University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1993

Distressed Public Housing: Where Do We Go from Here?

Michael H. Schill

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles

Part of the [Law Commons](#)

Recommended Citation

Michael H. Schill, "Distressed Public Housing: Where Do We Go from Here?," 60 University of Chicago Law Review 497 (1993).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Distressed Public Housing: Where Do We Go From Here?

Michael H. Schill†

Public housing increasingly commands public attention. Scarcely a day goes by without reports in the media about the physical, managerial, and social problems that plague some publicly-owned housing developments. Accounts of appalling apartment conditions,¹ corrupt administrators,² and innocent bystanders killed by gang warfare³ are commonplace. Negative images of public housing have even found their way into popular culture.

† Professor of Law and Real Estate, University of Pennsylvania Law School and Wharton School. I would like to thank Vicki Been and Bob Ellickson for providing helpful comments on an earlier draft and the Institute for Law and Economics of the University of Pennsylvania for financial assistance. An earlier draft of this article was presented at the Institute for Law and Economics Roundtable on Future Directions in Housing Policy.

¹ See, for example, Zachare Ball and Bill McGraw, *U.S. Threatens to Sue City Over Public Housing Woes*, Detroit Free Press B4 (Oct 30, 1992) (one-third of Detroit's public housing units are vacant and boarded up); Scott Harper, *Auditors Give An "F" For Up-keep; Say City Flunking At Allen Parkway Village*, Houston Post A27 (Dec 18, 1992) (none of the units inspected at Houston public housing development met federal standards); Patrick T. Reardon, *CHA Reeling From Years of Maintenance Neglect*, Chi Trib B1 (Nov 2, 1992) (thousands of Chicago public housing units are unlivable).

² See, for example, Chris Collins, *Public Housing Executives Exposed; Audits Cite Managers For Misusing Assets*, Houston Post A4 (Nov 30, 1992) (audits disclose that top managers of PHAs misappropriated or misused public funds); William Raspberry, *Scandal In Public Housing*, Wash Post A11 (Sep 30, 1991) (report describing corruption at PHAs); Dale Russakoff, *U.S. Seizes Philadelphia Public Housing Authority: HUD Acts After Political Corruption Charge*, Wash Post A3 (May 20, 1992) (patronage at the Philadelphia Housing Authority has led to waste of subsidies).

³ See, for example, Kevin Johnson, *For Kids, Nowhere To Hide: Gunfire Part of Life in Chicago Projects*, U.S.A. Today A3 (Oct 15, 1992) (children at public housing project killed as a result of gang violence); Robert D. McFadden, *Brooklyn Principal Shot To Death While Looking for Missing Pupil*, NY Times A1 (Dec 18, 1992) (principal shot in crossfire at a public housing project in Red Hook, Brooklyn); Kevin Moran, *Boy Slain in Galveston Gang Gunfire; 2nd Teen Wounded in Latest of Yearlong String of Killings*, Houston Chronicle A1 (Dec 18, 1991) (youth killed in gang-related drive-by shooting).

Bestsellers have recounted the hardships of life in public housing,⁴ while films depict life in public housing as a horror story.⁵

In 1989, Congress established the National Commission on Severely Distressed Public Housing and charged it with devising a National Action Plan to eradicate severely distressed public housing by the end of the century.⁶ The Commission's report, released in 1992, recommends several policies to deal with distressed public housing including an ambitious and potentially expensive plan to renovate physically deteriorated projects.⁷ Legislation passed in the closing days of the 102nd Congress implemented some of the proposals, including a program to fund renovation of "obsolete" developments.⁸

The Commission seems to have assumed that distressed public housing should be preserved regardless of cost. Absent from the Commission's report is any analysis of whether investing limited public resources in distressed public housing developments is the most desirable means to help low income households obtain "a decent home and a suitable living environment."⁹ In this Article, I conclude that rather than spending scarce resources to refurbish severely distressed public housing, Congress should instead make it easier for local authorities to demolish this housing and replace it with demand-oriented subsidies such as housing vouchers. In most housing markets, demand-oriented subsidies would enable households to obtain decent housing in environments more desirable than public housing.

The federal government should take steps, however, to prevent the vast majority of public housing that is now viable from

⁴ See, for example, Alex Kotlowitz, *There Are No Children Here: The Story of Two Boys Growing Up In the Other America* (Doubleday, 1991) (describing lives of two children in Chicago's Henry Horner homes); Nicholas Lemann, *The Promised Land: The Great Black Migration and How It Changed America* 225-31, 295-97 (Knopf, 1991) (describing family living in Chicago's Robert Taylor Homes).

⁵ See *Candyman* (TriStar Pictures, 1992). For less grisly, but no less disturbing, depictions, see *Menace II Society* (New Line Cinema, 1993); *New Jack City* (Warner Bros., 1991); *Straight Out of Brooklyn* (Samuel Goldwyn Co., 1991).

⁶ See Department of Housing and Urban Development Reform Act of 1989, Pub L No 101-235, §§ 501-07, 103 Stat 1987, 2048-52 (1989).

⁷ See National Commission on Severely Distressed Public Housing, *The Final Report* 9-31 (GPO, 1992) ("Commission Report") (summarizing the National Action Plan).

⁸ See Housing and Community Development Act of 1992, Pub L No 102-550, §§ 111, 120, 106 Stat 3672, 3686, 3701 (1992), codified at 42 USCA §§ 1437c, 1437v (West, 1993 Supp). See text accompanying notes 161-62.

⁹ Housing Act of 1949, Pub L No 81-171, § 2, 63 Stat 413 (1949) (proclaiming the national housing goal to be "a decent home and a suitable living environment for every American family").

becoming severely distressed. Cost-effective repairs should be funded to forestall future deterioration. Yet maintaining the physical plants of most public housing is the easiest part of the task. Steps must also be taken to make public housing developments safe and healthy living environments. Among the most important initiatives that government can undertake are policies that reduce the concentration and isolation of very poor people in public housing.

I. THE PUBLIC HOUSING PROGRAM

Under the Housing Act of 1937,¹⁰ local public housing authorities ("PHAs"),¹¹ rather than the federal government, build, own, and operate housing for low and moderate income households.¹² Once a municipality decides to participate in the program, it establishes a PHA, which executes an Annual Contributions Contract with the federal government.¹³ Under the contract, the PHA funds the purchase of land and the capital costs of the housing by issuing long term bonds, typically with a forty-year maturity.¹⁴ The federal government agrees to make all interest payments on the bonds, ef-

¹⁰ Pub L No 75-412, 50 Stat 888 (1937), codified as amended at 42 USC §§ 1437 et seq (1992).

¹¹ A public housing authority is a municipal corporation created pursuant to state enabling legislation. Typically, a PHA is governed by a board of commissioners appointed by the mayor and city council of the jurisdiction in which it is located. Currently there are nearly 3,400 PHAs in the United States. See Charles E. Daye et al, *Housing and Community Development: Cases and Materials* 132-35 (2d ed 1989); John P. Vitella and Wayne H. Sherwood, *Report #92-2: Trends in Public Housing Budgets and Finances 1975-1990* 1 (Council of Large Public Housing Authorities, Oct 1992) (on file with U Chi L Rev).

¹² Congress chose PHAs as the ownership entities because earlier efforts by the federal government itself to acquire land for subsidized housing had been thwarted by federal courts on the ground that housing was not a public purpose under the Takings Clause. See *United States v Certain Lands in Louisville*, 78 F2d 684, 687 (6th Cir 1935) (federal government cannot use power of eminent domain to assemble sites for public housing because the provision of housing to low-salaried workers and residents of slum districts is not a public purpose). State courts had already decided that states and localities could constitutionally use their powers of eminent domain to provide low-cost housing. See, for example, *New York City Housing Authority v Muller*, 270 NY 333, 1 NE2d 153, 156 (1936) (upholding the creation of a housing authority because the legislation aimed to protect and safeguard the entire public from the menace of the slums). Specially formed authorities were used instead of general purpose municipal governments, so as to insulate the public housing program from politics and to avoid statutory borrowing limits. See Elizabeth Wood, *The Beautiful Beginnings The Failure To Learn: Fifty Years of Public Housing in America* 12-13 (National Center for Housing Management, 1982).

¹³ The contract's terms and conditions are entered on a standard form. See U.S. Dep't of Housing and Urban Development ("HUD"), Annual Contributions Contract (Nov 1969) ("Contributions Contract") (on file with U Chi L Rev).

¹⁴ In some cases, maturity may be extended to 60 years. *Id* at Part One, 4.

fectively underwriting the full capital cost of the development.¹⁵ The PHA, in turn, promises to operate the public housing according to federal statutes and regulations.¹⁶ The municipality in which the project is built must sign a Cooperation Agreement granting the project an exemption from real property taxes.¹⁷

Due to the outbreak of World War II, few housing units were built under the 1937 Act.¹⁸ After the war, Congress passed the Housing Act of 1949,¹⁹ providing federal subsidies for slum clearance and urban redevelopment.²⁰ Though the Act revived the public housing program and authorized the construction of an additional 810,000 housing units, the apartments were not all constructed until 1972.²¹ At that time, the federal government changed directions in housing policy and began to subsidize private developers of low-income housing.²²

In recent years, the construction of public housing units has slowed to a trickle.²³ Presently, there are 1.4 million units of public

¹⁵ Under the 1937 Act, the federal government subsidized public housing in two ways. The maximum value of annual contributions was the going federal interest rate at the time the Annual Contributions Agreement was entered into, plus one percent of the development or acquisition cost of the housing. See Pub L No 75-412, § 10(b), 50 Stat at 892. Alternatively, federal capital grants would cover 25% of the cost of the dwellings. See id, § 11(a), 50 Stat at 893. Since the mid-1980s, the federal government has given loans or grants directly to PHAs rather than require them to issue bonds. See 42 USC §§ 1437b(a), 1437c(a)(2) (Supp 1992).

¹⁶ Contributions Contract at Part One, 3 (cited in note 13).

¹⁷ Id.

¹⁸ From 1937 to 1948, 117,000 units of public housing were constructed. See James Russell Prescott, *Economic Aspects of Public Housing* 24 (Sage, 1974).

¹⁹ Pub L No 81-171, 63 Stat 413 (1949). In 1974, Congress barred new loans or grants under this program after January 1, 1975. Pub L No 93-383, § 116(a), (b), (f), (g), 88 Stat 652, 653 (1974).

²⁰ The slum clearance program became known as the Urban Renewal Program. See generally Martin Anderson, *The Federal Bulldozer: A Critical Analysis of Urban Renewal 1949-1962* (M.I.T., 1964); James Q. Wilson, ed, *Urban Renewal: The Record and the Controversy* (M.I.T., 1966); Marc A. Weiss, *The Origins and Legacy of Urban Renewal*, in J. Paul Mitchell, ed, *Federal Housing Policies and Programs Past and Present* 253 (Center for Urban Policy Research, 1985).

²¹ See J. Paul Mitchell, *Historical Overview of Direct Federal Housing Assistance*, in Mitchell, ed, *Federal Housing Policies* at 187, 195 (cited in note 20).

²² In early 1973, President Nixon imposed a moratorium on all new commitments for subsidized housing programs. See R. Allen Hays, *The Federal Government and Urban Housing: Ideology and Change in Public Policy* 133-34 (S.U.N.Y., 1985). In 1974, the federal government enacted legislation establishing what came to be known as the "Section 8 Housing Assistance Program," which subsidized developers of new and substantially rehabilitated housing as well as tenants living in existing housing. See Housing and Community Development Act of 1974, Pub L No 93-383, § 201(a), 88 Stat 633, 662.

²³ The average annual number of public housing starts from 1980 to 1984 was 32,147; from 1985 to 1989, the average was 7,149. See Michael A. Stegman, *The Limits of Privatization*, in *More Housing, More Fairly: Report of the Twentieth Century Fund Task Force on*

housing in over 10,000 developments.²⁴ Although most PHAs have relatively small stocks of public housing, the largest two percent of authorities own almost half of all units.²⁵ Close to half of all units are located in family projects containing over two hundred dwellings.²⁶ Most of the problems commonly associated with severely distressed public housing are concentrated in these family projects.

II. DISTRESSED PUBLIC HOUSING

Although most public housing developments in the United States provide decent and safe homes for their residents,²⁷ a relatively small but growing proportion of projects exhibit distress.²⁸ This distress may be a result of physical deterioration, social problems, or a combination of the two phenomena. In this Section, I examine the extent and causes of public housing distress.

A. Physical Distress

A recent study prepared for the Commission on Severely Distressed Public Housing estimates that the total cost to modernize public housing ranges from \$14.5 billion to \$29.2 billion.²⁹ The

Affordable Housing 23, 26 (Twentieth Century Fund, 1991). See also Cushing N. Dolbeare, *At A Snail's Pace FY1993: A Source Book on the Proposed 1993 Budget and How It Compares to Prior Years* (Low Income Housing Information Service, 1992) (Table 3 shows that the incremental number of conventional public housing units reserved fell from 31,834 in 1980 to 10,000 in 1991.).

²⁴ See Vitella and Sherwood, *Trends in Public Housing* at 1 (cited in note 11).

²⁵ Over 86% of all PHAs are small, owning fewer than 500 units of housing. Nevertheless, the 2% of all PHAs with over 2,500 units own close to half the nation's stock of public housing. See National Association of Housing and Redevelopment Officials, *The Many Faces of Public Housing* 28 (NAHRO, 1990).

²⁶ Council of Large Public Housing Authorities, *Public Housing Today* 16 (CLPHA, 1988) (citing data from 1982). About one-quarter of all public housing units are located in developments primarily occupied by elderly households. *Id.*

²⁷ See Commission Report at 2 (cited in note 7) (6% of public housing stock is severely distressed); Ronald Jones, David Kaminsky, and Michael Roanhause, *Problems Affecting Low-Rent Public Housing Projects* 2-3 (HUD, 1979) (seven hundred public housing projects, containing 15% of the nation's public housing stock, can be characterized as "troubled"). Note that in the contexts of these reports, "severely distressed" and "troubled" are defined differently. Thus, comparing the dates of these reports and the percentages reported does not indicate a decrease in problems over time.

²⁸ "Distress," as used in this Article, departs from the definition of "severely distressed public housing" contained in the report of the National Commission on Severely Distressed Housing. See Commission Report at B-1 (cited in note 7).

²⁹ See ICF, Inc., *The Modernization Needs of Severely Distressed Public Housing*, in *Compilation of Unedited Technical Working Drafts Prepared For the National Commission on Severely Distressed Public Housing As of June 1, 1992* 3 (ICF, 1992) ("Compilation") (on file with U Chi L Rev). The authors of the ICF report used data from a number of sources in arriving at their estimates. The single most important source of data was an

lower estimate represents the cost of bringing all existing building systems into working order; the higher figure reflects the additional cost that PHAs would incur if they undertook lead paint abatement, reconfiguration to assure future viability and full project modernization. Approximately two-thirds of all public housing units in the United States require physical renovations that cost over \$10,000.³⁰ Furthermore, while only 5.5 percent of the public housing stock requires work that would exceed \$40,000 per unit, renovating these units would consume over 18 percent of a fully funded modernization program.³¹

The rather large backlog of modernization needs is partly due to the financial structure of the public housing program created by the 1937 Act. The 1937 Act made no provision for maintenance or modernization. The federal government financed the construction of the housing, but operating expenses such as maintenance were, for the most part, to be covered by rents charged to tenants.³² In addition, the Act forbade the type of prudent planning for eventual modernization that a private real estate developer would undertake since PHAs were not permitted to accumulate reserves in excess of one-half of one year's rent roll. Rent surpluses exceeding this amount were offset against federal contributions.³³

The replacement reserve limits were not the federal government's only contribution to the high current cost of renovation. The 1937 Act was vehemently opposed by business interests such as the United States Chamber of Commerce, the National Association of Real Estate Boards, and the United States Savings and Loan League. These groups feared public housing would compete with private landlords and home builders for customers.³⁴ Although they were unable to defeat the public housing program, their influence permeates the legislation. The 1937 Act placed relatively low ceilings on construction expenditures to ensure that the units would not be desirable enough to compete with private-sector

inventory of modernization needs compiled in 1985 by Abt Associates. Id at 2, citing Dixon Bain et al, *Study of the Modernization Needs of the Public and Indian Housing Stock* (Abt Associates, 1988).

³⁰ See ICF, *Modernization Needs* at 8 (cited in note 29).

³¹ Id.

³² Nevertheless, the drafters of the 1937 Act probably thought that the annual federal contributions would include some funds to help pay for operating expenses. See note 81.

³³ See Eugene J. Meehan, *The Quality of Federal Policymaking: Programmed Failure in Public Housing* 28 (Missouri, 1979).

³⁴ See Leonard Freedman, *Public Housing: The Politics of Poverty* 58-62 (Holt, Rinehart & Winston, 1969); Timothy L. McDonnell, *The Wagner Housing Act: A Case Study of the Legislative Process* 60-62 (Loyola, 1957).

housing.³⁵ In addition, Congress required that projects built under the Act “not be of elaborate or expensive design or materials, and [that] economy be promoted both in construction and administration.”³⁶

Although some commentators have indicated that the first housing projects built under the Act were of fairly good quality,³⁷ contemporaneous articles indicate that the quality limitations explicit in the Act manifested themselves in the finished buildings. A 1949 article noted that although public housing provided better accommodations than slum housing, the program’s “belief in ‘minimum charity’ is translated into accommodations that are often pared to the bone in room size, equipment, noise insulation, cupboards, and floor covering. A government study reported that many units required about eighty-five dollars to bring the dwellings up to tenants’ standards.”³⁸ By the late 1950s, housing experts agreed that mistakes were being made in both the quality and design of public housing.³⁹

Economy frequently led PHAs to use nondurable materials in the buildings’ structures and internal systems.⁴⁰ Many public housing developments lack sufficient insulation, have defective roofs,

³⁵ Pub L No 75-412, § 15(5), 50 Stat 888, 896 (1937). The Senate report accompanying the housing bill made clear that public housing should not compete with decent private sector housing: “[W]hatever housing is assisted by this bill will compete only with the sordid conditions of urban and rural slums, and not with any private enterprise that is supplying decent, safe and sanitary homes for families of moderate needs.” Creating a United States Housing Authority, S Rep No 933, 75th Cong, 1st Sess 15 (1937). The statute’s income ceilings also were designed to ensure that the housing would only be available to low income households. See text accompanying notes 82, 85.

³⁶ Pub L No 75-412, § 15(5), 50 Stat at 896.

³⁷ See Lawrence M. Friedman, *Government and Slum Housing: a Century of Frustration* 119-20 (Rand McNally, 1968) (“In the cities, low-rise projects, though never architectural masterpieces, do blend in with their surroundings.”); Gwendolyn Wright, *Building The Dream: A Social History of Housing in America* 230 (1981) (“Much early public housing testified to both economy and innovation. . . . There was often a high level of design, technology, and ‘livability,’ as public housing gave planners and architects an opportunity to experiment.”).

³⁸ John P. Dean, *The Myths of Housing Reform*, 14 Am Soc Rev 281, 287 (1949).

³⁹ In 1957, one of the most influential proponents of the 1937 Act, Catherine Bauer, published an indictment of the public housing program in which she criticized the manner in which projects were constructed and their effect on tenants. Catherine Bauer, *The Dreary Deadlock of Public Housing*, 106 Arch Forum 139 (1957).

⁴⁰ But see Richard F. Muth, *Public Housing: An Economic Evaluation* 16-18 (American Enterprise Institute, 1973). Muth has noted that the nature of the subsidy provided by the federal government creates an incentive for PHAs to substitute capital for current expenditures. PHAs, at least in theory, have an incentive to use durable materials in projects since construction costs will be completely subsidized whereas the costs of maintenance will largely be paid for out of tenant rents.

and obsolete mechanical, electrical, and plumbing systems which are in need of major overhaul.⁴¹ The design of individual apartments also reflects the need to conserve on resources. Rooms are typically very small; dining areas, for example, often have insufficient space to permit families to eat together. Closets were usually built without doors, bathrooms without showers or showerheads.⁴² Although not attributable to undue frugality, many units also contain materials since determined to be hazardous, such as lead paint and asbestos.⁴³

If the design and construction of individual apartments is problematic, the design and location of many developments is catastrophic. In addition to advocating that PHAs build units cheaply and rent them exclusively to low-income households,⁴⁴ the private interest groups that feared competition from public housing influenced Congress to require the elimination of one unit of substandard housing for each unit of public housing constructed.⁴⁵ This "equivalent elimination" requirement not only prevented an increase in the aggregate housing supply, but also precluded suburban jurisdictions from participating in the program, since they typically had few units of substandard housing to be demolished.⁴⁶ Instead, public housing was concentrated in cities, where land is typically more expensive. PHAs were, therefore, forced to build at high densities to spread the cost over more units.⁴⁷

In addition to contributing to the social problems that result from concentrating poor households together,⁴⁸ high-density housing is prone to deterioration and vandalism. Dense apartment buildings are now generally thought to be inappropriate living environments for poor families with children.⁴⁹ Mechanical systems

⁴¹ See Epp Associates et al, *Capital Improvement Programs and the Physical Condition of Public Housing in Compilation* at 57 (cited in note 29) (on file with U Chi L Rev).

⁴² See Raymond J. Struyk, *A New System For Public Housing: Salvaging A National Resource* 34 (Urban Institute, 1980) (describing the "penurious" character of public housing construction).

⁴³ See Epp Associates et al, *Capital Improvements Program* at 57-58 (cited in note 41).

⁴⁴ See text accompanying notes 34-36.

⁴⁵ Pub L No 75-412, § 10(a), 50 Stat at 891-92.

⁴⁶ A former federal commissioner of the public housing program told a Congressional hearing, "if there were no slums in the locality, regardless of how acute the housing shortage was, and if we knew that we could not get the equivalent elimination required by the Act, we could not go in there." Wood, *The Beautiful Beginnings* at 11 (cited in note 12).

⁴⁷ See Friedman, *Government and Slum Housing* at 120 (cited in note 37).

⁴⁸ See text accompanying notes 137-51.

⁴⁹ Congress adopted this view in the Housing and Urban Development Act of 1968, Pub L No 90-448, § 207, 82 Stat 476, 504. ("Secretary shall not approve high-rise elevator projects for families with children unless he makes a determination that there is no practical

such as elevators constantly break down as a result of heavy usage. Parents cannot adequately supervise their children because recreational facilities are frequently at a distance. The large number of people sharing common facilities make it difficult for residents to know their neighbors and maintain building security.⁵⁰ Inadequate recreational facilities, insufficient opportunities for parental monitoring of children, and an absence of building security contribute to vandalism and further deterioration of facilities.

Although the incentives created by the 1937 Housing Act would themselves probably have resulted in a rather high level of building deterioration, Congress's actions in the late 1960s exacerbated the downward spiral. Rents from the public housing program were originally expected to cover most, if not all, operating costs.⁵¹ But in the late 1950s and 1960s, the operating costs of public housing rose because of aging buildings and inflation, while the incomes of tenants lagged behind the resulting rent increases.⁵² Faced with rent strikes and tenant unrest, Congress passed the 1969 Brooke Amendment, which capped rents at twenty-five percent of income.⁵³ The Amendment plunged PHAs into financial turmoil, and many were forced to defer maintenance. Although Congress enacted a program of operating subsidies in 1970,⁵⁴ the money provided was insufficient to maintain the properties.⁵⁵

The physical deterioration that plagues a significant portion of the nation's public housing stock cannot be attributed solely to the federal government and the tenants. A share of the responsibility also rests with PHAs, whose duty it is to build and operate the

alternative"). But see J.S. Fuerst and Roy Petty, *High-rise Housing for Low-Income Families*, *The Public Interest* 118, 130 (Spring 1991) (arguing that high-rise buildings are not necessarily related to public housing problems).

⁵⁰ See Oscar Newman, *Defensible Space* 15-18 (Macmillan, 1972). Building security is also compromised by design defects. For example, elevators frequently do not stop on every floor, thereby forcing residents to use unsecured stairwells. Wright, *Building the Dream* at 236 (cited in note 37). In addition, "superblock" projects require individuals to walk along isolated routes rather than enter off a well-trafficked street. Newman, *Defensible Space* at 25.

⁵¹ There is some ambiguity in the 1937 Act about whether Congress expected all operating costs to be paid out of rent. See note 81.

⁵² According to one account, the poorest tenants paid as much as three-quarters of their income in rent and rent-to-income burdens of one-half were commonplace. Meehan, *The Quality of Federal Policymaking* at 26 (cited in note 33).

⁵³ Housing and Urban Development Act of 1969, Pub L No 91-152, § 213(a), 83 Stat 379, 389 (1970).

⁵⁴ Housing and Urban Development Act of 1970, Pub L No 91-609, § 210, 84 Stat 1770, 1778-79.

⁵⁵ Meehan, *The Quality of Federal Policymaking* at 37 (cited in note 33).

housing. Although there are no systematic nationwide evaluations of PHA management practices, allegations of mismanagement are ubiquitous.⁵⁶ HUD has characterized twenty-one large urban PHAs that own eighteen percent of the nation's public housing stock as "troubled" because they maintain insufficient operating reserves, have poor maintenance programs, badly deteriorated units or unacceptably high vacancy rates.⁵⁷ Evaluations of individual PHAs reveal specific management problems. Apartments frequently do not meet applicable health and safety requirements.⁵⁸ Further decay results from the often inordinate length of time required to complete simple repairs.⁵⁹ Delays in leasing vacant apartments⁶⁰ contribute to further deterioration as the units are vandalized. PHAs have also been accused of laxity in evicting tenants who engage in damaging or unlawful behavior.⁶¹ In some jurisdictions, management problems have become so severe that HUD has effectively placed the PHA in receivership.⁶²

⁵⁶ See Rachel G. Bratt, *Public Housing Authorities: Determining an Appropriate Role in a National Preservation Strategy*, 2 Housing Policy Debate 535, 540 (1991) ("Unfortunately, inadequate management is one of the most frequently heard criticisms of public housing."); Robert Kolodny, *Management Problems in U.S. Public Housing and Possible Lessons For Abroad*, in Niels L. Prak and Hugo Priemus, eds, *Post-War Public Housing In Trouble* 11, 15-16 (Delft University, The Netherlands, 1985) (describing public housing management problems).

⁵⁷ See Michael deCourcy Hinds, *Public Housing Ills Lead To Questions About H.U.D.*, NY Times A8 (Jul 20, 1992).

⁵⁸ HUD, Office of Inspector General, *Philadelphia Housing Authority Management and Selected Development Operations* 3 (1992) (of 87 public housing units inspected, 86 were not in good repair); US General Accounting Office, *Public Housing: Chicago Housing Authority Taking Steps To Address Long-Standing Problems* 15 (1989) (93% of the apartments inspected had "many serious physical problems"). See also sources cited in note 1.

⁵⁹ See, for example, HUD, *Philadelphia Housing Authority* at 13 (cited in note 58) (only about half of all reported repair work orders were completed within the federally specified three-day period); Rene Sanchez, *D.C. Council Hears Dismal Tales of Public Housing Repair Delays*, Wash Post B8 (Mar 1, 1992) (testimony describes long delays in repairing apartment plumbing and roofs).

⁶⁰ See, for example, HUD, *Philadelphia Housing Authority* at 9 (cited in note 58) (Philadelphia Housing Authority has an overall vacancy rate of 20.5%; the average period of vacancy for conventional public housing units in the city is 1,563 days); James Lawless, *Report Critical of CMHA; Repairs, Spending Come Under Fire*, Cleveland Plain Dealer B1 (Oct 4, 1992) (HUD audit finds 31% vacancy rate in Cleveland PHA).

⁶¹ See Bratt, *Public Housing Authorities* at 541 (cited in note 56). In part, delays in eviction reflect procedural requirements. See text accompanying notes 119-20.

⁶² See, for example, Hinds, *Public Housing Ills* at A8 (cited in note 57) (since 1989, HUD has taken partial or full control over six PHAs); Matthew Purdy, *U.S. Will Run Housing Authority; Saidel is To Quit As Chairman*, Philadelphia Inquirer A1 (May 21, 1992) (HUD takes over Philadelphia Housing Authority).

B. Social Distress

Distinguishing between physical and social distress, while useful for the purpose of exposition, creates a false dichotomy. Design flaws lead to vandalism and the deterioration of bricks and mortar; but they also diminish the residents' quality of life. Individual households must live in apartments with leaky roofs, broken plumbing and insufficient heat. High levels of deterioration also encourage tenants with the most resources to move elsewhere thereby increasing the concentration of poverty within the development.⁶³ Vacant units are vandalized and frequently used for illegal purposes, such as drug distribution or consumption. The flow of non-residents into these units reduces safety and leads remaining households to move elsewhere until what is left of the community is destroyed.

Nevertheless, physical distress need not exist for the residents of public housing to experience social distress. Like the inner cities in which many developments are located, most public housing projects shelter an increasingly impoverished and isolated population. This concentration of poverty in large urban public housing developments is explained both by demographic changes affecting American cities over the past four decades and by policies embedded in the public housing program. The poverty of public housing residents would cause them hardship and distress even if they lived in economically integrated communities. However, the enormously high concentration of poverty in many public housing developments generates social problems for tenants that are both different in kind and magnitude from the problems faced by poor people in less concentrated settings. High rates of crime, drug abuse and detachment from the labor market are some of the consequences of concentrated poverty for residents of public housing.

1. The causes of concentrated poverty in urban public housing.

The concentration of poverty in public housing developments is partially attributable to demographic trends that have affected most large cities. In recent years, concentrated inner city poverty has increased dramatically in large American cities, particularly in

⁶³ For a discussion of the negative effects of concentrated poverty, see text accompanying notes 137-51.

the Northeast and Midwest.⁶⁴ Paul Jargowsky and Mary Jo Bane find that from 1970 to 1980, the number of people with incomes below the poverty level living in census tracts where over forty percent of the population were poor increased by 29.5%, from 1.9 million to 2.4 million.⁶⁵ Additional research shows that the concentration of poverty in large urban areas continued to grow in the 1980s,⁶⁶ and that concentrated poverty affects black households with much greater frequency than white households.⁶⁷

The concentration of inner city poverty has many causes. Since the end of World War II, middle and upper income households have poured out of cities and into the suburbs.⁶⁸ Central cities have also lost a tremendous number of low-skilled jobs to the suburbs and foreign nations.⁶⁹ Many of the jobs that remain in the United States are now inaccessible to low-income residents of inner cities.⁷⁰ This inaccessibility stems from restrictive suburban

⁶⁴ For more detailed examinations of the causes of concentrated poverty and legal strategies for remedying the problem, see generally Michael H. Schill, *Deconcentrating The Inner City Poor*, 67 Chi Kent L Rev 795 (1991); Michael H. Schill, *The Federal Role in Reducing Regulatory Barriers to Affordable Housing in the Suburbs*, 8 J L & Pol 703 (1992).

⁶⁵ Paul A. Jargowsky and Mary Jo Bane, *Ghetto Poverty in the United States 1970-1980*, in Christopher Jencks and Paul E. Peterson, eds, *The Urban Underclass* 235, 252 (Brookings, 1991). See also Mark A. Hughes, *Misspeaking Truth to Power: A Geographical Perspective on the "Underclass" Fallacy*, 65 Econ Geography 187, 194 (1989); John C. Weicher, *How Poverty Neighborhoods Are Changing*, in Lawrence E. Lynn, Jr. and Michael G.H. McGeary, eds, *Inner-City Poverty in the United States* 68, 70 (National Academy Press, 1990).

⁶⁶ See John D. Kasarda, *Inner-City Poverty and Economic Access*, in Jack Sommer and Donald A. Hicks, eds, *Rediscovering Urban America: Perspectives on the 1980s*, 4-1, 4-39 to 4-44 (HUD, 1993); Richard P. Nathan and Charles F. Adams, Jr., *Four Perspectives on Urban Hardship*, 104 Pol Sci Q 483, 501 (1989).

⁶⁷ See Jargowsky and Bane, *Ghetto Poverty* at 252 (cited in note 65) (in 1980, 65% of the ghetto poor were black, 22% Hispanic, and 13% non-Hispanic white and other races.); Nathan and Adams, 104 Pol Sci Q at 504 (cited in note 66) (in 1986, more than 75% of all poor urban black households lived in concentrated poverty, compared to 43% of poor urban white households).

⁶⁸ For a discussion of the causes of population decentralization in large metropolitan areas, see generally Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (Oxford, 1985).

⁶⁹ See John D. Kasarda, *Urban Industrial Transition and the Underclass*, 501 Annals Am Acad Pol & Soc Sci 26, 29-30 (1989) (in the 1970s, large northern cities lost large numbers of jobs in clerical, sales, and blue-collar employment whereas their suburbs gained jobs in all occupational categories).

⁷⁰ The first proponent of the spatial mismatch hypothesis was John F. Kain, *Housing Segregation, Negro Employment and Metropolitan Decentralization*, 82 Q J Econ 175 (1968). The bulk of empirical evidence supports Kain's hypothesis that the inner city location of poor households disadvantages them in either obtaining a job or in the amount of their wages. See, for example, Harry J. Holzer, *The Spatial Mismatch Hypothesis: What Has the Evidence Shown?*, 28 Urb Stud 105, 118 (1991) ("It seems fair to say, therefore, that the preponderance of evidence from data of the last decade shows that spatial mis-

land use practices that raise the price of housing in the suburbs beyond the reach of low-income households,⁷¹ and from inadequate public transportation that prevents potential employees living in central cities from commuting to suburban employment centers.⁷² In addition, households living at great distances from sources of employment are less likely to learn about employment opportunities.⁷³

To the extent that jobs have been created in central cities, they typically pay lower wages or require higher levels of skill than the manufacturing jobs that departed.⁷⁴ And while the educational requirements for inner-city jobs have increased, the quality of education has apparently declined. Reductions in municipal fiscal bases have starved many inner-city school districts of the funds they require to offer their students appropriate class sizes, educational materials and technical facilities.⁷⁵ Large proportions of inner-city students drop out before graduation and are particularly ill-equipped to compete in the urban job market.⁷⁶

match has a significant effect on black employment.”); Schill, 67 U Chi Kent L Rev at 800 (cited in note 64) (“Although the results of these tests are not all consistent, the weight of the evidence supports the argument that the location of inner city poor households, especially black households living in the older cities of the North and Midwest, creates a disadvantage for them in escaping poverty.”). But see Christopher Jencks and Susan E. Mayer, *Residential Segregation, Job Proximity, and Black Job Opportunities*, in Lynn and McGeary, eds, *Inner-City Poverty in the United States* at 187, 218 (cited in note 65) (the findings of empirical studies on the spatial mismatch hypothesis “tell a very mixed story”).

⁷¹ Suburban land use practices make housing unaffordable by requiring large minimum lots or expensive subdivision amenities. In addition, many suburbs severely restrict the quantity of multifamily housing that may be built. See Advisory Commission on Regulatory Barriers to Affordable Housing, “*Not in My Back Yard*”: Removing Barriers to Affordable Housing 2-1 to 2-14 (1991).

⁷² See Keith R. Ihlanfeldt and David L. Sjoquist, *The Impact of Job Decentralization on the Economic Welfare of Central City Blacks*, 26 J Urb Econ 110, 125 (1989) (“public transit, even where it exists, normally does not serve the reverse commuter”); John D. Kasarda, *Urban Change and Minority Opportunities*, in Paul E. Peterson, ed, *The New Urban Reality* 33, 55 (Brookings, 1985).

⁷³ See Katherine M. O'Regan and John M. Quigley, *Labor Market Access and Labor Market Outcomes For Urban Youth*, 21 Regional Sci & Urb Econ 277, 291 (1991).

⁷⁴ See Kasarda, *Urban Change*, in Peterson, ed, *New Urban Reality* at 33, 53-55 (cited in note 72).

⁷⁵ For one example of a court's attempt to redress educational inequities between inner cities and suburbs, see *Abbott v Burke*, 119 NJ 287, 575 A2d 359, 377-408 (1990) (declaring New Jersey's system for financing public schools unconstitutional under the New Jersey Constitution).

⁷⁶ See Kasarda, *Urban Change*, in Peterson, ed, *New Urban Reality* at 54-55 (cited in note 72) (“large portions of black central city residents still do not possess the education to participate in information-processing industries beginning to dominate urban employment bases”); Jargowsky and Bane, *Ghetto Poverty*, in Jencks and Peterson, eds, *The Urban Underclass* at 249 (cited in note 65) (in 1980, the median number of school years completed by

Concentration of poverty in American cities has also been exacerbated by race discrimination. Despite laws that prohibit discrimination, blacks, Hispanics and other minorities continue to be denied jobs because of the color of their skin.⁷⁷ In addition, twenty-five years after the Fair Housing Act was signed into law, high levels of discrimination in the housing market still thwart minority households' ability to move to less concentrated neighborhoods.⁷⁸

By itself, the increasing concentration of low-income households in inner-city neighborhoods would probably have led to a high concentration of poor tenants in urban public housing. Nevertheless, embedded in the program are several features that have made public housing not just a microcosm of the inner city, but its exaggeration. The commonly accepted view is that Congress never expected public housing to become home to an extremely impoverished group of residents. Instead, public housing was designed for the "submerged middle class" that had been dislocated during the Great Depression and would soon be on its feet again.⁷⁹ Perhaps a more accurate characterization of the program's history is that members of Congress were not quite certain who should live in public housing and that this ambivalence manifested itself over the years in policies that, in retrospect, have had a deleterious effect on the program.

The 1937 Act reflects the tension in Congress over whether public housing should be available only to the lowest income households in a municipality or should serve less destitute families as well. The Act called for "decent, safe, and sanitary housing within the financial reach of families of low income." "Families of low income" meant "families who are in the *lowest income group* and who cannot afford to pay enough to cause private enterprise . . . to build an adequate supply of decent, safe, and sani-

ghetto blacks in Memphis and Philadelphia were 9.5 and 10.8, respectively); Frank Newman, Robert Palaich, and Rona Wilensky, *Reengaging State and Federal Policymakers in the Problems of Urban Education*, in Marshall Kaplan and Franklin James, eds, *The Future of National Urban Policy* 61, 68 (Duke, 1990) (43% drop-out rate in Chicago public schools for the Class of 1982).

⁷⁷ See Gerald D. Jaynes and Robin M. Williams, Jr., eds, *A Common Destiny: Blacks and American Society* 146-48 (National Academy Press, 1989) (presenting data on employment discrimination).

⁷⁸ See Margery A. Turner, *Discrimination in Urban Housing Markets: Lessons From Fair Housing Audits*, 3 Housing Policy Debate 185, 197 (1992) ("The overall incidence of discrimination against renters is 53% for blacks and 46% for Hispanics").

⁷⁹ Lawrence M. Friedman, *Public Housing and the Poor: An Overview*, 54 Cal L Rev 642, 646 (1966).

tary dwellings for their use.”⁸⁰ Although members of both the Senate and House of Representatives stated that the program’s objective was to reach the lowest income households, they also recognized that tenants who had no income to pay rent would be ineligible.⁸¹ In the end, the 1937 Act set income limits indirectly—tenants could earn no more than five times the rent they paid for their homes.⁸²

If the 1937 Act was somewhat ambiguous about what income group public housing was to serve, the 1949 Housing Act clearly sent the message that only the very poor need apply. The public housing provisions in the 1949 Act were influenced by the need to re-house families that would be displaced by the slum clearance program set forth in Title I of the Act, as well as returning World War II veterans. The Act provided that these two groups of applicants would receive a preference in obtaining public housing.⁸³ Targeting assistance to former slum dwellers guaranteed that a substantial proportion of the residents of public housing would have very low incomes.

The 1949 Act included other provisions which filled public housing with the very poor. Discrimination against households receiving public assistance was outlawed.⁸⁴ PHAs were also instructed to set income ceilings subject to federal government approval. Households whose incomes rose above the prescribed ceilings would be “required to move from the project.”⁸⁵ Interest-

⁸⁰ Pub L No 75-412, § 2(2), 50 Stat at 888 (emphasis added).

⁸¹ See, for example, Friedman, *Government and Slum Housing* at 109 (cited in note 37) (quoting Senator Wagner: “obviously this bill cannot provide housing for those who cannot pay the rent minus the subsidy allowed”); United States Housing Act of 1937, H Rep No 1545, 75th Cong, 1st Sess 6 (1937) (“It must be recognized, however, that as long as any rent is to be charged in a project, the people who will occupy the dwellings must have some income.”). Friedman’s argument that Congress must have contemplated tenants able to pay all of the operating expenses of the project is probably incorrect. The subsidy provided by the 1937 Act was not limited to capital costs. Although Congress capped federal contributions and required that they be used by PHAs first to pay off interest and principal on loans, the Act does not limit the federal subsidy to capital costs. Section 10(b) of the Act provides that “[a]nnual contributions shall be strictly limited to the amounts and periods necessary . . . to assure the low-rent character of the housing projects involved.” 50 Stat at 892. The House Report explicitly contemplates that these subsidies will be used to reduce the amount tenants must pay to cover operating expenses. See H Rep No 1545 at 6.

⁸² Pub L No 75-412 § 2(1), 50 Stat at 888.

⁸³ Pub L No 81-171 § 302, 63 Stat 413, 423 (1949).

⁸⁴ Id, § 301, 63 Stat at 423.

⁸⁵ Id. The Act further required a 20% gap between the lowest rents available in the private sector and the highest rents in public housing. Id. Since maximum incomes were defined as a multiple of rent, see text accompanying note 82, the rent ceiling also functioned as a limitation on income.

ingly, the reasons given for the income ceilings were quite different from the rationales offered by Congress in the early 1980s for similar rules.⁸⁶ Rather than seeking to target assistance to those most in need, the income ceilings seem to have been designed to protect private landlords from competition.⁸⁷

From 1959 to 1974, Congress gradually chipped away at some of the provisions limiting public housing to the lowest income households. The Housing Act of 1959 eliminated the rule limiting the income of tenants to five times the rent.⁸⁸ The Housing Act of 1961 eviscerated the preferential treatment accorded certain especially needy groups of applicants and also removed the obligation to evict households whose incomes exceeded maximum limits if special circumstances made it impossible for them to obtain housing in the private market.⁸⁹

The Housing and Community Development Act of 1974 first established the reduction of geographically concentrated poverty as an objective of federal housing policy.⁹⁰ In marked contrast to earlier housing legislation, the Act required PHAs to establish tenant selection criteria "to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems"⁹¹ Although the Act required that at least one-fifth of the dwellings be occupied by "very low-income households" earning less than fifty percent of the area's median income, it eliminated the requirement that PHAs set

⁸⁶ See text accompanying note 94-95.

⁸⁷ The Senate Report's description of the maximum income ceilings follows a short paragraph stating that "private enterprise has never had anything to fear from the low-rent public housing program." Housing Act of 1949, S Rep No 84, 81st Cong, 1st Sess (1949), reprinted in 1949 USCCAN 1569-70.

⁸⁸ Pub L No 86-372 § 503(a), 73 Stat 654, 680 (1980). The PHA would still set income limits, but the statute indicated that it could take into account the "financial stability and solvency of the project." *Id.*

⁸⁹ Pub L No 87-70 § 205(a), 75 Stat 149, 164 (1960). The legislation replaced the mandatory preference requirements with an exhortation to fully consider displaced households and veterans. *Id.* The legislative changes were justified on the ground that it was desirable to give localities greater flexibility to shape their admissions policies to local conditions. Housing Act of 1949, S Conf Rep No 602, 87th Cong, 1st Sess (1961), reprinted in 1961 USCCAN 2033.

⁹⁰ The Act includes among its nine objectives "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income" Housing and Community Development Act of 1974, Pub L No 93-383 § 101(c)(6), 88 Stat 633, 634-35.

⁹¹ *Id.*, § 201(a), 88 Stat at 653.

income ceilings and evict over-income tenants.⁹² The Senate Report accompanying the legislation expressed the concern that public housing developments had become "a concentration of very poor families" and the hope that a greater cross-section of families would create "economically viable housing as well as a healthy social environment."⁹³

If the 1974 Act was Congress's most extensive effort to avoid concentrating poor people in public housing, the Housing Act of 1981 was its strongest declaration that public housing should be almost exclusively devoted to those who earn the lowest incomes. Based upon the principle that scarce housing assistance dollars should be targeted to those with the greatest need,⁹⁴ the 1981 Act required that ninety percent of all occupants in existing public housing and ninety-five percent of the tenants in newly constructed buildings have very low incomes.⁹⁵

Since 1983 the pendulum has once again slowly begun to swing away from stringent targeting requirements. The minimum quota for very low income households has been reduced to seventy-five percent for pre-1981 public housing⁹⁶ and eighty-five percent for housing units developed after 1981.⁹⁷ Although mandatory admission preferences have been reestablished and their coverage broadened,⁹⁸ legislation passed in 1992 limits their applicability to fifty percent of a PHA's housing stock.⁹⁹

⁹² *Id.*

⁹³ Housing and Community Development Act of 1974, S Rep No 93-693, 93d Cong, 2d Sess (1974), reprinted in 1974 USCCAN 4273, 4311.

⁹⁴ See Omnibus Budget Reconciliation Act of 1981, S Rep No 97-139, 97th Cong, 1st Sess 228-29, reprinted in 1981 USCCAN 396, 524-25.

⁹⁵ Pub L No 97-35, § 323, 95 Stat 384, 405 (1982). "Very low income" was defined as income below 50% of the area's median income. *Id.*, § 322(b)(2), 95 Stat at 400.

⁹⁶ Housing and Urban-Rural Recovery Act of 1983, Pub L No 98-181, § 213, 97 Stat 1153, 1184 (1983).

⁹⁷ Cranston-Gonzalez National Affordable Housing Act, Pub L No 101-625, § 511, 104 Stat 4085, 4194 (1990), codified at 42 USC § 1437n (1990).

⁹⁸ See Housing and Community Development Amendments of 1979, Pub L No 96-153, § 206(a), 93 Stat 1101, 1108 (1981) (establishing preferences for families occupying substandard housing and those involuntarily displaced); Pub L No 98-181, § 203(a), 97 Stat at 1178 (extending preferences to households paying over 50% of their income for rent).

⁹⁹ Housing and Community Development Act of 1992, Pub L No 102-550, § 112, 106 Stat 3672, 3689 (1992), codified at 42 USC § 1437(d) (1992). The 1992 legislation also permits PHAs to skip over lower income households on their waiting lists, as long as they follow a local system of preferences. *Id.*, § 105, 106 Stat at 3684, codified at 42 USC § 1437n. The Act also extends ceiling rents permanently. *Id.*, § 102, 106 Stat at 3683, codified at 42 USC 1437a. PHAs are permitted to establish rents below the normal 30% of income standard. See 42 USCA § 1437a. Ceiling rents are designed to encourage moderate income households to remain in public housing.

Although it has taken a lead role, Congress has not been alone in contributing to the concentration and isolation of poor families in public housing. In both their site and tenant selection policies, PHAs have exacerbated the problem.¹⁰⁰ Many PHAs built public housing in large towers so as to conserve on land costs.¹⁰¹ In some cities, such as Chicago, several large public housing developments have been located in close proximity to each other, creating an enormous phalanx of poverty.¹⁰² PHAs in other cities have isolated public housing by restricting locations to the least desirable portions of town, frequently areas already home to disproportionate numbers of poor families.¹⁰³

Racially discriminatory siting and leasing policies have also helped concentrate the poorest people in certain developments.¹⁰⁴ In most large cities, the poor are disproportionately composed of racial minorities. Until the mid-1950s, racial discrimination in assigning tenants to public housing was official government policy in many cities.¹⁰⁵ Black households would be assigned to certain developments; whites to others.¹⁰⁶ Public housing was also disproportionately located in communities with high proportions of minority

¹⁰⁰ Ineffective management practices have also driven away public housing tenants who earned relatively higher incomes than those they left behind. See text accompanying notes 56-62.

¹⁰¹ See text accompanying notes 47-50.

¹⁰² See Arnold R. Hirsch, *Making The Second Ghetto: Race and Housing in Chicago, 1940-1960* 244 (Cambridge, 1983) (photograph depicting massive public housing developments as far as can be seen).

¹⁰³ John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920-1974* 169 (Temple, 1987) ("All of the projects planned and built from 1956 to 1967 were sited in ghetto or 'transitional' neighborhoods."); Wilhelmina A. Leigh and Mildred O. Mitchell, *Public Housing and the Black Community*, 17 *Rev Black Pol Econ* 107, 121 (1988) ("many public housing projects were built on vacant land on the fringes of cities in areas to which jobs never moved and which lack good public transit").

¹⁰⁴ See Bauman, *Public Housing* at 167-74 (cited in note 103) (describing discriminatory practices of Philadelphia Housing Authority); Rachel G. Bratt, *Rebuilding a Low-Income Housing Policy* 70-71 (Temple, 1989) (describing federal and local policies encouraging racial discrimination in public housing); Hirsch, *Making the Second Ghetto* at 212-58 (cited in note 102) (describing discriminatory practices of the Chicago Housing Authority); Martin Meyerson and Edward C. Banfield, *Politics, Planning, & the Public Interest: The Case of Public Housing in Chicago* 134 (Collier-Macmillan, 1955) (describing 10% quota on blacks in public housing in white areas of Chicago).

¹⁰⁵ PHAs were instructed by the federal government to follow the "neighborhood composition rule," under which the racial make-up of public housing developments were supposed to mirror their neighborhoods. See Mittie Olion Chandler, *Public Housing Desegregation: What Are the Options?*, 3 *Housing Policy Debate* 509, 518 (1992). See also Friedman, *Government and Slum Housing* at 123 (cited in note 37) ("Race discrimination in public housing was at one time fairly open and explicit.").

¹⁰⁶ See Hirsch, *Making the Second Ghetto* at 230 (cited in note 102) (certain public housing projects were "reserved" for whites).

households.¹⁰⁷ Even after federal court rulings held these discriminatory practices unconstitutional,¹⁰⁸ and a presidential directive outlawed discrimination in public housing,¹⁰⁹ the practices did not cease.¹¹⁰ The segregation in public housing of disproportionately low-income minority families remains a staggering fact of urban life.¹¹¹

Some commentators have also blamed the courts for the concentration of poverty and deterioration of public housing.¹¹² For better or worse, in the early years of the program, PHAs had enormous latitude in selecting applicants and evicting tenants.¹¹³ Public housing managers often used these powers to screen out potentially troublesome tenants.¹¹⁴ In the eviction context, PHAs were treated by many courts as private landlords and were thus not re-

¹⁰⁷ See Bauman, *Public Housing* at 169 (cited in note 103) (all of the projects planned and built from 1956 to 1967 were sited in ghetto or "transitional" neighborhoods); Hirsch, *Making the Second Ghetto* at 242-43 (cited in note 102) ("Of the thirty-three projects approved between 1950 and the mid-1960s, twenty-five and a 'substantial portion' of another were located in census tracts containing a black population in excess of 75%."); Raymond A. Mohl, *Race and Space in the Modern City: Interstate 95 and the Black Community in Miami*, in Arnold R. Hirsch and Raymond A. Mohl, eds, *Urban Policy in Twentieth Century America* 100, 132-33 (Rutgers, 1993) (in the 1960s, public housing was built in already segregated areas of Miami). A recent study by Massey and Kanaiaupuni found a significant relationship between the racial composition of Chicago census tracts in 1950 and whether public housing was constructed in that tract. The greater the proportion of blacks in 1950, the more likely that public housing would be built in that tract in the following 20 years. Douglas S. Massey and Shawn M. Kanaiaupuni, *Public Housing and the Concentration of Poverty*, 74 Soc Sci Q 109, 114-15 (1993).

¹⁰⁸ See, for example, *Heyward v Public Housing Administration*, 238 F2d 689, 698 (5th Cir 1956) (holding that black applicants for public housing could sue a PHA for race discrimination); *Detroit Housing Commission v Lewis*, 226 F2d 180, 182-83 (6th Cir 1955) (upholding lower court decision that PHA illegally engaged in race discrimination).

¹⁰⁹ Executive Order No 11063, 27 Fed Reg 11527, 3 CFR (1959-63 Comp) 652 (Nov 24, 1962) (directing federal agencies to prevent racial discrimination in housing financed or supported by the federal government).

¹¹⁰ See, for example, *United States v Yonkers Bd. of Ed.*, 837 F2d 1181, 1235 (2d Cir 1987) (upholding a finding that city and school board had discriminated against minorities in public housing).

¹¹¹ See text accompanying notes 133, 137.

¹¹² See, for example, J.S. Fuerst and Roy Petty, *Due Process—How Much Is Enough?*, 29 The Public Interest 96, 101 (Spring 1985).

¹¹³ See, for example, *Manigo v New York City Housing Authority*, 51 Misc 2d 829, 273 NYS2d 1003, 1006 (Sup Ct, NY County 1966) (upholding rejection of tenant whose husband had been arrested several times); Charles A. Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 Yale L J 1245, 1250 (1965) ("[T]his power [to select and oust tenants] can be exercised in a way that is largely discretionary, based in part upon officials' intangible impressions from interviews and home visits. . . . The standards are generally vague, and there are no clearly articulated methods of proof. There may be little in the way of procedure to make certain that the authorities' information is true.").

¹¹⁴ See Friedman, 54 Cal L Rev at 657 (cited in note 79).

quired to accord tenants a hearing prior to lease termination or a detailed explanation of why they were being evicted.¹¹⁵ This flexibility with respect to admissions and evictions gave PHAs enormous control over the lives of their tenants.¹¹⁶

Beginning in the late 1960s, however, public housing tenants won substantial freedom from arbitrary PHA actions. In *Holmes v New York City Housing Authority*,¹¹⁷ the Court of Appeals for the Second Circuit held that procedural due process required that PHAs adopt "ascertainable standards" in their tenant selection procedures. One year later, in *Thorpe v Housing Authority of the City of Durham*,¹¹⁸ the Supreme Court ruled that PHAs must follow a HUD directive requiring a hearing prior to lease termination. Shortly thereafter, the Second Circuit firmly established the due process rights of public housing tenants in *Escalera v New York City Housing Authority*¹¹⁹ by requiring that prior to lease termination, PHAs offer tenants a hearing, permit them to inspect PHA records, and enable them to cross-examine witnesses. Judicial decisions limiting PHA discretion have not merely been addressed to procedural matters. Admission and eviction standards that excluded unwed mothers or people with criminal records have also been struck down as arbitrary.¹²⁰

Although critics of enhanced tenants' rights may unjustifiably discount the harmful effects of government abuse,¹²¹ they correctly observe that the recent proliferation of procedural and substantive

¹¹⁵ See, for example, *Chicago Housing Authority v Stewart*, 40 Ill 2d 23, 237 NE2d 463, 465 (1968) (no reason need be given for eviction of month-to-month tenant); *Pittsburgh Housing Authority v Turner*, 201 Pa Super 62, 191 A2d 869, 871 (1963) (same); *New York City Housing Authority v Watson*, 27 Misc 2d 618, 207 NYS2d 920, 922 (Sup Ct, NY County 1960) (tenant may not contest finding of undesirability); Note, *Public Landlords and Private Tenants: The Eviction of "Undesirables" From Public Housing Projects*, 77 Yale L J 988, 994 (1968) ("courts have usually treated the housing authority as an ordinary landlord, who can have a tenant evicted merely by showing that he is holding over after the lease has been terminated"). The landlord's power over tenants was magnified by the fact that most public housing leases were month-to-month. *Special Project: Public Housing*, 22 Vand L Rev 875, 926 n 286 (1969) (public housing leases generally are month-to-month). See also Reich, 74 Yale L J at 1250 (cited in note 113).

¹¹⁶ See Wright, *Building the Dream* at 237 (cited in note 37) ("Management controlled every aspect of the residents' lives—the keeping of pets, the policy about overnight guests, the color of paint on the walls, the schedules for using the washing machines.").

¹¹⁷ 398 F2d 262, 265 (2d Cir 1968).

¹¹⁸ 393 US 268, 283 (1969).

¹¹⁹ 425 F2d 853, 863 (2d Cir 1970).

¹²⁰ See *Thomas v Housing Authority of Little Rock*, 282 F Supp 575, 581 (E D Ark 1967); *Tucker v Norwalk Housing Authority*, Civ No B-251 (D Conn 1971), discussed in National Housing Law Project, *HUD Housing Programs: Tenants' Rights* 2/14 (1981).

¹²¹ See note 113.

safeguards contributes to the difficulties facing large urban PHAs. PHAs may no longer deny admission to suspected "problem" tenants unless they can provide objective evidence of past misdeeds and persuasive arguments that the applicants will likely interfere with the health, safety, or welfare of other tenants.¹²² In addition, tenants may only be evicted for "good cause,"¹²³ which has generally been interpreted to require evidence of serious or repeated misconduct.¹²⁴ Even when a PHA believes it has evidence to justify eviction, it must accord tenants hearings prior to bringing a court action for eviction. During this potentially lengthy period of administrative hearings and court proceedings, undesirable tenants usually may remain in possession of their homes, where they continue to engage in practices destructive to the community.¹²⁵

2. The extent of concentrated poverty in urban public housing.

Whether motivated by a desire to direct assistance to those most in need, race discrimination, or the desire to accord tenants due process of law, Congress, PHAs and the courts have contributed to the concentration of poverty in America's public housing. Recent data, although in some respects incomplete, demonstrate the severity of this concentration.¹²⁶ The median income of fami-

¹²² See 24 CFR § 960.205(b) (1992).

¹²³ 42 USC § 1437d(1)(4) (1991).

¹²⁴ See *Cordrey v Housing Authority of Holyoke*, Civ No 80-C-881 (C D Colo 1980) (failure to keep apartment neat and clean does not provide good cause for eviction); National Housing Law Project, *HUD Housing Programs* at 14/3-14/5 (cited in note 120).

¹²⁵ See Fuerst and Petty, *The Public Interest* at 100-01 (Spring, 1985) (cited in note 112) ("Formalizing the rules for evicting public housing tenants means that the process becomes much slower, more complicated, and expensive: As a result, even conscientious housing officials are more likely to avoid entering into eviction proceedings, and disruptive tenants can remain in place, forcing law-abiding neighbors to move . . ."). Since the late 1980s, Congress and PHAs have sought to limit the procedural rights of tenants with mixed success in the courts. See text accompanying notes 242-57.

¹²⁶ Three sources of data about public housing residents will be used in this article. The first is data collected by HUD from each PHA as part of the HUD Multifamily Tenant Characteristics System ("MTCS"). This data, although not publicly available, was reported by Lawrence J. Vale, *Occupancy Issues in Distressed Public Housing: An Outline of Impacts on Design, Management and Service Delivery*, in *Compilation* (cited in note 29) (on file with U Chi L Rev). The second source of data is from a survey of PHAs jointly undertaken by the Council of Large Public Housing Authorities ("CLPHA"), the National Association of Housing and Redevelopment Officials ("NAHRO"), and the Public Housing Authorities Directors Association ("PHADA"). The survey results are summarized in Yves S. Djoko and Wayne Sherwood, *Report No. 92-3: Public Housing Demographics, 1992* (CLPHA, 1992) (on file with U Chi L Rev). The final source is a special tabulation of results from the 1989 American Housing Survey. See Connie Casey, *Characteristics of HUD-*

lies living in public housing is extremely low—less than \$6,500.¹²⁷ Roughly three-quarters of all non-elderly families living in public housing have incomes below the poverty level.¹²⁸ Over one-half of public housing residents have not graduated from high school.¹²⁹ Well over half of all families receive public assistance;¹³⁰ in some large PHAs the proportion of households on welfare exceeds ninety percent.¹³¹ Longitudinal data show the dramatic concentration of poverty in public housing. In 1974, about one percent of all households living in non-elderly public housing developments earned less than ten percent of the area's median income; this proportion has now swelled to twenty percent.¹³² In addition, a large majority of public housing residents are non-white; roughly two-thirds of all non-elderly families are black and nearly one-fifth are Hispanic.¹³³ Minority public housing tenants are more likely than white tenants to earn extremely low incomes.¹³⁴

Increasing concentrations of poor households in public housing have also affected the demography of the neighborhoods in which housing developments are located. A recent study by Douglas Massey and Shawn Kanaiaupuni demonstrates a strong relationship between proximity to public housing and the existence of concen-

Assisted Renters and Their Units in 1989 (HUD, 1992) ("American Housing Survey"). For further description of the American Housing Survey data, see text accompanying notes 174-76.

¹²⁷ See Djoko and Sherwood, *Public Housing Demographics* at 24 (cited in note 126) (median gross income of families is \$5,747); American Housing Survey at 68 (cited in note 126) (median income of households in both family and elderly developments is \$6,571; elderly households' median income is higher than families').

¹²⁸ See American Housing Survey at 68 (cited in note 126). Two-thirds of all non-elderly households living in public housing are composed of a female adult and children. See Vale, *Occupancy Issues*, in *Compilation* at 13 (cited in note 126).

¹²⁹ HUD, *Literacy and Education Needs in Public and Indian Housing Developments Throughout the Nation* 5 (1992).

¹³⁰ American Housing Survey at 68 (cited in note 126) (57% of non-elderly families and individuals receive welfare or supplemental security income).

¹³¹ Vale, *Occupancy Issues*, in *Compilation* at 12 (cited in note 126) (based on examination of 13 large PHAs).

¹³² Id at 6. Of 13 large PHAs examined by Vale, 10 report that a majority of non-elderly households have incomes below 20% of the area median income. Id at 7.

¹³³ See American Housing Survey at 44 (cited in note 126) (64.3% of non-elderly households are black; 14.4% are Hispanic); Vale, *Occupancy Issues*, in *Compilation* at 17 (cited in note 126) (61.7% of families are black; 19.8% are Hispanic.). The discrepancies between these estimates stem from the fact that the American Housing Survey does not delete Hispanics from its counts of whites and blacks, whereas Vale does.

¹³⁴ Vale, *Occupancy Issues* in *Compilation* at 9 (cited in note 126) (25.6% of black families, as compared to 13.6% of white families, earn less than 10% of the area's median income).

trated neighborhood poverty in Chicago.¹³⁵ The authors estimate that the presence of a public housing development in a census tract increases that tract's poverty rate by eleven percentage points.¹³⁶

3. The consequences of concentrated poverty in public housing.

Existing data show that public housing, particularly in large cities, has increasingly become home to poor racial and ethnic minorities, physically and socially isolated from the rest of the nation.¹³⁷ The consequences of this isolation are tremendous. In his book, *The Truly Disadvantaged*,¹³⁸ and several recent articles,¹³⁹ William Julius Wilson argues that concentrated ghetto poverty generates problems different both in kind and in magnitude from the problems poor people encounter in less isolated environments. According to Wilson, a poor individual who grows up in an environment without employed role models is more likely to have a weak attachment to the labor force than someone who has regular contact with employed persons. The absence of regular employment deprives the individual of his or her "perceived self-efficacy."¹⁴⁰ Lacking employment opportunities, individuals frequently turn to deviant or illegal activities to earn income, further distancing themselves from the labor market and middle class

¹³⁵ Massey and Kanaiaupuni, 74 Soc Sci Q at 114-15 (cited in note 107).

¹³⁶ Id at 116. The authors attribute the increase in concentrated poverty to the immigration of poor households rather than the emigration of the middle-class. Id at 117.

¹³⁷ See Adam Bickford and Douglas S. Massey, *Segregation in the Second Ghetto: Racial and Ethnic Segregation in American Public Housing, 1977*, 69 Soc Forces 1011, 1035 (1991) ("it is difficult to imagine a group that is more isolated from the mainstream of American society than black residents of authority-owned, family projects. These projects represent a federally funded, physically permanent institution for the isolation of poor minority families by race and class").

¹³⁸ William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago, 1987).

¹³⁹ See, for example, Loïc J.D. Wacquant and William Julius Wilson, *The Cost of Racial and Class Exclusion in the Inner City*, 501 Annals Am Acad Pol & Pol Sci 8 (1989); William Julius Wilson, *Public Policy Research and The Truly Disadvantaged*, in Jencks and Peterson, eds, *The Urban Underclass* at 460 (cited in note 65); William Julius Wilson, *Studying Inner-City Social Dislocations: The Challenge of Public Agenda Research*, 56 Am Soc Rev 1 (1991).

¹⁴⁰ See Wilson, *Studying Inner-City Social Dislocations* at 10-11 (cited in note 139). Social isolation may also deprive individuals of information about job opportunities. See O'Regan and Quigley, 21 Regional Sci & Urb Econ at 290 (cited in note 73) (higher social isolation is a significant factor in explaining unemployment among black youths).

norms.¹⁴¹ In fact, poor black people living in segregated communities composed of similarly impoverished households may develop alternative status systems in opposition to mainstream culture.¹⁴² Other people who live in the community and share similar views reinforce these attitudes and behaviors. The “concentration effects” generated in these communities lead Wilson to conclude that “[t]he issue is not simply that the underclass or ghetto poor have a marginal position in the labor market similar to that of other disadvantaged groups, it is also that their economic position is uniquely reinforced by their social milieu.”¹⁴³ These concentration effects may become reinforced as the more stable and less impoverished residents flee public housing and the surrounding neighborhoods.

Underlying Wilson’s concentration effects hypothesis are two somewhat different theoretical models of how neighborhood social structure affects individual socialization. “Contagion” theories analogize the behavioral patterns of the ghetto to pathologies that are spread by peer groups once a critical level of poverty or social isolation occurs.¹⁴⁴ “Collective socialization” models, in contrast, posit that young people are influenced not so much by peer groups as by adults who live in the community and serve as role models.¹⁴⁵ Although recent empirical studies differ over which theoretical model best explains the prevalence of high rates of teenage childbearing, school drop-outs, and deviant activities in inner-city communities, they do find a consistent relationship between social isolation and these behaviors.¹⁴⁶

¹⁴¹ See Wilson, *Public Policy Research*, in Jencks and Peterson, eds, *The Urban Underclass* at 472 (cited in note 139).

¹⁴² See Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 170 (Harvard, 1993) (“segregation creates an environment where failure to meet the ideal standards of American society loses its stigma; indeed, individual shortcomings become normative and supported by the values of oppositional culture”).

¹⁴³ See Wilson, *Inner-City Social Dislocations* at 11-12 (cited in note 139).

¹⁴⁴ See Christopher Jencks and Susan E. Mayer, *The Social Consequences of Growing Up in a Poor Neighborhood*, in Lynn and McGeary, eds, *Inner-City Poverty in the United States* 111, 113-14 (cited in note 65).

¹⁴⁵ See *id.* at 114-15.

¹⁴⁶ Elijah Anderson, *Neighborhood Effects on Teenage Pregnancy*, in Jencks and Peterson, eds, *The Urban Underclass* 375, 382-97 (cited in note 65) (describing cultural explanations for teenage pregnancy in ghetto communities); Jeanne Brooks-Gunn et al, *Do Neighborhoods Influence Child and Adolescent Development?* — Am J Soc — (forthcoming, 1993) (the presence of affluent neighbors decreases the likelihood that teenagers will have children and drop out of school); Rebecca L. Clark, *Neighborhood Effects on Dropping Out of School Among Teenage Boys*, 16-21 (Urban Institute, Dec 13, 1992) (rates of school drop-outs among boys increase as the proportion of poor households in a community in-

Although most systematic studies of Wilson's concentration effects hypothesis have focused on inner-city communities rather than public housing developments, the limited statistics that do exist, individual case studies, and anecdotal accounts are consistent with the theory. Public housing residents are increasingly detached from the labor market. Only between one-quarter to one-third of the tenants of large PHAs reported receiving income from wages in 1991.¹⁴⁷ Children often grow up without any realistic hope of finding a job in the mainstream economy.¹⁴⁸ Crime rates have skyrocketed in public housing developments; drug dealing and narcotics abuse have reached epidemic levels.¹⁴⁹ Violent crime and gang conflict have become so ubiquitous that mothers often do not let their children play outside or walk to school alone.¹⁵⁰

Although physical deterioration, social distress, and concentrated poverty in public housing need not occur simultaneously, many public housing developments, particularly those in large cities, tend to experience all three problems.¹⁵¹ This is partially because these three phenomena are causally related and mutually reinforcing. Concentrated poverty generates social distress which leads to greater levels of poverty concentration as the more stable

creases and as the proportion of households employed in middle-class occupations declines, although the results do not support a contagion theory); Jonathan Crane, *The Epidemic Theory of Ghettos and Neighborhood Effects on Dropping Out and Teenage Childbearing*, 96 Am J Soc 1226, 1236 (1991) (as the proportion of high status jobs in a community declines, teenage pregnancy and drop-out rate increase exponentially, supporting a contagion model); Paul Osterman, *Welfare Participation in a Full Employment Economy: The Impact of Neighborhood*, 38 Soc Prob 475, 486 (1991) (as the proportion of employed persons in a community decreases, the likelihood that an individual resident will receive public assistance increases).

¹⁴⁷ See Vale, *Occupancy Issues*, in *Compilation* at 10 (cited in note 126) (nationwide, 30% of non-elderly households living in public housing reported receiving wages in 1991); CLPHA, *Public Housing Today* at 16 (cited in note 26).

¹⁴⁸ See Kotlowitz, *There Are No Children Here* (cited in note 4); Richard Dembo et al, *Crack Cocaine Dealing by Adolescents in Two Public Housing Projects: A Pilot Study*, 52 Human Organization 89, 95 (1993) (young drug dealers interviewed by authors "felt hopeless regarding the likelihood of finding attractive, well-paid work"); Kirsten Gallagher and Darryl E. Owens, *Blacks' Plight: Growing Up Without Goals; Growing Up With Few Goals Common In Black Neighborhoods*, Orlando Sentinel A1 (Nov 17, 1992) (describing public housing community's "struggle with financial hardship and defeatist attitudes").

¹⁴⁹ Langley C. Keyes, *Strategies and Saints: Fighting Drugs In Subsidized Housing* 53-133 (Urban Institute, 1992) (case studies describing public housing drug problems in three cities).

¹⁵⁰ See Nancy F. Dubrow and James Garbarino, *Living in the War Zone: Mothers and Young Children in a Public Housing Development*, 68 Child Welfare 3, 10-11 (1989) (describing safety rules mothers in public housing give their children).

¹⁵¹ Compare Commission Report at 48 (cited in note 7) ("Importantly, there appears to be a relatively strong relationship between the income of the residents of a public housing development and the level of rehabilitation needs of that development.").

tenants move elsewhere. Heightened social distress, in turn, is often related to increased vandalism and physical deterioration. Physical deterioration only speeds the flight of relatively higher income tenants, creating a more impoverished and isolated community.

III. THE FUTURE OF DISTRESSED PUBLIC HOUSING

In the remainder of this Article, I examine policies that have been adopted or proposed to remedy the problem of distressed public housing. I maintain the dichotomy between policies geared to improve the physical condition of public housing and those meant to alleviate social distress. Nevertheless, as noted before, each of the policies discussed would affect both physical and social distress.

A. Renovating Public Housing

Although the Housing Act of 1937 made no provision for renovation, since 1980 the federal government has provided some funds for the modernization of public housing under the Comprehensive Improvement Assistance Program ("CIAP").¹⁵² Projects are eligible if rehabilitation costs do not exceed 62.5 percent of Total Development Costs ("TDC").¹⁵³ A TDC is the amount HUD approves for the cost of planning, land acquisition, and construction of a new public housing unit.¹⁵⁴ In 1987, Congress enacted a new modernization program, the Comprehensive Grant Program ("CGP"), targeting PHAs that own 500 or more housing units.¹⁵⁵ Under CGP, money is allocated by formula and may be used for expenses not exceeding ninety percent of the applicable TDC. A final modernization program, Major Reconstruction of Obsolete Projects ("MROP"), permits HUD to award funds that were appropriated for public housing development for reconstruction of "obsolete"

¹⁵² See 42 USC § 1437l(b) (1988).

¹⁵³ For elevator buildings the proportion of TDC that would be covered is 69%. 24 CFR § 968.203 (1992).

¹⁵⁴ 24 CFR §§ 905.102, 941.201 (1992).

¹⁵⁵ See 42 USC § 1437l(e) (Supp 1991).

projects.¹⁵⁶ Before 1992, MROP funded projects with renovation costs between seventy and ninety percent of the applicable TDC.¹⁵⁷

In its 1992 report, the National Commission on Severely Distressed Public Housing recommended numerous remedies for the physical and social needs of distressed public housing developments. The Commission estimated that 86,000 units of public housing (six percent of the total stock) qualify as severely distressed, requiring renovations that exceed sixty percent of the applicable TDC.¹⁵⁸ The Commission recommended that Congress appropriate 7.5 billion dollars over ten years to renovate this housing.¹⁵⁹ Because the cost of renovating severely distressed public housing might exceed the cost of reconstruction, the Commission recommended that Congress permit PHAs to seek funds in excess of one hundred percent of the applicable TDC.¹⁶⁰

In the Housing and Community Development Act of 1992, Congress adopted some of the Commission's recommendations. It enacted a new MROP program authorizing HUD to reserve up to one-fifth of public housing development appropriations for the renovation of obsolete projects.¹⁶¹ The 1992 Act expressly provides that "[t]he cost limitations shall not be related to the total development cost system for new development or to the cost limits for modernization and shall recognize the higher direct costs of such work."¹⁶²

The Commission's recommendation that Congress appropriate 7.5 billion dollars to rebuild distressed public housing—regardless of whether the cost of the renovation exceeds the cost of new con-

¹⁵⁶ An obsolete project eligible for MROP must have vacancies of 25% or more, estimated reconstruction costs between 70% and 100% of the applicable TDC, and the need to go to Step 3 of HUD's viability review process. See 57 Fed Reg 27330, 27334 (1992) (Notice of Funding Availability for MROP).

¹⁵⁷ In 1992, Congress removed the TDC limit on renovation costs. See Housing & Community Development Act of 1992, Pub L No 102-550, § 111, 106 Stat 3672, 3687 (1992), codified at 42 USC § 1437c(j). See text accompanying notes 161-62.

¹⁵⁸ Commission Report at 15 (cited in note 7).

¹⁵⁹ *Id.* at 18.

¹⁶⁰ "[T]he costs of successfully rehabilitating and replacing certain severely distressed public housing units have been higher than the costs of constructing modest replacement housing, on which the TDCs are based." *Id.* at 86.

¹⁶¹ Pub L No 102-550, § 111, 106 Stat at 3687. An obsolete project is defined as one which (1) has a vacancy rate in excess of 25%; or (2) a cost for redesign, reconstruction, or redevelopment in excess of 70% of its TDC; and (3) has an occupancy density in excess of the neighborhood in which it is located, a bedroom configuration that needs to be altered, significant security problems, significant physical deterioration, or inefficient energy and utility systems. *Id.*

¹⁶² *Id.* Congress also enacted a program of competitive grants to revitalize severely distressed public housing. See *id.*, § 120, 106 Stat at 3695.

struction—is misguided. Nowhere in its report did the Commission consider whether these funds could better be used for alternative forms of housing assistance. In the remainder of this Section, I examine the objectives that should guide housing assistance programs and how various housing subsidies achieve these objectives. I conclude that rather than pumping scarce resources into failed projects, Congress should instead encourage the demolition of physically distressed projects and, in most markets, replace the lost units with demand-oriented subsidies such as housing vouchers.

B. Alternative Forms of Housing Assistance for Low-Income Households

Housing assistance programs are typically characterized as either supply- or demand-oriented. Programs in which the government builds new dwellings or subsidizes developers are enacted to directly increase the supply of housing. Programs that provide recipients of assistance with funds to purchase housing services themselves increase the housing supply indirectly by stimulating demand.

In addition to the public housing program, the federal government has enacted several supply-oriented programs that provide assistance to private developers. Some programs, such as the Section 221(d)(3)¹⁶³ and Section 236¹⁶⁴ programs, subsidized the interest rate that developers pay on loans used to acquire or build low cost housing. These savings were expected to flow through to tenants in the form of reduced rents. Other initiatives such as the Section 8 New Construction¹⁶⁵ and Substantial Rehabilitation¹⁶⁶ programs guaranteed landlords who built or renovated housing a stream of subsidies lasting from twenty to forty years. Owners of Section 8 projects are entitled to a subsidy equivalent to the difference between thirty percent of their tenants' adjusted incomes and the federally prescribed fair market rents for the units. Since the mid-1980s, the major supply-oriented program has been the Low

¹⁶³ Housing Act of 1961, Pub L No 87-70, § 101(a), 75 Stat 149, codified at 12 USC § 17151 (1988).

¹⁶⁴ Housing and Urban Development Act of 1968, Pub L No 90-448, § 236, 82 Stat 476, 498, codified at 12 USC § 1715z-1.

¹⁶⁵ Housing and Community Development Act of 1974, Pub L No 93-383, § 201(a), 88 Stat 633, 653 (1974), codified at 42 USC §§ 1437f et seq (1976), as amended at 42 USC §§ 1437f et seq (1988).

¹⁶⁶ *Id.*

Income Housing Tax Credit Program.¹⁶⁷ Developers who agree to reserve units for low-income tenants earn a tax credit whose value is based upon the cost of project construction or renovation.¹⁶⁸ In 1990, Congress also enacted the HOME Investment Partnerships Program which gives local governments funds that may be used to subsidize construction and renovation by both profit-motivated and nonprofit housing developers.¹⁶⁹

From 1974 to 1990, Congress significantly cut funding for supply-oriented programs, replacing them with several demand-oriented subsidy programs. One such program, the Section 8 Existing Housing Certificate Program,¹⁷⁰ provides participating households with certificates enabling them to rent homes from private landlords. If the homes meet minimum quality standards and do not cost more than the federally prescribed maximum "fair market rent" ("FMR"),¹⁷¹ households participating in the program pay no more than thirty percent of their income in rent; the federal government pays the balance.

Since 1983, Congress has increased funds for housing vouchers, a slightly different demand-oriented subsidy.¹⁷² Under the voucher program, all participating tenants receive a subsidy equal to the difference between thirty percent of their income and the applicable FMR in their area. In the Section 8 certificate program,

¹⁶⁷ Internal Revenue Code § 42 (1991). For analyses critical of the housing tax credit, see generally Congressional Budget Office, *The Cost-Effectiveness of the Low-Income Housing Tax Credit Compared With Housing Vouchers* (1992); Michael A. Stegman, *The Excessive Costs of Creative Finance: Growing Inefficiencies in the Production of Low-Income Housing*, 2 Housing Policy Debate 357 (1991).

¹⁶⁸ Developers who agree to reserve at least 20% of their units for households that earn less than 50% of the area's median income, or 40% of their units for households with incomes less than 60% of the area median, are entitled to a tax credit equal to the present value of between 30% to 70% of eligible rehabilitation and construction costs. The 30% credit applies to developers who receive other federal subsidies. The 70% credit is for projects that do not use other federal subsidies. Internal Revenue Code § 42(b). Recipients must agree to maintain their units as affordable housing for a period of at least 15 years, and other provisions of the Internal Revenue Code virtually guarantee that the projects will be maintained as low cost housing for at least three additional years. *Id.* § 42(h)(6)(A), (D), (E)(ii). The IRS must set maximum rents. *Id.* § 42(g)(2).

¹⁶⁹ Cranston-Gonzalez National Affordable Housing Act, Pub L No 101-625, §§ 211-226, 104 Stat 4079, 4096-4114, codified at 42 USC § 12701 et seq (1990).

¹⁷⁰ Housing and Community Development Act of 1974, Pub L No 93-383, § 201(a), 88 Stat 653, 664 (1976), codified at 42 USC § 1437f(b) (1988).

¹⁷¹ The fair market rent ceiling is the forty-fifth percentile of rents charged for existing residences in a given local market area. See John C. Weicher, *The Voucher/Production Debate*, in Denise DiPasquale and Langley C. Keyes, eds, *Building Foundations: Housing and Federal Policy* 263, 266 (Pennsylvania, 1990).

¹⁷² Housing and Urban-Rural Recovery Act of 1983, Pub L No 98-181, § 207, 97 Stat 1153, 1181 (1983), codified at 42 USC § 1437f(o) (Supp 1992)).

the tenant's rent share is fixed; the government bears the burden of a higher total rent and benefits from a lower total rent. In contrast, under the voucher program, the government's share of rent is fixed; tenants whose rents exceed the FMR pay more than thirty percent of their income for rent; those who rent apartments for less than the FMR retain a portion of the subsidy.

C. Comparing Public Housing to Other Subsidy Mechanisms in the Achievement of Housing Policy Objectives

Federal housing policy is motivated by a multitude of objectives. In this Part, I compare the performance of three major forms of housing assistance—public housing, supply-oriented subsidies to private developers, and demand-oriented subsidies to low-income households—in terms of how well they achieve four “substantive” and three “methodological” goals that are generally considered to be objectives of housing policy.¹⁷³ The substantive objectives are affordability, housing quality, neighborhood quality, and neighborhood redevelopment. The methodological goals are efficiency, horizontal equity, and vertical equity. I conclude that demand-oriented subsidies fulfill most of the stated objectives better than public housing or other supply-oriented programs.

The absence of reliable data poses a major problem for studies comparing the performance of various housing delivery mechanisms. Some studies have compared a small number of government programs, but few have compared all three forms of housing assistance. Nevertheless, in 1992, HUD released tabulations of data from the 1989 American Housing Survey (“AHS”)¹⁷⁴ comparing public housing, certificates/vouchers, and privately-owned subsidized dwellings.¹⁷⁵ Although the first two categories of assistance are clearly defined, the privately-owned category includes housing that is subsidized by a number of different supply-oriented programs ranging from below-market interest rate loans to long-term

¹⁷³ The distinction between “substantive” and “methodological” objectives differentiates housing specific policy goals from objectives that are generally applicable to most, if not all, government programs.

¹⁷⁴ The AHS is a biennial survey of close to 50,000 households randomly selected throughout the nation by the Census Bureau. The Census Bureau and HUD also collaborate on an annual survey of metropolitan areas. Among the advantages of the AHS over the decennial census are its greater frequency and more detailed set of questions about housing and neighborhood characteristics. For a more detailed description of the AHS, see Schill, 67 *Chi Kent L Rev* at 822 (cited in note 64).

¹⁷⁵ Unless explicitly stated, “privately-owned subsidized dwellings” refers to units owned by private investors who receive supply-oriented subsidies.

commitments of rent subsidies. The 1992 AHS tabulations provide more accurate information about subsidized households than has heretofore been available because the Census Bureau matched each respondent against lists of subsidized dwellings instead of relying upon the tenant to identify the program under which she receives subsidies.¹⁷⁶ Unfortunately, the Census Bureau has not released the raw data, limiting the level of analysis in this Article to cross-tabulation comparisons rather than multivariate analysis.

1. Affordability.

Recent estimates indicate that affordability has eclipsed inadequate quality as the major housing-related problem among very poor households.¹⁷⁷ Not surprisingly, all three forms of housing assistance perform well in terms of providing affordable housing. Although all three (except housing vouchers) cap tenant rent contributions at thirty percent of income, the programs treat utility allowances differently. Once utility payments are factored in, public housing is somewhat more affordable than housing certificates.¹⁷⁸ No studies compare the housing expenses of tenants in privately-owned subsidized dwellings to public housing tenants, yet AHS data suggest that rent burdens for tenants of privately-owned subsidized dwellings are probably lower.¹⁷⁹

¹⁷⁶ See American Housing Survey at 3 (cited in note 126). The total number of respondents under each category of assistance is as follows: public housing, 221; certificates/vouchers, 440; subsidized privately-owned, 298. Id at 3-4.

¹⁷⁷ In 1989, five million very low income households (households earning less than 50% of their areas' median income) had "worst case" housing problems, defined as living in severely distressed substandard housing or paying more than half of their income for rent. HUD, *Priority Housing Problems and "Worst Case" Needs in 1989: A Report to Congress* i (HUD, 1991). Severe rent burdens were the only housing problem for almost three-quarters of these households. Id at ii.

¹⁷⁸ See General Accounting Office, *Assisted Housing: Rent Burdens in Public Housing and Section 8 Housing Programs* 1-2 (1990) (the average rent burden of public housing tenants with utility allowances was 30.5% of adjusted income compared to 36% of income for households receiving assistance under the Section 8 Certificate Program). The report's authors speculated that the seemingly more generous public housing utility allowances might be attributable to the difficulty PHAs encounter in collecting accurate utility consumption data for recipients of Section 8 certificates. Id at 15-16. A study using a different methodology compared rent burdens of tenants subsidized by housing certificates and vouchers. As expected, rent burdens were somewhat higher for voucher recipients (35%) as compared to certificate holders (31%). Mireille L. Leger and Stephen D. Kennedy, 1 *Final Comprehensive Report of the Freestanding Housing Voucher Demonstration* 136 (HUD, 1990).

¹⁷⁹ In 1989, the proportion of non-elderly households paying 50% or more of their income in rent was 16.7% for public housing and 12.1% for privately-owned subsidized units. American Housing Survey at 70, 154 (cited in note 126).

2. Housing quality.

Although housing quality problems among low-income households are generally less severe today than in the past, "decent, safe and sanitary" housing remains an objective of national housing policy.¹⁸⁰ The Commission on Severely Distressed Public Housing has estimated that approximately six percent of the stock of public housing has severe physical problems. Similar evaluations of the condition of privately-owned subsidized housing and the units occupied by recipients of demand-oriented subsidies are more difficult to come by. Both supply- and demand-oriented subsidy programs that make use of privately-owned housing require that the leased accommodations meet specified minimum quality standards. Nevertheless, PHAs have sometimes been lax in enforcing these requirements.¹⁸¹ Table 1 provides AHS data on several structural and neighborhood characteristics of subsidized households. Although the proportion of public housing tenants reporting moderate or severe physical problems is greater than the proportion of similarly reporting tenants subsidized under other programs, the difference is statistically significant only between public housing tenants and tenants residing in privately-owned subsidized dwellings.¹⁸²

¹⁸⁰ See 42 USC § 1437 (1991).

¹⁸¹ See, for example, *Ayala v Boston Housing Authority*, 404 Mass 689, 536 NE2d 1082 (1989) (PHA did not inspect Section 8 units for lead paint); *Wallace v Holy Temple Homes, Ltd.*, 1989 US Dist LEXIS 14439 (W D Mo), summarized at 7 The Authority 477 (1990) (suit challenging continuing government subsidies to Section 8 developers despite project deterioration).

¹⁸² Supply-oriented subsidies may be the best method to renovate deteriorated housing. Although demand-oriented subsidies are likely to cause owners of properties to do minor repairs, so as to bring their units into compliance with program requirements, see Ira S. Lowry, ed, *Experimenting With Housing Allowances: The Final Report of the Housing Assistance Supply Experiment* 25 (Oelgesclager, Gunn & Hain, 1983), such subsidies may provide insufficient incentives for landlords to renovate very deteriorated buildings.

Table 1. Housing, Neighborhood and Poverty Characteristics of Assisted Households

	<u>All Households</u>			<u>Non-elderly Households</u>		
	Public Housing	Voucher/ Certificate	Privately- owned Subsidized	Public Housing	Voucher/ Certificate	Privately- owned Subsidized
House Has Moderate or Severe Physical Problems	12.7	12.6	6.9**	16.1	14.0	7.5**
Mean Rating of Housing†	7.8	8.0	8.1	7.2	8.0**	7.6
Neighborhood Problems Exist	49.3	42.0	41.5*	62.3	47.8***	52.4
Crime Problems Exist in Neighborhood	21.5	13.5**	15.8*	27.9	15.4	24.2
Problems With Bad People Exist in Neighborhood	19.0	21.9	20.4	22.0	25.9	27.6
Mean Rating of Neighborhood†	6.7	7.2***	7.1*	6.1	7.0***	6.2
Household Income Below Poverty Level	67.9	65.0	48.9***	75.2	66.5	54.2***

*Significantly different from public housing at the .90 confidence level

**Significantly different from public housing at the .95 confidence level

***Significantly different from public housing at the .99 confidence level

Note: Unless otherwise specified, all numbers are percentages.

† Rating from one (low) to ten (high)

Source: American Housing Survey (1989)

When tenants rate their dwellings on a scale of one to ten,¹⁸³ however, statistically significant differences emerge as families in public housing respond less favorably than those receiving vouchers or certificates. Families in public housing gave a mean rating of 7.2 compared to 8.0 for certificate/voucher recipients and 7.6 for residents of privately-owned subsidized housing. In addition, as Tables 2 and 3 indicate, when the rating scale is collapsed into three categories, 16.3 percent of public housing families had unfavorable evaluations of their housing compared to only 6.2 percent of certificate/voucher holders and 6.1 percent of those living in privately-owned subsidized dwellings.¹⁸⁴

¹⁸³ The highest rating is 10; the lowest is 1.¹⁸⁴ In comparing public housing to other subsidy mechanisms, I utilize subjective evaluations by tenants and certain objective indicators contained in the AHS. Subjective evaluations of housing and neighborhood quality may be criticized on the ground that individuals are not truly aware of their feelings, are inclined to reduce cognitive dissonance, or are unable to make meaningful distinctions among categories in a ten-level scale. Moreover, subjective indicators might prove unreliable if tenants have different expectations of subsidized and nonsubsidized housing. For example, if tenants expect that the government should provide better housing than the private sector, comparing their ratings of public sector housing to private sector housing might bias the results toward finding public housing less desirable. Alternatively, if tenants have low expectations of government, the results may be biased the

Table 2. House Ratings of Public Housing Tenants and Voucher/Certificate Recipients

	<u>All Households</u>		<u>Non-elderly Households</u>	
	Public Housing	Voucher/Certificate	Public Housing	Voucher/Certificate
Unfavorable	11.4	6.0	16.3	6.2
Neutral	12.1	14.0	14.6	13.6
Favorable	76.6	80.0	69.0	80.2

p < .10.

p < .01

Note: all numbers are percentages.

Source: American Housing Survey (1989)

Table 3. House Ratings of Public Housing and Privately-Owned Subsidized Housing Tenants

	<u>All Households</u>		<u>Non-elderly Households</u>	
	Public Housing	Privately-Owned Subsidized	Public Housing	Privately-Owned Subsidized
Unfavorable	11.4	5.0	16.3	6.1
Neutral	12.1	16.1	14.6	21.1
Favorable	76.6	79.0	69.0	72.7

p < .05

p < .05

Note: all numbers are percentages.

Source: American Housing Survey (1989)

3. Neighborhood quality.

Since the 1949 Act, improved neighborhood quality has been an articulated goal of American housing policy. What Congress has meant by neighborhood quality has changed as neighborhoods themselves have evolved. In the 1949 declaration that each American family should have a "decent home and a suitable living environment,"¹⁸⁵ Congress probably meant a neighborhood devoid of slum housing, whereas the 1974 call for "spatial deconcentration of housing opportunities" unmistakably meant economic and racial integration.¹⁸⁶ One of the major advantages of demand-oriented subsidies is that they permit households to choose their preferred

other way. Nevertheless, objective indicators of housing and neighborhood quality are difficult to devise, and it is unclear whether the metric chosen by the researcher would be salient to the person whose views are being canvassed. I believe that it is appropriate to consider the stated views of the survey respondents rather than second-guess their validity or rely solely on a scale of objective indicators that may have little relevance to them.

¹⁸⁵ Pub L No 81-171, § 2, 63 Stat 413 (1949).

¹⁸⁶ Pub L No 93-383, § 101(c)(6), 88 Stat 633, 634-35 (1974), codified at 42 USC § 5301 (1988). The objective of racial desegregation also underlies the Fair Housing Act of

neighborhoods rather than limiting their choices to communities already containing subsidized housing. Siting controversies over both public housing and privately-owned subsidized housing have resulted in much of the stock being located in less desirable areas of town, frequently neighborhoods with high concentrations of poverty and racial minorities.¹⁸⁷ Although housing vouchers theoretically enable poor households to escape these communities, their ability to do so depends upon two factors. First, housing must be available in better neighborhoods with rents below the FMR. Second, housing discrimination must not block the ability of minorities to locate housing and move into these communities.

A substantial majority of households that enroll in demand-oriented subsidy programs secure satisfactory housing regardless of their race. In 1974, HUD funded the Experimental Housing Allowance Program ("EHAP"), an enormous demonstration project designed to test the feasibility of a housing assistance payment entitlement program.¹⁸⁸ Three-quarters of the households that expressed interest in the program located satisfactory housing.¹⁸⁹ Minority participation roughly equalled their proportion of the eligible population,¹⁹⁰ although minorities generally had more trouble securing adequate housing than did white households.¹⁹¹ Households that received public assistance were overrepresented in the program.¹⁹² A 1990 study of households receiving housing vouchers and certificates as part of a demonstration program in seventeen large cities also shows that most enrollees obtained housing that met program guidelines—sixty-five percent for voucher recipients and sixty-one percent for those receiving certifi-

1968. See *United States v Starrett City Associates*, 840 F2d 1096, 1101 (2d Cir 1988) (fair housing encompasses both the goals of anti-discrimination and integration.).

¹⁸⁷ See text accompanying notes 104-11.

¹⁸⁸ EHAP was authorized by the Housing and Urban Development Act of 1970, Pub L No 91-609, § 504, 84 Stat 1770, 1786 (1970). EHAP actually included three elements: examinations of the effects of housing allowances on housing demand and supply as well as a study of the administrative costs involved in implementing the program. Lowry, ed, *Experimenting With Housing Allowances* at 1-7 (cited in note 182) (describing EHAP).

¹⁸⁹ See Weicher, *The Voucher/Production Debate* in DiPasquale and Keyes, eds, *Building Foundations* at 274 (cited in note 171).

¹⁹⁰ See Bernard J. Frieden, *Housing Allowances: An Experiment That Worked*, in J. Paul Mitchell, ed *Federal Housing Policy and Programs: Past and Present* 365, 372 (Center for Urban Policy Research, 1985).

¹⁹¹ Minority households were overrepresented among applicants for the program, but had less success than white households in securing housing. See General Accounting Office, *Housing Allowances: An Assessment of Program Participation and Effects* 73 (1986).

¹⁹² See Frieden, *Housing Allowances*, in Mitchell, ed, *Federal Housing Policy* at 372 (cited in note 190).

cates.¹⁹³ The 1990 data also show that when program participants in New York City are excluded from the seventeen city sample,¹⁹⁴ minority success rates are, on average, nearly equal to those of whites.¹⁹⁵

Although most recipients of demand-oriented subsidies obtain housing that meets the minimum quality standards prescribed by the government, the effects of housing certificates and vouchers on mobility have been modest. Many EHAP participants remained in their homes and used the subsidy to reduce their rent burdens.¹⁹⁶ Those who moved tended to move within the same neighborhood, although the study found a small tendency for households to leave the poorest neighborhoods for those with higher socioeconomic composition.¹⁹⁷ Voucher and certificate holders studied in 1990 were more mobile than households in the EHAP program.¹⁹⁸ Although households moved to neighborhoods they rated more highly, the effects in terms of promoting racial integration were

¹⁹³ See Leger and Kennedy, 1 *Final Comprehensive Report* at ix (cited in note 178).

¹⁹⁴ For cities, such as New York, with barriers to market entry and unusually low vacancy rates, supply-oriented subsidies such as public housing may be necessary, at least temporarily. See Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 Cornell L Rev 878, 910-11 (1990). It is also conceivable that, in some housing markets, public housing could be more cost-effective than demand-oriented subsidies if private sector rents for minority households were inflated because of housing discrimination. *Id.* at 912.

¹⁹⁵ Meryl Finkel and Stephen D. Kennedy, *Racial/Ethnic Differences in Utilization of Section 8 Existing Rental Vouchers and Certificates*, 3 Housing Policy Debate 463, 480 (1992) ("outside of New York, once we control for site and other characteristics, racial differences in success rates, which were small to begin with, essentially disappear"). The difference in success rates in New York City, however, was substantial: 64% of white recipients in New York successfully obtained housing, but only 23% of blacks and 30% of Hispanics found dwellings. *Id.* at 477. The authors suggest that one reason is that fewer minorities were able to qualify by remaining in their existing housing because the housing didn't meet program standards. *Id.* at 496. The authors also suggest that the tight housing market prevailing in New York City at the time of the study (1985-1988) might have affected the findings. *Id.* at 498.

¹⁹⁶ Frieden, *Housing Allowances* in Mitchell, ed, *Federal Housing Policy* at 375 (cited in note 190) ("A general reluctance to move undercut chances for widespread neighborhood mobility, but a sizable minority of families did move . . ."); Jennifer L. Stucker, *Race and Residential Mobility: The Effects of Housing Assistance on Household Behavior*, in John M. Goering, ed, *Housing Desegregation and Federal Policy* 253, 254 (1986) (in the demand experiment, "the allowance had little or no effect on the percentage of households that moved").

¹⁹⁷ See Weicher, *The Voucher/Production Debate* in DiPasquale and Keyes, eds, *Building Foundations* at 282 (cited in note 171). See also Frieden, *Housing Allowances*, in Mitchell, ed, *Federal Housing Policy* at 375 (cited in note 190).

¹⁹⁸ See Mireille L. Leger and Stephen D. Kennedy, *Recipient Housing in the Housing Voucher and Certificate Programs* 3 (HUD, 1990) (just over two-thirds of the recipients of vouchers and certificates moved).

statistically insignificant.¹⁹⁹ Nevertheless, for households that moved, there was a statistically significant increase in the average per capita income of their new neighborhoods.²⁰⁰

Table 4. Neighborhood Ratings of Public Housing Tenants and Voucher/Certificate Recipients

	<u>All Households</u>		<u>Non-elderly Households</u>	
	Public Housing	Voucher/Certificate	Public Housing	Voucher/Certificate
Unfavorable	25.6	16.2	32.2	19.5
Neutral	17.0	16.8	18.2	15.4
Favorable	57.4	67.0	49.6	65.1

$p < .05$

$p < .01$

Note: all numbers are percentages.

Source: American Housing Survey (1989)

Table 5. Neighborhood Ratings of Public Housing and Privately-owned Subsidized Housing Tenants

	<u>All Households</u>		<u>Non-elderly Households</u>	
	Public Housing	Privately-Owned Subsidized	Public Housing	Privately-Owned Subsidized
Unfavorable	25.6	19.5	32.2	26.8
Neutral	17.0	15.4	18.2	18.9
Favorable	57.4	65.1	49.6	54.2

n.s.

n.s.

Note: all numbers are percentages.

Source: American Housing Survey (1989)

Data from the AHS, displayed in Tables 1, 4, and 5 suggest that households receiving housing assistance through demand-oriented programs live in better neighborhoods than other assisted households. Sixty-two percent of the families living in public housing reported neighborhood problems such as crime, noise, and the existence of "bad" people, compared to fifty-two percent of those living in privately-owned subsidized dwellings and forty-eight percent of households receiving certificates or vouchers.²⁰¹ Households that received housing vouchers or certificates also evaluated their

¹⁹⁹ See *id.* at 5. On average black recipients moved from neighborhoods that were 76% minority to ones that were 74% minority. Hispanic households, however, moved from neighborhoods that were 73% minority to ones that were 63%—a statistically significant shift. *Id.*

²⁰⁰ "The average per capita income in tracts occupied by recipients who moved was 4 percent higher than that in the tracts in which they had previously lived." *Id.*

²⁰¹ The difference in reported neighborhood problems between public housing residents and tenants of privately-owned subsidized dwellings is statistically insignificant.

neighborhoods more favorably than those who lived in public housing or privately-owned subsidized dwellings. Less than one-fifth of the families receiving demand-oriented housing assistance had unfavorable views of their neighborhoods compared to almost one-third of public housing families and one-quarter of those in privately-owned subsidized housing.

4. Neighborhood redevelopment.

Since 1937, federal housing assistance has been used to eliminate slums and advance community redevelopment.²⁰² Although some studies show that public housing does not blight surrounding communities,²⁰³ few would suggest that it increases property values or enhances neighborhood stability.²⁰⁴ Demand-oriented subsidies are also unlikely to advance neighborhood redevelopment efforts, since they are not restricted to particular communities. Supply-oriented subsidies targeted to private developers in particular neighborhoods seem the only practical way to achieve community development through housing assistance programs. Indeed, several cities have earmarked housing and community development funds for nonprofit community development corporations to foster this type of activity.²⁰⁵

²⁰² See Schill, 75 Cornell L Rev at 903-06 (cited in note 194).

²⁰³ See California Dep't of Housing & Community Development, *The Effects of Subsidized and Affordable Housing on Property Values: A Survey of Research* i (CDHCD, 1988) (of fifteen empirical studies surveyed, fourteen "reached the conclusion that there are no significant negative effects from locating subsidized, special-purpose or manufactured housing near market-rate developments").

²⁰⁴ Theoretically, public housing could be used to improve the quality of the neighborhoods by replacing deteriorating buildings with newly constructed dwellings. Schill, 75 Cornell L Rev at 910 (cited in note 194). Nevertheless, most empirical studies fail to find that public housing enhances surrounding property values. See Hugh O. Nourse, *A Rationale For Government Intervention in Housing: The External Benefit of Good Housing, Particularly with Respect to Neighborhood Property Values*, in HUD, 1 *Housing in the Seventies: Working Papers* 243, 250 (HUD, 1976) ("There is no evidence supporting subsidization of the poor in standard quality housing in order to improve surrounding property values."). But see William A. Rabiega, Ta-Win Lin, and Linda M. Robinson, *The Property Value Impacts of Public Housing Projects in Low and Moderate Density Residential Neighborhoods*, 60 Land Econ 174, 178 (1984) (properties in Portland, Oregon gained value after the location of public housing in close proximity, although gain was "quite small").

²⁰⁵ See Avis C. Vidal, *Rebuilding Communities: A National Study of Urban Community Development Corporations* 66-69 (1992) (describing housing activities of community development corporations).

5. Efficiency.

Efficiency is an important objective of any housing program, especially when the resources available for social programs are as limited as they are today. This analysis defines an efficient housing program as one that employs the fewest resources in achieving its substantive objectives. Public housing receives relatively low marks for efficiency, regardless of whether one analyzes the program from a theoretical or empirical vantage point.²⁰⁶ The government is frequently considered to be an inefficient provider of goods and services, for only private entrepreneurs will be driven by the profit motive to minimize costs and maximize productivity.²⁰⁷ Even where the beneficial owners of the privately-owned enterprises have ceded day-to-day control to management, the existence of transferable property rights creates strong incentives for the owners to monitor the business.²⁰⁸ Similar incentives for cost reduction and careful monitoring do not exist or exist in only an attenuated fashion in the public sector because individual taxpayers do not have a direct claim to the surplus produced by efficient government operation.

Preference aggregation under democratic regimes and bureaucratic self-interest also contribute to public sector inefficiency. Due to collective action problems, narrow self-interested groups have an advantage over diffuse majorities in influencing government.²⁰⁹ Individual voters who favor a government program that would generate widespread benefits may lack the incentive to expend resources in lobbying government because of high organizational costs and the ability of non-participants to share in the benefits.

²⁰⁶ For a more detailed analysis of the efficiency of public housing, see generally Schill, 75 Cornell L Rev at 878 (cited in note 194).

²⁰⁷ See Louis De Alessi, *Property Rights and Privatization*, in Steve H. Hanke, ed, *Prospects For Privatization* 24, 31 (Academy of Political Science, 1987) (public sector will not minimize costs as does the private sector).

²⁰⁸ Cento Veljanovski, *Selling The State: Privatization in Britain* 85 (Weidenfeld and Nicolson, 1987) ("private ownership plus remuneration by variable residual claims creates powerful incentives and a self-enforcing system of monitoring of costs and performance"); Armen A. Alchian and Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 Am Econ Rev 777, 782 (1972) (same). But see Adolf A. Berle, Jr. and Gardiner C. Means, *The Modern Corporation and Private Property* 8-9 (Macmillan, 1932) (the separation of management from ownership reduces incentives for efficiency). In those instances where individual owners fail to monitor management, the market for corporate control provides an additional safeguard against inefficiency. See, for example, Frank H. Easterbrook and Daniel R. Fischel, *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 Harv L Rev 1161, 1165-74 (1981); Henry G. Manne, *Mergers and the Market for Corporate Control*, 73 J Pol Econ 110, 113 (1965).

²⁰⁹ See generally Mancur Olson, *The Logic of Collective Action* (Harvard, 1965).

Small groups of intensely interested citizens, on the other hand, have lower organizational costs, can avoid free-rider problems, and can thereby increase their wealth at the majority's expense. Rent-seeking²¹⁰ behavior by special interest groups generates inefficiencies associated both with the resources expended in lobbying and with the diversion of public largesse. In addition, government officials may act inefficiently by maximizing the size and scope of their bureaus in an attempt to enhance their prestige.²¹¹

The public housing program illustrates many of the theoretical shortcomings of the public sector. Special interest groups, such as the Chamber of Commerce and the National Association of Real Estate Boards, undermined the effectiveness of the program by persuading Congress to include income limitations, cost ceilings, and the equivalent elimination requirement, all of which contributed to the physical and social deterioration that plagues a significant portion of the public housing stock today.²¹² Organized labor added to the costs of public housing by pressuring Congress to include requirements that PHAs pay prevailing wages to construction workers.²¹³

Statistical studies and anecdotal accounts also suggest that the absence of an incentive for PHA managers to cut costs has resulted in waste. One comprehensive study of housing subsidies found evidence of inflated expenses in the public housing program.²¹⁴ Indeed, the government could have saved money by purchasing housing from the existing stock rather than building it itself.²¹⁵ The authors also reported that the operating costs of public housing tend to be approximately thirty percent higher than the cost of

²¹⁰ See James M. Buchanan, *Rent Seeking and Profit Seeking* in James M. Buchanan, Robert D. Tollison, and Gordon Tullock, eds, *Toward A Theory of the Rent-Seeking Society* 3, 7-8 (Texas A&M, 1980).

²¹¹ See William A. Niskanen, Jr., *Bureaucracy and Representative Government* 36-42 (Aldine, 1971).

²¹² See text accompanying notes 34-50, 85-87.

²¹³ See Schill, 75 Cornell L. Rev. at 904 (cited in note 194).

²¹⁴ See Stephen K. Mayo et al, *Housing Allowances And Other Rental Housing Assistance Programs—A Comparison Based On The Housing Allowance Demand Experiment, Part 2: Costs and Efficiency* 151 (Abt Associates, 1980). The authors reach this conclusion by capitalizing the rents that public housing would earn in the private market. They find that the capitalized rental value of public housing is less than its development cost. Therefore, they conclude that the housing's hypothetical market value would not justify construction. *Id.*

²¹⁵ *Id.* at 154.

operating similar housing in the private sector.²¹⁶ Although less systematic, newspapers and government auditors frequently uncover incidents of mismanagement, waste, and fraud.²¹⁷

Public housing and supply-oriented subsidies for private developers, may also be criticized for failing to facilitate monitoring by consumers. Normally, the willingness of consumers to seek alternative suppliers disciplines producers who price unfairly or offer inferior goods. Supply subsidies, in effect, have two consumers—tenants and the government. Recent scandals demonstrate that government agencies have difficulty monitoring the use of housing subsidies to ensure that they benefit low income tenants.²¹⁸ Tenants are also unable to bring discipline to bear on PHAs and private recipients of supply-oriented subsidies. Tenants of public housing and privately-owned subsidized dwellings cannot effectively threaten to move elsewhere since the subsidies they receive are tied to their units. They may also be unable or unwilling to complain to local or federal officials because they fear eviction or some other form of retaliation. One of the advantages of a demand-oriented subsidy such as a housing voucher is that the tenant will act as an effective monitor of housing quality.²¹⁹

Virtually all empirical studies comparing supply- and demand-oriented subsidies agree that vouchers and certificates are a more

²¹⁶ See *id.* at 170. See also Arthur P. Solomon, *Housing the Urban Poor: A Critical Evaluation of Federal Housing Policy* 152-54 (M.I.T., 1974) (inefficient operating procedures contribute to the low cost-effectiveness of public housing).

²¹⁷ See Memorandum Summarizing HUD Inspector General Audits 1983-1989 (unpublished, 1989) (discussing scope of possible audits) (on file with U Chi L Rev). See also text accompanying notes 1-2, 56-62.

²¹⁸ See generally, Irving Welfeld, *HUD Scandals: Howling Headlines and Silent Fiascoes* (Transaction, 1992) (describing corruption of federal housing programs); William Tucker, *Housing's Subsidy Hunters*, Wash Times F4 (Oct 6, 1992) ("incentive program[s] to persuade developers to build new housing for the poor . . . attract all kinds of fly-by-night operators, hungry for shelter from the profit-and-loss system. These subsidy hunters extract a few quick profits and then leave the federal government holding the bag").

²¹⁹ Provided that moving costs are not prohibitive and that tenants are fully informed of their right to habitable housing, recipients of demand-oriented subsidies can obtain housing elsewhere and retain the subsidy if the landlord fails to deliver appropriate housing. See Michael H. Schill, *The Role of the Nonprofit Sector in Low Income Housing Production: A Comparative Perspective* 30 Urb Aff Q (forthcoming 1994). Demand-oriented subsidies may backfire if tenants and landlords collude to inflate the rent on an apartment and divide the surplus. This problem is alleviated by the voucher system, which permits the tenant to retain any surplus not needed to pay for housing and therefore instills incentives to shop for the best value. *Id.* An additional inefficiency of supply-oriented subsidy programs is that they do not permit tenants to decide for themselves how much housing they wish to consume. Demand-oriented subsidies such as housing vouchers preserve an incentive for households to consume appropriate levels of housing because recipients save money by renting cheaper apartments.

cost-effective means of delivering housing assistance.²²⁰ For example, a 1988 Congressional Budget Office study estimated that housing an elderly household in public housing for twenty years would cost the government thirty percent more than if it had given the household a Section 8 certificate.²²¹ Similarly, a 1980 comparison of alternative housing subsidies concluded that subsidizing a household in public housing cost 50 to 112 percent more than providing assistance through housing allowances.²²²

²²⁰ One fear is that demand-oriented subsidies will lead to rent inflation. Although economic theory predicts that rents might increase in the short-run as a result of increased demand, in the long-run developers should enter the market and construct additional housing. This additional supply will force down rents. In the EHAP Supply Experiment, researchers found that in two test sites (Green Bay, Wisconsin and South Bend, Indiana), the introduction of housing allowances did not cause inflation in the price of the existing housing stock. See Lowry, ed, *Experimenting With Housing Allowances* at 26 (cited in note 182) (EHAP Supply Experiment "[h]ad no perceptible effect on rents or property values"); C. Peter Rydell and C. Lance Barnet, *Price Effects of Housing Allowances* 20 (Rand Paper Series P-6794, 1982) ("housing allowance program had virtually no effect on the price of rental housing"). This absence of price effects was attributed to the repair of some units, new construction, and an increase in occupancy rates. See Lowry, ed, *Experimenting With Housing Allowances* at 20; Rydell and Barnet, *Price Effects of Housing Allowances* at 20. It may also have been influenced by the choice of sites for the experiment and the fact that less than half of all eligible households participated. See Chester Hartman, *Housing Allowances: A Critical Look*, 5 J Urb Aff 41 (1983) (criticizing housing allowances because they are "likely to least serve those who most need housing assistance").

²²¹ See Congressional Budget Office, *Current Housing Problems and Possible Federal Responses* 50 (GPO, 1988). The report also estimates that public housing would cost 8% more than Section 8 new construction. *Id.* The analysis uses a 4% interest rate and assumes that the household will be housed for a period of twenty years and that the units have a useful life of twenty years without requiring rehabilitation. The assumption that public housing has no residual value after twenty years probably leads the authors to overestimate the relative cost of public housing.

²²² See Mayo et al, *Housing Allowances* at 46-48 (cited in note 214). These estimates are based on the cost of subsidizing an average, two-bedroom unit without considering variations in quality. In addition, the analysis assumes that the value of public housing fully depreciates over 40 years. The authors defend this assumption on the ground that most public housing depreciates rather rapidly and requires further modernization expenditures. In addition, they estimate that even if their assumption of zero residual value were wrong, such a mistake would overestimate the cost of public housing by only 17%. *Id.* at 27-30. See also Urban Systems Research & Engineering, Inc., 1 *The Costs of HUD Multifamily Housing Programs* S-22 (HUD, 1982) (public housing and Section 8 new construction housing cost 55% and 27% more, respectively, than unsubsidized multifamily housing). Stegman suggests that the comparatively high development costs of public housing may not reflect relative inefficiency, but instead the disproportionate number of single parent minority families that PHAs house. Community opposition and litigation with respect to site selection may drive up the cost of public housing relative to other housing programs. See Michael A. Stegman, *The Role of Public Housing in a Revitalized National Housing Policy*, in DiPasquale and Keyes, eds, *Building Foundations* at 333, 341 (cited in note 171). Even if Stegman correctly attributes the higher costs of public housing to disputes over site selection, this explanation does not strengthen arguments in favor of public housing as opposed to demand-oriented subsidies. To the contrary, since demand-oriented subsidies make use

6. Horizontal equity.

Public housing has long been subjected to criticism because it lacks horizontal equity. Housing assistance in the United States is not an entitlement; some have likened it to a lottery.²²³ Those lucky enough to be selected by PHAs receive significant help; others receive no assistance whatsoever. Until housing assistance becomes an entitlement,²²⁴ any method of providing subsidized housing will violate the norm of horizontal equity. Nevertheless, because demand-oriented subsidies are less costly than supply-oriented programs they can serve more households. Therefore, on horizontal equity grounds, housing vouchers and certificates are preferable to public housing and other forms of supply-oriented assistance.

7. Vertical equity.

In theory, if not in practice, most redistributive programs are guided by the norm of vertical equity that provides that the neediest should derive the greatest benefits. Public housing performs only marginally better than other forms of housing assistance under this criterion. As Table 1 indicates, although proportionately more public housing residents fall below the poverty line as compared to tenants of privately-owned subsidized housing and certificate/voucher recipients, the difference between public housing and demand-oriented subsidy programs is not statistically significant.

Furthermore, the performance of public housing on the criterion of vertical equity will probably deteriorate in the future because allocating public housing to only the neediest families creates concentrations of poverty. To alleviate the social distress such concentrations already generate, PHAs increasingly will need to offer admission to households who are not the most impoverished.²²⁵ In contrast, demand-oriented programs targeted to the neediest

of existing housing, voucher programs eliminate site selection controversies. See text accompanying notes 185-201.

²²³ See Muth, *Public Housing* at 3 (cited in note 40). See also Edgar O. Olsen, *Housing Programs and the Forgotten Taxpayer*, *The Public Interest* 97, 104-05 (Winter 1982) (discussing inequities of supply subsidies). Waiting lists for public housing in many cities are extremely lengthy; in some areas the wait for accommodations among eligible applicants may exceed two years. See NAHRO, *The Many Faces of Public Housing* 61 (1990).

²²⁴ But see Robert C. Ellickson, *The Untenable Case For An Unconditional Right To Shelter*, 15 *Harv J L & Pub Pol* 17 (1992) (arguing against making housing assistance an entitlement program).

²²⁵ For a discussion of the recommendations of the Commission on Severely Distressed Public Housing with respect to income mixing, see text accompanying notes 291-95.

tend to alleviate rather than intensify concentrations of poverty,²²⁶ so government will not come under similar pressure to violate the norm of vertical equity in allocating these subsidies.

C. Renovation or demolition?

The preceding analysis shows that demand-oriented subsidies outperform public housing. Vouchers enable families to live in better homes in more desirable neighborhoods, and are a more efficient and equitable way to distribute housing assistance. The only objective of housing policy that public housing better achieves is affordability, but this difference is small and could easily be eliminated by adjusting utility allowances.²²⁷

The superiority of demand-oriented subsidies strongly argues against the recommendation of the Commission on Severely Distressed Public Housing that public housing be renovated even if the cost of renovation exceeds that of new development.²²⁸ Instead of pouring massive funds into rebuilding failed projects, the federal

²²⁶ A study based on late 1970s data concluded that the proportion of assisted households living in minority census tracts was much lower for recipients of demand-oriented subsidies than for those who lived in dwellings subsidized by supply-oriented programs. See Robert Gray and Steven Tursky, *Location and Racial/Ethnic Occupancy Patterns For HUD-Subsidized Family Housing in Ten Metropolitan Areas*, in John M. Goering, ed., *Housing Desegregation and Federal Policy* 235, 245 (cited in note 196). See also text accompanying notes 197-200.

²²⁷ Neither public housing, nor demand-oriented subsidies perform well in achieving neighborhood redevelopment objectives. Supply subsidies utilized by private entities seem the only method likely to implement successfully a program of neighborhood renewal. See text accompanying notes 202-205. Whether public policymakers should prefer profit-motivated to nonprofit housing developers is debatable. Supply-oriented subsidies may generate a market failure on account of the government's inability or unwillingness to monitor housing quality and the limited ability of tenants to discipline subsidized providers of housing. See text accompanying notes 218-19. Nonprofit organizations have fewer incentives to behave strategically since they are prohibited by law from transforming public surplus into private gain. Henry B. Hansmann, *The Role of Nonprofit Enterprise*, 89 Yale L J 835, 838 (1980) (describing the "nondistribution constraint"). Therefore nonprofit developers may be the most trustworthy recipients of supply subsidies. See Schill, 30 Urb Aff Q (cited in note 219). Nonprofit community development organizations may also be able to achieve objectives, such as community participation and empowerment, that private sector entrepreneurs cannot achieve. Nevertheless, the absence of a profit motive, limited access to capital, and small scale of their operations may offset some of the efficiency-enhancing properties of nonprofit developers.

²²⁸ Commission Report at 81 (cited in note 7). The Commission does contemplate that some public housing may have to be demolished to "thin out" some public housing developments. See id at 79, 82. Nevertheless, the Commission recommends that all units be replaced with supply-oriented subsidies. Id at 87. To avoid community opposition, the Commission also recommends that replacement units be permitted in the same neighborhood as the housing that was demolished, despite the fact that these neighborhoods already have high concentrations of poor households. Id.

government should carefully analyze the cost-effectiveness of its actions. Decisions at the extremes present few problems. Renovations that would exceed the cost of new construction should not be undertaken regardless of the level of social distress at the development. For projects with modest capital needs and low levels of social distress, modernization is desirable. Similarly, for socially distressed projects in need of extensive reconstruction, demolition and replacement with housing vouchers is more appropriate than reconstruction. For projects in between these polar cases, the government should carefully analyze whether the physical renovations are cost-effective as well as the likelihood that social distress can be alleviated by actions short of demolition.

Since social and physical distress are highly correlated,²²⁹ the number of units of public housing that would be demolished under these guidelines is likely to be significant. Although federal legislation does not unduly impede the ability of a PHA to justify demolition, it makes actual demolition extremely difficult because of requirements that the PHA replace demolished units. Under federal law, the Secretary may not approve an application by a PHA to demolish units unless he finds that

the project or portion of the project is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes, and no reasonable program of modifications is feasible to return the project or portion of the project to useful life; in the case of an application proposing the demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project²³⁰

In most cases of severely distressed public housing, a PHA can probably prove that the project is obsolete because of either physical deterioration or social distress. HUD is also unlikely to challenge a demolition request if the cost to modify the project would be enormously high.

Nevertheless, before public housing may be demolished, a PHA must develop a plan to replace each unit on a one-for-one basis, using additional public housing or other supply-oriented subsidies. HUD regulations also require that the housing not be

²²⁹ See *id.* at 15 (the Commission “has noted a strong relationship between severe distress and modernization needs”).

²³⁰ 422 USC § 1437p(a)(1) (Supp 1991).

built in neighborhoods with high concentrations of minorities.²³¹ Only under certain limited conditions, may public housing units be replaced with demand-oriented subsidies such as Section 8 housing certificates. Prior to approving a replacement housing plan involving housing certificates, the Secretary of HUD must find that replacement of the units with supply-oriented subsidies is not feasible and that the supply of housing in the area will remain sufficient for certificate holders throughout the period in which they will receive assistance. The Housing and Community Development Act of 1992 added an additional requirement providing that when 200 or more units are demolished, no more than one-half of the replacement units can be provided by demand-oriented subsidies.²³² PHAs may not, under any condition, replace public housing with housing vouchers.

At present, virtually no replacement housing plans have been approved that consist primarily of demand-oriented subsidies.²³³ A HUD notice states that a tenant-based replacement plan is not a "viable option" under the statute.²³⁴ The basis for this reluctance appears to be the view that supply-oriented subsidies are almost always feasible and that HUD is unable to predict future housing market conditions.²³⁵

The federal government has an important interest in preserving its investment in public housing. Therefore, the statutory requirement that HUD certify the project as obsolete and not susceptible to reasonable remediation seems prudent. Nevertheless, the replacement housing requirements are unduly burdensome.²³⁶

²³¹ 24 CFR §§ 880.206(c), 970.11(h) (1992).

²³² Pub L No 102-550, § 116(b), 106 Stat 3672, 3693 (1993), codified at 42 USC § 1437p.

²³³ Interview in Washington D.C. with William J. Flood, Director, Modernization Division, HUD, (Dec 8, 1992) ("Flood Interview") (notes on file with U Chi L Rev).

²³⁴ HUD, Notice No PIH 89-19 (PHA) 5 (Apr 11, 1989), renumbered as PIH 91-19 (PHA) pursuant to Notice No PIH 91-17 (PHA) ("Because of these stringent requirements in the statute for use of tenant-based assistance under Section 8 as a replacement unit in a RHP [Replacement Housing Plan] the Department does not feel that tenant-based assistance is a viable option for PHAs to pursue in developing their RHPs.").

²³⁵ Flood Interview (cited in note 233).

²³⁶ Low income housing advocates, however, have charged that PHAs have evaded replacement housing obligations by permitting public housing to deteriorate and become uninhabitable rather than seek demolition approval from HUD. National Housing Law Project, *Public Housing In Peril: A Report on the Demolition and Sale of Public Housing Projects 72-74* (NHLP, 1990). Several courts have held that tenants may challenge de facto demolitions of public housing under federal law. *Tinsley v Kemp*, 750 F Supp 1001, 1009 (W D Mo 1990); *Concerned Tenants Association of Father Panik Village v Pierce*, 685 F Supp 316, 324 (D Conn 1988).

Community opposition to the construction of new project-based replacement housing may doom efforts to demolish distressed public housing.²³⁷ Furthermore, the strong preference for supply-oriented subsidies exhibited by federal law is unjustified in light of substantial evidence that demand-oriented subsidies are more consistent with the equitable and efficient attainment of national housing policy objectives.²³⁸

D. Alleviating Social Distress

In its report, the National Commission on Severely Distressed Public Housing recognized that simply repairing bricks and mortar will not relieve the distress that envelops many public housing developments.²³⁹ In recent years, Congress and PHAs have adopted a four-pronged effort to improve the lives of people who live in public housing. Programs have been enacted or proposed to reduce drug distribution and use, extend social services and job training, improve management and alleviate the concentration of poverty in public housing.

1. Fighting drugs.

The increased use and sale of controlled substances in public housing developments has dramatically worsened the lives of tenants. In addition to lives destroyed by addiction, drugs are responsible for much of the violent crime that victimizes tenants. Battles between rival suppliers of drugs claim innocent victims and cause residents to fear leaving their apartments.²⁴⁰ In addition, the need for money to purchase drugs has led to increased levels of robberies and burglaries.²⁴¹

²³⁷ The recommendation of the Commission on Severely Distressed Public Housing that HUD permit replacement housing to be built in areas of high minority concentration may decrease the likelihood of community opposition, but will likely set the stage for future social distress. See note 228.

²³⁸ See text accompanying notes 173-226.

²³⁹ See Commission Report at 3 (cited in note 7) (calling for "equal and significant attention to both the human and the physical conditions").

²⁴⁰ Even remaining inside one's apartment is no guarantee of safety in some public housing developments. See, for example, Patrice Gaines-Carter, *In Drug Zone, Longing For a Shelter's Safety; Shootings Turn Joy of Getting Home in SE Complex Into Fear For Mother, 6 Children*, Wash Post C1 (Jun 19, 1991) (describing bullets crashing through apartment walls and windows); Jacquelyn Heard, *Young Writers' Neighborhoods Have No 'Happily Ever After'*, Chi Trib B1 (Dec 14, 1992) (same).

²⁴¹ See, for example, Camilo Jose Vergara, *Hell In A Very Tall Place*, Atlantic Monthly 72, 75 (Sep 1989) (describing victimization of tenants in New York City public housing project).

Congress and PHAs have responded to the drug problem primarily by seeking to evict tenants who possess controlled substances. In 1988, Congress passed the Public Housing Drug Elimination Act as part of the Anti-Drug Abuse Act of 1988.²⁴² Finding that "drug dealers are increasingly imposing a reign of terror on public housing tenants,"²⁴³ Congress required PHAs to include in their leases a clause providing that any drug-related criminal activity on or near such premises, "engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control," shall be cause for eviction of the tenancy.²⁴⁴ Although the law specifically authorizes PHAs to evict tenants for the actions of relatives and guests, apparently without regard for the tenant's culpability,²⁴⁵ some courts have interpreted this provision and those of analogous state statutes as requiring that the tenant have some knowledge of the prohibited activities.²⁴⁶

For an eviction to promote safety in public housing, the eviction must occur promptly. Before bringing a judicial action to evict a tenant, PHAs are typically required to hold a grievance hearing at which the tenant is entitled to be represented by an attorney and present evidence.²⁴⁷ Prior to 1990, PHAs were permitted to refuse grievance hearings if the Secretary of HUD made a determination that state eviction law would provide the tenant with due process. In response to increasing drug use, many PHAs sought and received waivers from the grievance procedure. In several cases, however, federal courts blocked PHAs from streamlining their procedures because state law provided inadequate discovery

²⁴² Pub L No 100-690 §§ 5121 et seq, 102 Stat 4181, 4301 (1989), codified at 42 USC § 11901 (1988), as amended 42 USC § 11901 (Supp 1991). For a critical analysis of federal anti-drug strategies focusing on eviction, see Regina Austin, "Step on a Crack, Break Your Mother's Back": Moms, Myths, and Drug-Related Evictions From Public Housing (unpublished paper, 1992) (on file with U Chi L Rev).

²⁴³ Pub L No 100-690, § 5122, 102 Stat at 4301, codified at 42 USC § 11903(3) (1988).

²⁴⁴ Id, § 5101, 102 Stat at 4300, codified at 42 USC § 1437d (1988).

²⁴⁵ See, for example, *Boston Housing Authority v Guirola*, 410 Mass 820, 575 NE2d 1100, 1103 (1991) (upholding eviction of tenant whose guest stored drugs in the apartment); *Chavez v Housing Authority of the City of El Paso*, 1991 WL 424554 *5 (W D Tex), aff'd, 973 F2d 1245 (5th Cir 1992) (granting eviction of tenant whose son engaged in criminal activities).

²⁴⁶ *Housing Opportunities Commission of Montgomery County v Lacey*, 322 Md 56, 585 A2d 219, 222 (1991) (upholding trial court's finding that tenant had no knowledge of son's drugs, despite the presence of the drug in the apartment and drug paraphernalia in tenant's bedroom).

²⁴⁷ 42 USC § 1437d(k) (Supp 1991).

and would deny tenants due process.²⁴⁸ In response, Congress amended the law to provide that, in the context of grievance waivers, due process did not include the right to inspect documents in the possession of a PHA.²⁴⁹

Government also has begun to use *in rem* actions against leaseholds to short circuit lengthy eviction proceedings. In the 1988 Anti-Drug Abuse Act, Congress amended the civil forfeiture statute to include public housing leases.²⁵⁰ The forfeiture statute enables the government to seize assets such as leasehold interests upon a showing of probable cause that they were used to facilitate a narcotics crime. In 1990, the Justice Department and HUD announced the Public Housing Asset Forfeiture Demonstration which was to have taken place in more than twenty cities. Based on sworn testimony from informants, U.S. Attorneys in these cities would receive warrants from federal magistrates to raid apartments and evict tenants.²⁵¹ In most cities, tenants were given no notice that their apartments would be seized.²⁵² Later that year, however, a federal district court issued a permanent injunction prohibiting, except in "exigent circumstances," forfeitures without prior notice and an opportunity to be heard.²⁵³ This limitation on the public housing forfeiture program was affirmed by a federal appellate court in 1992.²⁵⁴

Although HUD and PHAs may no longer bring forfeiture actions without notice and an opportunity to be heard, forfeiture actions have proceeded in several cities. Nevertheless, a recent district court opinion suggests that courts may be loath to require tenants to forfeit their leases, especially in cities with severe

²⁴⁸ See, for example, *Housing Authority of Jersey City v Jackson*, 749 F Supp 622, 633 (D NJ 1990) (rejecting HUD's determination that New Jersey summary eviction proceedings provide sufficient due process); *Simmons v Kemp*, 751 F Supp 815, 819 (D Minn 1990) (holding that Minnesota eviction proceedings do not permit sufficient discovery).

²⁴⁹ Cranston-Gonzalez National Affordable Housing Act, Pub L No 101-625, § 503(a), 104 Stat 4085, 4184 (1991), codified at 42 USC § 1437d(k) (Supp 1991). The amended statute requires PHAs to give tenants an opportunity to review documents prior to a trial or hearing.

²⁵⁰ Pub L No 100-690, § 5105, 102 Stat 4181, 4301 (1988), codified at 21 USC § 881(a)(7) (1988).

²⁵¹ Note, *Time for a New Battle Plan: HUD and the Drug War in Public Housing*, 7 J L & Pol 847, 856-57 (1991).

²⁵² *Id.*

²⁵³ See *Richmond Tenants Organization, Inc. v Kemp*, 753 F Supp 607, 608 (E D Va 1990) (discussing Justice Department no-notice policy); Sharon Le Franiere, *U.S. Alters Plan to Evict Drug Dealers: Agents Move to Begin Seizing Public Housing Leases of Suspects*, Wash Post A5 (Jun 26, 1990).

²⁵⁴ *Richmond Tenants Organization, Inc. v Kemp*, 956 F2d 1300 (4th Cir 1992).

shortages of unsubsidized, low cost housing. In *United States v Leasehold Interest in 121 Nostrand Avenue, Apt. 1-C*,²⁵⁵ the government sought the forfeiture of a lease held by Clara Smith, a fifty-one-year-old woman who lived in a three-bedroom apartment with eighteen of her children, grandchildren, and great-grandchildren. The judge accepted as facts that drugs and drug paraphernalia were found in Ms. Smith's dresser drawer, that Ms. Smith rarely left the unit, and that her granddaughter had sold drugs from the apartment.²⁵⁶ Nevertheless, the court refused to permit forfeiture of the leasehold. After noting the worsening housing crisis in New York City, the court held that Ms. Smith satisfied the "innocent owner" exception to the forfeiture statute. According to the district court judge, Ms. Smith had established, "beyond any doubt," that she had no knowledge of the drugs.²⁵⁷

Perhaps the most publicized efforts to rid public housing of drugs, guns, and criminals have been those of the Chicago Housing Authority. Since 1988, CHA officials have conducted "sweeps" of public housing developments.²⁵⁸ A sweep consists of a door-to-door search for weapons and drugs. Afterwards, security is increased and individuals must regularly identify themselves and submit to searches.²⁵⁹ Sweeps have met with mixed reactions in Chicago. Newspaper accounts suggest that many tenants are grateful for the increased security,²⁶⁰ while others complain that warrantless searches violate their civil liberties.²⁶¹

Efforts to rid public housing of drug abusers and dealers, whether in the form of evictions, lease forfeitures, or sweeps, no

²⁵⁵ 760 F Supp 1015 (E D NY 1991).

²⁵⁶ *Id.* at 1023-24.

²⁵⁷ *Id.* at 1024-25, 32.

²⁵⁸ For a description of public housing sweeps, see Comment, *Operation Clean Sweep: Is the Chicago Housing Authority "Sweeping" Away the Fourth Amendment?*, 86 *Nw U L Rev* 1103 (1991); Jennifer Lenhart, *Crackdown, Touchup at Cabrini*, *Chi Trib A1* (Oct 21, 1992).

²⁵⁹ Lenhart, *Chi Trib A1* (Oct 21, 1992) (cited in note 258).

²⁶⁰ See, for example, Louise Kiernan and William Recktenwald, *City Gang Truce Brings Hope, Lingering Distrust*, *Chi Trib A1* (Dec 13, 1992) (tenants at the Cabrini-Green project feel safer as a result of the sweeps); Lenhart, *Chi Trib A1* (Oct 21, 1992) (cited in note 258) (police say "[w]e've had nothing but positive response from the residents"); Jennifer Lenhart and John O'Brien, *"We're Crying For Help"*, *Chi Trib A1* (Oct 15, 1992) (tenant leader supports using National Guard to crackdown on crime in public housing).

²⁶¹ See, for example, Lenhart, *Chi Trib A1* (Oct 21, 1992) (cited in note 258) (tenant states that "[e]very right I ever had in my life [has been] violated" by the gangs and the government); Matt O'Connor, *ACLU Hits Sweeps At Cabrini*, *Chi Trib B5* (Dec 1, 1992) (ACLU seeks to have the Chicago Housing Authority held in contempt for violating a consent decree limiting searches of public housing units).

doubt, improve safety, at least for a short time. In Chicago, from 1988 to 1991, violent crime in public housing rose at a rate below that of the city as a whole.²⁶² Even so, the number of violent crimes increased by twenty-one percent over this period and the number of crimes per one thousand people was much higher than in the rest of the city.²⁶³ Enhanced law enforcement might improve a horrible situation, but, alone, it will not, unfortunately, solve the crime problems of PHAs.²⁶⁴

2. Enhancing social services.

The early proponents of increased government involvement in housing envisioned that public housing would not just provide a place for tenants to live, but also "a vehicle . . . for human development."²⁶⁵ Nevertheless, the Housing Act of 1937 made no provision for the delivery of social services. Indeed, the public housing program's increasing focus on very low income households (brought about by the Housing Act of 1949) was accompanied by a directive from Washington that "[a] housing authority is not the proper agency to provide personnel for direct program leadership or supervision."²⁶⁶ Only with the Housing Act of 1968, did Congress begin to address the need for social services in public housing, authorizing HUD to make grants to PHAs for tenant services including child care, job training, and counseling.²⁶⁷

²⁶² Violent crime in public housing increased at a rate of 21%, as compared to an increase of 31% throughout the city of Chicago. Patrick T. Reardon, *Without Sweeps, CHA Crime Might Be Worse*, Chi Trib A1 (Oct 26, 1992).

²⁶³ An average of 54 violent crimes per 1,000 public housing residents were reported in 1991. The crime rate at some public housing developments reached 79.9 per thousand. *Id.* For the city, the rate was 32.5 per 1,000. *Id.*

²⁶⁴ PHAs have adopted other initiatives to solve the drug problem in public housing. These programs include drug treatment and intensive screening of tenants. See Keyes, *Strategies and Saints* at 165-93 (cited in note 149). Congress provides funds for PHA drug elimination programs under the Public and Assisted Housing Drug Elimination Act of 1990, Pub L No 100-690, § 5123, 102 Stat 4301, codified at 42 USC § 11901 (1988).

²⁶⁵ Wood, *The Beautiful Beginnings* at 3 (cited in note 12). See also National Association of Housing Officials, *A Housing Program For the United States* 25 (Public Service Administration, 1935) ("In addition to control of the property, enlightened management is concerned with the provision of community activities, if the projects are to be more than mere structures, and are to provide a background for fully developed social and personal lives for the families.").

²⁶⁶ Wood, *The Beautiful Beginnings* at 31 (cited in note 12).

²⁶⁷ Pub L No 90-448, § 204, 82 Stat 47, 503-04 (1968). The legislative history of the 1968 Act expresses Congress's concern with the increasing concentration of poverty in public housing: "The need for additional services because of the constantly increasing number and concentration of lower income, multiproblem families in public housing has been brought to

After authorizing this social service funding, Congress did not return to the intellectual roots of the public housing program until 1990, when it made a significant commitment to coordinating housing and social welfare assistance.²⁶⁸ The centerpiece of the social welfare provisions in the 1990 National Affordable Housing Act is the Family Self-Sufficiency Program.²⁶⁹ Each PHA that administers a Section 8 or public housing program must institute a self-sufficiency program, under which participating households receive services such as childcare, education, and substance abuse treatment. Tenants sign five-year contracts with the PHA agreeing to participate in social services and seek employment. To reduce work disincentives, as a tenant's income increases, her rent either remains constant or rises gradually.²⁷⁰ In addition to the Family Self-Sufficiency Program, the 1990 Act provides PHAs with funds to establish intensive social service programs such as Family Investment Centers, which offer an array of social services and employment training programs in or near public housing developments.²⁷¹

The provision of social services within public housing developments seeks to take advantage of the large numbers of eligible individuals in close proximity. These programs are too new for any conclusions to be drawn about their effectiveness in improving the economic mobility of public housing tenants. Nevertheless, a recent evaluation of the first two years of a Baltimore program similar to Family Investment Centers demonstrates that putting social

the committee's attention" H Rep No 1585, 90th Cong, 2d Sess (1968), reprinted in 1968 USCCAN 2873, 2901.

²⁶⁸ See Sandra J. Newman and Ann B. Schnare, *Beyond Bricks and Mortar: Reexamining the Purpose and Effects of Housing Assistance* 28 (Urban Institute, 1992) ("If there is any reason for optimism that housing may ultimately establish its potential as a vehicle for economic independence, the 1990 Housing Act is it.").

²⁶⁹ Pub L No 101-625, § 554, 104 Stat 4085, 4225 (1990), codified at 42 USC § 1437u (1990). This program is based upon demonstration projects funded by HUD in the mid- to late 1980s: "Project Self-Sufficiency" and "Operation Bootstrap". David B. Bryson and Roberta L. Youmans, *A Passage From Poverty: Self-Sufficiency Policies and the Housing Programs* 10-12 (National Support Center for Low Income Housing, 1991).

²⁷⁰ 42 USC § 1437u(d)(1) (1992). PHAs are also required to open escrow accounts into which they must deposit the difference between the actual rents paid and what the tenant would have paid in rent had the rents been set at 30% of income throughout the tenancy. Once the tenant completes the program and moves elsewhere, he or she is entitled to receive the contents of the escrow account. 42 USC § 1437c(d)(2).

²⁷¹ Pub L No 101-625, § 515, 104 Stat 4085, 4196 (1990), codified at 42 USC § 1437t (1992).

services on site significantly increased tenants' use of these services.²⁷²

A locational fact—the large number of needy people all in one place—makes the idea of a Family Investment Center feasible and appealing. Nevertheless, location may also ultimately limit the ability of social welfare programs to help households escape poverty. Public housing projects are frequently not in close proximity to the sites of employment growth in large metropolitan areas. This spatial mismatch of employment and residence may diminish the likelihood that tenants will learn about job openings and be able to commute to those jobs that they do learn about.²⁷³ In addition, some empirical literature suggests that employers, operating on the basis of stereotypes, avoid hiring people who live in communities of concentrated poverty, regardless of the individuals' personal characteristics.²⁷⁴

3. Improving management.

For years, HUD has promoted the adoption of improved PHA management practices. Nevertheless, management remains a problem at public housing developments throughout the nation.²⁷⁵ Since the mid-1980s, HUD has increasingly encouraged tenants to manage their public housing projects. Resident councils have been authorized to form resident management corporations and enter into contracts with PHAs to manage individual projects.²⁷⁶ Funds have also been made available for technical assistance and the training of tenant-managers.²⁷⁷ As of 1990, resident management

²⁷² Anne B. Shlay and C. Scott Holupka, *Steps Toward Independence: Evaluating an Integrated Service Program for Public Housing Residents*, 16 *Evaluation Review* 508, 521-23 (1992). Shlay and Holupka compared tenants living in a public housing development with a Family Development Center to tenants in projects without an FDC. They found that tenants who participated in the development center were much more likely than tenants in the other project to take advantage of employment and training programs. Id. They also report that participation in development center programs was associated with higher self-esteem among participants. Id. at 527.

²⁷³ See text accompanying notes 70-73.

²⁷⁴ Joleen Kirschenman and Kathryn M. Neckerman, "We'd Love to Hire Them, But . . .": *The Meaning of Race For Employers*, in Jencks and Peterson, eds, *The Urban Underclass* 203, 215-17 (cited in note 65) (employers associate inner city residence with negative attributes); Kathryn M. Neckerman and Joleen Kirschenman, *Hiring Strategies, Racial Bias, and Inner-City Workers*, 38 *Soc Prob* 433, 435 (1991) (same).

²⁷⁵ See text accompanying notes 1-2, 56-62.

²⁷⁶ 42 USC § 1437r(b) (1991).

²⁷⁷ 42 USC § 1437r(f).

corporations had taken over the operation of fourteen housing projects.²⁷⁸

Advocates of public housing resident management have argued that it can improve the efficiency, safety, and quality of life at public housing developments,²⁷⁹ and can empower local residents to take control of their lives. It is difficult to evaluate these claims, since very few systematic analyses have been completed. One investigation, conducted by the Manpower Development Research Corporation in the early 1980s, examined a tenant-management demonstration program carried out in seven developments.²⁸⁰ The results were mixed: tenant management resulted in enhanced employment opportunities, personal development, and higher levels of satisfaction among public housing residents, but cost more than management by PHAs.²⁸¹ The report concluded that, "tenant management does not usually produce results markedly superior to those stemming from conventional housing authority management."²⁸² Other studies of resident management corporations report more favorable results including increased rent revenue per unit, decreased administrative costs and reduced vacancies.²⁸³

In particular, a 1992 examination of eleven established resident management corporations ("RMCs") found that "full service RMCs" performed as well as or better than PHAs on most management performance and cost-effectiveness criteria.²⁸⁴ Surveys of

²⁷⁸ Mittie Olion Chandler, *What Have We Learned from Public Housing Resident Management?*, 6 J Planning Literature 136, 141 (1991).

²⁷⁹ See David Caprara and Bill Alexander, *Empowering Residents of Public Housing: A Resource Guide for Resident Management* 1-2, 8 (National Center for Neighborhood Enterprise, 1989). For a discussion of the ambiguity of the "empowerment" concept, see Schill, 30 Urb Aff Q (cited in note 219).

²⁸⁰ Manpower Demonstration Research Corp., *Tenant Management: Findings From A Three-Year Experiment in Public Housing* (Ballinger, 1981).

²⁸¹ Id at 6.

²⁸² Id at 5.

²⁸³ Caprara and Alexander, *Empowering Residents* at 8 (cited in note 279); Robert L. Woodson and Rosalind R. Inge, *Cost Benefit Analysis of the Kenilworth-Parkside Public Housing Resident Management Corporation: Executive Summary* 1, 3 (1986) (based upon Coopers & Lybrand analysis).

²⁸⁴ See ICF Inc., *Evaluation of Resident Management in Public Housing* 4-8 (HUD, 1992). Of the eleven tenant-managed public housing developments, six had functions that included maintenance, rent collection, and financial control. The authors also examined five developments where, in contrast to the six full service RMCs, the RMC had responsibility for management, but not finances. The physical condition of the developments managed by full service RMCs was generally worse than those controlled by managing-agent RMCs; therefore, the experience of these developments is more likely to be relevant to the question of whether resident management can improve severely distressed public housing. Id at 3-4. For each of the eleven RMC-managed developments, the authors compared data obtained

residents living in developments managed by full service RMCs and PHAs showed statistically significant higher levels of satisfaction among RMC tenants with respect to management, maintenance, and social conditions.²⁸⁵ Tenants of developments managed by RMCs did not, however, respond more favorably than other PHA tenants with respect to a series of questions measuring general outlook on life and personal empowerment.²⁸⁶

In 1992, Congress gave tenants of distressed public housing additional responsibility, empowering the resident council of a distressed public housing development to request that the Secretary of HUD transfer management authority to an entity chosen by the council.²⁸⁷ Eligible management organizations include nonprofit organizations, government agencies, and, certain profit-motivated companies.²⁸⁸ Whether private managers can succeed where PHAs have failed remains to be seen,²⁸⁹ although the mere threat of a loss of management might improve existing PHAs' performance.²⁹⁰

with data from a control development in the same community and with data from the entire PHA. Id at 1-6.

²⁸⁵ Id at 8-1 to 8-16.

²⁸⁶ Id at 8-16 to 8-17.

²⁸⁷ See The Housing and Community Development Act of 1992, Pub L No 102-550, § 121, 106 Stat 3672, 3701 (1992). Tenants may only apply to transfer management of severely distressed housing projects owned by troubled housing authorities. A "severely distressed" housing project is one that requires major redesign or reconstruction, has high rates of unemployment, teenage pregnancy, or educational failure, is in a location of recurrent vandalism and criminal activity, and cannot remedy the problems through normal modernization programs. Id, § 120, 106 Stat at 3695. For a description of "troubled housing authorities," see text accompanying note 57.

²⁸⁸ Profit-motivated management companies qualify if they form a joint venture with a private nonprofit organization. See id.

²⁸⁹ In 1983, a study conducted for HUD compared the relative success of private management companies and PHAs in operating public housing. See Granville Corp., *Public Housing Authority Experience With Private Management: A Comparative Study* (HUD, 1983). The study concluded that there was no statistically significant difference in operating expenses with respect to urban family projects. Id at xi. However, the study found that sites managed by private companies experienced higher rent delinquencies and twice the incidence of crime and social problems as did those managed by PHAs. Id at 86, 94.

²⁹⁰ The United Kingdom has also attempted to inject the discipline of private markets into public housing management. Nonprofit housing associations have been given the right to acquire housing owned by local councils provided that a majority of existing tenants do not oppose the acquisition. Helen F. Cope, *Housing Associations: Policy and Practice* 67 (Macmillan, 1990); Peter Kemp, *Shifting The Balance Between State and Market—The Reprivatization of Rental Housing*, 22 *Envir & Plan* 793, 803-04 (1990). In addition, the government has recently announced plans to require councils to place the management of council housing out to bid. Douglas Broom, *Private Firms To Manage Council House Estates*, *The Times* (London), Home News Section (Jun 8, 1992); *Council Housing; Compulsively Competitive Tories*, *The Economist* 34 (Jun 6, 1992).

4. Reducing concentrated poverty.

The concentration of poor people in public housing underlies much of the distress experienced by public housing residents in large American cities.²⁹¹ Rather than alleviating poverty and enhancing social mobility, as its early adherents had hoped, distressed public housing developments have magnified the problems faced by poor families and kept them out of the economic mainstream. As I discussed in Section I of this Article, the concentration of poor people in public housing is due in part to laws passed by Congress that required PHAs to limit admission to very poor households, grant preferences to the most needy, and evict those whose incomes rose over mandatory ceilings.²⁹² The National Commission on Severely Distressed Public Housing recently acknowledged the problems generated by concentrated poverty. The Commission recommended that Congress grant PHAs greater flexibility in achieving a mix of incomes among residents.²⁹³ In 1992, Congress adopted this proposal by permitting PHAs to establish local public housing preferences different from those in the housing legislation.²⁹⁴ PHAs may use these local preferences to fill one-half of their vacancies. However, despite this relaxation of targeting, the continuing requirement that PHAs lease between seventy-five and eighty-five percent of their units to very low-income households²⁹⁵ guarantees continued concentrations of poverty within public housing.

Congress should further relax statutory requirements and permit PHAs to achieve a greater mix of incomes in public housing developments. Although granting priority to low and moderate income households over very low income applicants violates the principle of vertical equity, economic integration of public housing is necessary to alleviate distress and prevent further decline. The Chicago Housing Authority recently demonstrated the feasibility of luring moderate income households to public housing. As part of a national demonstration project,²⁹⁶ the CHA renovated two fifteen-story buildings in one of the most impoverished neighbor-

²⁹¹ See text accompanying notes 137-50.

²⁹² See text accompanying notes 80-99.

²⁹³ See Commission Report at 69-70 (cited in note 7).

²⁹⁴ See text accompanying notes 99.

²⁹⁵ See text accompanying notes 96-97.

²⁹⁶ The Mixed-Income New Communities Strategy ("MINCS") was authorized by Congress in the National Affordable Housing Act, Pub L No 101-625, § 522, 104 Stat 4085, 4207 (1990), codified at 42 USC § 1437f note (1992).

hoods in South Chicago and renamed them Lake Parc Place.²⁹⁷ Enough households with moderate incomes applied for residence in Lake Parc Place to achieve a tenant population that is composed one-half of households earning less than fifty percent of the area median income and one-half of families earning between fifty and eighty percent of the area median. Households with different income levels are equally distributed throughout the buildings.²⁹⁸ Despite its success in Chicago, the allure of Lake Parc Place to moderate income households may be difficult to replicate at some public housing projects. In addition to its recent renovation and below market rents, the development is located on Lake Michigan, in close proximity to downtown. Nevertheless, public housing could probably attract a large spectrum of households with modest incomes, especially in cities with high market rents.

CONCLUSION

Over the past half century, the United States government has invested substantial resources in building public housing. In an era of limited funds for social welfare programs, cost-effective efforts to preserve that investment are eminently sensible. Physical renovations, reduced crime, coordinated social services, better management, and more economically mixed populations all have the potential to relieve the distress that envelops some inner city public housing developments.

Nevertheless, the desire to preserve our investment in public housing should not distract us from the fact that the program exists to serve people, not structures. Public housing, even with lower

²⁹⁷ Chicago Housing Authority, Application to the U.S. Department of Housing and Urban Development to Conduct a Mixed-Income New Communities Strategy (MINCS) Demonstration Program 7-8 (May 5, 1992) (on file with U Chi L Rev).

²⁹⁸ Interview in Chicago with Ameshia Hardison, Manager, Lake Parc Place (Dec 14, 1992) (notes on file with U Chi L Rev); Interview in Chicago with Daniel Hollander, Manager of Program Coordination, Chicago Housing Authority (Dec 14, 1992) (notes on file with U Chi L Rev). In the second phase of MINCS private developers will construct market-rate housing on land near the housing project. CHA will lease one-quarter of these units and sublease them to 141 very low income tenants selected according to rigorous standards. These tenants will be expected to sign an agreement with CHA obligating them to participate in orientation programs, social services, and job training. During their residency in the housing, increases in the income of the very low income households will not be counted as resources available under federal law unless their incomes exceed 80% of the area's median income. During the seven years of participation, CHA will deposit a proportion of each tenant's monthly rent into an escrow account. These funds will be made available to the tenant for home purchase, college education, or other approved purposes upon completion of its participation in the MINCS program. Chicago Housing Authority, Application to HUD at 13-24 (cited in note 297).

levels of physical and social distress, may impede rather than facilitate the economic and social mobility of the poor. Many urban developments are located in communities with enormously high levels of poverty and extremely low levels of economic opportunity. A single-minded policy of public housing preservation, such as the one adopted by the National Commission on Severely Distressed Public Housing, may waste resources and bind public housing tenants to these communities. Government housing policies that facilitate mobility, such as housing vouchers, initiatives to reduce regulatory barriers to affordable housing, and rigorous enforcement of anti-discrimination laws, may, in the long-run, be much more successful in enabling poor households to escape poverty.²⁹⁹

²⁹⁹ See text accompanying notes 185-200. See also Schill, 67 *Chi Kent L Rev* at 811-53 (cited in note 64) (arguing in favor of policies that would facilitate the movement of poor, inner-city residents to the suburbs); Michael H. Schill, *Race, the Underclass and Public Policy*, *L & Soc Inq* (forthcoming 1994) (same).