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John R. Nolon

*Elisabeth Haub School of Law at Pace University*

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### Recommended Citation

John R. Nolon, Reexamining Federal Housing Programs in a Time of Fiscal Austerity: The Trend Toward Block Grants and Housing Allowances, 14 Urban Law. 249 (1982), <http://digitalcommons.pace.edu/lawfaculty/197/>.

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# Reexamining Federal Housing Programs in a Time of Fiscal Austerity: The Trend Toward Block Grants and Housing Allowances\*

John R. Nolon

Executive Director, Center for Community Development and Preservation; J.D., University of Michigan Law School (1966); Former Professor of Urban Studies, State University of New York.

## I. Introduction

SEVERAL RECENT ACTIONS at the federal level represent a fundamental shift in the role that the nation's highest level of government will play in pressing for "a decent home and suitable living environment for all Americans."<sup>1</sup> Congress acted in 1981 to reduce federal spending for housing by nearly 50 percent and to shift the emphasis of federal programs to subsidies for existing housing rather than for the construction of new housing units.<sup>2</sup> In October

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\*Portions of this article were prepared for an Information Bulletin to be published by the Urban Consortium for distribution to the chief executives of the nation's largest cities and urban counties.

1. Housing Act of 1949, 42 U.S.C. § 1441 (1976). The declaration of national housing policy contained in Section 2 of the National Housing Act of 1949 provides an apt preface for this article and an interesting counterpoint to recent federal housing activity:

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

2. Housing and Community Development Amendments of 1981, Pub. L. No. 97-35, 95 Stat. 384 (1981). This legislation, signed by President Reagan on Aug. 13, 1981, provides funding of \$18.087 billion for 156,250 units of assisted housing. This contrasts with Pub. L. No. 96-526, 94 Stat. 3044 (1980), signed by President Carter on Dec. 15, 1980, which provided \$30.87 billion for 280,000 housing units.

of 1981, The President's Commission on Housing recommended "that the primary federal project for helping low-income families achieve decent housing be a consumer-oriented housing assistance grant."<sup>3</sup> Simultaneously, the United States Department of Housing and Urban Development (HUD) proposed radical changes in its legislative program for fiscal year 1983; HUD recommended a sharply reduced subsidized housing program that would eliminate three housing rehabilitation programs and replace them with a block grant, establish a direct rental subsidy program for the poor, and provide a very modest new construction program for the elderly.<sup>4</sup> These actions contrast markedly with the federal housing programs of the 1970s and early 1980s. For fiscal year 1981, for example, Congress approved funding for 280,000 assisted housing units, fully half of which were to be newly constructed or substantially rehabilitated housing.<sup>5</sup>

The federal government's changing role in housing parallels a change in federal spending for many other domestic programs.<sup>6</sup> These changes represent a shift in the course of the federal system, centered on the national government's power to tax and to spend public funds for the general welfare.

This article begins with an examination of the evolution of the federal government's predominant role in collecting and spending revenues for social programs, including housing. It traces the growth of federal spending, and the evolution of federally assisted programs for housing. It continues with an analysis of the trend toward block grants and housing allowances, and concludes by commenting on this trend's effect on the future of housing programs for households with limited incomes.

## **II. Evolution of the Federal Power to Collect and Spend Revenues for the General Welfare**

Article I, Section 8 of the United States Constitution gave Congress the power "to lay and collect taxes, duties, imposts, and

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3. THE PRESIDENT'S COMMISSION ON HOUSING, INTERIM REPORT, at p. 3 (1980).

4. HUD Transmittal of its Legislative Program for the 97th Cong., 2nd Sess., forwarded to the Office of Management and Budget by Donald I. Hovde, Acting Secretary (Sept. 15, 1981).

5. Pub. L. No. 96-526, 94 Stat. 3044 (1980).

6. In 1981, Congress designed block grant legislation to consolidate categorical programs in the health, education, and social services fields. These programs generally reduce the level of federal assistance available, transfer greater authority to state governments for the administration of the programs, and reduce federal regulation of the programs.

excises, to pay the debts, and provide for the common defense and general welfare of the United States.” The Founding fathers hotly debated the meaning of the Section 8 general welfare provision. Jefferson and Madison argued that the power to tax was limited to promoting the general welfare under powers specifically granted by other clauses of the Constitution. Their view of the federal government, as one of enunciated powers, suggested that Congress could not tax and spend for just any broad general welfare purposes that it might choose to promote.<sup>7</sup> Hamilton disagreed. He held that Congress could tax and spend for the general welfare as defined by Congress itself.<sup>8</sup>

This debate over the meaning of Article I, Section 8 continued for over a century and a half until it was decisively resolved by the Supreme Court during the New Deal.<sup>9</sup> In upholding the constitutionality of the Social Security Act, the Court adopted the Hamiltonian view that the Constitution’s grant of power to Congress to spend for the general welfare was broad, and not narrowly limited to the furtherance of specific, enumerated powers. The Court also defined the general welfare power as flexible and changing, rather than fixed by the framers of the Constitution: “Nor is the concept of general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with the time.”<sup>10</sup>

This dynamic view of the spending power was essential to the ability of Congress to enact the sweeping social programs that were initiated in the post-Depression period. At issue was the federal government’s authority to raise and distribute resources to solve problems that had previously been regarded as local rather than national in scope. Even Hamilton had agreed that the powers of taxation and appropriation extended only to matters of national, as distinguished from local, welfare. This view was reinforced by commentator Story who wrote: “The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enunciated powers, and not of general and unlimited powers.”<sup>11</sup> In *Helvering*, the Court concluded that the several states could not deal effectively with problems such as relief for the elderly and unemployed.

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7. See THE FEDERALIST No. 41 (J. Madison); T. JEFFERSON, VIRGINIA PROTEST (1825).

8. See THE FEDERALIST No. 35 (A. Hamilton).

9. *Helvering v. Davis*, 301 U.S. 619 (1935).

10. *Id.*, at 641.

11. J. STORY, 1 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 909 (5th ed. 1891).

State and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged. . . . Apart from the failure of resources, states and local governments are at times reluctant to increase heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared to neighbors or competitors.<sup>12</sup>

The Great Depression, the Roosevelt Administration, and cases like *Helvering v. Davis* set the stage for the creation by Congress of housing programs for low-income Americans. Prior to *Helvering*, Congress had limited its actions in the housing field to programs designed to strengthen credit institutions and make mortgage financing available to a larger number of home buyers.

In a major departure, two years after the *Helvering* decision, Congress created the Public Housing Program for low-income tenants. The 1937 United States Housing Act made available direct federal subsidies to allow local governmental bodies to develop, own and manage housing for low-income people and to encourage the replacement of slums with newly constructed housing.<sup>13</sup> This post-Depression housing legislation was motivated as much by a desire to create jobs in a fragile economy as to provide shelter for those in need. Both purposes, however, would have withstood the judicial test for determining whether Congressional legislation properly pursued the nation's general welfare. In fact, in no case to date has the Supreme Court held any federal grant program unconstitutional for pursuing a local purpose, rather than the national welfare.

A recent Supreme Court ruling illustrates the extent to which Congress can go in funding local projects, in the interest of the national welfare. In *Fullilove v. Klutznick*,<sup>14</sup> the Court held constitutional the grant of federal monies for local public works projects, under the Public Works Employment Act of 1977. The *Fullilove* case describes a federal government that for practical purposes, seems complete and without limitation in its power to tax and spend for the general welfare. The housing programs that have emanated from Congress, beginning with the 1937 U.S. Housing Act, are illustrative of the extent to which the federal government has been willing to spend public monies to assist local programs in pursuit of "national" general welfare objectives.

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12. *Id.*, at § 644.

13. United States Housing Act of 1937, 42 U.S.C. §§ 1401-30 (1976).

14. *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

### III. The Evolution of Federally Funded Housing Programs

As Congress considers enactment of the sweeping changes envisioned by the recent recommendations of HUD and the President's Housing Commission, it will be deciding where next to turn on a path it has been travelling for over fifty years. Congress began during the fiscal crisis of the early 1930s by creating the Home Loan Bank System, establishing a system of deposit insurance, and creating a secondary market for mortgages threatened with foreclosure.<sup>15</sup> It continued its concern for the mortgage market by passing the National Housing Act of 1934 which established a system of mortgage insurance through the Federal Housing Administration. This Act had the effect of liberalizing private mortgage credit terms and greatly spurred housing construction by making long-term, low down-payment mortgages available. The Act also created secondary market facilities for purchasing government insured mortgages and returning capital to originating lenders for additional mortgage lending.

It was against this backdrop that Congress acted in 1937 to create the Public Housing Program. Twelve years later, Congress created a separate slum clearance initiative that became known as the Urban Renewal Program.<sup>16</sup> Under the Housing Act of 1949, Con-

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15. In 1931, President Hoover convened the White House Conference on Home Building and Homeownership to look into the emerging crisis in mortgage lending. At the time, there was little unanimity of opinion over whether government should intervene. In 1932, the Home Loan Bank System was created; by that time, symptoms of financial collapse had spread throughout the home lending market. Through regional banks, the Home Loan Bank Board was authorized to make loans to member savings and loan institutions which, in time, were required to invest heavily in real estate mortgages. Later, a system of deposit insurance was established, restoring public confidence in banking institutions. This early housing-related legislation was borne out of national calamity and went far toward revitalizing and reshaping the system of mortgage credit and home insurance that had been in use.

In an ironic parallel a half-century later, President Reagan's Commission on Housing called for an extensive restructuring of the home financing system to ensure that adequate funds are available for residential lending. In a draft position paper entitled *Financing the Housing Needs of the 1980s* (issued January, 1982), the Commission noted that the changes needed today may be as widespread as those made during the Roosevelt Administration that enabled savings and loan associations to become the primary source of home mortgage lending. The Commission reported that "a broader based and more resilient system of housing credit is needed to finance the housing needs of the 1980s." It recommended giving broader powers to thrift institutions so they can offer checking accounts to business, invest more widely in consumer, commercial and agricultural loans, and expand their real estate activities.

16. Housing Act of 1949, Title I, 42 U.S.C. § 1441 (1976).

gress provided direct subsidies to local governmental agencies to allow them to clear blighted areas and provide sites at economically feasible prices for private enterprise to build moderate cost housing and other commercial, industrial and public facilities. The Housing Act of 1954 added conservation and rehabilitation programs to broaden urban renewal into a more comprehensive tool.<sup>17</sup> Local governments were also required, beginning in 1954, to adopt master plans and a variety of local codes, to remain eligible for urban renewal subsidies.

In 1959, Congress extended the availability of housing subsidies to nonpublic entities for the first time. The Housing Act of 1959 created the Section 202 Program, providing direct loans to private, nonprofit entities to develop housing for the elderly and handicapped.<sup>18</sup> Congress first provided these loans at the interest rate then paid on the federal debt, but later wrote the rate down to three percent. This was the first congressional expression of the need for direct subsidy to accommodate households with incomes above the public-housing level.

The momentum picked up with the Housing Act of 1961, which created the Section 221(d)(3) Below Market Interest Rate Program.<sup>19</sup> For the first time, private developers were made eligible, along with nonprofits and cooperatives, for direct federal loans; interest rates were established by the amount paid on the federal debt. In the Housing Act of 1965, Congress allowed subsidies to be geared to individual family needs for the first time; the Rent Supplement Program was created, under which eligible tenants paid no more than 25 percent of their income for rent and a flexible federal subsidy covered the difference.<sup>20</sup> In 1965, Congress also created the Section 23 leasing program enabling local public housing agencies to subsidize units in existing housing.<sup>21</sup> That same year HUD was created as a new cabinet-level agency. In 1966, Congress created the Model Cities Program, an attempt to coordinate physical improvement activities with social programs in defined neighborhoods.<sup>22</sup>

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17. Housing Act of 1954, 42 U.S.C. § 1450 (1976).

18. Housing Act of 1959, 12 U.S.C. § 1701q (1976 and Supp. III 1979).

19. Housing Act of 1961, Pub. L. No. 87-70, § 101(a) (6), 75 Stat. 149, 150 (1962).

20. Housing and Urban Development Act of 1965, Title I, Pub. L. No. 89-117, 79 Stat. 451 (1966), 12 U.S.C. § 1701s (1976).

21. *Id.*, at § 103(a), 79 Stat. 451, 455 (1966).

22. Demonstration Cities and Metropolitan Development Act of 1966, Title I, 42 U.S.C. §§ 3301-3313 (1976).

A half century of federal housing legislation was combined and significantly expanded in the Housing and Urban Development Act of 1968.<sup>23</sup> Congress created the Section 235 Program, under which subsidies were made available to enable lower income families to purchase homes.<sup>24</sup> The 1968 Act also created the Section 236 Program to provide rental housing for families whose incomes exceeded public housing eligibility limits.<sup>25</sup> Under Section 236, an interest subsidy was provided; HUD could write the interest on the mortgage down to one percent. The Neighborhood Development Program was also created in 1968, giving a new slant to Urban Renewal by encouraging steady, more flexible, and comprehensive performance under Urban Renewal programs.<sup>26</sup> In addition, the 1968 legislation also extended and expanded Model Cities, Urban Renewal, and a variety of other grant-in-aid programs and authorized large appropriations for Rent Supplements and Public Housing.

With this new legislation, private developers were fully enfranchised by Congress. The flow of federal housing subsidy funds was henceforth to be triggered by applications from private sector developers, except for public housing projects, which remained within the control of local housing authorities. Local renewal and redevelopment agencies worked in partnership with private developers providing sites and public improvements and otherwise aiding project feasibility in urban renewal areas. Outside renewal areas, the ground rules were much less clear. Local governments often initiated the process whereby private developers applied to HUD for housing subsidies. Frequently, however, localities found themselves responding to unsolicited initiatives by developers to build low- and moderate-income housing with federal assistance.

The Nixon moratorium on housing programs and runaway inflation in the early 1970s spurred a reexamination of federal development and housing programs and led to the passage of greatly revised legislation in 1974. The Housing and Community Development Act of that year eliminated most categorical urban development programs, including Urban Renewal, and replaced them with a community development block grant for eligible localities and urban counties.<sup>27</sup> The Act provided for the phasing out of most

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23. Pub. L. No. 90-448, 82 Stat. 476 (1968).

24. *Id.* at 477.

25. *Id.* at 498.

26. *Id.* at 518.

27. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (1976).



current housing subsidy programs and created the new, highly flexible Section 8 Housing Assistance Payments Program.<sup>28</sup>

The Housing and Community Development Act required localities to develop a Housing Assistance Plan (HAP) as a part of their application for Community Development Block Grant assistance. These HAPs were then to be used by HUD in allocating housing subsidies and in reviewing developers' applications; all such applications were to be referred to the local chief executive for review and comment regarding whether the application was consistent with the municipality's HAP. While this procedure gave local officials a greater degree of control over the construction of federally assisted housing, the private sector was still heavily relied on to initiate applications for new construction and substantial rehabilitation projects.

Section 8 was not just a new construction and substantial rehabilitation program. Local public agencies were made eligible to apply for set-asides of Section 8 units to subsidize the rents of tenants in existing housing complying with local housing standards. This Existing Section 8 Program was later expanded to give these local agencies set-asides of Section 8 funds, with higher allowable rental levels, to enable the owners of rental housing to complete a moderate level of rehabilitation. Under this program, local housing authorities and other eligible public agencies became the vehicles through which applications were made to HUD for housing assistance to subsidize rents and effect moderate rehabilitation in existing housing. The expansion complemented the localities' recently acquired authority to use their Community Development Block Grant funds to initiate rehabilitation loan and grant programs to stimulate the preservation and revitalization of privately-owned homes and rental housing and to launch neighborhood preservation programs in both residential and commercial areas.

In designing the Section 8 new construction and substantial rehabilitation program, Congress was attempting to provide a subsidy sufficiently deep and flexible to respond to double digit inflation. An alarming number of Section 236 projects had become financially troubled because the interest subsidy employed by the program was simply not flexible or deep enough to keep pace with rapidly rising energy and maintenance costs. Under Section 8, Congress agreed to pay the difference between 25 percent of a

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28. *Id.* Title II, § 201(a).

tenant's income and rents designed to respond to actual market conditions. The flexibility of Section 8 allowed avoidance of the cost overrun problem of Section 236, but caused increasing anxiety in Congress as costs continued to escalate, increasing the federal contribution and building pressure on the legislators to look for alternative subsidy mechanisms such as the Housing Block Grant and Housing Allowance approaches.

#### **IV. Reexamining Federal Housing Programs**

By 1980, these federal housing programs had become sufficiently controversial to inspire Congress to order a comprehensive examination of the feasibility of a housing assistance block grant program. Congress stipulated that the examination, to be conducted by the Department of Housing and Urban Development, study the feasibility of replacing the current federal housing programs with a block grant for housing.<sup>29</sup> The order reflected a congressional response to heightened criticism of the current programs as too costly, overly complex and too highly regulated. Congress sought to investigate other alternatives that would give localities greater flexibility, lower the cost of housing assistance, and simplify the method of administering the program. Under a block grant method of distributing federal housing assistance, municipalities and other recipients of block grant funds would play a greatly increased role in planning and implementing programs for the construction, rehabilitation, and maintenance of low- and moderate-income housing.

Housing block grant legislation would signal a fundamental shift in the attitude of Congress as to how some or all federal housing programs are to be administered. The degree of federal prescription would be lowered, administrative control loosened, and the allocation of funds made more directly to local and state governments. The significance of a shift to housing block grants can be illustrated by a review of two recent proposals to use block grants as the method of delivering federal housing assistance.

##### ***A. Housing Block Grant Proposals of the 1970s***

Two formal proposals to create a housing block grant program emanated separately from Congress, in 1973, and from the Ford

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29. Housing and Community Development Act of 1980, Title II, Pub. L. No. 96-399, § 215, 94 Stat. 1614, (1980).

Administration in 1976. These two proposals had a great deal in common. House Report 10036, commonly known as the Barrett-Ashley proposal, and a report prepared by HUD Secretary Carla Hills shared these basic notions concerning housing block grants:

1. Funds would be allocated to local governments and to states based on a statistically measurable formula.
2. Large cities and urban counties would be entitled to receive allocations directly, with funds for smaller jurisdictions being separately allocated either through state governments or by HUD.
3. Applications for housing funds would be simplified, federal reviews of the application narrowed, and emphasis placed on performance reviews.
4. Funds could be used for virtually all types of housing subsidy payments, with an emphasis on the housing needs of lower income households, and with responsibility for planning and administering housing programs centered at the local and state level.
5. Compliance with other federal statutes such as fair housing, civil rights and environmental legislation would be required.

These common characteristics spring from the underlying nature of block grant legislation, and, with minor deviations, are likely to appear in most housing block grant proposals. Basic to the block grant concept are the elimination of undue federal interference in local decision making and the reduction of the difficulties, delays, and costs inherent in federal processing. These refinements will in turn result in greater flexibility at the local level in program design, greater local responsibility for the success of individual projects, and the hope of achieving greater efficiency through the coordination of federal, state, and local resources.

As likely as these characteristics are to appear in housing block grant legislation, there are several major issues about which there is little historical or conceptual agreement. Most significant of these is the specific method of allocating funds to the local or state level.

### *B. The Allocation Dilemma*

The Barrett-Ashley proposal was based on direct allocations of entitlement amounts to local and state governments. It authorized entitlement communities to use a certain percentage of their projected annual allocation for outlays in the current year. It left the

locality free to choose to make short- or long-term commitments of block grant funds. Multiyear commitments could be made to secure long-term financing required for new construction and substantial rehabilitation, subject to certain limitations controlling the amount of deferred payments in any one year. The administration in 1973 opposed the Barrett-Ashley proposal because of its "emphasis" on new construction; it suggested instead greater consideration of direct cash assistance and allowances. The 1976 Hills proposal was also based on the direct allocation of an entitlement amount to local and state governments. Hills would have used the newly evolved concept of "budget authority" to provide the long-term commitment of funds necessary to insure the financial success of programs over time.

The concept of budget authority is basic to a full understanding of the dilemma that faces Congress in deciding how best to allocate housing block grants. In 1974, Congress required, for the first time, that HUD include in its budget submissions the cost of assisted projects over the full life of the federal government's commitment to provide assistance.<sup>30</sup> This long-term budget authority resolved the long ignored issue of how subsidy commitments were to be guaranteed. Prior to 1974, HUD had simply requested contract authority to meet obligations under subsidy commitments that fell due in any given year. Today, HUD is required to include in its budget both the authority that is needed to pay the long-term costs of housing assistance contracts to be awarded during the fiscal year, as well as the amount of contract authority that is to be expended during that fiscal year. Under any housing block grant program, Congress must then decide how much budget authority to allocate to eligible recipients, the length of that budget authority, and the amount of contract authority (as a percent of budget authority) available in any given year.

The 1976 Hills proposal recommended that the housing block grant authorization legislation specify the amount of budget authority that would become available at the beginning of each fiscal year. It further recommended that congressional appropriations release budget authority for three years and make that authority available to localities until expended, up to fifty-five years. The Hills proposal would have set an upper limit on annual contract authority allocated to a locality; only this amount could be spent in

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30. Congressional Budget and Impoundment Control Act of 1974, Title IV, § 31 U.S.C. § 1301 (1976).

any given year. This would allow, but not require, localities to expend their three year budget authority in no fewer than ten years.

Hills reasoned that this technique would create an incentive for localities to develop projects for the subsidy or repair of existing housing, rather than new construction or substantial rehabilitation. Existing housing programs have lower per unit cost, require shorter contract terms, and allow localities more latitude to use fully their maximum annual spending allowances. The longer term contracts required for financing new construction and substantial rehabilitation would require localities to spread their available budget authority over a longer period than the ten-year minimum; this would tend to discourage localities from using their allocations for these longer term commitments.

The Hills proposal was advanced toward the end of the Ford Administration. It was criticized by the Office of Management and Budget as preempting a discussion, under broader welfare reform proposals, of the prospects of meeting the housing needs of the poor, partially or completely, through a cash transfer system. This criticism, other technical difficulties, and the defeat of President Ford combined to curtail discussion of the Hills block grant recommendation. The Hills proposal received considerable reexamination after Governor Reagan's election in 1980 and his appointment of former Secretary Hills to chair his transition housing policy task force, and subsequently to serve as the Vice Chairman of his Housing Commission.

As Secretary Hills candidly admitted, the method she recommended of allocating budget and contract authority tended to favor the use of federal housing funds for maintaining and revitalizing existing housing. The Barrett-Ashley allocation mechanism was criticized as being too oriented toward new construction. These proposals illustrate the difficulties that face Congress in addressing the threshold issue of how to allocate federal spending authority to lower levels of government. They also demonstrate how the allocation method chosen by Congress tends to bias a block grant program in favor of one set of housing programs over another.

## **V. The Various Designs of a Block Grant for Housing**

Out of the dilemma that is built into the allocation mechanism have evolved four separate program models, distinguishable primarily

by the method each uses to allocate housing assistance, and by what, and how much, each proposes to allocate.

1. *Short-Term, All Purpose Grant.* Under the first program model, only short-term authority would be allocated to block grant recipients, which they would then be authorized to spend immediately. Such authority tends to encourage housing programs that require short-term contractual commitments, such as one-time land acquisition or capital grants, one-to-five year interest reduction arrangements or rental assistance contracts, or one-time interest reduction payments. As an all purpose grant, it is generally intended to replace all other federal housing assistance programs and to give recipients great control over the shape of local programs. Short-term authority can be converted to long-term commitments to support new construction and substantial rehabilitation; however, localities would be discouraged from making such commitments because they require the use of all, or a substantial portion, of the grant to support a relatively few units.

2. *Long-Term, All Purpose Grant.* The 1976 Hills proposal fits this second model; it proposes the allocation of long-term budget authority to block grant recipients for use in a wide range of housing activities. Long-term authority more easily allows for payment of debt service over a longer period and is equally adaptable to a range of shorter term uses. This model usually carries an arbitrary ceiling on annual contract authority to limit the amount for which the federal treasury will be obligated in any one year. As illustrated by the Hills proposal, this annual contract authority ceiling can be manipulated to encourage localities to favor one type of housing activity over another.

3. *Allocation of Budget Authority Under Current Programs.* This model suggests that current federal housing programs be left in place as designed by Congress. A formula could be used to allocate to recipient jurisdictions their share of budget authority; they could then design housing strategies by choosing from full range of HUD programs. This transfers full control over program selection and mix to the local or state level, while Congress and HUD retain responsibility for program standards.

4. *Limited Purpose Block Grant.* This final model would terminate fewer of the existing federal subsidy programs, and use a limited purpose grant to allow recipients greater flexibility to design replacement programs. Proposals in this category normally set their sights on HUD's traditional rehabilitation programs and recommend their replacement by a Housing Conservation Block Grant or Rehabilitation Block Grant Program. These proposals

illustrate the relative nature of the block grant concept. By proposing to replace a smaller group of federal housing programs, they are less "blocky" than full-purpose grants in proportion to the number of initiatives they supplant. The limited purpose approach is often suggested as a method of making the transition to a full-purpose model. Limited purpose grants can, of course, be either long- or short-term. One interesting adaptation of the limited purpose model would combine, or coordinate, welfare allowances, currently administered by the Department of Health and Human Services, with HUD's existing housing programs. This approach is, in one respect, the "blockiest" of the block grant proposals in that it cuts across departmental lines and aggregates both housing and social service programs. This illustrates again, the wide range of options available to Congress.

#### **VI. A Host of Considerations for Congressional Attention**

The allocation dilemma and the wide variety of available program options are only two of several critical issues that should be watched carefully as Congress considers enacting housing block grant legislation. In addition to the amount of funding and the method of allocation, key decisions must be made regarding the nature of the formula to be used to allocate available funds, the range of policy options recipients will have, the administrative and fiscal requirements that Congress will impose, and the degree of support that will be made available for the new housing ventures designed by recipient jurisdictions. Taken together, these concerns can be grouped and described as follows:

##### ***A. How Extensive Will Block Grant Resources Be?***

The cost of housing will not be reduced by the form that federal housing assistance takes. Advocates of the block grant approach often contend that increased flexibility will lead to the invention of more highly leveraged or less expensive methods of meeting the housing needs of lower income households. Will this contention lead to a reduction in the overall dollar commitment of the federal government to housing? If so, will the promises of greater efficiency and innovation of the block grant concept be meaningful in the face of the increasingly high cost of constructing, rehabilitating, and maintaining housing?

*B. What Type of Financial Authority  
Will Be Allocated?*

Will Congress make a sufficiently long-term allocation of budget authority to justify the time and expense involved in gearing up for the responsibility assumed by recipient jurisdictions? Is that budget authority, and any restriction on annual contract authority, geared to allow recipients the full range of housing options available under current programs? If not, what financial and programmatic biases can be found in the method Congress chooses to allocate budget and contract authority? These biases must be understood and respected before recipient jurisdictions develop an administrative structure to assume block grant program responsibility.

*C. How Will Block Grant  
Resources Be Allocated?*

What formula will be used to determine the percent of total block grant resources that will be allocated to each entitled jurisdiction? Will the factors used in the formula be limited to poverty and housing quality—the most fundamental indices of housing need—or will they include other factors, such as housing costs and scarcity, population, and rent/income imbalance? Will the resources be divided between metropolitan and non-metropolitan areas? Will the capacity of recipient jurisdiction figure in the allocation process? Will a population threshold be used to determine which localities are entitled to receive funds directly and which must apply through their states or to HUD for discretionary funds? Given all these considerations, what level of annual funding is likely? How many units of housing will that size grant assist in each locality, given local priorities? Given that level of funding, what amount of preparation, administrative structure, and commitment of other resources does the program warrant?

*D. What Is the Effective Range of  
Policy Options Allowed?*

Does the proposed block grant program offer recipient jurisdictions measurably increased flexibility in designing housing programs that respond to local needs? Has Congress included a broad range of eligible activities, or created instead a limited purpose program? Will the recipient be obligated to divert a substantial portion of the funds to honor commitments made by HUD or the



recipient under pre-existing housing subsidy programs? Has Congress required that funds be targeted primarily to benefit a limited population group or a defined type of geographical area? How specifically has Congress defined the federal purposes for which block grant funds must be expended? How does that definition compare with local and state priorities?

*E. What Degree of Administrative Control Will HUD Exercise?*

How extensive will the application for block grant funds be? Will HUD have authority to require changes in priorities, programs, and policy decisions, or will its review be narrower and more expeditious? Will federal cost and quality standards be imposed on local projects? What financial management and fiscal control standards will be used? How will Congress require that recipient jurisdictions comply with other federal statutory and judicial mandates regarding fair housing, affirmative action, environmental quality, intergovernmental coordination, labor standards and energy conservation? What type of program reporting and performance review system will HUD use to determine recipient compliance with minimum federal requirements? What sanctions will HUD be empowered to use in the event that recipients fail to comply with these and other criteria?

*F. What Other Support Will Be Offered by Congress?*

If Congress delegates responsibility for program design to recipient jurisdictions, will it lessen its commitment to providing other needed assistance? What assistance and guidance will HUD provide to insure that projects receiving block grant funds will be secure from the long-term risks associated with low-income housing that have been a paramount concern under current HUD housing programs? What financial support, such as conventional and long-term financing, mortgage insurance, secondary mortgage market support, tax incentives, and inducements to states to provide financial assistance will be provided? What technical standards and assistance will HUD provide? Will cost and quality standards be imposed or recommended? Will management plans be required, management standards set, and post-occupancy monitoring performed? Will a federal staff or federal funds be made available for these and other technical responsibilities that are proposed to be delegated to recipient jurisdictions?

## **VII. The Impact on State and Local Government of a Shift to a Housing Block Grant Program**

The impact on state and local governments of a shift to a block grant approach to allocating federal housing assistance will, at a minimum, be significant; if that shift is to a full-purpose block grant program, and if most current subsidy programs are eliminated, that impact will be extreme. To date, the construction and rehabilitation of low- and moderate-income housing has been financed principally through a limited number of carefully prescribed federal housing programs administered and controlled directly by HUD. Responsibility for the design of these programs has been federal; Congress has carefully established priorities for the expenditure of federal housing dollars and has developed a tight administrative framework for receiving, reviewing and approving proposals for the commitment of federal housing resources. The federal bureaucracy has retained direct responsibility for meeting other national objectives such as fair housing, environmental protection and affirmative action; it is charged with coordinating housing subsidy programs with the functioning of the all-important secondary mortgage market and with HUD insurance programs.

The degree to which housing block grant legislation transfers these current federal responsibilities to the local and state level will define the impact of such legislation on lower levels of government. The greater the flexibility and control given to states and municipalities, and the larger the number of federal programs that are eliminated, the more political, technical and financial responsibility local and state officials will have. Their role will be proportionately increased in establishing priorities, devising methods of leveraging bank participation, insuring compliance with design and quality standards, and otherwise monitoring and controlling private developers. This consideration gives rise to a series of additional issues that must be seriously examined by Congress if it considers enacting housing block grant legislation.

### ***A. The Impact of Housing Assistance Block Grant Legislation on the State and Local Political Process***

A housing block grant program is likely to expand the policy options available to state and local legislatures in determining what

housing objectives ought to be met with federal assistance. These legislators are likely to have more control in deciding whether to pursue new construction, substantial rehabilitation, housing conservation, or rental assistance programs, and what the mix among these programs ought to be. They may be given greater latitude by Congress to decide which households will be eligible for assistance, and whether to target greater amounts to the elderly, the handicapped, low-income households or minority populations. If some or all of the current federal housing programs are discontinued, state and local legislative bodies will be faced with hard decisions as to whether to use the block grant revenues to continue them. In the extreme event that public housing modernization funds and operating subsidies for public housing and troubled federally assisted projects are folded into the block grant program, legislative leaders must decide whether or how to preserve the integrity of existing subsidized projects through the use of block grant funds.

There may be a new level of technical, as well as political, complexity to the decisions local and state legislators must make. If state or local laws and ordinances must be passed to create housing initiatives to replace current federal subsidy programs, then these legislators will be required to develop considerable expertise in housing finance and development. They will have to learn the intricacies of the mortgage market, understand underwriting criteria, and determine how to create local programs that can take advantage of innovative mortgage techniques, private mortgage assistance, tax-exempt financing authorized by state legislation, and whatever federal insurance and secondary market programs remain after the block grant program is established.

If Congress were to decide to grant wide discretion to municipalities and states to create new subsidy programs to replace all or a significant part of the current federally created programs, the political and technical complexity of the task would be enormous. This complexity decreases in proportion to the number of federal programs retained by Congress; it also decreases as the amount of revenue included in the block grant program declines and the range of eligible uses for such revenue decreases.

An additional complication overlays this increased political responsibility. A variety of federal statutes and judicial decisions create standards that must be complied with in spending federal housing funds. The environmental, fair housing and labor standards, and the affirmative action requirements enforced by HUD

will not necessarily be affected or diminished by housing block grant legislation. The much debated site and neighborhood standards, for example, are used by HUD to evaluate the compliance of Section 8 new construction and substantial rehabilitation projects with established fair housing laws and judicial decisions.<sup>31</sup> Although other techniques may be devised to comply with these legislative and judicial criteria, the criteria themselves do not disappear with the enactment of block grant legislation, for all its emphasis on local control and flexibility. These additional federally and judicially prescribed standards, then, must also be understood and complied with by recipients in carrying out their block grant funded housing programs, unless the standards are relaxed by Congress.

The potential political impact of a housing block grant program indicates how radically the traditional role of local and state government could be changed in the housing field. Under current housing subsidy programs, Congress has presented legislators with a clear statement of federal housing objectives, completely designed federal housing programs, and an administrative structure to oversee the implementation of federal programs at the state and local level. Since federal law is relied on in lieu of local and state law, legislators have been presented with fewer policy choices in the implementation of housing programs than may be true in the future.

### *B. The Legal Impact of Housing Block Grants*

The housing block grant program may create unforeseen legal problems to the extent that it gives wide discretion for the expenditure of federal assistance to state and local governments. The block grant concept is based on the philosophical principal of allowing recipient jurisdictions wide discretion in deciding how to spend federal assistance. The wider this discretion, the less directive the

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31. Title VIII of the Civil Rights Act of 1968, 18 U.S.C. § 245 (1976), requires that all executive departments and agencies administer their programs relating to housing in an "affirmative" manner so as to further the objectives of the Title. This is reinforced by Title VI of the 1964 Civil Rights Act prohibiting discriminatory actions by the federal government. In 1972, following *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970), HUD established project site selection criteria aimed at providing minorities with a wide range of housing opportunities. See 24 C.F.R. Part 200, Subpart N (Project Selection Criteria) (1981). The requirements of Title VIII and *Shannon* will have to be respected by Congress and the administration in adopting and administering successors to the current federal housing programs.

federal authorizing statutes will be. In many states, local governments have relied on the specificity of federal statutes to authorize them to spend federal dollars for the purposes of the authorizing legislation. In the absence of such specific direction, localities may have to look to state statutes for the legal ability to engage in housing related activities.

This problem confronted many jurisdictions in the early days of the Community Development Block Grant Program. Federal law allowed recipient jurisdictions to give property owners grants, or low interest loans, to rehabilitate their homes or apartments. State constitutions and statutes in many states prohibited gifts or loans to private individuals unless in furtherance of a recognized "public purpose." The legal definition of public purpose in many states was simply not broad enough to include the rehabilitation or repair of privately owned housing unless it was part of an urban renewal plan or other purpose prescribed by state statutes. Most localities were able to obtain legal rulings authorizing them to proceed with their rehabilitation grant and loan programs, based on the detailed authorization contained in the Housing and Community Development Act and HUD's regulations.<sup>32</sup> Federal revenue sharing legislation, on the other hand, contains much less specificity as to the uses to which the shared revenues may be put. These funds must generally be spent in accordance with the provisions of state and local finance and municipal law.

A housing block grant program enacted by the current Congress could very possibly fall somewhere between the fairly specific Community Development Block Grant program enacted in 1974 and the nonprescriptive federal revenue sharing program. If this is the case, it may be an open question in many states as to whether the block grant legislation is specific enough, or whether localities are narrowly constrained by the spending powers contained in their state statutes.

### *C. The Impact of Housing Block Grants on the Municipal Planning Function*

Municipalities that have been receiving Community Development Block Grants have grown accustomed to preparing Housing Assistance Plans. The Housing and Community Development Act of 1974 made the preparation of a Housing Assistance Plan a prerequisite for receiving Community Development Block

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32. See, e.g., Opinion No. 74-1120, State Comptroller of New York (Nov. 1, 1974).

Grants. It required legislators to articulate the housing needs of the poor; it provided some assurance that Community Development Block Grant recipients would implement housing, as well as community development, objectives. Localities were expected to "take all actions within their control" to implement their housing assistance plans.<sup>33</sup> Such actions included, of course, working cooperatively with developers and property owners interested in applying for the separately funded federal subsidy programs. The legislation also provided that HUD allocate federal subsidy funds; HUD area offices were authorized to advertise the availability of units of various forms of subsidy—new construction, substantial rehabilitation, moderate rehabilitation and existing housing—roughly in accordance with the needs for these various programs spelled out in the housing assistance plans in each allocation area.

If Congress enacts a housing block grant program and eliminates most or all of the current subsidy programs, much of the rationale for the housing assistance plan will be removed. Localities are likely to be allocated a direct dollar amount for a variety of housing programs; the program mix may be subject to their control rather than that of the HUD area office. Since many of the same localities that are entitled to receive community development block grants may be entitled to receive housing block grants as well, there is some assurance inherent in the housing block grant concept that they will be pursuing housing as well as community development objectives. A modified housing assistance plan might well be required as part of a locality's application for its housing block grant, as opposed to its community development block grant. This raises the question of what application and planning requirements Congress is likely to impose on housing block grant applicants. Something akin to the current housing assistance plan may be required if Congress decides not to streamline greatly the application process, and to require advance local analysis of the housing stock and the housing needs of the poor.

On the other hand, there is evidence that Congress might abandon any requirement that localities applying for federal aid prepare and adopt any special housing plan.<sup>34</sup> In this event, the normal local planning process would be relied on, as supplemented by the locality, in its discretion, to chart appropriate directions for those grant assisted housing projects. The local master plan, capital

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33. 24 C.F.R. § 570.306(a)(3) (1981).

34. The requirement that applicants for Community Development Block Grants submit a Housing Assistance Plan was deleted from the Small Cities Community Development Program in the Fiscal 1982 HUD reauthorization law.

budget, operating budget, zoning ordinance, building and housing codes, and other supplemental planning processes would become the criteria for planning the expenditure of housing block grant funds.

Ironically, however, a flexible housing block grant may lead to a greater degree of housing planning at the local level. Given a broad range of choices for spending funds that are received by local government, local lenders may insist on more precise housing needs analyses, market studies, housing condition reports, and demographic data. It might be decided that the conscientious exercise of the municipality's additional housing responsibility will require more reliable information to justify decisions. The desire of many local officials to be able to account to the public for their decisions heightens the need for, and should increase local interest in, professional housing planning.

*D. State and Local Administrative and  
Technical Capacity and  
Housing Block Grants*

Perhaps the greatest impact of a shift to housing block grants would be felt at the level of the line agencies that would be called upon to design and implement initiatives to replace the eliminated federal programs. These agencies and their managers and staffs will bear the initial responsibility for program design and, ultimately, responsibility for program execution. These programs must face the significant challenge of attracting the participation of private developers and financial institutions, if they are to leverage private resources with public funds. They must also reduce the long-term risk inherent in developing assisted housing to a level acceptable to the involved political leaders and the private institutions. The extent of this challenge differs markedly, depending on whether the staff is designing methods of replacing federal new construction and substantial rehabilitation programs or the moderate scale rehabilitation and rental supplement programs. Where long-term financing for extremely costly construction and rehabilitation is required, the subsidies must be deeper, more sophisticated, and supported by other insurance, secondary market and related programs, that are themselves highly complex.

**VIII. Facing Program Design Issues**

The outline of issues below raises many of the critical questions that must be addressed by state and local officials in designing their

own housing subsidy programs. The deeper the subsidy and the longer the term of financing required, the more difficult these questions will be to answer.

#### A. *Designing Financing Mechanisms*

Housing subsidy issues can be divided into two general categories: availability of mortgage financing and the cost of developing, financing, and operating housing. Housing subsidy programs must be designed both to lower the cost of housing and to guarantee the availability of mortgage credit. Unless the underwriting criteria of private and public lending institutions are met, cost-reducing subsidy programs will not succeed, because construction financing and permanent mortgage loans will not be available. These considerations raise four issues that state and local governments would have to address in deciding how to allocate their housing block grant resources.

Should the *development cost* of housing (land, capital improvements, labor materials, overhead, or construction financing) be written down through a local financial contribution? By reducing any of the development costs, the final per unit cost will be reduced as will the amount, and thus the cost, of permanent financing. Is this the proper focus of block grant assistance? How much would the price have to be written down to reach the intended target population?

Should a direct post-occupancy *operating subsidy* program be established to reduce the operating and maintenance costs of housing to the occupant? How deep would the operating subsidy have to be to reach the intended population?

Should the *cost of financing* be subsidized? The interest rate under the old Section 236 program was written down to one percent to make housing affordable to moderate-income households. To reach low-income households, the government had to pay a rental supplement, on their behalf, to the owner. Even with these deep subsidies, countless Section 236 projects went into default because tenant rents were unable to cover the increased cost of housing as inflation reached the double-digit level in the 1970s.<sup>35</sup> At today's mortgage rates, the cost of subsidizing the

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35. See COMPTROLLER GENERAL OF THE UNITED STATES, SECTION 236 RENTAL HOUSING: AN EVALUATION WITH LESSONS FOR THE FUTURE, REPORT TO THE CONGRESS (Jan. 10, 1978).



mortgage interest rate to 1 percent would be double the cost involved when the Section 236 program was initiated.

Should the *availability of financing* for housing be the target of housing block grant expenditures? Local, regional or state governments can establish insurance funds, participation loan programs, secondary mortgage markets, and a variety of other mechanisms designed to attract private financing for housing. Perhaps the major technical issue that officials must address is whether the state and local governments have the resources and the capacity to attract private mortgage capital to the projects that they wish to assist financially. The staff must soberly assess the locality's chances of success in attracting private financing. Where it is overly costly or complex to induce mortgage lenders to provide either construction financing or permanent loans, the locality must then rely on public or private mortgage insurance, the secondary market, and other supportive programs to make mortgage funds available. Cost cutting subsidy programs must, in turn, be designed to fit the criteria of these supportive programs.

These four separate techniques can, of course, be used in combination to bring the cost of housing into the range affordable by the target population. As the technical staff studies methods of combining subsidy techniques, several questions will inevitably be raised. Which of the techniques are the most cost-effective in the short term? What are the cost consequences of each technique over the long term? What is the exposure to risk? What existing local, regional, and state programs already exist that can be used to lower housing costs before using block grant funds? Can tax exempt financing, real estate tax exemption, syndication of tax advantages, changes in zoning, density bonuses, private mortgage insurance, the local capital budget, or other resources be used as the basis for designing a housing block grant program? When all of these cost reducing techniques are combined, will they be adequate to lower the costs sufficiently to reach low- and moderate-income households? Will they be free enough of risk, and lucrative enough as investments, to attract mortgage financing from private or public lending institutions?

### B. *Development Issues*

In addition to designing programs that are financially feasible, state and local technicians must assure that projects assisted by them are developable. If projects are not profitable and if their success is not predictable, private developers cannot be induced to

build and own them. In the alternative, existing nonprofit, quasi-public, or public entities will have to be used, or new ones created, to develop desired projects. Such entities may have to receive further public subsidies to do what the private sector will not.

Can the state and local agencies further assist the developer, whether private, nonprofit, or public, by amending zoning ordinances and revising building and fire codes to allow the use of more cost-effective, but safe and durable, building products, construction techniques, and design types? Localities can encourage more cost effective housing design through zoning and code revision. They can adopt zoning techniques that allow density bonuses to developers willing to market the bonus units to moderate-income households. They can perform generic environmental impact statements and then review and approve preliminary proposals from developers to cut design and engineering costs. Publicly owned land can be made available for development, and the public power of eminent domain, where allowed, can be used to assist developers with site assemblage. Localities can otherwise act to foster the level of development desired to fulfill local policy objectives.

Once a developable project is designed, the staff must then decide how to select a qualified developer, how to monitor that developer's performance, how to set and insure compliance with housing standards, how to avoid windfall profits and fraud, and how to insure that the developer complies with other public objectives regarding, for example, relocation, labor rates, affirmative action, energy conservation, and environmental protection.

### *C. Local Administrative Issues*

A flexible housing block grant program would bring with it new opportunities for recipient jurisdictions to coordinate the expenditure of housing block grant funds with its capital and operating budgets. This, in turn, can facilitate interdepartmental coordination. The need, in many communities, for supportive programs from regional and state governments may lead to the creation of new intergovernmental arrangements.

A shift to the direct allocation of federal housing assistance funds to local governments may lead many communities to become involved in nontraditional administrative activities and arrangements. This was certainly the result of the Community Development Block Grant Program that was initiated in 1974. That program led to the hiring of rehabilitation specialists, rehabilitation

finance officers, architects, and housing counselors in communities that had previously not had such staff positions. In some cases, it fostered coordination between the community development agencies' activities and those of local housing code bureaus. Community development agencies also began planning public service and public works programs in conjunction with human resource agencies and public works departments.

To the extent that cities have funded physical development activities under their community development program, they have already addressed the major administrative issues which will arise if they receive block grants for housing. This added resource will, of course, need to be carefully coordinated with the existing community development program, and administered, as is the community development program, in close coordination with the functions of other city departments and agencies. Social services, tax assessment administration, permit issuance, zoning planning reviews, capital improvements, and code compliance are all governmental functions that can be used in conjunction with community development programs to support and facilitate housing.

This same opportunity to coordinate housing and community development programs may now be extended to states which have heretofore not administered community development programs. In fiscal year 1982, Congress has given states the option to administer directly the Small Cities Community Development Block Grant Program. Where states exercise that option, the possibility exists of close coordination of housing and community development programming at the state level.

Perhaps the greatest potential for administrative change under a housing block grant program exists in the area of intergovernmental compacts and arrangements. This may be particularly appropriate if a sufficient scale of operations is to be achieved to justify the cost of creating participation loan programs, complicated bank pools, mortgage backed security programs, secondary mortgage markets, and the issuance of tax exempt bonds. Additionally, the magnitude of the need for public subsidy of new construction and substantial rehabilitation will inspire a search for all possible sources of revenue, authority and resources that can be used to supplement block grant funds to effect affordable housing strategies. State-local and inter-local arrangements regarding roads, sewers, sewage treatment, water supply, public transit, social service, and other public services and improvements may be essential to the success of assisted housing strategies.

### **IX. Housing Allowances and Cash Transfer Payments**

With modest exceptions, HUD historically has administered programs aimed at increasing or improving the supply of housing for the poor. To encourage developers to build, and landlords to rehabilitate housing for low-income households, Congress provided that subsidies would be paid directly to the project owner and attach to the housing units subsidized. The guarantee of subsidy payments, secured by a contract between the owner and HUD, was designed to enable owners to obtain financing to build or rehabilitate residential buildings. Eligible tenants could come and go over the life of the contract, benefiting from reasonably priced housing built or rehabilitated to meet property standards defined by HUD.

Housing allowances, in contrast, are designed to bolster the demand for housing. They are typically paid to eligible tenants in the form of a cash transfer payment designated specifically for meeting shelter costs. HUD has administered three programs that moved in the direction of housing allowances. Two such programs were created in 1965. Under the Housing and Urban Development Act of that year, Congress created the Rent Supplement and Section 23 Leased Housing Program, both of which tied subsidies to the incomes of eligible tenants.<sup>36</sup> The Housing and Community Development Act of 1974 established the Section 8 Existing Program, which also utilized an income related subsidy to be paid on behalf of eligible occupants of existing, standard housing units.<sup>37</sup> None of these programs, however, involved direct payments of housing allowances to the assisted household. They relied on intermediaries, the local public housing agency or project owner, to receive and administer the funds.

Congress had stopped short of legislating a housing allowance program, with subsidies to be paid directly to low-income families, for a variety of reasons. It was feared that allowances would be difficult to administer, would artificially inflate housing prices and would be used to pay for, and thus subsidize, substandard housing. It was also thought that allowances would have no perceptible effect on the supply of housing for the poor. The perceived benefits of the housing allowance approach were several. It was seen as less expensive, on a per unit basis, than providing newly constructed or

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36. See notes 20 and 21 *supra* and accompanying text.

37. Housing and Community Development Act of 1974 *supra* note 27.

substantially rehabilitated housing to the poor. If properly managed, it might be used to encourage better maintenance of older housing. To some, it was thought more equitable to spread housing subsidy dollars broadly through an allowance program, than to reward a fortunate few with costly new and rehabilitated units.

In the late 1960s the President's Commission on Urban Housing, popularly called the Kaiser Commission, reviewed the housing allowance debate and recommended the initiation of an experimental program to test the concept further.<sup>38</sup> Shortly thereafter, Congress authorized HUD to establish the Experimental Housing Allowance Program (EHAP).<sup>39</sup> After a decade of experimentation, several conclusions have been reached about housing allowances, as tested under three separate EHAP programs.<sup>40</sup>

HUD has determined that 20 percent of all United States households have incomes that make them eligible for a housing allowance program. Under the allowance experiment, it was found that a majority of the eligible households lived in substandard housing; most had high rent burdens. Participation in the experimental programs was generally high among most income and ethnic groups, when the program was administered without housing standards. When housing standards were introduced as a program requirement, participation declined markedly. More stringent housing standards disproportionately reduced the participation of minority families, large households, and poorer people. Predictably, the poorer the quality of the dwelling unit, the less likely the household occupying it is to participate. If housing standards are eliminated, participation levels increase, but about two-thirds of the households receiving the allowance will live in substandard housing. As the level of payment increases, so does participation. On the average, the allowance program costs \$1,150 per household in 1974 dollars: \$900 for allowances and \$250 for administration. HUD concluded that allowances do not artificially inflate the price of housing, nor do they stimulate the construction or major repair of housing for the poor.

Based on these conclusions, it may be fairly stated that housing allowances are, at best, only a partial response to the housing

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38. A DECENT HOME, THE REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING 14 (1969).

39. Housing and Urban Development Act of 1970, Pub. L. No. 91-609, § 504, 84 Stat. 1770, 1784 (1971).

40. EXPERIMENTAL HOUSING ALLOWANCE PROGRAM, CONCLUSIONS: THE 1980 REPORT (February, 1980).

problems of low-income households. Where the supply of housing is inadequate, where deterioration is widespread, and where costs are particularly high, the allowance approach is simply not enough to redress the major shelter needs of the poor. If housing standards are not used, participation will be acceptable, but public funds will be used to subsidize substandard housing. If decent, safe, and sanitary conditions are required, participation among the occupants of substandard housing will decline markedly. In either event, allowances are not deep enough to cause the market to increase the supply of housing for the poor.

#### **X. Cash Transfer Payments**

As HUD and Congress continue to experiment with the provision of housing allowances directly to the poor, they begin to obscure the difference between the housing programs administered by HUD and the cash transfer, or welfare, programs administered by the Department of Health and Human Services (HHS). National welfare policy has been directed to a variety of objectives discernible as early as 1909 in the White House Conference on Children. One of these objectives is aiming federal aid at maintaining a suitable home for the rearing of children. Federal social welfare legislation has consistently provided for the provision of "maintenance services" designed to help recipients sustain or strengthen family life and to restore them to a condition of self-support or self-care. Taxpayer groups have favored programs and policies that discourage households from obtaining or continuing on relief. In recent years, it has become an overt purpose of Congress to reduce social service expenditures by getting people off the welfare rolls. This objective was to be achieved by a variety of techniques, including the provision of "developmental services" and the creation of job incentive programs both designed to help recipients achieve self-support and to reduce their dependency on the government. Social work philosophy also favors recipient self-determination out of a motivation to see less reliance on the public sector and greater personal growth and responsibility within the family unit.

Out of this emphasis on self-dependency evolved the "money payment principle," which is a landmark in social legislation. The Social Security Act, passed in 1935,<sup>41</sup> established the categorical

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41. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (1936).

assistance benefit as a money payment to be made directly, without restriction, to the eligible recipient. The assumption is that financial need does not abrogate the individual's right and responsibility to handle money to which he or she is entitled by reason of his or her needy status. Although the Social Security Act has been amended on many occasions, the unrestricted money payment is still the controlling principle behind the federal system of public assistance. This principle applies, of course, to the payment of rent. With limited exceptions, recipients must be unfettered in their right and responsibility to utilize their grants to pay rent and their other expenses of living.

The money payment principle has prevented departments of social services from responding to suggestions by landlords that additional housing would be opened up to recipients, and better quality housing provided, if payments on behalf of recipients were made directly to the owners. Recent efforts to widen the departments' direct payment authority have been thwarted by legal services attorneys and representatives of recipients who argue that direct payments markedly lessen the landlord's incentive to provide services and make repairs, and limit the freedom of recipients to take effective recourse when services and repairs are not provided.

HHS's unrestricted payment approach provides assistance to recipients at or below the minimum standard of living. Recipients are subject to the private market where they negotiate rentals with only those landlords who can afford to operate their buildings at the rent levels that recipients can pay. This frequently results in recipient families paying up to 50 percent of their incomes for shelter. Further, there are virtually no administrative mechanisms in place to insure that the shelter purchased provides a suitable home.

Despite the fact that billions of public dollars flow into the housing markets under HHS cash transfer programs, the words "shelter" and "housing" are singularly absent from the social security legislation drafted over the years by the congressional committees that design HHS's programs and appropriate funds for their implementation. The deliberations of those critical committees are uncluttered and uninfluenced by the representatives of builders, banks, neighborhood organizations, tenant organizations, public housing authorities, and community development agencies. Instead, the attention of housing lobbyists is riveted on the activities of those separate housing, banking, and urban affairs

committees where national housing policy is made and programs to realize the elusive statutory goal of "a decent home and suitable living environment for every American family" are conceived and given birth.

In the years ahead, these congressional housing committees must confront the increasingly popular notion of reducing federal expenditures by increasing HUD's reliance on housing allowances. As they do, they will face a dilemma of significant proportions. They will be called upon to distinguish the HUD housing allowance from the HHS cash transfer payment, much of which is used to pay for shelter for welfare families. The distinction, of course, rests on HUD's historical commitment to a "decent home for all Americans." This commitment, in turn, will create great pressure to tie housing allowances to housing standards. The EHAP experiment, however, shows that such a link drastically reduces participation among those most in need of housing assistance. This, then, argues for increasing the level of the allowance which, EHAP tells us, tends to increase participation. But, to increase allowance levels is to place a greater financial burden on the federal treasury. Since the high cost of housing programs was what began the reexamination of federal housing policy in the first instance, such a result may be unacceptable. One option is to reduce the number of households eligible for the housing allowance program. If this is achieved by lowering the income limits, the households eligible for HUD's housing allowance program may be nearly indistinguishable from those receiving living and shelter allowances from HHS. The temptation, in the current political climate, to celebrate that result by simply eliminating HUD subsidy programs for the poor may be too great to resist.

#### **XI. New Generation of Federal Housing Programs**

The Supreme Court in *Helvering* and *Fullilove* silenced all echoes of the debate among the founders over the extent to which Congress was empowered to tax and spent in the national interest. *Fullilove* was decided in 1980, just as the debate over the extent to which the federal fisc should be relied on to solve social problems reached a crescendo. With the election of Ronald Reagan and the advent of supply-side economic theory, the broad spending powers that Congress is now recognized to possess seem destined, at least for a time, to be exercised much less vigorously in pursuing the goal of a decent home for all Americans. Alexander Hamilton had



argued persuasively for a broad interpretation of the general welfare clause. Yet, he would have understood this result. On the power to tax he wrote:

There is no part of the administration of government that requires extensive information and a thorough knowledge of the principles of political economy so much as the business of taxation. The man who understands these principles best will be least likely to resort to aggressive expedients, or to sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burdensome.<sup>42</sup>

The decision to reduce federal spending for housing in the current fiscal year, by nearly 50 percent, was part of the general reaction to double digit inflation, precipitated in significant part by federal borrowing to finance the budget deficit, and for loans to, and sponsored by, the federal government. In the decade prior to the inauguration of President Reagan, the amount of annual borrowing for these purposes increased from \$33.5 billion to \$156.9 billion. "Taxes, like necessity," Hume wrote, "when carried too far, destroy industry by engendering despair; . . . An attentive, disinterested legislature will observe the point when the emolument ceases and the prejudice begins."<sup>43</sup>

That point has apparently been reached for the Congress, the Secretary of HUD, and the President's Housing Commission. Their recent actions bespeak less federal spending for housing, greater reliance on the private market for solutions, and more use of direct assistance to those in need. In forwarding his Interim Report to the President, Chairman McKenna of the Housing Commission wrote, "We support your commitment to control the growth of government spending and your determination to arrest the pace of government spending which fuels the fires of inflation and high interest rates—common enemies of a truly healthy housing market."<sup>44</sup>

The Commission recommended that the "primary federal program for helping low-income families achieve decent housing be a consumer-oriented housing assistance grant."<sup>45</sup> The Commission proposed that this housing allowance approach replace new construction programs entirely, that eligibility be limited to "households with very low incomes," and that recipients "should be

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42. THE FEDERALIST No. 35 (A. Hamilton).

43. D. HUME, OF TAXES.

44. THE PRESIDENT'S COMMISSION ON HOUSING, INTERIM REPORT (1980).

45. *Id.* at 6.

required to live in decent housing in order to qualify for assistance. . . ."<sup>46</sup> Recognizing that housing allowances do not increase the supply of housing, the Commission stated its belief that a new federal housing policy should include "reliance on the experience and flexibility of state and local agencies to finance and produce housing, including both rehabilitation and new construction."<sup>47</sup> The report also adopts the "trickledown" theory of housing occupancy. It suggests that its recommendations which serve to increase housing supply for middle- and upper-income Americans will enable the poor to find and afford better housing.

HUD, which provided staff assistance to the President's Housing Commission, endorsed the Commission's emphasis on housing allowances in submitting its budget proposals for fiscal year 1983 to the Office of Management and Budget in October of 1981.<sup>48</sup> The HUD proposal seeks an additional thirty percent cut in funding for housing assistance, and places nearly exclusive emphasis on subsidies for existing housing. HUD proposed a housing voucher program involving a direct subsidy payment to individuals as the cornerstone of future federal housing assistance to lower income households. Only 10,000 units of new construction would be assisted—down 93 percent from the fiscal year 1981 program. The voucher program would have to meet housing standards and eligibility would be limited to households with very low incomes.

HUD also proposed a \$200 billion housing rehabilitation block grant program which would be supported by a 40,000 unit set-aside of housing vouchers. This represents the first serious and formal proposal to initiate a housing block grant program since the 1976 Hills proposal. The Hills proposal was a long-term, full-purpose block grant program; it contrasts markedly with the current HUD recommendation which is patterned after the short-term, limited purpose model.

## XII. Conclusion

These proposals represent an abrupt change in the course of federal housing policy. For four and a half decades the trend was to spend larger and larger sums of money on a variety of programs. These initiatives were built on the belief that achieving decent

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46. *Id.*

47. *Id.* at 5.

48. See note 4, *supra*.

housing for the poor required highly prescriptive federal programs to increase the supply of newly constructed and substantially rehabilitated housing. Proposals being given serious consideration in Washington today represent an entirely new generation of thought about the role of the federal government in housing. The shift in emphasis to subsidizing existing housing, providing housing allowances directly to the poor, and transferring resources and responsibility to state and local governments may mark the end of the expansive use of the federal spending power for low-income housing. It may also herald the beginning of a new succession of experiments that rely much less on the Article I, Section 8 tax and spending powers over which Hamilton, Madison, and Jefferson argued so strenuously. As a new era of federal housing policy begins, the debate will center not on the extent of the federal spending power, but rather on the extent to which that power ought to be exercised to assure adequate shelter for needy Americans.