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NEGLECTED DIMENSIONS IN LOW-INCOME HOUSING AND DEVELOPMENT PROGRAMS†

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Approximately 60 million people in the U. S.—some 13 million households—are victims of housing deprivation.[1] Almost invariably they lack purchasing power and are further shackled by a variety of non-economic difficulties. They usually rent their dwellings and are members of a minority (a racial minority group, a member of

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1. MIT-HARVARD JOINT CENTER FOR URBAN STUDIES, AMERICA'S HOUSING NEEDS: 1970 TO 1980 at 1-4 (1973). Elements of "housing deprivation" are substandard condition, overcrowding, excessive costs, and inability to pay.

a female-headed household, a welfare recipient, or part of a divergent subculture) that must contend daily with institutions and legal doctrines that favor landlords, the conventional family structure, and the dominant culture. Often they are members of neighborhood organizations struggling, against great odds, with powerful interest groups to secure some control over neighborhood development from traditionally unresponsive local governments. They are potentially displaced persons battling for a place to live.

The categorical housing and urban development programs created during the last 40 years are presently in transition. After a two-year freeze on most federal housing and urban development funding[2] the Housing and Community Development Act of 1974[3] has ushered in a modified form of block grants for urban development assistance and has given some of the categorical housing programs a limited extension. A program of "housing allowances" remains under study. These new directions in housing are founded on two basic premises: that free market forces will provide adequate housing if "effective demand" is increased by subsidizing the housing poor; and that the federal housing subsidy system is inefficient, rather than misdirected, and merely needs "tinkering"—*i.e.* the categorical programs were too numerous and too narrow, did not "fit" local conditions, required excessive paperwork, and were administered by the wrong "level" of government. In short, *economics* and *efficiency* are the sole conceptual underpinnings of the proposed new directions. The assumption is that the problem of inadequate housing will be solved simply by improving the economic position of the poor or the efficiency of the housing subsidy delivery system, or both.

We reject this assumption and solutions based upon it. We contend that the solution lies in a multi-faceted attack upon the economic *and* non-economic weaknesses that plague low-income persons. An effective housing subsidy system should provide the poor with the

2. HOUSING & DEV. RPTR., Reference File 07:0008 contains the full texts of both the telegram imposing a moratorium on federal housing and urban development programs, and a subsequent clarifying telegram. As a result of litigation, funds for some programs have been unfrozen and the President's right to impound funds has been seriously eroded. *See* Guadamuz v. Ash, 368 F. Supp. 1233 (D.D.C. 1973); Pealo v. Farmer's Home Administration, 361 F. Supp. 1320 (D.D.C. 1973); Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, tit. X, 88 Stat. 297. *But see* Pennsylvania v. Lynn, 362 F. Supp. 1363 (D.D.C. 1973), *rev'd*, 501 F.2d 848 (D.C. Cir. 1974).

3. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633.

bargaining power[4] to obtain decent, safe and sanitary housing within their financial reach as well as an effective voice in developing and controlling the programs that affect them.[5]

First, this Article analyzes, from the perspective of the poor, the effect of political, economic, social and legal relationships on past and proposed subsidized housing systems. Secondly, we consider why past programs failed to fulfill their promise and why proposed "New Federalist" solutions are similarly doomed. Neither has faced the need for change in political, social and legal relationships nor the basic economic problems. Finally, we outline the elements of a subsidized housing system design that gives proper weight to these relationships.[6]

I. An Overview of Housing and Development Programs

The record of the past four decades of federal assistance in housing and urban development is grim. Some programs, notably Urban Re-

4. *See* Kline & LeGates, *Citizen Participation in the Model Cities Program: Toward a Theory of Collective Bargaining for the Poor*, 1 Black L.J. 44 (1971).

A housing subsidy system can foster the growth of bargaining power by (1) providing legislative and administrative entitlements for the benefit of the poor, and (2) by encouraging the poor to organize and effectively anticipate their needs.

Citizen participation standards in the Model Cities Program were originally intended to encourage the poor to organize and to anticipate effectively their needs in relation to urban development. Unfortunately, administrators hostile to this philosophy undermined these standards and prevented achievement of the goal.

A judicial or legislative standard of "warranty of habitability" gives tenants specific entitlements. It gives them a choice between lower rents for below code housing, or housing that meets the code standards at the same or higher rents. In addition, it may be the first step in opening a political dialogue at the municipal level to find ways to obtain the necessary money for repair, rehabilitation or rent control. *See* Achtenberg, *The Social Utility of Rent Control*, in Housing Urban America 434-47 (Pynoos, Schafer, & Hartman eds. 1973) (rent control); Bryson & Phillips, *Refinancing: A First Step Toward a Realistic Housing Program for the Poor*, 39 Geo. Wash. L. Rev. 835 (1971) (rehabilitation); *Landlord Security Deposit Act*, 7 Clearinghouse Rev. 411 (1973) (repairs).

5. For an example of what we mean by "controlling" programs see Hirshen & Brown, *Public Housing's Neglected Resource: The Tenants*, 6 City, No. 4, at 15 (1972).

6. Although this Article focuses on urban programs, our analysis also applies to the equally serious problems of rural programs. For a discussion of issues relating to rural housing see Housing Assistance Council, Alternative Low-Income Housing Delivery System for Rural America (1974); Butler, *Alternatives for Rural America*, 4 HUD Challenge, No. 6 at 7 (1973); Cochran & Rucker, *Every American Family Housing Need and Non-Response*, in House Comm. on Banking and Currency, Papers Submitted to Subcomm. on Housing Panels, 92d Cong., 1st Sess. 525 (1971).

newal, have done massive damage to the poor. Others have been so crippled and diverted from their course by a hostile climate that benefits to the poor have been small while gains to the rich have been large and the costs outrageous. Modest successes include: an increase, in absolute numbers, of habitable units; a few outstanding public housing projects (mainly for the elderly);[7] some effective section 235 programs in areas where production costs are low;[8] a number of worthwhile social programs emerging from the Model Cities program;[9] and some advantageous use of section 23 leasing[10] or of rent supplements.[11]

The grim realities, however, are that after 23 years of operation, the urban renewal program, which was intended to provide "a decent home and suitable living environment for every American family,"[12] has destroyed 300,000 more low-income housing units than it has produced,[13] thus massively exacerbating the housing dilemma of the urban poor. The public housing program, which was intended to produce 810,000 units of low-income housing between 1949 and 1955, has only recently reached that figure almost 20 years later.[14] Much of the housing produced is of poor quality, harshly or poorly administered, and desperately in need of increased federal financial assistance.[15] The Federal Housing Administration (FHA) has incurred subsidy cost obligations of 16.5 billion dollars[16] in order to deliver

7. *See* Low Rent Housing Act of 1937, 42 U.S.C. §§ 1401-36 (1970).

8. *See* National Housing Act, 12 U.S.C. § 1715z (1970).

9. *See* Model Cities Act, 42 U.S.C. §§ 3301-74 (1970).

10. *See* Low Rent Housing Act of 1937 § 23, 42 U.S.C. § 1421b (1970).

11. *See* Housing and Urban Development Act of 1965 § 101, 12 U.S.C. § 1701s (1970).

12. Housing Act of 1949, *as amended*, 42 U.S.C. § 1441 (1970).

13. Through 1967, 404,000 dwelling units, mostly low-income, were reportedly demolished by urban renewal. During the same period less than 86,000 low- and moderate-income units were constructed on urban renewal land. NAT'L COMM'N ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY 160 (1969) (Douglas Commission).

14. *Id.* at 110. The 810,000 figure is for units in addition to those already in existence in 1949.

15. *See* Hirshen & LeGates, *Dreary Deadlock Revisited*, 138 ARCHITECTURAL F., No. 2, at 66 (1973).

16. The total costs for units completed or under construction in the section 236 program is estimated at 14 billion dollars and for the section 235 program at 2.5 billion dollars. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSING IN THE 1970's, ch. 4 at 4—23, Table VI (1973).

only partially subsidized housing to one-half of one per cent of the population, virtually all of whom are well above the poverty line.[17]

National economic problems, deterioration of the inner-city housing stock, and general discontent with federal housing programs have engendered grave doubts about any "new construction" strategy to aid the poor. Thus present discussions of federal housing policy reflect a pervasive shift in favor of a strategy that would rely upon the "standing stock" rather than "new production," *i.e.*, a subsidization of demand rather than supply. In addition, discussions about urban development policy have moved away from a focus on categorical program funding to solutions that would channel "flexible" funds to local governments with minimal federal supervision.

Recent academic and legislative proposals for replacing the "categorical" system contain two major motifs: some form of "housing allowance" to provide transfer payments, roughly modeled on the welfare system, in place of FHA and public housing programs; and some form of flexible, local-government controlled, urban development assistance to replace Urban Renewal, Model Cities, and related federal programs.

Support for the housing allowance concept crystallized in the late 1960's. Different forms have been proposed by the Nixon Administration,[18] by the Kaiser Committee,[19] and by scholars of the Urban Institute,[20] the Brookings Institution,[21] and the New York Rand Study.[22] Significant "experiments" are underway to test the viability of the concept.[23] The United States Department of Housing and

17. *See id.* at 4—59.

18. Nixon, *Housing Proposals*, 1 HOUSING & DEV. RPTR., No. 10, at app. L-1 (1973).

19. PRESIDENT'S COMM. ON URBAN HOUSING, A DECENT HOME 71-72 (1968) (Kaiser Committee).

20. Heinberg, The Transfer Costs of a Housing Allowance: Conceptual Issues and Benefit Pattern, Urban Institute Working Paper No. 112-18, May 1971; Leaman, Estimated Administrative Costs of a National Housing Allowance, Urban Institute Working Paper No. 10-112-6, May 22, 1971.

21. H. AARON, SHELTER AND SUBSIDIES 167-73 (1972).

22. J. LOWRY, HOUSING ASSISTANCE FOR LOW-INCOME URBAN FAMILIES: A FRESH APPROACH (1971).

23. Housing and Development Act of 1974, Pub. L. No. 93-383, tit. VIII, § 804, 88 Stat. 633; Beckman, *The Experimental Housing Allowance Program*, 30 J HOUSING, No. 1, at 12 (1973); Fried, *Housing Allowances: The Latest Panacea*, 216 NATION 304 (1973); Gans, *A Poor Man's Home is His Poorhouse*, New York Times, Mar. 3, 1974, § 6 (Magazine), at 20-21; Hartman & Keating, *The Housing Allowance Delusion*, 4 SOCIAL POLICY, No. 4, at 31 (1974).

Urban Development (HUD) has broken the testing down into a "demand" experiment to test how families will respond to allowances, a "supply" experiment to test how allowances will affect the condition of the housing stock, and an "administrative agency" experiment to compare alternative vehicles for administering an allowance system. The Housing and Community Development Act of 1974 provides for the continuation of on-going housing allowance experiments at an annual cost of no more than 40 million dollars.[24] HUD Secretary James Lynn's proposal of a limited phase-in of housing allowances for the elderly has been deferred primarily because of opposition within the Administration to the costs of such a program.[25]

On August 22, 1974, President Ford signed into law the Housing and Community Development Act of 1974.[26] In the process of negotiating a politically acceptable compromise, both branches of Congress moved toward synthetic legislation that blends together elements of three distinct approaches: a pure "special revenue sharing" approach; a modest simplification of the categorical system; and a "block grant approach."[27] For clarity, we will consider three prototype "pure forms" of the approaches that provide the basis for the compromise legislation.

"Special revenue sharing for community development" in its pure form would replace Urban Renewal, Model Cities and related programs with a system that passes federal funds through to local government for community development activities with almost no federal control. The "Better Communities" bill,[28] repeatedly and unsuccessfully introduced by the Nixon Administration, is the leading prototype of this approach.

Two earlier variants of urban development legislation fell somewhere between the existing categorical system and "pure" special revenue sharing. The proposed Housing and Urban Development

24. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 804, 88 Stat. 633.

25. Lynn, *Nixon Housing Proposals Stress Easing Credit Crunch and New Subsidized Production*, 1 HOUSING & DEV. RPTR., No. 10, at AA-1, AA-3 (1973).

26. Pub. L. No. 93-383, 88 Stat. 633.

27. For a thorough discussion of the different types of general and special revenue sharing see Susskind, *Revenue Sharing and the Lessons of the New Federalism*, 8 URBAN L. ANN. 33 (1974).

28. H.R. 7277, 93d Cong., 1st Sess. (1973); S. 1743, 93d Cong., 1st Sess. (1973).

Act of 1973[29] suggested preservation of the broad outlines of the categorical system with a number of consolidations and simplifications. Alternatively, the "block grant" approach of the Community Development Assistance Act of 1973[30] proposed eliminating the categorical system but retaining federal performance standards, as well as application and reporting procedures. The legislation finally authorized by the Housing and Community Development Act of 1974 was far closer to that proposed by the House than to the more generous Senate proposal.[31]

We now turn to an examination of the economic and non-economic climates in which the "housing poor" exist and how they effect the workability of past and proposed low-income housing systems.

II. The Economic Dimension

Funding levels for low-income housing and urban development have been woefully inadequate. A necessary element in any workable low-income housing system is an increase in purchasing power, either by direct rent subsidies or indirect production subsidies. Increased purchasing power alone, however, is insufficient.

Many "New Federalists" argue that the best way to provide such a subsidy is through a direct housing allowance to the poor. Such allowances, they argue, would allow recipients to choose their own housing in the private market, thus avoiding both impaction of the poor and local community resistance to construction of new low-income units. Direct subsidies, it is contended, would reach a larger

29. S. 3248, 93d Cong., 1st Sess. ch. I, pt. A (1973).

30. H.R. 10036, 93d Cong., 1st Sess. (1973).

31. Conference Report on S. 3066, Housing and Community Development Act of 1974, H.R. Rep. No. 93-1279, 93d Cong., 2d Sess. (1974). A Senate requirement of a public hearing prior to land acquisition was dropped. The House provision, requiring the Secretary of HUD to approve local applications absent a finding that the localities' statement of community development needs is patently defective, was substituted for the Senate's authorization for the Secretary to approve or disapprove an application, in whole or in part, on the basis of the program proposed in the application. Senate requirements for employment of community development area residents were weakened. In summary, the legislation as passed has less money, fewer standards directing funds to relieve poverty and racial problems, and fewer controls over local discretion (either by HUD or private citizens) than might have been anticipated during the debate. *See generally id.*

percentage of the poor than present production subsidies.[32] Its advocates also believe that it would eliminate the need for a large federal/local, production/management bureaucracy.

It would be difficult to argue with the concept of housing allowances if sufficient monies were made available to lift the poor to the economic status of the middle class.[33] Such an expectation, however, is unrealistic. Anthony Downs recently noted the unwillingness of the American people to provide sufficient money to close the "food subsidy gap." Downs concluded that, since housing has historically been regarded as a lower priority than food, "realistically 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."[34]

Another indication that sufficient money will not be provided is the bitter struggle to adopt the Family Assistance Plan to provide uniform federal welfare subsidies to the poor. Even reductions in assistance that all but destroyed the essence of the plan did not save the proposed legislation.[35]

Recent federal government actions corroborate the likelihood that funding levels for housing allowances will be insufficient. Former President Nixon's Housing Message of September 9, 1973, not only failed to support a general housing allowance program, but also did not approve the much less expensive and more politically acceptable proposal of HUD Secretary Lynn for housing allowances for the elderly. The cost (1.2 billion dollars annually) was reportedly viewed

32. *See* Peabody, *Housing Allowances*, 170 NEW REPUBLIC 220 (1974); Nixon, *supra* note 18.

For a breakdown of households presently served by the categorical housing programs by income groups see HOUSING IN THE 1970'S, *supra* note 16, at 4—29.

33. Hartman and Keating identify several restraints in the housing market that are serious barriers to poor people seeking affordable, habitable living conditions: (1) an inadequate number of housing units, at prices or rents the poor can afford and located where they wish to live; (2) the substandard conditions prevalent in the low-income housing sector; (3) racial, class and sex discrimination; (4) rising and uncontrolled rents; and (5) the unequal pattern of legal relationships in existing landlord-tenant law. The authors have concluded that even in the unlikely event that an adequate subsidy is made available, the goal of decent housing would not be obtained. Hartman & Keating, *supra* note 23, at 36-37. *See also* Fried, *supra* note 23; Gans, *supra* note 23.

34. Downs, *Are Subsidies the Best Answer for Housing Low and Moderate Income Households?*, 4 URBAN LAW. 405, 416 (1972).

35. *See* Bawden, Cain & Hausman, *The Family Assistance Plan: An Analysis and Evaluation*, 19 PUBLIC POLICY 323 (1971).

as excessive and was successfully resisted by influential persons at the Office of Management and Budget (OMB) and the Department of Health, Education and Welfare.

Henry Aaron's careful projections, based on 1967 figures, placed a minimum housing allowance program cost at between 4.9 and 6.2 billion dollars,[36] while the Urban Institute places the cost at between five and seven billion dollars.[37] In light of the low level of past funding, it is unlikely that such deeply rooted resistance can be overcome and the poor given the purchasing power of the middle class. It is more likely that whatever housing allowance is adopted will be seriously underfunded.

Underfunding of a direct subsidy program would have a more negative impact than the historic underfunding of the production programs. If 1,000 units of public housing are considered necessary for a given community and only 250 are provided, the eligible low-income community suffers to the extent of 750 units. At least 250 households, however, will benefit from the better quality housing provided. If, on the other hand, a $1,000 per year allowance is considered necessary to provide an equivalent housing benefit, but it is reduced to $250 per year, none of the recipients may acquire the power to bargain for any significant qualitative improvement in shelter. Excessively "thin" subsidies, equitably divided, are likely to be totally absorbed without providing recipients with improved housing. As Hartman and Keating note, more than half of all welfare recipients receiving transfer payments similar to housing allowances are presently living in substandard housing, and recipients of section 23 leased housing (another form of transfer payment for use in the existing housing stock) often live in substandard housing at inflated

36. *See* AARON, *supra* note 21, at 170. His estimate assumes stable housing costs. If institution of a housing allowance program stimulated a rise of 10% in housing costs in the universe served, which Aaron suggests is likely, program costs would be 6.2 billion dollars. Aaron's estimates are based on seven-year old data at a time before substantial housing cost increases. His program is designed to reduce the percentage all households pay for housing to no more than 25% of income. This is less than the median amounts paid by the lowest income groups but significantly more than moderate- and upper-income households pay, and five percent more than public housing households and most section 235 and section 236 households currently pay. Aaron concedes that this approach would not squarely meet the "bad" housing problem. Housing markets would likely respond (sluggishly) to the increased demand. Wider social aspects of "bad" housing would not be addressed.

37. Heinberg, *supra* note 20.

costs. They further cite the scandals involving rehabilitation of existing units for homeownership under the section 235 program as evidence of the potential for taking advantage of the poor and powerless in the private market.[38]

The Housing and Community Development Act of 1974 provides for 2.5 billion dollars in authorizations for fiscal year 1975, 2.95 billion dollars for fiscal year 1976, and 2.95 billion dollars for fiscal year 1977.[39] It also provides for previously appropriated but unused funds from various programs (impounded by the Nixon Administration) to be spent during 1975. This represents a significant initial "sweetener" and a slight overall increase in community development funding in addition to the release of impounded funds. It does not, however, represent a significant increase in federal commitment to this area.

In summary, a "housing allowance" program has not been instituted primarily for fiscal reasons. There is every reason to believe that if such a program is instituted it will be inadequately funded. "Community Development" assistance is proceeding at only modestly increased levels but with dramatically fewer controls to assure that it is spent for the priority physical development needs of cities. It appears likely that the amount of funding that will actually be directed towards urban poverty needs in the areas of housing and community development will continue, as in the past, at woefully inadequate levels.

We now consider the non-economic factors that affect a workable low-income housing system.

III. The Political Dimension

An understanding of the political power and motivations of the major groups that influence housing production and maintenance is basic in designing an intelligent low-income housing system. A realistic approach should be adopted to obtain the support of these groups for the ultimate benefit of low-income households. Past programs were designed for the direct benefit of politically powerful groups with indirect benefit to the poor added almost as an afterthought.

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38. Hartman & Keating, *supra* note 23, at 33. *See also* B. Boyer, Cities Destroyed for Cash (1973).

39. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 103(a)(1), 88 Stat. 633.

Harold Wolman has examined the major influential, housing-related lobbying groups at the national level and has characterized their dominant motivations.[40] The major financial institutions—the Mortgage Bankers Association, the American Bankers Association, the U. S. Savings and Loan Association, and the National Association of Mutual Savings Banks—are primarily concerned "that government programs do not interfere adversely with normal operations of the mortgage market."[41] In addition, they wish to ensure economic stability and growth. Thus "the financial organizations, with the exception of the Mutual Savings Banks Association . . . , are likely to react in a somewhat cautious and skeptical manner to efforts to house low- and moderate-income people whom these organizations have traditionally viewed as poor risks."[42] The National Association of Home Builders typifies the developers' attitude: "In the 1960's NAHB grew more pragmatic. It now favors nearly any program which will mean more houses for its members to construct."[43] Wolman identified the U. S. Conference of Mayors as the most influential association representing local governments' interest in housing and noted: "It supports programs which make available to cities as much money as possible with as few strings as possible attached. Its major effort is thus aimed not at drawing up specific programs, but at bringing *money* to cities."[44] Speaking of the National Association of Housing and Redevelopment Officials (NAHRO), the organization for employees of local public housing and urban renewal agencies, he states: "Its *main* interest is urban renewal and public housing and its main thrust is to push for more and more of each. . . . NAHRO has been somewhat suspicious of innovations which threaten to work outside the traditional framework of local public housing agencies. . . ."[45] Wolman concludes that the influence of liberal labor, represented principally by the National Housing Conference, is much less significant than any of the groups cited above and that the influence of the spokesman for minority groups and planners, the American Institute of Planners,

40. *See generally* H. WOLMAN, POLITICS OF FEDERAL HOUSING (1971).
41. *Id.* at 62.
42. *Id.* at 63.
43. *Id.* at 62.
44. *Id.* at 61 (emphasis in original).
45. *Id.* at 60 (emphasis in original).

is lower still.[46] A group that Wolman did not identify as a lobbying organization, but which in reality functions in the same manner, is the federal bureaucracy itself, particularly HUD and OMB.

The Wolman study concludes that the dominant national lobbies represent financial institutions, builders, local politicians, and housing professionals. Thus programs that provide for government intervention in low- and moderate-income housing are primarily designed to achieve goals other than the welfare of the program's intended beneficiaries. The principal goals are greater and more stabilized mortgage profits, increased construction, federal budget control, and local government patronage, plus professional job protection and enhancement. These goals, as an examination of past programs indicates, dictated the design of the existing low-income housing and development system without regard to its effect on the poor.

The inclusion of local government approval provisions,[47] unrealistic cost restrictions,[48] and "local autonomy" for local authorities in public housing legislation[49] may serve the goals of local government patronage, professional job protection, and federal budget control. Such provisions, however, also allow local prejudices to defeat needed new units, dictate highrise projects in poor and segregated locations, and permit potentially unfettered local discretion in unit management. In FHA subsidized housing the goals of increased production and stabilized mortgage profits prevailed over the goals of homeowner and tenant protection, resulting in scandals[50] and inordinate federal subsidies.[51]

When the potential for using Urban Renewal to benefit local interest groups other than the poor became increasingly apparent, the goals

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46. *Id.* at 60-69. Traditionally "liberal" labor groups are generally moving to the right in housing policy matters. One indication of this trend is that the National Housing Conference presently opposes the "Brooke Amendment" reforms in public housing.

47. *See* 42 U.S.C. § 1415(7)(b) (Supp. II, 1972).

48. *See* 42 U.S.C. § 1415(5) (1970).

49. *See id.* § 1401.

50. *See generally* B. BOYER, *supra* note 38.

51. Although the government is committed to 16.5 billion dollars in mortgage subsidies, the provision authorizing 10 million dollars for credit counseling has been badly neglected. *See* National Housing Act, 12 U.S.C. § 1707x (1970). Initially Congress did not ask for an appropriation for this section. Then funds were appropriated but not spent. Only now is this section being seriously implemented.

of the program shifted.[52] The history of the "residential re-use" provision illustrates what has been called "the perversion of the Urban Renewal Formula."[53] Originally, title I of the 1949 Housing Act[54] required that all Urban Renewal grants be committed to predominantly residential re-use projects. The act was amended in 1956 to permit 10% of urban renewal projects to be excepted from the "predominantly residential" restriction,[55] then 20% in 1959,[56] 30% in 1961,[57] and 35% in 1965.[58] In 1968 the provision was again revised to permit up to 50% non-residential re-use projects and a still higher percentage if local government and the Secretary of HUD agree that it is necessary and proper for the community.[59]

Failure to consider the needs of low-income households in formulating housing policy is not confined to the legislature. It also pervades program implementation by federal and local bureaucracies. The implementation of the Brooke Amendments is illustrative.[60] In the late 1960's inflation, deferred maintenance costs, and the concomitant increases in operating expenses pushed many big-city public housing authorities to the brink of bankruptcy.[61] The fiscal crisis had forced many authorities to cut maintenance efforts below necessary minimums and to increase rents above 25% of income for many tenants. Attempts to obtain additional funds by substantial rent increases brought fears of nationwide rent strikes such as the one in St. Louis' massive Pruitt-Igoe Project. In response to requests from the National Tenants Organization (NTO) and others for a federal funding alternative to avoid devastating rent increases and possible reactive rent strikes, Senator Edward Brooke (R. Mass.) obtained passage in 1969

52. *See* C. HARTMAN *et al.*, YERBA BUENA: LAND GRAB AND COMMUNITY RESISTANCE IN SAN FRANCISCO 51-55 (1974).

53. C. ABRAMS, THE CITY IS THE FRONTIER 82-85 (1965).

54. *See* 42 U.S.C. §§ 1450-69 (1970).

55. Housing Act of 1956, Pub. L. No. 84-1020, § 302(c), 70 Stat. 1091.

56. Housing Act of 1959, Pub. L. No. 86-372, § 413, 73 Stat. 654.

57. Housing Act of 1961, Pub. L. No. 87-70, § 308, 75 Stat. 149.

58. Housing and Urban Development Act of 1965, Pub. L. No. 89-117, § 308, 79 Stat. 451.

59. Housing and Urban Development Act of 1968, 42 U.S.C. § 1460(c) (1970).

60. *See* D. MANDELKER, HOUSING SUBSIDIES IN THE UNITED STATES AND ENGLAND 81-119 (1973).

61. F. DE LEEUW, OPERATING COSTS IN PUBLIC HOUSING: A FINANCIAL CRISIS 12-15 (1969).

of the first of the so-called "Brooke Amendments" to the Housing Act of 1937.[62] The amendment and the Conference Report based upon it provided: (1) operating expenses for maintenance, administration, tenant services, and related costs, (2) a bail-out, one-time subsidy to help the neediest housing authorities pay outstanding debts, and (3) a limitation on a tenant's rent to a maximum of 25% of his income, with the federal government supplying the difference between actual operating cost of the unit and the 25% cut-off. The Sparkman Amendment paved the way for the Brooke Amendment by authorizing subsidies in excess of debt service on the construction of public housing projects.[63] Brooke had intended modest improvement of maintenance efforts and a ceiling on rent/income ratios of 25%. Although the statutory language expressed these concepts clumsily,[64] the Conference Report made it clear that the changes were intended for the direct benefit of the tenants.[65]

After passage of the Brooke Amendment, HUD regulations crippled the legislation.[66] The regulations (1) interpreted the provision for an operating subsidy as a "one-time-only" provision (in disregard of documentation that the pressure for operating subsidies was continuous and progressive), (2) conditioned the subsidy upon "improved management" (a term that HUD Assistant Secretary Lawrence Cox, who opposed the amendment, had indicated meant that local housing

62. Housing and Urban Development Act of 1969 § 213(a), 42 U.S.C. § 1402(1) (1970).

63. Act of December 24, 1969, 42 U.S.C. § 1410(b) (1970). The amendment was initially contained in a bill introduced by Senator Sparkman. S. 527, 91st Cong., 1st Sess. § 5 (1969).

64. In order to enable public housing agencies to provide housing within the means of families of very low income and to provide improved operating and maintenance services, the secretary [of HUD] may make, and contract to make, annual rental assistance payments to public housing agencies with respect to any low-rent public housing project. The amount of the annual payment with respect to any dwelling unit in a low-rent housing project shall not exceed the amount by which the rental for such unit exceeds one-fourth of the tenant's income.

Hearings on Housing and Urban Development Legislation of 1969 Before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, S. 2761, 91st Cong., 1st Sess. 553-54 (1969). Senator Brooke's language was substantially changed before it was enacted. *See* 42 U.S.C. § 1402(1) (1970).

65. CONFERENCE REP. No. 91-740, 91st Cong., 1st Sess. 30-31 (1969).

66. U.S. Dep't of Housing and Urban Development, Circular 3-16-70, Implementation of Sections 212 and 213 of the Housing and Urban Development Act of 1969 (Mar. 16, 1970).

authorities were henceforth, in agency jargon, to "cream"—*i.e.* to screen applicants to avoid potential "problem families"),[67] (3) interpreted the provision as not authorizing any *improvement* in operating maintenance services (notwithstanding documentation that such operations were *already* below minimum adequate levels at the time of the amendment), and (4) did not permit a "pass through" of the 25% income limit maximum to benefit welfare recipients.

A second "Brooke Amendment" in 1970[68] and a third in 1971[69] sought to re-establish the legislation as originally intended. HUD officials have nevertheless yielded to pressures from the OMB and have blocked the increased appropriations necessary to provide the prescribed subsidies. Thus the economic position of many local housing authorities has further deteriorated, maintenance costs have been further cut, and the pressure on housing authorities to accept only families at the highest levels of income eligibility are even more intense.[70] For political reasons, the federal bureaucracy thus perverted tenant-oriented legislation in the name of efficiency, control of local bureaucracy by the federal bureaucracy, and federal budget control.

With respect to the section 236 program, HUD adopted the underlying private-sector goals in issuing its "35% rule," which flatly prohibited admission to persons whose rent would exceed 35% of income. HUD's motivation was to save a program in financial trouble. The choice excluded the low-income tenant, in violation of the Act, and was held illegal in *Findrilakis v. Secretary of Housing and Urban Development*[71] and *Mandina v. Lynn*.[72] The rule was rescinded[73] and a new regulation is now in effect.[74] HUD's original choice in an economic crisis is, however, indicative of its tendency to pursue goals that are inimical to the low-income tenant's interests.

67. *Id.*; D. MANDELKER, *supra* note 60, at 91-92.

68. Housing and Urban Development Act of 1970 § 210, 42 U.S.C. § 1410(a) (1970).

69. 42 U.S.C. § 1402(1) (Supp. II, 1972), *amending* 42 U.S.C. § 1402(1) (1970).

70. HUD Circular RHM § 7465.12 (June 1962); *see* Fletcher v. Louisville Housing Authority, 491 F.2d 793 (6th Cir.), *vacated and remanded*, 43 U.S.L.W. 3188 (Oct. 15, 1974); Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. II, § 201(a), subsections 3, 6(c)(4)(A), 9(b), 88 Stat. 633.

71. 357 F. Supp. 547 (N.D. Cal. 1973).

72. 357 F. Supp. 269 (W.D. Mo. 1973).

73. 38 Fed. Reg. 15648 (1973).

74. 39 Fed. Reg. 3675 (1974).

At the local level federal funds mean jobs and money. The goal of local patronage often becomes paramount. The real, albeit hidden, agendas at the local level are frequently construction contracts for political allies, jobs for friends of those in power, or funds to "buy off" potentially disruptive neighborhood activists. Thus local officials falsify relocation figures in order to move urban renewal projects along.[75] Even when programs are administered honestly and efficiently, local goals are often in conflict with, and take precedence over, the declared federal policy that the programs benefit the poor.

Nationally, the trend in Urban Renewal has been to concentrate effective program control in the hands of a relatively few persons in the private sector. Their principal goals are projects that will enhance the central business district in general and their own economic interest in particular. A case in point is the Yerba Buena Urban Renewal project in San Francisco.[76] Through the process of goal displacement, the San Francisco Redevelopment Agency came under the control of a small group of downtown interests. But for massive litigation, 4,000 units of low-cost housing in an area with a zero percent vacancy rate would have been destroyed and replaced with a token 276 units of public housing.

IV. The Social Dimension

In addition to the *economic* and *political* elements of a low-income housing system, it is essential to deal with the *sociological* aspects of the problem. The "housing poor" are overwhelmingly "lower class,"[77] nearly one-third are members of racial minorities,[78] and many are members of subcultures more or less divergent from the dominant, white, middle-class culture in America. The characteristics of low-income households help explain the political unpopularity of programs to house them. Such groups generally do not receive adequate subsidies because of their inability to attain a favored position in the American order of priorities. The shelter needs of some preferred

75. *See* Cahn, Eichenberg & Romberg, *The Legal Lawbreakers: A Study in Official Lawlessness Regarding Federal Relocation Requirements*, 4 Clearinghouse Rev. 515 (1970).

76. *See generally* C. Hartman *et al.*, *supra* note 52.

77. *See* E. Banfield, The Unheavenly City 45-66 (1970).

78. Of all substandard units in metropolitan areas, 69.4% were occupied by whites and 30.6% by nonwhites in 1969. Nat'l Comm'n on Urban Problems, *supra* note 13, at 79.

groups of housing poor (*e.g.*, veterans desiring to become homeowners, college students, and some subcategories of the elderly) have usually been met because they are regarded as members of the dominant culture.

The middle and upper classes attach great symbolic importance to shelter. They are extremely reluctant to see "lower class" persons housed in units that approach the quality of their own dwellings. Low-income housing legislation reflects this class prejudice by virtually assuring that the physical design of publicly-assisted housing will be inferior to units on the private market. Class prejudice also explains why federal low-income housing programs have been so poorly funded in the past and why inadequate funding can be anticipated in the future.

Perhaps the most forthright academic statement seeking to rationalize class discrimination in housing has been made by Edward Banfield.[79] He posits the existence of four classes, differentiated primarily by their ability to imagine a future and to guide their lives in accordance with it. He writes: "Each class implies—indeed, more or less requires—a certain sort of physical environment. It follows that a city (or a district within a city) which suits one culture very well is likely to suit another very poorly or not at all."[80] Banfield describes the environment suitable to the lower class in the following terms: "The lower class individual lives in the slum 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."[81] In contrast, the working class prefers to be "comfy" but requires little privacy and few public facilities. Environments suitable to the middle and upper classes require space, privacy, beauty, good schools, parks, libraries and museums.[82]

Roger Starr, New York Housing Authority Commissioner and well-known authority on housing policy, has developed a related though less extreme theory. He suggests a range of immediate policy conse-

79. E. BANFIELD, *supra* note 77, at 45-66.
80. *Id.* at 59.
81. *Id.* at 62.
82. *Id.* at 60-61.

quences in the case of public housing.[83] Starr differentiates between the "working class poor," with their superior set of attitudes and values, and the "dependent poor," who he believes are the principal source of vandalism and disruption. In the first category Starr places persons from working class backgrounds who find themselves destitute as a result of unemployment, old age, divorce, or physical disability. By the "dependent poor" Starr means primarily AFDC recipients, and to a lesser extent, others whose families were not stable members of the work force. In view of the growing fiscal crisis in public housing and the alleged vandalism of the dependent poor, Starr advocates giving housing authorities great discretion to screen and exclude potential troublemakers and the power to evict troublemakers without meeting procedural due process requirements, which he views as dilatory.[84]

Both Banfield and Starr conclude that the "imperatives of class" necessitate physical separation of classes, either in distinct neighborhoods or in separate buildings within the same neighborhood. Both argue that government housing assistance should be reserved exclusively for the "worthy poor."

Class prejudice expresses itself in the vigorous opposition of neighborhood groups to construction of low-income housing in their area. Such attitudes are behind the firebombings and cross burnings like those that have occurred recently in Forest Hills, New York and Warren, Michigan.

Class discrimination is intertwined with racial discrimination, which remains a massive barrier to the goal of adequate shelter for all.[85] The evidence is overwhelming that blacks and other minorities continue to encounter extreme difficulty in obtaining housing outside of minority areas regardless of ability to pay;[86] that institutional racism in housing continues in the practices of brokers[87] and mortgage

83. Starr, *Which of the Poor Shall Live in Public Housing?*, PUB. INTEREST, No. 23, at 116 (1971).

84. The bases of Starr's argument and the conclusions he draws from them are critiqued elsewhere by one of the authors of this Article. Hirshen & Brown, *Too Poor for Public Housing: Roger Starr's Poverty Preferences*, 3 SOCIAL POLICY, No. 1, at 28 (1972).

85. For a discussion of the recent literature on this topic see Foley, *Institutional and Contextual Factors Affecting the Housing Choices of Minority Residents*, in NAT'L ACADEMY OF SCIENCES, SEGREGATION IN RESIDENTIAL AREAS 85-147 (1973).

86. *Id.* at 97-99.

87. *Id.* at 99-101.

lenders;[88] and that minorities receive less for their dollar even in segregated housing.[89]

An effective low-income housing system design must do more than maximize the economic and political power of the housing poor. It must also erode a wide range of discriminatory practices that cut across class, race and life style. We now examine how "housing law" has begun to erode such practices and has strengthened the bargaining position of the poor.

V. The Legal Dimension

The past decade has seen a slow trend toward improving the position of low-income persons bargaining for shelter. Federal statutory housing law, private landlord-tenant relations, and the constitutional law of equal protection and due process rights related to housing have furthered this trend.

Federal housing legislation, allegedly targeted at the poor and the near poor, expanded dramatically in the 1960's. The Department of Housing and Urban Development was created;[90] Model Cities,[91] the 221 (d) (3) program,[92] rent supplement,[93] section 235 homeownership,[94] section 236 rental housing,[95] and other programs were enacted. The 1964 Civil Rights Act was passed,[96] and an improved relocation program followed in 1970.[97]

Judicial interpretation of this body of law has also extended and strengthened the bargaining position of the housing poor. Case law has increased the rights of displacees[98] and protected their participa-

88. *Id.* at 105-106.
89. *Id.* at 99.
90. Housing and Urban Development Act, 42 U.S.C. § 3532 (1970).
91. Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. § 3301 (1970).
92. National Housing Act § 221(d)(3), 12 U.S.C. § 1715*l*(d)(3) (1970).
93. Housing and Urban Development Act of 1965, 12 U.S.C. § 1701s (1970).
94. Housing and Urban Development Act of 1968 § 235, 12 U.S.C. § 1715z (1970).
95. *Id.* at § 236, 12 U.S.C. § 1715z-1 (1970).
96. 42 U.S.C. § 2000a (1970).
97. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601-55 (1970).
98. *See, e.g.*, Jones v. D.C. Redevelopment Land Agency, 6 E.R.C. 1534 (D.C. Cir. 1974); Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968); Keith v. Volpe, 352 F. Supp. 1324 (C.D. Cal. 1972); Garrett v. City of Hamtramck, 335 F. Supp. 16 (E.D. Mich. 1971); La Raza Unida v. Volpe, 337 F. Supp. 221 (N.D. Cal. 1971), *aff'd*, 488 F.2d 559 (9th Cir. 1973), *cert. denied sub nom.* California

tion in Model Cities and other programs.[99] Standards of procedural fairness in public housing have developed rapidly. Litigation and administrative advances[100] have greatly limited arbitrary or unacceptable procedures and standards in both admissions[101] and evictions.[102]

Highway Comm. v. La Raza Unida, 94 S. Ct. 3171 (1974); Western Addition Community Organization v. Romney, 320 F. Supp. 308 (N.D. Cal. 1970) (preliminary injunction); Western Addition Community Organization v. Weaver, 294 F. Supp. 433 (N.D. Cal. 1968) (memorandum decision); Powelton Civic Home Owners Ass'n v. HUD, 284 F. Supp. 809 (E.D. Pa. 1968).

99. *See, e.g.*, North City Area-Wide Council, Inc. v. Romney, 456 F.2d 811 (3d Cir.), *cert. denied sub nom.* Rizzo v. North City Area-Wide Council, Inc., 406 U.S. 963 (1972); Parra v. Lynn, Civ. No. 72-196-N (S.D. Cal. Feb. 23, 1973) (memorandum decision); North Nashville Citizens Coordinating Comm., Inc. v. Romney, Civ. No. 6121 (M.D. Tenn. July 28, 1972) (memorandum opinion); Lower Kensington Civic Ass'n v. Watson, 330 F. Supp. 1257 (E.D. Pa. 1971); Congress of Mexican-American Unity Council v. Yorty, Civ. No. 70-1835-CC (C.D. Cal. Dec. 21, 1970) (order, findings of fact, and conclusions of law filed); General Assembly v. Sensenbrenner, Civ. No. 70-74 (S.D. Ohio May 7, 1970); Coalition for United Community Action v. Romney, 316 F. Supp. 742 (N.D. Ill. 1970).

100. *See* Hirshen, *New Era in Public Housing Management*, 9 NATION'S CITIES, No. 7, at 36 (1971); Hirshen, *HUD Issues New Mandatory Circulars on Public Housing Leases and Grievance Procedures*, 4 CLEARINGHOUSE REV. 571 (1971).

101. *See, e.g.*, Fletcher v. Housing Authority, 491 F.2d 793 (6th Cir.), *vacated and remanded*, 43 U.S.L.W. 3188 (Oct. 15, 1974); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 (2d Cir.), *cert. denied*, 404 U.S. 863 (1971); Cole v. Housing Authority, 435 F.2d 807 (1st Cir. 1970); Holmes v. New York City Housing Authority, 398 F.2d 262 (2d Cir. 1968); Pry v. Port Chester Housing Authority, No. 71, Civ. No. 1708 (S.D.N.Y. Feb. 13, 1974); Starr v. Allegheny County Housing Authority, No. 72-1057 (E.D. Pa. Feb. 6, 1973); United States v. Albany Housing Authority, No. 1007 (D. Ga. Jan. 16, 1973); Lopez v. White Plains Housing Authority, 355 F. Supp. 1016 (S.D.N.Y. 1972); Dale v. Paintsville Housing Authority, No. 1454 (Sept. 6, 1972), *preliminary injunction issued*, (E.D. Ky. Mar. 21, 1973); Taylor v. Millington, No. C-71-249 (D. Tenn. Apr. 25, 1972); Richard v. Reading Housing Authority, No. 72-2339 (E.D. Pa. Jan. 26, 1972); Neddo v. Housing Authority, 335 F. Supp. 1397 (E.D. Wis. 1971); Gilmore v. Newark Housing Authority, No. 923-71 (D.N.J. Oct. 1, 1971); Battle v. Municipal Housing Authority, 53 F.R.D. 423 (S.D.N.Y. 1971); Nicholas v. Indianapolis Housing Authority, No. IP 71-C-378 (S.D. Ind. Aug. 23, 1971); Tucker v. Norwalk Housing Authority, No. B-251 (D. Conn. May 24, 1971); Meachem v. Hawaii Housing Authority, Civ. No. 70-3126 (D. Hawaii Sept. 22, 1970); Lane v. McGarry, 320 F. Supp. 562 (N.D.N.Y. 1970); Davis v. Toledo Metropolitan Housing Authority, 311 F. Supp. 795 (N.D. Ohio 1970); McDougal v. Tamsberg, 308 F. Supp. 1212 (D.S.C. 1970); Colon v. Tompkins Square Neighborhood, Inc., 289 F. Supp. 104 (S.D.N.Y. 1968); Thomas v. Housing Authority, 282 F. Supp. 575 (E.D. Ark. 1967); Spady v. Mount Vernon Housing Authority, No. 403/99 (N.Y. Ct. App. Mar. 29, 1974); Sumpter v. White Plains Housing Authority, 29 N.Y.2d 420, 278 N.E.2d 892, 328 N.Y.S.2d 649 (1970), *cert. denied*, 406 U.S. 928 (1972).

102. *See, e.g.*, Thorpe v. Housing Authority, 393 U.S. 268 (1969); Brown v.

Some of these principles have been carried over in diluted form to FHA assisted housing.[103]

Constitutional jurisprudence has also significantly improved the bargaining position of minorities. Racially discriminatory public housing site selection, tenant assignment policies, and due process violations with regard to both rent increases and evictions have been

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Housing Authority, 471 F.2d 63 (7th Cir. 1972); Glover v. Housing Authority, 444 F.2d 158 (5th Cir. 1971); Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970), *cert. denied*, 401 U.S. 1003 (1971); Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir.), *cert. denied*, 400 U.S. 853 (1970); Rudder v. United States, 226 F.2d 51 (D.C. Cir. 1955); Tyson v. New York City Housing Authority, 369 F. Supp. 513 (S.D.N.Y. 1974); McElveen v. Pahokee Housing Authority, No. 7101727 (S.D. Fla. June 5, 1973); Jones v. Akron Metropolitan Housing Authority, 6 CLEARINGHOUSE REV. 761 (N.D. Ohio Dec. 18, 1972); Dale v. Paintsville Housing Authority, No. 1454 (Sept. 6, 1972), *preliminary injunction issued*, (E.D. Ky. Mar. 21, 1973); Lewis v. Housing Authority, Ca. No. 67-106 (N.D. Ala. May 26, 1972); Maeberry v. Housing & Redevelopment Authority, 341 F. Supp. 643 (D. Minn. 1971); Ruffin v. Housing Authority, 301 F. Supp. 251 (E.D. La. 1969); Holt v. Richmond Redevelopment & Housing Authority, 266 F. Supp. 397 (E.D. Va. 1966); Appel v. Beyer, 39 Cal. App. 3d 7, 114 Cal. Rptr. 336 (Super. Ct. App. Div. 1974); Milam v. Housing Authority, 129 Ga. App. 188, 199 S.E.2d 107 (1973); Chicago Housing Authority v. Harris, 49 Ill. 2d 274, 275 N.E.2d 353 (1971); Chicago Housing Authority v. Stewart, 43 Ill. 2d 96, 251 N.E.2d 185 (1969); Housing Authority v. Moore, 5 Ill. App. 3d 883, 284 N.E.2d 456 (1972); Chicago Housing Authority v. Daughrity, 132 Ill. App. 2d 652, 270 N.E.2d 613 (1971); Boston Housing Authority v. Hemingway, No. 922389 (Mass. Mar. 5, 1973); Housing Authority v. Isler, 127 N.J. Super. 568, 318 A.2d 432 (App. Div. 1974); Lee v. Housing Authority, 119 N.J. Super. 72, 290 A.2d 160 (Dist. Ct. 1972); Morales v. Golar, 75 Misc. 2d 157, 347 N.Y.S.2d 325 (Sup. Ct. 1973); Newton v. Municipal Housing Authority, 72 Misc. 2d 633, 340 N.Y.S.2d 89 (Sup. Ct. 1973); Vinson v. Greenburgh Housing Authority, 29 App. Div. 2d 338, 288 N.Y.S.2d 159 (Sup. Ct. 1968); Sanders v. Cruise, 10 Misc. 2d 533, 173 N.Y.S.2d 871 (Sup. Ct. 1958); Lancaster Housing Authority v. Gardner, 434 Pa. 467, 255 A.2d 539 (1969); Nashville Housing Authority v. Taylor, 59 Tenn. App. 600, 442 S.W.2d 668 (1968), *cert. denied*, (Tenn. Sup. Ct. June 16, 1969); Housing Authority v. Mosby, 53 Wis. 2d 275, 192 N.W.2d 913 (1972).

103. Geneva Towers Tenant Organization v. Federated Mortgage Investors, No. C-70-104 SAW (N.D. Cal. June 16, 1972); Colon v. Tompkins Square Neighbors, Inc., 294 F. Supp. 134 (S.D.N.Y. 1968). *Compare* Hahn v. Gottlieb, 430 F.2d 1243 (1st Cir. 1970), *with* Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Cir. 1971).

banned.[104] In addition, an assault on restrictive land use practices has begun.[105]

The 1960's also saw a significant reform of antiquated landlord-tenant law. The doctrine of an implied warranty of habitability originated[106] and spread to many jurisdictions,[107] as did a ban on retaliatory eviction.[108] The National Conference of Commissioners

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104. Marshall v. Lynn, 497 F.2d 643 (D.C. Cir. 1973); Wilson v. Lincoln Redevelopment Corp., 488 F.2d 339 (8th Cir. 1973); Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973); Male v. Crossroads Associates, 469 F.2d 616 (2d Cir. 1972); Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970); Anderson v. Denny, 365 F. Supp. 1254 (W.D. Va. 1973); Paulsen v. Candlelight Apartments Co., No. G-345-72 CA (W.D. Mich. Mar. 8, 1973); Mizell v. Avondale Non-Profit Housing, Inc., CA No. 8705 (S.D. Ohio Feb. 7, 1973); United States v. Albany Housing Authority, No. 1007 (D. Ga. Jan. 16, 1973); Keller v. Kate Maremont Foundation, 365 F. Supp. 798 (N.D. Cal. 1972); McClellan v. University Heights, Inc., 338 F. Supp. 374 (D.R.I. 1972); Fletcher v. Grant Villa, Civ. No. A-71-CA-11 (W.D. Tex. ..... 1971); Taylor v. Millington, No. C-71-249 (D. Tenn. Apr. 25, 1971); Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969); Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907, *enforced*, 304 F. Supp. 736 (N.D. Ill. 1969); El Cortez Heights Residents & Property Owners Ass'n v. Tucson Housing Authority, 10 Ariz. App. 132, 457 P.2d 294 (1969); Jenkins v. Allen Temple Development, 127 Ga. App. 61, 192 S.E.2d 714 (1972); Bonner v. Park Lake Housing Dev. Fund Corp., 70 Misc. 2d 325, 333 N.Y.S.2d 277 (Sup. Ct. 1972); Tompkins Square Neighbors, Inc. v. Zaragoza, 69 Misc. 2d 301, 329 N.Y.S.2d 402 (Sup. Ct. 1972).

105. Freilich & Bass, *Exclusionary Zoning: Suggested Litigation Approaches*, 3 URBAN LAW. 344 (1971); Heyman, *The Legal Assaults on Municipal Land Use Regulation*, 5 URBAN LAW. 1 (1973).

106. Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

107. *See, e.g.*, Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); Hinson v. Delis, 26 Cal. App. 3d 62, 102 Cal. Rptr. 661 (Dist. Ct. App. 1972); Guesdenbury v. Patrick, Pov. L. RPTR. § 15,803 (Colo. County Ct. 1972); Gevens v. Gray, 126 Ga. App. 309, 190 S.E.2d 607 (1972); Lemle v. Breeden, 41 Hawaii 426, 428, 462 P.2d 470, 472 (1969); Jack Springs, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Steele v. Latimore, 214 Kan. 329, 521 P.2d 304 (1974); Boston Housing Authority v. Hemingway, ... Mass. ....., 293 N.E.2d 831 (1973); Rome v. Walker, 38 Mich. App. 458, 196 N.W.2d 850 (1972); King v. Moorehead, 495 S.W.2d 65 (Mo. Ct. App. 1973); Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970); Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973); Pines v. Perssion, 14 Wis 2d 590, 111 N.W.2d 409 (1961).

108. Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969); *see, e.g.*, Bowles v. Blue Lake Dev. Corp., Pov. L. RPTR. § 12,920 (S.D. Fla. 1971); McQueen v. Drucker, 317 F. Supp. 1122 (D. Mass. 1970), *aff'd*, 438 F.2d 781 (1st Cir. 1971); Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969); Schweiger v. Superior Court, 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970); Aweeka v. Bonds, 20 Cal. App. 3d 278, 97

on Uniform State Laws has incorporated many of these new ideas into the Uniform Residential Landlord-Tenant Act, adopted by nine states and pending in 20 more.[109]

The "New Federalist" programs of housing allowances and special revenue sharing or block grants threaten to curtail much of the development in statutory and administrative rights or possibly even to return to pre-1960 status.[110] The housing allowance system is intended to replace public housing and FHA assisted housing. If this occurs, administrative and case law that has established tenants' rights in those programs should be carried over into a federally assisted housing allowance program.[111] Unfortunately, it is safe to predict that these rights will have to be re-established by litigation on a case-by-case basis, which is wasteful of time, money and energy.

The Housing and Community Development Act of 1974 has replaced Urban Renewal, the Model Cities Program, and related categorical urban development programs with a consolidated block grant approach. The case law that established neighborhood residents'

Cal. Rptr. 650 (Dist. Ct. App. 1971); Silberg v. Lipscomb, 117 N.J. Super. 491, 285 A.2d 86 (Dist. Ct. 1971); E. & E. Newman, Inc. v. Hallock, 116 N.J. Super. 220, 281 A.2d 544 (App. Div. 1971); Engler v. Capital Management Corp., 112 N.J. Super. 445, 271 A.2d 615 (Ch. Div. 1970); Alexander Hamilton Savings & Loan Ass'n v. Whaley, 107 N.J. Super. 89, 257 A.2d 7 (Dist. Ct. 1969); Dickhut v. Norton, 45 Wis. 2d 389, 173 N.W.2d 297 (1970).

A number of states have recognized the defense through statutory enactment. CAL. CIV. CODE § 1942.5 (Deering 1972); CONN. GEN. STAT. REV. § 52-540a (1973); DEL. CODE ANN. tit. 25, § 5516 (Noncum. Supp. 1972); HAWAII REV. STAT. § 521-74 (Supp. 1973); ILL. ANN. STAT. ch. 80, § 71 (Smith-Hurd 1966); ME. REV. STAT. ANN. tit. 14, §§ 6001, 6002 (Supp. 1974); MD. ANN. CODE art. 21, § 8-213.1 (Supp. 1973); MASS. ANN. LAWS ch. 186, § 18 (Supp. 1973); MICH. STAT. ANN. § 27A.5720(2) (Supp. 1974); MINN. STAT. ANN. § 566.03 (Cum. Supp. 1974); N.J. STAT. ANN. § 2A:42-10.10 (Supp. 1974); N.Y. UNCONSOL. LAWS §§ 8590, 8609 (McKinney 1974); PA. STAT. ANN. tit. 35, § 1700-1 (Supp. 1974); R.I. GEN. LAWS ANN. § 34-20-10 (1969). The legislatures of Maine, Massachusetts, New Jersey, Michigan and Rhode Island protect tenants from eviction if they have organized or become a member of a tenants' union or similar organization.

109. NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS, UNIFORM RESIDENTIAL LANDLORD-TENANT ACT (August, 1972).

110. *See generally* Susskind, *supra* note 27.

111. Meininger, Federal Housing Allowance Lease, (National Housing and Economic Development Law Project, University of California, Berkeley, 1973); *see* Lavoie v. Bigwood, 457 F.2d 7 (1st Cir. 1972); McQueen v. Drucker, 317 F. Supp. 1122 (D. Mass. 1970), *aff'd*, 438 F.2d 781 (1st Cir. 1971), for strong statements regarding the appropriateness of federal supervision when federal funds are subsidizing the existing stock.

rights to participate in the design of Urban Renewal, Neighborhood Development Programs, and Model Cities programs could evaporate with the abandonment of the legislation and regulations upon which they are based. Some judicial decisions are clearly no longer applicable as the specific provisions upon which they were based no longer exist. The status of other case law built upon more general principles or upon legislative provisions that have close analogues in the new legislation is less clear. In the coming months the courts will undoubtedly be confronted with the difficult task of re-interpreting this body of law.

As important as the statutes are the detailed implementing regulations have provided in countless conflicts the basis for the legal protection of low-income and minority rights. With the exception of regulations implementing the FHA subsidy programs, which are preserved in modified form by the 1974 Act, the regulations developed under the categorical system in urban development have ceased to exist. While it is unclear how specific and detailed the regulations under the new Act will be, it is certain that they will not impose standards with the same clarity and detail as the old categorical programs. The extent to which courts will attempt to protect program beneficiaries by extending constitutional principles, by implying entitlements from the general language of the Act, or by carrying over past precedent by analogy, is as yet unknown.

Operation of the Uniform Relocation Act,[112] although not *directly* affected, is in practice made more difficult. Federally-assisted housing is an important relocation resource. The housing programs proposed to be replaced by a housing allowance system contain special provisions favoring admission of displacees. Curtailing relocation resources will require implementation of the "houser of last resort"[113] provisions of the Act since even significantly increased relocation payments cannot solve the problem of the lack of decent, safe and sanitary units at rents and prices displacees can afford.

A design for a low-income housing system must strengthen the bargaining position of the poor to allow negotiation for habitable

112. 42 U.S.C. §§ 4601-55 (1970). We assume displacement under special revenue sharing would be federal action and, therefore, covered by the National Environmental Policy Act, 42 U.S.C. §§ 4321-47 (1970). In its Annual Report to the President HUD stated: "The requirements of the Uniform Relocation Act will continue to apply to recipients of HUD financial assistance under [the Better Communities Act]." DEP'T OF HOUSING AND URBAN DEVELOPMENT, THIRD ANNUAL REPORT I-9 (1973).

113. *See* note 140 *infra.*

housing at a price they can afford and to permit control over programs that affect their environment. The "New Federalist" proposals do the opposite.[114]

VI. Conclusion

In designing a low-income housing system, the goals of increased bargaining power and control of the program must be met, and political, social and legal discrimination must be minimized. We assume a priori that any insufficiently funded program will fail.[115]

Two major objectives must be addressed in any design: (1) when possible, potentially conflicting goals must be avoided in the design, and (2) conflicting goals should be resolved in favor of strengthening the low-income individual's position. An example of such a conflict is the public housing legislation. The goals of "economy" and "efficiency"[116] are bound to conflict with the goals of "a decent safe and sanitary dwelling within the financial reach of families of low income"[117] and "the financing of tenant programs and services."[118] This conflict has generally been resolved against the low-income individual, resulting in deferred maintenance,[119] discrimination against the lowest income group,[120] and failure to fund tenant-oriented programs and services.[121] Similar conflicting goals in the Model Cities Act caused serious problems. While the Act contained language requiring that a program "make marked progress in reducing underemployment and enforced idleness"[122] and "provide educational services necessary to serve the poor and disadvantaged,"[123]

114. Although the categorical programs failed to meet the housing needs of the poor, at least they enabled the poor to enforce what rights they had.

115. Although this is essential in designing a low-income housing system, it is unlikely that such funding will be forthcoming for the reasons stated above. *See* Section II of this Article *supra.*

116. 42 U.S.C. § 1402(1) (1970).

117. *Id.* § 1402(1).

118. *Id.* § 1402(6).

119. HUD Circular HM § 7475.12, *Subsidies for Operations: Low Rent Public Housing Program* (Nov. 28, 1972).

120. HUD Circular, *supra* note 70; Fletcher v. Housing Authority, 491 F.2d 793 (6th Cir. 1974), *vacated and remanded*, 43 U.S.L.W. 3188 (Oct. 15, 1974); *cf.* Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. II, § 201, subsection 6(c)(4)(A), 88 Stat. 633.

121. HUD Circular, *supra* note 119.

122. 42 U.S.C. § 3303(a)(2) (1970).

123. *Id.*

it also contained strong labor standards that effectively protected organized labor from employing low-skilled, non-union slum residents.[124] It also contained an anti-busing provision restricting "necessary educational services."[125] Similarly the Urban Renewal legislation authorizes the local public agency to be the agent of site clearance and at the same time charges it with protecting the interest of site residents.[126]

The passage of the 1974 Act by no means closes the debate concerning appropriate performance standards and criteria for national housing and community development policy or the appropriate degree of federal control over local programs within the federal system. The very fact that the legislation took so long to be enacted and embodies so many diverse elements of the three approaches to the housing problem[127] assures that it will be the subject of continued controversy and amendment. The strength of political forces that would like to see the Act clarified to direct its aid explicitly at urban poverty problems with greater federal performance standards and controls is indicated by Senate passage of a bill calling for higher degrees of specificity and control.[128] If, as we predict, a great deal of community development money is squandered, pressure for tighter definitions and control will mount. Moreover, the controversies concerning design of the entire housing allowance program remain unresolved. While many alternative legislative models can provide a workable design for housing and community development assistance, any such legislation should include at least the following provisions:

(1) A Declaration of Policy that clearly states that the legislation is to benefit the poor and a provision directing that policy conflicts be resolved in favor of those "poor person"-oriented goals.[129]

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124. *Id.* § 3310.

125. *Id.* § 3303(d).

126. 42 U.S.C. § 1455 (1970).

127. *See* text at notes 28-31 *supra.*

128. S. 3066, 93d Cong., 2d Sess. (1974).

129. For example, courts have placed great weight upon the strong declaration of purpose in the National Environment Policy Act, 42 U.S.C. § 4331(a) (1970):

> The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man,

(2) A provision preventing discrimination based on race,[130] source of income (*e.g.*, welfare families),[131] personal factors unrelated to tenant status,[132] and life style.[133]

(3) Procedural due process protections.[134]

(4) A requirement of full access to information concerning the program, its administration, and the low-income individual's status thereunder.[135]

(5) Requirements that the federal, state or local agency charged with implementing the program include low-income individuals and their representatives in the decision-making process on a regular basis[136] and that funds be provided to allow such groups to obtain

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declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, *to use all practicable means and measures*, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Id (emphasis added). For an example of aggressive court reliance on this policy declaration see Calvert Cliffs Coordinating Comm. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971).

130. Foley, *supra* note 85, at 99, summarizes the evidence that demonstrates minorities pay more than whites for comparable housing.

131. Regulations like the HUD Circular *supra* note 70, regarding economic mix, indicate the need for specific provisions against such discrimination. Such a provision was a part of the public housing statute for 20 years. Housing Act of 1949, Pub. L. No. 81-171, § 301, 63 Stat. 422. The Housing Act of 1949, § 301, amended section 15 of the United States Housing Act of 1937 by adding a new paragraph 8 that provided: "In the selection of tenants (i) the public housing agency shall not discriminate against families, otherwise eligible for admission to such housing, because their incomes are derived in whole or in part from public assistance . . . ." This provision was repealed by section 205 of the Housing Act of 1961, Pub. L. No. 87-70, 75 Stat. 149.

132. *See* cases cited notes 101 & 102 *supra*.

133. *See* 42 U.S.C. § 1401 (1970), which declares the policy of alleviating conditions injurious to the "morals of the citizens of the nation."

134. *See, e.g.*, HUD Circular RHM § 7465.8 (Feb. 22, 1971) (regulations regarding public housing lease procedures); HUD Circular RHM § 7465.9 (Feb. 22, 1971) (eviction procedures).

135. The information provisions in the Housing and Urban Development Act of 1969 with respect to admissions are steps in the right direction. *See* 42 U.S.C. § 1410(g)(2) (1970). *See also* Freedom of Disclosure Act, 5 U.S.C. § 552 (1970); Davis, *The Information Act: A Preliminary Analysis*, 34 U. CHI. L. REV. 761 (1967).

136. *See* 42 U.S.C. § 3303(a)(2) (1970), which provides with respect to Model Cities: "A . . . program is eligible for assistance . . . only if . . . the program is of sufficient magnitude to . . . provide . . . widespread citizen par-

any necessary professional expertise and advice.[137]

(6) Administrative procedures assuring orderly and fair resolution

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ticipation in the program."

Model Cities CDA Letter No. 3, MCGR 3100.3 (Nov. 30, 1967) contains the following policy statement and performance standards:

2. *POLICY STATEMENT ON CITIZEN PARTICIPATION.* The implementation of this statutory provision requires: (1) the constructive involvement of citizens in the model neighborhood area and the city as a whole in planning and carrying out the program, and (2) the means of introducing the views of area residents in policy making should be developed and opportunities should be afforded area residents to participate actively in planning and carrying out the demonstration.

This requirement grows out of the conviction that improving the quality of life of the residents of the model neighborhood can be accomplished only by the affirmative action of the people themselves. This requires a means of building self-esteem, competence and a desire to participate effectively in solving the social and physical problems of their community.

HUD will not determine the ideal organizational pattern designed to accomplish this objective. It will, however, outline performance standards for citizen participation which must be achieved by each City Demonstration Agency. It is expected that patterns will vary from city to city, reflecting local circumstances. The city government, as the principal instrument for carrying out the Model Cities program, will be responsible for insuring that whatever organization is adopted provides the means for the model neighborhood's citizens to participate and be fully involved in policy-making, planning and the execution of all program elements. For a plan to be approved, it must provide for such an organization and spell out precisely how the participation and involvement of the residents is to be carried out throughout the life of the Model Cities program.

3. *PERFORMANCE STANDARDS FOR CITIZEN PARTICIPATION IN MODEL NEIGHBORHOOD PROGRAMS.* In order to provide the citizen participation called for in the Act, there must be some form of organizational structure, existing or newly established, which embodies neighborhood residents in the process of policy and program planning and program implementation and operation. The leadership of that structure must consist of persons whom neighborhood residents accept as representing their interests.

The neighborhood citizen participation structure must have clear and direct *access* to the decision making process of the City Demonstration Agency so that neighborhood views can influence policy, planning and program decisions. That structure must have sufficient information about any matter to be decided for a sufficient period of time so that it can initiate proposals and react knowledgeably to proposals from others. In order to initiate and react intelligently in program matters, the structure must have the technical capacity for making knowledgeable decisions. This will mean that some form of professional technical assistance, in a manner agreed to by neighborhood residents shall be provided.

Where financial problems are a barrier to effective participation, financial assistance (e.g., baby sitting fees, reimbursement for transportation, compensation for serving on Boards or Committees) should be extended to neighborhood residents to assure their opportunity to participate.

Neighborhood residents will be employed in planning activities and in the execution of the program, with a view toward development of new career lines, including appropriate training and modification of local civil service regulations for entry and promotion.

137. Funds for independent technical assistance to neighborhood groups have

of grievances on the local, state and federal levels.[138]

(7) Mandatory provisions assuring the use of funds for low-income households and for the goals enumerated in the Declaration of Policy.

(8) A provision holding the federal agency liable for any acts of local public agencies that it funds.[139]

(9) Provisions for direct federal intervention when a locality with a demonstrated need fails to provide necessary low-income housing and development.[140]

(10) Provisions prohibiting the substitution of federal housing and development assistance for other forms of welfare assistance or

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been provided in both the Model Cities program, pursuant to 42 U.S.C. § 3303(a)(2) (1970), and in Urban Renewal pursuant to administrative regulations requiring neighborhood Project Area Communities, HUD Circular RHA § 7217.1, ch. 5, § 1 (Feb. 1969).

138. Grievance procedures have been developed with respect to eviction from public housing. HUD Circular, *supra* note 134. Regulations governing HUD's relocation grievance procedure have been published in 38 Fed. Reg. 5168, 11918, 25172 (1973).

139. Ample case law exists upon which to base such a provision. In Garrett v. City of Hamtramck, 335 F. Supp. 16 (E.D. Mich. 1971), the court held:

> Any discussion of Hamtramck's duties and responsibilities cannot be segregated from a realization that the federal government's involvement in the various Hamtramck programs included the approval and funding necessary to carry out these programs.
>
> . . .
>
> Once involved, the Department of Housing and Urban Development had the same duty as Hamtramck, under law, to consider the total needs of the Community, including, but not limited to, problems of slums, blight and the special needs of minority groups therein.

Id. at 25. Similarly, in Housing Authority v. United States Housing Authority, 468 F.2d 1 (8th Cir. 1972), *cert. denied*, 410 U.S. 927 (1973), the court of appeals concluded:

> In interpreting Section 1401 [Housing Act of 1937, 42 U.S.C. § 1401 (1970)], we find it significant that . . . (2) although "administration" is not confined to budgetary acts and may necessarily be related to policy decisions, the ultimate responsibility for policy lies with the National Authority [HUD] to achieve uniformity in fulfilling the objectives of the Act, and (3) where HUD determines that local authorities have failed to act or have acted in an inimical way to the objectives of the Act, that the ultimate authority is vested in HUD to set overall policy.

468 F.2d at 7. And in Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971), the court stated that because of federal acquiescence in the Chicago Housing Authority's racially discriminatory policies "we are unable to avoid the conclusion that the Secretary's past actions constituted racially discriminatory conduct in their own right. The fact that the Secretary's exercise of his powers may have more often reflected CHA's own racially discriminatory choices than it did any ill will on HUD's part, does not alter the question now before us." *Id.* at 739.

140. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4623(b), 4626, 4635 (1970), provides for housing as

for local government funds historically committed to housing programs.[141]

These provisions could be enacted without the overly detailed regulations that have made the categorical programs so cumbersome. Together these provisions would form a federal framework allowing for local innovation in designing housing and urban development programs—but not at the expense of the poor and minorities.

It is unfortunate that the lessons of the past have been ignored. The housing poor exist in a climate of social, political and economic weakness. Strong federal assistance and clear legal entitlements, vigorously enforced, are necessary to enhance the position of the housing poor. Present national housing policy favors less rather than more federal intervention, fewer rather than more entitlements, and weaker rather than stronger administrative protection of the housing poor.

The proposed design for a low-income housing and development system takes into account the economic and the equally important non-economic relationships necessary to give the poor enough bargaining power to obtain their goals. Without such provisions, any low-income housing and development system is doomed to failure.

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a "last resort." Specifically, section 4626 provides that, when comparable replacement housing is not available and "the head of the Federal agency determines that such housing cannot otherwise be made available he may take such actions as is [*sic*] necessary or appropriate to provide such housing by use of funds authorized for such project." Section 4635 enables a displacing agency to make loans to nonprofit, limited dividend, or cooperative organizations to cover planning and other reasonable preconstruction expenses necessary to develop replacement housing. Section 4623(b) permits federal agencies to ensure the mortgage on a displacee's replacement home, despite the fact that the displacee lacks some or all of the personal characteristics normally required of applicants for such mortgage insurance.

141. 42 U.S.C. § 3305(d) (1970), provides, with respect to the Model Cities Program, that

> grant funds shall be made available to assist *new and additional* projects and activities not assisted under a Federal grant-in-aid program. . . . Such grant funds, however, shall not be used—(1) for the general administration of local governments; or (2) to replace non-Federal contributions in any federally aided project or activity included in an approved comprehensive city demonstration program, if prior to the filing of an application for assistance under section 3304, an agreement has been entered into with any Federal agency obligating such non-Federal contributions with respect to such project or activity.

(Emphasis added.)