FEDERAL BUDGET CUTS IN HOUSING: IS THERE NO PLACE LIKE A DECENT HOME?

For nearly four decades after creating "public housing,"[1] the federal government continued to play a larger role in providing low and moderate income individuals and families with affordable, decent housing. President Reagan and his Commission on Housing reaffirmed "in the strongest terms the national commitment to 'a decent home and a suitable living environment' for all Americans, and recognize[d] a continuing role for the federal government in helping those individuals" who need assistance.[2] The "national commitment" and the "continuing role" now envisioned by the Commission on Housing for the federal government represent a departure from the pattern of governmental involvement that had been evolving for nearly half a century.[3] The reduction in federal spending for housing and community development by nearly fifty percent from fiscal year 1981 to fiscal year 1982 heralds a changed national commitment to public housing.[4] The dramatic shift in emphasis of federal housing programs and proposals, from increasing the supply of public housing to bolstering the demand for housing through direct payments to the "housing poor,"[5] suggests a new and less prominent role for the federal government.

In April, 1982, the President's Commission on Housing reported that federal programs that encouraged the construction of new housing had become too costly, restrictive, and inequitable. It noted that the long-term commitments associated with new housing construction programs had the effect of tying the federal government down and restricting its flexibility. Without such long-term commitments, the Commission noted, federal money could be channeled into direct housing payment programs and "twice the number of families could be helped."[6]

1. United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (1937) (codified as amended at 14 U.S.C. §§ 1401-1440 (1976 & Supp. V 1981)) [hereinafter cited as Housing Act].
2. President Reagan established a 30-person Commission on Housing in June, 1981. W. McKenna, The Report of the President's Commission on Housing xxii (1982) [hereinafter referred to as Housing Commission Report]
3. Nolon, *Reexamining Federal Housing Programs in a Time of Fiscal Austerity: The Trend Toward Block Grants and Housing Allowances*, 14 Urb. Law. 249, 281 (1982).
4. *Id.* at 249 n. 2. Under the Housing and Community Development Amendments of 1981, Pub. L. No. 97-35 §§ 300-371, 95 Stat. 384 (1981), signed by President Reagan on August 31, 1981, $18.087 billion was appropriated for 156,250 units of assisted housing. P.L. 96-526, 94 Stat. 3044 (1980) signed by President Carter on December 15, 1980, had provided $30.87 billion for 280,000 housing units. *See* Appendix 1, *infra* p. 475.
5. "Housing poor" and "housing deprived" are terms used to describe people who cannot afford new housing or otherwise participate in the housing market. *See, e.g.*, *Social Costs of Substandard Housing* in Housing For All Under Law 437 (Fishman, ed. 1978).
6. Housing Commission Report, *supra* note 2, at xxii.

This note examines the evolution of federal housing programs, including the Experimental Housing Allowance Program (EHAP) begun in 1972,[7] against a backdrop of changing federal priorities. Using the State of Indiana, St. Joseph County, and the city of South Bend as illustrations,[8] this note explores some of the local effects and reactions to changes in housing at the federal level and considers alternatives for providing "a decent home and suitable living environment" for low and moderate income families if federal budget cuts continue.

THE EVOLUTION OF SUPPLY-SIDE FEDERAL HOUSING PROGRAMS

Although our society does not constitutionally protect the right to decent housing,[9] providing decent housing and a decent living environment are of paramount importance to us.[10] The lack of constitutional protection accorded this right means that the initiative for adequate housing must come from federal and state legislatures, rather than from judicial bodies.

Following the Supreme Court's decision in *Helvering v. Davis*,[11] Congress created a Federal public housing program for low income individuals and families that fixed responsibility with local communities under state enabling laws.[12] In *Helvering v. Davis*, the Court interpreted the constitutional grant of power to spend public funds for the general welfare broadly, explaining that as separate sovereigns the states could not be expected to grapple with certain pervasive social and economic problems such as those related to the care of the elderly

7. Housing and Urban Development Act of 1970, Pub. L. No. 91-609, § 504, 84 Stat. 1770, 1786 (1971).

8. St. Joseph County was selected in 1974 as one of two metropolitan sites for the Supply Component of EHAP. Additionally, South Bend, the central city in St. Joseph County, has not suffered a drastic reduction in the programs its public housing authority administers. As a result of its participation in EHAP, St. Joseph County has grown to rely on direct cash assistance to its housing poor at the same time that it receives total funding for its housing and other section 8 projects. Interview with Al Watson, Director of South Bend Housing Authority, in South Bend, Indiana. (Nov. 3, 1982). *See infra* notes 83 to 97 and accompanying text.

9. Lindsey v. Normet, 405 U.S. 56, 74 (1972): "[T]he Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality."

10. As will be noted *infra* note 23, in the Housing Act of 1949, 42 U.S.C. § 1441 (1976 & Supp. V 1981), Congress first expressed federal housing policies by declaring that

> The general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and suitable living environment for every American family.

11. 301 U.S. 619 (1935). The Court expressed a Hamiltonian view of Article I, sec. 8 and held that the general welfare power was neither inflexible, "[n]or is the concept of general welfare static. Needs that were parochial a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with time." 301 U.S. at 641.

12. Housing Act, *supra* note 1. For a thorough discussion of the Wagner Housing Act's legislative history see T. McDONNELL, THE WAGNER HOUSING ACT (1957).

or the needs of the unemployed.[13]

Under the 1937 United States Housing Act,[14] the Federal government created the United States Housing Authority (Authority) in the Department of the Interior. Through the Authority, the Federal government made subsidies available to assist states and their political subdivisions in developing, organizing, and operating decent and sanitary housing for low income people. Congress hoped to stimulate localities to clear slum areas in preparation for new housing by providing direct subsidies to local public housing authorities.

In order for the localities to qualify for these benefits, Congress required the state legislatures to enact enabling statutes, generally referred to as "housing authorities" acts.[15] Under the provisions of these acts, most of which are substantially the same today, a political subdivision of a state could establish a housing authority if its fiscal body determined that either "unsanitary or unsafe dwelling accomodations [were] inhabited" in the political subdivision, or that "there [was] a shortage of safe or sanitary dwelling accomodations available in the unit for persons of low income at rentals they [could] afford."[16]

The 1937 public housing program directed the Authority to lend funds to local public housing authorities for the planning and construction of low-rent public housing units. The local public housing authorities then repaid the Authority through the sale of tax-exempt, long-term bonds in the private investment market. To assure the ready marketability of the bonds, the Authority guaranteed annual contributions to housing authorities to cover the debt-service on the bonds. The first federal public housing program gave local housing agencies the primary responsibility for owning and operating public housing for low income tenants. The federal government only provided resources in the form of subsidies to cover the capital costs of housing and to enable

13. Helvering v. Davis, 301 U.S. 619 (1935). See also the companion case to *Helvering*, Stewart Machine Co. v. Davis, 301 U.S. 548 (1935), in which the Supreme Court upheld the constitutionality of certain portions of the Social Security Tax Act dealing with unemployment compensation.

14. Housing Act, *supra* note 1. *See also* HOUSING AND COMMUNITY DEVELOPMENT SUBCOMM., OF THE HOUSE COMM. ON BANKING, CURRENCY AND HOUSING, 97TH CONG., 1ST SESS., EVOLUTION OF ROLE OF THE FEDERAL GOVERNMENT IN HOUSING AND COMMUNITY DEVELOPMENT 9 (1975) [hereinafter cited as EVOLUTION OF FEDERAL ROLE]. In 1934, Congress passed the National Housing Act to further the government's efforts to establish programs to relieve unemployment and "to stimulate the release of private credit in the hands of banks and lending institutions for home repairs and construction." *Id.* at 4. Under this Act, the Federal Housing Administration (FHA) was created, headed by a Federal Housing Administrator. National Housing Act, P.L. 73-479, 48 Stat. 1246 (1934). Early federal programs in the field of direct housing construction were limited and temporary. In 1935, the Supreme Court invalidated an emergency depression measure because, among other things, it substantially reduced the value of existing mortgages. Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935). To avoid the effect of the *Louisville* decision, Congress created a federal housing program that fixed responsibility for housing with politically neutral local housing agencies. In 1939, the federal government transferred the U.S. Housing Authority to the Federal Works Agency. Pub. Res. No. 76-20, 53 Stat. Ch. 193, 76th Cong., 1st Sess. (1939).

15. *See, e.g.*, Indiana's Housing Authorities Act, IND. CODE §§ 36-7-18-1 to 36-7-18-44 (Cum. Supp. 1981).

16. IND. CODE § 36-7-18-4(d) (Cum. Supp. 1981).

local housing authorities to set rents at levels sufficient to cover operation and maintenance expenses.

Urban reformers who encouraged the post-Depression federal activity in housing and community development concluded that "bad housing was a cause of—or at least a contributing factor to—many of the social and physical problems confronting the poor."[17] Many studies done at that time found numerous social and physical ills more prevalent in slums than in areas of decent housing.[18] "A dollar spent on housing for the poor was expected to bring more benefits to both the poor and society than a dollar spent on food, clothing, or other commodities."[19] Consequently, Congress decided to separate federal housing assistance from the welfare system.

As public housing programs evolved, the federal government began to play a more prominent role in the administration and operation of its programs, reducing the control and flexibility of local housing authorities and state and local governments.[20] Congress established a permanent Housing and Home Finance Agency (HHFA) at the federal level. Its Administrator supervised HHFA's three constituent agencies: the Home Loan Bank Board, the Federal Housing Administration, and the Public Housing Administration.[21] The Senate also established a special subcommittee of its Banking and Currency Committee to develop housing legislation.[22]

Following World War II, Congress affirmed the federal commitment to remedying urban housing problems and assumed responsibility for slum clearance and redevelopment by enacting the Housing Act of 1949.[23] This Act articulated as its goal, "a decent home and a suitable living environment for every American family."[24] In addition to expressly stating federal housing goals for the first time, the 1949 Act created the Urban Redevelopment Program to encourage clearance of blighted areas for private enterprise to use for construction of moderate

17. J. WEICHER, HOUSING: FEDERAL POLICIES AND PROGRAMS 5 (1980).
18. R. FISHER, TWENTY YEARS OF PUBLIC HOUSING 62-73 (1959).
19. J. WEICHER, *supra* note 17. Forty years later a Yale epidemiologist, after reviewing 178 studies in the fields of public health, medicine, and social psychology, concluded that,

> the link between the parameters of housing and indices of physical health has not been well-supported by the reviewed evidence—at least not in any direct sense . . . the relationship between housing and chronic conditions and disability is not at present supported by any firm evidence . . . the association between housing and mental health (excluding housing satisfaction) is supported only by the weakest, most ambiguous studies . . . the best designed studies do not demonstrate any mental health benefits, and it now appears that some of our most cherished hopes – such as raising educational aspirations by moving people out of slums—never will be realized.

Kasl, *Effects of Housing on Mental and Physical Health* in NAT'L HOUSING POLICY REV., HOUSING IN THE SEVENTIES: WORKING PAPERS 296 (1976). *See also* D. WILNER, R. WALKLEY, T. PINKERTON & M. TAYBACK, THE HOUSING ENVIRONMENT AND FAMILY LIFE (1962).
20. HOUSING COMMISSION REPORT, *supra* note 2, at 31.
21. EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 20.
22. *Id.* at 22.
23. Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413.
24. *Id.*

cost housing and other commercial, industrial and public facilities. While increasing the funds available for public housing and establishing new programs for rural housing, the 1949 Act also required public housing authorities to submit redevelopment plans to the governing body of the locality for its approval before seeking federal subsidies.[25]

In 1953, President Dwight D. Eisenhower established the Committee on Government Housing Policies and Programs to examine the existing housing and urban development programs and to recommend changes and modifications.[26] In response to the Committee's findings, the Housing Act of 1954 enlarged slum clearance programs to encompass additional urban renewal activities such as conservation and rehabilitation.[27] Congress hoped to make urban development a more comprehensive tool for meeting local housing and community needs.[28] Under the 1954 Act, the scope of the public housing agencies' authority began to be further circumscribed because local governments were required to draft master plans for combatting blight as a prerequisite for numerous types of federal housing assistance. The 1954 "Workable Program for Community Improvement" required local master plans to include long-range capital improvement programs, neighborhood analyses, relocation plans, and a host of local codes and code enforcement mechanisms. Before approving local programs, the Housing Administrator had authorization to review a community's urban renewal plan and past performance to determine whether the locality had achieved slum clearance and urban redevelopment objectives.

Additionally, Eisenhower's Committee recommended a complete reform of the government's secondary market structure, both as to the role of the federal government and that of the private financial community. The Committee speculated that these changes could enable the Federal government to finance its housing programs and stimulate some local involvement.[29] The Committee intended Congress to design a secondary market facility that would not have to rely on the Federal Treasury. Rather, this secondary market facility would use capital from participating lending institutions and would then generate its own resources in the private capital market.[30]

The 1954 legislative acts liberalized the conventional financial mechanisms previously relied upon as the primary means for solving housing problems. The Mortage Insurance and Loan Guaranty Programs, both products of the 1954 legislation, changed the character of the Federal Housing Administration from an agency primarily concerned with increasing the supply of adequate housing to an agency

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25. D. MANDELKER & R. MONTGOMERY, HOUSING IN AMERICA: PROBLEMS & PERSPECTIVES 215 (2d Ed. 1979) [hereinafter cited as MANDELKER].
26. *Id.*
27. Housing Act of 1954, 42 U.S.C. § 1450 (1976).
28. MANDELKER, *supra* note 25, at 216.
29. *Id.*
30. *Id.*

which began to serve special public purposes in the housing field.[31]

As the Federal government expanded its involvement in housing and urban renewal programs, it also loosened the requirements imposed on states and their political subdivisions. Although governing bodies of localities had to certify that the community needed particular housing projects, such as those for families displaced by urban renewal, the certification process became little more than a formality.[32] The federal government relaxed requirements that programs for eliminating slums and blight receive the Housing Administrator's approval as to workability before the execution of new contracts for public housing. Meanwhile, the Housing Administrator obtained broad authority to purchase obligations or make loans to finance specific public projects under state or municipal law.[33]

By the late 1950's, President Eisenhower voiced concern about excessive federal expenditures on housing and urban renewal programs. He strongly urged Congress to draft legislation that would lead to increased state financial and administrative participation in meeting the problems associated with slum clearance and urban renewal. In his 1958 Budget Message, President Eisenhower recommended that each state create an agency with special responsibility for handling problems of urban development, housing, and metropolitan planning.[34]

In 1959, President Eisenhower vetoed Congress' first two housing bills as extravagant, inflationary, and a substitution of federal spending for private credit.[35] In the 1959 housing legislation, which President Eisenhower finally approved, Congress made direct federal loans available for rental housing for the elderly to private nonprofit corporations.[36] As a concession to the President, Congress directed the Housing Administrator to encourage the use of local public agencies. These agencies would operate on behalf of smaller communities within states engaged in urban renewal programs. Congress appropriated federal money for matching grants to assist states in their urban planning.[37]

In 1961, President John F. Kennedy recommended the establishment of a new Department of Housing and Urban Affairs.[38] Realizing that several Federal programs affected the same urban areas simultane-

31. *Id.* at 217.
32. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSING IN THE SEVENTIES: A REPORT OF THE NATIONAL POLICY REVIEW 18 (1974).
33. Specifically, the Federal Housing Administrator obtained the authority to purchase obligations of states, municipalities other political subdivisions of the state, public agencies, public corporations, boards, and state commissions. Housing Amendments of 1955, Pub. L. No. 84-345, 84 Stat. 719 (1955).
34. H. R. Doc. No. 266, 85th Cong., 2d Sess. (1958).
35. S. Doc. No. 34, 86th Cong., 1st Sess. 1 (1959); S. Doc. No. 52, 86th Cong., 1st Sess. 1 (1959).
36. Housing Act of 1959, 12 U.S.C. § 1701q (1976 & Supp. V 1981).
37. *Id. See also* J. WEICHER, *supra* note 17, at 34.
38. H. R. Doc. No. 102, 87th Cong., 1st Sess. 9 (1961). The House of Representatives rejected the proposal to establish a Department of Housing and Urban Affairs in 1962. H. R.Res. 530, 87th Cong., 2d Sess. (1962). In 1963, 1964, and 1965 the President continued to request

ously, the President urged the Housing Administrator to coordinate HHFA's planning activities with the Secretary of Commerce in order to integrate urban renewal and freeway construction plans. President Kennedy also suggested that state and local highway and housing officials and private experts be consulted as part of this coordinated effort.

The 1961 housing legislation expanded the existing Section 221 rental housing program to include low and moderate income families as well as displaced families.[39] Real property in urban renewal areas could now be purchased by limited dividend corporations, nonprofit organizations, and cooperatives as well as public bodies to be used for developing profit-making rental housing projects for moderate income families. The 1961 act contained the Section 221(d)(3) program.[40] This program provided a subsidized, below-market interest rate mortgage insurance to assist in the development of rental housing for moderate income families. Eligible mortgagors included limited dividend corporations, cooperatives, nonprofit organizations, and other public bodies or agencies. The program purportedly benefited families with incomes above public housing limits set by local housing authorities, but below amounts necessary to meet rental requirements in decent, new, unsubsidized private housing.[41]

Congress introduced a consumer-oriented housing program in the Housing and Urban Development Act of 1965.[42] The rent supplement program made certain privately-owned housing available to low income individuals and families who were elderly, handicapped, displaced by governmental action, occupants of substandard housing, or occupants (or former occupants) of dwellings damaged or destroyed in natural disasters. Under this prototype for the current Section 8 existing program, recipients' incomes could not exceed the maximum permitted in the area for occupancy in low rent public housing. Rent supplement payments, paid directly to landlords, made up the difference between one-fourth of a tenant's income and the fair market rental value of the housing unit. Any increase in a tenant's income reduced the rent supplement payments. This 1965 Act also created the Section 23 leasing program,[43] which authorized local public housing agencies to subsidize units in existing housing.

In 1965, President Lyndon B. Johnson transferred all the functions,

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Congress to establish a Department of Housing and Urban Affairs. H. R. Doc. No. 15, 88th Cong., 2nd Sess. (1964); H. R. Doc. No. 1, 89th Cong., 1st Sess. (1965).

39. Basically the section 221 program is a subsidized, below-market interest rate insurance program to provide rental housing for moderate income families. Housing Act of 1961, Pub. L. No. 87-70, §101(a)(6), 75 Stat. 149, 150 (1962) (currently codified at 12 U.S.C. § 1715 *l* (1976 & Supp. V 1981). *See also* Nolan, *supra* note 3, at 254 n. 19.

40. *Id. See also* EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 76.

41. For discussion of "myths" of federal housing programs, see Marcuse, *Housing Policy and the Myth of the Benevolent State*, 8 SOC. POL'Y 21, 23-26 (1978).

42. Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 451 (1965) (currently codified at 12 U.S.C. § 1701s (1976)).

43. *Id.*

powers and duties of the HHFA, the Federal Housing Administration, the Federal National Mortgage Association, the Public Housing Administration, and the functions, powers, and duties of the heads and officials of those organizations to the head of the new Department of Housing and Urban Development (HUD).[44] Congress established HUD as a cabinet-level agency. Congress also directed HUD and its Secretary to develop and recommend to the President "policies for fostering orderly growth and development of the nation's urban areas" and to coordinate federal, state, and local housing and urban development programs and policies.[45]

President Johnson's 1966 State of the Union Message stressed the importance of metropolitan-wide housing and urban planning.[46] To encourage metropolitan areas to undertake comprehensive planning regarding housing and urban renewal, transportation, education, welfare, and other social programs,[47] Congress created the Model Cities Program.[48] By providing special supplementary grants to cities of various sizes, Congress intended the Demonstration Cities program to stimulate coordination of physical improvement activities and social programs in defined neighborhoods.[49]

In 1968, Congress reported that the supply of housing was not increasing rapidly enough to keep pace with current demands. Consequently, it expanded federal programs to include home-ownership programs that provided federal subsidies to low income families interested in purchasing homes.[50] The 1968 housing legislation authorized the Secretary of HUD to contract with lenders making FHA-insured home mortage loans to these families. Federal subsidies became available for public agencies and nonprofit organizations that purchased homes for rehabilitation and resale to low income families.[51] In addition to expanding the Model Cities program, the 1968 legislation also

44. Department of Housing and Urban Development Act, Pub. L. No. 89-174, 79 Stat. 667 (1965) (codified at 42 U.S.C. §§ 3531-3541 (1976)).
45. *Id.* HUD was not actually organized until February, 1966.
46. H. R. Doc. No. 321, 89th Cong., 2d Sess. 5 (1966).
47. The Model Cities program was designed to provide federal assistance for both the planning and implementation of a city's demonstration program. Grants were made to cities, counties, or any local public agency designated by a community's governing body to administer a comprehensive city demonstration program. To qualify, a demonstration program had to include plans for: (1) renewing entire slum neighborhoods by combined use of physical and social development programs; (2) increase substantially the supply of standard housing of low and moderate cost; (3) make marked progress in reducing social and educational disadvantages, ill health, underemployment, and enforced idleness; and (4) contribute toward a well-balanced city. Demonstration Cities and Metropolitan Development Act of 1966, tit. I, 42 U.S.C. §§ 3301-3313 (1976). *See also* Nolon, *supra* note 3, at 254 n. 22.
48. *Id.*
49. *Id. See also* EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 109. Among other mid-sixties HUD programs designed to stimulate local involvement in public housing was a procedure referred to as the "Turnkey Method." The Turnkey Method served the dual purposes of encouraging local initiative for public housing and reducing administrative costs by allowing private developers to design and construct housing units and turn around and sell them to public housing agencies.
50. Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476 (1968).
51. *See* EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 127-141.

contained a cascade of grant-in-aid programs, neighborhood development programs, and authorized large appropriations for rent supplements and public housing. Rental housing units financed with below-market interest rate FHA 221(d)(3) mortgages[52] were eligible for conversion into cooperative or condominium ownership.

To stimulate private sector participation in public housing construction and to encourage localities to develop self-help programs, this new legislation allowed applications from private sector developers to trigger federal subsidies.[53] Local renewal and redevelopment agencies worked in tandem with private developers selecting sites and designing projects for urban renewal areas. Outside urban renewal areas, local governments frequently initiated projects that involved private developers applying to HUD for housing subsidies.

By the end of the sixties, public housing construction had increased dramatically. Between 1968 and 1971, over 300,000 units of public housing were begun.[54] Localities found themselves "responding to unsolicited applications by developers to build low and moderate income housing with Federal assistance."[55]

In January, 1973, President Richard M. Nixon put a stop to the proliferation of federal spending programs in housing by declaring a year-long moratorium on all housing and community development projects.[56] Responding to federal budget watchers who had grown concerned with the rapid expansion of the home ownership programs and the multi-family rental housing program, President Nixon created a task force to study and reevaluate existing housing and community development activities.[57] The task force's report, which Congress sharply criticized, contained a devastating account of the home ownership program. The report suggested that the program had been wracked with scandals and that it was to blame for catalyzing the deterioration of the central cities.[58] The Senate Subcommittee on Housing and Urban Affairs revealed a number of short-sighted and unquantified assumptions in the task force's report. However, urban researchers had produced data showing that, despite the massive amounts of federal money poured into urban areas, disappointingly little progress had been made in improving the quality or quantity of housing for low income households.[59]

The Nixon Administration, furthering the President's New Federal-

52. See discussion of Housing Act of 1961 and text accompanying note 40, *supra*.
53. Public housing projects remaining within the control of local housing authorities.
54. J. WEICHER, *supra* note 17, at 33.
55. Nolon, *supra* note 3, at 255.
56. EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 183.
57. *Id.*
58. MANDELKER, *supra* note 25, at 221. However, the Senate Subcommittee on Housing and Urban Affairs criticized the "Housing in the Seventies" report as inadequately evaluating federal housing programs.
59. *See, e.g.*, Meeks, Oudekerk & Sherman, *Housing Code Dilemmas*, 6 REAL EST. L.J. 297 (1978).

ism strategies, favored diminishing federal responsibility for public housing by directly subsidizing housing demand, rather than continuing to pour federal dollars into the supply side of the market by funding construction firms and landlords.[60] Perhaps foreshadowing events to occur a decade later, Nixon's researchers warned that by employing supply-side strategies, federal housing money would never reach those who needed it the most—the lowest of the low income families.

Several days after President Nixon's resignation, Congress passed a new basic housing program, the Housing and Community Development Act of 1974.[61] This act eliminated most categorical urban development programs, including urban renewal, and replaced them with a community development block grant program for eligible local units and urban counties.[62]

To involve local governments in housing and community development activities, the Housing and Community Development Act, still in effect today, requires localities to adopt Housing Assistance Plans (HAP). Just as the Housing Administrator would review communities' master plans under the Workable Program for Community Improvement, HUD would use a community's HAP to allocate subsidies and review grant applications. With respect to housing, the 1974 Act provided that most existing housing subsidy programs be phased out. The Act transformed the revised Section 23 program into the Section 8 Housing Assistance Payments Program.[63] The purpose of the Section 8 program is to provide "low income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments."[64] The Section 8 system of housing assistance payments can be used to construct, to rehabilitate, or to partially defray a tenant's monthly rent payments.

Under the Section 8 program, local housing authorities and other eligible public agencies have become the vehicles for processing HUD housing assistance payment applications.[65] Although this would seem to return control over housing programs to local officials, localities continue to rely heavily on private sector initiative for projects involving construction and substantial rehabilitation.[66]

Section 8, designed to be a flexible program, allocated federal subsidies among new, existing, and substantially rehabilitated rental housing stock for a variety of reasons. First, Congress did not want to involve the Federal government in long-term, restrictive projects in light of the escalating energy and maintenance costs.

Second, the Section 8 program was designed to stimulate local au-

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60. MANDELKER, *supra* note 25, at 221.
61. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (1976).
62. EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 201-215.
63. *Id.* at 205-206.
64. 24 C.F.R. § 880.101(a)(1) (1982).
65. EVOLUTION OF FEDERAL ROLE, *supra* note 14, at 205-206.
66. Nolon, *supra* note 3, at 257.

tonomy. The program requires local public housing agencies to assess their communities' housing markets to determine whether new housing stock should be constructed, or whether existing housing units could be rehabilitated to provide a decent home for low or moderate income families.

Now that the federal government's outstanding Section 8 obligations exceed $121 billion,[67] this federal housing program has become the subject of much criticism. Spiraling costs have prompted HUD and Congress to explore alternative subsidy mechanisms, such as housing block grants and direct payment programs to insure that the goal of "a decent home and a suitable living environment for every American family" is more than an empty promise.

EXPERIMENTAL HOUSING ALLOWANCE PROGRAM — A CONSUMER-ORIENTED APPROACH TO PUBLIC HOUSING

Until the early 1970's, federal involvement in housing had been aimed at the supply side of the market. Congress intended to encourage developers to build an adequate stock of suitable housing for low income households, and to create incentives for landlords to maintain and rehabilitate property. HUD Secretary Samuel J. Pierce, Jr. noted last fall that "[t]he housing problem can be summed up in three words: affordability, availability, and adequacy."[68] Although this neat dissection of America's housing problems may oversimplify an entangled series of economic, social, and political concerns, this triad does provide a basis for understanding why the current Administration advocates consumer-oriented housing programs.[69]

In contrast to supply-side programs, such as the Section 8 New Construction program, housing allowance programs (sometimes referred to as direct cash payment programs or voucher programs) are geared toward bolstering the demand side of the housing market. Eligible tenants receive vouchers or cash transfers designed to cover a percentage of their housing expenses. HUD has never administered programs which involved direct payments of housing allowances to assisted households. The rent supplement, Section 23 leased housing program, and the Section 8 existing program all used an income-related subsidy to be paid on behalf of eligible occupants of existing, standard housing units. However, all these programs relied upon intermediaries, either local public housing agencies or project owners, to receive and

67. HOUSING COMMISSION REPORT, *supra* note 2, at xxiii.

68. Address by the Honorable Samuel J. Pierce, Jr., published as Pierce, *The Future of Housing in the U.S.*, 10 PROB. & PROP. 3-4 (1981).

69. The assumption at the federal level is that there presently is an ample supply of adequate housing and that affordability is the predominant problem. HOUSING COMMISSION REPORT, *supra* note 2, at 12.

administer funds.[70] Out of a concern over administrative problems and possible inflationary side effects, Congress has yet to legislate a housing allowance program.[71]

The articulated benefits of a housing allowance program, in a community where there is adequate housing stock, are great in number. First, a housing allowance program would be less expensive than providing newly constructed or substantially rehabilitated housing to low and moderate income households. Second, a housing allowance program appears more equitable because it spreads federal housing dollars further, rather than housing a fortunate few in costly new or substantially rehabilitated units. Third, once in place, a housing allowance program requires a fraction of the administrative resources required by other federal housing programs.[72]

Since the late 1930's, public officials have debated proposed housing allowance programs, designed to provide direct cash assistance to renters or homeowners.[73] In the late 1960's, the President's Commission on Urban Housing, the Kaiser Commission, reviewed the housing allowance debate and recommended a thorough test of housing payments.[74] Following the Kaiser Commission's recommendations, Congress authorized HUD to undertake the tripartite Experimental Housing Allowance Program (EHAP) in the early 1970's.[75] In 1980, the Kaiser Commission reported the first results of these experiments.[76]

Early EHAP data showed that approximately twenty per cent of American households have incomes at levels which would make them eligible for a housing allowance. The study found that the vast majority of eligible households lived in substandard housing. Initially, participation in the experimental housing allowance programs was high among most ethnic and racial groups. As experimenters introduced quality standards, denying direct payments to homeowners or renters who lived in "substandard" housing, participation in EHAP declined markedly.[77] As standards grew more rigorous, minority families, large families, and low income people became the first groups to cease participating in EHAP. In the absence of quality control requirements, participation in EHAP gradually increased, but as many as two-thirds of the participants could be living in substandard housing. The early EHAP tests demonstrated that participation also increased when pay-

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70. *Id.* at 12-15. The report raises concerns regarding both skyrocketing costs and latent inequities of producer-oriented programs.
71. Nolon, *supra* note 3, at 275.
72. HOUSING COMMISSION REPORT, *supra* note 2, at 17. *See also infra* note 94.
73. Nolon, *supra* note 3, at 275.
74. HOUSING COMMISSION REPORT. *supra* note 2, at 17. *See also* PRESIDENT'S COMMISSION ON URBAN HOUSING, A DECENT HOME 14 (1969).
75. Housing and Urban Development Act of 1970, Pub. L. No. 91-609, § 504, 84 Stat. 1770, 1786 (1971).
76. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, EXPERIMENTAL HOUSING ALLOWANCE PROGRAM, CONCLUSIONS: THE 1980 REPORT (1980).
77. *Id.* In the Demand Experiment, the failure rate (those who signed up but never received an allowance) was as high as 60%.

ment levels were increased.[78]

As a result of early EHAP tests, HUD concluded that housing allowances would neither artifically inflate the price of housing nor stimulate the construction of major repairs of housing for the poor.[79] Some commentators feel that the 1980 EHAP results prove that housing allowances are, at best, only a partial solution to the housing problems of low and moderate households.[80] Meanwhile, the President's Commission on Housing stated in its 1982 report that "[t]he primary Federal program for helping low-income families to achieve decent housing should be a Housing Payments Program. This program, coupled with housing supply assistance through the Community Development Block Grant[81] program, should replace future commitments to build or substantially rehabilitate additional units under Federal housing programs."[82]

HOUSING ASSISTANCE SUPPLY EXPERIMENT: A CASE STUDY OF THE LARGEST HOUSING TEST EVER CONDUCTED IN THE UNITED STATES

To aid HUD in determining the viability of a direct cash assistance program administered at the local level for providing "a decent home and a suitable living environment" for low income households, the Rand Corporation contracted wth HUD to undertake a portion of EHAP,[83] the Housing Assistance Supply Experiment (HASE).[84] Brown County, Wisconsin, and St. Joseph County, Indiana, were selected as the metropolitan sites for a ten-year, full-scale housing allowance program, and, as such, are carrying out the largest housing experiment ever conducted in the United States.[85]

78. *Id.*
79. *Id.*
80. Nolon, *supra* note 3, at 277.
81. Congress has generated two separate block grant proposals for housing. The 1973 and 1976 proposals both sought to reduce federal interference with state and local decision-making by providing the following: first, that funds would be allocated to state and local governments based on a "statistically measurable formula"; second, large municipalities would receive funds through state governments or from HUD; third, federal review of applications would focus on past performance; fourth, funds would be available for all types of housing subsidies with state and local governments primarily responsible for planning and administration; and fifth, compliance with federal statutes pertaining to fair housing, civil rights and the like would be mandatory. *Id.* at 257-270.
82. HOUSING COMMISSION REPORT, *supra* note 2, at 18.
83. Two other phases of EHAP are the Housing Assistance Demand Experiment, which tests recipients' responses to alternative amounts and forms of assistance, and the Administrative Agency Experiment, designed to explore the advantages and disadvantages of alternative institutional and administrative arrangements for delivering allowances to low income households. RAND CORPORATION, HOUSING ASSISTANCE SUPPLY EXPERIMENT (HASE) SIXTH REPORT 2-3 (1980) [hereinafter referred to as RAND REPORT].
84. *Id.* at 1, 3-4. HASE was designed to focus on the following four "clusters" of questions concerning the effects of a national housing allowance program: supply responsiveness; behavior of market intermediaries and indirect suppliers; residential mobility and neighborhood change; and effects on nonparticipants, by contrasting identical programs in two different metropolitan housing markets.
85. These two sites were selected and matched for a variety of reasons. First, funding constraints

For the first five years, beginning in 1974 with the "phase-in" period, the Rand Corporation accepted responsibility for administering the program. During the "phase-in" period, the Rand Corporation also collected data on the effects of the allowance program on the local housing market, on participants, and on the community. Following this five-year monitoring period, Rand personnel withdrew and local officials assumed control over the housing allowance program.

Nonprofit corporations, called housing allowance offices (HAO), were set up in each site to administer the housing allowance programs. For the first five years, the HAO's board of trustees was comprised of members of the Rand Corporation, as well as local residents.[86] A ten-year annual contributions contract with HUD and the local housing authority provides funding for the housing allowance program.[87] In St. Joseph County, the Mishawaka and St. Joseph County Housing Authorities delegated their responsibility for the program to the South Bend Housing Authority, which in turn delegated operating authority for the program to the HAO. Absolutely no control, regulation or administration of the housing allowance program exists at the state level.

The HAO determines eligibility for housing allowance payments in accordance with HUD's assistance formula, weighing a family's income, housing expenses, and household composition. When a family's income "exceeds four times the standard cost of adequate housing for a given household size, allowance entitlement drops to zero."[88] Housing allowance recipients may be homeowners or renters and may move within the boundaries of the experimental site without affecting their eligibility.

As part of its comprehensive enrollment process, the HAO does more than calculate an applicant's eligibility and inspect the applicant's dwelling. The HAO actually interviews and counsels applicants.[89] The housing allowance program encourages recipients to select their own residences and negotiate the terms and conditions of their rental and purchase agreements with landlords and sellers without assistance. However, to receive monthly payments, a recipient must live in a housing unit which the HAO certifies as meeting adequate standards. Also, the household must spend the housing allowance it receives for housing

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required selection of metropolitan areas with populations under 250,000 in 1970. Second, Brown County was selected because of its rapidly growing urban center and relatively tight housing market and because its low percentage of racial minorities caused it to have few problems of residential segregation and housing discrimination. In contrast, St. Joseph County has a rapidly declining urban center and a large, growing population of blacks and other disadvantaged minorities. *Id.* at 5-6. *See infra* note 8.

86. *Id.* Now the Board members are all residents of Brown and St. Joseph Counties.
87. Pursuant to section 23 of the 1937 Housing Act, *supra* note 1.
88. RAND REPORT, *supra* note 83, at 7. Eligible households may consist of: (a) one person (no more than 10% of the number of single-person households authorized for assistance may be under the age of 62 or non-handicapped); or (b) two or more related persons of any age, provided that current income and assets are within specified limits and that the household does not already receive equivalent assistance under another Federal housing program.
89. *See* Appendix 2, *infra* p. 476, which illustrates the enrollment process flow.

expenses.[90]

The housing allowance program has brought well over fifty-seven million new federal dollars into St. Joseph County since its inception in 1974.[91] Monthly allowance benefits per participant have kept pace with inflation, increasing twenty dollars between December, 1980 and December, 1981.[92] When the housing allowance program began, the administrative cost per unit month was $171.79. The administrative cost of servicing each HAO client is now $21.84.[93] Between 8,000 and 8,500 households currently benefit from the housing allowance program in St. Joseph County.

After studying the impact of the housing allowance program in St. Joseph County during HASE's first five years, the Rand Corporation drew four conclusions. First, the "allowance program is an economical and efficient alternative to traditional public housing and federal housing subsidy programs."[94] Second, by putting money directly into the hands of tenants and homeowners, housing allowances have not caused housing costs to increase in the St. Joseph County area.[95] Third, the local housing stock has improved, apparently as a result of housing allowances.[96] Finally, the Rand Corporation concluded that the allowance program has neither disrupted neighborhoods nor achieved integration, and that only a small percentage of recipient families have moved into "different, and presumably better, neighborhoods"[97] rather than improving, or encouraging their landlords to improve, their current residences.

However, another, and perhaps more important, conclusion can be drawn from the two years in which local housing officials administered St. Joseph County HASE. This housing allowance program demonstrated that with adequate funding and suitable housing stock, an agency operating locally can efficiently and economically meet the housing needs of a community's low and moderate income families without the superstructure of federal and state programs.

90. RAND REPORT, *supra* note 83, at 7-14. Each household is reviewed every six months to determine that it continues to be eligible for housing allowance program benefits.
91. HOUSING ALLOWANCE OFFICE, INC., 1981 ANNUAL REPORT 8 (1982) [hereinafter cited as 1981 REPORT].
92. *Id.*
93. *Id.*
94. Researchers estimate that 85¢ of each program dollar directly benefits housing allowance program participants as compared to 57¢ of each program dollar in Section 8 existing programs and 34¢ of each program dollar in federal public housing programs. When compared to other public benefit programs, HAO operating costs per recipient were 73% less than average costs among the states for the Aid to Families of Dependent Children (AFDC) program. *Id.* at 5,8.
95. *Id.* at 5. Under Section 8 existing programs, which use regulations to control price increases rather than relying on market forces, landlords raised their rents an average of 26%.
96. *Id.* at 6.
97. *Id.*

1984 CONCLUSIONS

Unlike George Orwell's modern classic that predicted a negative utopia for the year 1984,[98] local housing officials in St. Joseph County do not project an Orwellian mood of hopelessness or despair when confronted with the question of what will happen in 1984 when the ten-year housing allowance program ends. Although political changes have disrupted many early assurances local housing officials received regarding continued federal assistance at housing allowance levels, local officials predict that HUD will transfer HAO clients to a Section 8 existing program, or a similar program, in September, 1984.[99] Should HAO clients be converted to HUD's Section 8 program, more than 60 percent of current allowance recipients would no longer receive housing assistance.[100] Section 8 benefits are not available for homeowners or non-elderly, non-handicapped people living alone.[101]

With regard to alternatives at the federal level, Indiana housing officials do not view housing block grants as a feasible means for providing housing assistance. Local housing officials have doubts about the community development block grant program and do not advocate the development of a housing block grant program. The housing officials suspect that block grants offer too great a potential for the politicization of housing.[102] In contrast, local housing officials favor housing payments programs and federal subsidies for public housing. These programs make the largest number of federal dollars available to a great number of low income households, while providing local housing authorities with the opportunity to control and efficiently operate housing programs for low and moderate income families.

A local resource yet to be tapped is the public housing authority. Notwithstanding the disincentive of HUD ceilings placed on the amount of income local housing authorities may generate from the private sector to subsidize their housing projects, the South Bend Housing Authority continues to explore means for achieving self-sufficiency, should Federal regulatory constraints be lifted and budget cuts continue. Because the South Bend Housing Authority enjoys a good reputation in the community for efficiently and economically managing and operating multifamily dwellings, a number of private apartment complex owners (not targetting their stock for low and moderate income families) have entered into contractual arrangements for the Housing Authority's managerial and administrative services.

Because of their proximity to the community they serve, public

98. G. ORWELL, 1984 (1949).
99. Interview with Hollis Hughes, Jr., Director of Housing Allowance Office, Inc., in South Bend, Indiana. (Oct. 12, 1982).
100. *Id. See also* 1981 REPORT, *supra* note 91, at 10.
101. *Id. See also* 24 C.F.R. § 880.101(a)(1) (1982).
102. Interview with A. Watson, Director of South Bend Housing Authority, in South Bend, Indiana (Nov. 3, 1982).

housing authorities are experts of sorts at responding to the housing needs of low and moderate income families. By virtue of their ability to work with HUD to secure federal subsidies and their connection with the community, public housing authorities can detect and accommodate local or federal changes more rapidly than governmental bodies charged with the responsibility of ministering to congeries of state or local needs. Returning responsibility for organizing and operating housing assistance programs to a single local nongovernmental agency maximizes the potential for local control and accountability for public housing.

Moreover, current economic conditions have changed the pool of potential public housing tenants. Individuals and families in the moderate income bracket have become interested in living in public housing projects because costs of rental units in the private market and purchased homes have grown prohibitively high. South Bend is in the fortunate position of having adequate available housing stock[103] for these families, were HUD to relax its income-eligibility guidelines to permit these individuals to live in public housing. An advantage of renting public housing units to these higher income families and individuals, as well as income-eligible people, is that the public housing authority could use fewer federal dollars to subsidize the fair market rental of their housing units. Unused funds could be reallocated to the lowest of the low income families who presently have to be excluded from public housing projects because they are unable to devote an adequate amount of their incomes to housing.

Nearly half a century ago the federal government entered the field of public housing with legislation designed to minimize federal interference with state and local government administration of housing programs for the poor. Public housing was to be owned and operated by local public housing authorities. As the federal government became more involved in public housing, its programs grew more sophisticated and complicated. Agencies and committees at the federal level proliferated in order to keep Congress and the President advised on the nation's current housing needs and to implement federal programs. The federal government continued to develop more detailed housing programs, even though states and their subdivisions often received needed assistance too late due to the cumbersome federally administered programs.

Despite Congress' attempts to urge state and local housing officials to involve themselves in housing and urban development projects, states did not undertake comprehensive planning and programming. Even federal programs affecting the same urban areas were not jointly planned or implemented. To stimulate coordination and cooperation

103. *Id.*

among the physical and social programs directed at urban renewal and redevelopment, Congress enacted the Model Cities program.

Rather than reducing federal involvement in housing and community development, the federal government continued to produce additional specialized programs until the early 1970's moratorium on housing and community development. Now, continuing President Nixon's New Federalism strategies, the Reagan Administration advocates a continued shift in the emphasis of federal housing programs from production to consumption. Meanwhile, the Reagan Administration claims that its programs return responsibility for public housing to the communities.

CONCLUSION

The increasing complexity of America's housing problems caused the federal government, committed to solving these problems, to legislate more sophisticated programs. Unfortunately these programs included awkward and inflexible mechanisms and regulations. Many programs approached housing problems uneconomically and locked the federal government into costly long-term contracts. Perhaps, with a modicum of additional legislative activity the national goal of "a decent home and a suitable living environment for every American family" can still be achieved by giving local organizations such as housing authorities or HAO's control over the administration and operation of housing assistance programs.

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APPENDIX I

FEDERAL HOUSING PROGRAM LEVELS

	FY 1981	FY 1982	FY 1982 (revised 7/82)
SECTION 8b[b]			
New Construction/Substantial Rehabilitation Units	73,861	43,935	27,398
Moderate Rehabilitation Units	24,981	18,909	8,000
Existing Housing Units	85,289	55,387	103,139
Modified Existing Housing Units	—	—	—
TOTAL	184,131	118,231	138,537
PUBLIC HOUSING UNITS	36,370	24,000	8,759
PUBLIC HOUSING MODERNIZATION	$50[a]	$90	—[d]
PUBLIC HOUSING OPERATING SUBSIDIES	$1,200[c]	$1,152	$1,350

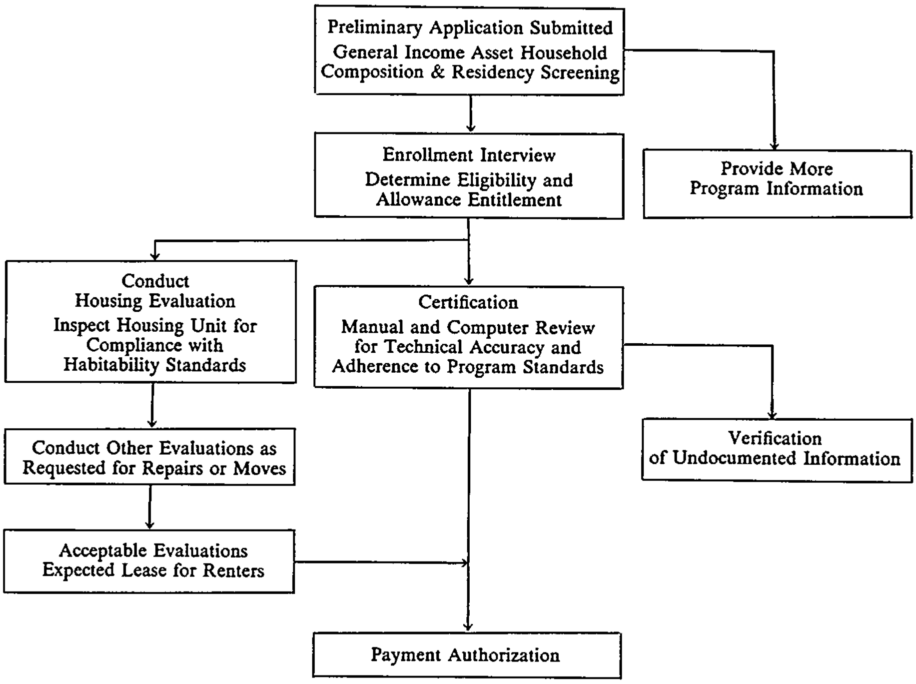
BUDGET AUTHORITY ($ billions)

Program Description	FY 1981	FY 1982	FY 1982 (revised 7/82)
SECTION 8	$19.4	$11.8	$13.6
PUBLIC HOUSING	4.7	4.2	2.3
PUBLIC HOUSING MODERNIZATION	1.7	1.8	1.8
PUBLIC HOUSING OPERATING SUBSIDIES	1.2	1.152	1.350

[a]dollars in millions
[b]number of unit reservations estimated by HUD to be available from appropriated funds
[c]includes supplemental appropriations approved December, 1981.
[d]statistic not available

SOURCES: FY 1983 BUDGET SUMMARY, HUD, FEBRUARY, 1982. July 19, 1982 supplemental appropriations figures published in NATION'S CITIES WEEKLY, Aug. 16, 1982.

APPENDIX 2
ENROLLMENT PROCESS FLOW



SOURCE: Housing Allowance Office, Inc., Anniversary Report to the Residents of St. Joseph County (1979).