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Housing and Central Cities: 
The Conservation Approach*

Kenneth F. Phillips** and Michael A. Agelasto, II***

INTRODUCTION

The thesis of this Article is that the time has come for a sober rethinking of government housing policies and programs and for a new approach giving primary emphasis to the rebuilding of inner city1 neighborhoods.
neighborhoods and the rehabilitation and conservation of the existing housing stock.

In recent years vast areas of inner city housing have deteriorated below minimum levels of human habitability. Other areas, now marginal, will deteriorate below acceptable levels unless broadscale remedial programs can be developed and implemented. Projecting both population growth and housing production it is clear that these substandard or deteriorating units will continue to be the only homes available for millions of low and moderate income families for ten, fifteen, or more years. Yet, with few exceptions, this housing is not reached by present federal housing programs. It is reached by market forces which relentlessly escalate all elements of housing cost.

In that context, Part I of this Article attempts an overview of the prototype American city of the 1970's, broadly outlining the demographic, social, and fiscal elements which underlie the physical realities of central city decline and outer city growth. It next reviews and criticizes the strategies and programs through which the federal government has intervened in the urban growth process. It argues that, notwithstanding the absence of any cohesive and articulated national growth policy, the form in which American cities and suburbs have emerged over the past decades has derived in large measure from the dictates of federal laws, programs, and policies. Finally, this section considers the implications of the principal initiatives embodied in the Housing and Community Development Act of 1974: Community Development Block Grants, housing allowance experimentation, and the substitution of the reconstituted Leased Housing Program for the earlier production subsidies.

the urban core and older section, and the outer city, which consists of the suburbs and the various political units that surround the inner city. A comprehensive discussion of cities must necessarily include both the inner city and suburbs because of the dynamic interrelationship of the two. NAT'L COMM'N ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY, H.R. Doc. No. 91-34, 91st Cong., 1st Sess. 35 (1969) [hereinafter cited as DOUGLAS REPORT].

2. See text accompanying notes 46-54 infra.
6. In September 1973, the administration evaluated these subsidies as inequitable, costly, and fundamentally unworkable in the context of the seventies. See 1 HOUSING
The '74 Housing Act amended the National Housing Goal to call for:
a greater effort . . . to encourage the preservation of existing hous-
ing and neighborhoods through such measures as housing preserva-
tion, moderate rehabilitation, and improvements in housing manage-
ment and maintenance, in conjunction with the provision of adequate municipal services.7

While it falls short of articulating a national urban growth strategy, giving emphasis instead to local discretion and flexibility, the '74 Act does continue or provide an array of program authorities that might be employed in a coordinated housing conservation strategy. Community Development Block Grants8 must be programmed to ensure "maximum feasible priority to activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight,"9 and may be allocated to code enforcement and building rehabilitation. The new Leased Housing Program10 can provide an important rehabilitation tool. Other existing rehabilitation aid programs are continued and strengthened.11 Part II of this Article calls for carefully coordinated implementation of these program authorities in a pro-cities strategy aimed at the restoration of inner city communities and their economies. In particular, it explores the potential of new section 223(f),12 which authorizes the Department of Housing and Urban Development (HUD) to insure mortgages executed in connection with the purchase or refinancing of existing multifamily housing.

The general impossibility of securing loans from institutional lenders in gray13 and hard core areas has created a prevalent pattern of short

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10. § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437f (Supp. 1975) (corresponds to § 8 of the United States Housing Act of 1937).
13. The term "gray areas" was defined by the Douglas Commission as "older neighborhoods that are not slums but where signs of deterioration are beginning to
term non-institutional financing at very high interest rates which has discouraged housing maintenance and moderate rehabilitation. If that pattern could be broken through implementation of the section 223(f) refinancing authority and replaced by HUD insured longer term loans at unsubsidized interest rates, an influx of private capital could be made available to finance modest, but critical, repairs and improvements. Given sympathetic administration by HUD, refinancing would permit code enforcement agencies and judges to advise landlords where to get the money for moderate rehabilitation and to insist on substantial housing code compliance. Because refinancing involves no increases in debt service, it would avoid the dilemma of "housing improvement equals rent increase" that has undercut efforts to enforce codes and may undercut the utility of the warranty of habitability laws now emerging.

Many inner city buildings, although worth salvaging, have deteriorated to a point where the cost of rehabilitation would require a greater investment than the refinancing mechanism could provide. Assistance to these buildings may be available, however, through the various subsidized rehabilitation programs. Coordinated utilization of these programs is imperative. The public housing program because of its flexibility, managerial resources, and deep subsidy character could be particularly useful to intercept the deterioration process in this housing short of abandonment.

Supportive actions by neighborhood organizations, unions, contractors, and all levels of government will be necessary for conservation approaches to function, as well as to maximize their constructive impact. The concluding section of Part II outlines the other elements that would appear to be necessary or useful.

I

CENTRAL CITIES AND SUBURBS: THE DE FACTO URBAN GROWTH STRATEGY AND ITS CONSEQUENCES

A. Housing in the Central Cities

A prototype central city-suburban pattern has emerged since World War II: burgeoning population growth and increasing afflu-


14. From 1950 to 1970 central cities grew by 19%; during the same period suburban population size increased 85%. In 1950 there were 13 million more people in the central cities than in the suburbs. By 1970 that figure had almost been reversed with 12 million more people living in the suburbs than in central cities. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 17 (1974).
ence in the suburbs; concentrations of the poor and ethnic minorities in central cities; a massive exodus of business and jobs to the suburbs; high rates of central city unemployment and "sub-


15. In 1960, suburban residents had incomes 32.5% greater than those in the central cities; by 1970, the corresponding percentage was 41.7%. U.S. Bureau of the Census, 1960 Census of Population, Vol. 1, at 1, Table 100 at 1-236; 1970 Census of Population, Vol. 1, pt. 1, § 1, Table 105, at 1-411. See also Rosenthal, Fifty Richest Cities are in Suburbs, N.Y. Times, Sept. 19, 1972, at 35, col. 5.

16. An analysis of census data for the central cities reveals a continuing in-migration pattern of poor and relatively unskilled migrants and a complimentary out-migration pattern of middle and working class central city residents, resulting in a lower economic level in the central cities than in the suburbs. Shanahan, Study Finds Poor Blacks in Cities, Whites Outside, N.Y. Times, Aug. 30, 1974, at 14, col. 1. See also Burks, Middle Class Whites Still Leaving City, N.Y. Times, May 29, 1973, at 1, col. 5.

In addition, the income gap between white and black families has begun to widen again, after having narrowed in the 1960's. The median annual income of black families in 1973 was $7,269 or 58% of the $12,595 earned by white families. This compared with a high of 61% in 1969 and 1970. U.S. Bureau of the Census, The Social and Economic Status of the Black Population in the United States 17 (1973).

17. The percentage of blacks living in central cities increased during the 60's by 33.1%; while the percentage of white decline was 5.7%. The 1950-60 percentage increases in the central cities were 50.6% for blacks and 0.05% for whites. U.S. Bureau of the Census, Statistical Abstract of the United States: 1974, at 17 (1974). Much of this increase has been caused by the migration of blacks to cities from rural areas. See C. Tilly, Race and Migration to the American City, in The Metropolitan Enigma 124 (J.Q. Wilson ed. 1967) [hereinafter cited as The Metropolitan Enigma]. Although recent evidence suggests that such migration may be less of a factor in the future, natural increases will account for continuing and increasingly high percentages of racial concentration in central cities. P. Morrison, Dimensions of the Population Problem in the United States, in U.S. Comm'n on Population, Growth, and the American Future, Population Distribution and Policy, Vol. V, 1972, at 26. See J. Simmons & E. Lee, The Extraordinary Composition of Rural Black Population Outside the South, 35 Phylon 313-22 (1974); C. Beale, Migration Patterns of Minorities in the United States, 55 Amer. J. Agricultural Econ. 938-46 (1973).

18. The suburbs are now overtaking the central cities in the absolute number of job opportunities offered, and in the manufacturing sector may have already surpassed them. Rosenthal, Large Suburbs Overtaking Cities in Number of Jobs Supplied, N.Y. Times, Oct. 15, 1972, § 1 at 1, col. 5. The availability in the outer city of inexpensive land for expanded plant layouts and parking, lower tax rates, skilled labor, the growth of trucking as a principal industrial transport vehicle, and the decreasing attractiveness...
employment” especially for non-whites.

In the past, central city revenue raising capability exceeded that of the surrounding suburbs. Even today their respective capabilities are roughly equal. But at the same time, central city concentrations of the
unemployable, the employable unemployed, and the underemployed have increased demand for city services and supports, while the cost of each unit of service has steadily inflated. The budgetary needs of central cities to provide police, fire, sanitation, education, health care, and other public services at adequate levels have not been met and will

<table>
<thead>
<tr>
<th>Table 1</th>
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<table>
<thead>
<tr>
<th>Revenue</th>
<th>Percentage Growth Over the Previous Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1972</td>
</tr>
<tr>
<td>Total Big Three</td>
<td>15.2%</td>
</tr>
<tr>
<td>Property tax</td>
<td>11.6</td>
</tr>
<tr>
<td>General sales tax</td>
<td>15.3</td>
</tr>
<tr>
<td>Individual income tax</td>
<td>33.5</td>
</tr>
</tbody>
</table>

*The declining growth of the income tax yield reflects significant tax cuts as well as property tax relief provided through income tax deductions and credits.


The ACIR study reports new revenue raising efforts at the state and local level. Expenditure levels, severely affected by inflation, have also risen:

<table>
<thead>
<tr>
<th>Table 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE AND LOCAL SURPLUSES AND DEFICITS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(in billions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total state-local surplus or deficit</td>
</tr>
<tr>
<td>Less social insurance fund surplus</td>
</tr>
<tr>
<td>Balance</td>
</tr>
</tbody>
</table>

Percentage Change from Previous Year

Total state-local expenditures:

- In current dollars | +12.1%† | +11.8% | +11.2% | +12.3% | +11.2% | +10.7% |
- In constant dollars** | +1.5%† | +5.9% | +7.8% | +7.2% | +5.3% | +5.6% |

Federal grants-in-aid to state-local government:

- In current dollars | +6.1%† | +8.2% | +29.1% | +18.7% | +20.2% | +8.9% |
- In constant dollars** | -1.1%† | +2.5% | +24.9% | +13.5% | +13.9% | +3.9% |

*Third quarter, seasonally adjusted at annual rate.

**On basis of implicit GNP deflator.

† Based on comparison of first three quarters of 1974 with first three quarters of 1973.

Source: Id.

24. The old, the disabled, the female heads of household with pre-school or school age children, the “structured-in poor,” who depend and will continue to depend upon welfare and other transfer payments.

25. See note 20 supra.


27. See notes 22 & 23 supra. As businesses move from the inner city the property, sales and income taxes they generate are lost. In 41 large cities and their school districts, expenditures from 1962-70 underwent a 112% increase while revenue advanced only 108% for the same period. The expenditure increases for public welfare rose 264%. State and federal aid programs generated most of the increase in funds and property tax revenues rose 57%. Local property taxes and external aid account for 35% and 36% of city revenues respectively. A. Schreiber, P. Gatons, & R. Clemmer (eds.), Economics of Urban Problems—An Introduction 302-3 (1971); NAT’L LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, THE FEDERAL BUDGET AND THE CITIES—A R-
not be met through the revenue sharing measures recently adopted or now under consideration. 28

For the inner city poor the housing problem has three basic elements: physical dilapidation or other inadequacy of the existing housing stock, 29 high rental burdens relative to income, 30 and overcrowding. 31

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<table>
<thead>
<tr>
<th>Category</th>
<th>Households (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Households in physically inadequate units*</td>
<td>6.9</td>
</tr>
<tr>
<td>Overcrowded households in physically adequate units**</td>
<td>0.7</td>
</tr>
<tr>
<td>Non-overcrowded households in physically adequate units with high rent burden***</td>
<td>5.5</td>
</tr>
<tr>
<td>Total households with one or more forms of housing deprivation</td>
<td>13.1</td>
</tr>
<tr>
<td>All U.S. households</td>
<td>63.4</td>
</tr>
</tbody>
</table>

* A unit is adequate if not dilapidated, and has adequate plumbing facilities and heating.

** A household is overcrowded if it consists of at least 3 persons and has 1.5 persons or more per room.

*** As defined:

1. A two or more person household with the head less than age 65, paying more than 25% of its income for rent.
2. A single person household paying more than 35% of its income for rent.
3. A two or more person household with head over 65, paying more than 35% of its income for rent.

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28. See notes 181-94 infra and accompanying text.

29. NATIONAL DATA ON HOUSING DEPRIVATION: 1970 (Non-Overlapping Categories) —for Households with incomes less than $10,000

30. Those at the bottom of the income distribution scale commonly spend over 35% of their annual incomes for housing. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSING IN THE SEVENTIES, in Hearings on Housing and Community Development Legislation—1973, before the Subcomm. on Housing of the House Comm. on Banking and Currency, 93d Cong., 1st Sess., at 6-13 (1973) [hereinafter cited as HUD, HOUSING IN THE SEVENTIES]; U.S. BUREAU OF THE CENSUS, SUBJECT REPORTS—LOW INCOME POPULATION, Table 36 at 410 (1973). In a 1968 survey of Baltimore, Maryland, two-fifths of all low-income households spent more than 40% of their annual income for housing. HOUSING AND POVERTY, supra note 3, Ch. IV, at 53. See also THE REPORT OF THE PRESIDENT'S COMM. ON URBAN HOUSING, A DECENT HOME 39-45 (1968) [hereinafter cited as the KAISER REPORT].

31. Overcrowding, another important aspect of substandard housing, is not a property of housing quality per se, but rather of the "fit" between the size of the unit and the number of occupants. There is reason to believe that the effects of overcrowding on mental health and family life may be more severe than the effects of physically substandard conditions, and that we ought to devote more effort to ameliorating the housing plight of families overcrowded in...
Physical deterioration patterns range from relatively minor deferred maintenance situations in gray areas to deliberate and sustained milking in buildings moving toward abandonment. High rents, the single most common housing complaint in poverty areas, effectively deny the poor access to a large portion of the housing stock and are thus a principal cause of overcrowding.

Housing strategy in the United States has relied predominately on the "trickle down" or "filtering" method. As explained in a recent text:

Housing filters down in quality, and, as it does so, it filters down through the spectrum of household incomes moving from the richer to the poorer. . . . When a person buys a new house it usually means he moves out of an older one. One move leads to another. A species of musical chairs game ensues as people circulate or filter through housing. The rules of this game are the laws of housing market dynamics.

In central city areas undergoing ethnic and socio-economic composition change the filtering process has been severely undercut by rising oper-
ating costs.\textsuperscript{37} The cost of money, particularly in areas "redlined" by conventional lending sources,\textsuperscript{38} has pushed steadily upward for many years.\textsuperscript{39} Property taxes, which are a direct tax on housing, and which operate regressively to impose the heaviest relative burden on those least able to pay,\textsuperscript{40} have constantly escalated,\textsuperscript{41} as have maintenance and operating costs, reflecting both the general pattern of inflation and the

37. According to one analyst, it is extremely unlikely that downward filtered dwellings will provide satisfactory housing to occupants who obtain them at low rents or prices. I. Lowry, Filtering and Housing Standards, Land Econ. Nov. 1960, at 362. For a discussion of the filtering literature, see W. Brueggeman, An Analysis of the Filtering Process with Special Reference to Housing Subsidies, June 1973 (prepared for the Office of Policy Development and Research, Dept. of Housing and Urban Development). See note 3 supra.

38. 'Redlining' is defined as the practice by mortgage lenders or insurers of denying loans or insurance on properties located in a specific geographical area without regard to the credit worthiness of the individual applicant mortgagor or the quality of the specific property. The term is used most often in reference to central city residential neighborhoods. Douglas Report, supra note 1, at 100; Housing and Poverty, supra note 3, at VI-29; R. Devine, Where the Lender Looks First (1974); W. Marshall, Mortgage Redlining, Savings and Loan News, June 1974, at 30, 40-55, 48-51, 54-55; T. Taggart, How the Bankers Starve the Cities to Feed the Suburbs, Planning, Dec. 1974, at 14; Real Estate—Greenlining in America, Time, May 27, 1974, at 72. M. Stegman, Housing Investment in the Inner City (1972); see note 30 infra.

In March 1975, Senator William Proxmire introduced S. 1281, The Home Mortgage Disclosure Act of 1975. 121 Cong. Rec. S. 4864-66 (daily ed. March 22, 1975). "The purpose of this Act is to provide the citizens and public officials of the United States with sufficient information to enable them to determine which depository institutions are fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located." Id. at S. 4865.

39. See Douglas Report, supra note 1, at 100-03; Housing and Poverty, supra note 3, at 50-57; C. Rapkin, The Real Estate Market in an Urban Renewal Area 44 (1959); G. Sternlieb, The Urban Housing Dilemma: The Dynamics of New York City's Rent Controlled Housing 48, 581-648 (1970) [hereinafter cited as Sternlieb, New York Study].

40. If the property tax is regarded as a tax on the consumption of housing and of other goods and services... the burden of state-local taxes is regressive throughout the income scale. On this assumption, effective state/local tax rates begin at about 30 percent at the bottom of the income scale and decline to about 6 percent at the top.


41. C. Lowell Harris, Property Taxation in Government Finance 12 (1973); Property Taxation, supra note 40, at 1.
effects of increased tensions and hostilities between landlords and tenants. Low income tenants, who may spend so great a portion of their income for rent that the remainder is barely adequate to cover the cost of food, clothing, and other necessities, see themselves as exploited by landlords. Some neglect or vandalize their housing even though they may themselves be the most direct victims of their actions.

Faced with neighborhood decline, rising costs, tenants' incapacity to pay higher rent, and consequent diminished cash flows and profits, landlords cut back out-of-pocket spending. This means curtailing the only areas of cost within their control—repairs, maintenance, and operations. Whenever a decision is made to defer a repair, further deterioration, greater future costs, and increased tenant hostility become inevitable and the vicious cycle is perpetuated.

In hard core central city areas, poverty, crime, unemployment and subemployment, undermaintenance of buildings to the point of abandonment, and general neighborhood decline are concentrated and intense. A recent newspaper article describing conditions in the South

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42. Kerner Report, supra note 34, at 470-72. See note 30 supra.
43. The rising costs apartment owners face reflect the increased costs among the basic components: real estate taxes, heating and utilities, and labor and materials used in maintenance and repairs.

The following table, based on figures from the consumer price index, indicates that costs of housing services have exceeded rent increases:

<table>
<thead>
<tr>
<th>Item</th>
<th>Jan. 1973</th>
<th>Jan. 1975</th>
<th>% increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>fuel and utilities</td>
<td>122.8</td>
<td>160.5</td>
<td>23</td>
</tr>
<tr>
<td>household furnishings</td>
<td>116.9</td>
<td>140.3</td>
<td>17</td>
</tr>
<tr>
<td>property taxes (homeowners)</td>
<td>150.8</td>
<td>155.0</td>
<td>3</td>
</tr>
<tr>
<td>maintenance and repairs (homeownership)</td>
<td>144.7</td>
<td>183.4</td>
<td>21</td>
</tr>
<tr>
<td>rent (homeownership)</td>
<td>121.5</td>
<td>134.0</td>
<td>9</td>
</tr>
</tbody>
</table>

See also Hieronymus, Rising Rents—Apartments Become More Difficult to Find and Much Costlier, Wall St. J., Oct. 4, 1974, at 1, col. 6.

44. Sternlieb, New York Study, supra note 39, indicates that maintenance expenses are the landlord's primary source of operation flexibility. In a tight economy, with little opportunity for refinancing, undermaintenance and deterioration have naturally resulted. Id. at 47.
45. The effect of the resulting disinvestment of the housing stock was summarized in a recent report by the Harvard-MIT Joint Center for Urban Studies, which found [a] continually increasing number of deteriorations of formerly standard units to a physically dilapidated condition. . . . [u]nless there is substantial federal intervention in the production of housing or in the renovation of substandard housing, the rate at which substandard housing is eliminated will significantly drop during the 1970's.

46. See Schumach, Poverty Pockets Eroding Middle-Class Areas Here, N.Y. Times, July 8, 1973, § 1 at 1, col. 6, for a description of disaster areas infringing on gray areas in New York City. Residents of large cities perceive crime (21% of the responses), transportation (11%), and drugs (10%), as their most serious problems.
Bronx reports the following facts and statistics: forty percent of the 400,000 residents are on welfare; 30 percent of the employables are unemployed; 20,000 drug addicts; 9,500 gang members; 20 percent of the houses without water and 50 percent without heat half of the time.47

Much of the housing stock in these areas has deteriorated below minimum standards of "human habitability," as defined by local housing, health, and safety codes.48 Buildings are commonly rat-infested; stairs and handrails are broken; furnaces don’t function; wiring is hazardous; roofs leak.49 Many structurally sound housing units have been abandoned,50 reflecting the social crisis of these areas and the collapse of investor confidence as increasing costs and management difficulties have outstripped rent returns and profits.51


49. See The Tenement Landlord, supra note 13.

50. In five years, over 180,000 New York City housing units were abandoned. F. Kristof, Housing: The Economic Facts of New York City's Problems 15 (1970).


51. Several researchers have focused on the underlying problem concerning disinvestment of private capital in core cities. Lack of investor confidence is characterized by factors including:

A reduction in maintenance procedures; Permitting the structure to become tax delinquent; The virtual abandonment of all reinvestments for maintenance usually coupled with increased tax delinquency; The cessation of vital services to the structure, particularly utility elements and heating; The landlord arranging through a paper sale to avoid any level of legal liability for the structure.

are stripped of plumbing, heating, and electrical fixtures and serve as gathering places for addicts, prostitutes, alcoholics, vagrants, and neighborhood gangs, and as garbage dumps which attract rodents and create fire hazards.\textsuperscript{52}

Home and neighborhood identifications are critical to human self-image and self-respect.\textsuperscript{53} Rotting, undermaintained, vermin infested buildings in collapsed neighborhoods thus directly contribute to social alienation and become, in turn, a major cause, as well as an effect, of the inner city malaise.\textsuperscript{54} In the long run social pathology effects will prove the heaviest societal cost of the central city housing deterioration and abandonment process.

\section*{B. Outer Cities: The Suburban Strategy}

A diversity of motivating factors underlay the extraordinary growth of the suburbs\textsuperscript{62}: the urge to escape central city problems of pov-

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Community Change; Shipler, Experts Attribute Housing Decay Here to Landlord's Fears and Fantasies As Well As Economic Realities, N.Y. Times, March 22, 1970, § 1, at 69, col. 1.


52. Recent reports indicate that a major proportion of structural fires are occurring in abandoned buildings. Van Allsburg, supra note 24, at 866. See also R. Syron, An Analysis of the Collapse of the Normal Market for Fire Insurance in Substandard Urban Core Areas (Research Report to the Federal Reserve Board of Boston, 1972).


erty, racial impaction, crime\textsuperscript{66} and neighborhood deterioration; the emergence to dominance of the automobile; the persistent anti-urban bias of American ideology;\textsuperscript{57} and the traditional aspiration of every American family to own its own home and plot of land.\textsuperscript{58}

Federal policies and programs, reflecting the Government's \textit{de facto} growth policy, have encouraged and supported the move to the suburbs.\textsuperscript{59} Tax incentives for homeownership,\textsuperscript{60} which encourage suburban development,\textsuperscript{61} amounted to \$9.2 billion in fiscal year 1974, as

\begin{verbatim}

56. See note 46 supra. Respondents to a 1972 Gallup poll considered crime to be their community's worst problem (13\% of respondents), followed by transportation (11\%), and drugs (8\%). GALLUP OPINION INDEX 15, n.91 (Jan. 1973).


59. The pattern of suburban growth, encouraged by highway spending and mortgage insurance, together with the government's failure to develop and sustain effective inner-city programs, has been described as an "implicit growth policy." The policy has been implemented by seemingly unrelated measures in taxation, military spending, and placement of water and sewer funds, which in reality are consistent with the emerging suburban political domination, but never overtly stated. W. ALONSO, PROBLEMS, PURPOSES, AND IMPLICIT POLICIES FOR A NATIONAL STRATEGY OF URBANIZATION, in U.S. COMM'N ON POPULATION GROWTH AND THE AMERICAN FUTURE, POPULATION DISTRIBUTION AND POLICY, Vol. V, 1972, at 631. See also J. Weinstein, Housing Subsidies: An Overview, 51 J. URBAN LAW 723 (1974).

This section and section C review only selected federal programs, summarizing some of those which have had the most effect on metropolitan development. For a more complete summary and analysis of the programs discussed, see NAT'L HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, HANDBOOK ON HOUSING LAW (1970) [hereinafter cited as HANDBOOK ON HOUSING LAW]; HOUSING AND DEVELOPMENT REP., REFERENCE FILE (1975).

60. See, e.g., INT. REV. CODE OF 1954, §§ 163 (mortgage interest deductions), 164 (property tax deduction).

61. Favorable tax treatment for suburban land speculation arises in several ways. Numerous studies have shown that unimproved suburban land is typically treated with great tenderness by the assessors, even though most states have laws requiring that the idle land, like other real property, pay local real estate taxes based upon the full market value of the land. In cases where it is hard to distinguish the real market price from inflated claims, the assessor's caution may be defended, at least in part. Frequently, however, there is a lag in reassessments, and land with a rapidly rising price pays taxes based upon values of some years earlier. In many cases, outright favoritism is suspected but cannot well be proven. Often the landowners and the assessors have mutual interests. In some states favorable tax treatment has recently been extended to "farmland" in suburban areas, and tax farming has become profitable.

Land speculation gets favorable treatment in federal taxes also. Real estate taxes are deductible from income in calculation of federal income tax; so is
\end{verbatim}
compared to only $2.38 billion in federal budget outlays for directly subsidized housing programs, and were by far the largest federal housing subsidy. FHA mortgage insurance programs have provided further support for suburban tract development by facilitating long term mortgage loans from institutional lenders. FHA's basic section 203 unsubsidized mortgage insurance program, as of December 31, 1972, covered more than $103 billion in outstanding loans, primarily for suburban subdivision houses. In central cities the volume of FHA insured construction has been minimal. Its impact on central cities has been primarily indirect, through the encouragement of the massive exodus of white working and middle-class families to suburban FHA supported

interest paid on money borrowed to finance land speculating. Also, with some exceptions, gains from land sales may qualify for treatment as capital gains and be taxed at a distinctly lower rate than ordinary income.

Each of these preferential tax treatments for suburban land speculation could be removed by government action. Local real estate taxes could in fact as in theory be based upon the full market value of land; federal income tax laws could be changed so that real estate taxes and interest could not be claimed as a deduction if the land were relatively unimproved; and capital gains on unimproved land could be treated as ordinary income.


65. 1972 HUD Statistical Yearbook, Table 158, at 166 (1974). By 1973, the Veteran's Administration had insured $85 billion in loans. Id. Table 369, at 367.

66. The subsidized housing programs also provided various tax benefits for developers and investors. See, e.g., PLI, Subsidized Housing Tax and Profit Opportunity in Selling and Buying (1974). These are not reflected in the cost of the programs as indicated in budget expenditure amounts.

67. See Douglas Report, supra note 1, at 100.
tracts.68 The massively funded Federal Aid Highway program69 and HUD's water and sewer grant program70 have provided further stimuli important in shaping metropolitan growth patterns. As urbanologist Lewis Mumford perceived when the highway legislation was enacted in 1957:

When the American people, through their Congress, voted a little while ago for a twenty-six billion dollar highway program, the most charitable thing to assume about this action is that they hadn't the faintest notion of what they were doing. Within the next fifteen years they will doubtless find out; but by that time it will be too late to correct all the damage to our cities and our countryside, not least to the efficient organization of industry and transportation, that this ill conceived and preposterously unbalanced program will have wrought.71

The first Nixon Administration's "suburban strategy" elected to accelerate these growth processes by bypassing urban centers and their problems in order to concentrate on maximum housing production in the suburbs. The strategy included continuation or expansion of the policies and programs noted above, deemphasis of central city programs, and a series of suburb-oriented initiatives.

The suburban strategy derived from several independent bases. Whereas central cities had voted heavily Democratic, the suburbs had

68. In its early years FHA notoriously discriminated against minority applicants, going so far as to require covenants against sales to negroes until 1948, when in Shelley v. Kraemer, 334 U.S. 1 (1948), restrictive covenants were declared unconstitutional by the Supreme Court. DOUGLAS REPORT, supra note 1, at 101. See also UNITED STATES COMM'N ON CIVIL RIGHTS, ABOVE PROPERTY RIGHTS (1972); UNITED STATES COMM'N ON CIVIL RIGHTS, EQUAL OPPORTUNITY IN SUBURBIA (1974).

More than $5 billion is added to the fund each year; and this amount is steadily increasing. Thus, when local, county, and state highway spending is added to the federal expenditure, the total is more than $17 billion a year. This is more than the combined total of government spending on housing, parks, recreation, sanitation, fire, and police protection. W. Shannon, The Untrustworthy Highway Fund, N.Y. Times, Oct. 15, 1972, § 6, at 31, 121. See also SEN. COMM. ON GOVERNMENT OPERATIONS, BIBLIOGRAPHY OF FEDERAL GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS 1964-1969, 91st Cong., 2d Sess., 354-73 (Comm. Print 1970); J. Meyer, Urban Transportation, in THE METROPOLITAN ENIGMA, supra note 17, at 44.

For a discussion of the hardships imposed by highway displacements on low and moderate income residents, see HANDBOOK ON HOUSING LAW, supra note 59, Vol. I, Ch. X.
70. 42 U.S.C. § 3102 (1970), under the Housing and Urban Development Act of 1965, authorizes the Secretary of HUD to make grants to local public bodies and agencies for basic water and sewer facilities.
provided the administration's most important political support. Upon the recommendation of the Douglas Commission and the Kaiser Committee, Congress had included in the 1968 Housing Act an annual production goal of 2.6 million housing units. Developers prefer to build in the suburbs, where land acquisition is relatively cheap, aggregate building systems can be employed, minority hiring regulations are less effective, and social problems can be kept at a distance. Socio-economic theoretical underpinnings for the suburban strategy were provided by the intellectual community, which had largely written off 

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72. Analysis of 1968 presidential election results, indicating Democratic strength in urban areas, appears in Nixon Wins Presidency with 43% of Popular Vote, 26 Cong. Q. Weekly Report, Nov. 8, 1968, at 3071; Big City Vote Declines; Democrats Suffer Greater Loss, 26 Cong. Q. Weekly Report, Dec. 6, 1968, at 3229.

But see, R. Scammon and B. Wattenberg, The Real Majority 294-95 (1970). Some Republican strategists have noted that the potential for more Republican voters increases as more Americans live in suburbia... In short, there is no evidence that Democratic-oriented voters switch parties simply because they move from the cities or become more affluent. The "old affluent" are traditionally Republican; the new suburbanite is neither so affluent nor so Republican. In fact, there is evidence that, many suburbs once solidly Republican are now toss-ups between Democrats and Republicans or, in some instances, already solidly Democratic.

73. Douglas Report, supra note 1, at 180, recommended the production of 2-2.5 million units annually. The Kaiser Report, supra note 30, at 40, called for a total of 2.6 million new and rehabilitated units each year.


75. See J. Kain, The Distribution of Jobs and Industry, in The Metropolitan Enigma, supra note 17, at 1.

76. Professor Banfield asserted that urban problems are primarily cultural and not to be resolved except as and when the lower class adopts a working, middle, or upper class ethic. E. Banfield, The Unheavenly City (1970).

The lower class individual lives in the slums and sees little or no reason to complain. He does not care how dirty and dilapidated his housing is either inside or out, nor does he mind the inadequacy of such public facilities as schools, parks and libraries: indeed, where such things exist he destroys them by acts of vandalism if he can.

Id. at 63. Professor Banfield minimized the significance of structural-societal causes of poverty, such as unemployment, bad housing, collapsing neighborhoods, crime, and family disintegration, and the usefulness of program efforts to deal with those causes.

In Urban Dynamics, Professor Forrester reported on a computerized model which, having postulated that better low income housing will attract poor people, mathematically derived the conclusion that central city housing improvements would result in increased poverty concentrations and consequently exacerbate central city problems. J. Forrester, Urban Dynamics (1969). The postulate, although expressly avowed as an assumption, was lost in the reverberations of the computer's judgment.


Similarly, Professors Kain and Persky, in an influential article entitled Alterna-
the cities as beyond salvation. Civil rights organizations representing primarily upwardly mobile blacks joined forces with the administration and the developers by failing to press for coordinated emphasis on central city programs, thus ignoring the needs of blacks and other ethnic minorities who lack the economic resources or, in many cases, the desire to leave their center city communities for alien suburban turf.

Finally, the emphasis on suburban production was consonant with the philosophy and objectives of HUD's top administrators in the first Nixon Administration. Secretary George Romney, coming from a background of American Motors, was more at home with production goals than with social welfare approaches such as Model Cities, and was morally committed to integrationist purposes. Eugene Gulledge, HUD's former FHA Commissioner, had been a homebuilder for 25 years before joining the Department.

Suburban housing production levels reached new highs during the
late sixties and early seventies.\textsuperscript{84} Construction and mortgage money was plentiful\textsuperscript{85} as was demand for suburban units, reflecting the several motivations underlying the population shift to the suburbs.\textsuperscript{86} HUD's shallow subsidy (moderate income) programs\textsuperscript{87} produced over 800,000 new units from 1961 through 1972.\textsuperscript{88}

In contrast, the administration's highly publicized but largely abortive suburban strategy initiatives—Operation Breakthrough, Regional Government, New Towns, and the HUD site selection criteria—had little effect.\textsuperscript{89} Operation Breakthrough, a much vaunted, media sens-

\begin{itemize}
\item \textsuperscript{84} Total housing production in 1971 surpassed the 2 million unit mark, and more than doubled 1961 production levels. HUD, Housing in the Seventies, supra note 30, Table 2, at 4-4.
\item \textsuperscript{86} See note 14 supra.
\item \textsuperscript{87} In the 1960's, Congress expanded the FHA mortgage insurance programs (12 U.S.C. §§ 1707 et seq. (1970)) to include moderate income subsidized rental housing, owner occupied new and rehabilitated units, cooperatives, and condominiums.
\item In 1965 the section 221(d)(3) program (12 U.S.C. § 1715l(d)(3) (1970)) (corresponds to § 221(d)(3) of the National Housing Act) was supplemented by section 101(j)(1) of the Housing and Urban Development Act of 1965 (12 U.S.C. § 1701s(h) (1970)) to provide insurance for long term, low interest mortgage loans on inexpensive rental housing. The following year, the section 221(h) program was added by section 310(a) of the Demonstration Cities and Metropolitan Act of 1966 (12 U.S.C. § 1715i(h) (1970)) (corresponds to § 221(h) of the National Housing Act) to permit mortgage insurance in financing, rehabilitation, or improvement projects. Its subsidized interest rates and income and mortgage limitations were similar to those under the section 221(d)(3) program. See J. Gallagher & J. O'Donnell, Jr., Non-Profit Housing 221 (d)(3) (1968).
\item The section 235 homeownership program was established by section 101(a) of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1715z (1970) (corresponds to § 235 of the National Housing Act). The section 236 program for rental properties was added by section 201(a) of the above Act, 12 U.S.C. § 1715z-1 (1970) (corresponds to § 236 of the National Housing Act). These programs sought to stimulate the production and rehabilitation of low and moderate income housing by subsidizing eligible (renters') owners' mortgage (rental) payments to limit these payments to 20 percent of the (renters') owners' adjusted annual income. Section 236 new construction included 25,632 (elderly) and 278,364 (family). Section 235 new construction totaled 319,059. 1972 HUD Statistical Yearbook 167, 170 (1974). See note 131 infra.
\item U.S. Dept of Housing and Urban Development, Division of Research and Statistics, Housing Production, and Mortgage Credit, U.S. Housing Starts, 1961-1972, by Selected Categories (1974). The following programs are included: §§ 235, 236, 221(d)(3) below market interest rate, and rent supplement. According to a HUD 1973 statistical analysis, 36% of the section 235 and 50% of the section 236 programs were located in the central city. The population housed by the programs was approximately 60% white. U.S. Dept. of Housing and Urban Development, Filtration Study, Region IX. Table XIV, unpagd (1973).
\item See HUD, Housing in the Seventies, supra note 30; cf. Critique of Housing in the Seventies, Housing and Urban Affairs Subcomm. of the Sen. Comm. on Banking, Housing and Urban Affairs, 93d Cong., 2d Sess. (Comm. Print 1971) [hereinafter cited as Critique of Housing in the Seventies].
\end{itemize}
sitive, suburban production program, sought to cut production costs through adoption of assembly line methods in the housing construction industry. It ultimately failed on its own terms, the victim of high land and financing costs, opposition from the construction unions and merchant builders, restrictive building codes, the reluctance of the housing production market to accept technological innovation, and inflation.

The Regional Government or "Real City" program sought to achieve a comprehensive approach to the inner and outer city, viewed as single integrated metropolitan entities. Regional Councils of Government (COG's) were created and funded. Many COG's developed elaborate housing allocation models to distribute the urban poor among suburban localities. Each community was given a "quota" to provide its "fair share" of low and moderate income housing, based on such factors as the amount of vacant land, the localities' fiscal resources, and the availability of housing for the poor. Most COG's, however,


91. For an evaluation of Operation Breakthrough, highlighting both accomplishments and failures, see D. Weidman, F. Tolson, & J. Wholey, SUMMARY OF INITIAL ASSESSMENT AND EVALUATION STUDY DESIGN FOR OPERATION BREAKTHROUGH (1974).


93. To the maximum extent feasible, all grants under this subsection shall be for activities relating to all the developmental aspects of the total metropolitan area,. . . including, but not limited to, land use, transportation, housing, economic development, natural resources development, community facilities, and the general improvement of living environments. 40 U.S.C. § 461(g) (1970).

94. Id. See M. Nenno, HOUSING IN METROPOLITAN AREAS: ROLES AND RESPONSIBILITIES OF FIVE KEY FACTORS (1973)) (Nat'l Ass'n of Housing Redevelopment Officials), discussing the need for comprehensive housing planning at the metropolitan level. Cf. M. Mogulof, GOVERNING METROPOLITAN AREAS—A CRITICAL REVIEW OF COUNCIL OF GOVERNMENTS AND THE FEDERAL ROLE (1971).

95. See Am. Inst. of Planners, A Regional Housing Plan: The Miami Valley Regional Planning Commission Experience, PLANNERS NOTEBOOK, Apr. 1971, at 1 (the Dayton, Ohio, Plan); L. Craig, The Dayton Area's 'Fair Share' Housing Plan Enters the Implementation Phase, Crv, Jan./Feb. 1972, at 50 (the problems with its implementation). For an analysis of the problems besetting the St. Louis Regional Plan, see J. Pratter, Gateway to Frustration—Housing in St. Louis, 33 URBAN LAW. 746 (1972).


96. Considerable local and regional interest has been generated over what have come to be known as fair share housing plans. These plans are generally drawn up by regional bodies which establish quotas of low- and moderate-
received little cooperation either from suburbs, reluctant to surrender their autonomies, or from central city governments which viewed with alarm the prospect of metropolitan domination. In general, COG's achieved little power and had little influence.

The New Towns Program also proved to be no panacea. New towns are built where the market place has found development unacceptable or land assembly problems insurmountable. They fail to take advantage of the costly infrastructure already developed in existing cities and communities. Like urban renewal, new towns have been expensive and unresponsive to the need of cities, minorities, and the income households for all municipalities in the region. First devised for the Dayton, Ohio region in 1970, similar plans are now at various stages of development in several areas, including the Philadelphia, St. Louis, Atlanta, Washington, D.C., Denver and Minneapolis-St. Paul metropolitan areas, and in the California counties of San Bernardino and San Diego. Most plans allocate housing responsibility to the local areas which then decide how to meet such quotas. Indirectly, at least, this would seem to imply that localities must rezone in a less exclusionary manner. The fact that since most fair share plans are based heavily upon voluntary compliance and that some establish quotas only for subsidized housing, over which the Nixon Administration has temporarily established a moratorium, inclines one against consideration of such fair share plans as a basis for substantial reform of exclusionary zoning.


One exception is the Minneapolis-St. Paul (Twin Cities) COG which has instituted a regional tax base. Forty percent of the increased tax revenue generated by new commercial and industrial facilities located in the Twin Cities metropolitan area is shared among all local government units. This scheme, based on population, is weighted to give more money to those jurisdictions with lower assessed valuations. The use of the metropolitan area for the tax base rather than each locality which taxes for its own specific needs, considers the dynamic interrelation between the central city and surrounding areas. There are few other successful examples. S. Baldinger, Planning and Governing the Metropolis—The Twin Cities Experience (1971); Metropolitan Council, Metropolitan Development Guide, A Comprehensive Development Guide for the Metropolitan Area (1973); P. Gilje, Minnesota's Metropolitan Tax Pool, City, Fall 1971, at 49-50.

The House Report accompanying the '74 Housing Act indicates that community development block grant applications should carefully consider regional planning efforts. H.R. Rep. No. 1114, 93d Cong., 2d Sess. 7 (1974).


101. See text accompanying notes 144-67 infra.
poor. 102

Finally, HUD's site selection criteria, 103 promulgated in October 1971, were intended to force allocation of housing subsidy funds into suburban areas, at the expense of inner cities. A series of federal court decisions, in suits brought by civil rights organizations, had condemned deliberate racial impaction strategies by government agencies. 104 Per-


A recent Comptroller General's report notes:
The new communities legislation encourages the development of new communities in existing metropolitan areas, older central cities, smaller towns, and rural areas. Of the 15 projects HUD has approved for guarantee assistance, 13 are on the outskirts of fast-growing metropolitan areas. New community projects are not being undertaken in central cities, smaller towns, and rural areas because unique problems in these areas increase costs of the projects and risks of the developers.


In a recent study of 15 new towns, only two of which were under the HUD program, and 15 closely matched control communities, a researcher who is part of a study on new communities conducted by the University of North Carolina states:

New communities are certainly not a method for attacking the problems of the city or even temporarily relieving them. It is unrealistic to imagine that new communities will improve the quality of life for a significant number of poor. It is also unrealistic to expect that any one program or public policy can positively affect the conditions associated with poverty. However, new communities can serve as a vehicle for experimentation. They do have characteristics which can facilitate economic integration—economies of scale, single ownership and centralized decision making, and a high level of amenities, facilities, and services. And theoretically, integration of new communities can be achieved without excessive costs to anyone. Even in this narrow context, new communities can demonstrate whether economic integration is, in fact, feasible.

H. Smookler, Economic Integration in New Communities: An Evaluation of Factors Affecting Policies and Implementation (Summary), a paper presented at the New Communities Policy Applications Workshop, Nov. 19, 1974, Chapel Hill, N.C., at 1. “New communities are an expensive experiment and even with economies of scale, low cost housing cannot be produced without some subsidy.” Id. at 3.

For general discussion, see J. DeBoer and A. Greendale, ARE NEW TOWNS FOR LOWER INCOME AMERICANS Too? (1974).

103. 36 Fed. Reg. 19316 (1971). The only significant opposition was from the Nat'l Tenants Organization and the Nat'l Housing and Economic Development Law Project, representing legal services attorneys.

After HUD put out the first version of the site selection criteria for comments on June 17, 1971, a trade journal reported:

Housing Director William Morris, NAACP Special Contributions Fund, asks 6-month delay in implementing the rules, pending a discussion of issues between HUD and various organizations. Morris is fearful the proposed wording may work to the detriment of modest-income housing. It could reduce or halt inner city development, he says, and favor construction outside areas of minority concentration.

HOUSING AFFAIRS LETTER, July 23, 1971, at 8.

104. See, e.g., Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill. 1969), aff'd 436 F.2d 306 (7th Cir. 1971), and order entered at 304 F. Supp. 736 (N.D. Ill. 1969), where, upon a finding of long-standing deliberate segregation in
haps most influential was the Shannon case in Philadelphia, in which the court enjoined a rent supplement project in the inner city, holding that an:

increase or maintenance of racial concentration is prima facie likely to lead to urban blight and is prima facie at variance with national housing policy.

While HUD and certain civil rights organizations interpreted the case as precluding subsidized construction in racially concentrated areas, the court had, in fact, taken a much less extreme position:

Nor are we suggesting that desegregation of housing is the only goal of the national housing policy. There will be instances where a pressing case will be made for the rebuilding of a racial ghetto. We hold only that the agency's judgment must be an informed one; one which weighs the alternatives and finds that the need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration.

Given its commitment to the suburbs, HUD seized upon the Shannon line of cases as the basis for imposition of new site selection criteria applicable to all HUD subsidized housing. These regulations have made it extremely difficult to qualify projects in inner city areas.

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107. Id. at 822.

108. 37 Fed. Reg. 7388 (1972). Secretary Romney explained their operation thus:

A proposed project will be rated "superior," "adequate," or "poor": with respect to criteria ranging from "community need" to "improved environmental location of low-income families" to "effect of proposed housing upon neighborhood environment." A key item is "nondiscriminatory location." Here a proposed project will earn a "superior" rating if it is not outside an area of minority concentration only if it is either a part of a major new development , , , which will be racially inclusive, or if it responds to overriding needs which can't feasibly be met any other way. If a project doesn't rate at least "adequate" on the non-discriminatory location criterion it will be disapproved.


The Guidelines remain in effect, and have recently received a measure of statutory endorsement in the Preamble to Title I of the '74 Housing Act, which provides that one of the purposes of the Community Development Act is to: "[i]ncrease . . . the diversity and vitality of neighborhoods through the spatial deconcentration of housing oppor-
The suburban strategy has faced growing resistance and trouble. From Forest Hills in Queens to rural Bedford and Greenburg in Westchester County, from Black Jack, Missouri, to San Jose, California, suburbs have become increasingly adamant against accepting low income housing. In Warren, Michigan, in 1970, HUD stipulated acceptance of public housing as a condition to its continued support for downtown renewal only to see the renewal program overwhelmingly rejected by a citywide referendum. In California, voters have repeatedly refused to approve public housing referenda required by state law before units could be built.

The suburbs have problems of their own; vast inefficient sprawl, high property taxation, juvenile delinquency and other crime and drug problems which are not confined to the inner city.
rising housing costs at all levels;\textsuperscript{116} traffic snarls on commuting thoroughfares;\textsuperscript{117} balkanized and self-defeating governmental jurisdictions.\textsuperscript{118} On the importance of keeping out the poor, particularly ethnic minorities, a virtual consensus exists.\textsuperscript{119} The poor would bring with them the very problems suburbanites left the city to escape: crowding, increased crime levels, "environmental decay," the fear of which has now emerged as a full-blown "no growth" movement in suburbs across the country.\textsuperscript{120} The taxes paid by low income families would not begin to cover the add-on service cost burdens, particularly for education and welfare, that these families' presence would impose.\textsuperscript{122}

To avoid these results suburbs employ a diverse assortment of exclusionary devices: zoning controls,\textsuperscript{123} subdivision exactions, local gov-

\textsuperscript{116} Kovach, \textit{HOUSING AND CENTRAL CITIES} 821
\textsuperscript{117} The Agony of the Commuter, \textit{Newsweek}, Jan. 18, 1971, at 44.
\textsuperscript{119} For a survey of residents' attitudes on building low and moderate income housing in their suburban community, see \textit{LOW AND MODERATE INCOME HOUSING IN THE SUBURBS}, supra note 109.
\textsuperscript{120} See Construction Industry Ass'n of Sonoma County v. City of Petaluma. 375 F. Supp. 574 (N.D. Cal. 1974).
\textsuperscript{122} Numerous cost/revenue studies illustrate that the costs of providing services for new moderate income subdivisions exceed the revenues generated. This is attributed to the fact that educational expenses must be obtained, in part, from property taxes. Other costs are generally covered. See \textit{ASSOCIATED HOMEBUILDERS OF THE GREATER EASTBAY, INC., GROWTH COST—REVENUE STUDIES} (1972).
government purchase of developable land, staged growth, refusals to extend city services, and denials of local approvals required for public housing production. Although occasionally countermanded by court orders following protracted litigation, these strategies have by and large achieved their exclusionary purposes.

As early as 1971, suburban counter pressures had forced reconsideration of housing policies at the White House level. On June 11th, the results of this reappraisal were presented in a presidential statement which declared:

'We will not seek to impose economic integration upon an existing local jurisdiction; at the same time, we will not countenance any use of economic measures as a subterfuge for racial discrimination.'

The statement condemned provable instances of racial exclusion, having in mind the difficulty and expense of litigating individual cases and the limited effect of selective enforcement litigation on demographic change. HUD's plans for the dispersion of the poor to the outer city were severely undercut. It adhered to the suburban production approach until Secretary Romney's resignation in late 1972 despite White House and suburban pressures and its own misgivings as to the cost-effectiveness of the subsidized low and moderate income housing production programs.

Building Codes: Their Effect on Low and Moderate Income Housing, 45 Notre Dame Law. 123 (1969).


126. See Urban Land Institute, Fair Housing and Exclusionary Land Use: Historical Overview, Summary of Litigation and a Comment With Research Bibliography (1974).


But if the suburbs were unwilling to accept subsidized housing, how could the statutory production targets be achieved? The administration called for an agonizing reappraisal, suspending in the interim all of the subsidized FHA and public housing production programs. As of this writing the programs remain suspended. One year of study and reconsideration under former HUD Secretary Lynn produced only a lukewarm endorsement of the continued need for suburban housing production programs and a generalized expression of interest in...


131. Downs evaluated four types of federal policies affecting housing between 1960 and 1972—indirect influences, community related programs, direct financial influences, and direct housing subsidies. He concluded that they were:

- **Very Effective** in generating high-level housing production, providing adequate housing finance, attracting private capital into housing, and creating good-quality new neighborhoods.
- **Moderately Effective** in promoting overall economic stabilization, providing housing assistance for low-income and moderate-income households, and encouraging home ownership.
- **Moderately Ineffective** in stabilizing housing production.
- **Very Ineffective** in reducing housing costs and improving conditions in deteriorating inner-city neighborhoods.


Various criticisms of the subsidized housing programs include: J. Wehner, Jr., Sections 235 and 236 (1973). The author finds that the programs are unduly costly as compared to its benefits to the poor, that production subsidies are inefficient, and that the programs do not address the problems of substandard housing. R. Silverman, Homeownership for the Poor: Subsidies and Racial Segregation, 48 N.Y.U.L. REV. 72 (1973), who concludes that the section 235 program has been an important factor in perpetuating segregation. M. Stegman, Low-Income Ownership: Exploitation and Opportunity, 50 J. URBAN L. 371 (1973), who describes some of the speculative-related abuses of the section 235 program. See generally H. Aaron, Shelter and Subsidies (1972) [hereinafter cited as SHELTER AND SUBSIDIES]; W. Lilly, III, Washington Pressures/ Homebuilders' Lobbying Skills Result in Successes, 'Good Guy Image,' NAT'L J. REP., Feb. 27, 1971, at 431. Cf. A. Downs, Federal Housing Subsidies: How Are They...
housing allowances as a possible supplementary approach for the future. As to the housing production subsidy the administration concluded:

... [It] does not serve the intended beneficiaries, the poor ... has not greatly improved their housing and living environment ... [and] has proved inequitable, wasteful, and ineffective in meeting housing needs.

C. Central Cities: Benign Neglect

For the central cities the suburban strategists prescribed a diet of benign neglect, confident that time would heal all wounds or, alternatively, that the problems of central cities were beyond human solution. As early as 1963, Daniel Moynihan and Nathan Glazer had argued that cities no longer function, or are capable of functioning, as staging grounds for immigrants—a prophecy which became in some measure self-fulfilling in consequence of Moynihan's later role in policy formulation. Moynihan's subsequent infamous prescription of "benign neglect" has proved, however, no answer for the urban poor, whose numbers have increased and whose situation has not improved. In practice, writing off the cities has meant unenthusiastic


132. HUD, HOUSING IN THE SEVENTIES, supra note 30. Cf. CRITIQUE OF HOUSING IN THE SEVENTIES, supra note 89. R. Bryum, The HUD Interest Subsidy Programs: Some Economic Realities Affecting Project Feasibility and Investor Participation, UMKC L. Rev., Fall 1972, at 37-69, concludes that the Section 235 and Section 236 subsidy is not sensitive to housing cost increases and the administration of the program tends to encourage inflation, and discusses impediments to a thorough utilization of the program. See also Housing Muddle—Is the Government Putting Up "Instant Slums"?, U.S. NEWS AND WORLD REP., Sept. 11, 1972, at 66-67.


134. See note 76 supra.


136. Moynihan was the President's Assistant for Urban Affairs from 1969-72.


138. See notes 15-20 supra.

139. Given demographic data (see text accompanying notes 256-57 infra) demonstrating that cities continue to be lived in, the human implications of public policy based on "writing off" the cities are worth pondering. Interestingly, a recent comprehensive analysis of city-suburb economic dynamics finds:
perpetuation of programs that had failed to come to grips with the brutalizing human conditions described earlier in this Article. \(^1\) Programs such as OEO's Community Action Program \(^2\) and Model Cities, \(^3\) which had at least perceived and attempted to activate the potential of government actions to mobilize community energies, failed to receive adequate funding over sufficient time spans. At the same time, billions of federal dollars have been spent on grandiose capital-intensive downtown renewal schemes primarily profiting local commercial and political interests. \(^4\) A brief review of the central city programs and their effects is important to an understanding of present options.

1. Development Programs

a. Urban Renewal and F.A.C.E.

Urban Renewal \(^5\) was the federal government's first major program effort to strengthen and enrich central cities. \(^6\) Slums were cleared by acquiring sites, demolishing existing structures, writing down resale costs, and coordinating private development of commercial and public facilities and low income housing on the acquired land.

The 1949 Act called for the production of 810,000 new public

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Part of the reason is that much of the information available about the city over time is not in an idiom suitable for technological analysis. Even in the short terms, research is confounded by the infinitely various fragmentation of the city, by the intense complexity of its behavior patterns, and by the urgency of its highly apparent problems with housing, poverty, education, transportation, racial hostility, governance, pollution and crime. With a combination of technical analysis where it is possible, and surmise where it is not, a 'conventional wisdom' has sounded the 'plight' of the central cities with overtones not far from funereal, and with prescriptions largely surgical.

**Urban Economic Development**, supra note 19, at xiii.

140. See text accompanying notes 46-52 supra.


housing units over a six year period.146 Yet the actual completion of these units was not achieved until 1969, 20 years later.147 By 1967, urban renewal had demolished some 400,000 housing units while only 41,580 units of low and moderate income housing had been provided.148 In poor communities across the country the program came to be known as "negro removal" since most of the demolition affected the homes of minority people and the poor.149 As one observer summed up the situation as early as 1965:

At a cost of more than $3 billion the Urban Renewal Agency has succeeded in materially reducing the supply of low-cost housing in American cities. Like highways and streets, the program has ripped through the neighborhoods of the poor powered by the right of eminent domain.150

After relocation, higher rent and more over-crowded units have been the common lot of displacees.161 Further, by reducing the low rent housing supply relative to demand, the demolitions lessened pressures on landlords in nearby areas to maintain their properties in order to attract or retain tenants, thereby contributing to undermaintenance and neighborhood decline.152 Concern over these problems led Congress to re-

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148. DOUGLAS REPORT, supra note 1, at 163. Another commentator has concluded: "The basic renewal program of demolition and redevelopment, typically created high-quality, expensive housing for upper income groups, reducing the stock of low-quality housing for the poor." WEICHER, supra note 145, at 14. The following table indicates housing stock changes caused by urban renewal:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Housing Units Razed</th>
<th>New Housing Units Planned</th>
<th>Public, low &amp; moderate income</th>
<th>New Housing Units Completed</th>
<th>Public, low &amp; moderate income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>383,449</td>
<td>195,999</td>
<td>76,363</td>
<td>106,961</td>
<td>42,601</td>
</tr>
<tr>
<td>1968</td>
<td>422,817</td>
<td>226,031</td>
<td>97,573</td>
<td>124,781</td>
<td>52,399</td>
</tr>
<tr>
<td>1969</td>
<td>460,482</td>
<td>256,978</td>
<td>113,485</td>
<td>144,317</td>
<td>63,021</td>
</tr>
<tr>
<td>1970</td>
<td>499,407</td>
<td>286,707</td>
<td>133,199</td>
<td>169,224</td>
<td>80,696</td>
</tr>
<tr>
<td>1971</td>
<td>538,044</td>
<td>324,615</td>
<td>162,587</td>
<td>200,687</td>
<td>101,461</td>
</tr>
</tbody>
</table>

a All data are cumulative.

149. YERBA BUENA, supra note 143, at 100.
peatedly strengthen the federal relocation housing requirements, only to face their continued evasion through statistical manipulations by redevelopment agencies and ineffective enforcement by regional HUD offices.\textsuperscript{158} As a result, the statutory rights to decent, safe, and sanitary relocation housing at affordable rents have rarely been realized.\textsuperscript{154}

A second major problem of urban renewal was the trend toward grandiose “downtown” renewal schemes which preempted resources needed for community improvements.\textsuperscript{156} These commercial projects, sponsored by local business interests, politicians, and redevelopment agencies,\textsuperscript{156} monopolized available community development funds to construct office buildings, parking garages, and luxury apartments.\textsuperscript{167} Federal laws required local share contributions to renewal projects, which localities could contribute “in kind.”\textsuperscript{118} As a result, city monies budgeted for street improvements, lighting, and other renovations have tended to be concentrated in renewal areas, thus permitting cities to qualify for federal renewal funds without increasing their overall expenditures for these items. The resulting chronic diversion of local funds has imposed further severe costs on non-renewal urban areas deprived of resources needed for maintenance and repairs.

Finally, even where the renewal process produces low or moderate income housing, the demolition-production approach has proved so

\begin{itemize}
\item Contrary to regulations, insufficient timely effort is made to inform, assist, and relocate the residents of an area designated for urban renewal. This appears to be a pervasive technique for illegally reducing the number of persons which the LPA ‘officially’ acknowledges as requiring relocation, thereby artificially inflating the percentage of successful relocation.\
\item \textit{Id. at 7.}
\item 155. See Yerba Buena, supra note 143.
\item 156. L. Friedman, \textit{Government and Slum Housing} (1968). See note 143 supra.
\item 157. B. Boyer, \textit{Cities Destroyed for Cash—The FHA Scandal at HUD} (1973) [hereinafter cited as Boyer]. For 20 years the lobbying support in Washington for housing and renewal legislation was from the groups with the most to gain financially—the homebuilders, mortgage bankers, thrift institutions, commercial banks, and organizations of housing and redevelopment officials. For an analysis of the role played by the private sector in federal inner city housing and development programs, see L. Downie, Jr., \textit{Mortgage on America} (1974); W. Chapman, \textit{The Housing Hustlers—This Land is Whose Land?}, \textit{The Progressive}, May 1974, at 29.
\item 158. The local contribution toward the cost of the project or program may be made in the form of cash or noncash grants-in-aid, such as donations of land, demolition and removal work, project improvements, historic preservation activities, certain expenditures by colleges, universities and hospitals, or public facilities that benefit the project.
\item 24 CFR § 500.3(j).
\end{itemize}
costly as to preclude its broadscale applicability to inner cities. A new
three bedroom housing unit in a large city now costs $30,000 to $40,000. If urban renewal funds were used to acquire the site and subsi-
dize demolition, the real cost, including staff time, support from all the
governmental agencies involved, and the loss of property taxes for the
period the property was off the tax rolls, could easily be two or three
times that amount. Per-unit expenditure of this magnitude is feasible for
only a small fraction of those in need of low-cost housing: it is exorbitant
by any standard and creates serious equity problems by limiting the
number of those served by subsidized housing and by providing assisted
families better accommodations than those available to higher income
people.

The Federally Assisted Code Enforcement (FACE) program, which provides subsidized loans and grants to stimulate housing
rehabilitation in urban renewal and concentrated code enforcement
areas, has proved more cost-effective than the demolition ap-
proach. Its outreach has been limited, however, by area require-

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in preventing the construction of lower cost housing is discussed in M. Barton, *The
Housing Industry and Union Power: An Economic Analysis*, *Yale Rev. Law and


(rehabilitation loans).

Rehabilitation grants may be made "for the purpose of covering the cost of repairs and
improvements necessary to make such real property conform to public standards for de-
cent, safe, and sanitary housing as required
by applicable codes . . . for the area." 42

164. Section 116(e)(2) of the '74 Housing Act, 42 U.S.C.A. § 1452b(a)(1)(D)
(Supp. 1975) extends § 312 (42 U.S.C. § 1452b(a)(1) (1970)) to rehabilitation which
is part of an approved community development program under Title I of the Act, 42
U.S.C.A. §§ 5301 et seq. (Supp. 1975), or an approved urban homestead program under
enforcement are detailed at length in B. Ackerman, *Regulating Slum Housing Markets
on Behalf of the Poor; Of Housing Codes, Housing Subsidies and Income Redistribution
Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor, 82
Yale L.J. 1175 (1973); B. Ackerman, *More on Slum Housing and Redistribution Policy;
A Reply to Professor Komesar, 82 Yale L.J. 1194 (1973.*

The factors affecting the effectiveness of code enforcement and rehabilitation are
discussed in *Weicher*, supra note 145, at 61-64; R. Taggart, *III, Low Income Housing:
is described in C. Gramlich, *Housing Code Enforcement in McAlester*, *Pub. Manage-
ment*, Nov. 1973, at 12-13; C. Henry, *Conserving Urban Neighborhoods, the University

[hereinafter cited as McFarland & Vivrett]. *Dep't of Housing and Urban Develop-

ments,\textsuperscript{166} by the small amount of annual loan volume,\textsuperscript{167} by poor administration\textsuperscript{168} and by its imposition of "good as new" standards,\textsuperscript{169} economically unjustifiable for many properties in low income areas.\textsuperscript{170}

\begin{quote}


167. Between 1965-71, only 35,274 ($94,168,000) grants were issued. During the same period, 25,414 residential loans were made, for $168,405,000 covering 40,766 dwellings. \textit{HUD 1971 Statistical Yearbook}, Tables 31, 32, at 46 (1972).


169. Rehabilitations standards for urban renewal areas are stated in \textit{HUD, Rehabilitation Guide for Residential Properties} (1968). "These guidelines for rehabilitation are significantly different from standards for new construction." \textit{Id.} at 1. The manual distinguishes between what 'shall' be done and what 'should' be done, leaving the determination up to the appraisal officer. \textit{But cf. HUD, Urban Renewal Handbook, RHA 7210.1, Rehabilitation, Ch. 1, § 9, at 3.}

The minimum objective in developing the specifications is to secure upgrading of the properties to a marketable level and fully meet the PRS [property rehabilitation standards]. However, a somewhat higher level should be sought in order to meet the overall objective of restoring the area to long term sound condition, to the extent that it can be accomplished within the aforementioned cost limits. Requirements specified in addition to those of the PRS to achieve such a purpose should not be elaborate or of extravagant design or materials but of durable materials and sound workmanship so that normal maintenance will suffice to maintain standard conditions for the economic life of the structure.

The FHA rehabilitation requirements have also been criticized for their excessive stringency. These high standards have frequently prevented rehabilitation because in order to meet them in high cost construction areas, e.g., New York City, a developer would have to exceed statutory ceilings on rehabilitation expenditures.

Even in cases in which financing or cost limitations are no problem, property owners or investors may not wish to effect the extensive rehabilitation required by the FHA. In a recent study George Sternlieb noted that "many owners who would be interested in securing funds for less dramatic rehabilitation shrink away from the level of indenture required to support FHA standards regardless of the interest rate (footnotes omitted). \textit{Listokin, supra} note 165, at 50.


170. Unnecessary improvements precluding efficient administration may be required by local codes, or, in the case of proprietors located within urban renewal areas, by HUD's property rehabilitation standards. \textit{Handbook on Housing Law, supra} note 59, Vol. I, Ch. II, pt. II, at 8-9. Problems with the code enforcement program are detailed in \textit{S. Jackson, Housing Code Inspection Subjected to Some Suggestions for the Future}, 27 J. OF HOUSING 330-33 (1970). \textit{See H. Chung, The Economics of Residential Rehabilitation} 117 (1973) [hereinafter cited as \textit{Economics of Residential Rehabilitation}], arguing that federal programs were designed for long-term rehabilitation (at 142), but that feasibility of the degree of rehabilitation necessary should be determined prior to undertaking a project.
b. Model Cities and Community Action

HUD's Model Cities\(^{171}\) and OEO's Community Action Programs (CAP),\(^{172}\) both developed by the Johnson Administration as elements of its "War on Poverty," were never-fully-endorsed stepchildren of the Nixon Administrations. Community Action, since 1965, has provided federal support for numerous programs—Head Start, child care centers, manpower training, and half-way houses—coordinated by boards of local residents in poverty areas across the country. Model Cities, begun in 1967, selected 150 "hardcore slum" neighborhoods for local planning of "new and imaginative" programs intended to effect institutional changes in housing, health, education, and crime prevention.\(^{173}\) It aimed at coordination of all available federal categorical programs, augmented by specially provided supplemental funds, in a comprehensive attack on poverty. Citizen participation in the planning and implementation of programs was first emphasized, then subsequently deemphasized as the Nixon Administration increasingly shifted control over the programs to the mayors. Model Cities has been subsumed under block grant funding since January 1, 1975.\(^{174}\) The CAP program,

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173. The Model Cities program was initiated to serve only a few cities but, for political considerations, was expanded to serve 150 cities. The funding, however, never expanded to ensure that adequate resources were provided. See generally M. Schussheim, The Modest Commitment to the Cities, Ch. 8 (1974) [hereinafter cited as Schussheim].

174. § 116(a) of the '74 Housing Act, 42 U.S.C.A. § 5316 (Supp. 1975). Model Cities, along with urban renewal (neighborhood development program (NDP), code enforcement, rehabilitation grants, etc.), neighborhood facilities, open space, water and sewer, and public facility loans, was one of the programs consolidated into Title I, Community Development Block Grants, of the 1974 Act. 42 U.S.C.A. §§ 5301 et seq. (Supp. 1975). Communities which were carrying on these programs during the fiscal
which would have been discontinued in 1973 except for an intervening court order, has survived for the present and is now administered by OEO's successor, the Community Services Administration.

Both the CAP and Model Cities programs have contributed to the development of community leadership in poverty areas. Neither, however, achieved a sustained momentum sufficient to affect the socio-economic patterns of the areas in which it operated or to overcome the dominating sense of individual powerlessness which it sought to redress. Given the ambivalence of administration support, the programs' uncertainties of direction and established goals, the diffusion and ambiguities of management responsibility, and the insufficiency of the resources provided relative to their ambitions, it is fair to say that the validity of the Community Action's and the Model Cities' initial assumptions have not been tested. These assumptions—that hardcore poverty areas need a multifaceted program approach which includes jobs, training, child care, housing, mass transportation, better schools, crime prevention, and improved sanitation; that local planning capable of coordinating the various governmental categorical programs is essential; that categorical programs must be supplemented with flexible “supplemental” funds; and that residents must be meaningfully involved in rebuilding their communities and improving their individual conditions—must be included in any future efforts to grapple with the problems of poverty areas. The real problem has been, as George Bernard Shaw said of Christianity, that the idea has never seriously been tried.

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c. Community Development Block Grants

By the early 1970's, the inadequacy and misdirection of the renewal programs were painfully apparent.\(^{180}\) Deterioration of the housing stock continued unabated, as did high levels of crime, unemployment and sub-employment, and inadequacies in basic city service systems. Mayors complained that federal aid was insufficient in amount, was tied to categorical programs which distorted city priorities, and, by bypassing the authority of city hall, uncercut local planning and program efforts.\(^{181}\) In 1971, the administration responded with a substitute program package under the rubric of "New Federalism." For community development and housing, it emphasized general and special purpose revenue sharing, an expansion and reorientation of the Leased Public Housing Program, and the prospect of a housing allowance (direct cash payments to the poor) at some future time.\(^{182}\)

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180. For historic descriptions, see the DOUGLAS REPORT, supra note 1; the KAISER REPORT, supra note 30.


"Since the enactment of the revenue sharing program, total federal aid outlays have continued to increase in absolute terms but have declined somewhat in relation to state and local expenditures." U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, GENERAL REVENUE SHARING: AN ACR REEVALUATION 8 (1974).

"The formula also does not take full account of the relative financial needs of units of local government. Revenue sharing may represent a windfall for many governments that provide few services for residents." U.S. COMM'N ON CIVIL RIGHTS, MAKING CIVIL RIGHTS SENSE OUT OF REVENUE SHARING DOLLARS 12 (1975). "Furthermore, many cities are penalized by the provision that limits the per capita allotment of individual localities to no more than 145 percent of the average entitlement of all local governments within the State." Id. at 12.

Because of the way in which funds are divided among recipients, allocations to particular municipalities in a county are affected directly by characteristics of other governments within the same county. As a consequence, a wealthy city in a poor county can receive more than a poor city in a wealthy county because there is a larger amount of money to distribute among jurisdictions in the poor country. Id. at 13.

In its analysis of 65 recipient jurisdictions of general revenue sharing funds, a Brookings Institution study states that

[Local governments in the sample were found to have allocated approximately two-thirds of their revenue sharing appropriations for various substitution purposes: more than one-half of the total of the revenue-sharing applications of the surveyed local governments took the place of taxes and borrowing; 12 per-
The objectives of the new revenue sharing approach are appealing: just distribution of funds on the basis of need; a reduction of federal over regulation; strengthening of local democratic decision-making; and increased flexibility to permit appropriate programs at the local level. Misallocations deriving from the duplication and narrowness of federal program categories and the tendency of matching grant approaches to distort priorities would be reduced. Time consuming project applications would be eliminated.

As originally proposed, special revenue sharing would have virtually eliminated federal guidelines, program approvals, and expenditure reviews, and would have totally undercut citizen participation in planning decisions, laboriously developed under the Workable Program Law. The compromise version ultimately enacted requires HUD approval of block grant applications, which must contain three year community development plans, including programs designed to:

eliminate or prevent slums, blight, and deterioration where such conditions or needs exist, . . . and provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate;

The application must designate specific planned projects and must include a housing assistance plan based on an accurate survey of the

cent was used to maintain existing programs and thereby prevent budget cuts . . . of new spending in aggregate terms by local governments in the sample, by far the major share was for capital projects. The use of shared revenue for new and expanded program purposes was limited.


Revenue Sharing for Community Development, supra note 182, at 262.


42 U.S.C. § 1451 (1970) required that every city receiving urban renewal and certain other types of federal assistance maintain in effect a "workable program" for community improvement certified as such by HUD. Community organizations in many cities have taken advantage of the citizen participation requirements of HUD's workable program regulations to insist on involvement in policy decisions affecting housing and planning, codes and code enforcement, and relocation. See HANDBOOK ON HOUSING LAW, supra note 59, Vol. I, Ch. II, pt. II.

Title I of the '74 Housing Act, 42 U.S.C.A. §§ 5301 et seq. (Supp. 1975). For an analysis of the community development block grant legislation and its implication for the poor see LAW PROJECT BULL., infra note 224, at 50.


condition of the community's housing stock and an assessment of the housing needs of lower income residents.\textsuperscript{189} Citizen participation must be afforded in the development of the application and public hearings must be held.\textsuperscript{190} Although the findings with which the Act begins evidence congressional awareness of the need for far reaching and multifaceted program efforts,\textsuperscript{191} HUD is required to approve applications unless they are "plainly inconsistent" with the facts and data, plainly inappropriate, or contrary to law.\textsuperscript{192}

In effect, the entire city has become the program area. Concentration of expenditures in Model Cities, CAP, and urban renewal areas will no longer be required, provided the applicants "certify to the satisfaction of HUD" that "maximum feasible priority to activities which will benefit low or moderate income families or aid in the prevention or elimination of slums or blight" has been ensured.\textsuperscript{193} Citizen organizations mobilized through the Model Cities and Great Society programs will thus have to make their case to city hall in competition with traditional local power groups and with less help than in the past from sympathetic federal bureaucracies. Since the level of expenditure authorized by the '74 Housing Act represents no real increase over prior year appropriations for community development programs,\textsuperscript{194} lo-

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{189}§ 104(a) of the '74 Housing Act, 42 U.S.C.A. § 5304 (Supp. 1975).
\item \textsuperscript{190}§ 104(a)(6) of the '74 Housing Act, 42 U.S.C.A. § 5301(a)(6) (Supp. 1975). For criticism of this section, see 2 HOUSING & DEVELOPMENT REPORTER 606 (1974).
\item \textsuperscript{191}§ 101 of the '74 Housing Act, 42 U.S.C.A. § 5301 (Supp. 1975).
\item \textsuperscript{192}§ 104(c)(1) of the '74 Housing Act, 42 U.S.C.A. § 5304(c)(1) (Supp. 1975). See Kushner, Community Planning and Development Under the Housing and Community Development Act of 1974, 8 CLEARINGHOUSE REV. 661.
\item \textsuperscript{193}The preamble to the '74 Housing Act recognizes that the nation's communities "face critical social, economic, and environmental problems": metropolitan growth and concentration of the poor in central cities; "inadequate public and private investment and reinvestment" in housing, physical facilities, and public and social services. After declaring that the future welfare of the nation rests upon making these communities viable, the preamble proposes: (a) systematic government action to eliminate blight, conserve and renew older urban areas, improve the environment of the poor, and develop new population centers; (b) expansion and continuity in federal assistance; (c) expansion of the housing stock; (d) extension and improvement of community services for the poor; (e) more rational land use; (f) reduction of isolation by income groups through the dispersal of low-income housing and the revitalization of deteriorating neighborhoods; and (g) further development of a national urban growth policy. § 104(b)(2) of the '74 Housing Act, 42 U.S.C.A. § 5304(b)(2) (Supp. 1975).
\item \textsuperscript{194}§ 103(a) of the '74 Housing Act, 42 U.S.C.A. § 5303(a) (Supp. 1975), authorizes $8.4 billion over three years, including $2.5 billion in fiscal 1975. Fiscal year 1973 appropriation for major community development programs was $2.1 billion. J. OF HOUSING, Sept. 1972, at 378. The revenue sharing approach, which does not require local contributions and which replaces some prior local financing with federal funds, will result in a reduction in total community development funding. Revenue Sharing for Community Development, supra note 182, at 256-57. See also HUD Halts Discretionary Grants From Metropolitan Balances, 2 HOUSING & DEVELOPMENT REP., Mar. 24, 1975, at 1089. But see A. Hirshen & R. LeGates, HUD's Bonanza for Suburbia, 39 PROGRESSIVE 32-34 (1975).
\end{enumerate}
\end{footnotesize}
cal competition for funds will largely determine the effectiveness of the block grant approach as an allocating mechanism for easing the "critical social, economic, and environmental problems." The legislation purports to address.

2. Housing Programs

a. Public Housing

The public housing program was to have been the principal vehicle for achieving the 1949 Act's national goal of "a decent home and suitable living environment for every American family." Mass production of heavily subsidized low rent units was to have been the means. But 25 years later, public housing finds itself beset with problems and facing an uncertain future. Symbolically, the Pruitt-Igoe Project in St. Louis, which once epitomized public housing's achievements and aspirations, has now been demolished. Its social planning deficiencies—the concentration of great numbers of poor, mostly black, families in high rise units, insufficient provision for police protection, sanitation, day care, and other social services, and the escalation of operating costs beyond the tenants' rent paying capacity—created problems that proved insoluble.

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195. § 101(a) of the '74 Housing Act, 42 U.S.C.A. § 5301(a) (Supp. 1975).
198. Shelter and Subsidies, supra note 131, states:
   A number of issues concerning public housing remain unsettled. The most important is the fairness of giving a sizable subsidy—$800 per year on the average—to a small fraction of low income households and nothing to most of the rest. Another is whether the large variation in rent-to-income ratios should be permitted to continue.
200. See R. Scobie, Problem Tenants in Public Housing (1975). Many of the problems derive from the fact that public housing operates outside the private housing market yet is still greatly influenced by it. In many localities, public housing has been the monopoly supplier of housing to the poor. The poor have a 'need' for low rent housing but are unable to translate that need into a 'demand' felt in the market place. The supply of public housing is not a response to this need. Instead, it is dependent upon statutory and administrative procedures (level of funding, the politics of application approval, and the site selection process) based on goals (such as integration) other than housing the poor where they currently live.
Alienation in high-rise buildings is not a problem faced exclusively by the poor.
Local Housing Authorities (LHA's) which operate public housing units receive federal subsidies to cover the full cost of construction but rely substantially on rent receipts to support maintenance and operating services. As the latter costs have escalated beyond tenants' capacity to pay increased rents, LHA's across the country have faced bankruptcy. Congress sought to relieve their situation in 1969, and again in 1970, by enacting the "Brooke Amendments," which authorized incremental funding to cover the costs of deferred maintenance and other operational items and to subsidize rentals, so that no tenants would be charged more than 25 percent of their income. The administration belatedly released the Brooke Amendment funds after an initial period of delay, but given the effects of accelerated inflation, the financial plight of LHA's continues to be critical.

The Pruitt-Igoe experience increased public awareness of the negative social costs of concentrating large numbers of poor families in high rise apartment buildings. This criticism and HUD's reluctance to support housing authority budgets with Brooke Amendment funds strengthened pressures for economic integration of public housing and led to a fundamental reorientation of the program in the '74 Housing Act. LHA's will be required to comply with HUD requirements pertaining to:

- the establishment of tenant selection criteria designed to assure that, within a reasonable period of time, the project will include families


206. See Shelter and Subsidies, supra note 131. See notes 198 & 202 supra.
with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available.\textsuperscript{207}

As of November 1967, the number of eligible persons on public housing waiting lists in the 50 largest cities in the United States was almost 200,000 compared to approximately 7,000 reported vacancies.\textsuperscript{208} Unless accompanied by a great increase in the total number of public housing units (unlikely in view of the high costs of new construction), economic integration will be achieved only at the expense of the poor, who will be excluded from public housing to make room for higher income families.\textsuperscript{209}

Despite its difficulties, the achievements of the public housing program have been considerable. For 1.3 million families,\textsuperscript{210} about one percent of the nation's population, public housing today provides far better accommodations than are available at comparable rentals on the private market. Prodded by the National Tenants Organization and the National Housing and Economic Development Law Project, HUD in 1971 issued regulations establishing grievance procedures and requiring fair and reasonable lease provisions.\textsuperscript{211} In several cities, innovative tenant

\textsuperscript{207} § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437d(c)(4)(a) (Supp. 1975) (corresponds to § 6 of the United States Housing Act of 1937).

At least 20% of the dwelling units in any project are reserved for "very low income families"—defined as "families whose incomes do not exceed 50% of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families." § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437a(2) (Supp. 1975).

\textsuperscript{208} DOUGLAS REPORT 131, supra note 1. But see A. SOLOMON, HOUSING THE URBAN POOR 193 (1974) [hereinafter cited as HOUSING THE URBAN POOR]. No figures updating the DOUGLAS REPORT are available. Waiting list statistics must be qualified because many housing authorities do not accept applications past a certain cutoff point, not all persons on waiting lists qualify, and many who do qualify do not place their names on the lists.


\textsuperscript{210} U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, 1972 HUD STATISTICAL YEARBOOK, at 149. Figure is for low rent public housing units under annual contributions (includes both under management and under construction). See also FEDERAL HOUSING SUBSIDIES, supra note 131, Ch. 2.

organizations and tenant participation efforts are pointing the way toward improved social conditions and more humane management. These developments have already done much in these cities to reduce the oppressiveness and paternalism that have traditionally characterized public housing management.

b. Leased Housing

HUD's 1973 re-examination of the subsidized housing programs found them guilty on all counts: inordinately costly, capable of reaching only a small fraction of the poor, restrictive of freedom of choice and mobility, and fundamentally unworkable in the context of the 1970's. The January 1973 suspension of the housing subsidy programs was continued in effect. In their place HUD has substituted a reconstituted and expanded version of its Leased Housing Program (Section 8) conjoined with intensified experimentation with housing allowances, seen as the most promising long term approach.


The role of HUD in ensuring well-managed public housing projects is discussed in two articles: Lefcoe, HUD's Authority to Manage Tenants' Rights in Public Housing, 80 YALE L.J. 463 (1971) (the Secretary's discretion with statutory limitations); Comment, HUD's Authority to Mandate Effective Management of Public Housing, J. OF URBAN L., Aug. 1972, at 79 (HUD’s ultimate responsibility for effective management of public housing).

213. Id.

214. HUD, HOUSING IN THE SEVENTIES, supra note 30. See text accompanying notes 89 and 133 supra. One study suggests HUD deserved partial blame for program failure because the department failed to monitor program activity adequately. See U.S. General Accounting Office, Greater Benefits Can be Derived from Improved HUD Audits of Program Participants, Nov. 1974.

215. See text accompanying note 129 supra.

216. The rationales for this redirection was explained by HUD Secretary Lynn as follows:

By providing qualified recipients with an appropriate housing payment, instead of providing a place to live, direct cash assistance has the advantage of allowing families the freedom to select their own housing, without the stigma of living in a “project” and at the same time permitting maximum utilization of existing housing, which involves substantially lower costs than the costs of new construction. This last point—lower costs—is worth emphasizing. To provide housing for all eligible families under existing construction-oriented programs, would cost the federal tax payers, according to our estimates, $34 billion annually. But by placing families in existing safe and sanitary housing where available, the costs are estimated to be in the range $8-11 billion annually [emphasis added].
Until such time as the broadscale housing allowance approach has been fully examined and implemented, HUD proposes to rely primarily on leased housing. The new Section 8 program authorizes LHA's, state agencies, or HUD itself, in certain instances, to lease units at "fair market rental," plus not more than 10 or 20 percent under "special circumstances." Lease terms are up to 180 months in the case of existing units, 240 months in the case of new or substantially rehabilitated units, or 480 months in the case of projects owned or financed by a loan or loan guaranty by a state or local agency. HUD may give preference to projects involving not more than 20 percent assisted units, where such projects contain more than 50 units and are not designed primarily for elderly or handicapped persons. In all other cases, assisted leases may involve up to 100 percent of the dwelling units in any structure. The program is neither limited nor primarily oriented toward low income tenants. Families with incomes not in excess of 50 percent of the area median income are eligible and must constitute at least 30 percent of the families assisted. Participating families contribute from 15 to 25 percent of their total family income to rental payments.
The Section 8 program has been described as a limited but powerful housing tool—powerful because of its deep subsidy character but, for the same reason, capable of reaching only a limited number of units. Its usefulness for neighborhood upgrading and preservation will depend upon its coordinated use with lower per-unit cost programs capable of reaching many more units.

Leased housing programs have been in operation, moreover, since 1965 and have not been without serious problems. A 1970-72 Internal HUD Audit which examined a sample of the 13,728 leased housing units in the Boston Regional Office Area found major defects in the conditions of approximately 41 percent of the leased units examined, laxity in inspection procedures, and evidence that housing authorities were paying excessive rents to private landlords. HUD's failure to apply its Model Lease and Grievance Procedure Regulations, adopted in 1971, to leased public housing has inhibited the capability of tenants to engage in rent withholding activity to force landlords to make repairs. If the program is to have significant impact, the administration must find means to deal with these problems and to overcome present bonding problems and lack of developer enthusiasm.

Finally, the administration's assumption that leased housing will provide a testing ground for housing allowances may prove illusory in view of the important functions housing authorities continue to perform under the leased housing program: searches for units, inspections and reinspections, lease negotiations, rent collections and payments, and the program's small scale of operation relative to that of proposed housing allowances.
Given resident pressures against public housing construction in the suburbs on the one hand,\textsuperscript{234} and judicial, governmental, and public concern regarding racial and economic class impaction on the other,\textsuperscript{235} and in either event the high and increasing costs of new construction, little prospect exists for a significant increase in public housing production. A new definition of the role of public housing is needed.\textsuperscript{236} The key lies in the program's flexibility as a financing and management mechanism, adaptable to both production needs and existing housing management and leasing opportunities, and its deep subsidy character, which together make it a uniquely suitable program instrument for inner city stabilization efforts. The administration's emphasis on expanding leased housing\textsuperscript{237} could represent a step in that direction. Part II of this Article proposes an expanded role for public housing through its integration into community conservation programs in those instances where market economics are such that private ownership of certain housing is no longer feasible, or where the infusion of management capability and housing subsidies in conjunction with lower per-unit cost programs can stabilize or upgrade areas.

c. Housing Allowances

The administration's proposed housing allowance program, also part of the New Federalism, is still in the design stage. HUD is currently monitoring several pilot projects involving supply, demand, and administrative aspects.\textsuperscript{238} If fully implemented,\textsuperscript{239} the housing allowance system might largely replace both the production-oriented programs (which have been the main thrust of federal housing policy since the New Deal) and the current leased housing programs.\textsuperscript{240}

\textsuperscript{234} See text accompanying notes 109-26 \textit{supra}.
\textsuperscript{235} See text accompanying notes 103-08 \textit{supra}.
\textsuperscript{236} For a summary of the new and renewed directions critics and supporters of public housing are taking, see Hirshen & LeGates, \textit{Dreary Deadlock Revisited}, ARCHITECTURAL F., Mar. 1973, at 66.
\textsuperscript{237} See generally \textit{HOUSING THE URBAN POOR}, supra note 208.
\textsuperscript{239} The current status of the program is reported in Demkovich, \textit{Housing Report/Ad- ministration Weighing Plans for Low Income Allowances}, NAT'L J. REP., Feb. 15, 1975, at 243-48. See also C. HARTMAN, \textit{HOUSING AND SOCIAL POLICY}, 153-59 (1975) [hereinafter cited as \textit{HOUSING AND SOCIAL POLICY}].
\textsuperscript{240} During the short-run, the housing production programs are needed until complete phase in of a general income maintenance system. Hunter, \textit{Rethinking the Problem of Housing in America}, REAL ESTATE REV., Winter 1974, at 52 [hereinafter cited as Hunter]. See also Unrestricted Allowances Don't Mean Better Housing, \textit{Report States}, 2 HOUSING & DEVELOPMENT REPORTER, CURRENT DEVELOPMENTS, Mar. 24, 1975, at 1078.
\textsuperscript{240} Several studies have recommended the leased housing or housing allowance ap-
Housing allowances are, in reality, an incomes strategy, not a housing intervention mechanism. In general, eligible families would receive "rent certificates" similar to food stamps. They would select their own housing and negotiate rents and other lease provisions with individual landlords. The allowance scheme is intended to obviate the need for large federal-local, production-management bureaucracies.

Major support for the concept comes not from the traditional real estate-banking-building lobbies but rather from academicians and policy analysts who see the "housing problem" as an aspect of the larger "poverty problem." The housing problems of the poor would be solved, they argue, if the poor had enough money to translate their needs into effective demand. More of the poor would be served by an allowance than by the production programs. Housing allowances offer, moreover, a means of providing regional cost variations on top of a general pattern of income support, which the administration's Family Assistance Plan and similar proposals would create. Such cost variations may be needed and may be politically difficult to achieve by direct congressional action.

Infusion of federal subsidy funds without direct intervention to preserve and rebuild housing and neighborhoods is not likely, however, to improve housing conditions for the poor. Unless supported by revital-

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The proposition that housing allowances would be more economical because of lower administrative costs is yet untested. Certification of units could possibly make the program more expensive than the production programs. The difference would be that the costs would be incurred by the locality, not by the federal government. Id. at 40-43. But see Fried, Housing Allowances: The Latest Panacea, The Nation, Mar. 5, 1973, at 304; Housing and Social Policy, supra note 238 at 153-59; Gans, A Poor Man's Home Is His Poorhouse, N.Y. Times, Mar. 31, 1974, § 6, at 20; U.S. General Accounting Office, Observations on Housing Allowances and the Experimental Housing Allowance Program (1974); Schussheim, supra note 173 at 93.


ized code enforcement, improvement in housing quality as a consequence of housing allowances is improbable or at best speculative. Unless accompanied by rent control in areas with low vacancy rates, housing allowances will result in a further costly and irrevocable round of rent increases. The desirability of subsidizing a landlord's rate of return is subject to serious question. Increased profitability resulting from such subsidies will be capitalized through higher prices on resale, resulting in an increased capital (equity plus debt) service burden which will have to be supported by future rentals and a new "cash squeeze" at a higher receipts-expenditures level. Unless open housing policies are more aggressively enforced, improvement in access to housing cannot be assumed. Provision for allowances without massive efforts to upgrade declining areas might lead to the mass abandonment of gray areas and result in over-crowding in better sections with consequent rent increases in those sections. The rent increase effects and changes in the racial and economic population mix in the new in-migration areas could set off another round of moves by their present residents. Already a body of literature has developed questioning the housing allowance approach on these and other grounds.

For several reasons, implementation of the allowance approach on a nationwide basis seems improbable. First, allowances would cost over $6 billion annually. Opposition from the Office of Management and Budget has already caused the administration to back down from an allowance proposal for the elderly. The mammoth fiscal require-

245. In New York City, for example, high development costs engendered high capital return requirements. The result was that the federally assisted programs required monthly servicing costs that were almost double that of comparable, well maintained, private structures. HOUSING ASSISTANCE FOR LOW-INCOME FAMILIES, supra note 240, at 501-02.
246. See text accompanying notes 35-37 supra.
ments of a housing allowance system are likely to prove beyond the scope of the national commitment to better housing for the poor. Second, as noted above, the proposal lacks the political backing which has sustained present housing programs for two decades. Bankers, realtors, and builders view allowances as a threat to their profitable production programs and question whether an income strategy would cause any housing to be built. The housing allowance experiments thus deserve to be watched with skeptical interest.

II

ELEMENTS OF A PRO-CITIES STRATEGY

This Article has offered to this point a broad perspective on the present central city housing situation and its causes and summary evaluations of major federal interventions in the housing market. Although the federal programs have contributed to the increase in the number of livable units that has occurred over the past decades, they stand justly accused of sins of commission and omission. Federal subsidies for housing, highways, water and sewers, and tax deductions for home ownership have spread subdivisions over the land, but the housing tracts have rarely ripened into true communities. The middle class exodus encouraged by the programs deepened concentrations of the poor and ethnic minorities within the cities. Where federal urban programs did not exacerbate central city problems, as in the case of urban renewal

250. Anthony Downs has noted that housing has traditionally received less support than food and that there is currently no national commitment to close the even more basic "food subsidy gap." He concludes that "[r]ealistically there is almost no chance whatever that the federal government will raise housing subsidies high enough to fully close this total subsidy gap in the foreseeable future." Downs, Are Subsidies The Best Answer for Housing Low and Moderate Income Households? URBAN LAW., Winter 1972, at 405, 407.

A measure of the national commitment toward housing is the seriousness with which Americans view the "housing problem" or the "urban problem" in relation to other national problems. Annual Gallup polls show that, in two-thirds of the years between 1936 and 1974, Americans viewed foreign policy problems as more important than domestic issues, and even when domestic issues were chosen, housing and the urban crisis rated low except during the riot years of the late 1960s. See GALLUP OPINION INDEX, Oct. 1971, at 4; Oct. 1972, at 88; Oct. 1973, at 11; and Nov. 1974, at 30.


The President and Chairman of the Board of the Federal National Mortgage Association expressed concern that a token housing allowance program would continue the inequity of present programs while producing a considerable inflationary result. Hunter, note 239 supra, at 52, 54-55.

252. See text accompanying note 210 supra.

253. See note 270 infra.
projects that have caused large scale demolition of low rent housing, they have proved inadequate in scale and inappropriate in design. The present pattern of concentrated central city poverty, encircled by self-protective, hostile, and balkanized suburbs, is in substantial degree a product of the misdirection of these efforts.

In this part we attempt to make the case for an alternative pro-cities strategy and to suggest the elements such a strategy ought to include.

A. Why Priority for Cities and Housing

The case for rebuilding our cities rests on both negative and positive premises. First, the cities will continue to be lived in. Even during the 1960's, two-thirds of the central cities with over 100,000 inhabitants gained population, while only one experienced a loss of population in excess of 7 percent. In the future, although rural-urban migration might occur at a reduced rate, projected natural increases probably will substantially maintain or increase central city populations.

Second, the socio-economic causes of deterioration in the cities will persist and will not yield to benign neglect. Absent a major reorientation of government actions, these forces will continue to cause an outflow of businesses, jobs, and higher income residents; a deterioration of neighborhoods and buildings; and inadequate levels of basic public services. If financing for repairs and rehabilitation continues to be denied, housing in gray areas will further deteriorate to the "disaster" level.

Third, suburbs can be expected to continue to resist subsidized housing and other penetration pressures. While it is true that many upwardly mobile blacks are now living and working in integrated suburban situations, most of the black exodus from the inner cities has been

255. There are indications that cities are experiencing a resurgence as middle class residents are attracted back. See Crim, National Conference of Urban "Pioneers" Shows Strength of City Revival, Mortgage Banker, Nov. 1974, at 15ff.; Priest & Black, Time May Have Arrived for Central Cities' Resurgence, Mortgage Banker, Nov. 1974, at 24ff. [hereinafter cited as Priest & Black]. (Cities discussed include Washington, D.C.; Dallas; Baltimore; Philadelphia; Atlanta; and Cincinnati).
258. The Kerner Report, supra note 34, recommended substantial increases in basic public services for the central cities. Id. at 288-99. This recommendation has not been implemented in the seven years since the report was written due to the Nixon Administration's suburban strategy. See text accompanying notes 16-28 supra.
259. See text accompanying notes 46-52 supra.
260. See text accompanying notes 109-26 supra.
to close-in predominantly black enclaves. Subsidized housing construction in the suburbs has primarily served the needs of white working-class homeowners. Barring unforeseeable, massive, and improbable demographic shifts, millions of the poor will continue to live in the central cities. For most, dispersion will not be an alternative. The most distinguished and articulate advocates of dispersion are forced to recognize that the American middle-class majority is overwhelmingly opposed to making the sacrifices in money, power, and degree of neighborhood dominance that large-scale dispersion would require.

Fourth, a number of factors, taken together, may lead to a reversal of the city-to-suburb trend. Building trends indicate that apartments may slowly replace single family detached homes as the more practical and preferred unit of new residential construction. In addition, due to

261. A. Hawley & V. Rock (eds.), Segregation in Residential Areas (1973); S. Sutker & S. Sutker (eds.), Racial Transition in the Inner Suburb—Studies of the St. Louis Area (1974). Physical expansion of the inner city ghettos into contiguous areas has been cited as the major reason that the black population of certain suburban communities more than doubled in the 1960's, so that by 1970, blacks constituted at least 10 percent of the total population of those communities studied. Connolly, Black Movement Into the Suburbs: Suburbs Doubling Their Black Populations During the 1960's, URBAN AFFAIRS Q., Sept. 1973, at 91.

262. See notes 68 & 88 supra.


264. A 1971 survey of residents in an average income inner city black neighborhood in Baltimore indicates that "both movers and stayers are limited in their ability to materially change their living conditions through mobility." Nathanson, Moving Preferences and Plans Among Urban Black Families, J. AM. INST. PLANNERS, Sept. 1974, at 353.

In a sample of black inner-city residents, 45.1% preferred to move, 29.2% preferred to stay, and 25.7% expressed no preference. Id. at 354.

265. A. Downs, Opening Up the Suburbs (1974) at 17: This book has presented two main themes. One is that America's remaining urban property cannot be attacked effectively, without reducing the spatial concentration of the poor. The second is that practical means of achieving this goal exist—means that would not seriously threaten the quality of life of the middle and upper-income majority. However, adopting those means would require many members of that majority to make additional sacrifices in money, power, and degree of neighborhood dominance.

At present I believe the American middle-class majority is overwhelmingly opposed to making these additional sacrifices. Although its members and leaders rhetorically express a desire to combat poverty and improve conditions in crisis ghettos, they show little willingness to bear the costs of doing so.

266. A substantial increase in multi-family construction occurred during the 1960's, but this has subsided in recent years due to the unavailability of mortgage money at interest rates acceptable to builders. See U.S. LEAGUE OF SAVINGS ASS'N, FACT BOOK 1974 (1974). In addition, apartment buildings are (per sq. ft.) less costly to build and to operate. REAL ESTATE RESEARCH CORP., THE COST OF SPRAWL: RETAIL COST ANALYSIS (1974).
the no growth movement and the economic recession, new construction may remain at its present level, far below the boom of the 1950's and 1960's. Finally, the energy crisis, especially the shortage of gasoline, may make dependency on the automobile and its accompanying lifestyle costly and unpleasant for the suburban resident.

But the case for urban regeneration need not rest on negative premises. The opportunity to rebuild our cities is an opportunity to make our society whole again. The cities are situated at the heart of the metropolises—often on choice sites bordering bays, lakes, or rivers. Even today, business activity in central cities, as illustrated by retail sales, exceeds that in suburban areas. The cultural heterogeneity cities have traditionally provided contrasts sharply with the relatively blank assimilationist lifestyle prevailing in many suburbs. Cities offer parks, museums, choice of cinema and restaurants, symphonies, opera, theater, freedom from dependence on the automobile, diversity, a sense of action and place, and people relating to each other. Even poor and badly deteriorated neighborhoods commonly offer qualities of community and both tangible and intangible benefits that no suburban tract can provide.

The choice is not between inner city restoration and suburban inte-


268. While the nation has been in a serious recession for the past six months, the home building industry has been in an ever deepening recession for the last 18 months. Governmental policies led to this situation and governmental action must reverse it.

In 1974 we produced 1.35 million housing units. This is the lowest level since 1967. It was 34.3% below the 2.05 million units produced in 1973, and 43.2% below the 2.37 million units produced in 1972. In January of this year, our production level was at an annual rate of 987,000 units, slightly above December. However, the annual rate of building permits for January was at a level of only 661,000 units. This level of building permits, which is the lowest ever recorded, presages a continued annual production level of less than one million units over the next several months.


269. In 1967, for example, 55% of retail sales were made in central cities, which accounted for over 70% of gross receipts for SMSA's of over 200,000 in population. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACTS OF THE UNITED STATES, 1972, 33, at 856.7. See also King, City Downowns Struggle Back, N.Y. Times, Feb. 26, 1973 at 1, col. 3.

270. But see H. GANS, THE LEVITOWNERS (1967) for arguments that the suburbs have developed heterogenous lifestyles; Podeschi, The Reality of Our Suburban Myths, SOCIAL AFFAIRS, Jan. 1975, at 234-35.

gration. While a renewed urban emphasis is necessary to redress the imbalance fostered by present policies, it need not preclude suburban housing production, particularly in areas where inverse commuting patterns evidence significant job opportunities outside the inner city. Policies intended to stimulate or facilitate further out-migration should, however, take careful account of their potential effects on social and economic conditions in the central city. Ultimately, only by restoration of the central cities, as an urban life style becomes an increasingly viable alternative, can true desegregation occur through flows and counter-flows between city and suburb prompted by individual choice.

Rebuilding the central cities will require the restoration or improvement of inner city transportation, police protection, schools, parks, sanitation systems, and facilities of every kind. It will require restructuring basic political institutions. But a central focus and visible thrust to the new approach is needed and it should be a combination of housing and jobs. Community people are deeply skeptical of government programs. In their view, they have been victimized by government solutions more often than they have been helped. So long as central city housing conditions continue to de-


274. See Priest & Black, supra note 255.

275. The National Commission on Urban Problems called for "a massive attack on substandard and overcrowded housing conditions which are concentrated in the core city among the poor especially among the Negro poor," adding that improving housing conditions "also mean[s] providing adequate city services, housing code programs, relocation payments, neighborhood improvements, recreation and open spaces, and good urban design so that both a decent home and suitable living environment are provided." DOUGLAS REPORT, supra note 1, at 26. Most of the Commission's comprehensive recommendations, offered in 1968, have yet to be adopted. HOUSING AND SOCIAL POLICY, supra note 238, at 176.

276. See KERNER REPORT, supra note 34, at 283-87.

277. Yerba Buena, supra note 143, provides a case study of a poverty community traditionally "victimized" by both federal and municipal governments. See also KERNER REPORT, supra note 34, at 143-50 & 283-87, for a discussion of attitudes toward government agencies and services in the riot cities studied.
teriorate, people who live in that housing will feel that nothing has changed. Restoration of parks, schools, or transportation systems will be seen as benefits primarily for others, not responsive to their immediate felt needs. Realistic housing improvement programs could, however, address their perceived priorities and could provide the focal point for practical and labor intensive neighborhood improvement efforts. Visible physical improvements, jobs in the community, and opportunities for small minority contractors and community-based nonprofit housing and development corporations would be immediate by-products. The dollars earned through the jobs and contracts created would tend to be spent and respent in the community, providing a multiplier effect and a foundation for the sustenance and growth of small businesses and, over time, increased revenue to support neighborhood conservation programs.278

Whether, and to what extent, housing improvement and neighborhood stabilization can provide a starting point for more generalized urban regeneration is necessarily problematic. The meaning of urban regeneration will inevitably vary among cities with different physical, social, cultural, and historical patterns. But the failure of the downtown renewal approach279 stands as evidence that, if a beginning is to be made, its focus cannot be on peripheral "trickle down"280 factors. The poor areas are where the healing process must begin. Program benefits must be immediately and broadly perceived by the intended beneficiaries whose problems of poverty lie at the core of the inner city's malaise. A focus on jobs and broadscale housing improvements meets these criteria. Only as progress is made toward improving their social and economic conditions—by reducing unemployment, underemployment, drug dependence, crime, and welfare costs—will the cities be able to restore and further the varieties of urban lifestyles and amenities that underlie civilized society.

B. The Conservation Approach

While central city populations have not markedly declined over the past decade, it is also true that, in general, they have not substantially increased.281 The primary housing problem of most central cities is not


279. See text accompanying notes 155-58 supra.

280. See text accompanying notes 35-37 supra.

281. See note 14 supra.
insufficient supply in an absolute sense; it is how to provide and sustain an adequate supply of habitable units at prices residents can afford.\textsuperscript{282} The gray areas of most cities contain many buildings which, if deferred maintenance is accomplished, can provide sound housing for many years. Even older declining urban areas have large numbers of deteriorating but structurally sound and usable or reclaimable units. Given the high costs of new construction and the present low rate of production,\textsuperscript{288} these units will continue to be lived in for many years. They constitute an important neglected resource which, relatively inexpensively, can be improved to provide livable housing.\textsuperscript{284} While new inner city construction will continue to be important to upgrade the quality of the stock, to replace housing removed from the market, to increase supply where sufficient demand exists, and to fill specific unmet housing needs, the principal available resource will be the existing inner city housing stock.\textsuperscript{288}

\textsuperscript{282} DOUGLAS REPORT, supra note 1, at 80, needs of large families.

See generally INSTITUTE FOR URBAN AND REGIONAL STUDIES, WASHINGTON UNIV., ST. LOUIS, URBAN DECAY IN ST. LOUIS (1972).

What is proposed is minimal rehabilitation: that the structure be sound and that its heating and plumbing be maintained in working order. For the truly poor, these rudimentary amenities would represent an improvement in their housing condition, particularly if they existed in a non-slum environment, a moderate-income neighborhood. Throughout the city at the present time are structurally sound, vacant buildings which may be purchased for $1,000 to $2,000 or less.

\textit{Id.} at 106.


\textsuperscript{284} See text accompanying notes 310-14 infra. See HOUSING AND POVERTY, supra note 3, at Ch. IX; HOUSING ASSISTANCE FOR LOW INCOME FAMILIES, supra note 240, at 503.

Broad scale rehabilitation is not an easy answer. See, e.g., McFARLAND & VIVRETT, supra note 165; LISTOKIN, supra note 165. Despite the difficulties with rehabilitation, the considerations discussed in this section indicate that there are no satisfactory alternatives.

HUD's 1973 program review criticized the existing programs for relying too heavily on new construction, but failed to explore rehabilitation as a possible option. See HUD, HOUSING IN THE SEVENTIES, supra note 30, at 4-30.


\textsuperscript{285} Approximately 40\% of year-round housing units in use in 1970 were con-
Congressional findings in the '74 Housing Act reflect the growing awareness that preservation and rehabilitation programs are essential. Thus, as earlier noted, the Act amends the national housing goal to call for:

a greater effort . . . to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance in conjunction with the provision of adequate municipal services.  

Section 104(b)(2) of the Act requires that programs to be supported by community development block grants give "maximum feasible priority to activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight." That requirement, in conjunction with the restatement of the national housing goal, should be read as a mandate to HUD to persuade cities to emphasize broadscale rehabilitation and to assist them in that process.

The housing preservation approach would require property owners to put deteriorating units into habitable condition and to sustain them in that condition by responsible maintenance and management on an ongoing basis. In older declining areas, it would require that landlords avoid or minimize rent increases. The nexus of the strategy is access to improvement financing. Failure to ensure such access to resources not only discourages voluntary rehabilitation efforts but, as experience with housing codes has demonstrated, makes enforcement of legal requirements for minimum performance standards an impossibility.

1. Section 223(f)

If liberally construed and sympathetically administered, the

287. § 104(b)(2) of the '74 Housing Act, 42 U.S.C.A. § 5304(b)(2) (Supp. 1975). For an analysis of this section, see LAW PROJECT BULL., supra note 224.
288. Id.
289. See HOUSING AND POVERTY, supra note 3, ch. 10; Stegman, supra note 38 at 93-149.
290. See note 42 and text accompanying notes 315 & 316.
291. See notes 38 & 39 supra; note 297 infra.
293. Liberal administrative interpretation and energetic implementation of the 223(f) refinancing authority was the clear intent of the proposal's sponsors, Senators Robert Taft, Jr., and Alan Cranston, Jr. See note 306 supra and accompanying text.
mortgage refinancing authority of new section 223(f)\(^2\) can provide access to funding for deferred maintenance, repairs, and moderate rehabilitation, which until now has been the missing element necessary for broadscale neighborhood preservation. It can do so without major federal subsidy and without forcing rent increases. Used in conjunction with the other programs noted below, it could underwrite coordinated neighborhood reconstruction efforts in central cities across the country.\(^2\)

Traditionally, building owners have obtained funds to repair, paint, and generally upgrade units, and to periodically recoup invested capital, by refinancing residential properties approximately every ten years.\(^2\) Financing has been provided by institutional lenders: banks,


Notwithstanding any of the provisions of this Act, the Secretary is authorized, in his discretion, to insure under any section of this title a mortgage executed in connection with the purchase or refinancing of an existing multi-family housing project. In the case of refinancing under this subsection of property located in an older, declining urban area, the Secretary shall prescribe such terms and conditions as he deems necessary to assure that—

1. the refinancing is used to lower the monthly debt service only to the extent necessary to assure the continued economic viability of the project, taking into account any rent reductions to be implemented by the mortgagor; and

2. during the mortgage term no rental increases shall be made except those which are necessary to offset actual and reasonable operating expense increases or other necessary expense increases approved by the Secretary.

This section of the '74 Act is analyzed in S. Rep. No. 693, 93d Cong., 2d Sess., 161 (1974).

\(^{295}\) As passed by the Senate, S. 3066 provided mortgage insurance programs for both homes (one to four units) and multi-family projects (five or more units). See §§ 401 and 501 of S. 3066, 93d Cong., 2d Sess. (1974). S. 3066 emerged from the Conference Committee in substantially the form of the House bill. The program consolidations were not included. The refinancing authority emerged as new subsection 223(f), addressed to multi-family housing projects and based on subsection 501(k) of S. 3066. However, the conferees had been satisfied by HUD representations that existing statutory authority was sufficient to permit implementation of the refinancing program for home mortgages. See 120 Cong. Rec. 514892 (remarks of Senator Taft).

\(^{296}\) According to Sternlieb, N.Y. Study, supra note 39:

Most of the return on residential real estate comes not from the operations of the building per se, but from the capacity of the owner to remortgage his building. He thus recaptures the amortization, which frequently has severely limited his cash flow yield over a period of years . . . it is not uncommon for mortgages to be "rolled over", i.e. refinanced at the original or even increased amounts every few years.

Id. at 581.

Owners see their buildings not as individual units having a single economic life but as a series of components which, as they deteriorate, can be repaired or replaced. For example, the lightbulb may run one year; the kitchen toaster, five; the bathroom linoleum, fifteen. Each of these components is replaced when its economic life ends. The life of the building is the life of its most fundamental and lasting component—in most cases, the foundation. Also, the profitability of the building depends to a large extent on the building's mortgageability.
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savings and loan companies, and credit unions. As a result of declining values and increased lending risks, institutional lenders no longer supply this financing in large parts of most cities. Owners find themselves unable to obtain medium term, moderate interest rate loans for repairs and improvements.

Section 223(f) can offer building owners an opportunity to obtain the funds necessary to accomplish needed repairs and, by refinancing existing indebtedness, to rationalize the financial structure of their buildings. Its authority is not limited to older declining areas or to low or moderate income residents. Its broad language permits HUD for the first time to insure mortgages on existing housing where "substantial rehabilitation" will not be undertaken. Interim regulations have been published and HUD has issued a Draft Handbook setting forth eligibility and underwriting requirements for the program. Pursuant to section 223(f) institutional lenders will be encouraged by FHA insurance to provide long term loans at FHA market interest rates. The longer terms of the new mortgages will permit inclusion of the cost of the necessary improvements, together with the amounts of prior indebtednesses relating to the building and financing charges, without increasing monthly debt service. Participating owners will be required to make repairs and improvements necessary to satisfy applicable housing codes and the objectives of HUD's Minimum Property Standards Multi-Family Housing, and to establish reserves for replacement of equipment and repairs.

297. See Sternlieb, N.Y. Study, supra note 39, at 616-20; Residential Abandonment: The Environment of Decay, supra note 51, at 43-45. The lack of institutional financing forces an owner or investor to pursue non-institutional financing, represented by the land installment contract or purchase money mortgage. Often, these instruments do not offer the buyer sufficient protection from foreclosure and they serve to aid the speculator in exploiting the low income resident. M. Stegman, Housing Investment in the Inner City 200 (1972); Residential Abandonment, supra note 51, at 238.

298. In the case of the sale and purchase of eligible properties the mortgage amount may not exceed 85% of the acquisition cost. In refinancing situations it is a function of the amount of prior indebtedness, the cost of repairs, and financing charges, all of which are includable in the new mortgage loan. In either case the mortgage amount may not exceed 80% of the appraised value of the buildings or the income limits under section 207 and is further limited by HUD's estimate of the amount that can be serviced by the property, after payment of other costs. See HUD, 223(f) Draft Handbook, infra note 300, at § 5-3.


300. Dep't of Housing and Urban Development, Mortgage Insurance for the Purchase or Refinancing of Existing Multi-Family Housing Projects, Section 223(f), Feb. 1975 (draft) [hereinafter cited as HUD, 223(f) Draft Handbook].

301. HUD, 223(f) Draft Handbook, supra note 300, ¶ 2-1. The decision to limit rehabilitation requirements to the "objectives" of the Minimum Property Standards is of critical importance for the future of the program. A major factor in limiting the outreach of programs such as the 221(d)(4) rehabilitation program (12 U.S.C. § 1715e

302.
Considerable initial interest has developed with respect to a "special eligibility" category created by the regulations and Handbook to assist buildings currently under construction in obtaining permanent financing. Buildings 3 years old or older which contain 25 or more units and which meet relatively high underwriting standards are also eligible. Use of the program in older declining areas is not expressly prohibited but is effectively precluded for the present by the underwriting requirements. The possibility of extensive use of the program in those areas is, however, presently being studied by HUD, as are questions related to administrative mechanisms appropriate for its utilization.

The legislative history of section 223(f) demonstrates unequivocally that Congress intended the refinancing authority to be used to support broadscale moderate rehabilitation in older declining urban areas where such a program is most critically needed. In these areas,

(d)(4)) (1970) has been the necessity of compliance with the detailed requirements imposed by the Minimum Property Standards, which effectively limit that program to relatively high rent property.

302. Construction must have commenced on or before June 30, 1974, and must be completed not later than Dec. 31, 1975. 40 Fed. Reg. 10175 (1975); HUD, 223(f) DRAFT HANDBOOK, supra note 300, at ¶ 1-5.

303. Two or more nearby buildings may be combined under one mortgage to satisfy the 25 units requirement. HUD, 223(f) DRAFT HANDBOOK, supra note 300, at ¶ 1-4.

304. HUD, 223(f) DRAFT HANDBOOK, supra note 300, at ¶ 4-9 (regarding "remaining economic life").

305. See notes 170 & 304 supra.

306. The section derived from the Senate Bill. See SEN. COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, S. REP. NO. 693, 93d Cong., 2d Sess. 592-93 (1974), where it is stated that

The committee believes that refinancing for the purpose of moderate-cost housing rehabilitation could be a particularly valuable tool for stabilizing deteriorating neighborhoods. All too often in these neighborhoods, homeowners have low or moderate incomes and cannot afford the additional monthly housing expense normally incurred in the process of making needed housing repairs. Landlords in these neighborhoods, squeezed by rising operating costs, property taxes and the limited rent-paying ability of their prospective tenants, are likely to try to make as much money as they can from the property while it is deteriorating rather than invest money in repairs.

Id. at 592.

The Committee is concerned that in the absence of a refinancing program for declining neighborhoods which is defined explicitly in the statute, HUD might not risk carrying out such a program. Sec. 401(h) and Sec. 501(k) should provide a clear indication that while Congress is aware of the particular problems likely to be encountered in declining neighborhoods, it believes that FHA guarantees for refinancing can play an important role in preserving them.

The conference report on what became the '74 Housing Act indicates that § 311 of the Act derived from the Senate provisions noted above:

The Senate bill contained provisions not in the House amendment . . . authorizing 100 percent insured mortgages where refinancing is involved in older, declining areas. . . . The conference report does not contain the Senate provision with respect to 100 percent refinancing in older, declining areas, although it retains existing authority with respect to such refinancing.
as noted earlier, high costs preclude broadscale new construction or substantial rehabilitation except through deep per-unit subsidies, unlikely to become available on a significant scale. Rents cannot be raised, and reductions in operating and maintenance costs or property taxes are unlikely. This leaves mortgage debt refinancing as the only possible source of money to finance renovations.

The program's potential utility for that purpose derives from the fact that, in older declining urban areas, the unavailability of loans from institutional lenders has created a pattern of short-term financing at very high interest rates and, consequently, relatively high monthly debt servicing costs. Section 223(f) was intended to take advantage of the financial leveraging power of the FHA guarantee mechanism to break this pattern. Short-term financing would be replaced by FHA insured longer term loans at unsubsidized but institutional interest rates, thus facilitating an influx of private capital to finance broadscale building repairs and improvements. For example, a typical $3,000 five year loan at 10 percent interest could support a principal of $5,230 without increasing monthly debt service payments if the debt were financed over a term of ten years at an 8-1/2 percent interest rate. The longer term period should be based on projections as to the number of years the specific property will be lived in, rent producing, and able to support a mortgage. In this example, $2,230 would be made available for repairs and improvements of the housing unit.

The additional capital of $2000 to $5000 per unit which could be made available by this technique would be sufficient to finance mod-


307. See Abandonment and Rehabilitation, supra note 51, at 8; The Tenement Landlord, supra note 13, at 103-19. Sternlieb found a predominance of private, non-institutional lenders in Newark central city areas black-listed by institutions. Borrowers had to resort to purchase money mortgages from private sources or short term, high interest rate loans from conventional lenders. The Tenement Landlord, supra note 13, at 107-20; G. Sternlieb, Residential Abandonment, supra note 51, at 237-65.

308. Where the outstanding balance of existing loans is excessive relative to the present value of the property, a "wringing out" process to establish an insurable loan to value ratio would be necessary. Where operating costs approach or exceed available rental, refinancing could work only if supported by subsidy.

309. For a full examination of the potential of refinancing as a vehicle for the support of broadscale moderate rehabilitation and technical analysis of the feasibility of the refinancing approach, see Phillips & Bryson, Refinancing: A First Step Towards a Realistic Housing Program for the Poor, 39 Geo. Wash. L. Rev. 835, 855-59 (1971) [hereinafter cited as Phillips & Bryson].

est, but critical, repairs and improvements affecting the habitability of many units potentially capable of providing good and livable housing. Thus, in a comprehensive study of the Baltimore housing market, William Grigsby concluded that 45 percent of the units needed only moderate rehabilitation; 13 percent of the units could be rehabilitated at an average cost of less than $2,000; 32 percent needed repairs averaging a little under $500 per unit; and 6 percent needed replacement, at a projected cost of $15,000 per unit.\footnote{311} A study undertaken by New York City Rand Institute in 1968-70\footnote{312} indicated that minor and moderate rehabilitation of deteriorating but not dilapidated housing in New York City would cost an average of $1,000 per unit: $500 to remove housing code violations, and an additional $500 for cosmetic improvements. Expenses for improvements to tenements covered by the city’s tax abatement program during that period averaged about $1,000 per unit.\footnote{313} While subsequent inflation has increased cost above the levels indicated by the foregoing data, the refinancing increment would provide sufficient funds to cover such basic improvements as repainting walls; replacing broken window glass; repairing wiring, heating, and plumbing systems; providing adequate interior lighting; repairing roofs, spouts, and gutters; and repainting exteriors.\footnote{314}

Given their present onerous rent burdens,\footnote{315} low and moderate income tenants would bitterly resent and would resist any housing improvement programs causing further rent increases or dislocation of present occupants unable to pay higher rents.\footnote{316} In contrast to add-on loans, even at subsidized interest rates, refinancing loans would maintain the owner’s current level of monthly debt service,\footnote{317} and thus would

\footnote{311. \textit{Housing and Poverty}, \textit{supra} note 3, at Table IX-2.}
\footnote{312. \textit{The New York City Rand Institute, 1 Rental Housing in New York City} 28 (I. Lowry ed. 1970).}
\footnote{313. \textit{Id.}}
\footnote{314. \textit{Id.}; \textit{but see} McFarland, \textit{Standards for Residential Rehabilitation}, Jan. 18, 1974, at 19 (National Technical Information Service Document PB-299 489) (whether modest rehabilitation is sufficient to preserve many existing inner city housing units).}
\footnote{315. \textit{See notes} 14, 30 \textit{supra}.}
\footnote{316. \textit{See Phillips & Bryson}, \textit{supra} note 309, at 868-69. Senator Taft has stated: In particular, the tool can be valuable in resolving tenant-landlord disputes and allowing courts to require needed housing repairs, by providing a means for the landlord to repair his property while holding down his expenses and rents. It is a unique tool in this respect. Those who write the regulations should also help by considering changes to facilitate housing preservation actions. For example, a more liberal loan-to-value ratio determining the maximum mortgage principal might be provided in cases where the property is sold from a profit-making entity to an approved tenant cooperative. Other such adjustments in the regulations may have to be made.}
\footnote{317. Refinancing might be used to reduce debt service where code standards can be met with less than full financing increments. In older declining urban areas, buildings of four or less units may not use refinancing to that end, unless HUD finds that}
not exacerbate the cash squeeze problem. The legislation prohibits rent increases as a consequence of the refinanced improvements in multi-family (5 or more units) housing in older declining urban areas and requires HUD to monitor rent levels. Outside those areas and in one to four unit structures, where the statutory limitations will not apply, the burden will be on the tenants and their organizations to limit rent increases, having in mind the absence of any debt service or other expense increase to the property owner. Effective avoidance of or limitation on rent increases will be important in securing tenant support for the program.

The refinancing approach could thus provide available funding through the institutional capital market for those property owners willing to upgrade their properties. From the landlords' viewpoint, although debt service would be payable for a longer period of time, this disadvantage would be offset by a number of positive factors. The landlord would be improving his own property, often making repairs essential for its continued rental use; tenant relations should improve as a result of the improvements; the resale value of the property should increase; future maintenance costs would be reduced; occupancy rates might be expected to improve; and special income tax deductions, offsetting the outlays involved, would be available.

As to building owners not willing to upgrade their properties on a voluntary basis, the availability of refinancing could greatly increase the effectiveness of housing code enforcement agencies, tenant organizations, and lawyers representing tenants in seeking to compel landlord compliance with basic housing, health, and safety code requirements. The unavailability of improvement financing now drastically undercuts this process. In New York City, during 1968, the average fine per proven current cash flows are not sufficient "to assure the economic vitality of that housing." Section 223(f) sets this standard for multi-family (5 or more units) housing in older declining urban areas. 12 U.S.C.A. § 1715 N(f) (Supp. 1975), amending 42 U.S.C. § 1715N (1970) (corresponds to § 223 of the Nat'l Housing Act). The standard could be administratively imposed elsewhere. See text accompanying note 295 supra.


A literal reading of section 223(f) would suggest that the rent increase prohibition applies, even in older, declining areas, only to mortgages used to refinance prior indebtedness and not to mortgages obtained in connection with the purchase of the underlying property. The legislative history suggests no intention to make such a distinction, nor is any policy basis to do so apparent.

319. See text accompanying notes 321-22 infra and supra note 316.

code violation, in those relatively few cases which reached the courts, was $11.47.\textsuperscript{321} The landlord's defense has been: "Judge, I don't have the money to fix this place up; I can't get the money because lenders aren't making loans in my area; even if I could get the money, I'd have to raise the rents to cover my increased payments and my tenants would have to move."\textsuperscript{322} Given sympathetic administration by HUD, the refinancing authority could enable code enforcement agencies and judges to advise landlords where to obtain the money and to insist on code compliance.

Refinancing would also eliminate the dilemma of "improvement equals rent increases" which has undercut efforts to enforce housing codes on behalf of low income tenants. Absent refinancing, improvements have resulted in rent increases of $5 to $10 a month per $1,000 of repairs,\textsuperscript{323} requiring remaining tenants to face even more onerous rent burdens and displacing those unable or unwilling to pay higher rents. To the extent refinancing proves able to provide improvement funds without forcing rent increases, this fundamental ambiguity of purpose that has plagued code enforcement agencies and the courts will be resolved.\textsuperscript{324} Hopefully, greatly expanded official enforcement efforts will result.

A second major impetus for broadscale code enforcement should come from legal services attorneys\textsuperscript{325} and other lawyers representing low income tenants. In 19 states and the District of Columbia, courts have held that every residential tenancy includes a non-waivable landlord warranty that the unit will be maintained in not less than minimum habitable conditions.\textsuperscript{326} Two state legislatures have so provided by statute.\textsuperscript{327} The warranty of habitability rule has been adopted by the Commissioners on Uniform State Laws in the Uniform Residential Landlord Tenant Act,\textsuperscript{328} adaptations of which have been enacted in Oregon, Ari-

\begin{itemize}
\item \textsuperscript{321} N.Y. Times, April 12, 1970 at 29, col. 1. Also, more than 18 months elapsed between placement of most violations and their first court appearances. Teitz & Rosenthal, Housing Code Enforcement in New York City, May 1971, at 42 (New York City Rand Institute). \textit{See also} \textit{Housing and Social Policy}, \textit{supra} note 238, at 66.
\item \textsuperscript{322} \textit{See Municipal Housing Code Enforcement, supra note 292.}
\item \textsuperscript{323} \textit{Economics of Residential Rehabilitation supra note 170, at 132, noting that in New York City, tenants have experienced 10-60\% increases in rental payments.}
\item \textsuperscript{324} \textit{See note 316 supra.}
\item \textsuperscript{325} \textit{Clearinghouse Review} is published by the Nat'l Clearinghouse for Legal Services to inform legal aid attorneys of developments relating to housing law.
\item \textsuperscript{326} \textit{See the Law Project Bull., supra note 224, for a compilation of states where the warranty of habitability has been judicially recognized. Id. at 14, n.45.}
\item \textsuperscript{327} Massachusetts—\textit{Mass. Gen. Laws}, Ch. 239, § 8A. Michigan—\textit{Mich. Comp. Laws Ann.}, §§ 554.139 et seq.
\item \textsuperscript{328} \textit{National Conference of Commissioners on Uniform State Laws, Uniform Residential Landlord and Tenant Act} (Aug. 10, 1972). \textit{See Moskowitz, The
Provision for improvement funds through the refinancing legislation can prevent dilution of the emerging warranty of habitability doctrine by apologias similar to those used by landlords in code violation prosecutions.

Finally, pressures for code enforcement and rehabilitation can be expected to come from tenants and tenant organizations. Landlords eligible for refinancing would find it difficult to resist organized tenant pressure for needed repairs and improvement if financing were readily available. Those unwilling to make needed improvements, notwithstanding the availability of financing, might choose to sell their building to tenants or to a non-profit housing development corporation, either of which may be eligible for purchase and rehabilitation financing under the program.

Whether vigorous code enforcement, backed by periodic refinancing, could achieve and maintain satisfactory conditions without a supporting subsidy system remains to be seen. If code enforcement supported by periodic refinancing can maintain satisfactory conditions, housing allowances or other income maintenance payments could be designed to reduce rent burdens or to provide incentives to encourage improved building maintenance.
C. Implementing Neighborhood Conservation

Broadscale moderate and substantial housing rehabilitation programs could become the core element of a systems approach to neighborhood conservation. Section 223(f) could provide an unsubsidized underpinning program base for local conservation efforts designed to make coordinated use of all available supports and programs.\textsuperscript{835} It is not limited by statutory area and program restrictions and, in contrast to the below market interest rate programs,\textsuperscript{836} is not dependent upon appropriations, the insufficiency of which has limited the scope and effectiveness of other rehabilitation programs. Like the FHA and VA market interest rate programs\textsuperscript{837,838} that financed the development of the suburbs, it has thus a potential for great outreach and program effect.

That outreach must, however, be achieved; it cannot be assumed. The legislation itself offers only a source of funds for voluntary action, a necessary but not sufficient first step toward broadscale rehabilitation. Deficiencies in state and local housing codes; the present debility, let alone corruption, of many code enforcement agencies; the ineffectiveness of most tenant organizations; probable landlord resistance; possible union obstructionism with regard to a community employment emphasis; and the absence of workable tenant remedies in many jurisdictions will initially inhibit broad utilization of the program.

\textsuperscript{835} See note 87 supra.
I. Local Governments and Local Housing Authorities

City governments adopting a neighborhood reconstruction approach will find it necessary to fix implementation responsibility in designated special agencies or departments, to coordinate utilization of all available federal, state, and local housing and community development programs, and to reevaluate past planning decisions and departmental programs in order to provide increased levels of public services to conservation areas. The sufficiency of all essential services is necessarily involved. These include not only services directly related to physical improvement efforts, such as code enforcement, street repair, sewers, lighting, and tree planting, but also public transportation, police and fire protection, sanitation, child care facilities, hospitals, drug rehabilitation centers, schools, libraries, and parks. Community development block grant funds may be used to cover the cost of service improvement, thereby redirecting resources which in the past have been diverted to expensive downtown renewal projects.

Cities will need to reexamine their housing codes and their administrative and judicial code enforcement mechanisms. Code provisions may be unduly restrictive, given the need for broadscale moderate rehabilitation. Enforcement of unnecessarily rigorous and sometimes arbitrary housing, health, and safety codes has in the past forced demolition of reclaimable and needed housing units. Variable code standards could be established to provide for stricter levels of maintenance and repair in higher-income areas. Code enforcement agencies may need upgrading in manpower, technical skills, and general capability. Consideration should be given to the establishment of special housing courts to deal with code violations and housing issues. Zoning laws should be reviewed to eliminate possible impediments to the neighborhood conservation-rebuilding strategy. The impact of the property tax as a potential disincentive to rehabilitation should be studied and remedial ac-

336. The effects of code enforcement must be examined carefully on an individual basis:

Code enforcement can push a monopolistic supplier of housing to a competitive position and in so doing reduce rent per quality and raise the level of quality. Through the interaction of external effects on consumers of housing and consequently on suppliers, higher code levels may increase the quality and rent levels in a competitive market. In both competitive and monopolistic markets, code levels above the competitive equilibrium level can force losses on landlords. Sufficiently high levels can force abandonment. Very low levels of code enforcement, of course, have no effect.


tion taken.\textsuperscript{339} City-established hardship loan programs, perhaps requiring only interest payments until the sale of the property or the demise of the present owner, may be needed to supplement federal and local aids.

Many buildings in central city neighborhoods have been degraded by sustained undermaintenance to a point where rehabilitation would require heavier investment than the refinancing mechanism could provide.\textsuperscript{340} These buildings have been proven presumptively incapable of providing a socially acceptable level of housing condition and services, within the economic constraints of the private market. While some have so far deteriorated that they are no longer reclaimable through any reasonable expenditure and should be demolished, many others could be rehabilitated to provide good housing for many years.\textsuperscript{341} To the extent these buildings are reclaimable and worth rehabilitating they represent an important housing resource. When allowed to deteriorate to the point of abandonment, they become a liability, imposing on the surrounding neighborhood the social costs described earlier in this Article.\textsuperscript{342} The cost of reclaiming these buildings would be a small fraction of the cost of demolition and new construction.\textsuperscript{343}

An effective strategy will require coordinated utilization of all

\begin{itemize}
  \item \textsuperscript{339} See notes 40, 41 supra, 412 infra.
  \item \textsuperscript{340} Even in hard-core poverty areas, however, many buildings will be found where refinancing funds will be adequate to achieve code levels. \textit{See, e.g.}, \textit{Housing and Poverty}, supra note 3.
  \item \textsuperscript{341} \textit{See Housing and Poverty}, supra note 3; \textit{Abandonment and Rehabilitation: What Is To Be Done?}, supra note 51. In discussing rehabilitation, one study points out:

  When the term "rehab" is used, one at least knows that it refers to the repair of a housing unit, even though the extent of repair and other factors are not known. The term "rehab program," however, is even less clear. The term generally takes its meaning from the federal programs classified as rehab programs. Accordingly, the term is used to describe efforts ranging from (1) owner-initiated, light rehab efforts which are not part of any coordinated plan and carry no subsidy and no program of other neighborhood improvements, to (2) gut rehab programs which require the entity performing the rehab to acquire the property, which carry relatively heavy subsidies and which do not include provisions for other neighborhood improvements, to (3) the concentrated code enforcement approach to rehab which offers limited grants and subsidized loans for light building treatment and does include provisions for making some neighborhood improvements.
  \textit{J. Mitchell, note 283 supra, at 3. See text accompanying note 311 supra.}
  \item \textsuperscript{342} Economists use the terms "externalities" or "neighborhood effects" to describe the fact that an action by an individual property owner often poses costs or benefits to those external to him. The abandonment of one unit may thus create a snowballing effect. A discussion of externalities appears in \textit{W. Smith, Housing} 21-23 (1970). See text accompanying notes 46-52 supra.
  \item \textsuperscript{343} Custodial services are required prior to the demolition of abandoned buildings. These outlays, while substantial, must be measured against the costs of inaction and should be discounted to take effect of the benefits to result from providing labor intensive employment.
\end{itemize}
available housing and rehabilitation program aids, particularly refinancing under section 223(f)\textsuperscript{344} and leased housing under section 8,\textsuperscript{346} in conjunction with other federal, state, and local government agencies' activities as well as private sector programs.\textsuperscript{346} The Section 8 program,\textsuperscript{347} because of its deep subsidy character, is well suited to support renovation of older buildings requiring substantial rehabilitation. Up to 100 percent of the dwelling units in any building may be supported by Section 8 assistance payments.\textsuperscript{348}

Situations will arise where owners are unwilling to participate in the leased housing program or where the buildings involved are inappropriate for leased housing.\textsuperscript{349} Where this occurs, it is imperative that appropriate agencies be charged with the responsibility and provided with the necessary legal authority and resources to intercept the deterioration process by acquiring the buildings involved. Expedited application of code enforcement procedures could provide a legal basis for condemnation where landlords are unable or unwilling to bring properties up to code requirements. A second legal basis for taking may be found in the property tax area, as many of these buildings are in tax default.\textsuperscript{350}


345. See § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437f (Supp. 1975) (corresponds to § 8 of the Housing Act of 1937).

346. This approach would not usually be adequate or effective, however, in inner city areas where deterioration is very far advanced and substantial population decrease is occurring. Here clearance type renewal, although it presents the problems discussed above, may be the only remaining alternative. See text accompany notes 146-53 supra. In such cases redevelopment, rather than substantial rehabilitation, is the preferred option.

Specifically redevelopment has the largest cost advantage when compared to an extensive level of rehabilitation ("gut" rehab) effected in blighted neighborhoods. Redevelopment's cost advantage declines when compared to moderate rehabilitation effected in transition neighborhoods. Redevelopment has the least cost advantage when compared to light rehabilitation effected in stable neighborhoods.


347. § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437f (Supp. 1975) (corresponds to § 8 of the Housing Act of 1937).

348. § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437f(c)(5) (Supp. 1975).

349. Reluctant landlords, uninterested in maintaining their properties but unable to dispose of them, are a major cause of housing deterioration. Replacement of these landlords with "new stable middle class owners," tenant cooperatives, or local housing development corporations, would be an important benefit. RESIDENTIAL ABANDONMENT, supra note 51, at 297. See also HOUSING AND POVERTY, supra note 3, Ch. VIII.

350. RESIDENTIAL ABANDONMENT, supra note 51, at 181-233. This fact is illustrated for St. Louis in K. Langsdorf, Urban Decay, Property Tax Delinquency: A Solution in St. Louis, 5 URBAN LAW. 729 (1973) [hereinafter cited as Langsdorf]. For a general description of tax foreclosure procedures, see Note, Revenue and Taxation—Collection of Delinquent Real Estate Taxes—Legislating Protection of the Delinquent Property Owner in an Era of Super Marketable Tax Titles, 19 DEPAUL L.
Special "emergency" legislation, at the state or local levels, may be necessary. Reclaimable buildings so acquired could then be rehabilitated and managed. Those not reclaimable could, at a minimum, be boarded up and secured against fire danger, garbage dumping, and intrusion by trespassers, pending their demolition in accordance with neighborhood planning decisions.

Local public housing authorities (LHA's) may be the optimum agencies to perform this intervention function and to assume rehabilitation and managerial or custodial responsibilities. The LHA's already exist, and many have had experience with rehabilitation programs. They have or could be provided access to rehabilitation funding. They have extensive experience with low income housing management and, as earlier noted, have made much progress in reducing the paternalism and oppressiveness that has traditionally characterized public housing. Under the public housing "Turnkey II" variant the LHA's can contract in appropriate cases for outside management, which can be provided by private firms or local housing development corporations and which can include substantial tenant participation. The LHA's are agencies of state or local governments, although federally financed, and are thus legally accountable to the local government and citizenry.

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353. The construction or substantial rehabilitation of dwelling units supported by section 8 funds is eligible for mortgage financing insurance. § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437f(e)(3) (Supp. 1975).
355. See text accompanying note 213 supra.
357. § 201(a) of the '74 Housing Act, 42 U.S.C.A. § 1437f(e)(8) (Supp. 1975).
358. Compare Hartman's position: "All basic decisions about public housing—whether to have any units at all, how many to have, where they should be located, what type to have—are placed in the hands of an appointive local body that historically has tended to represent those elements in the community—businessmen, lawyers, and realtors—that were opposed to or ambivalent about extensive government subsidies for housing the poor. The men and women appointed to these authorities by and large represent the more conservative values of the community's middle class. There have rarely been low-income persons, nonwhites, or residents of public housing on these boards (although a few communities are now beginning to appoint public housing residents). Generally, housing authorities have not acted as aggressive advocates of bigger and better public
The production of new low-income housing units, whether by means of traditional public housing construction programs or the leased housing approach, will also be needed. Housing shortages in the literal sense of insufficient habitable units relative to demand, particularly units large enough to accommodate families with three or more children, continue to be a severe problem in many central city neighborhoods.\footnote{Vacant sites exist throughout many of these areas, where buildings have been demolished as a result of abandonment, code enforcement, fires, and other causes. Neighborhood revitalization will require reuse of these sites in accordance with neighborhood plans. While some of the sites should be reserved for non-housing uses, housing construction will be the best use of many others. If the housing so produced is to be available to low income community residents, deep per-unit subsidies such as the public housing programs provide will be necessary.}

It may be objected that court decisions concerned with racial impaction, such as \textit{Gautreaux}\footnote{See \textit{Douglas Report}, supra note 1, at 80.} and \textit{Shannon},\footnote{360. \textit{Gautreaux} v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill. 1969), aff'd 436 F.2d 306 (7th Cir. 1971).} and the HUD site selection guidelines derived from those cases\footnote{361. \textit{Shannon} v. U.S. Dept of Housing and Urban Development, 436 F.2d 809 (3d Cir. 1970).} preclude substantial public housing construction in low income urban areas.\footnote{Those cases impose no such flat inhibition, nor is there any proven causal relationship between the improvement of housing conditions in admittedly impacted central city areas and increased racial concentration in those areas.} In a more long-range perspective the best hope for desegregation lies in the revitalization of central city neighborhoods and the general improvement of city living conditions as a means of stimulating voluntary population movements between city and suburbs.

The public housing program, as earlier noted, looks toward an uncertain future.\footnote{362. See \textit{Urban Economic Development}, supra note 19, at 63-79.} Its problems include disenchantment with the Pruitt-Igoe highrise approach, the escalating costs of new construction, the financial insolvency of many LHA's, and stiffened suburban resistance to new public housing.\footnote{363. See text accompanying notes 168-209 supra.} These rehabilitation, manage-
ment, and new construction functions, through leased housing or other-
wise, could provide the new mandate which the public housing
program badly needs. The proposed reorientations would make the pro-
gram more responsive to present day supply-demand realities and would
utilize its potential as a deep subsidy, highly flexible mechanism. They
could thus permit LHA’s to bring to bear the managerial capabilities
and financial resources required to serve now neglected housing needs.

2. The Federal Government

Only the federal government can provide the leadership and sus-
tained financial support necessary for a commitment to central city
neighborhood reconstruction and preservation. Sympathetic imple-
mentation of the refinancing legislation in the inner city, including old-
er, declining urban areas, and strong administration support for re-
orienting subsidized housing programs toward central city realities will
be essential to ensure the availability of the required financial inputs.
Expedited procedures for FHA review and monitoring will be imperative
if the refinancing program is to achieve broad outreach. Access
through FNMA and GNMA to secondary market financing

However, the Ford Administration has stated this commitment is not necessary.
23, 1975, at 1, col. 1. But see Kneeland, Mayors Step Up Appeals for Federal Aid
to Cities, N.Y. Times, Mar. 24, 1975, at 24, col. 3.

368. The need for effective monitoring is indicated in Hearings on Unfair Practices
in the Home Improvement Industry and Amendments to the FTC Act Before the Senate
Committee on Commerce, 90th Cong., 2d Sess., at 1 (1968). See Phillips & Bryson,
supra note 309, at 863-65.
370. Id.

GNMA employs the Federal National Mortgage Association (Fannie
Mae) to act as its agent in the purchase and sale of mortgages. In fact,
GNMA was a spin-off from FNMA when the later agency was privatized in
1968. GNMA was created as an agency of the U.S. Government within the
Department of Housing and Urban Development to perform the special-
assistance functions that had formerly been assigned to FNMA. GNMA has
two primary functions:
The purchase and sale of authorized mortgages pursuant to various Tan-
dem Plan programs for the support of the housing market; and
The guarantee of mortgage-backed securities issued against pools of mort-
gages.

Thus, the agency is a major tool for implementation of federal housing policy
and, through the timing of its purchase and sale of mortgages under the Tan-
dem Plans, can affect the federal budget deficit by as much as several billion
dollars a year.

D. Ganis, All About the GNMA Mortgage-Backed Securities Market, REAL ESTATE
REV., Summer 1974, at 56. See also Ginnie Mae, New Girl of Mortgage Financing,
HUD CHALLENGE, Mar.-Apr. 1970, at 24, 26-27; B. Dillon, Moving into the Second
Mortgage Market, BANKERS MAGAZINE, Winter 1974, at 94; R. Clifton, New FNMA Pro-
gram Hopeful Source of Mortgage Credit, MORTGAGE BANKER, Apr. 1974, at 66.

371. Refinancing borrowings will be in competition with other investment opportu-
nities for institutional loans and may be dependent, accordingly, on secondary mortgage
market mechanisms, through the FNMA and GNMA system, particularly during pe-
will be necessary. Federal regulatory initiatives to ensure full participation by private lending institutions may also be needed. During the pendency of the present tight mortgage money market, interest rate subsidies could be instituted to encourage participation in the program.\textsuperscript{372} Funding should be provided to support experimentation with innovative methods to encourage improved maintenance.

Federal community development program guidelines should ensure local and neighborhood planning, coordinated utilization of housing assistance and other subsidy programs, and supportive allocation of community development block grant money. The '74 Housing Act provides or continues an array of program authorities in addition to sections 8 and 223(f), which, if implemented on a coordinated basis, could produce extensive housing rehabilitation and neighborhood improvements.\textsuperscript{373} The Section 312 Rehabilitation Loan Program\textsuperscript{374} is expanded to include rehabilitation incident to urban homesteads in addition to previously authorized urban renewal and concentrated code enforcement.\textsuperscript{375} At least 10 percent of the total amount of section 236 contracts\textsuperscript{376} must be used for rehabilitation.\textsuperscript{377} HUD is authorized to transfer to state and local agencies department-owned one to four unit housing suitable for rehabilitation and "urban homesteading."\textsuperscript{378} The

\textsuperscript{372} See \textit{Phillips & Bryson, supra} note 309, at 854-55.

\textsuperscript{373} While the effectiveness of the refinancing mechanism in permitting loan balance increases without raising monthly debt service is more a function of longer term periods than interest rate, present high mortgage interest rates will discourage program utilization, particularly by owners holding lower interest rate mortgages unless government subsidies are introduced to absorb or minimize the interest rate differential. See \textit{Phillips & Bryson, supra} note 309, at 838.


\textsuperscript{376} See note 162 supra.

\textsuperscript{377} \textsection{116(e) of the '74 Housing Act, 42 U.S.C.A. \textsection{1452b(e)} (Supp. 1975), amending 42 U.S.C.A. \textsection{1452b(e)} (1970).

\textsuperscript{378} Section 810 of the 1974 Act authorizes the Secretary of HUD to transfer federally owned homestead properties to a local government or a public agency. The homes
loan limits of the Title I Property Improvement Mortgage Insurance Program are raised to $10,000 for single family and $5,000 for multifamily units, to a maximum of $25,000. The allowable term is extended to 12 years and 32 days, thereby reducing debt service increases. The three year development plan required by Title I of the '74 Housing Act may be an appropriate vehicle for planning such coordination at both city-wide and subordinate levels.

The jobs and training opportunities created by the rebuilding program will be as important as or more important than the resulting physical improvements to community residents. While job preferences for low income residents of the inner city will increase both improvement costs and the difficulties of ensuring satisfactory work standards, the maintenance and repair skills the workers will achieve would be conveyed at a nominal cost to individuals and families willing to make improvements on them, with a view toward obtaining title. § 810 of the '74 Housing Act, 12 U.S.C.A. § 1706(e) (Supp. 1975). Several cities—notably Wilmington, Delaware, Baltimore, St. Louis, Newark, and Philadelphia—have instituted comparable programs for homesteading city-owned properties.

Urban homesteading will not adequately provide housing for low income families nor will it serve as a primary mechanism for revitalizing disaster areas. Most low income families have neither the initial capital nor mortgage creditability needed to obtain the housing unit. Yet a homesteading program could help prevent transitional neighborhoods from becoming disaster areas. Middle income families could be enticed back to urban gray areas to rehabilitate their own homes. To maximize the impact of the program, cities could supplement units obtained from the federal government with abandoned and tax deeded properties acquired through tax foreclosures.

HUD initially viewed the program as a panacea and promised more units than it had in its inventory. The Department is currently re-evaluating the goals and the scope of its homestead program. Regulations prepared in Nov. 1974 have not been issued as yet. See generally CAL. SEN. COMM. ON GOVERNMENTAL ORGANIZATION, URBAN HOMESTEADING: SWEAT EQUITY AT WORK HELPING TO SOLVE THE HOUSING PROBLEM, (1974); Note, Homesteading 1974: Reclaiming Abandoned Houses on the Urban Frontier, 10 COLUM. J. OF L. & SOCIAL PROBLEMS 416 (1974); M. Akre. Urban Homesteading: Once More Down the Yellow Brick Road, 3 ENVIRONMENTAL AFFAIRS 563-94 (1974); D. Robinson. Jr. & J. Weinstein. Urban Homesteading: Hope . . . or Hoax?, J. OF HOUSING, Aug. 1973, at 395-96.

Title I loans would be particularly useful in financing minor improvements and could provide a convenient alternative to refinancing if made more readily available in the central cities. From 1934 through 1971, the Title I program insured over 39 million property improvement loans, totalling $21 billion. The average insured loan in 1971 was $2,124. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, 1971 STATISTICAL YEARBOOK, Table 172, at 170 (1972). In contrast, the § 312 rehabilitation loan program, 42 U.S.C. § 1452b (1970), approved only 25,414 loans for a total of $168 million. Id. at 46. The Title I improvement loans have historically been unavailable in the inner city. See DOUGLAS REPORT, supra note 1, at 100.

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them continuing employment opportunities in work useful to their communities. Contract preference, affirmative action, and manpower training programs must parallel housing finance initiatives. Present statutory provisions for training and hiring preferences for low income community residents should be amended to establish their applicability to inner city FHA-guaranteed housing rehabilitation programs. Federal subsidy supports could be provided contractors to offset the incremental costs of employing relatively unskilled labor. While reasonable wages should be ensured, the Davis Bacon prevailing wage level rule would be excessive and might escalate rehabilitation costs.

383. The refinancing legislation can be used in conjunction with two Acts passed during 1974 by the 93d Congress. The Emergency Jobs and Unemployment Assistance Act of 1974 authorizes a $2.5 billion public service employment program for fiscal year 1975. Eligible applicants may use the funds for Neighborhood Youth Corps, Mainstream, New Careers, and special services to older workers unemployed due to plant closings. Pub. L. 93-567, 88 Stat. 1847, 29 U.S.C.A. §§ 961 et seq. (Supp. 1975). Title III of the Act authorizes $500 million for fiscal year 1975 to finance programs or projects that will generate jobs for the unemployed in areas of high unemployment. Pub. L. 93-567, 88 Stat. 1853, 42 U.S.C.A. 3246f (Supp. 1975). These activities must contribute significantly to the reduction of unemployment in the area, must be initiated promptly and substantially completed within 12 months, and must be labor intensive. Id.


In the administration by the Secretary of Housing and Urban Development of programs providing direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, the Secretary shall—

(1) require, in consultation with the Secretary of Labor, that to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing in the area of such project; and

(2) require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the area of such project.

HUD regulations pursuant to this provision exclude projects where HUD's financial assistance is solely in the form of insurance or guaranty, as well as Public Housing and section 235, 236 projects which do not exceed $500,000 in estimated cost. 24 C.F.R. § 135.5(m).

385. See, e.g., the Harlem experiment described in note 332 supra.

386. The Davis Bacon Act (40 U.S.C. §§ 276a et seq. (1970)) is applicable to rehabilitation of residential property “only if such property is designed for residential use
beyond the available refinancing funds. The individual contract opportunities created, because relatively small and not requiring sophisticated building equipment or techniques, will be well suited to the capabilities of local minority contractors. Bonding problems, accordingly, will be minimized. Present law preferences for local contractors should be amended to establish their applicability to inner city FHA-guaranteed housing programs.

Increased funding and technical support for non-profit housing development corporations (HDC’s) and Community Development Corporations (CDC’s) to permit these organizations substantial participation in the rebuilding of their communities would be particularly valuable. Funding for the CDC’s has come from the OEO and Model Cities programs and foundation grants. Their involvement will build local support for the program, ensure maximum employment of low income residents, and provide important vehicles for community

for eight or more families.” § 110 of the ’74 Housing Act, 42 U.S.C.A. § 5310 (Supp. 1975).

387. The General Counsel of the U.S. Dep’t of HUD recently has ruled that the section 223(f) program is not a substantial rehabilitation program and is, therefore, not subject to the Davis Bacon Act requirements. U.S. Dep’t of Housing and Urban Development, General Counsel Memorandum, Mar. 19, 1975. See note 159 supra.

388. See note 384 supra.

389. Because of the housing moratorium of Jan. 1973, the activity of nonprofit housing corporations has been greatly curtailed. By 1970, 1300 nonprofit organizations had sponsored the construction of 135,474 housing units—41.9 percent of the total at a cost of $1.9 billion. The Nonprofit Housing Center, An Analysis of the Effectiveness of Nonprofit Corporations as Housing Sponsorship Vehicles, (unpublished monograph, Nov. 1970). The Nonprofit Housing Center and its parent organization, the National Urban Coalition, are now defunct.


394. Approximately 64 CDCs existed in 1973. Eight were supported by the Ford Foundation, 41 by the Special Impact Program of OEO, and 22 by the Model Cities Program, seven of which were supported by either of the two other agencies. FORD FOUNDATION COMMUNITY DEVELOPMENT CORPORATIONS, A STRATEGY FOR DEPRESSED URBAN AND RURAL AREAS 7 (1973). In 1974 the Ford Foundation announced its intention to provide $34 million in financial support to CDC’s for fiscal years 1974 and 1975. FORD FOUNDATION, CURRENT INTERESTS OF THE FORD FOUNDATION 9 (1974).
input into planning decisions. These organizations, where they have the capability, should be encouraged and assisted in undertaking moderate rehabilitation under the refinancing, direct loan, or other mortgage insurance programs. Similarly, in the field of housing management, where improved performance is critically needed, CDC's and HDC's, because of their roots in the community, can make a valuable contribution. Necessary training and technical assistance could be provided by the National Center for Housing Management, which could also serve as an information clearing house in the management area.

Other federal actions supportive of the neighborhood preservation-rebuilding approach would include: continued and increased funding for inner city housing construction and rehabilitation programs; the establishment and enforcement of guidelines for neighborhood planning, relocation, and community participation, and further implementation of the Urban Property Protection and Reinsurance Act of 1968 to guarantee the availability of adequate property insurance, a pre-requisite for institutional financing. The National Institute of Housing and Central Cities.

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397. The '74 Housing Act and HUD regulations issued pursuant thereto require citizen participation in community development planning but do not call for citizen participation in program execution. § 104(a)(6) of the '74 Housing Act, 42 U.S.C.A. § 5304(a)(6) (Supp. 1975).

Localities applying for block grant funding must certify that:

(2) Prior to submission of its application, the applicant has:

(i) Provided citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(ii) Held at least two public hearings to obtain the views of citizens on community development and housing needs; and

(iii) Provided citizens an adequate opportunity to participate in the development of the application and in the development of any revisions, changes, or amendments.

Community Development Block Grants, 39 Fed. Reg. 40144 (1974). See LAW PROJECT BULL., supra note 224, at 70-73. This process differs from that of the former categorical programs which required community participation review bodies and participation during the project execution phase. For example, in Neighborhood Development Programs, “there was [to be] effective widespread participation of a representative spectrum of NDP area residents in the development of project objectives and there is evidence of current support for the execution of the project.” 24 C.F.R. § 511.18(b) (1974).


Building Sciences⁴⁰⁰ should give high priority to testing and certifying optimum materials and techniques for housing preservation and rehabilitation, and should serve as a training center and clearing house for housing rehabilitation information. HUD should insist upon revisions of antiquated codes in its review of community development grant applications⁴⁰¹ to ensure that localities provide resources for the purposes outlined below,⁴⁰² and should continuously and systematically monitor these program efforts.⁴⁰³

The cost of rehabilitation programs to the federal government is small relative to the benefits to be derived or compared with the cost of

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⁴⁰² The following questions, based on these legislative objectives, serve as a central core of evaluation issues for determining whether localities are meeting legislative intent in implementing Title I:
1. Are low and moderate income groups the principal beneficiaries?
2. Which types of programs are given priority by Congress but are left unfunded through block grants? Could these needs be addressed by categorical programs?
3. Do block grants reduce “red tape,” the use of outside consultants, and the number of unnecessary special purpose bureaucracies?
4. Are there adequate mechanisms for the poor to participate in the planning and implementation of programs?
5. Are block grants merely substituted for local monies that would have been spent for community development in the absence of block grants?
⁴⁰³ The Senate version of S. 3066, which became the '74 Housing Act, included proposed new section 832, also derived from the Taft-Cranston bill, S. 971, section 101, which called upon HUD to develop and maintain various statistical data thought to be necessary for the ongoing evaluation and periodic adjustment of administrative requirements for the refinancing program. Section 101 of S. 971 would have amended Title II of the National Housing Act by adding new section 244, which provided in part:
(h) The Secretary shall develop and maintain full information and statistics regarding the utilization of and experiences incurred under this program, which shall include information and statistics concerning—
1. financial market conditions, including the interest rates, payback periods, and other terms and conditions affecting housing eligible to be refinanced hereunder;
2. the character, extent, and actual costs of repairs, renovations, and moderate housing rehabilitation undertaken hereunder;
3. factors affecting and statistics showing the extent of actual and potential utilization of this program;
4. factors affecting the processing time of applications submitted hereunder and statistics showing processing times actually experienced;
5. mortgage arrearages, defaults, and foreclosures on mortgage loans insured hereunder and expenses incurred as a result of such arrearages, defaults, and foreclosures;
6. abuses of the program, actual or potential, and remedial and punitive actions taken in connection therewith; and
7. the costs of administering the mortgage insurance program provided by this section,
and shall submit to the Congress not later than February 15 of each year an annual report summarizing such information, together with an analysis of the effectiveness and scope of the program and recommendations for its improvement and future utilization.
such other federal housing efforts as urban renewal, public housing, FHA below-market-interest-rate housing, the new Section 8 program, or the proposed housing allowance system. Under the refinancing approach, a subsidy would normally not be involved and administration costs, which could be covered by processing fees, would be small. The government's principal inputs would be FHA mortgage insurance, possible secondary mortgage market assistance, and manpower training assistance to permit the greatest possible exploitation of the job opportunities which rehabilitation would offer. Bad lending experience, such as has occurred in the FHA's used housing guaranty programs, can be avoided or minimized by careful administration ensuring accurate appraisals and setting realistic amortization periods for the new loans.

3. State Governments

State actions or inactions, particularly in those areas where states exercise exclusive jurisdiction, will also importantly affect the prospects for the success of the proposed approach. Tenants, tenant organizations, and their lawyers must provide a major impetus for a broadscale code enforcement rehabilitation program. Legal provisions for rent withholding, repair and deduct, rent abatement, and receiverships are essential to compel landlord compliance with housing, health, and safety

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405. See note 383 supra.

406. Much of HUD's bad experience with inner city rehabilitation has resulted from its bad program administration rather than from its function in assuming risks in high risk areas which lenders cannot underwrite. Boyer, supra note 157, at 141-62. The absence of effective safeguards in existing mortgage insurance programs has encouraged speculation for quick profits which has resulted in shoddy workmanship and other abuses. The short-term speculator has been the primary cause of program abuse. He buys up deteriorated properties, superficially rehabilitates them for maximum resale advantage, and then sells them to unsophisticated buyers at high price increases. Unlike the long-term owner, he will emphasize "cosmetic fix-up" rather than sound improvements. His mark-up, often very high, will impose on the ultimate owner a mortgage which may exceed the real value of the property and may result in unduly onerous monthly payments. See Sternlieb, Residential Abandonment: The Environment of Decay, supra note 51, at 48.

The Senate's initial version of the '74 Housing Act attempted to meet this problem head on by eliminating the speculator. It limited eligibility to mortgagors who had owned the property for at least 3 years, or whose families had owned the property for that period, except in the case of cooperative or non-profit mortgagors approved by HUD. S. 971, 93d Cong., 1st Sess. (1973). Section 223(f) leaves this problem to be dealt with by HUD regulations. § 331 of the '74 Housing Act, 12 U.S.C.A. § 1715 N(f) (Supp. 1975), amending 42 U.S.C. § 1715 N (1970).

407. See note 325 supra.
standard codes.408 The strengthening of tenants' rights,409 including adoption of the warranty of habitability doctrine and effective remedies against retaliatory eviction as provided by the Uniform Residential Landlord Tenant Act (URLTA),410 will be important. Where state law or administrative regulations impose code requirements, they should be reconsidered to eliminate restrictive provisions that could impose undue costs inconsistent with conservation objectives. Statewide or local option rent control legislation, limiting rent increases to tax and operating expense pass throughs, may be necessary in communities with low vacancy rates.411


410. See notes 325-29 and accompanying text supra.

411. Within the past few years numerous Northeastern cities, including sixty in New Jersey, have adopted rent regulation. Six cities in Connecticut have set up "fair rent commissions" with some power to regulate rents. Boston, Somerville, Cambridge, Brookline, and Lynn have each adopted ordinances under the State of Massachusetts enabling legislation. G. Sternlieb & E. Brody, The Pitfalls in Rent Control, Real Estate Rev., Summer 1974, at 120. See A. Brownfeld, How Rent Controls Hurt the Poor, Human Events, Nov. 9, 1974, at 19. In the United States, controls have generally been viewed as a short run response to problems brought about by housing shortages. In this context, it has been all but a disaster according to many economists who have written on the subject. Rent ceilings cause "haphazard and arbitrary allocation of space, inefficient use of space, retardation of new construction and indefinite continu-
States should also examine the impact of their tax laws, particularly in the property tax area, on rehabilitation efforts and on housing maintenance generally. They should consider the needs of non-metropolitan areas for conservation-upgrading assistance, including the establishment or activation of public housing programs. By building on the federal refinancing legislation as a base for supplemental rehabilitation subsidies and neighborhood improvement efforts, states will be able to extend the outreach of their own assistance programs and avoid the rent increase effects of traditional add-on rehabilitation loans.


The summary of responses to the owner survey indicates that property tax concessions in respect to both new construction/major rehabilitation and maintenance/repairs are relatively unimportant. However, as would be expected, they do have a greater potential effect in areas of relatively high property tax rates. Indications... are that property tax concessions could be important in determining how adequately a building is maintained.

New York was the only city surveyed that had a program of granting exemptions and abatement of property taxes to encourage specific types of improvements or rehabilitation. It should be noted that the property owners were required to make most of these improvements to comply with code changes, so that the New York City tax incentive for rehabilitation has been used to a large extent to facilitate compliance with local codes.

Boston's program of granting "informal preconstruction tax agreements" appears to have been quite successful, apparently because of the lack of red tape. Such agreements provided the prospective real estate developers some predictability regarding tax liability on a project which is very necessary in obtaining financing. Since uniform assessing standards are not used in Boston the developer needs to reach some agreement as to what his assessment will be before he can obtain financing and begin construction. This procedure would appear to offer potential benefits to other cities with uneven assessment practices, assuming the question of legality can be overcome. [Id. at 4.]

4. Neighborhood Organizations and Governments

It seems appropriate to conclude this analysis with suggestions for the roles neighborhood organizations and governments should play in rebuilding urban communities.\(^1\) Two separate elements of participation, often merged in actual experience, are involved. Thus, both informal groups, such as neighborhood associations, block associations, tenant unions, cooperatives,\(^4\) churches, and merchant organizations, and officially established agencies, such as Community Action Boards, Model Cities, and Project Area Committees in urban renewal areas commonly serve to bring neighborhood pressures to bear in accordance with perceived community interests. Mobilizing this kind of com-

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\(^4\) Section 802 of the '74 Housing Act, 42 U.S.C.A. § 1440 (Supp. 1975) encourages:

- the concept and effective development of state housing finance and development agencies. Assistance is offered to those agencies which seek: (1) to provide for the development of housing for persons of low, moderate and middle income; (2) to promote the sound growth of neighborhoods through the revitalization of slum areas; (3) to increase employment opportunities for the unemployed and under-employed through the development and redevelopment of industrial, manufacturing and commercial facilities; and (4) to implement the development aspects of state land use and preservation policies. Maximum participation by private and nonprofit developers in all activities assisted under this section is encouraged.

The Secretary is authorized to guarantee the obligations issued by an agency to finance development activities in areas (1) and (2) above. However, where the agency is operating only in area (1), such guarantees are to be issued only where the development is in connection with the revitalization of a slum or blighted area. The Secretary is also authorized to make grants to cover up to one-third of the interest payable on such obligations issued by the state agency, whether guaranteed or not. No obligations are to be guaranteed or assisted unless the interest paid to the purchasers is subject to federal taxation. Tax-free bonds will not receive assistance.

The Secretary of HUD may contract up to a total of $50 million per year under this section. The aggregate amount of principal cannot exceed $500 million. Guarantees are to be supported by the full faith and credit of the United States with respect to principal, interest and any redemption premiums.

HUD is also authorized to provide a broad range of technical assistance to state housing finance agencies or development agencies in both the planning and operation of their programs. [footnotes omitted]


Community involvement will be important to the success of the proposed approach. Landlords must be persuaded to utilize refinancing and to avoid or minimize rent increases in those structures not protected by statutory constraints. Lending institutions must be persuaded to participate in the refinancing program. Unions must be persuaded to cooperate and, hopefully, to participate in training programs. Contractors must be persuaded to employ local residents. City councils must be persuaded to allocate sufficient community development funds.

The second closely related element is participation in official neighborhood planning so that the plan will be, and will be seen as, the will of the community, not something externally imposed. This requires significant neighborhood resident input into all policy decisionmaking with regard to such matters as neighborhood economic development, code enforcement, land use, establishment and operation of maintenance and tenant counselling programs, housing arbitration panels, housing management training programs, sanitation services, and police and fire protection. It requires participation in all program implementation and in the continuing monitoring and evaluation of neighborhood experience. Participation, in this sense also, has sometimes derived from legislative and administrative requirements intended to bring government decisionmaking closer to the people. Elsewhere it has occurred through spontaneous initiatives by local community organizations.

Informal neighborhood organizations commonly lack sufficient legitimacy in the eyes of local government, the public, and within the

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417. See text accompanying notes 316-19 [*supra*].

418. See NAT'L CENTER FOR URBAN ETHNIC AFFAIRS, BUSINESS DEVELOPMENT IN THE CONTEXT OF NEIGHBORHOOD ECONOMIC REVITALIZATION (1975).

419. CITIZEN PARTICIPATION IN URBAN DEVELOPMENT: VOL. 1, CONCEPTS AND ISSUES 23-30, 75-145 (H. Spiegel ed. 1968) [hereinafter cited as CITIZEN PARTICIPATION, VOL. 1].

420. *Id.* at 149-205; *Id.* Vol. 2, CASES AND PROGRAMS 23-68 (H. Spiegel ed. 1969).
community itself to assume full responsibility for governmental planning and administrative functions. Elected neighborhood government bodies might be established to assume these functions in cities willing to delegate the necessary authority, although community-wide elections held in low income areas have generally failed to achieve broad voter participation. In cities not so willing, the appropriate government authority might be administratively decentralized to city officials physically located in preservation areas, where they would be accessible to community residents and their organizations. Supported by necessary technical and administrative staff, these officials could assume primary planning and program responsibility, consistent with overall city plans and program administration. Situated in the community, and subject to community pressures, they would receive continuing inputs from all community elements, both through formal advisory board channels and informally from all interested community groups.

CONCLUSION

Recent developments suggest that federal, state, and local governments are increasingly coming to recognize the importance of rehabilitation. In April 1974, HUD announced the establishment of a demon-

421. The importance of the neighborhood is discussed in SLUMS AND SOCIAL INSECURITY, note 53 supra. See also note 416 supra.

422. Cities are reluctant to turn over power to the neighborhoods. Some cities like Baltimore and New York have tried delegating more authority to the district sanitation superintendent, the police precinct captain and other district personnel in an effort to improve services. A few cities, including Boston, have established Little City Halls to enable community residents to bypass red tape. But neither experiment involves setting up a stronger structure of neighborhood government with policy making powers . . . Whether enough support for these fundamental changes will be forthcoming . . . remains doubtful. Neighborhood government will clearly not be won without a struggle, for City Hall will not give up power easily.


423. Homeowner's Rehab., Inc. of Cambridge, Mass., has assisted more than 100 families over a two year period, to complete $500,000 worth of improvements. Camden Housing Improvements Project of New Jersey has housed 403 families, accounting for 24% of all units built or rehabilitated in Camden, since its inception in 1967. Both Homeowner's Rehab., Inc., and CHIP have provided job training and employment opportunities for local residents in connection with their rehabilitation work. For a case study on CHIP see LISTOKIN, supra note 165, at II. See also, City Gets a Plan to Save Housing—It Involves Rehabilitation of Selected Neighborhoods in Early Stages of Blight, N.Y. Times, May 30, 1973, at 43, col. 8; City Seeks Mortgage Unit to Curb Slums, N.Y. Times, May 4, 1973, at 1, col. 7. The new direction toward “urban homesteading” indicates this rehabilitation trend. See King, Homesteaders Combatting Urban Blight, N.Y. Times, Sept. 16, 1973, § 1, at 1, col. 1; Bronson, The Old Homestead—Abandoned Houses Are Given Free to People Willing to Restore Them, Wall. St. J., Sept. 21. 1973, at 1, col. 1; Property Owners Step Up Repairs, HOUSING AND URBAN AFFAIRS DAILY, July 30, 1974, at 12.
istration Neighborhood Preservation Program, in conjunction with the Federal Home Loan Bank Board, which was funded by a $750,000 grant in fiscal year 1974 and $2,000,000 in fiscal year 1975. Many state housing assistance programs offer loans for rehabilitation. A recent HUD report describes 83 municipal rehabilitation programs.

The 1974 Housing and Community Development Act's emphasis on local government flexibility in the allocation of community development block grant funds and federal administrative discretion as between new housing and rehabilitation falls short of the articulated pro-cities strategy for which this Article argues. Even so, that Act amends the national housing goal to call for "a greater effort . . . to encourage the preservation of existing housing and neighborhoods" and provides

A recent HUD survey of officials in 31 cities located in six states covered by the Denver Regional Office found that 74% of the cities considered housing rehabilitation as a priority item for use of community development block grant funds. 7 HUD CHALLENGE, March, 1975, at 30.


425. Most state housing assistance programs, for either construction or rehabilitation are relying on indirect subsidization. Funds are raised by the sale of tax exempt bonds the proceeds of which are loaned at below market rates. Although cost free to the states and politically attractive, the resulting subsidy is commonly too shallow to reach low income tenants or homeowners. See D. Pearlman, supra note 413, at 649-50. However, several states have activated or are planning rehabilitation financing programs which will permit deeper subsidies to rehabilitation and loan and grant programs. See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, EXAMPLES OF LOCAL AND STATE FINANCING OF PROPERTY REHABILITATION 56-75 (1974) [herein after cited as EXAMPLES OF LOCAL FINANCING]; Survey of State Programs Designed to Encourage Homeownership, LAW PROJECT BULL., Jan./Feb. 1975, at 7.

426. Seventeen are employing funds from Model Cities to finance rehabilitation programs, 19 are using local bank funds and 44 are using local public revenues. Seattle has established a housing rehabilitation fund out of general revenue sharing receipts, the interest from which provides property rehabilitation loans. San Francisco is commencing a Rehabilitation Assistance Program, financed by the proceeds of tax exempt bonds, which will be reloaned at an interest rate a fraction of a point above that payable by the city to property owners in designated areas, to which city funds will be allocated for general improvement requirements. EXAMPLES OF LOCAL FINANCING, supra note 425, at 43-47. See also U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, NEIGHBORHOOD PRESERVATION: A CATALOG OF PROGRAMS (1975).
or continues in effect considerable program authorizations to that end.\footnote{427}

If the deterioration patterns of central city hardcore poverty areas are to be reversed and marginal neighborhoods restored and conserved, realistic, cost effective, broad scale, job-creating, participatory program approaches must be found. Downtown renewal projects, benign neglect, and suburban bypass strategies have not met these criteria. The criticisms and suggestions put forth in this Article are offered in the hope that a pro-cities commitment will be made and that coordinated and feasible programs will be developed to restore urban communities.

\footnote{427. \S 801(1)(c) of the '74 Housing Act, 42 U.S.C.A. \S 1441a(c) (Supp. 1975), amending 42 U.S.C. \S 1441a (1970). See note 397 supra. See generally CITIZEN PARTICIPATION, Vol. 1, supra note 419.}