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Overview: Housing Options for the 1990s

Toward a New National Housing Policy

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Housing is many things: a basic survival need; an expression of how we see ourselves and our status in society; and a place of security, domesticity and privacy. Each of these meanings of *housing* implicates an individual or social need that is a proper concern for federal policy. Indeed, the central goal of our nation's housing policy has long been to provide "a decent home and a suitable living environment for every American family."[1]

To fulfill that promise to ourselves, federal policy has, in the last fifty years, stimulated the building of millions of decent and affordable housing units by:

(1) expanding the mortgage capital available for housing purchase and construction;

(2) making mortgage capital inexpensive as compared to other capital uses;

(3) directing federal appropriations toward housing programs;

(4) using tax policy to encourage the flow of capital to housing; and

(5) seeking to ensure that fair housing and fair credit are available to all Americans.

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1. The Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 43 (codified at 42 U.S.C. § 1441 (1950)).

The very existence of a federal housing policy has been threatened in the 1980s. Federal appropriations for new housing commitments were slashed by almost 80%, more than any other sector of the national budget. The Tax Reform Act of 1986[2] eliminated the tax stimulus for rental housing and curtailed tax benefits to homeowners.[3] All that remains in 1988 of a carefully crafted federal housing policy is the housing credit system, which makes available an almost unlimited amount of capital for housing at preferred rates, and the ongoing commitments to past subsidized housing made over the preceding 50 years. There is no coherent policy for addressing current and future housing needs.

How to fulfill the promise of decent and affordable housing is a question we must again ask, and answer, in the 1990s. Yet the basic need for shelter has never been the driving force behind developments in national housing policy. Historically, catalytic social issues—housing-related issues at the front of our national consciousness—have stimulated a renewed national awareness of and commitment to housing. Decent housing for all Americans has been a means to fulfill other social commitments, not an end unto itself. This will also be true for the swell of interest in housing as a key issue for the 1990s. Because policy proposals for the 1990s must address the basic need for shelter as well as attendant social commitments, housing will be a vital issue in the coming decade.

Effective housing policy cannot be based on politicians' or voters' shifting interests that may fade in a few months or years, nor on a short-lived concern for particular problems, however serious. An effective housing policy requires an enduring social commitment that will support an ambitious investment of resources—tax dollars as well as political support—over a long period of time. The nation's housing stock is like its highways—expensive to construct and maintain, and requiring steady, predictable funding to ensure a long useful life.

Today our nation is facing up to a crisis of homelessness, a painfully visible tragedy. Suffering we cannot help but see shocks our conscience and prompts us to react sensitively. Social observers have speculated that national sentiment turned against the war in Vietnam because scenes of the conflict and its human consequences were broadcast into our homes every night on the six o'clock news.

2. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (codified as I.R.C. (1986)) [hereinafter Tax Reform Act].

3. *See generally* Nagel, Housing Bonds & Tax Reform: The Perils of a Partial Analysis of Low-Income Housing Programs, 6 Yale L. & Pol'y Rev. 287 (1988).

Homelessness can stimulate a similar reaction to the federal government's neglect of housing needs.

If the crisis of homelessness acts as a catalytic issue focusing attention on housing issues, the first step toward a solution must be a hard-headed look at how people become homeless. Fifty years of federal housing activity dramatically improved the availability of decent housing and enhanced the quality of the housing stock in terms of physical condition, amenities, and overcrowding.[4] More than half of the dwelling units in existence today—single-family homes and rental units—have been built since 1950.[5] Yet, less than one decade of federal neglect of the present and future housing needs of the nation's poor has exhausted our housing resources and forced thousands of families into the streets. To make a meaningful difference, a passionate desire to shelter the homeless must mature into a renewed and stable social commitment to house all Americans decently and affordably.

The focus of housing policy in the 1990s must expand beyond the traditional concerns for improving quality and expanding supply. The problem of unaffordable housing—for both renters and owners—has steadily worsened throughout the 1980s and will continue to intensify in the decade ahead. Many of the government subsidy contracts that keep privately-owned housing affordable to low-income families will expire in the next seven to ten years. As a result, this vital resource of affordable housing is threatened by defaults on subsidized mortgages and conversions to market-rate rents. In addition, there is a growing, and increasingly unmet, need for shelter designed for people with special housing needs. The programs of past decades provide the foundation on which to build. Yet repeating past formulas, even if they were successful in their time, is not a sufficient response to present and future needs. We must also look to the nation we will be in the next decade. Housing needs change continually as demographic and economic trends reshape the face of the country. New housing policies must be dynamic and responsive to these changes.

4. Irby, Attaining the Housing Goal?, U.S. Dep't of Housing and Urban Dev., Office of Economic Affairs, Housing and Demographic Analysis Division (1986). Irby's study looks at housing data from the Annual Housing Surveys of 1975, 1977, 1981, and 1983, which are the most recent available surveys of housing characteristics. The 1985 Annual Housing Survey is to be released this summer. Because the 1985 Survey used an entirely new sample of housing rather than the sample used in previous surveys, the 1985 Survey data may not be comparable to data from the earlier surveys.

5. Mortgage Bankers Ass'n of America, A Report on National Housing Policy, at IV-1 (1987) [hereinafter Mortgage Bankers Ass'n].

In anticipation of (or perhaps already in the midst of) the debate over how to house all American families decently, this Article provides an overview of what the author believes will be the housing issues in the coming decade. Who will need housing in the next decade? What kind of housing? Based on these needs and our social commitment, what should national housing goals be? What policies can most fully and efficiently realize these goals? Finally, how do we create the political and economic environment in which those policies can succeed?

I. The Prelude to the 1990s: A Brief History of National Housing Policy

As noted earlier, the history of housing legislation in this country cannot be explained in terms of efforts to address the need for shelter. Since its inception during the Great Depression, national housing policy has been driven by catalytic issues that evoke a commitment to housing. In the past such issues have been a desire for economic growth or recovery, a concern for the poor, and a commitment to stabilize and revitalize communities.

A. Supply-Oriented Measures

The first thirty years of federal involvement in housing focused primarily on production. The federal government attempted to increase the supply of housing through mortgage insurance to facilitate the development of market rate housing, through tax policy favoring homeownership, and through subsidy mechanisms intended to provide shelter for families the market would not otherwise serve. Both government policymakers and the general public agreed that inadequate supply and substandard quality were the primary housing problems of Americans and that increased production was the solution to such problems.

1. Mortgage credit. The Federal Housing Administration (FHA) was created in 1934.[6] During the 1930s and 1940s, in conjunction with the Federal Home Loan Bank[7] system, FHA mortgage insurance established as a standard the long-term, level-payment, low-interest home mortgage which, in turn, made ownership accessible to most Americans. In the post-war era, these functions were

6. National Housing Act of 1934, Pub. L. No. 73-0479, 48 Stat. 1246 (codified as amended at 12 U.S.C. § 1701 *et seq.* (1982 & Supp. IV 1986)).

7. Federal Home Loan Bank Act of 1932, 47 Stat. 725 (codified as amended at 12 U.S.C. § 1421 *et seq.* (1982 & Supp. IV 1986)).

consolidated in the Federal Housing and Home Finance Agency,[8] and in 1965 were transferred to the Department of Housing and Urban Development (HUD) as part of the legislation that created that department.[9] The federally chartered credit institutions, such as Fannie Mae, Freddie Mac,[10] and Ginnie Mae,[11] have acted as the structuring force for private mortgage credit markets. These federal credit institutions ensure that a stable and reliable stream of credit for housing flows to the private mortgage sector.

The FHA was also empowered to insure mortgages on rental properties. After World War II, federal mortgage support (both through FHA and the Farmers Home Administration (FmHA)) provided financing for an increasing number of rental projects. The post-war years also saw the emergence of federally guaranteed mortgages through the Veterans Administration (VA). Together VA and FHA financed America's move to the suburbs.

2. *Tax policy.* Federal mortgage support for housing was augmented by a tax policy that strongly favored homeownership. The tax deduction for home mortgage interest and real property taxes, the deferral of capital gains tax upon the sale of one house and acquisition of another, and, more recently, the single tax-free sale of a home for persons over age 55 combined to make homeownership not merely a desirable form of shelter, but a highly favored form of investment. By the 1980s, tax expenditures for homeownership accounted for more than 80% of all federal spending on housing.[12]

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8. Agencies consolidated pursuant to the Reorganization Plan No. 3 of 1947, 61 Stat. 954 (codified at 5 U.S.C. app. 1 (1982)).

9. Department of Housing & Urban Development Act of 1965, (42 U.S.C. § 3531 *et seq.*, at § 3534 (1982 & Supp. III 1985).

10. Federal National Mortgage Association (FNMA or Fannie Mae), 12 U.S.C. § 1716 *et seq.* (1982 & Supp. IV 1986), and Federal Home Loan Mortgage Corporation (Freddie Mac), 12 U.S.C. § 1452 *et seq.* (1982 & Supp. IV 1986). Fannie Mae and Freddie Mac are privately-owned, federally chartered corporations. Although privately-owned, Fannie Mae and Freddie Mac operate as public-purpose corporations under federal statutory and regulatory control, dealing only in mortgages of a type and amount set by law. The purpose of Fannie Mae and Freddie Mac is to establish a secondary market for mortgages, thereby improving the liquidity and distribution of investment capital for housing.

11. Government National Mortgage Association (GNMA or Ginnie Mae), 12 U.S.C. § 1716b (1982 & Supp. IV 1986). Ginnie Mae is part of HUD. Ginnie Mae guarantees mortgage-backed securities that generate funds for mortgages insured by the FHA and VA and is thus an essential backbone of the secondary mortgage market. Ginnie Mae focuses particularly on generating mortgage capital for segments of the housing market for which conventional financing is not easily available. Ginnie Mae's guarantee carries the full faith and credit of the United States.

12. Congressional Budget Office, The Tax Treatment of Homeownership: Issues and Options (1981).

3. Subsidies. The United States Housing Act of 1937[13] created the public housing program by authorizing direct federal construction subsidies for low-rent housing for poor families. Like policies promoting homeownership, the public housing program was supported on both housing and economic grounds. Yet the public housing program was also the first housing legislation with the express purpose of helping low- and moderate-income people to secure affordable shelter.[14]

Subsequent government efforts have also relied upon providing incentives to the private sector to deliver low-income housing. By the early 1960s, federal mortgage insurance was combined with capital subsidies in order to encourage private owners, including nonprofit organizations, to expand the supply of affordable housing for low- and moderate-income families.

Decades of federal policy designed to expand and improve the nation's housing supply largely succeeded. As a result of the mortgage programs subsidized directly and indirectly by the federal government, almost two-thirds of American families presently own their own homes.[15] Through various housing subsidy programs, more than four million subsidized rental units were created for low- and moderate-income households.[16] The average quality of housing—both rental and single family—has been transformed since the 1930s.[17]

B. Recent Developments — Shifting Concerns

The relative success of the early federal programs in increasing the supply of housing in this country allowed policymakers to begin

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13. United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 891 (codified as amended at 42 U.S.C. § 1437f (1982 & Supp. III 1985)).

14. Under housing programs, individuals or families who earn 50% or less of median family income, adjusted for location and family size, are considered "very low income." Those earning 51-80% of median family income are considered "low income." The term "moderate income" has not been so precisely defined, but generally refers to households with incomes at or below the area median. 24 C.F.R. § 813.102.

15. National Housing Task Force, A Decent Place to Live 4 (1988) [hereinafter A Decent Place to Live].

16. National Low Income Housing Preservation Commission, Preventing the Disappearance of Low Income Housing 13 (1988) [hereinafter Preventing Disappearance of Low Income Housing]. These four million units include housing built under the Section 221(d)(3) (Below Market Interest Rate (BMIR) and Assisted Market Rate), Section 236, FmHA Section 515, Section 8, and Public Housing Programs.

17. A Decent Place to Live, *supra* note 15, at 7. As recently as the 1960s nearly one-quarter of the nation's housing stock lacked complete plumbing facilities or was dilapidated and deteriorated. By 1983, only 3% of the housing stock lacked plumbing, and the incidence of serious deficiencies was similarly reduced. The current problems of substandard quality housing are disproportionately concentrated among lower income renters and homeowners and are particularly prevalent in rural areas.

to focus on new dimensions of the housing problem and to examine difficulties with the traditional strategies.

1. *Mortgage credit.* The emphasis on government-assisted production and purchasing has come under attack in recent years as creating an expensive and poorly-focused subsidy of the housing industry. The FHA and the federal credit institutions have been charged with competing with the private sector and funneling too much credit to housing at the expense of other sectors in the economy.[18] Nonetheless, the success of these institutions in promoting homeownership—ever a popular policy with taxpayers and voters—seems to assure their future as part of national housing policy in the 1990s.

2. *Tax reform.* Tax preferences for homeownership have also come under heavy attack in the past decade as a result of concern both for fairness and for lost revenues. The homeownership deduction gives its greatest benefits to those taxpayers in the highest income brackets and to those who own the most expensive homes. Federal tax expenditures for homeownership have exceeded $50 billion annually for the past several years.

Tax preferences for homeownership emerged from the 1986 Tax Reform Act virtually unscathed. The deductibility of mortgage interest was preserved not only for primary residences, but also for second homes. The deductibility of property taxes and tax-free rollovers were retained.

The preservation of these benefits is even more remarkable in light of the fate of tax incentives for rental housing. These tax incentives—accelerated depreciation and early write-offs of paper losses—were virtually eliminated in 1986, as were the particular benefits for low-income housing. A new low-income housing tax credit was enacted in their place.[19] While the credit has already achieved some success, it alone cannot generate a sufficient level of housing production or housing rehabilitation for the poor.[20]

18. President Reagan's Commission on Privatization has recommended that FHA mortgage insurance programs be cut back so as not to compete directly with private mortgage insurers. The Commission has further urged that the activities of the federal credit institutions be restricted to stop an excessive flow of credit to housing. President's Commission on Privatization, Privatization: Toward More Effective Government (1988) [hereinafter Privatization].

19. I.R.C. § 42 (1987).

20. Experience with the first two years of the low-income housing tax credit indicates it may be most effectively used to preserve the existing stock of privately-owned assisted housing for low-income use.

3. *Low-income housing.* Although these indirect subsidies continued to dominate federal housing policy, beginning in the mid-1960s, the affordability of housing was increasingly recognized as the primary housing problem of the poor.[21] Affordability was directly addressed in 1965 for the first time by the Rent Supplement Program, which provided direct rent subsidies to families unable to pay market level rents.[22] Skyrocketing energy prices in the 1970s forced rent increases in many assisted housing projects that received only fixed-rate subsidies.[23] The resulting disparity between rents and tenant income threatened the economic viability of both the residents and the projects. Rather than permit rents to rise to unaffordable levels in response to this economic squeeze, the government resorted primarily to tenant subsidies, which kept the units affordable to the tenants and increased the income stream of the project owners.

The definitive shift toward a national housing policy focused on affordability was the enactment of a new Section 8 program in 1974.[24] From 1974 to 1981, Section 8 was the primary national housing assistance program, providing both tenant subsidies to be used to rent existing housing on the private market (the Section 8 Existing Program) and owner subsidies to stimulate the construction of new low-income housing units (the Section 8 New Construction and Substantial Rehabilitation and the Moderate Rehabilitation

21. Affordable rental housing is housing a family can obtain for 30% or less of their income. Rental housing is unaffordable if a family must spend an excessive portion of their income (more than 30%) for rent. 24 C.F.R. § 813.107(a).

22. Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 451 (codified as amended at 12 U.S.C. § 1701s (1982 & Supp. IV 1986)).

23. These projects were primarily Section 236 and Section 221(d)(3) (BMIR) projects. Section 236 was a program enacted under the National Housing Act of 1934, 12 U.S.C. § 1715z-1 (1968). Section 236 provided a subsidy to reduce mortgage interest payments in multi-family housing projects. Later, the Section 236 program also authorized "deep" subsidies to aid very-low-income families. A deep subsidy makes up the difference between the basic rent set by HUD for Section 236 projects and 30% of the tenant's income. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. §§ 5503, 5505, 5507, 5316 (1976)). Section 221(d)(3) is a program enacted under the National Housing Act of 1934, 12 U.S.C. § 1715. Section 221(d)(3) provides HUD mortgage insurance and, formerly, also provided below market interest rates and rent supplements, to finance low- and moderate-income housing. Below market interest rates and rent supplements are no longer available for new projects under the program.

24. Section 8 was originally a part of the United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (1937). Section 8 granted to the United States Housing Authority discretionary rule-making authority to carry out the purpose of the 1937 Act: "to assist the several States . . . to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income. . . ."

programs).[25] Based on their particular needs, localities could choose to use Section 8 funds either to raise tenant income or to create new low-income housing in their communities.

The Section 8 program represented a compromise on the issue of demand-side subsidies versus supply-side subsidies—an issue as hotly debated in 1974 as it is today. A demand-side subsidy transfers income to the tenant, providing the tenant with adequate financial resources to rent existing housing on the private market.[26] Advocates of a demand-side strategy argue that the federal government does not need to build or stabilize a supply of low-income housing. If a tenant subsidy bridges the gap between the rent affordable to a low-income family and market-level rents, the private market can and will supply the needed amount of low-income housing units.

A supply-side subsidy—a direct grant, mortgage interest reduction, or an operating cost subsidy—is paid to the owner who builds or commits to low-income use a housing project affordable to low- or moderate-income people. The supply-side subsidy flows to the building, not to the tenant, although tenants are the beneficiaries of the subsidy.

In the 1980s, the demand-side approach has prevailed. Section 8 supply-side assistance for production of new or rehabilitated low-income housing virtually ended in 1981.[27] What presently remains of the Section 8 program is a demand-side rent certificate or voucher program used by low-income tenants to obtain existing housing. However, Section 8 rent certificates have not created a universal housing entitlement for the poor; certificates and vouchers are limited in availability, and the majority of eligible families do not receive assistance.[28] Because resources are so meager compared with need, Congress narrowed the Section 8 eligibility standard in 1981 from 80% to 50% of median income on the theory that the very poorest families should have priority.

25. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified at 42 U.S.C. § 1437f (1982 & Supp. III 1985)). Under Section 8, the tenant pays no more than 30% of his or her income for rent. 24 C.F.R. § 813.107(a).

26. For examples of tenant voucher programs, see Report of President's Commission on Housing (1982) [hereinafter President's Commission on Housing]; Privatization, *supra* note 18.

27. The Section 8 new construction authority was formally repealed in 1983 by the Housing and Urban Rural Recovery Act of 1983, Pub. L. No. 98-181, 97 Stat. 118 (codified at 42 U.S.C. § 1437f (1982 & Supp. III 1985)).

28. Across the board, the level of rental housing assistance does not meet the level of need. In 1987, there were 3.2 million renter families with incomes of less than $5,000 who did not receive rental assistance. If families with incomes up to $10,000 are added, the number of unassisted households in 1987 was 3.8 to 4.5 million. A Decent Place to Live, *supra* note 15, at 7.

With the virtual demise of programs to stimulate production of new low-income housing,[29] tax policy survived as the only federal mechanism supporting private, market-driven increases in the supply of rental housing in the 1980s, and this mechanism was effectively eliminated by the tax reforms of 1986.

Thus, low-income housing policy under the Reagan Administration has definitively shifted away from a supply-side focus and toward a demand-side strategy. Through the use of tenant vouchers, the policy relies on the unassisted private market to supply adequate low-income housing.[30]

II. Affordability: The Critical Housing Problem of the 1990s

As we enter the 1990s, affordability, aggravated by a recent decrease in housing supply, is our nation's primary housing problem. Housing policy for the 1990s must turn explicitly toward the goal of affordability or we will face the consequences and inevitable social injury of homelessness as housing becomes unobtainable for the poor, who even now are forced to pay an unreasonable proportion of their income for housing.

Affordability problems extend to potential homebuyers. After forty years of steady growth, the rate of homeownership has been declining each year since 1980. Young families largely account for this decline.[31] The frustration of aspiring first-time homebuyers has evoked considerable attention, and has raised the question of whether the present generation of young adults will be the first in

29. Two small rental housing production programs—the Rental Rehabilitation Grant Program (Rent Rehab), 42 U.S.C. § 1437o (1982 & Supp. III 1985), and the Housing Development Grant Program (HoDAG), 42 U.S.C. § 1437o (1982 & Supp. III 1985)—were authorized in 1983 under the Reagan Administration. HoDAG provides HUD-administered grants for new construction and substantial rehabilitation; Rent Rehab is for moderate rehabilitation of existing rental housing. Production levels under these programs have been low, although competition for available funds is fierce. Funding for both programs was cut back in 1987. By 1989, the programs will receive no funding at all if the current Administration's proposals are successful.

30. President's Commission on Housing, *supra* note 26. The focus of this policy was clarified by the recent report of the President's Commission on Privatization, which recommended selling off or demolishing the federal stock of public housing and ending all project-based subsidy programs that assure private rental housing is affordable for low-income families. Like the President's Commission on Housing, the Privatization Commission recommends the replacement of all these programs with a tenant voucher program. Privatization, *supra* note 18.

31. The homeownership rate for the group of people aged 25–29 years has dropped from a peak of 44% in 1979 to 36.2% in 1987. Similar declines are evident in the group of people aged 30 to 34 years. The decline was particularly concentrated among young families with incomes below the 1987 national median of $30,000. A Decent Place to Live, *supra* note 15, at 8.

the country's history to live in less desirable dwellings than did their parents.[32]

Renters, however, are most affected by the affordability problem. Most poor people rent housing.[33] In the years between 1975 and 1983, the number of renter households that were cost-burdened by housing expense rose by almost 60%.[34] Between 1970 and 1983 median rents increased at about twice the rate of the median income.[35] By 1983, roughly one-third of all renter households lived in unaffordable housing.[36]

Low-income families have the most serious problem finding decent and affordable rental housing. More than one-half of low-income renters in 1983 spent more than 50% of their income on rent.[37] Low-income families represent almost three-quarters of all households unable to find decent housing without paying a disproportionate share of their income.[38] The problem is most difficult for families headed by women and for low-income black or Hispanic families.[39] The level of rental assistance has not kept pace with the need. In 1987, more than 3.2 million families with annual incomes of less than $5,000 received no rental assistance.[40]

The housing affordability problem for low-income families will only intensify in the coming decade. The present generation of low-income families is composed primarily of single parents and their children—families with an especially acute need for housing that is safe and supportive, as well as affordable.[41] Their poverty appears increasingly to be permanent. As a result, local housing authorities

32. *See, e.g.*, Hinds, Owning a Home Recedes as an Achievable Dream, N.Y. Times, Sept. 13, 1987, § 12, at 15.

33. In 1987, 63% of poverty-level households were renters. A Decent Place to Live, *supra* note 15, at 5.

34. Mortgage Bankers Ass'n, *supra* note 5, at IV-6. A family is cost-burdened if the family spends more than 30% of its income for housing. *See supra* note 21.

35. A Decent Place to Live, *supra* note 15, at 6.

36. Mortgage Bankers Ass'n, *supra* note 5, at IV-6.

37. A Decent Place to Live, *supra* note 15, at 6.

38. Mortgage Bankers Ass'n, *supra* note 5, at IV-7. The median income for all renters in 1972 was $18,000 (in 1986 dollars). By 1986, it had declined to $15,300 and was one-half the median income of home owners. From 1974 to 1987, the number of renter households with incomes under $5,000 (in 1986 dollars) grew from 2.7 million to 4.7 million. A Decent Place to Live, *supra* note 15, at 5.

39. Irby, *supra* note 4, at 11-13. These groups are not, of course, mutually exclusive. A female-headed family may be a black or Hispanic family.

40. A Decent Place to Live, *supra* note 15, at 7.

41. From 1974 to 1987 the median income of young, single-parent, renter households with children fell by 34%, from $10,965 to $7,271. Correspondingly, the rent burden for these single-parent families increased from 35% in 1974 to 58% in 1987. *Id.*

report that turnover in subsidized housing is low and waiting lists are extremely long.[42]

Some families who face such economic and housing pressures are forced into the population of homeless people—those who lack any shelter, whether decent and affordable or not. Many homeless persons have social problems that suitable housing alone cannot address.[43] But the fastest growing segment of the homeless population in the 1980s has been single-parent families and the families of the unemployed, who range from unskilled laborers to former professionals who are the victims of layoffs or business failures.[44] Like other poor people, these homeless lack housing because they cannot afford to compete in the private rental market and the supply of assisted housing is too small to meet their need.

III. *Problems of Housing Supply*

Housing affordability and housing supply are interdependent. In our market economy, an affordability crisis works quickly to restrict the production of new housing. Current production of new units of affordable housing falls far behind the need. Whereas more than one million new federally subsidized units of affordable housing were added to the nation's housing supply from 1976 to 1982, in recent years fewer than 25,000 units have been produced annually.[45] In 1986, unsubsidized private developers produced only 30,600 units of housing that rented for less than $300 per month.[46]

The existing stock of low-income housing is also threatened by affordability problems. When tenants become too poor to provide sufficient operating income, owners of low-income projects must either upgrade and convert their buildings to serve more affluent residents, or simply permit their buildings to deteriorate, leading

42. Council of Large Public Housing Authorities, Public Housing Today 9 (1986) [hereinafter Public Housing Today]; U.S. Conference of Mayors, The Continuing Growth of Hunger, Homelessness and Poverty in America's Cities: 1987, at 2 (1987) [hereinafter Conference of Mayors].

43. *See* Bassuk, Redefining Transitional Housing For Homeless Families, 6 Yale L. & Pol'y Rev. 309 (1988).

44. Conference of Mayors, *supra* note 42, at 21-23. Statistics regarding the makeup of the homeless population are difficult to establish and are the focus of much of the political debate over the causes of homelessness. *See* The Homeless: Who, Where, and How Many, Nat'l J., Aug. 9, 1986. The U.S. Conference of Mayors estimated that families made up 33% of the homeless population. Conference of Mayors, *supra* note 42, at 21.

45. A Decent Place To Live, *supra* note 15, at 6.

46. *Id.*

eventually to abandonment. In either case, the supply of affordable housing contracts.

This problem is not limited to federally subsidized housing. The stock of affordable, unsubsidized rental units is also shrinking. Between 1973 and 1983, 4.5 million units of housing were permanently removed from the nation's housing stock, either through demolition or structural conversion; one study estimates that almost half of these units had been occupied by low-income families.[47] The amount of money spent on renovating existing rental units, often to upgrade previously affordable properties to serve more affluent residents, more than doubled between 1982 and 1986.[48] While this is beneficial to housing quality, it results in increased costs to lower income tenants.

A. *Preserving the Existing Stock of Privately Owned, Subsidized Low-Income Housing*

Federal housing efforts over the last fifty years have built up a stock of almost two million units of privately owned, government-subsidized housing for families who cannot find affordable, decent housing in the private market.[49]

Preserving this existing stock for use by low-income families is crucial in light of the increasing demand and steadily decreasing supply of affordable housing. Yet a substantial number of these units may be lost to low-income use in the next decade. Preservation of these units must be an urgent housing priority in the 1990s.

Federal subsidy contracts and use restrictions on approximately 1.9 million privately owned, government-assisted rental units began to expire in 1985, with expiration dates continuing through 2025. At expiration the economics of the private market will decide whether these units will remain low-income. When contracts and restrictions expire, owners are free to refinance properties and prepay government-assisted first mortgages. Some may simply decline to renew subsidy contracts. In either event, owners escape the requirement that their projects be retained for low-income tenants.

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47. *Id.*
48. *Id.*
49. This stock includes 840,000 units of Section 8 New/Rehab housing; 159,000 units of Section 221(d)(3) (BMIR) housing; 406,000 units of Section 236 housing; 80,000 units of Section 221(d)(3) (Assisted Market Rate) housing; 305,000 units of FmHA Section 515 housing; and 165,000 units of housing built under assorted other subsidy programs. Preventing Disappearance of Low Income Housing, *supra* note 16, at Ex. 1-3.

The risk is greatest for the most valuable part of the stock—buildings in good condition, in good locations, and in strong real estate markets. Without a doubt, these premium buildings can profitably be converted to condominiums or luxury apartments for more affluent residents. Although not all eligible owners will find it profitable to take this route, estimates place as much as 38% of the inventory at risk of loss through prepayment.[50] In the present political and economic environment, it is not realistic to expect that more than a small percentage of projects lost to low-income use would be replaced.

Financially troubled and physically deteriorated assisted low-income projects are also at special risk of loss. Indeed, default is a more substantial threat to a large portion of the assisted inventory than is conversion. It is estimated that as much as 43% of total inventory may be at risk of loss through default.[51] When such projects are foreclosed or abandoned, HUD assumes ownership and sells the property. Even after resale, properties that have been physically and financially neglected are at high risk of further deterioration and eventual abandonment. Substantial expenditures for rehabilitation and operation are required to return such buildings to the viable housing stock.

B. *Preserving the Existing Stock of Public Housing*

Preservation of the existing stock of public housing is also at stake. Recent proposals have been made to sell off the federal government's public housing inventory either to tenants or private owners, or to demolish troubled public housing projects. Advocates of such action argue that the federal government is incapable of managing public housing. Such proposals immediately threaten thousands of units of low-income housing and future generations of needy families would be deprived of this permanent source of affordable housing.

C. *Providing Housing to Meet Special Needs*

Many Americans have special housing needs that are only infrequently acknowledged in discussions of housing policy. To enable them to live independently, groups such as the frail elderly, the chronically ill, and the disabled require special facilities and supportive services to accommodate their physical conditions. These

50. *Id.* at Ex. 2-4.
51. *Id.*

groups have especially serious problems finding suitable housing, affordable or not. Families headed by working parents may also need infant and after-school child care facilities close to their homes.[52]

The common need of these diverse populations is for physically tailored housing with integrated social service delivery systems. Existing public housing simply was not constructed to accommodate such needs. Nor has the private market adequately responded to provide housing for these populations—both because many of these people cannot afford to pay for the specially designed shelter settings they need, and because the number of such households in particular local markets is too small to attract the attention of private developers. The dilemma facing individuals with special needs illustrates the need for a government housing policy that will direct resources to housing needs that the private market cannot meet.

Providing adequate housing for those with special needs will become more difficult in the years ahead. In the past twenty years, the number of single-parent families has grown; in the coming decades, the elderly population will grow substantially.[53] More than thirty-two million Americans over the age of fifteen years are limited in physical mobility.[54] Many others are visually and/or hearing impaired.[55] Some groups of chronically ill people, such as AIDs patients, are rapidly growing in number. Other groups, such as the chronically mentally ill, are stable in size but are composed of relatively young people who will require life-long care and housing.[56] The supply of housing targeted to these special housing needs will have to increase in the coming decade as these populations grow.

52. We cannot encourage parents to work—particularly single parents receiving welfare—and not also be concerned for the well-being of "latchkey kids."

53. Bureau of Census, U.S. Dept. of Commerce, Statistical Abstract of the United States 1987, at 49, tables 67-68 (107th ed. 1987).

54. Nat'l Ctr. for Health Statistics, U.S. Dept. of Health and Human Services, Current Estimates for the National Health Interview Survey: U.S. 1986, at 110-11, tables 67–68 (1987). According to this study, 13-14 million people are severely disabled—limited in major activities that they may perform. *Id.*

55. Nat'l Ctr. for Health Statistics, U.S. Dept of Health and Human Services, National Health Survey: Prevalence of Selected Impairments, United States 1977 (1981).

56. The median age of a sample of chronically mentally ill residents in 1980 was estimated to be 42 years. H.H. Goldman, Long-Term Care for the Chronically Mentally Ill (The Urban Institute Working Paper 1466-23, 1983), *cited in* S. Newman & R. Struyk, Housing and Supportive Services: Federal Policy for the Frail Elderly and Chronically Mentally Ill (Massachusetts Institute for Technology Center for Real Estate Development Working Paper #HP13, 1987).

IV. Coordination of Housing and Other Social Policy Goals

Fair housing issues are a central concern of national housing policy. Discrimination interferes with the effective delivery of housing assistance in many ways. Important battles to end race and class segregation in housing were fought over the issues of whether communities would accept public and assisted housing in their midst and where in those communities such housing would be placed. Tenant voucher and rent subsidy programs depend on open rental markets and cannot operate successfully in communities where racial discrimination or discrimination against families with children limits the availability of housing. A recent study found that more than three-quarters of minority and non-minority families that consist of both parents and more than four children and that have Section 8 rent certificates experience discrimination in finding housing. For minority families, the discrimination is far more pervasive, reaching all qualified Section 8 categories. Many of these families never benefit from the housing assistance for which they are eligible because they are unable to obtain housing within the mandatory 60 days.[57]

Another goal that housing may promote is community development and economic growth. Housing assistance resources can be used by local and state housing agencies and community development planners to strengthen and stabilize older or economically distressed neighborhoods. These resources also enhance economic development by providing construction jobs and homes for workers needed in growing industries.

V. Proposal for a National Housing Policy for the 1990s

The federal government withdrew from active involvement in housing policy during the 1980s, asserting that the private market could most efficiently meet housing needs. At best, this assertion is unrealistic. At worst, it is willfully blind to economic reality. No previous administration, conservative or liberal, has argued that the private market is willing and able, without assistance, to meet the housing needs of low income families, people with special housing needs, and others unable to pay market prices.

During this decade of federal neglect, state and local governments have addressed housing problems with new concern and energy, new delivery programs and funding, and a new emphasis on local

57. Public Housing Today, *supra* note 42, at 9-10.

definition of housing needs and solutions. A new wave of community-based nonprofit organizations has emerged, pioneering partnerships with the private sector and state and local governments to develop, rehabilitate, finance, own, and manage housing.

Recently, Congress has begun to return its attention to housing matters. In 1987, a housing statute was enacted for the first time in seven years. The Housing and Community Development Act of 1987[58] is basically a "housekeeping" act that continues existing programs and maintains the status quo for two years, with an eye toward major housing legislation to be proposed in 1989-90.

Congressional housing committees have solicited research, recommendations, and solutions from experts on housing problems in preparation for major legislation intended to set the housing agenda for the 1990s.[59] Several task forces have been designated to study specific issues. Major organizations concerned with housing have submitted recommendations to Congress for a new national housing policy. The stage is set for a renewed federal commitment to address the nation's housing needs.

If the nation's housing needs grow in coming decades, as I believe they will, policies addressing the provision of low-income housing must be a part of the national response. Even if funding at sufficient levels is not immediately available to implement a comprehensive housing policy, a Congressional commitment to long-term funding of programs will make the dollars invested in housing more efficient than the sporadic, *ad hoc* approaches of the past.

A. Low–Income Housing

All people in this country, without regard to wealth, are entitled to decent housing. Without an income supplement specifically targeted to housing, the very poor cannot hope to find decent and affordable homes, whether subsidized or not. The creation of a housing entitlement for the very poor should be a long-term national housing policy goal.

1. Combining demand-side and supply-side strategies. Every family with an income below 50% of median renter income in their geo-

58. Housing and Community Development Act of 1987, Pub. L. No. 100-242, 101 Stat. 1815 (1987).

59. Senator Alan Cranston (D-Cal.) hopes to introduce major housing legislation in 1989. Interview, The Role of the Federal Government in Real Estate Finance: Standardize and Stabilize, Mortgage Banker (Oct. 1987).

graphic area[60] should have access to rent support that enables them to secure adequate housing for 30% or less of their income. Funding for tenant subsidies should be the responsibility of the federal government. Immediate coverage of all persons in this income group, however, would require funds that cannot realistically be expected in today's spartan budget climate. But the goal of universality can be reconciled with budgetary reality.

First, funding for a housing entitlement must be viewed as an annual appropriation. This will avoid what has become a severe political obstacle for housing programs. Because housing programs normally provide long-term funding commitments, Congress must appropriate funds for the full term of the commitment in the first year. Thus, a Section 8 unit with anticipated annual subsidy costs of $3,600 ($300 per month) would require $72,000 in budget authority for a 20-year commitment.[61] When faced with such a budget request, members of Congress predictably respond: "Why, we can buy homes for the poor at that price! Housing programs cost too much." Annual appropriations will help to avoid such seemingly logical, but nonetheless flawed, arguments.

Second, so long as resources are insufficient to meet the needs of the entire universe of people eligible for the housing entitlement, Congress should provide assistance to entire categories of targeted beneficiaries on the basis of their income level. Groups most in need should be identified and provided coverage first. Expansion of the program toward universal coverage should proceed by adding new eligible groups in their entirety, not on a first-come, first-served basis.

Comprehensive welfare reforms may provide the only context that makes a housing entitlement possible. Housing costs are usually considered in determining the appropriate level of welfare grants, whether on an individual or area-wide basis. A significant

60. Eligibility classification by income should eventually become even more sensitive to community context than the customary standard of "area median renter income." Percentage of median income is too crude a measure to define eligibility and extent of subsidy. For example, compare one person at 50% of median income in a county with a $40,000 median income and low construction costs with a second person at that same income level in a county with a $32,000 median income and high construction costs. In terms of income figures, the first person is no wealthier than the second, but will certainly find housing significantly more affordable in his or her community. Housing assistance program standards, for both supply- and demand-side subsidies, must be sensitive to the varied and diverse economic contexts of different communities.

61. "Budget authority" is a long-term commitment to annually appropriate a certain level of funds for a program. In the year the commitment is made, the whole chunk of multi-year funding is subtracted from that year's budget. By contrast, when funding is done on an "annual actual outlays" basis, only funds actually spent in a particular year are subtracted from that year's budget.

proportion of welfare expenditures goes to housing. Yet these expenditures rarely produce improved housing and are often inadequate to meet the needs of either the low-income tenant or the landlord for two reasons. First, rent-based welfare benefits rarely are tied to housing quality, so owners have no added incentive to upgrade or maintain properties. Second, when resources are inadequate welfare programs reduce the amount of assistance provided, unlike housing programs that restrict the number of people assisted. When funding is short, everyone gets too little in welfare instead of a few people receiving adequate benefits while the remainder of eligible recipients receive nothing. Until these conflicting program approaches can be reconciled—through a housing allowance to the tenant—welfare and housing programs will continue to overlap and often conflict.[62]

The housing entitlement must be linked to housing quality, with quality standards established by state and local housing policymakers. The program should be designed and administered by state and local governments according to eligibility standards set by the federal government. For example, state and local decisionmakers, familiar with local needs and priorities, should determine whether to pay the subsidy directly to tenants or to link the subsidy to housing units.

Supply-side strategies are needed to complement tenant subsidies. Where housing is in short supply and rents relatively high, income supplement alone cannot solve the housing problems of low-income families.[63] Government support for the steady production of new rental housing for a broad range of income levels is a necessary companion strategy. When total housing supply expands, affordable rental units for lower income families open up as moderate-income families move into homeownership. This process is known as "filtering." But where supply is static and tight, the filtering-down of affordable units cannot occur. Competition for the limited number of available units is decided by wealth alone, and the neediest families necessarily suffer the most.

Income supplements are targeted to the very poor, but supply-side subsidies are most effectively directed to low- to moderate-income families. "Working poor" families can often afford near-market rents. Federally subsidized debt service reduction, which is far

62. *See generally* S. Newman & A. Schnare, Integrating Housing and Welfare Assistance (Massachusetts Institute of Technology Center for Real Estate Development Working Paper #HP12, 1987).

63. The level of income supplement required to make the very poor tenant a driving force behind private market production of new housing is so high as to be unfeasible.

less expensive than demand-side subsidies, produces enough incentive to spur private production of rental housing for these families. Evidence of this is the high level of rental production achieved in the years 1982 through 1986, which was stimulated by tax-exempt financing and other tax incentives.[64]

Production programs should include new construction and, if appropriate, rehabilitation of a community's existing rental stock. Once supply-side subsidies successfully create new housing, very poor tenants boosted by income supplements, as well as moderate-income families, should find this new housing affordable.

Funding for supply-side subsidies should come from a broad base: federal, state, and local governments and the socially conscious private sector all have varying degrees of responsibility and capacity for program funding. Programs to stimulate growth in the supply of low- and moderate-income housing should be developed and carried out by state and local governments. State and local housing agencies can best understand and respond to community needs and conditions. Federal funds should be disbursed to state and local governments in the form of block grants, which include incentives to encourage these governments to find additional sources of funding. The failure of housing leadership at the federal level over the past decade spurred many state and local governments, in concert with nonprofit organizations, to develop new sources of housing funds and new sophistication in housing matters. Creative local approaches to program funding must be supported and delivery systems for housing assistance redirected to build on the strengths of these new players.

This mixed demand- and supply-side strategy differs from the Section 8 program, which also combined both approaches in response to locally determined need, in its provision of a coherent and politically acceptable budgetary plan. Section 8 was a sound and effective housing policy, but it was a very expensive program. At its peak, approximately $250 billion in budget authority was committed to the Section 8 program on a long-term basis, but it provided only $10-$13 billion in annual actual outlays. Thus the enormous budget figures associated with Section 8 made the program a political liability in an era of growing deficits and budget stringency.

The approaches recommended in this Article have the effect of restructuring the Section 8 program to separate the costs of the demand-side subsidy from those of the supply-side subsidy.[65] Federal

64. A Decent Place To Live, *supra* note 15, at 39.

65. Supply-side subsidies intended to stimulate housing production should continue to be appropriated on the basis of budget authority, while funds for the demand-side

resources should pay for the tenant subsidy, but funding for housing production should be apportioned among state and local governments. The necessary supply-side subsidies will be reduced with a housing entitlement for all very poor families. Such project-based subsidies will have only to bring the rent burden down to the level affordable to households at 50% of median income rather than down to those at *less* than 50%, as did the Section 8 supply component.

2. *Affirming the role of public housing.* The federal public housing program today serves 1.34 million families,[66] primarily the very poor and the elderly. Because of the highly visible problems of some troubled projects, the public housing program generally has been criticized for failing to provide decent housing or to solve the social problems of its residents. In the face of such perceived failure, some critics recommend that the federal government sell off its existing inventory and build no more public housing units.

Without question, much of the stock of public housing is aged and needs substantial repair and upgrading. But the answer is not to surrender this valuable resource of low-income housing. The answer is to save it. The federal government must commit to a long-term program of repair and modernization of the entire public housing inventory.

The current supply of public housing is inadequate to meet present or future need. A steady program of construction and acquisition of new public housing units is required. A substantial portion of new public housing units should be targeted by state and local housing agencies to populations with special housing needs that neither the private market nor nonprofit organizations are anxious to assist: the frail elderly, the chronically ill and disabled, and large, single-parent families.

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tenant voucher program should be appropriated on the basis of annual actual outlays. The long-term commitment of budget authority makes conventional mortgage financing available for private development and construction of subsidized housing. Lenders require the assurance, which budget authority provides, that government subsidies will continue as promised. But, for example, when Congress appropriates funds to build an aircraft carrier, there is no accompanying multi-year appropriation for personnel and maintenance, although it is evident that both people and repairs will continually be needed to effectively operate that aircraft carrier. Similarly, there is no reason to appropriate funds for a housing entitlement on the basis of long-term budget authority, even though it is likely that there will be a fairly permanent population of poor people needing such assistance.

66. Public Housing Today, *supra* note 42, at 7. Five percent of the nation's 29 million unit rental stock is federal government-owned public housing, and another 2.5% of rental units are state and local government-owned public housing. *Id.* at 5.

3. Integrating social support systems. Groups with special housing needs require more than suitable housing; they often need a broad range of care and support services. Likewise, some problems of residents of public and assisted housing, while not necessarily related to their housing, can become problems that affect housing. Housing policy in the next decade must address those interdependent needs.

Public and subsidized housing can provide the site for integrated programs of housing and social service assistance that enhance residents' independent living capacity, family strength, and economic mobility. HUD's Congregate Housing Program for the elderly took a first step toward such an integrated program of housing and social services.[67] Similar programs are now being proposed to shelter the chronically mentally ill and to assist homeless families with a range of family, economic, vocational, and psychological problems.[68] Such initiatives must be supported by housing policymakers, both for the wellbeing of the residents and for the best use of public and assisted housing programs.

Currently, separate delivery systems for housing and social service assistance create barriers to coordination. Housing money is federally administered, while social service programs are designed and administered by state and local agencies. This Article's proposed delivery of housing program funds—a proposal that emphasizes local solutions to local problems, supported by the resources of the federal government—will make it possible to provide creative and integrated approaches to social problems. Permanent, affordable, and decent housing, tied into a community support network to help families survive illness or crisis, must be the goal of both housing and social welfare policies.

4. Preserving the existing stock of housing for low-income use. The inventory of almost two million units of privately owned, subsidized housing[69] is an invaluable resource for low-income families. Re-

67. The Congregate Housing Program was a HUD demonstration program that operated in 60 public housing and Section 202 projects serving about 1800 elderly people. Congregate housing provided meals and other forms of long-term care and independent living support services, as well as community spaces and activities. Nachison, Who Pays? The Congregate Housing Question, Generations 34 (Spring 1985). Several states also offer congregate housing-type programs for the frail elderly, usually state-funded and insured under the FHA 221(d)(4) program. For examples, see R. Thielen, State Initiatives in Elderly Housing, Council of State Housing Agencies and National Association of State Units On Aging (1986).

68. *See, e.g.*, Bassuk, *supra* note 43.

69. Preventing Disappearance of Low Income Housing, *supra* note 16, at Ex. 1-3.

placement of this pool is not economically feasible.[70] In the face of expiring subsidy contracts and use restrictions, an attempt must be made to preserve as many presently subsidized units as possible.

Different preservation strategies are required for different parts of this inventory. Owners of troubled projects—those that are physically deteriorated or that serve very-low-income families in weak real estate markets—and other marginal projects will want to renew subsidy contracts. The federal government must make available the funds necessary to renew those contracts and should encourage modernization and repair of deteriorated projects as part of the renewal process. Modernization can be accomplished either directly through funding, or by encouraging refinancings and resales that generate additional capital for projects.

Projects that may be converted profitably to market rate use require a more complicated approach involving governmental "carrots" and "sticks." Owners of such projects should be offered a range of incentives for maintaining low-income use. Incentives might include a rent voucher program that would increase rents to near market levels and an opportunity to realize greater profit through increased contract rents, increased return payouts, and equity take-out loans. HUD funds and tax credits should also be available to generate capital for project repair and rehabilitation.

In concert with state and local housing agencies, HUD should aggressively negotiate with owners for preservation of their projects for low-income use, employing a range of owner incentives. The negotiations should contemplate creative approaches that are responsive to the circumstances of each project and its owner. Not every project can or should be saved, but a cost-effective program would permit both a healthy return for the owner and retention of valuable portions of the existing stock.[71]

70. The cost of replacing this stock is estimated to be $250 billion. P. Clay, At Risk of Loss: The Endangered Future of Low-Income Rental Housing Resources, Neighborhood Reinvestment Corporation 1 (1987).

71. The principle of local solutions for locally identified problems is fundamental to preserving the existing stock of subsidized housing. Even in communities where the demand for subsidized housing is not immediately pressing, planning and foresight demand a commitment to preservation. Housing policymakers must keep in mind that there is a dynamic to housing need that is beyond our control. Contrasting examples are provided by the cities of Houston, Texas and Boston, Massachusetts. Due to serious economic downturns in Houston, the current vacancy rate in that city's private rental market is extremely high. In this "renter's market," a demand-side subsidy alone would be effective to ensure that even the poorest Houston families could find housing. Such an expansive private market is also likely to lead to a lack of demand for Houston's stock of public and subsidized housing. But if Houston experiences another boom cycle, as it did 10 years ago, the housing market could once again become highly competitive. In such a tight rental market, huge supply-side subsidies for production of new housing

Incentives must be paired with muscle. Without question, owners have the legal right to exercise options granted them in contracts and agreements with the federal government. The owner's right to convert should not be restricted. Exercise of that right, however, may be discouraged through tax policies and certain state and local regulatory powers.

A demand-side tenant subsidy program can play a valuable role in preservation strategy. Tenants eligible for income supplements who live in projects threatened by conversion should receive top priority for rent certificates or vouchers, but only for use at the threatened project. Linking tenant subsidies to preservation should lower the cost to the federal government of renewing expiring subsidies.

Preservation of the current inventory of public housing is less problematic. However, such housing must be fully repaired and modernized over a long-term schedule. A reserve for replacements should be instituted for existing projects to ensure that restored projects are continually maintained and upgraded.

Modernization should also include plans to relocate tenant populations to appropriate housing: families with children should be moved out of high-rise buildings and into scattered-site projects; the elderly should occupy the high-rise facilities. Racial segregation in public housing must be vigorously addressed and eradicated. Tenants displaced by modernization and relocation programs should be given rent vouchers and relocation assistance in finding low-income housing in the community. If necessary, local housing authorities should provide interim public housing.

Sale of public housing projects is not a solution to the problems of either the public housing program or its residents. Such sales should be permitted only where private ownership is the only available solution for serious failures in housing authority performance, and then only under guarantees that the low-income use of the property will be preserved.

would be required. If Houston acts now to preserve its existing low-income housing stock, enormous future costs could be avoided. In fact, Houston's current housing market presents a wonderful opportunity for local housing authorities to acquire new housing at a reasonable cost for future needs. A strong argument for such foresight is the parallel example of Boston. Boston's depressed economy of 10-20 years ago created a rental housing market much like that of Houston's today. No concerted effort was made at that time to preserve or acquire large numbers of available rental units for the poor. Now, in the midst of an economic boom, the supply of housing available to poor families is critically tight, forcing local and state housing agencies to be aggressive and creative in developing strategies for the preservation and production of affordable housing. Boston's strategies have been extremely effective, but the need for them might have been less had the city acted with foresight a decade earlier.

5. Using tax reform to promote investment in low-income housing. Federal tax policy should encourage private capital investment in rental housing, particularly low-income housing. Tax reform legislation in 1986 that ended incentives for such investment should be reconsidered. Losses from rental real estate, including depreciation and operating expenses, should be permitted to offset other income, and limits on the volume of tax-exempt bonds for financing low-income rental housing should be removed.

6. Creating delivery systems that emphasize partnership among public and private sectors. Delivery of low-income housing assistance is a responsibility shared among the several levels of government and the for-profit and nonprofit components of the private sector. The federal government should renew the partnership between government and the private sector that achieved the gains in housing of the last half century, and should establish new partnerships with state and local governments. Private, profit-motivated developers should retain a major role in the provision of low-income housing and the development activities of nonprofit organizations should be increased.

Housing is a moving target: conditions, supply, and need vary from place to place and time to time. State and local governments should define housing needs, determine what programs will meet those needs in light of local conditions, and establish delivery systems for housing assistance in their communities. Such policies will make housing programs more effective and will increase public support for assisted housing.

State and local governments can advance housing efforts in a variety of ways. Local governments are able to use zoning, building code, and other regulatory mechanisms (e.g., linkage or inclusive zoning) to promote private development of low-income housing. The cost of all housing can be reduced by intelligent regulatory codes, infrastructure requirements, and fee schedules.

Private developers and nonprofit groups will have primary responsibility for producing, rehabilitating, financing, and managing low-income rental housing. The sophistication and experience of the private sector and the innovative approaches of the nonprofit sector should be combined; shared ventures should be encouraged. Programs should be developed to provide nonprofits with technical expertise and support in order to make them more effective players in the housing area. Nonprofits play a central role in developing charitable, non–governmental funding sources and should be encouraged to do so.

The federal government should assume primary responsibility for tax policies affecting housing. State tax initiatives that support federal tax policies should also be encouraged.

Because discrimination magnifies the housing problems of low-income families, the federal government should lead aggressive programs to enforce fair housing and fair credit laws. Federal funding should also be used to promote aggressive local fair housing efforts.

B. Home Ownership

Promoting homeownership is an important goal of federal housing policy, but should not be a major focus of federal appropriations. The private market is generally able to meet the homeowning aspirations of middle- to upper-income families without government assistance. Government should concentrate on meeting housing needs that the private market is unwilling to address.

The federal government should assist first-time homebuyers by allowing them to make tax-free withdrawals from existing IRAs for the down payment on a first house. Tax laws should continue to permit use of state and local mortgage revenue bond issues to support homeownership.

The federal government must affirm and maintain its role in structuring the private credit market to assure a reliable flow of mortgage capital to housing. Efforts to limit FHA mortgage insurance authority should be resisted. The FHA should permit the wider use of innovative mortgage forms, such as adjustable rate mortgages. The federal role in the secondary market should be continued and federal credit institutions should be permitted to expand their services and products in a manner consistent with good housing and financial regulatory policy.

C. Tax Policy

The "pot" of federal housing money includes tax expenditures as well as direct program expenditures. The largest of these expenditures is the homeowner's deduction for mortgage interest and local property taxes.[72]

72. 1987 federal spending on housing totalled approximately $70 billion, including tax expenditures, housing program budgets, and housing assistance benefits. Of this amount, almost 75% was spent to promote homeownership—three times the amount spent on all subsidized and rental housing programs combined. Executive Office of the President, Office of Management and Budget, Budget of The United States Government 1989.

The historical purpose of these deductions was to stimulate homeownership in the belief that homeownership benefits all of society. This belief is as true today as it was in 1916 when the homeowner's deduction was first enacted. Homeownership is still the American dream; it forms the basis of sound communities and stabilizes social and economic forces. Promoting homeownership is as central to federal housing policy as low-income rental housing programs, and must remain so.

Cutbacks in current levels of tax support for homeownership are increasingly seen as a potential source of revenue in an era when huge budget deficits threaten the economy. The Tax Reform Act of 1986, with its myth of lower tax rates and tax simplification, coupled with the 1987 Tax Act[73] that begins to limit interest deductibility for home mortgages, is a sign of the potential erosion of the homeowner's deductions.

Further limits in the homeownership deductions are contrary to the proposals of this Article. If such a limit should be imposed and the deductions curtailed, the money saved thereby should be redirected to other housing policy goals. Any federal savings on housing should be earmarked and retained as housing money rather than returned to general revenues.[74]

Conclusion

A policy vision is distinct from a political forecast. Having analyzed our nation's housing needs and identified solutions that effectively respond to those needs, we must turn our attention from policy leadership to political reality. The political process is a territory of compromise. There, some housing needs will be given priority over others; some housing goals will be deemed urgent, while others of equal importance will be postponed; and federal spending levels consistent with those priorities and timetables will be set.

The underlying political question in current debates over housing policy is when the federal government will resume an active responsibility for housing the people of this nation. The answer to that

73. Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987).

74. For example, earmarking and redirection was not done with tax expenditures saved when deductions for rental real estate investment were cut in the 1986 Tax Reform Act. Although the low-income housing tax credit was introduced at the same time, the amount of money available for the credit does not equal the amount lost to housing when the deductions are removed. The consequence is that housing, particularly rental housing, becomes more expensive in relation to other goods and services.

fundamental question lies where all political energies in this nation finally reside—in the electorate. If the electorate's attention returns to domestic social problems in the next decade, if compassion and hope replace fear and greed as political currency, housing will again rise as a priority for elected officials. The focus of the electorate's social conscience will determine which groups will benefit from the housing policies adopted in the next decade. If the recent and drastic increase in poverty and homelessness is the dominant concern, housing policy will be explicitly directed toward low-income people. If domestic economic development and international trade remain central concerns, the need to house workers and to support labor forces in regions of economic growth will define the agenda of housing policy, directing resources towards more moderate-income families.