that many programs report either not having a tracking system in place or not knowing if such a system exists. In addition, except for a rather limited number of programs, we do not know in which neighborhoods the affordable units are located, the socio-demographic characteristics of participating households, or transaction/lease details for units.

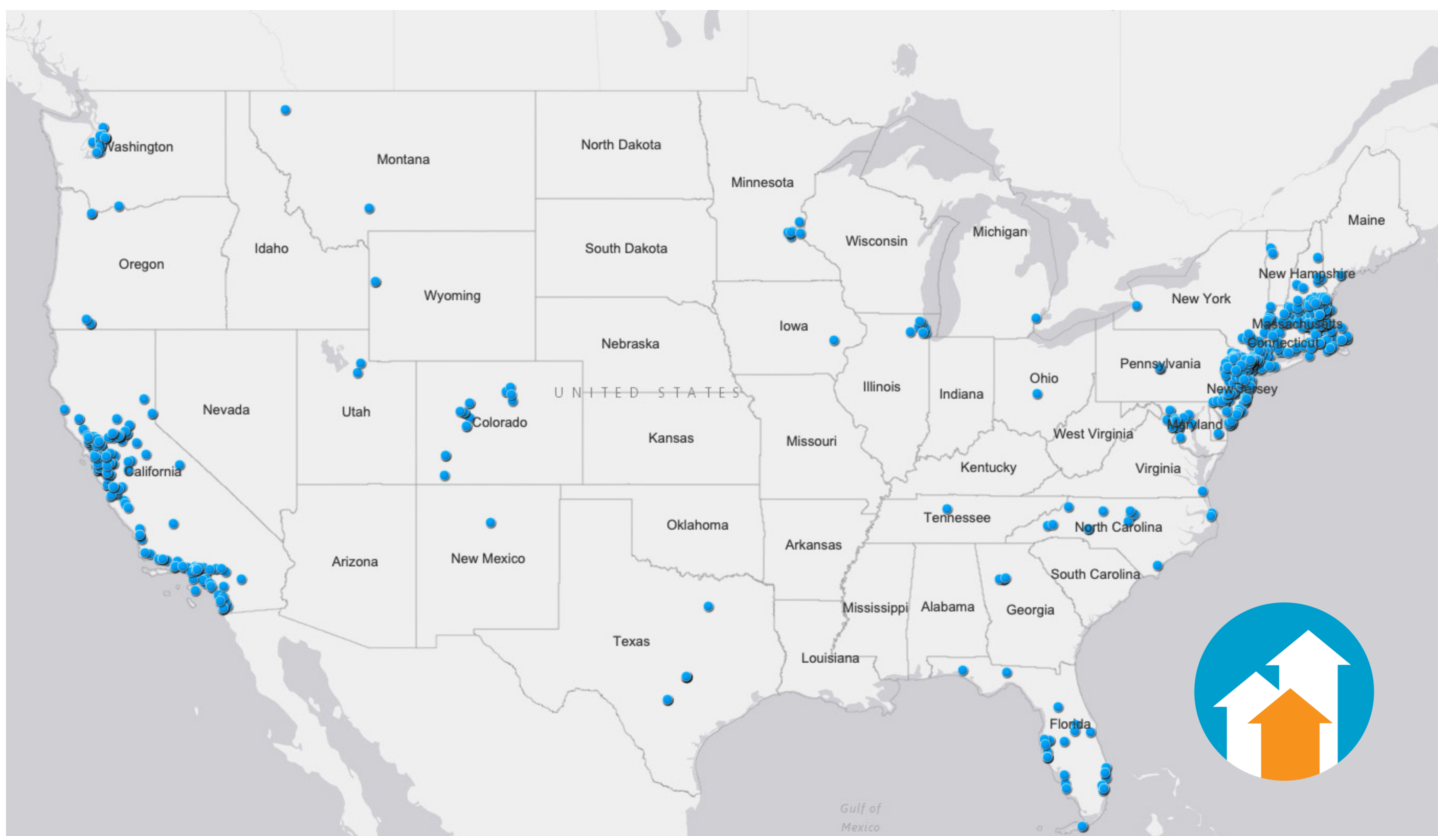
Considerable variations in terms of program design and outcomes exist across states

States that mandate inclusionary housing show programmatic similarity within those states, but not necessarily across states. Programs in California, Massachusetts, and New Jersey reveal distinct patterns within each state, especially in terms of program type (mandatory or voluntary), income targeting requirement, and affordability term. While state mandates certainly are helpful for widespread adoption of local inclusionary housing programs, programs are more productive if they are designed in ways to address local affordable housing needs.



inclusionaryhousing.org/map

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



Location of inclusionary housing programs in United States

Introduction and Background

Across the United States, conscious efforts to segregate communities by race and income have resulted in harmful consequences for individuals and families by subjecting them to unhealthy housing and neighborhoods, reducing access to education and employment opportunities, and limiting social relationships (Rothstein, 2017). During an era of inadequate federal resources for affordable housing, inclusionary housing (IH) policies have begun to play an increasingly strategic role in increased affordable housing production. When designed appropriately, IH also has the potential to promote residential integration by tying affordable housing to market-rate housing development. In their simplest form, IH policies require market-rate developers to sell or rent a portion of their new units at below-market rates to income-qualified households. Among other purposes, IH policies are often adopted in municipalities as a reaction to exclusionary zoning, which Merriam-Webster defines as "a residential zoning plan whose requirements (as minimum lot size and house size) have the effect of excluding low-income residents." Exclusionary zoning is considered a racist and classist practice that keeps away people and development deemed undesirable in higher-income neighborhoods (Jacobus, 2015; Whitehead and Williams-Derry, 2014).

As a local housing policy, great variation exists in terms of IH policy structure and program administration. Yet the scarce empirical studies on the effectiveness of IH policy design and implementation have consistently focused on the same few programs. What is missing to support further understanding and investigation is a nationwide database that documents the prevalence, practices, and impact in the field.

In 2016, Grounded Solutions Network, in partnership with Lincoln Institute of Land Policy, conducted a national survey of IH programs located in 25 states and the District of Columbia. This survey resulted in a 2017 working paper on IH programs (Thaden and Wang 2017). It was the most comprehensive study up until our recent efforts. Subsequently, as part of services provided to Fannie Mae, Grounded Solutions Network created the first nationwide inclusionary housing map,[3] a web-based interactive tool featuring programmatic details of the entire IH dataset, as well as displaying a state-by-state legal framework for local IH programs. The database behind the map may be downloaded to generate further research.

The 2016 survey, while pioneering in understanding the impact of the nation's IH policies and programs, had certain limitations. Specifically, survey responses came from only a small portion of programs. We were not able to identify all inclusionary programs in all jurisdictions with IH programs, because the overall survey response rate was low. This limitation prevented us from collecting comprehensive data on impact and program characteristics for the majority of programs. In particular, the study estimated that a substantial number of IH policies and programs were missed in states such as New Hampshire, Connecticut, and New York. In addition, the research barely collected any local programmatic information in Massachusetts and New Jersey, which together accounted for over half of all programs in the nation. Instead, estimates for jurisdictions with IH policies and programs and their impact in these two states were derived from data provided by state agencies. This data

[3] The inclusionary housing map is updated with data from this study.

included policies and programs that fell outside of the IH definition used in the 2016 study, resulting in an overestimation of the number of IH policies and programs as well as the units/fees generated.

Since the publication of the 2017 working paper, many new IH programs have emerged, including those in the major cities of Atlanta, Georgia; Portland, Oregon; Minneapolis, Minnesota; and Detroit, Michigan. In addition, some states have enacted new policies that either support or impede the adoption of local IH programs. Notably, in California, the passage of Assembly Bill 1505 in 2017 (also known as "Palmer Fix" bill) returns power to counties and cities to implement IH on rental projects.

Increasing demand for better data by practitioners and national partners, coupled with emerging trends in the IH landscape, propelled us to plan for a new round of data collection. Under a services agreement with Fannie Mae to initiate and conduct this research, the project commenced in 2018. The goal of this study is to build a national IH database to better understand the geographies, types, characteristics, outcomes, and trends of IH programs.

This study employs a refined data collection strategy compared to Grounded Solutions Network's 2016 effort, and the new strategy results in a substantially improved dataset. We partnered with four state and regional affordable housing organizations to collect data in five states with large concentrations of IH programs. Our research partners helped create different versions of survey questionnaires that were tailored to regional conditions, conducted extensive ordinance reviews, and administered surveys. We used a dual data collection approach — ordinance review and survey administration — for all jurisdictions identified with an IH program, followed by thorough data validation and cleaning, to collect as much information as possible and to minimize biases that may occur during the data collection process. The result of this extensive effort is a new IH dataset that comprehensively tracks policy details for all 1,019 programs identified in the study.

The terms "inclusionary housing programs" and "inclusionary housing/zoning policies" are often used interchangeably in the literature. In this study, we prefer the former term over the latter for two reasons. First, although in most cases inclusionary housing is part of a zoning ordinance or bylaw, based on our data collection approach we find that, occasionally, it may not be articulated in legislation. For example, the inclusionary development policy in Boston, Massachusetts, was created through an executive order of the mayor. The term "program" intends to broadly capture local government interventions that are beyond legislative provisions. Second, we intend to use the term "program" to capture some aspects of policy implementation and administration — such as compliance, monitoring, and outcome tracking — that is often not written in the ordinance.

This report proceeds as follows. The next section includes the data collection method and process. In the section that follows, we present findings which include program distribution, growth, practices, and outcomes. The report concludes with a comparison of key findings between the previous study and the current study.

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Data and Methodology

IH Definition and Scope

Inclusionary housing (IH) programs vary widely in forms and applications. Consequently, definitions of inclusionary housing are equally diverse in scholarship. In this study, we use a relatively broad definition to capture various forms of IH. Specifically, an "inclusionary housing program" is referred to as "a set of local rules or a local government initiative that encourages or requires the creation of affordable housing units, or the payment of fees for affordable housing investments when new development occurs."

We use this definition to capture IH policies or programs in local jurisdictions that are either mandatory or voluntary in yielding affordable units on-site within market-rate buildings, affordable housing units off-site in a different location, or payments in-lieu of development (collectively referred to in this study as "traditional IH programs"). This definition also captures policies or programs that generate fees for the development of affordable housing from commercial development, residential development, or both (these types of programs are called "linkage/impact fee programs" in this study).

In essence, we broaden the IH definition by capturing the intent of the policy or program in one or more of the following ways: 1) the policy or program was created to increase affordable housing supply; 2) the policy or program was created to promote social and economic integration; and/or 3) the policy or program was created to incentivize any type of development as long as the underlying policy or program ensures or includes an increase in the local affordable housing stock.

We also draw clear boundaries for policies and programs that should not be included in this study. Policies or programs which do not establish a maximum household income level (either or through connected policy or state mandate) are excluded. Policies or programs which do not specify the affordability term of the affordable housing units to be created are also excluded.

In addition, we exclude policies or programs if the inclusion of affordable housing or the payment of a fee for affordable housing is a result of project-by-project, ad-hoc negotiations with developers. We also exclude site-specific inclusionary zoning policies in New Jersey that require specific sites in the municipality to be zoned for housing development with an affordable percentage, either because of a Mount Laurel/Fair Housing Act compliance plan or otherwise. Furthermore, most state-level policies that require or enable inclusionary housing are excluded from this study, including the density bonus program[4] and inclusionary provisions of California Senate Bill 35[5] in California, Chapter 40B[6] in Massachusetts, and state-mandated development fees on non-residential development[7] in New Jersey. One exception is New York State's 421-a Tax Exemption program.[8] Although this is a state-level policy, it only applies to New York City. Hence, we included it in the database.

[4] The California State Density Bonus Law, under Section 65915 of the California Government Code, offers incentives including up to a 35% increase in densities that are intended to encourage the development of affordable housing. While California's State Bonus density law has generally been excluded from this study, locally adopted programs based on the law with more stringent requirements have been included.

[5] California Senate Bill 35 (SB 35) is a statute streamlining housing construction in California counties and cities that fail to build enough housing to meet state-mandated housing construction requirements.

[6] Chapter 40B is a state statute of Massachusetts, which enables local Zoning Boards of Appeals to approve affordable housing developments under flexible rules if at least 20 – 25% of the units have long-term affordability restrictions.

[7] Pursuant to the Statewide Non-Residential Development Fee Act of New Jersey, municipalities are required to impose a non-residential development fee of 2.5% of the equalized assessed value to address the state's affordable housing needs. While New Jersey's Statewide Non-Residential Development Fee Act has generally been excluded from this study, locally adopted programs based on the act with more stringent requirements have been included.

[8] The 421-a tax exemption is a property tax exemption in the U.S. state of New York that is given to real estate developers for building new multifamily residential housing buildings in New York City. The 421-a program began in 1971, and the state government later added provisions to mandate the creation of affordable housing units in order for developers to qualify for the program.

Most state-level policies are excluded for three main reasons. First, inclusionary housing programs are known to be local responses,[9] therefore state-level policies fall outside of the traditional scope of inclusionary housing. In addition, it is not feasible to accurately count local policies or programs that directly result from these state-level policies, because local jurisdictions vary widely in whether and how they incorporate such state law into local ordinances, despite all non-exempt developments in the state being technically subject to these state-level policies (Goetz and Sakai, 2020). Lastly, there is no way to comprehensively track unit/fee production resulting from these state-level policies. In California, there is no state-level tracking system for the state's Density Bonus Law, and many local jurisdictions don't track units produced under such law. In Massachusetts and New Jersey, even though there are state-level tracking systems for affordable units (e.g. the Subsidized Housing Inventory and Local Initiative Program in Massachusetts, and the Housing Trust Fund in New Jersey), units/fees created by IH programs that meet the definition of this study cannot be identified in those databases.

Although most state-level policies are excluded from the study, we include local IH programs adopted as a result of Chapter 40R[10] in Massachusetts, as well as municipal-wide inclusionary zoning programs and residential development fee programs adopted as part of the Council on Affordable Housing (COAH) process in New Jersey. This is due to the fact that these programs are generally uniform in how they are written into local ordinances and are easier to identify. Lastly, local programs adopted as the result of actual state level policies with more stringent requirements than the actual state level policies are included in the dataset because they are easier to identify in local ordinance (see Table 1).

Table 1. **Summary of Project Scope**

	Included	Excluded
Overall	▶ Traditional IH programs and linkage/ impact fee programs. ▶ Mandatory and voluntary programs.	▶ Policy/program that does not establish a maximum household income level. ▶ Policy/program that does not specify the affordability term of the inclusionary units. ▶ Policy/program with inclusionary units resulting from ad-hoc negotiations with developers.
California	▶ Locally adopted density bonus programs that have more stringent requirements than the state mandate.	▶ The state's density bonus program. ▶ Inclusionary provisions of California Senate Bill 35. ▶ Locally adopted density bonus programs that have the same requirements as the state mandate.
Massachusetts	▶ Chapter 40R.	▶ Chapter 40B.
New Jersey	▶ Municipal-wide inclusionary zoning programs. ▶ Residential development fee programs. ▶ Locally adopted development fee programs on non-residential development that have more stringent requirements than the state mandate.	▶ State-mandated development fees on non-residential development. ▶ Site-specific inclusionary zoning policies as a result of Mount Laurel/Fair Housing Act.
New York	▶ 421-a Tax Exemption program.	

[9] See here: https://inclusionaryhousing.org/inclusionary-housing-explained/what-is-inclusionary-housing/.

[10] The California State Density Bonus Law, under Section 65915 of the California Government Code, offers incentives including up to a 35% increase in densities that are intended to encourage the development of affordable housing. While California's State Bonus density law has generally been excluded from this study, locally adopted programs based on the law with more stringent requirements have been included.

Questionnaire Design and Variations

The IH survey questionnaire included two main parts. The first part collected jurisdictional information such as government name, level, and address; the survey respondent's contact information; and the number of IH programs in the jurisdiction. The second part focused on information related to each IH program identified by the research team or survey respondents. If there were multiple programs in an underlying jurisdiction, the survey respondent repeated the second part multiple times in order to provide information about each program's characteristics. Among other things, information included year of adoption, year of most recent amendment, and program geographic coverage. For traditional IH programs, we further recorded program features, including program type (mandatory and/or voluntary) and tenure type (rental and/or homeownership development), minimum project size for the program to apply, set-aside, incentives, compliance options, income requirements, and affordability term. For linkage/impact fee programs, we documented development type (residential and/or commercial development), fee rates, exemptions, and alternative compliance. In addition, we collected information about program administration, including whether a program tracks units/fees and whether there is third-party administration. For traditional IH programs, we also collected a set of information about their legal agreements and affordability compliance to understand if IH programs meet the definition of shared equity homeownership under the Duty to Serve rule, including rent/resale restriction mechanisms, monitoring of compliance, enforcement and remedies of noncompliance, and whether a preemptive right to purchase exists. Finally, we collected information about program outcomes, including the number of rental units and homeownership units generated, as well as fees collected.

Three additional variations of the survey questions were developed for certain states. For California, we added questions about the type of primary compliance option and reasons for choosing them. For Massachusetts, we consolidated questions for rental and for-sale development because the state mandates do not differentiate between the requirement of these two tenure types. We also allowed respondents to skip questions if their inclusionary units must qualify for the Subsidized Housing Inventory, which provides uniform, standard requirements. For New Jersey, because of the state legal framework, local inclusionary housing provisions are more structured. Respondents were asked to check and fill in one or more of three program types: a municipal-wide inclusionary zoning, a non-residential development fee program (a term used in New Jersey that is equivalent to commercial linkage/impact fee program), and a residential development fee program (equivalent to residential linkage/impact fee program). Despite these few variations, we were able to standardize most of the answers into a uniform database for comprehensive analyses.

Administration of Data Collection

Data collection included two sets of tasks — ordinance review and administration of an online survey — with slight variations in different parts of the country. In California, our state partners — Non-Profit Housing Association of Northern California and the California Coalition for Rural Housing — led the data collection effort. An online survey was administered between November 2018 to October 2019. Contact information used to administer the online survey was derived from multiple sources, including Association of Bay Area Governments for the Bay Area, Sacramento Area Council of Governments for Sacramento Area, the Governor's Office of Planning and Research, and other partner organizations across the state. All of the 540 cities and counties in California were contacted for the online survey. We contacted non-responders up to five additional times via email or phone call until we received a response. Concurrently, we conducted a document review (mostly zoning ordinances, sometimes other publicly available documents) for 528 cities and counties. There were 12 jurisdictions that did not have documents accessible online.

In Massachusetts, we partnered with Massachusetts Housing Partnership (MHP), whose staff led the data collection. For the second half of 2018, MHP staff conducted a preliminary literature review and looked at regulatory documents for all 351 municipalities in Massachusetts. They identified 238 jurisdictions with at least one IH policy or program. They also identified local contacts during this phase. Between January and May 2019, MHP performed in-depth document reviews for the 238 jurisdictions on the preliminary list. They reviewed municipal bylaws, zoning bylaws, and regional and municipal housing plans. This review revealed that only 198 of the 238 jurisdictions on the preliminary list had an IH program that met the definition of this study. We used this information to prefill the survey questions as much as possible. The survey was administered primarily through

email and phone. Emails were sent to survey recipients on a bi-weekly basis from August to November 2019. Throughout the survey administration, MHP staff updated the contact list regularly with new hires or personnel best suited to respond to the survey. Between November and December 2019, phone survey was the primary method for contacting recipients who had been difficult to reach or had technical challenges completing the survey.

For New York, Connecticut, and New Jersey, our regional partner, Regional Plan Association, led the data collection effort. Between December 2018 and June 2019, staff from Regional Plan Association reviewed zoning ordinances for all 1,489 municipalities in New York and all 169 municipalities in Connecticut. This preliminary process identified 87 municipalities in New York and 35 municipalities in Connecticut with at least one IH program. Detailed program information was collected during this phase to prefill the online survey. Contact information used to administer the online survey was obtained via municipal websites.

For New Jersey, document review was first based on the self-reported information from the Council on Affordable Housing (COAH) third-round petitions. The most updated information in these records ranged from December 2008 to August 2010. We were able to access program information for 232 municipalities through these records. A review of ordinances (either the housing and fair share plan or zoning code) was then conducted for the other 333 municipalities. At the end of this process, 273 municipalities in New Jersey were identified with at least one IH program.

In New York, Connecticut, and New Jersey, all municipalities identified with at least one IH program in the document review phase were asked to complete the online survey. In this three-state region, the research team also conducted in-depth interviews with program administrators from 12 municipalities to supplement the understanding of program administration and rationale of program design.

For areas other than the above-mentioned states, we started by updating the IH inventory, which included jurisdiction name, IH program name, and contact information for data collection purpose. The baseline directory was from Grounded Solutions Network's 2016 survey. Between March and November 2018, the research team identified IH programs and points of contact using multiple approaches — including literature review, keyword search in social media, and outreach to partner organizations, state and regional practitioners, policymakers, and scholars. Between December 2018 and March 2019, we reviewed ordinances to collect program information for 203 IH programs in 152 jurisdictions identified in the first phase. We prefilled the online survey form with this information. The survey was then emailed to all program contacts between April and November 2019. The data collection effort is summarized in Table 2.

Table 2. **Summary of Data Collection Effort**

State/Region	# of Jurisdictions Covered in Document Review (Total # of Jurisdictions)	# of Jurisdictions Contacted and with IH Program	# of Survey Responses	Survey Response Rate
California	528 (540)	162	125	77%
Massachusetts	351 (351)	140	136	97%
New Jersey	565 (565)	222	5	2%
New York	1,489 (1,489)	36	15	42%
Connecticut	169 (169)	22	21	95%
Other States	152 (N/A)	152	92	61%
All	**3,254**	**734**	**394**	**54%**

The research team cross-validated the data extensively to address discrepancies between information collected via ordinance review and online survey. In most cases, the research team could verify the accuracy of submitted information through ordinance review. . However, when in doubt, the research team contacted survey respondents to verify survey input.

Data Limitations

As shown in Table 2, the survey had an overall satisfactory response rate, except for in New Jersey. The lack of survey participation in New Jersey was mainly because the adoption of inclusionary zoning is often considered by local governments as a means to meet the affordability housing obligation in the state through COAH. However, with COAH being involved in legal status battles since 2010, the affordable housing agenda has taken a backseat. Therefore, data collected in New Jersey lacks a layer of validation from survey responses. Information about program management and production that relies on program staff input is either absent or based on other sources.

While the research team made great efforts and strides in documenting IH programs in all parts of the country, data collection was likely most complete in those regions where we had a regional partner. Partners were able to use their own contact lists and networks. They could also enhance survey language to match local norms. It is almost impossible to conduct an exhaustive jurisdiction-by-jurisdiction review to identify IH programs across the nation; it is inevitable to miss some IH programs, especially in states without a full scan of local IH programs. We suspect that IH programs in small municipalities and voluntary programs are particularly likely to have been missed, especially when they are not locally identified as "inclusionary housing," but simply as a tax incentive or density bonus program.

As mentioned earlier, this study does not capture some state-level policies that require or enable inclusionary housing or local IH programs that directly result from these policies. The omission of this information under-counts total IH programs as well as the total inclusionary units created in the country.

Findings

Distribution and Growth

Program Count by State: In this study, we identify a total of 1,019 IH programs in 734 local jurisdictions. They are in 31 states and the District of Columbia. The number of IH programs in each state varies widely (Table 3 *on the next page*).

With 287 IH programs in 222 municipalities, New Jersey has the highest share of IH programs and municipalities with IH programs. California ranks second in the number of jurisdictions (162) with IH programs, while its IH program count (228) is third in the country, falling just short of Massachusetts. Massachusetts ranks third with 140 municipalities and has the second highest number of IH programs (236). Together, the IH programs in New Jersey, California, and Massachusetts make up 74% of the IH programs across the country. In all three states, the state constitution provides local jurisdictions with home-rule authority, which authorizes jurisdictions to pass laws to govern themselves. In addition, these states either expressly authorize by statute particular inclusionary measures (e.g. Massachusetts and California), and/or require the development of affordable housing in jurisdictions which lack it (e.g. Massachusetts and New Jersey). In the latter case, IH is often the mechanism to meet these requirements.

Four states with a substantial number of IH programs form the next tier. They are New York (42 IH programs in 36 jurisdictions), Washington (33 IH programs in 18 jurisdictions), Florida (30 IH programs in 23 jurisdictions), and Connecticut (23 IH programs in 22 municipalities). These four states are home to 13% of all IH programs.

The majority (71%) of 734 jurisdictions have only one IH program, and 23% of jurisdictions have two IH programs. Common reasons for multiple programs in one jurisdiction include: one program is traditional inclusionary zoning policy and the other is fee-based IH program; one program is mandatory and the other is voluntary; one program applies to for-sale developments only and the other applies to rental developments; and different programs apply to distinct geographic areas. A small portion of jurisdictions (6%) have more than two IH programs, and the majority of them are concentrated in Massachusetts. In Austin, Texas, there are nine IH programs. This is because inclusionary zoning in the city's ordinances are administered in distinct zones, rather than citywide.

Table 3. **Jurisdiction and Program Count by State/District**

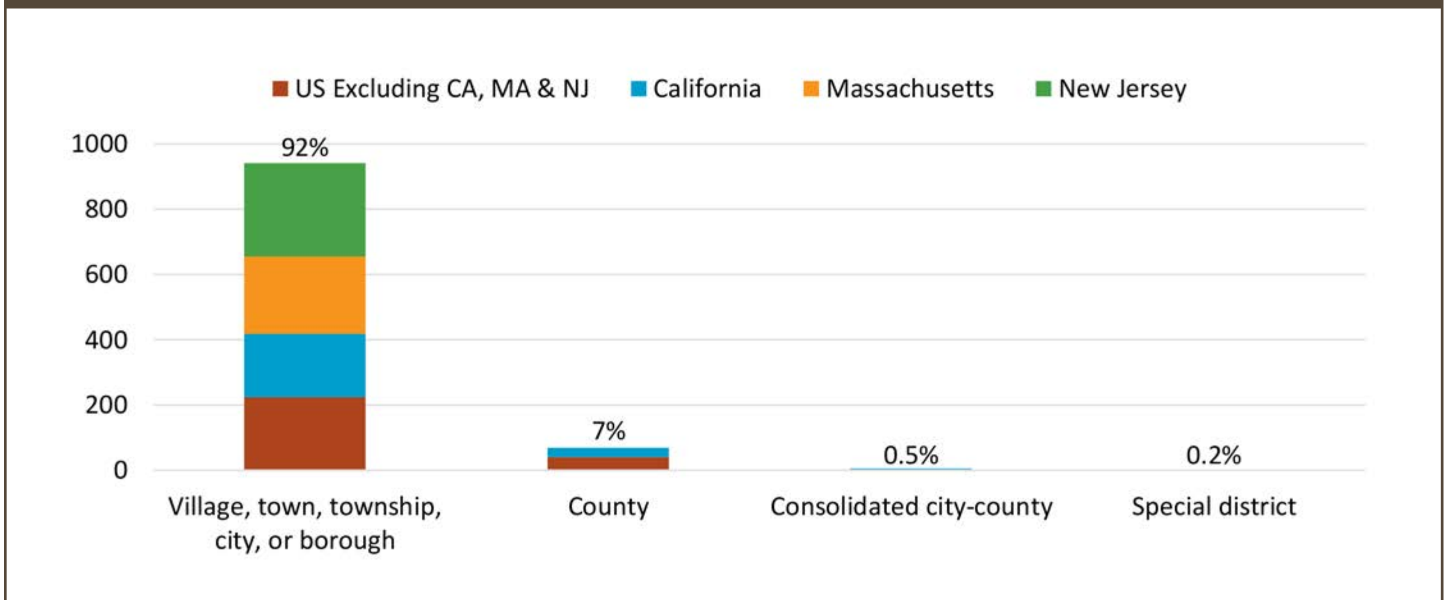
State/District	Count (%) of Jurisdictions with Inclusionary Housing Programs	Count (%) of Inclusionary Housing Programs
New Jersey	222 (30.2%)	287 (28.2%)
California	162 (22.1%)	228 (22.4%)
Massachusetts	140 (19.1%)	236 (23.2%)
New York	36 (4.9%)	42 (4.1%)
Florida	23 (3.1%)	30 (2.9%)
Connecticut	22 (3%)	23 (2.3%)
New Hampshire	19 (2.6%)	19 (1.9%)
Washington	18 (2.5%)	33 (3.2%)
North Carolina	13 (1.8%)	15 (1.5%)
Colorado	12 (1.6%)	16 (1.6%)
Rhode Island	10 (1.4%)	10 (1%)
Maryland	9 (1.2%)	10 (1%)
Minnesota	7 (1%)	7 (0.7%)
Illinois	6 (0.8%)	7 (0.7%)
Virginia	5 (0.7%)	8 (0.8%)
Oregon	4 (0.5%)	8 (0.8%)
Pennsylvania	4 (0.5%)	4 (0.4%)
Delaware	2 (0.3%)	4 (0.4%)
Georgia	2 (0.3%)	4 (0.4%)
Hawaii	2 (0.3%)	2 (0.2%)
Montana	2 (0.3%)	2 (0.2%)
Utah	2 (0.3%)	2 (0.2%)
Vermont	2 (0.3%)	2 (0.2%)
Wyoming	2 (0.3%)	2 (0.2%)
Texas	1 (0.1%)	9 (0.9%)
District of Columbia	1 (0.1%)	2 (0.2%)
Maine	1 (0.1%)	2 (0.2%)
Idaho	1 (0.1%)	1 (0.1%)
Michigan	1 (0.1%)	1 (0.1%)
New Mexico	1 (0.1%)	1 (0.1%)
Ohio	1 (0.1%)	1 (0.1%)
Tennessee	1 (0.1%)	1 (0.1%)
Total	**734**	**1,019**

Program Count by Government Type: As shown in Figure 1, most (n = 942, or 92%) IH programs are located in municipalities and are dependent on the state's system and organization of local governments. For example, in Connecticut and Massachusetts, IH programs are located in either towns or cities. In New Jersey, IH programs are located in one of the five forms of government: township, town, city, borough, or village.

In addition, 70 programs (7% of all programs) are at the county level. California and Florida have a relatively high number of county-level IH programs (n = 29 and 17, respectively). Maryland and Virginia each have five county-level IH programs, and Delaware has four. Together, programs in Florida, Maryland, Virginia, and Delaware make up a noticeable share of programs at the county level for areas other than the California, Massachusetts, and New Jersey (Figure 1).

There are five programs in consolidated city-county government: four programs in San Francisco, California, and one in Denver, Colorado. Finally, there are two IH programs in Washington, D.C.

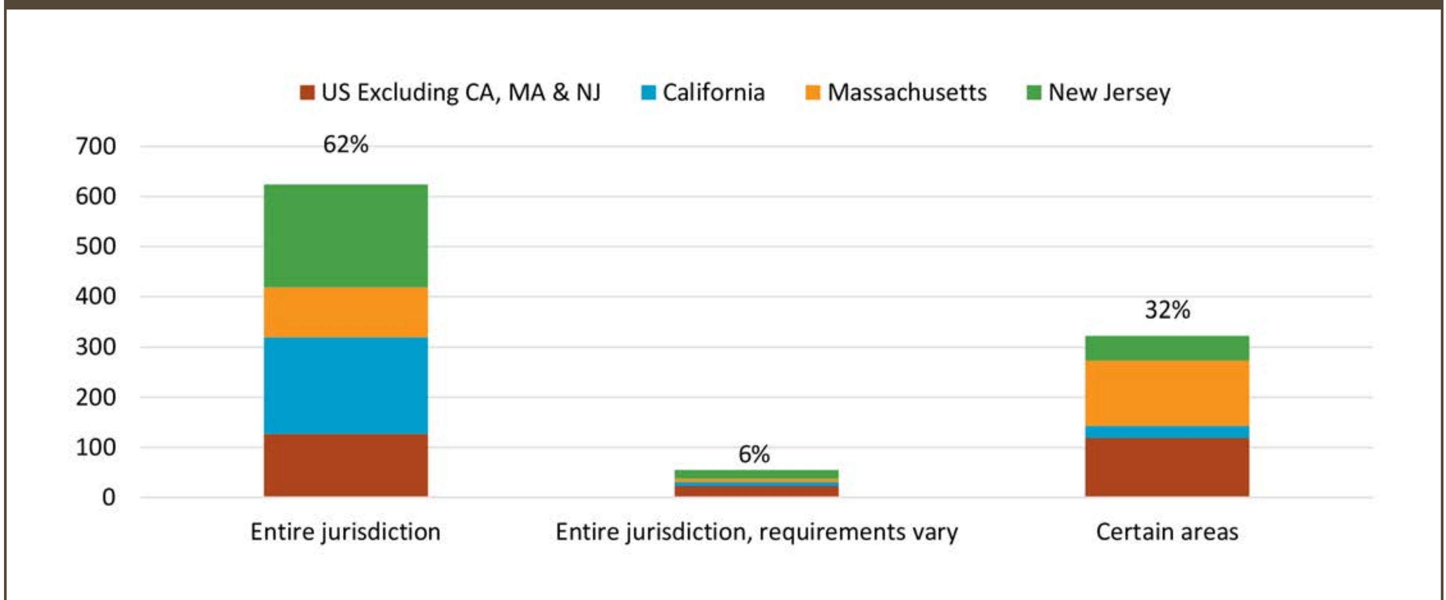
Figure 1. **Program Count and Percentage by Government Type** (n = 1,019, or 100% of all)[11]



Program Count by Area Coverage: The majority of IH programs (n = 624, or 62%) were in place across the jurisdiction. In these localities, inclusionary provisions are uniform. Another 55 IH programs (6%) apply to the entire jurisdiction, but requirements vary by zones, neighborhood, or districts. Nearly one in three IH programs (n = 322, or 32%) apply only to certain zones, neighborhoods, or districts (Figure 2 *on the next page*).

In practicality, however, the distinction between blanket IH programs and those only applying to certain areas may not be that substantive. In some cases, blanket inclusionary zoning policies are geographically limited only to certain areas, as these policies are highly dependent on the underlying zoning to support proper development. Even if many zoning districts are subject to the policy, those zones simply do not have the underlying zoning codes to support a dense development that would trigger inclusionary zoning requirements. Physical infrastructure, such as sewer capacity, may also serve as a constraint to denser development.

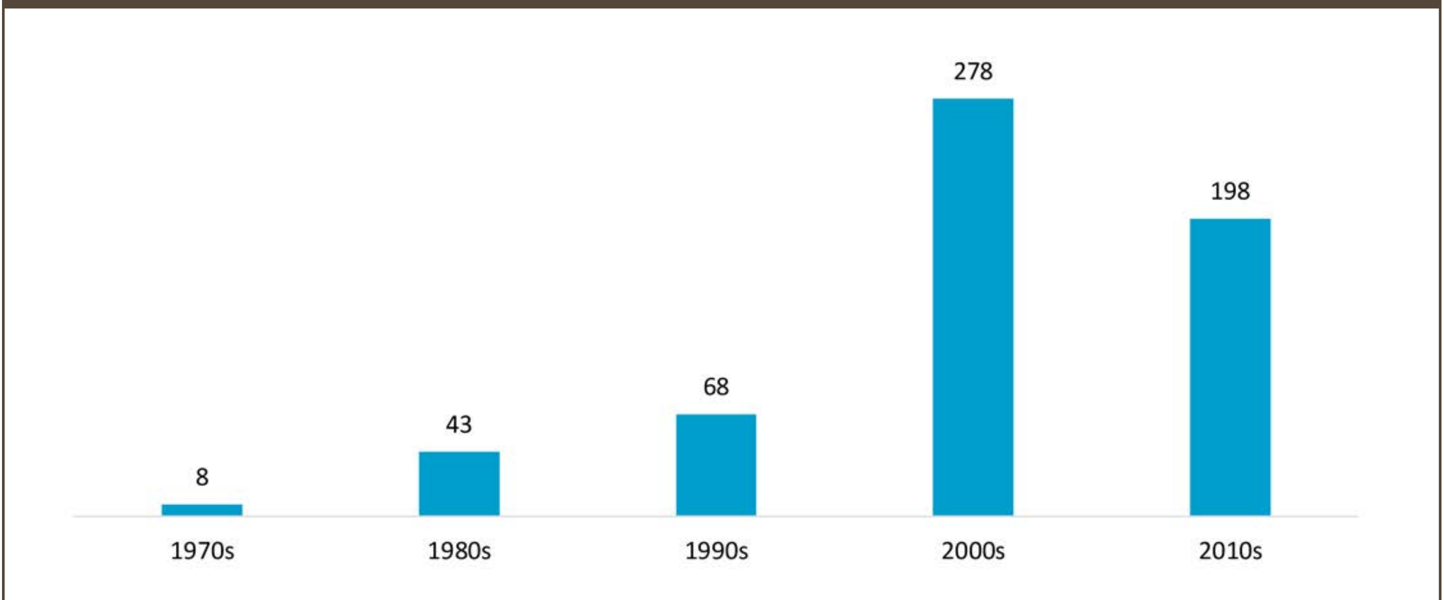
Figure 2. **Program Count and Percentage by Area Coverage** (n = 1,001, or 98% of all)



Program Adoption by Decade: This study collects data on the year in which an IH program was adopted. The subgroup of 595 IH programs (58% of all programs) with a known year of adoption shows that the history of IH programs in the U.S. spans over six decades. The oldest IH program in the dataset is the inclusionary zoning provision in Newton, Massachusetts, which was put in place in 1972. In each of the subsequent five decades, the number of adopted IH programs was eight (1%), 43 (7%), 68 (11%), 278 (47%), and 198 (33%), respectively. The peak of IH program adoption started in 2003 and lasted until 2010. On average, 33 IH programs were adopted per year during this eight-year period. The rates of adoption have dropped since 2011, with an average annual adoption rate of 19 programs between 2011 and 2019 (Figure 3).

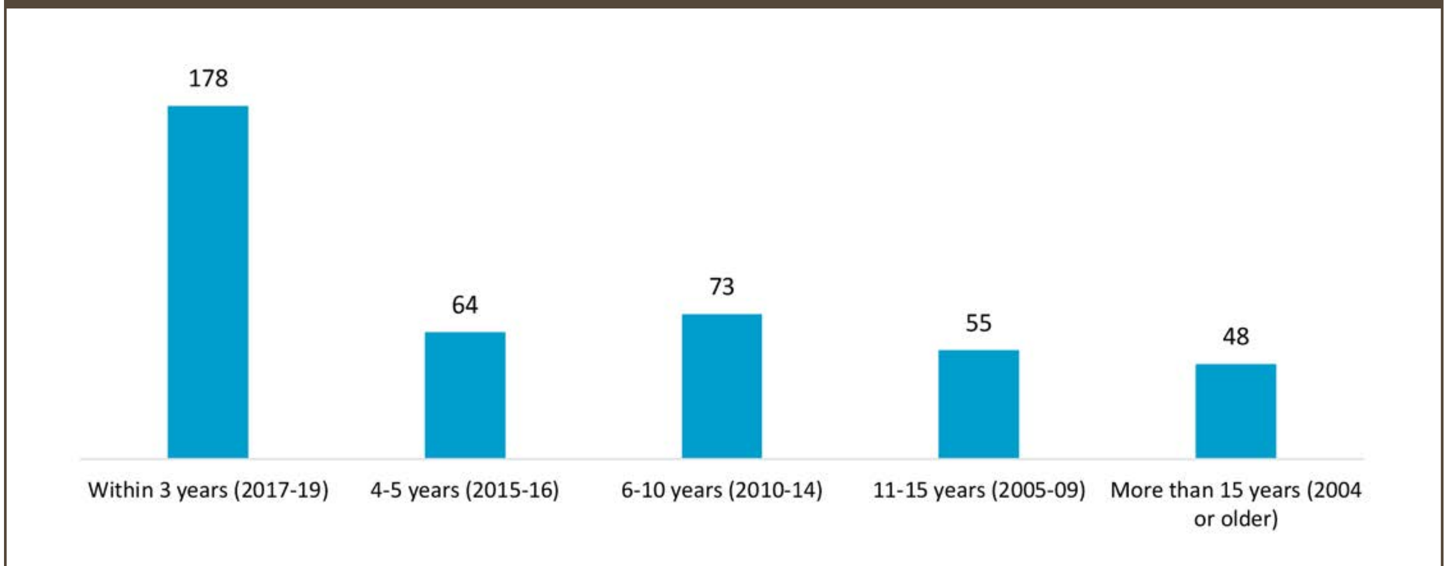
One important caveat to our assessment is our inability to obtain 'year of adoption' information for any programs in the state of New Jersey (n = 287, or 68% of all IH programs with unknown adoption year). As stated earlier, many IH programs in New Jersey were adopted in response to the Fair Housing Act in 1985. Hence, IH adoption in New Jersey most likely occurred during the 1990s and 2000s, which, if accounted for in the overall national distribution, may shift the predominant adoption decade to the 1990s rather than the 2000s, as shown in the current trends.

Figure 3. **Program Count by Decade** (n = 595, or 58% of all)



Program Amendment: IH programs may be amended to either become more effective in achieving the policy goal and/or adapt to market dynamics. To understand how frequently and when program amendments occurred, we asked respondents to provide the year there was a significant legislative update to the program. With a relatively small subset of 418 programs, or 41% of all programs (excluding programs in New Jersey), we found that two in five programs (42%) had undergone a significant update within the past three years. Only a quarter of IH programs were amended more than 10 years ago.12 In addition, 613 survey respondents answered whether their programs were currently under review. About one in five programs (22%) in the subset were under review when the survey was conducted. Together, these findings suggest that IH program amendments are quite common (Figure 4).

Figure 4. **Program Count by Number of Years Since Last Significant Legislative Update** (n = 418, or 41% of all)



[12] The finding about the most recent year of program legislative update should be interpreted in caution. Programs with the most recent year of legislative update dated a longer period ago may not report the year due to staff turnover or other reasons. Also, IH programs in New Jersey — whose information about this data point is not collected in this study — may not undergo as frequent updates in recent years as those in the rest of country due to the state's legal battles. Both factors contribute to the likely overestimation of IH programs that have undergone legislative updates in recent years. And the omission of IH programs in New Jersey is likely to contribute to overestimation of IH programs that were currently under review.

Practices

Of 1,019 IH programs, 685 (67%) are traditional IH programs and 334 (33%) are linkage/impact fee programs (Table 4). California and Massachusetts have a large number of traditional programs (144 and 230, respectively). Other states with a substantial number of traditional IH programs include New Jersey (n = 57), New York (n = 42), Washington (n = 33), and Florida (n = 28). For linkage/impact fee programs, the majority (n = 230, or 69% of all linkage/impact fee programs) were in New Jersey (known as development fee programs in this state). California also has a large number of linkage/impact fee programs (n = 84, or 25% of all linkage/impact fee programs). Other states either have a few or no linkage/impact fee programs.

Table 4. **Program Type Breakdown**

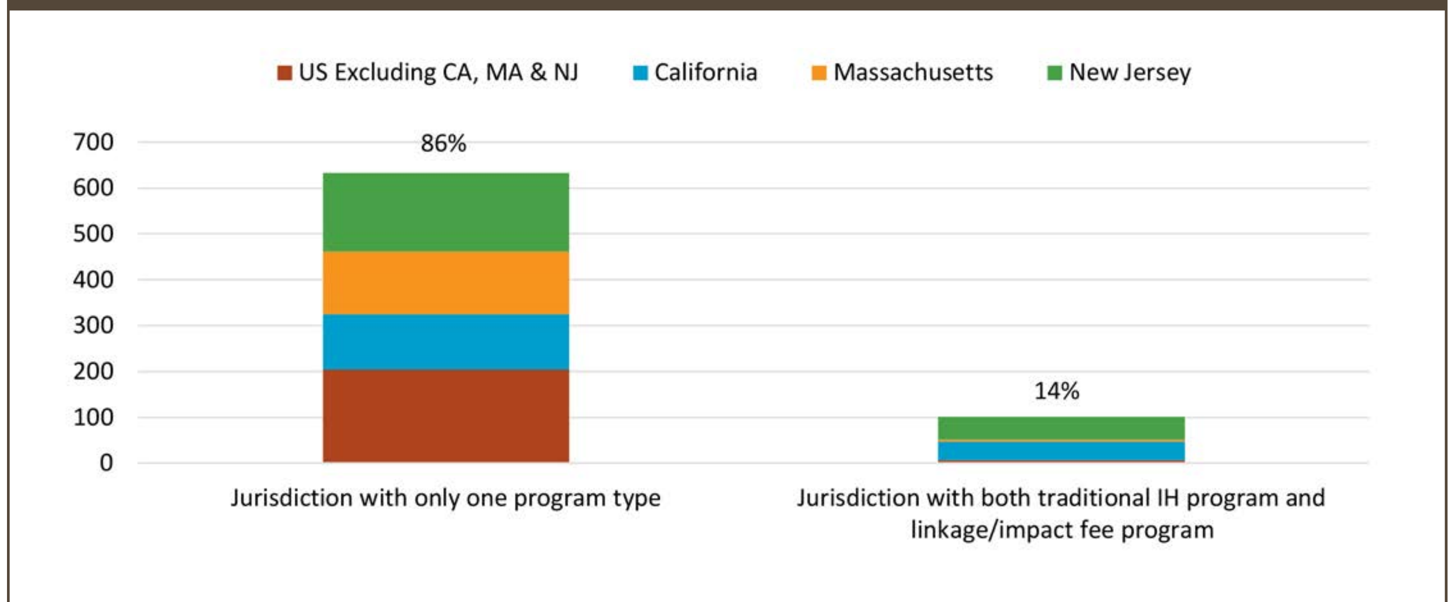
State/District	Count of Traditional IH Programs	Count of Linkage/Impact Fee Programs
California	144	84
Colorado	12	4
Connecticut	22	1
Delaware	4	0
District of Columbia	1	1
Florida	28	2
Georgia	4	0
Hawaii	2	0
Idaho	1	0
Illinois	7	0
Maine	2	0
Maryland	10	0
Massachusetts	230	6
Michigan	1	0
Minnesota	5	2
Montana	2	0
New Hampshire	19	0
New Jersey	57	230
New Mexico	1	0
New York	42	0
North Carolina	15	0
Ohio	1	0
Oregon	5	3
Pennsylvania	4	0
Rhode Island	10	0
Tennessee	1	0
Texas	9	0
Utah	2	0
Vermont	7	1
Virginia	2	0
Washington	33	0
Wyoming	2	0
Total	**685**	**334**

Usually jurisdictions choose either a traditional IH program or a linkage/impact fee program, not both. Across the nation, only 14% of jurisdictions that have inclusionary housing programs have adopted both a traditional IH program and a linkage/impact fee program (Figure 5). If we take out California and New Jersey, where a relatively high share of jurisdictions have both types of IH programs (25% and 23%, respectively), only 3% of jurisdictions have both types of IH programs.

The intention of distinguishing traditional IH programs from linkage/impact fee programs was to understand which IH programs were designed to directly yield affordable units either on-site within market-rate buildings, or off-site in a different location; and which ones generate fees for the development of affordable housing from a broader range of development types. In practice, however, such distinction may not be as obvious as it sounds. Discretion was given to survey respondents in deciding the number and type of programs in the jurisdiction. Although respondents may apply different standards in categorizing their own IH programs, which can cause inconsistency, we believe this is a more accurate approach as respondents can factor in program outcome in determining program type. For example, the Inclusionary Affordable Housing Program in San Francisco, California, was reported as a linkage fee program in this survey because the survey respondent noted that it was technically a fee program with on-site and other alternatives.

In the following section, we report findings on traditional programs and linkage/impact fee programs separately, as they have two distinct sets of survey questions. For traditional linkage fee programs, we report findings in five groups: programs in California only, those in Massachusetts only, those in New Jersey only, those in other areas, and all programs. Since programs in Massachusetts, California, and New Jersey are tied closely to the corresponding state's mandate, it is helpful to explore distinctive program characteristics in these states. For each program feature, we first describe an overall trend and then describe specific trends in the states of Massachusetts, California, and New Jersey.

Figure 5. **Jurisdiction Count and Percentage by Coexistence of Program type** (n = 734, or 100% of all)



Traditional IH Programs

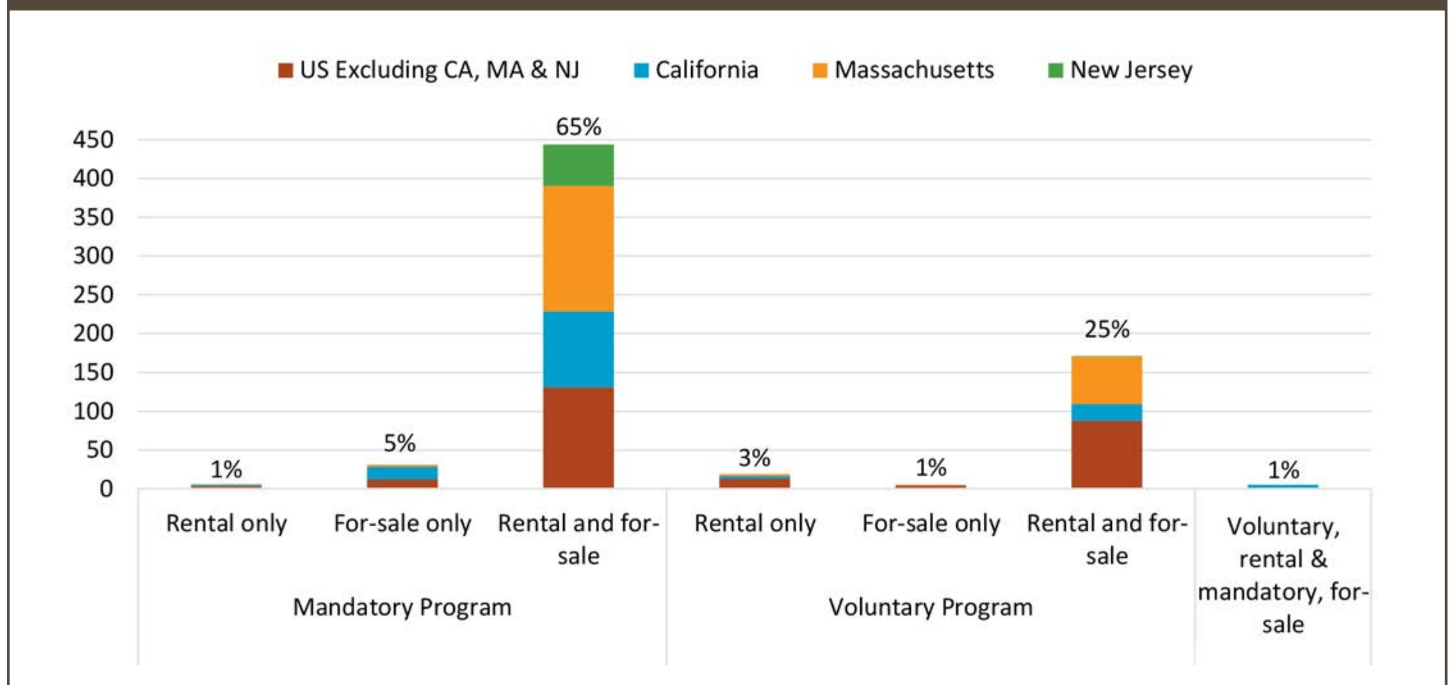
Traditional Program Features

Program Type and Development Type: Traditional IH programs were grouped by the type of program (voluntary or mandatory) and development type (for-sale, rental, or both). The distinction between mandatory and voluntary programs lies in whether developers can choose to opt out of the program. In other words, they are required to provide affordable housing in the former and may choose to provide affordable housing in the latter.

Overall, mandatory programs far outnumber voluntary programs; there are two-and-a-half times as many mandatory programs as voluntary programs. Also, nine out of 10 programs apply to both for-sale and rental developments. Of 681 programs for which program type and development type were identified (out of 685 traditional programs), 65% are mandatory programs that apply to for-sale and rental developments, and another 25% are voluntary programs that apply to both types of developments. There are five programs — four in California and one in North Carolina — that are mandatory in the case of for-sale developments and voluntary for rental developments. Notably, a majority of programs in New Hampshire, Washington, and Florida are voluntary programs applying to both types of housing tenure. Excluding California, Massachusetts, and New Jersey, the share of this program type is substantially higher in the U.S. (34%) than each of the three comparing states (15%, 27%, and 2%, respectively). This pattern may suggest that states with legal framework favoring adoption of local IH programs are more likely to result in mandatory programs (Figure 6).

Incentives: Incentives are commonly used as mechanisms to reduce the financial impacts of inclusionary requirements. IH programs offer a variety of incentives, with density bonuses being most common. Overall, 382 out of 671 programs (57%) use density bonus as an incentive to offset the cost of providing affordable housing units. The next most commonly used incentive is to offer other zoning variances (24%), such as reduction in site development standards, modification of architectural design requirements, and reduction in parking requirements. Other less commonly used incentives include waivers, reduction or deferral of development and administrative fees and/or financing fees (17%), expedited processing (13%), concessions on the size and cost of finishes of affordable units (11%), tax relief abatement (6%), and direct public subsidy (4%). Survey respondents also describe other incentives, such as issuing certificates of affordable housing credits, which are transferable and can be sold, and technical

Figure 6. **Program Count and Percentage by Program Type and Development type** (n = 681, or 99.4% of all)



assistance from the city. Notably, 29% of programs do not offer any incentives, whereas 35% of programs – including some mandatory programs – offer more than one type of incentive (Figure 7).

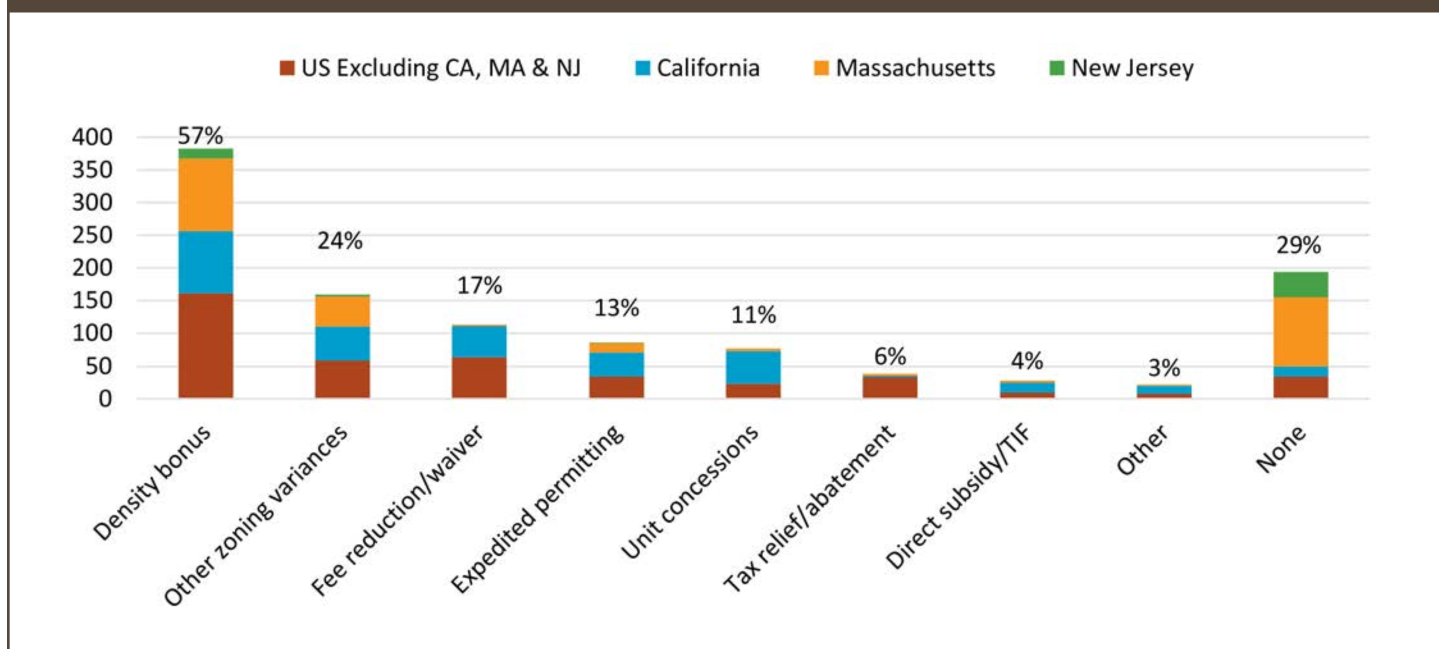
Distribution of incentives are quite different in the three states with the majority of IH programs. A relatively higher share of IH programs in California use incentives other than density bonus. In Massachusetts, nearly half (48%) of programs do not offer any incentives, and for those do, density bonus and other zoning variances are the most common (48% and 20%, respectively). In New Jersey, two in three programs (68%) do not offer any incentives, and only about one in four programs offer density bonus (27%). Other types of incentives are barely or never offered in New Jersey. Excluding California, Massachusetts, and New Jersey, the use of incentives is diverse and similar to the nationwide pattern.

Compliance Options: Developers can be given options for how to contribute to the creation of affordable housing under an IH program. Providing on-site affordable units is the predominant way developers are asked or required to contribute to affordable housing. Almost all IH programs in the subset of those who responded (674 out of 679 programs, or 99%) include the provision of on-site affordable housing units as the sole way (41%) or as one option among others for developers (58%). Commonly offered alternative compliance options are paying a fee (49%) and building off-site affordable units (42%). Less commonly offered options are land donation (21%), preserving/rehabilitating regulated units (13%), and purchasing/renovating unregulated units (11%). Other alternative options included purchasing/using/transferring affordable housing/community credits, conversion from non-residential use to affordable housing, and relocation assistance for residents in old developments (Figure 8 *on next page*).

Excluding California and New Jersey, most states follow the national pattern in choice of compliance options. California IH programs are more likely to use alternative options. Three options — paying an in-lieu fee (75%), building off-site units (67%), and donating land (56%) — are particularly popular. New Jersey IH programs are more likely to allow options such as paying in-lieu fee (74%) and preserving/rehabilitating regulated units (39%). The option of purchasing/renovating unregulated units (2%) is rarely offered. And donating land (0%) is never offered.

Survey respondents in California answered additional questions about compliance options. Most programs (109 out of 134 programs, or 81%) report that building on-site is either the sole way or the first option. About one in three programs (35 out of 100 programs, or 35%) report that paying an in-lieu fee is the most used alternative option. Substantially fewer programs report that donating land (10 out of 73 programs, or 14%) or building off-site affordable housing (11 out of 87

Figure 7. **Program Count and Percentage by Incentive** (n = 673, or 98% of all)



programs, or 13%) is the most used alternative option.[13] When asked who decides which compliance option is selected, 54 programs report a managing government agency as the deciding authority, 18 report that developers may choose, and 13 report that the decision is a result of negotiation between the government and developers. Another 21 programs reported that such decisions vary across developments.

Figure 8. **Program Count and Percentage by Compliance Options** (n = 679, or 99% of all)

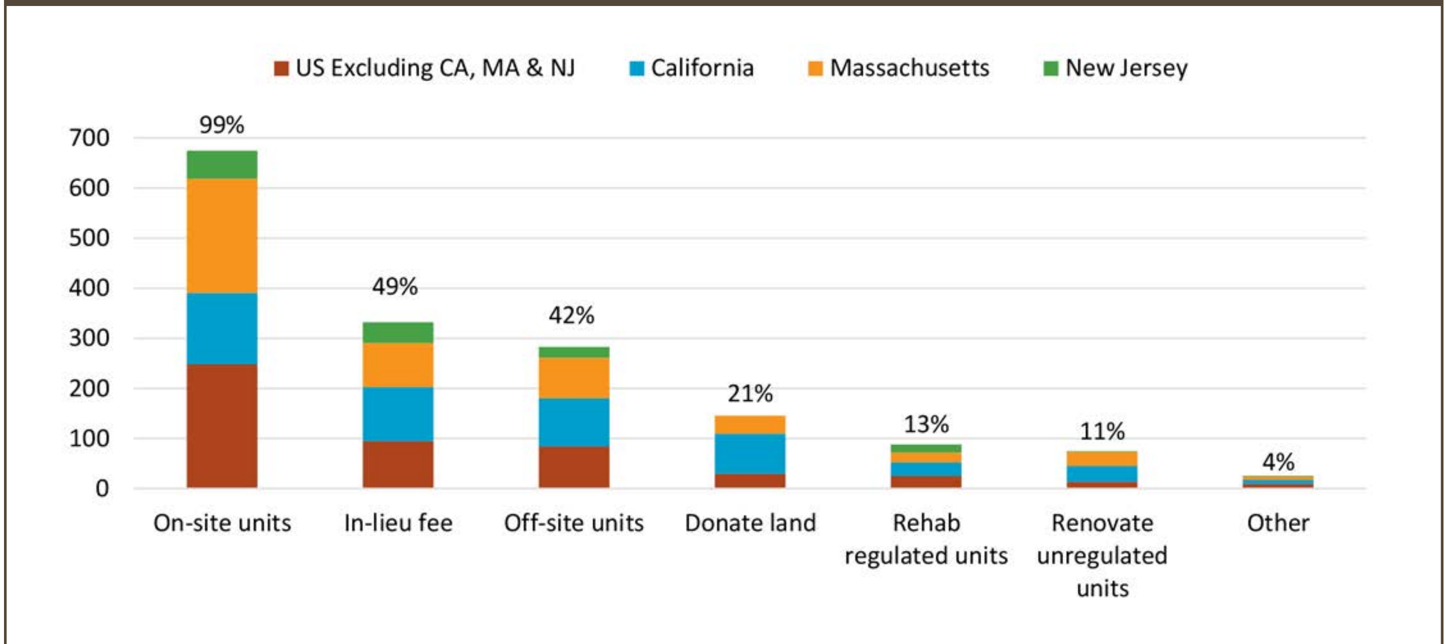
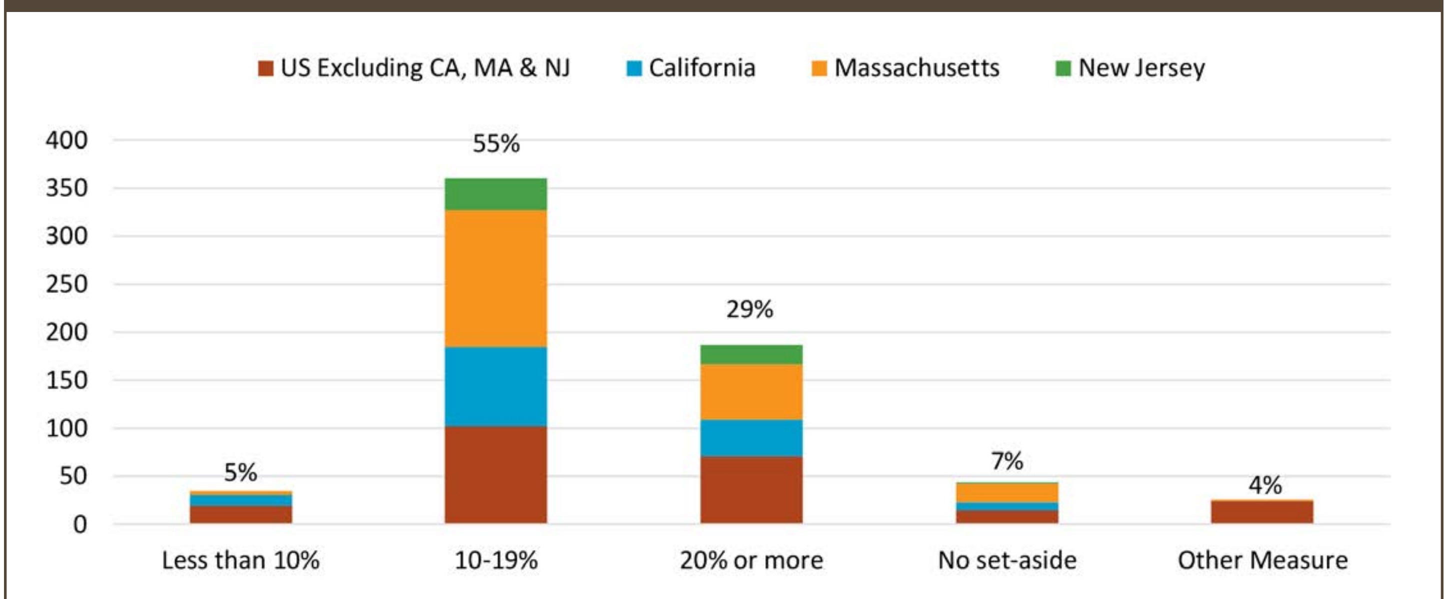


Figure 9. **Program Count and Percentage Levels of Minimum Percentage of Affordable Housing Required** (affordable housing set-aside) (n = 652, or 97% of all programs with on-site option)

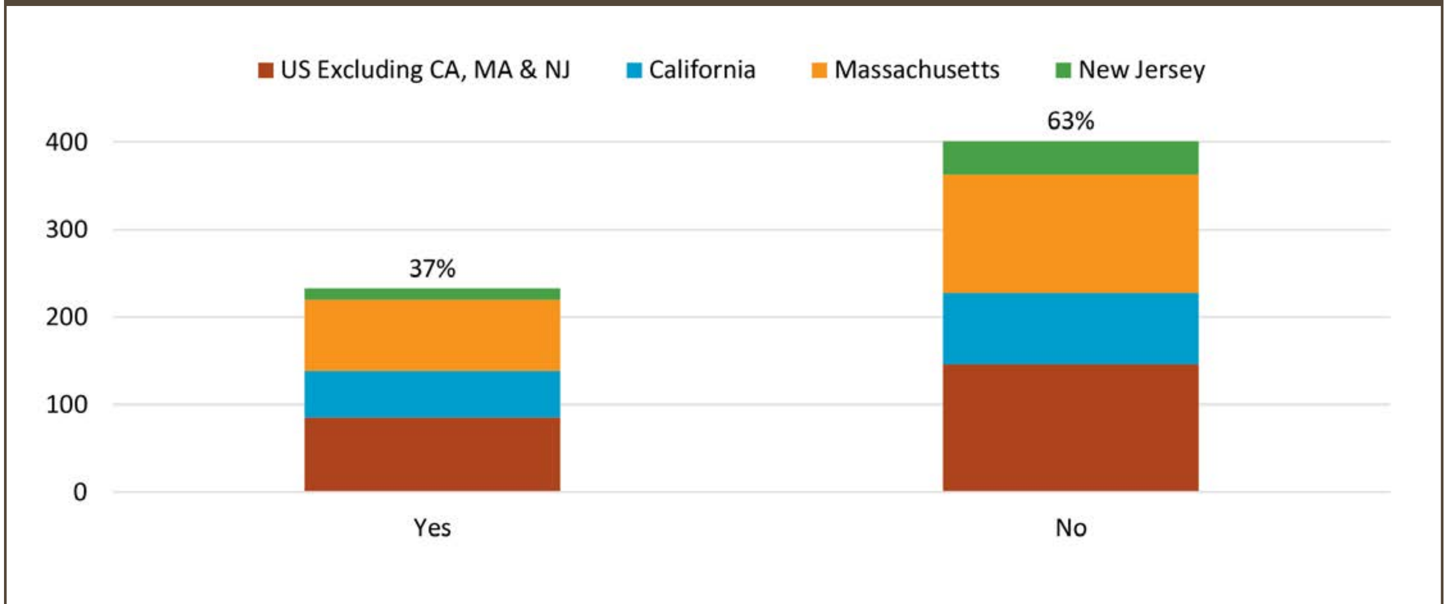


[13] The number of programs in California for each compliance option is fewer here than what is listed in the paragraph above. This is because some programs answered "don't know" for this set of additional questions.

Affordable Housing Set-Asides: To regulate how much of affordable housing needs developers should be expected to meet, IH programs typically establish a basic requirement as a percentage of the total units that must be set aside to be rented or sold at affordable prices on-site. Of 652 IH programs that provided an answer,[14] 5% (n = 35) require less than 10% of housing units, 55% (n = 360) require 10% to 20% of housing units, 29% (n = 187) require 20% of housing units or more, and 4% (n = 26) require other units of measure including square footage area and number of employees generated (for mixed-use land developments) (Figure 9). Note that we chose 20% as one of the thresholds for this analysis because a 20% affordability set-aside is a minimum requirement for multiple Duty to Serve[15] activities, including Residential Economic Diversity and State and Local Affordable Housing activities. The average set-aside percentage for those reporting housing unit as the unit of measure is 16%. If we count programs with any set-aside requirement at 20% or more, there are 249 programs nationwide, or 40% of all programs that provided such information. The percentage of programs with 20% or higher affordable housing set-aside is even higher in areas excluding the three states. There are 44 IH programs (6%) that report not having a minimum set-aside requirement. These programs are most likely to be voluntary programs and/or have varying minimum percentage requirements.

The set-aside requirements vary for about one in three IH programs (n = 233, or 37%).[16] The variation is based on a wide range of factors, including level of affordability, project size or density, geographic location, targeted population, tenure, percentage of open space, and case-by-case negotiations with the developer (Figure 10).

Figure 10. **Program Count and Percentage by Whether Set-Aside varies** (n = 635, or 94% of all programs with on-site option)



[14] Out of 674, or 97% of programs that have an on-site affordable housing contribution option and were asked about affordable housing set-aside.

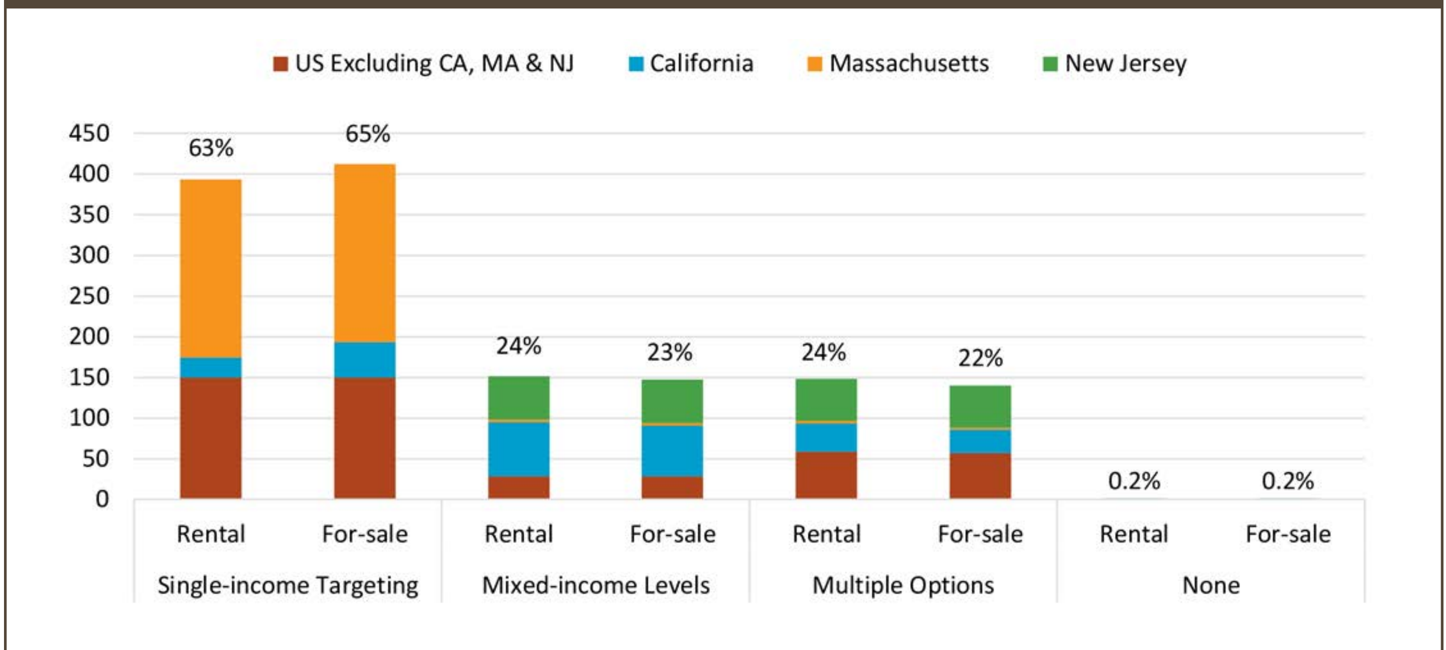
[15] The Enterprises — Fannie Mae and Freddie Mac — can get credit for purchasing mortgages on multifamily or single-family building that meet this threshold.

[16] We ask the question about set-aside variation to all IH programs with an on-site affordable housing contribution option, regardless of whether an IH program reported having a minimum set-aside requirement.

Income Requirement: Cities set income targets for affordable units created through IH programs. For on-site affordable units, this study collects information about income requirements for rental units and for-sale developments. The majority of the IH programs — 61% of rental programs and 64% of for-sale programs — use a single income targeting requirement by setting either a maximum income level or an income range. Some jurisdictions prefer to address local housing needs across lower-income groups. There are two main approaches in which income targets are set, and under one IH program, both may be employed. First, the mixed-income level approach requires affordable units created to be allocated across multiple income groups (e.g. 25% of affordable units at 50% AMI and 75% of affordable units at 80% AMI). About one-quarter of programs (both rental and for-sale developments) employ the mixed-income level approach. The other approach, multiple-income targeting, offers developers different options to serve lower-income residents, often tying income requirements to project size, incentives, or level of set-aside (e.g. 5% affordable housing set-aside at 30% AMI or 10% set-aside at 60% AMI). Nearly one-quarter of programs (both rental and for-sale developments) offer multiple income targeting options to developments (Figure 11).

Programs in areas excluding California, Massachusetts, and New Jersey generally follow the nationwide pattern of income requirement types. On the other hand, the approach of income targets varies widely across the three states. In California, mixed-income level approach is the dominant approach, particularly for programs applying to rental projects (56% for those applying to rental development and 49% for those applying to for-sale development). Only one in five programs applying to rental development and one in three applying to for-sale development employ the single-income targeting approach. In Massachusetts, almost all IH programs (99%) follow the single-income requirement of Subsidized Housing Inventory (SHI), which requires both rental and ownership units affordable to households at 80% AMI or below.[17] Most municipalities in New Jersey follow the state's Uniform Housing Affordability Controls

Figure 11. **Program Count and Percentage by Type of Income Requirement** (n = 628, or 93% of all rental programs with on-site option; n = 635, or 94% of all for-sale programs with on-site option)



[17] However, the uniformity of maximum income for IH programs in Massachusetts documented in the study may undermine the fact that some survey respondents did not answer or did not know about varying income limits within their bylaws. Despite this potential miss recording of income limit variations, units must not exceed the 80% AMI affordability threshold in order to qualify for the SHI.

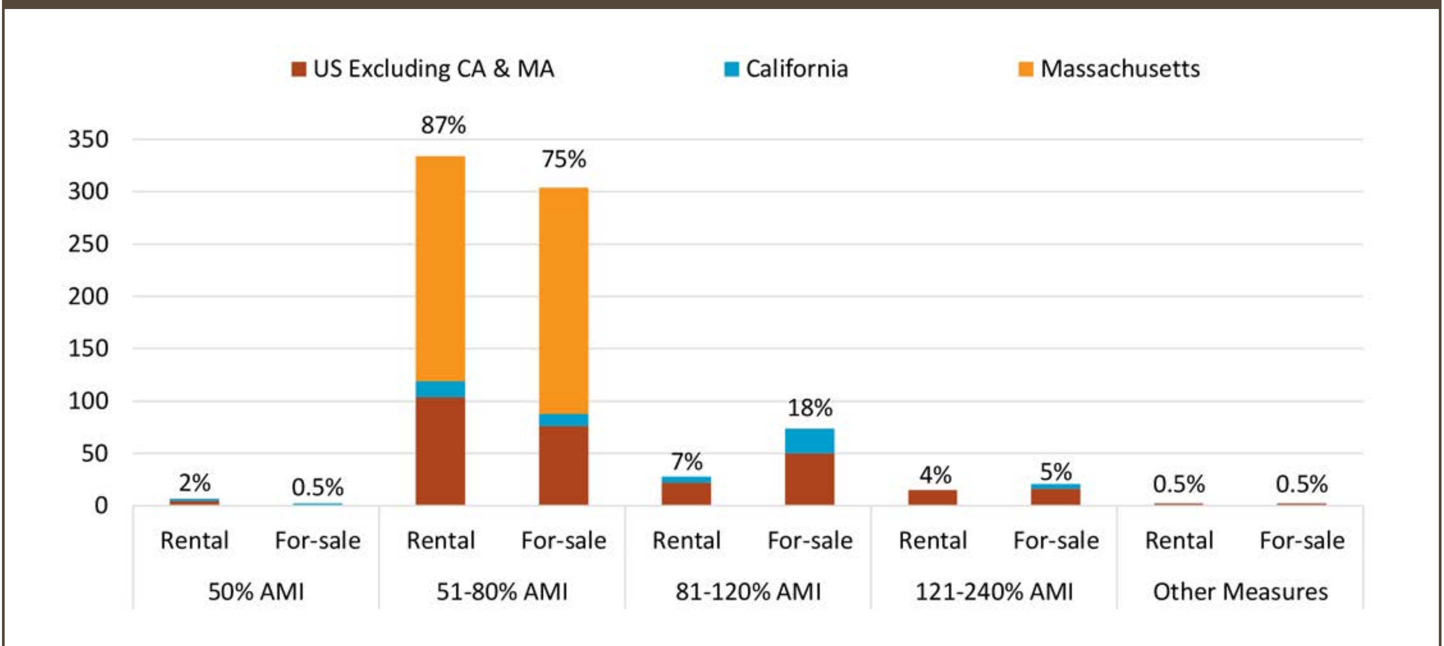
(UHAC) guidelines, which offer multiple options for developers to comply, along with allocating affordable units to low- and moderate-income households (hence are subject to mixed-income level approach).

For programs with known single income targeting requirement (n = 386 for those applying to rental development and 403 for those applying to for-sale development), the majority (87% for rental and 75% for for-sale) set the maximum income of eligible households between 51% and 80% AMI, which is defined by HUD as low-income households. The most commonly used income ceiling is 80% AMI; 290 rental programs (75%) and 297 for-sale programs (74%) set maximum income requirement at 80% AMI. Generally, rental developments provide deeper affordability than for-sale developments. Twenty-two percent of programs (n = 86) set the maximum income at 81% AMI or above for rental developments, compared to 47% of programs (n = 190) for for-sale developments. Only two programs with single income targeting requirement (one in Connecticut and one in New York) did not use HUD-defined income limits; instead, income limits were based upon the median salary of full-time town employees (Figure 12).

Single income targeting requirements varies widely across the nation. For programs located in areas outside of California and Massachusetts, the majority of inclusionary units are made affordable for low-income households, but it is not as dominant as the nationwide pattern. This is particularly the case for for-sale units, where a significant share is made affordable to moderate-income households (defined as households earning 81 – 120% AMI). In California, the dominant maximum income threshold is at 80% AMI for programs with rental developments and at 120% AMI for those with for-sale developments. In Massachusetts, almost all programs comply with SHI's income targeting requirement and set the maximum income limit at 80% AMI. Only one program in Ipswich, Massachusetts, requires deeper affordability at 60% AMI for its rental developments.

Programs targeting multiple income groups often follow HUD's income group categorization. Of 109 programs, the average percentage allocation set for rental developments at each income level is 2% for extremely low-income households (30% AMI and below), 17% for very low-income (31 – 50% AMI), 47% for low-income,

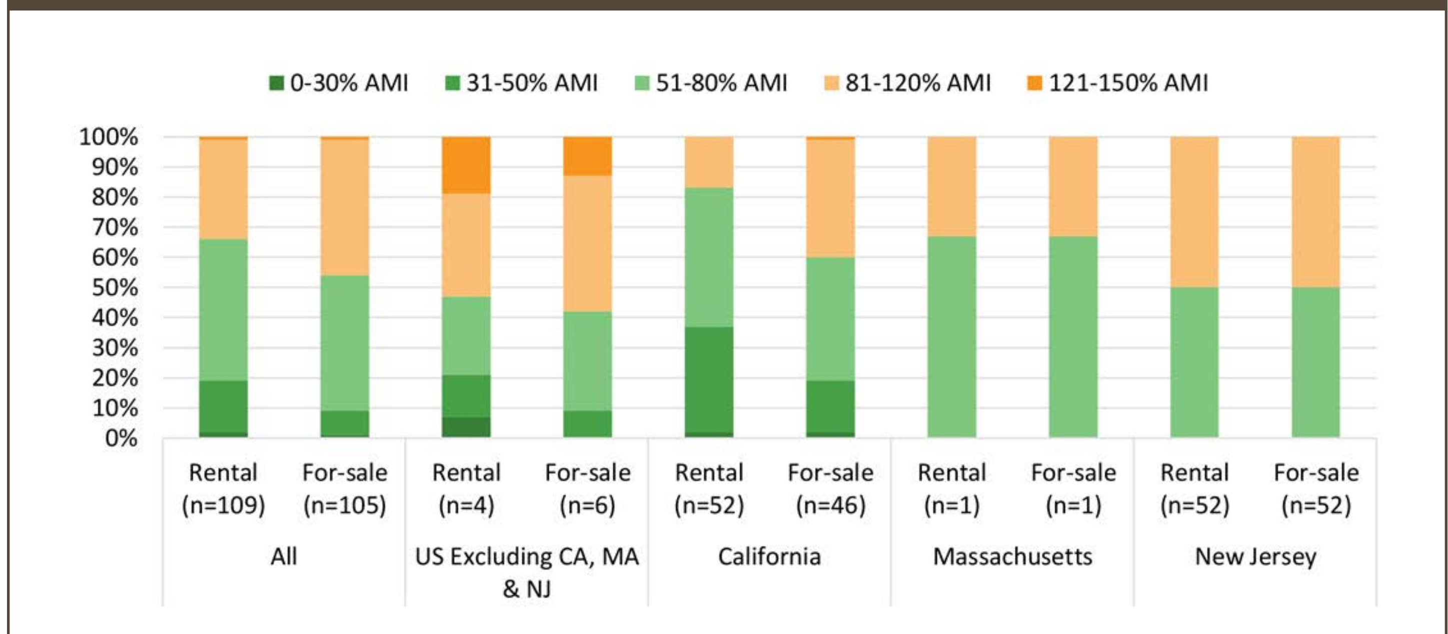
Figure 12. **Program Count and Percentage by the Range of Maximum Income Level**
(n = 386, or 98% of all rental programs with single-income targeting requirements; n = 403, or 98% of all for-sale programs with single-income targeting requirements)



33% for moderate-income, and 1% for above-moderate income (121 – 150% AMI). Again, rental units provide deeper affordability than for-sale units, which has lower percentage allocation in extremely low- and very low-income levels (1% and 8%, respectively) but higher in the moderate-income level (44%).[18] The focus of low- and moderate-income groups seen in the overall pattern is consistent across regions, except that in California programs require deeper affordability for rental developments (35% for very low-income level) (Figure 13).

Thirty-four IH programs report using different income thresholds to determine unit mix. Some use HUD's income limits as the reference while applying different percentage thresholds from HUD-defined standard income groups. For example, the inclusionary housing program in Somerville, Massachusetts, sets income thresholds at 50% AMI, 80% AMI, and 100% AMI, respectively for rental developments, and 80% AMI, 110% AMI, and 140% AMI, respectively for homeownership developments. Other programs take city median income as the reference. Still others tie income targeting requirements to subsidized housing programs. For example, Watsonville, California, requires a quarter of affordable units created through its Affordable Housing Ordinance to be occupied by households participating in the federal Housing Choice Voucher program, which typically serves an extremely low-income population.

Figure 13. **Average Percentage Allocation for Mixed-Income Targeting Requirements** (n = 109 for rental programs and n = 105 for for-sale programs)[19]



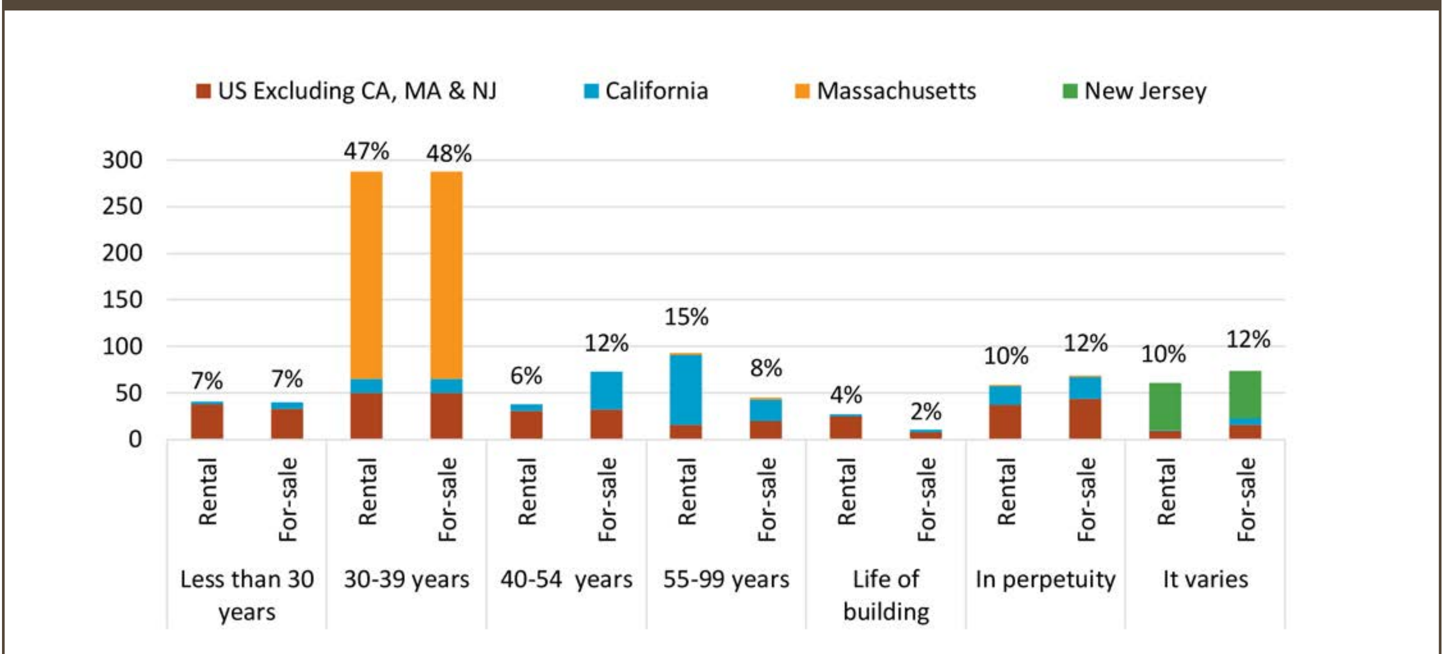
[18] It is unlikely that a program would set an income requirement for extremely low income (households earning 30% AMI or below) on homeownership, yet we found two programs in California that did so. This could be a reporting error or that they are pairing with other affordable housing programs with deeper affordability.

[19] Note small number of programs for Massachusetts and areas excluding California, Massachusetts, New Jersey.

Affordability Term: As shown in Figure 14, only 7% in each type require units to remain affordable for less than 30 years.[20] Nearly half of programs (47% for programs with rental developments and 48% for those with for-sale developments) have affordability terms between 30 and 39 years. For programs applying to rental developments, 6% have affordability term between 40 and 54 years and 15% have affordability term between 55 and 99 years. Under these two affordability term categories, the pattern is reversed for programs applying to for-sale developments (12% and 8%, respectively). For programs that have affordability terms reported in definite number of years (99 years or less), we further asked whether the affordability term restarts upon resale. Seventy-two percent of rental programs upon the sale of the building and 75% of for-sale programs report that affordability term would restart. A small portion of programs (4% for programs with rental developments and 2% for those with for-sale developments) require inclusionary units to be affordable for the life of building. Meanwhile, about one in 10 programs set permanent affordability requirements. Another 10% programs applying to rental developments and 12% applying to for-sale developments have affordability term requirements specific to each project. The variation can depend on affordable housing set-aside amount, whether units receive city financial assistance, or geographic locations of the developments.

Excluding California, Massachusetts, and New Jersey, a higher share of programs falls under both sides of the affordability term spectrum, while a smaller percentage — 40% of programs compared to about 60% for nationwide — sets affordability term between 30 and 54 years. In California, most programs with rental developments (n = 69, or 57%) choose to follow the state's standard minimum affordability period of 55 years, which explains why a high share of rental programs in this state falls into the 55 – 99-year affordability term category. In Massachusetts, almost all programs follow SHI's minimum affordability period of 30 years, except for two inclusionary zoning bylaws — one in Provincetown and one in Southampton — require units remain affordable permanently. All IH programs in New Jersey follow the state's UHAC minimum affordable period of 30 years in general and 10 years for units located in high-poverty census tracts.

Figure 14. **Program Count and Percentage by Affordability Term** (n = 607, or 93% of all rental programs; n = 600, or 91% of all for-sale programs)

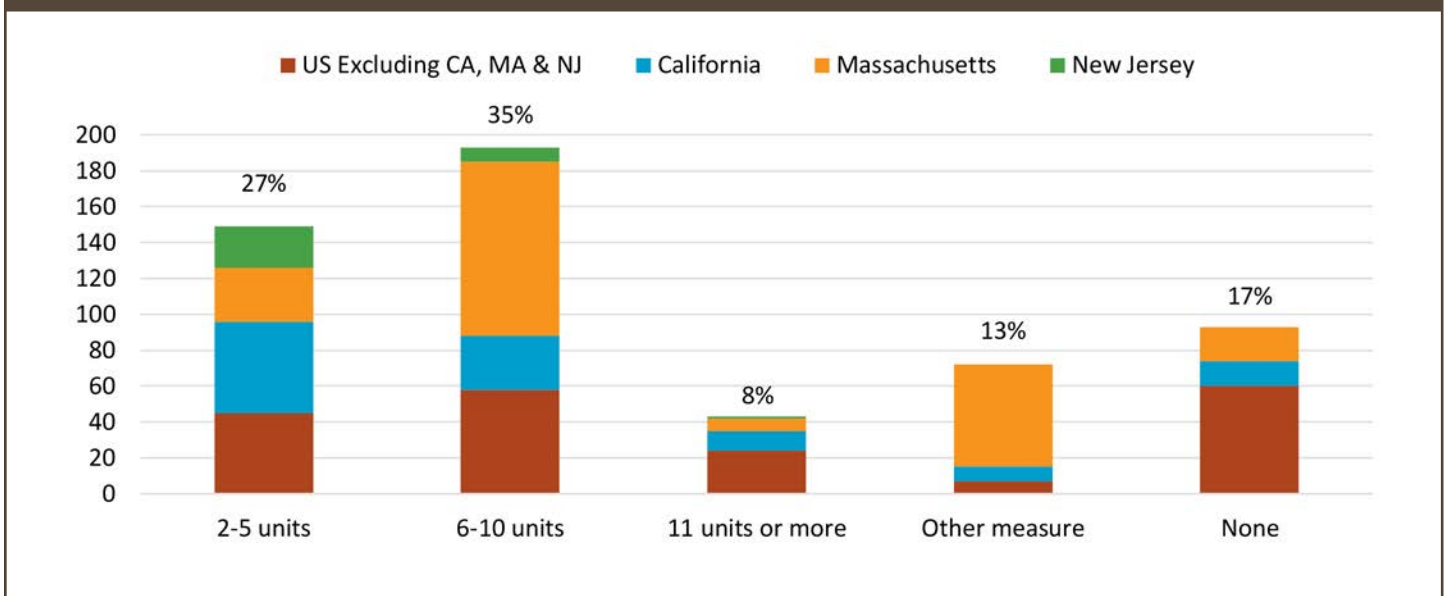


[20] There are 602 programs applying to rental developments and 601 programs applying to for-sale developments reporting affordability period.

Project Size Threshold: Certain developments are exempt from contributing to affordable housing in some IH programs. Often these programs set a minimum development size in terms of number of units as the threshold, at or above which the policy will be triggered. Everything else being equal, higher threshold means fewer developments trigger application of the program, hence less affordable housing units/fees are generated. Of 550 IH programs that provided an answer, 27% (n = 149) set the minimum project size between two and five units, 35% (n =193) between six and 10 units, and 8% (n = 43) larger than 10 units. There are 72 programs (13%) that use measures other than project size to determine the threshold. For example, the threshold was set as the land area of the parcel/lot. For a few IH programs that apply to both rental and for-sale developments, the threshold differs by the development type. Another 93 programs (17%) did not have any threshold (Figure 15).

Excluding California, Massachusetts, and New Jersey, a higher share of programs either does not set any project size threshold (31%) or sets the minimum project size at 11 units or more (12%). On the other hand, only 3% choose other measures. In California, a higher share of IH programs (45%) sets the minimum project size between two and five units. In Massachusetts, most programs either set the minimum project size between six and 10 units (46%) or offer other types of exemptions, which often relate to development types. In New Jersey, in most cases (97%) programs set the minimum project size as 10 units or below, and the majority set between two to five units (72%).

Figure 15. **Program Count and Percentage by Minimum Applicable Development Size**
(n = 550, or 80% of all)



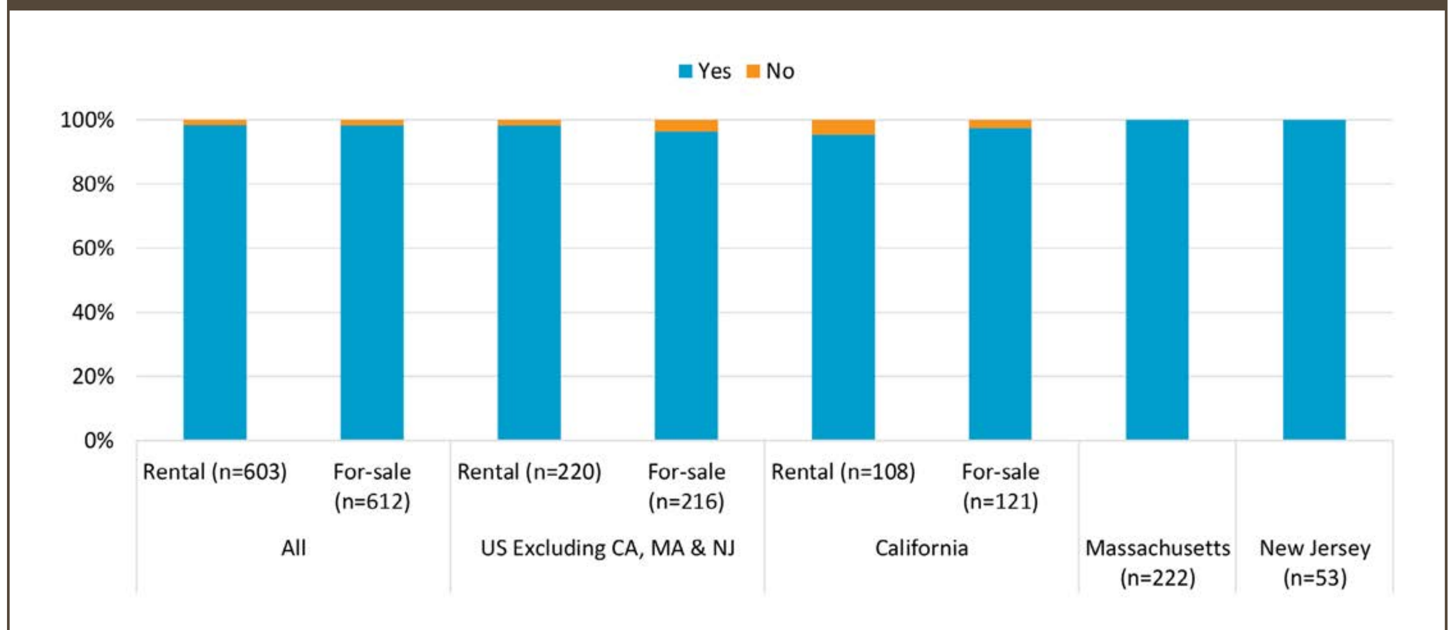
Compliance, Monitoring, and Partnership

Resale/Rent Restriction: The Duty to Serve rule delineates specific eligibility criteria for shared equity programs associated with single-family mortgage loans purchased by both Fannie Mae and Freddie Mac. The study also evaluated the compliance of IH programs with those criteria to provide a better understanding of programs that comply with the rule's requirements.

Under the Duty to Serve rule, one of the eligibility criteria is that some form of legal agreement needs to be in place to establish price/rent restrictions. These restrictions help keep inclusionary units affordable to the targeted income-eligible groups designated by a program. For rental developments, such agreements are put in place between the program and rental property owners. For for-sale units, programs enter into agreements with property owners/homebuyers. Legal agreements can be in the form of deed restrictions, deed covenants, ground leases, development agreements, or affordable housing agreements. Overall, 99% of 603 rental programs and 98% of 612 for-sale programs for which data is available have legal agreements in place to preserve affordability. This pattern is consistent across states and regions (Figure 16).

For IH programs with for-sale developments, this study collects further information about their legal agreements to understand if IH programs meet the definition of shared equity homeownership under the Duty to Serve rule. Another of the eligibility criteria is that the legal agreement needs to have a resale formula that limits homeowners' proceeds at resale. Overall, 93%

Figure 16. **Breakdown of Whether Legal Resale Restriction Exists** (n = 603, or 93% of all rental programs; n = 612, or 93% of all for-sale programs)

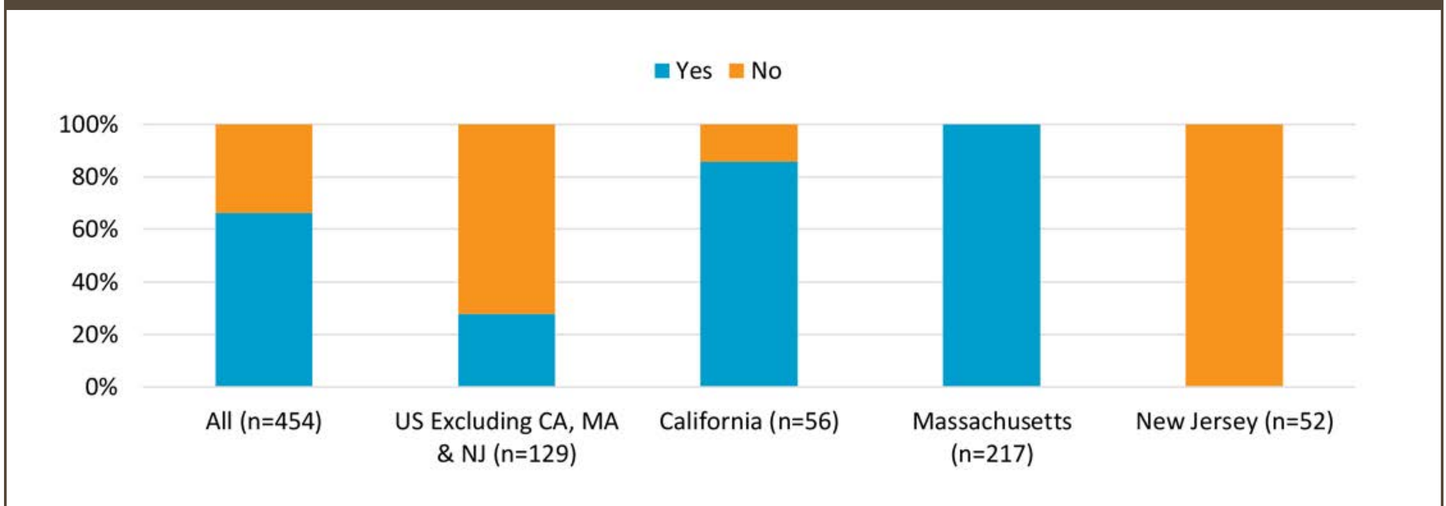


of 511 programs report that resale formulae exist. All IH programs in Massachusetts and New Jersey meet this criterion because of the state mandates. The majority of IH programs that do not have a resale formula in the legal agreement are in states other than California, Massachusetts, and New Jersey (Figure 17).

Under the Duty to Serve rule, a third criterion for programs with for-sale developments is to include clauses for review and pre-approval of refinances and home equity lines of credit in their legal agreements. Overall, 66% of 454 programs that provided an answer to this question report the existence of such reviewing and approval clauses. However, for IH programs located in states other than California, Massachusetts, and New Jersey, the majority (n = 92, or 72%) did not have such a requirement (Figure 18). In addition, such a requirement is absent at the state level in New Jersey, and the research team did not find this requirement in any local IH ordinances. In contrast, the majority of IH programs in California (n = 48, or 86%) and all of the programs in Massachusetts (owing to state mandates) have such a requirement.

Figure 17. **Breakdown of Whether Resale Formula Exists** (n = 511, or 78% of all for-sale programs)

Figure 18. **Breakdown of Whether IH Programs Review and Pre-Approve Any Refinances/ Home Equity Lines of Credit** (n = 454, or 69% of all for-sale programs)



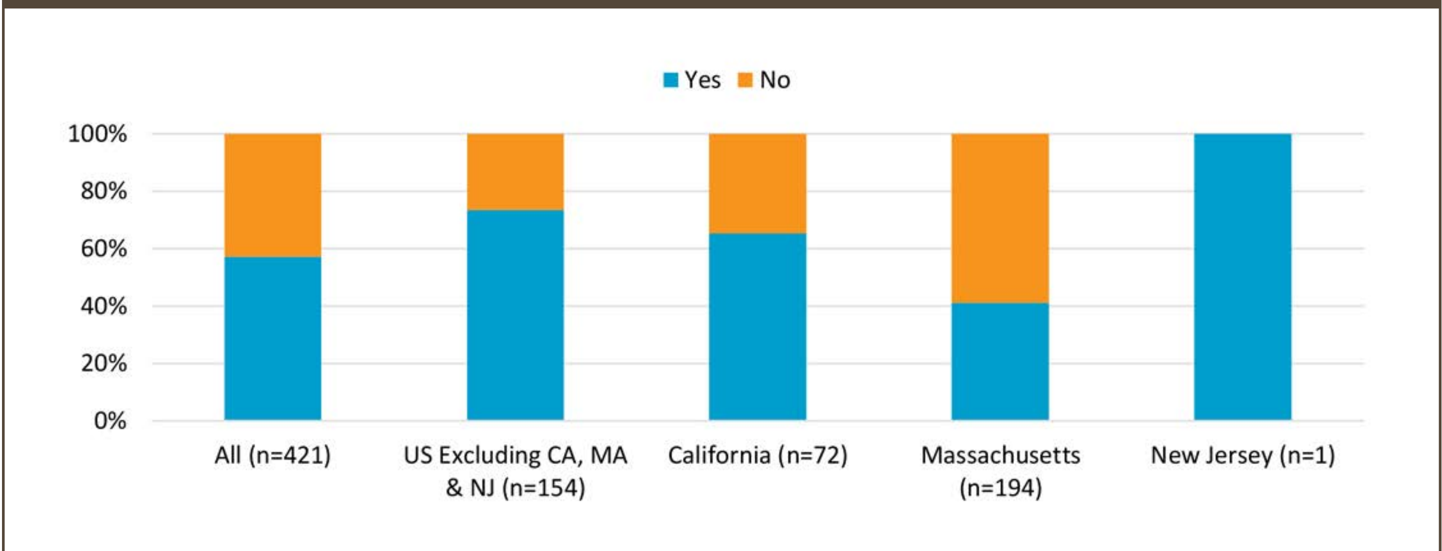
Right of First Refusal: A fourth requirement for shared equity programs under Duty to Serve is the right for programs to elect to repurchase homes at resale, usually called the right of first refusal. Overall, 319 out of 480 IH programs with known information or about 66%, retain a preemptive right to purchase inclusionary units at the time of resale. Programs gain greater control and oversight over the resale process with the right to purchase homes at resale.

The majority of IH programs or about 61% of programs in states other than California, Massachusetts, and New Jersey do not provide IH programs with the right of first refusal (Figure 19). Two-thirds of programs in California retain such right. All IH programs in Massachusetts retain the right barring the existence of the state's right of first refusal. In contrast, there are no for-sale programs in New Jersey with the right of first refusal.

Outcome Tracking: Survey respondents were asked whether inclusionary units and fees generated by IH programs were tracked systematically in a database. Overall, 57% of traditional IH programs (n = 241) report outcome tracking in place, and 180 programs (43%) do not track units/fees generated. This information is not available for 265 IH programs (39%) as survey respondents either did not know the answer or left the question unanswered (Figure 20).

Figure 19. **Breakdown of Whether "Right of First Refusal" exists** (n = 480, or 70% of all)

Figure 20. **Breakdown of Whether Outcome Tracking Exists** (n = 421, or 61% of all)



State variation exists. Three in four programs in states other than California, Massachusetts, and New Jersey report tracking program outcomes. Barring a relatively small number of programs in California (half of IH programs either did not participate in the survey or survey respondents did not know the answer), nearly two in three programs have an outcome tracking system in place. In Massachusetts, on the other hand, only two in five programs report tracking program outcomes.

Partnership: Some jurisdictions partner with other entities to administer IH programs. Survey respondents were asked to identify these partnering agencies. Of the 415 IH programs (out of 685, or 61% of traditional IH programs) that answered this question, nearly one-third (32%) report having a partnering agency (Figure 21). There are generally three types of partnering agencies. The first type of partnering agencies could include government entities, either specific departments in the jurisdiction government or public housing authorities. The second type encompasses a wide range of local nonprofits, such as affordable housing organizations, financing agencies, community development corporations (CDCs), and community land trusts. Some cities work with regional organizations, which make up the third type of partnering agencies. This type could include, for example, Regional Housing Services Office in Massachusetts, A Regional Coalition for Housing (ARCH) in Washington, and Bay Area Affordable Homeownership Alliance.

IH programs in states other than California, Massachusetts, and New Jersey are more likely to partner with a managing agency, with 45% reporting having a partner. On the other hand, IH programs in Massachusetts are less likely to work with a third-party managing agency; about one in five programs reported having a partner.

Compliance Monitoring for Rental Developments: Survey respondents were asked if inclusionary rental units were monitored to ensure compliance with a program's income targeting requirements. Of 562 IH programs applying to rental developments that provided an answer to this question, 97% have compliance monitoring in place. All programs in Massachusetts and

Figure 21. **Breakdown of Whether Partnering Agency Exists** (n = 415, or 61% of all)

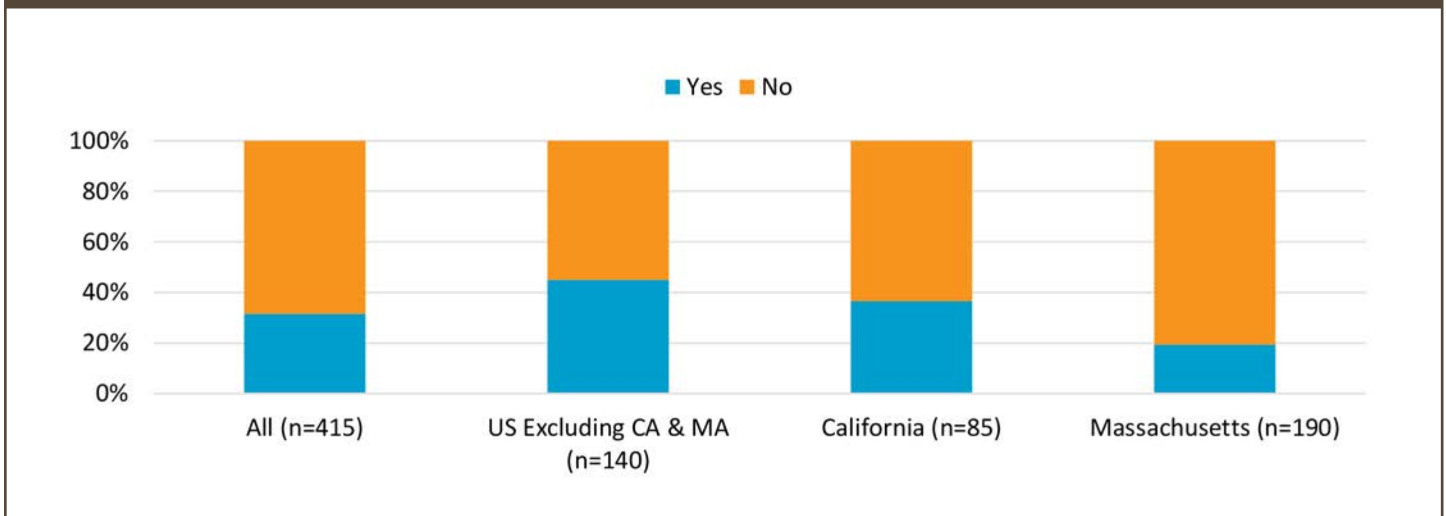
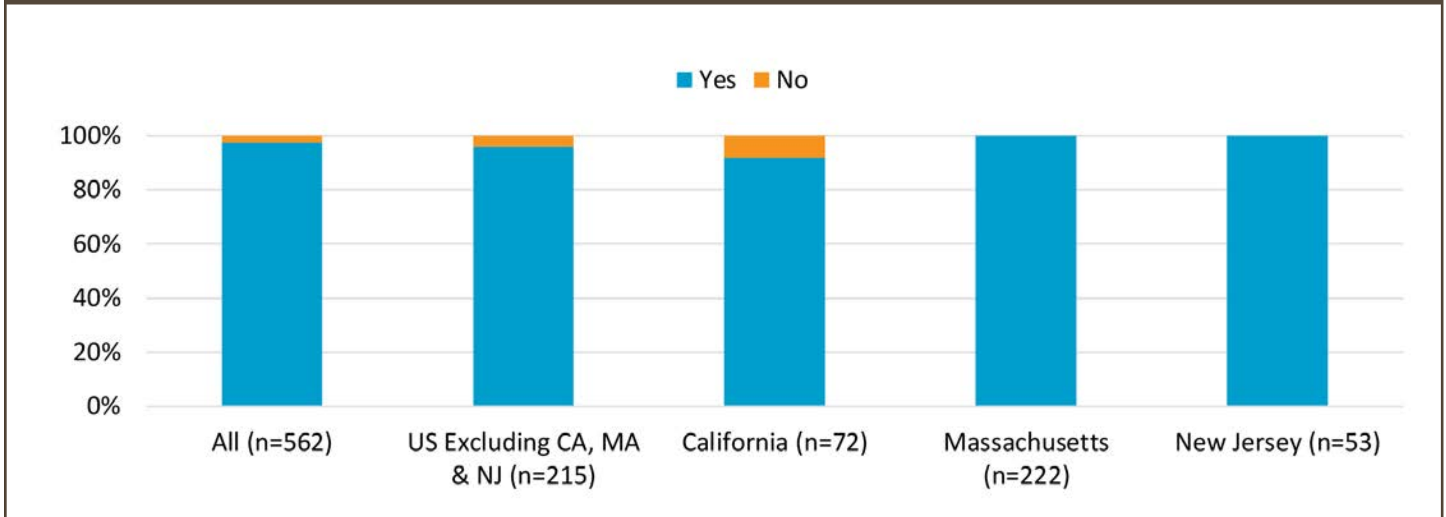


Figure 22. **Breakdown of Whether Compliance Monitoring Exists** (n = 562, or 87% of all rental programs)



New Jersey monitor for tenant income compliance as a result of state mandates. Of 15 IH programs that report not monitoring for compliance, most are in California (n = 6), New York (n = 5), and Connecticut (n = 3). One is in Minnesota (Figure 22).

Survey respondents were also asked how often tenant incomes are certified to ensure compliance with the IH program. Of 457 IH programs that provided an answer, 73% report that the certification takes place annually. Another 16% (n = 74) certify tenants only when they move in. Thirty-one programs (7%) report that certification takes place both when a tenant moves in and annually. Eighteen programs report other frequency of certification, which ranges widely from monthly reporting to every three years. For programs that did not report income certification when tenants move in, it simply means this is not a requirement by the underlying program. Tenant certification upon move in conducted by managing agencies — although may not be required by an IH program — should be common. The program distribution in areas other than California, Massachusetts, and New Jersey is similar to the nationwide pattern. In compliance with the SHI requirement, all programs in Massachusetts recertify tenants annually. In New Jersey, all programs certify tenants only at move in, following UHAC's guidance. In California, 27% of IH programs certified tenants both at move in and annually — this is a significantly higher share than the overall pattern (Figure 23 *on next page*).

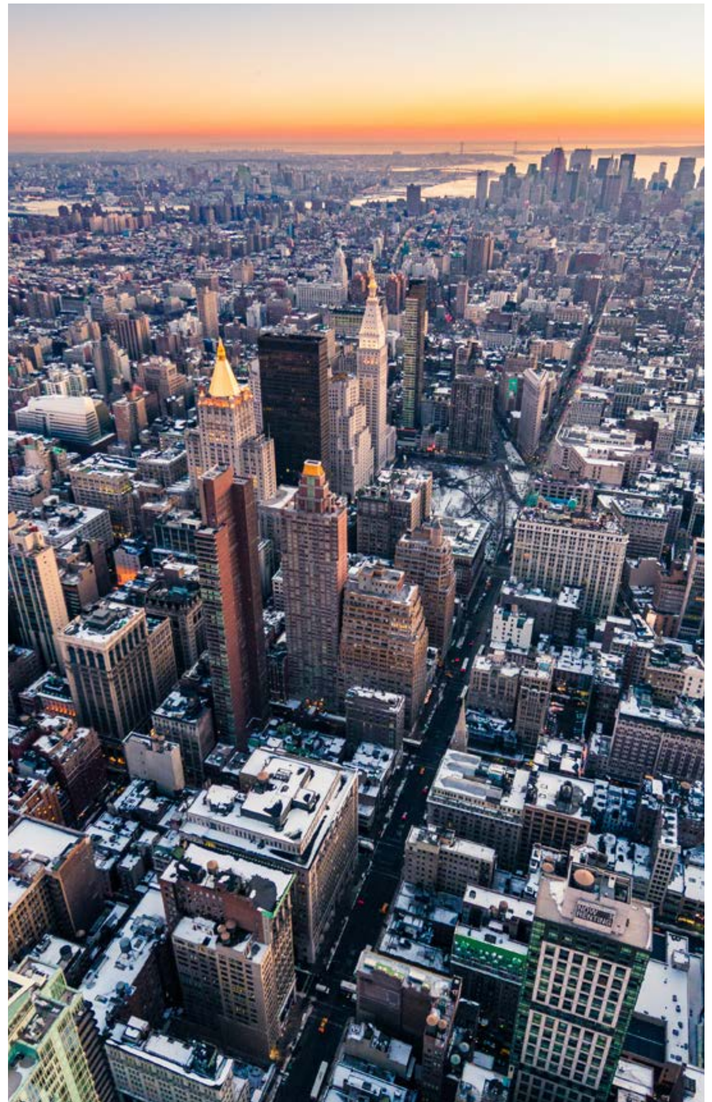
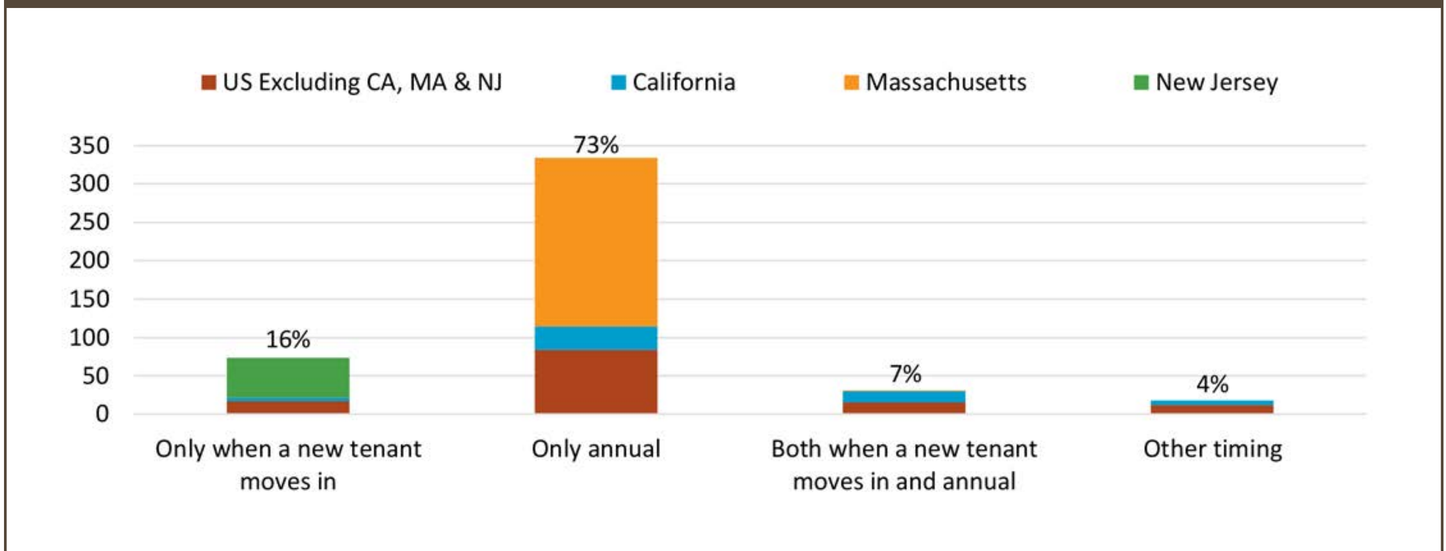
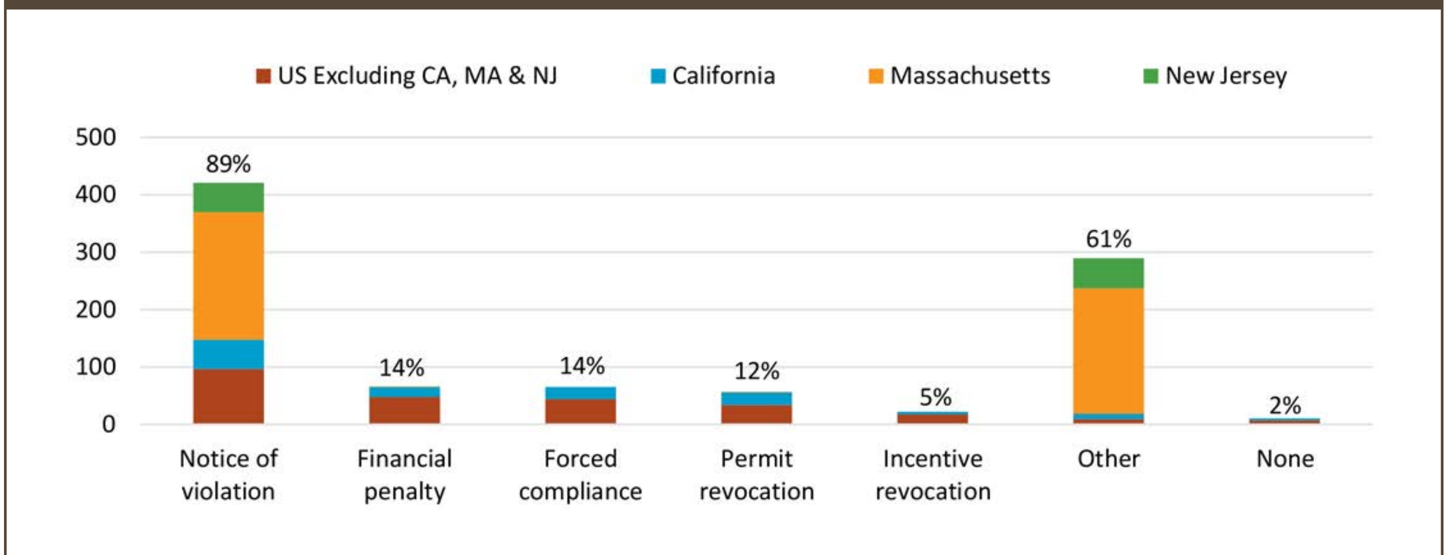


Figure 23. **Program Count and Percentage by Timing of (Re)Certification** (n = 457, or 84% of all rental programs with compliance monitoring in place)



Remedies and Enforcement for Rental Noncompliance: When asked about remedies and enforcements for noncompliance of income targeting requirements, 472 IH programs with rental developments (73% of all rental programs) provided an answer. Most programs (89%) send notice of violation and opportunity to cure. About the same share of programs exercise one or more of three approaches: financial penalty (14%), injunction/forced compliance (14%),[21] and revocation/denial/suspension of permits (12%). A small number of programs (n = 22, or 5%) revoke, deny, or suspend incentives granted under the IH program. In Massachusetts, the state may remove affordable units from the SHI. Only 11 IH programs (2%) report not having any remedies or enforcement for noncompliance (Figure 24).

Figure 24. **Program Count and Percentage by Type of Noncompliance Remedy/Enforcement** (n = 472, or 73% of all rental programs)



[21] Injunction is a legal remedy in the form of a special court order that compels the property owner to comply with the income targeting requirements of the policy.

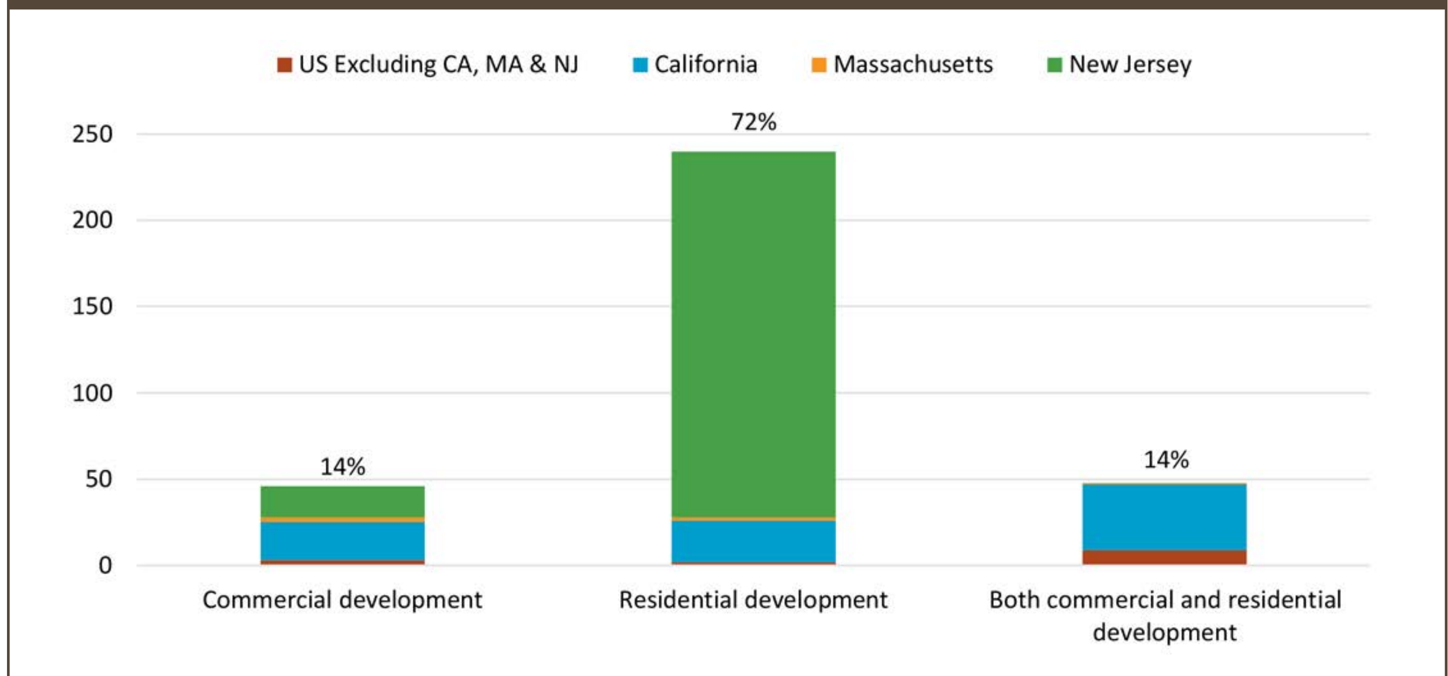
Linkage/Impact Fee Programs

Development Type: Of 334 linkage/impact fee programs, 46 (14%) generate fees for the development of affordable housing from commercial developments. Here, commercial development is a broad term that encompasses a wide range of non-residential development types, such as office, industry, retail/service, hotel, and research and development. Nearly half of these 46 programs (n = 22) are in California. Another 18 non-residential development fee programs are in New Jersey; these programs have development fee requirements that are in addition to the 2.5% state-mandated development fee on non-residential development. A small number of commercial programs are in Massachusetts (n = 3), Colorado (n = 2), and Florida (n = 1) (Figure 25).

Most of the 334 linkage/impact fee programs (n =240, or 72%) are for residential developments. Of these 240 programs, 212 are residential development fee programs in New Jersey. Another 24 are in California. Massachusetts and Minnesota each have two programs. In addition, there are 48 linkage/impact fee programs that apply to both residential and commercial developments. They are concentrated in California (n = 38). Oregon has three and Colorado has two programs. Connecticut, Florida, Massachusetts, and Virginia each have one program.

Commercial Program Development Type and Fee Rate: It is a common practice that commercial development fee programs apply to multiple development types. Of 76 commercial development fee programs with known information about development type (such information was not collected for any of the 18 programs in New Jersey), 96% (n = 73) apply to office, 91% (n = 69) apply to retail/service, 88% (n = 67) apply to hotel, 84% (n = 64) apply to industry, and 75% (n = 57) apply to research and development. Two programs apply to office development only. Commercial development

Figure 25. **Program Count and Percentage by Development Type** (n = 334, or all linkage/impact fee programs)



fees for the development of affordable housing may also apply to recreational facilities, health clubs/gyms, residential care/nursing facilities, hospitals/medical facilities, agricultural structures, and schools. Generally, many cities included a wide range of development types that demonstrate the nexus between potential for job creation and the need for affordable housing (Figure 26).

Across development types, the majority of programs (75 – 84%) use square footage to calculate fees. The average fee rates range from $5 per square foot for retail/service development to $7.90 per square foot for office developments. The median fee rate range is between $4.30 and $4.70 per square foot across development types, except for industrial development, which is $2.50 per square foot. Across development types, the average and median fee rates do not vary significantly, however, there are remarkable difference between programs. For example, the maximum fee rate charge for office development is $36 per square foot (Palo Alto, California), which is over 51,000 times higher than the minimum fee rate of the same development type (e.g. $0.71 per 1,000 square foot in Rohnert Park, California). The large discrepancy in fee rates has also been documented in other development types. Some programs report other ways of charging fees, such as basing the rate on employee estimates (instead of

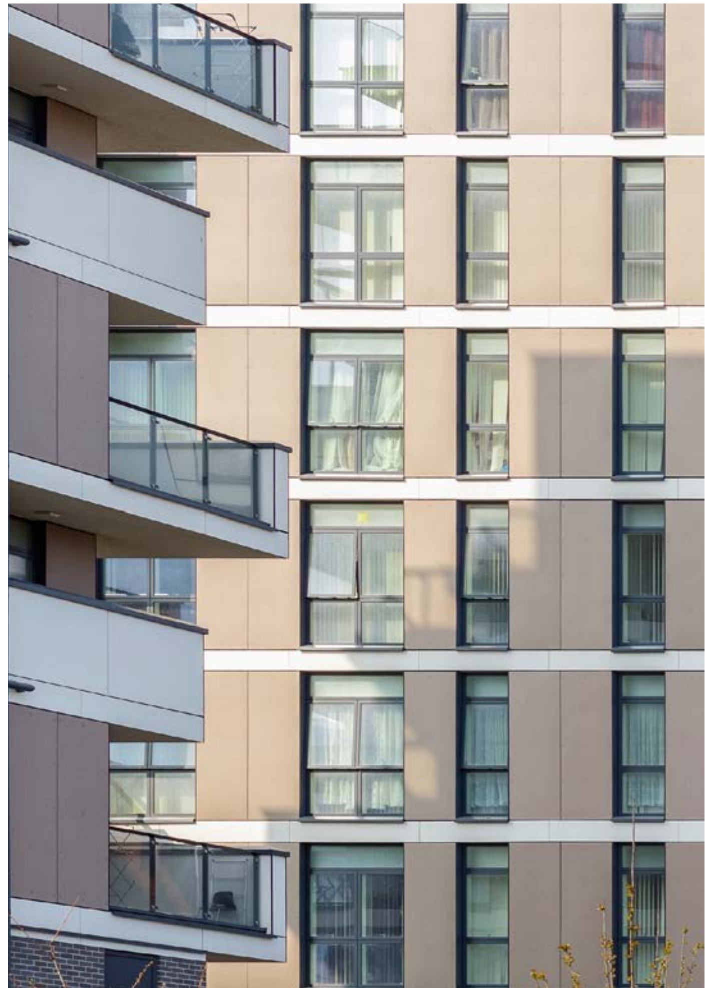
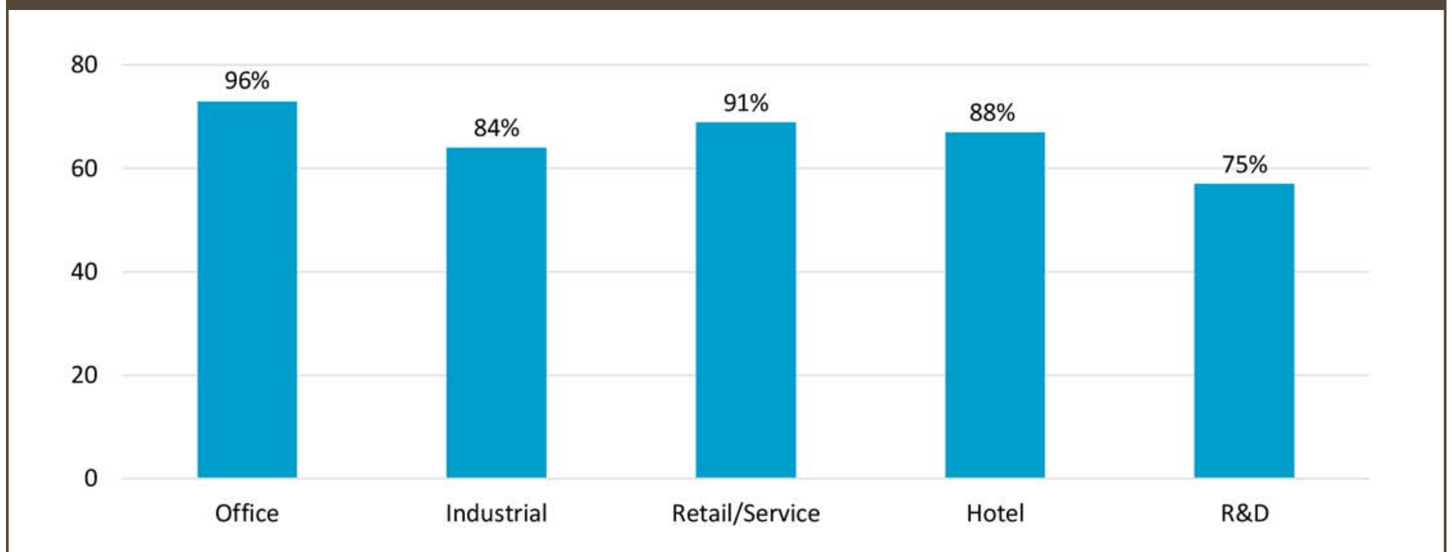


Figure 26. **Commercial Linkage/Impact Fee Program Count and Percentage by Development Type** (n = 76, or 84% of all commercial programs)



square foot), a flat rate, or a fixed rate associated with construction cost or building value. Some programs tie fee rates to the size of the building (Table 5).

Out of 70 commercial development fee programs, 40 (57%) report that certain developments are exempt from the policy. Exemptions typically relate to development type, size, or geographic area in which the project is developed.

Residential Program Development Type and Fee Rate: Similar to commercial development fee programs, most residential programs do not limit fees to a single development type. Ninety-three percent of residential programs (n = 267) apply to rental development, 90% (n = 259) to single-family for-sale development, 91% (n = 263) to multifamily for-sale development, and 87%

Table 5. **Summary of Fee Rate charged by Commercial Linkage/Impact Fee Programs**

Development Type	Number (%) of Programs Using Square Foot to Determine Fee Rate	Average (per SQFT)	Median (per SQFT)	Min (per SQFT)	Max (per SQFT)
Office	59 (81%)	$7.90	$4.50	$0.00071	$36
Industrial	52 (81%)	$5.60	$2.50	$0.00069	$28
Retail/Service	58 (84%)	$5.00	$4.70	$0.00119	$25
Hotel	50 (75%)	$5.60	$4.30	$0.05	$21
R&D	45 (79%)	$7.70	$4.40	$0.05	$36

(n = 250) to townhouse for-sale development. Some programs report exemptions relating to development size or geographic area in which new residential projects are developed (Figure 27).

Residential programs generally use two types of fee structure (Table 6). One is to charge by square foot of the new residential development. The average per square foot rate is $14.22 for rental development, $11.80 for single family for-sale, $15.41 for multifamily for-sale, and $14.28 for townhouse for-sale. The median per square foot rate is $13.75, $9.87, $11, and $10.82, respectively. Across programs, fee rates vary widely between $0.05 and $27 for rental and single-family for-sale developments, and between $0.05 and $51.75 for multifamily and townhouse for-sale developments.

Figure 27. **Residential Linkage/Impact Fee Program Count and Percentage by Development type (n = 281, or 98% of all residential programs)**

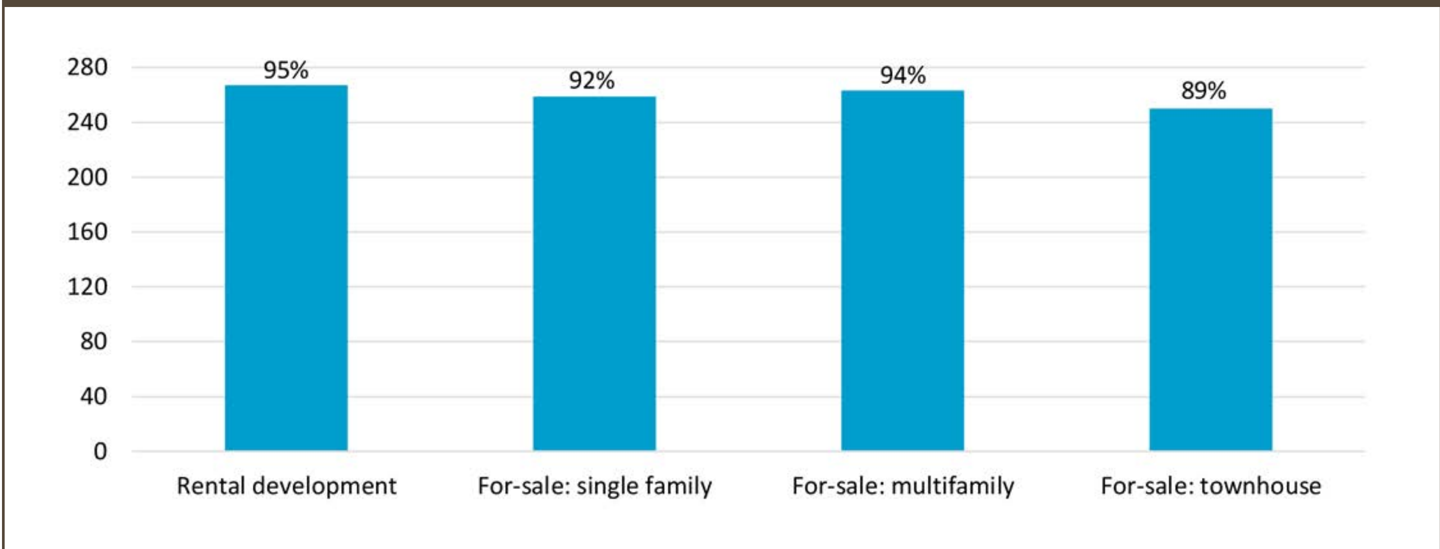


Table 6. **Summary of Fee Rate Charged by Residential Linkage/Impact Fee Programs**

Development Type	Number of Programs	Average	Median	Min	Max
		per SQFT	per SQFT	per SQFT	per SQFT
Rental Development	24	$14.22	$13.75	$0.05	$27.00
For-Sale: Single family	23	$11.80	$9.87	$0.05	$27.00
For-Sale: Multifamily	23	$15.41	$11.00	$0.05	$51.75
For-Sale: Townhouse	17	$14.28	$10.82	$0.05	$51.75
		per unit	per unit	per unit	per unit
Rental Development	16	$39,256	$10,781	$362	$331,070
For-Sale: Single family	11	$36,773	$5,206	$362	$331,070
For-Sale: Multifamily	12	$40,937	$5,372	$658	$331,070
For-Sale: Townhouse	12	$32,873	$5,026	$658	$331,070

Another type of fee structure is based on housing unit. The average per unit rate is $39,256 for rental development, $36,773 for single family for-sale, $40,937 for multifamily for-sale, and $32,873 for townhouse for-sale. The median per unit rate is $10,781, $5,206, $5,372, and $5,026, respectively. Across programs, fee rates vary widely between $362 and $331,070 for rental and single-family for-sale developments, and between $658 and $331,070 for multifamily and townhouse for-sale developments.

Residential development fee programs in New Jersey charge the same rate based on the assessed value of residential development regardless of development type, and for every $1 assessed value, the average rate is $0.014, with minimum rate of $0.003 and maximum rate of $0.06.

Alternative Compliance Option: It is common for residential development fee programs to offer alternative compliance options. The majority of programs (n = 58, or 78%) allow developers to build on-site affordable units instead of paying a fee. Thirty programs (41%) provide the option of donating land. Other less common compliance options include purchasing/renovating unregulated units (n = 14, or 19%), preserving/rehabilitating regulated units (n = 13, or 18%), and building off-site affordable units (n = 9, or 12%). The Below Market Rate Housing program in San Bruno, California, also allows developers to build accessory dwelling units. Only 10 out of 74 programs that provided an answer (14%) do not offer alternative compliance options (Figure 28).

Figure 28. **Residential Linkage/Impact Fee Program Count and Percentage by Alternative Compliance Option** (n = 74, or 79% of all residential programs)

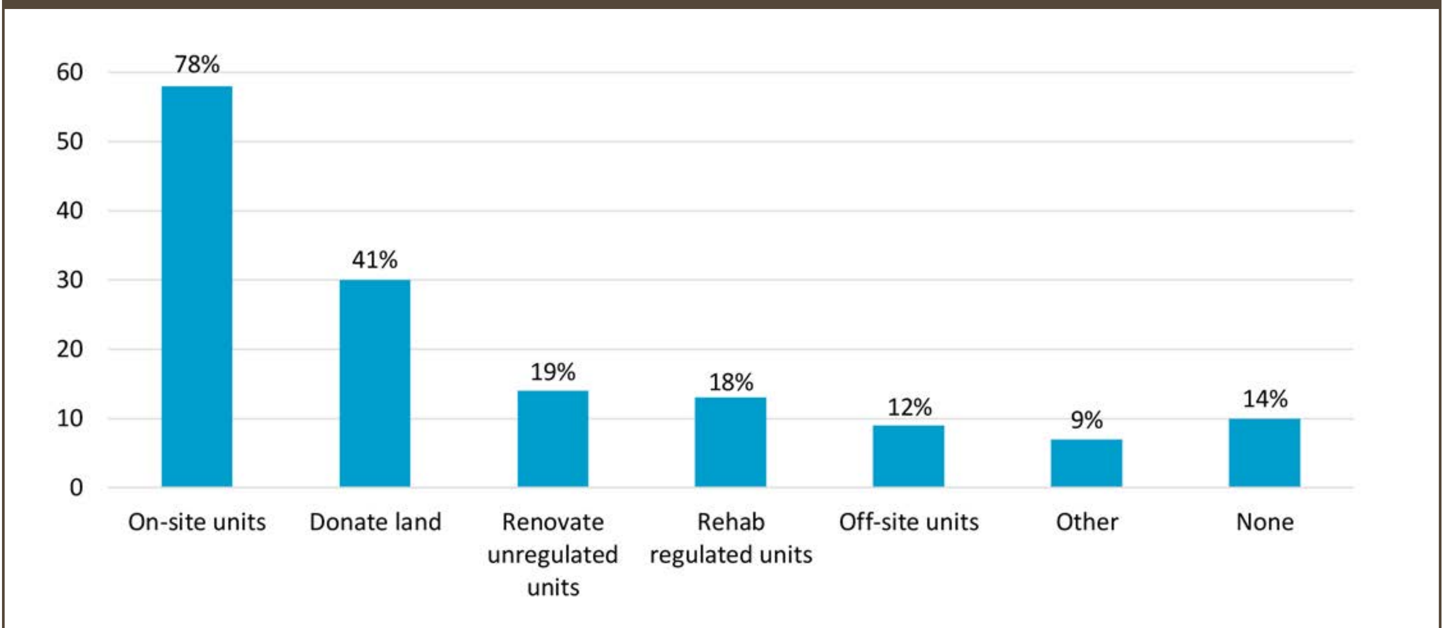
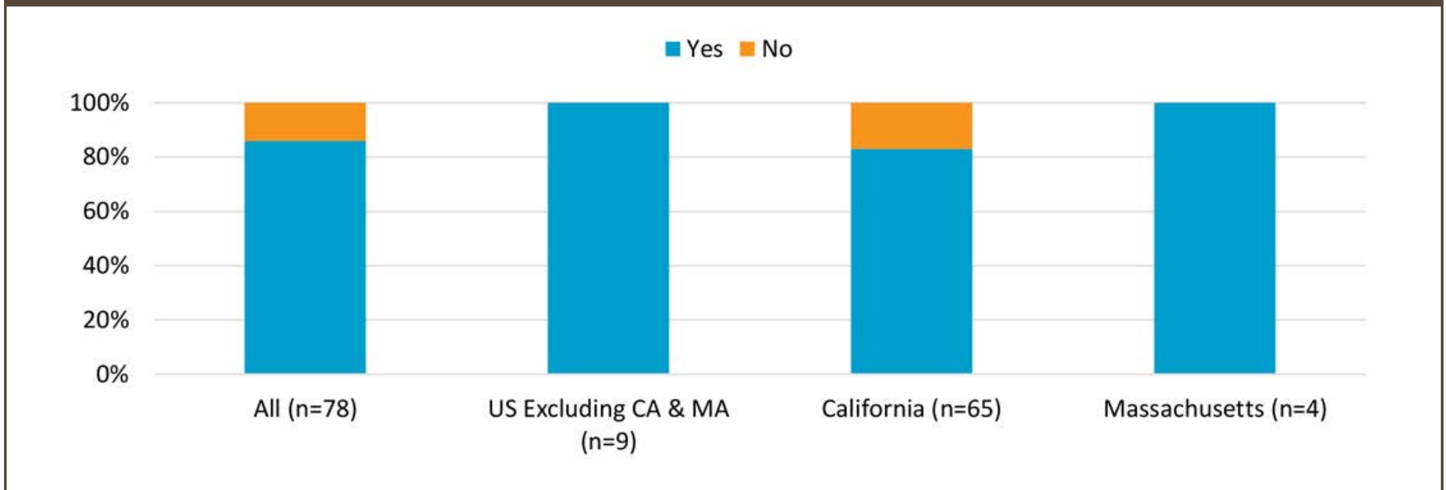


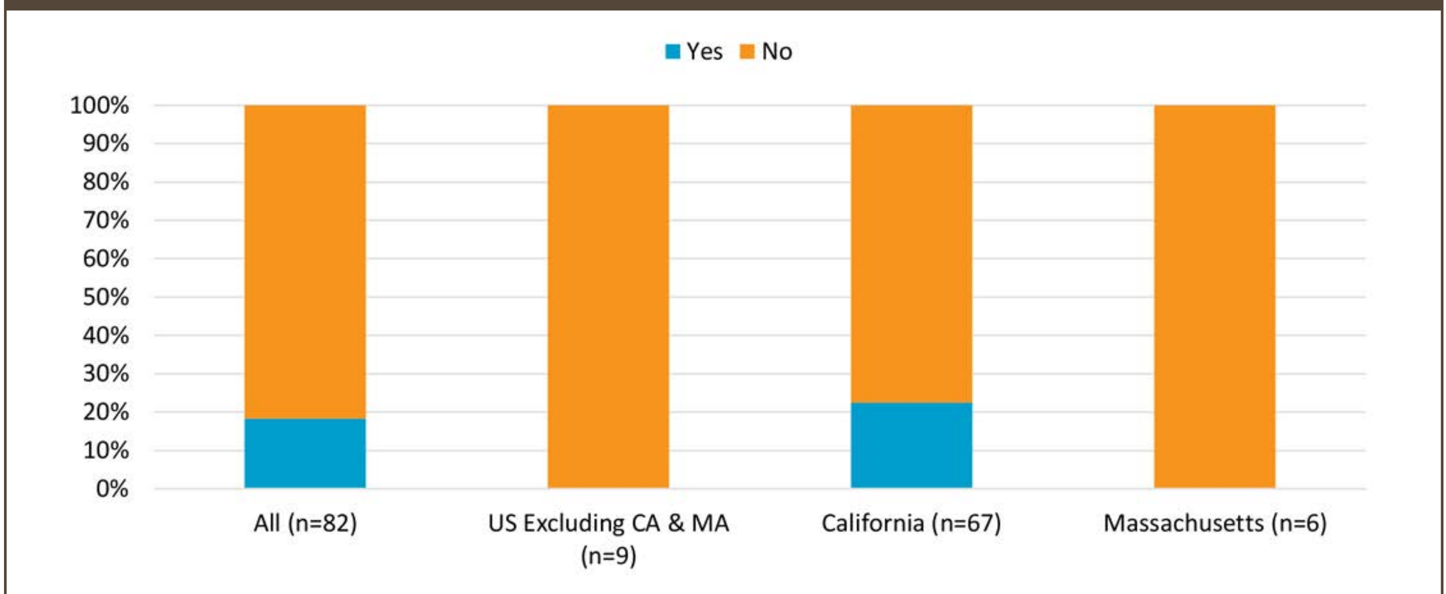
Figure 29. **Breakdown of Whether Outcome Tracking Exists** (n = 78, or 23% of all linkage/ impact fee programs)[22]



Outcome Tracking: Of 78 linkage/impact fee programs, most (n = 67, or 86%) report an outcome tracking system is in place. Only 11 programs do not track outcomes. This information was not collected for development fee programs in New Jersey (n = 230). The share of linkage/ impact fee programs with an outcome tracking system is higher than traditional IH programs (Figure 29).

Partnership: Unlike traditional IH programs, only 14% (n =15) of linkage fee programs partner with external agencies to manage the programs. These managing agencies include nonprofit affordable housing organizations and public housing authorities. We did not collect this information for 230 development fee programs in New Jersey (Figure 30).

Figure 30. **Breakdown of Whether Partnering Agency Exists** (n = 82, or 25% of all linkage/ impact fee programs)



[22] This chart shall be interpreted in caution due to small number of programs for two comparison groups.

[23] This chart shall be interpreted in caution due to small number of programs for two comparison groups.

Outcomes

Units: Of the total 1,019 IH programs, 741 (73%) can create affordable units directly, as opposed to programs collecting fees and using those fees to create affordable units (Table 6). These 741 programs include both traditional programs and linkage/impact fee programs that offer one or more of the following compliance options: 1) building on-site affordable unit, 2) building off-site affordable units, 3) preserving/rehabilitating regulated units, and 4) purchasing/renovating unregulated units. This study collects information on unit counts (including programs reporting zero units) for 383 of 741 IH programs, or 52%. This coverage rate is higher in Massachusetts (71%) than in California (33%), New Jersey (54%), and the rest part of the country combined (48%).

Overall, 125 out of 383 programs (33%) report that no affordable units have been created since the adoption of the program (Table 7). This count includes 26 new programs adopted in or after 2017. It is likely that these 26 programs had not produced affordable units at the time of the survey because it usually takes a couple of years from building permit to completion. For 258 IH programs that report at least one affordable unit, the average unit count is 426 and the median is 61 units. The 421-a Program in New York City reports the highest production of affordable units with over 42,000 units by 2016. There are 23 programs reporting 1,000 or more affordable units since adoption, eight of which are in California. Together, these 258 IH programs report a total of 109,488 to 110,172 affordable units, including 34,401 to 31,586 for-sale units from 159 programs and 70,101 to 70,600 rental units from 165 programs. Survey respondents entered a range if the exact number of units was not available or could not be retrieved easily.

Outside of California, New Jersey, and Massachusetts, 86 IH programs in other states account for over half the affordable units created in the entire country (66,979 – 67,283). The programs outside of these three also have the highest average number of units per program, which is 781. California has some of the most prolific programs as 57 programs report between 28,960 and 29,180 units with an average of 510 and median of 189 affordable units created per program. Massachusetts has more programs which are less prolific. Eighty-four programs have produced between 8,882 and 9,042 affordable units with an average of 107 units produced. In New Jersey, 31 programs have together created 4,667 affordable units through 2010, with an average of 150 units per program. There are consistently more affordable rental than for-sale units created through IH programs (Table 7 *on next page*).

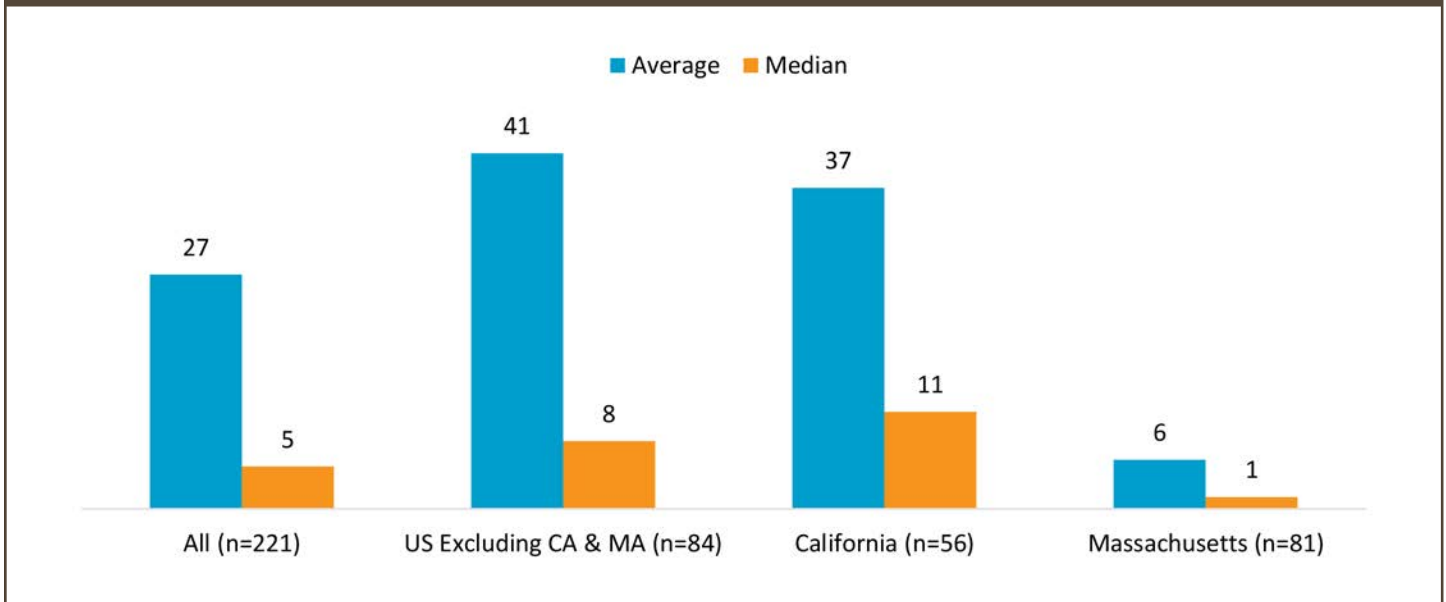
Table 7. **Summary of Affordable Units Produced by IH Programs** (n=741)

State/ Region	Unit Type	Program With at Least 1 Affordable Unit						Program Count (%): 0 Affordable Units	Program Count (%): Unknown Number of Affordable Units
		Program Count (%)	Average	Median	Min	Max	Total Units		
All	**Rental Units**	**165 (27%)**	**426**	**80**	**1**	**10,123**	**70,101-70,600**	**159 (26%)**	**279 (47%)**
	For-Sale Units	**159 (26%)**	**198**	**19**	**1**	**10,000**	**31,401-31,586**	**163 (26%)**	**294 (48%)**
	All Units	**258 (35%)**	**426**	**61**	**1**	**15,000**	**109,488-110,172**	**125 (17%)**	**358 (48%)**
US Excluding CA, MA & NJ	Rental Units	69 (29%)	614	77	1	10,123	42,248-42,462	40 (17%)	128 (54%)
	For-Sale Units	59 (25%)	364	40	1	10,000	21,416-21,506	48 (20%)	130 (55%)
	All Units	86 (33%)	781	80	1	15,000	66,979-67,283	37 (14%)	135 (53%)
CA	Rental Units	42 (30%)	494	188	10	3,165	20,667-20,817	10 (7%)	88 (63%)
	For-Sale Units	46 (30%)	181	88	1	2,793	8,289-8,359	8 (5%)	99 (65%)
	All Units	57 (30%)	510	189	1	4,003	28,960-29,180	6 (3%)	130 (67%)
MA	Rental Units	54 (24%)	134	54	1	1,950	7,186-7,321	109 (48%)	63 (28%)
	For-Sale Units	54 (24%)	32	8	1	649	1,696-1,721	107 (47%)	65 (29%)
	All Units	84 (36%)	107	25	1	2,599	8,882-9,042	82 (35%)	67 (29%)
NJ	All Units	31 (54%)	150	52	6	809	4,667	26 (46%)	

Notes:

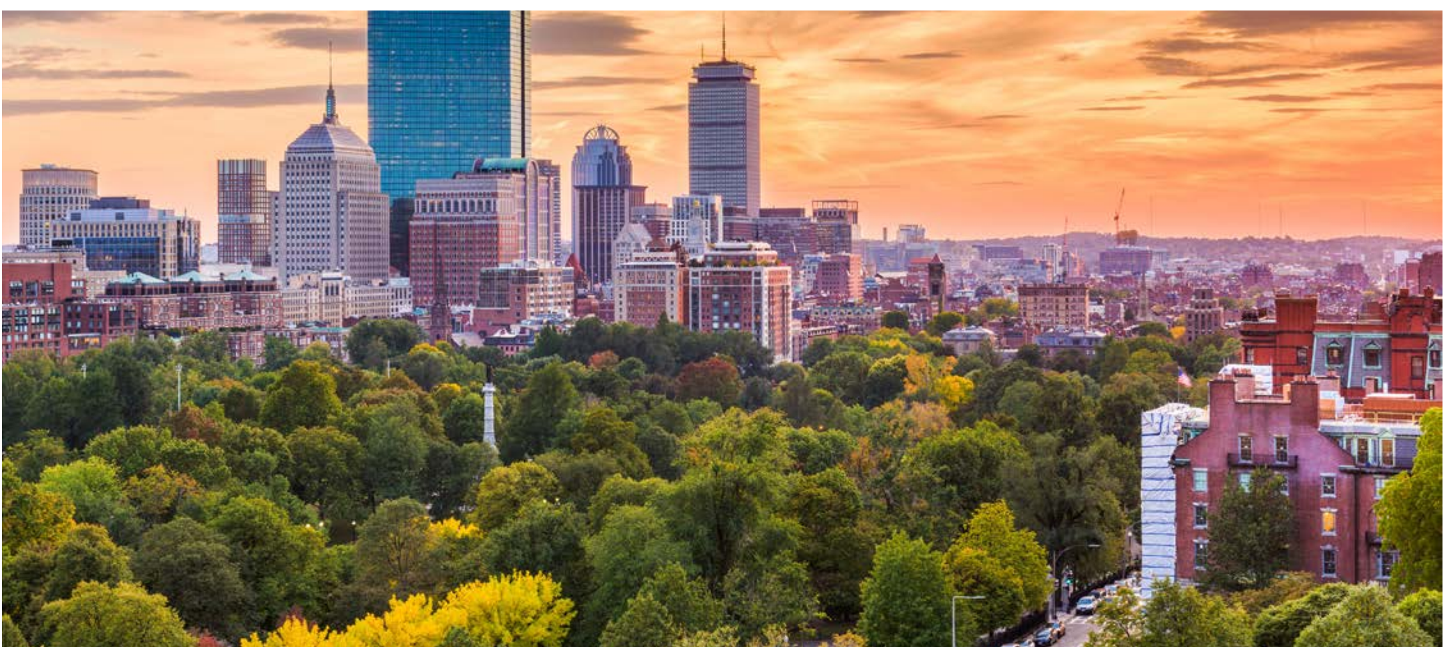
1. The percentages sum up to 100% in the rows.
2. For programs reporting a range of units, the middle point of the range was used to calculate the average, median, minimum, and maximum values.
3. In New Jersey, unit counts were obtained through the latest COAH petitions between December 2008 and August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

Figure 31. **Average and Median Annual Affordable Unit Production Per Program With at Least One Unit**



For each of the 221 IH programs that report at least one affordable unit and with known program age, we calculated the average annual unit production by dividing the total number of affordable units by the age of the program. Figure 31 shows the average and median of this measure across these 221 IH programs and by state/region. We excluded New Jersey from this analysis because of the lack of information about program age.

Across the nation, on average an IH program produces 27 affordable units per year; and the median is five units. Programs in areas other than California, Massachusetts, and New Jersey have the highest average annual production rate of 41 units (median eight), compared to six units (median one) in Massachusetts and 37 units (median 11) in California.



Fee Revenue: In addition to identifying the number of affordable units built directly through IH programs, this study collected information about IH program fees that are used for affordable housing development. Fees include impact/linkage fees collected under development fee programs, as well as in-lieu fees collected under traditional IH programs. Affordable housing units reported in the previous section are separate from the fees reported here. There are 657 programs (64% of all IH programs) that are either reported as a linkage/impact fee program or a traditional IH program that collects in-lieu fees as a compliance option. In theory, these 657 programs can generate fee revenues for affordable housing development (Table 8).

Of these 657 programs, 174 (26%) provided an answer. Of the 174 programs, 51 (29%) report that zero dollars have been collected since adoption. For the 123 programs reporting at least one dollar of development fee, the total fee collected is $1.76 – 1.78 billion. On average, a program generates $12.7 million in its life. The median is $1.1 million. It is important to note that all dollar amounts reported are in nominal terms, and not in real terms.

Many questions remain unanswered about fees collected through IH programs. For example, we don't know how those fees were used, how much is still available, and whether additional funding sources are available to build affordable housing units. While answers to these questions are important to better understand the efficacy and successfulness of IH programs, this information is beyond the scope of this study, because it is difficult to obtain via an online survey.

Table 8. **Summary of Fee Amount Collected by IH Programs** (n=657)

Program Count (%) With $0	51 (8%)
Program Count (%) With at Least $1	123 (19%)
Average	$12,698,293
Median	$1,126,040
Minimum	$800
Maximum	$224,299,220
Total Fees	$1,758,425,176 – 1,779,613,176
Program Count (%) With Unknown Fee Amount	483 (74%)

Discussion

Comparison With the 2016 Survey

In this study, through data collection from 2018 to 2019, we identified a total of 1,019 local IH programs in 734 jurisdictions. The study finds that 258 IH programs report a total of about 110,000 affordable units, and 123 IH programs report a total of $1.76 billion in impact or in-lieu fees for the creation of affordable housing. In comparison, the 2016 survey conducted by Grounded Solutions Network estimated substantially higher counts, with 886 jurisdictions and a total of 1,379 IH programs. Among them, 675 jurisdictions reported creating 173,707 units and 373 jurisdictions reported collecting $1.78 billion in fees. It is important to note that the seeming reduction in estimated figures reported does not indicate a sunset in IH policies, nor does the current study have a lower response rate than our previous attempt. In fact, the 2019 jurisdiction counts, as well as IH program outcomes, reflect the discrepancy in target scope and method design between these two studies, which we explain in detail below.

Of 31 states and the District of Columbia with at least one IH program, 22 states have more IH programs identified as compared to the 2016 survey. This includes the addition of six states in which IH programs have been identified for the first time: Iowa, Michigan, Montana, New Hampshire, Ohio, and Wyoming. In the remaining states, the number of IH programs in four states and District of Columbia are on par with the 2016 survey, and only five states witness a decrease in program count compared to the 2016 survey, including three states with only one fewer program (Colorado, Tennessee, and Vermont). Two states contribute to the overall decrease: Massachusetts and New Jersey, where 124 and 473 fewer IH programs respectively (97 and 179 fewer jurisdictions with at least one IH program) are identified.

In 2016, the research team relied on datasets from state agencies to estimate jurisdiction count, program count, and outcomes in Massachusetts and New Jersey, rather than applying the investigation of local municipalities approach used in 2019. As a first attempt of capturing IH programs (essentially starting from scratch), the 2016 approach was the only manageable approach at that time and the best estimates the research team could achieve. However, that approach resulted in an overestimation of program count and outcome in the 2016 study for two reasons. First, not all affordable units documented in those state-provided datasets were created by local IH programs (or even state IH programs in the case of Massachusetts). Second, state-provided datasets included affordable units that were created as a result of state IH mandates (e.g. Chapter 40B and Local Initiative Program in Massachusetts, and 2.5% Non-Residential Development Fee in New Jersey), which are generally excluded from this study. There were also state-specific issues. In Massachusetts, some local inclusionary zoning bylaws that generated affordable units eligible for Subsidized Housing Inventory, Local Initiative Program lists, or Local Action Units lists (the research team used these three datasets to identify IH programs and outcome in the 2016 survey) do not meet the definition of IH program in this study. This study requires IH programs to include income targeting and affordability term requirements; and excludes affordable housing created through ad-hoc negotiations. All the above-mentioned factors contribute to discrepancies in program count and outcome between the 2016 study and this current effort. On the other hand, the downside of this current effort is that unit counts and fee amounts are based on survey respondents in Massachusetts and partial, historical data that is over 10 years old in New Jersey. Hence, the study was unable to capture program production fully in either state.

There are states where we identified substantially more IH programs than last time. This was mainly because we were able to build off the earlier effort and employ a far more comprehensive data collection approach this time. These states include California (84 more programs,

or 228 in total),[24] Connecticut (21 more, or 23 in total), Florida (28 more, or 30 in total), New Hampshire (all 19 are newly identified), New York (34 more, or 42 in total), and Washington (16 more, or 33 in total).

Outside of California, Massachusetts, and New Jersey, this study documents roughly 67,000 affordable units reported by 86 jurisdictions, substantially more than the 2016 survey (45,000 units in 40 jurisdictions). This study also records approximately $415 million in fees collected by 30 jurisdictions outside of those three states, compared to $400 million collected by 24 jurisdictions in the 2016 survey. Even so, this study does not capture all inclusionary units or fees, as only a subset of roughly half of programs recorded in the database reported their productions. Also, as described in the Data Limitation section, this study underestimate IH production because 1) the research team likely missed IH programs, particularly voluntary programs and those in small-size municipalities, and 2) this study does not count inclusionary units produced through policies, programs, or government decisions that fall outside the IH definition employed in this study.[25]

Discussion of Key Findings and Recommendations

This study finds that overall, IH programs in the nation are growing fast and evolving. Between 2003 and 2010, on average, 33 IH programs were created each year. This acceleration of interest in IH programs reflects a growing willingness by local governments nationwide to ask for greater affordability. This was demonstrated both during the early half of the 2000s with rapidly rising home prices, as well as during the 2008-2009 housing crisis, when there was a nationwide trend toward instituting new policies in areas experiencing significant up-zoning and/or areas where major new transit investments took place (Hickey, 2013). Since 2011, while somewhat lower, the growth rate remains at a high level with an average of 19 new IH programs adopted annually. In addition, IH policy strengthening and/or adaptation to market dynamics is quite common, as two out of five policies have undergone significant legislative updates in the past three years, and one in five was under review at the time of survey. As IH programs are gaining ground in both hot and soft/mixed markets (Reyes, 2018), more research is needed to understand the adoption and adaptation of IH programs in various housing market conditions.

By capturing such a large number of U.S. IH programs, this study reinforces and adds nuance to findings in the literature, thereby allowing readers to better understand IH program features. For example, consistent with the previous study, we find that the most popular type of IH programs are mandatory programs applying to both rental and for-sale developments. Providing on-site affordable units is the predominant way developers are asked or required to contribute to affordable housing, with in-lieu fees being the most offered alternative option. A majority of IH programs target low-income households earning 50 – 80% of AMI, and rental programs generally serve lower-income levels than homeownership programs. Also, IH programs are innovative in designing various ways of income targeting requirements to provide deeper affordability. Most IH programs have affordability requirements that last for 30 years or longer, and it is a common practice for programs to restart the affordability term upon resale, which provides another layer of affordability insurance.

This study also sheds light on patterns of program design that were not presented in previous studies. For example, the average set-aside for affordable units is 16% of housing units and 29% IH programs require 20% or more of housing units to be set aside at affordable prices on-site. For linkage/impact fee programs, fee rates vary widely across programs. The maximum fee rate reported is over 1,000 times higher than the minimum. The fee rate is often set too low for an affordable housing fund to build the same number of affordable units as the on-site option. California, Massachusetts, and New Jersey show distinct patterns in some program features in comparison to IH programs outside of these three states. IH program design in states other than Massachusetts and New

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[24] It should be noted that the Grounded Solutions Network 2016 dataset included 21 local density bonus programs, whereas this time we only included five density bonus programs with requirements different from the state's Density Bonus Law, meaning that the discrepancy would have been even larger in California if we had included all density bonus programs recorded in 2016 survey.

[25] For example, inclusionary units can be created through ad-hoc negotiations between local governments and developers.

Jersey generally reflects policy innovation and adaptation to "make it work" in various local housing markets. Whereas in Massachusetts and New Jersey, program design is more responsive to the state's fair housing mandates and requirements.

About one-third of local governments partnered with external agencies to manage IH programs. There remains a big gap in the literature in unveiling the administrative practices of IH programs. We find that many programs report either not having a tracking system in place or not knowing if such a system exists. Except for a rather limited number of programs, we do not know in which neighborhoods the affordable units are located, the socio-demographic characteristics of participating households, or the transaction/lease details for units. Ultimately, inclusionary housing programs must track the units they have produced and effectively steward them to preserve affordable housing opportunities for members of their community. Affordable units created through IH programs effectively don't exist or lose affordability if there is no enforcement or monitoring. Beyond just tracking the number and location of IH homes, systems like HomeKeeper promote better program management and evaluation.[26]

In conjunction with this working paper, Grounded Solutions Network created a webpage (inclusionaryhousing.org/map) that enables users to visualize the distribution of IH programs across the country, and it allows people to download the database used in this study. The webpage also provides a channel for program administrators to report new and/or amended IH programs, as well as to populate missing and incorrect information.

Findings Related to Duty to Survey Rule

As a component of its Underserved Market Plan in support of its three-year Duty to Serve plan for affordable housing preservation in the single-family segment, Fannie Mae has sought to increase its mortgage purchase activity for loans to buyers in shared equity programs. As IH programs are a primary mechanism for the creation of new shared equity housing supply (Wang et al., 2019), it is important to know to what extent IH programs meet the definition for shared equity homeownership under the Duty to Serve rule. This survey includes questions that address this need. We find that most of the programs with a legal mechanism to preserve affordability, or 93%, also require a resale formula in the legal agreement to limit the amount of homeowners' proceeds at the time of resale. On the other hand, fewer programs — about two-thirds — require review and pre-approval of any refinances and requests for home equity lines of credit. Also, only about two-thirds of programs retain the right of first refusal. Given all four eligibility criteria, the study identified 314 IH programs that would qualify under Duty to Serve as shared equity programs.

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

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

[26] HomeKeeper is a workflow management system, developed and maintained by Grounded Solutions Network, that helps program staff track properties, households, and transactions, which compiles information into social impact performance metrics and programmatic outcomes.

Conclusion

This study significantly advances the understanding of prevalence, practices, and production of inclusionary housing programs in local jurisdictions in the United States using a more up-to-date, complete, and accurate dataset. Through an extensive data collection effort, the research team identified a total of 1,019 local IH programs in 734 jurisdictions. Through a comprehensive scan of all local zoning ordinances in states with a large number of IH programs, we were able to identify IH programs in New Jersey across all local jurisdictions, and we document more complete information in California and Massachusetts.

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

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