

## DOES AMERICA NEED PUBLIC HOUSING?

*Peter W. Salsich, Jr.\**

## INTRODUCTION

“I didn’t want to leave, but I didn’t have a choice,” Annie Ricks, the last of fifteen thousand former residents of the Cabrini-Green public housing complex in Chicago, stated upon leaving the eleventh-floor apartment where she lived with five of her eight children.<sup>1</sup> Ms. Ricks and her children were forced to leave in December 2010 because the building in which her apartment was located had become so dilapidated that Chicago Housing Authority (“CHA”) officials had declared it uninhabitable.<sup>2</sup> Her new apartment, in a low-rise building on Chicago’s South Side, was completely renovated but smaller, with three bedrooms instead of the five in the apartment she had to vacate.<sup>3</sup> Demolition of the Cabrini-Green complex was part of the CHA’s ambitious Plan for Transformation, announced in October 1999 and begun in 2000 as a ten-year, but later extended to a fifteen-year, plan to demolish obsolete high-rise public housing units and replace them with twenty-five thousand new or rehabilitated public housing units.<sup>4</sup>

Similar efforts at transformation of isolated, high-rise public housing ghettos have been taking place across the country. This reform movement began during the Reagan administration and was aided by Clinton-era legislation authorizing a series of experiments to provide greater flexibility to local public housing authorities (“PHAs”).<sup>5</sup> The programs include Home-

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<sup>1</sup> Sylvester Monroe, *Closing Cabrini-Green*, THE ROOT (Dec. 16, 2010, 12:08 PM), <http://www.theroot.com/print/48881> (internal quotation marks omitted).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Lawrence J. Vale & Erin Graves, *The Chicago Housing Authority’s Plan for Transformation: What Does the Research Show So Far?* 8-9 (Mass. Inst. of Tech., Dep’t of Urban Studies & Planning, 2010), available at [http://www.macfound.org/atf/cf/%7Bb0386ce3-8b29-4162-8098-e466fb856794%7D/VALEGRAVES\\_CHA\\_PFT\\_FINAL-REPORT.PDF](http://www.macfound.org/atf/cf/%7Bb0386ce3-8b29-4162-8098-e466fb856794%7D/VALEGRAVES_CHA_PFT_FINAL-REPORT.PDF).

<sup>5</sup> See HUD, HOUSING AGENCY RESPONSES TO FEDERAL DEREGULATION: AN ASSESSMENT OF HUD’S “MOVING TO WORK” DEMONSTRATION 14-15 (2004); Joan C. Williams, *The Future of Tenants’*

ownership and Opportunity for People Everywhere VI (“HOPE VI”), commenced in 1993 as a demonstration program<sup>6</sup> and established in 1998 as a regular U.S. Department of Housing and Urban Development (“HUD”) program,<sup>7</sup> and Moving to Work (“MTW”), a demonstration program authorized in 1996 for thirty of the roughly three thousand local PHAs.<sup>8</sup> These programs enable participating PHAs to pool resources and enter into public-private partnerships in order to leverage private investment and seek a broader socioeconomic mix of residents.<sup>9</sup> One of the participating MTW agencies, the Atlanta Housing Authority, has imposed a strict work requirement in return for receipt of subsidized housing.<sup>10</sup>

Proposals advanced by President Obama would expand the public housing transformation process by authorizing all PHAs to convert their public housing portfolios to voucher-based portfolios<sup>11</sup> and to mortgage public housing real estate to raise money for development and rehabilitation of low-income housing.<sup>12</sup> The Choice Neighborhoods Initiative, added in 2009 through the HUD Fiscal Year 2010 Appropriations Act,<sup>13</sup> extends the HOPE VI concept to other assisted housing programs and moves beyond the physical boundaries of public housing developments to focus on transforming surrounding neighborhoods.<sup>14</sup>

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*Rights in Assisted Housing Under a Reagan Voucher Plan: An Analysis of Section 8 Existing Housing Cases*, 23 URB. L. ANN. 3, 6 (1982).

<sup>6</sup> Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, § 14, 106 Stat. 1571, 1579-81 (1992), *repealed* by Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, § 522, 112 Stat. 2461, 2564 (1998).

<sup>7</sup> Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, § 535, 112 Stat. at 2581-86 (codified as amended at 42 U.S.C. § 1437v (2006)); *id.* § 539, 112 Stat. at 2594-96 (codified as amended at 42 U.S.C. § 1437z-7).

<sup>8</sup> Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 204, 110 Stat. 1321, 1321-281 to -284 (1996) (codified as amended at 42 U.S.C. § 1437f).

<sup>9</sup> For HUD’s assessment of the first ten years of a projected twenty-year Moving to Work demonstration, see HUD, MOVING TO WORK: INTERIM POLICY APPLICATIONS AND THE FUTURE OF THE DEMONSTRATION 7 (2010), *available at* [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10134.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10134.pdf).

<sup>10</sup> Howard Husock, *Atlanta’s Public-Housing Revolution*, CITY J., Autumn 2010, at 74, 76-77.

<sup>11</sup> *See infra* notes 161-226 and accompanying text.

<sup>12</sup> A HUD request for comment on its Public Housing Mortgage Program (“PHMP”) stated that mortgages on non-dwelling units could be placed in first position, with foreclosure extinguishing any HUD interest, but that upon foreclosure of mortgages on dwelling units, “a declaration of restrictive covenants [would] constitute first lien position, and . . . the [public housing units would] be required to continue to be operated in accordance with public housing requirements.” Public Housing Mortgage Program: Notice of Web Publication, 74 Fed. Reg. 65,781, 65,781 (Dec. 11, 2009). PHMP originally was authorized in 1998 by Section 516 of the Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 516, 112 Stat. 2518, 2550 (1998) (codified as amended at 42 U.S.C. § 1437z-2).

<sup>13</sup> Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3080-81 (2009).

<sup>14</sup> *See infra* notes 234-66 and accompanying text.

*Does twenty-first century America need a public agency that owns housing?* Policymakers have asked this question since the inception of the public housing program,<sup>15</sup> and they continued to do so in 2011.<sup>16</sup> The debate over what would become the public housing program began in an environment different in degree, but not in kind, from the environment of 2011. In 1933, “[a]pproximately 15 million people were out of work . . . [and t]housands of families were losing their homes and their farms.”<sup>17</sup> In 2011, almost fourteen million people were unemployed and millions of people faced the loss of their homes to foreclosure.<sup>18</sup> In the debate leading up to enactment of the Housing Act of 1937, residential developers so feared the competition of government-owned and operated housing that they prevailed upon Congress to sharply restrict public housing’s reach “only [to] those who could not afford what private enterprise was willing and able to build.”<sup>19</sup> In the first decade of the twenty-first century, property owners and residents were so distrustful of very-low-income families that the Housing Authority of Joliet, Illinois, was unable to find housing for forty-four families despite contacting one thousand property owners in the Joliet vicinity over a five-month period.<sup>20</sup>

But the dire situation of jobless and homeless families in 1933 did not mean the original program was going to serve very-low-income households. Lawrence Friedman describes the attitude about the people for whom public housing initially was intended.

[I]nfluence flowed not from the destitute, the descendants of the destitute . . . the Negro ghetto dwellers, or the abject poor; it flowed from the submerged and potential middle class. The ideal housing act, then, would be one which would accept the new poor and reject the old

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<sup>15</sup> LAWRENCE M. FRIEDMAN, *GOVERNMENT AND SLUM HOUSING* 105 (Arno Press 1978) (1968) (mentioning the opinion of Senator David I. Walsh that “government ought not to compete with ‘private property’” (quoting TIMOTHY L. McDONNELL, *THE WAGNER HOUSING ACT: A CASE STUDY OF THE LEGISLATIVE PROCESS* 166 (1957))).

<sup>16</sup> See *infra* Part II for a discussion on the movement toward privatizing public housing.

<sup>17</sup> FRIEDMAN, *supra* note 15, at 100 (second alteration in original) (quoting JOSEPHINE CHAPIN BROWN, *PUBLIC RELIEF 1929-1939*, at 145-46 (1940)).

<sup>18</sup> News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, *The Employment Situation—May 2011* (June 3, 2011), available at [http://www.bls.gov/news.release/archives/empisit\\_06032011.pdf](http://www.bls.gov/news.release/archives/empisit_06032011.pdf); *Record 2.9 Million U.S. Properties Receive Foreclosure Filings in 2010 Despite 30-Month Low in December*, REALTYTRAC (Jan. 12, 2011), <http://www.realtytrac.com/content/press-releases/record-29-million-us-properties-receive-foreclosure-filings-in-2010-despite-30-month-low-in-december-6309>.

<sup>19</sup> FRIEDMAN, *supra* note 15, at 105 (describing the strong opposition of the National Association of Real Estate Boards).

<sup>20</sup> See *infra* notes 329-33 and accompanying text. The Joliet Housing Authority sought to place eighty-eight families facing eviction because of an eminent domain action, but could find Section 8-assisted housing for only forty-four of them. See *infra* notes 329-33 and accompanying text.

poor; it would shut the doors on those with the ability to get housing privately, but would not open the doors to people on the dole and likely to stay there.<sup>21</sup>

Homeowners in many communities so feared the impact of public housing that they prevailed upon their local and state representatives to confine public housing developments to isolated ghettos.<sup>22</sup> But from its inception in 1937 to the present, public housing has been the housing program with the deepest subsidy, the program designed for households that cannot compete effectively in the private housing market, and since the 1950s, the program that reaches the lowest income quadrant of society.

Questions posed in 2011 center around the future of the 1.2 million public housing units in existence, all of which are at least forty-five years old and most of which need substantial repairs and renovation.<sup>23</sup> Despite an estimated \$25 billion backlog in capital needs, Congress has reduced its level of support for public housing considerably. The Fiscal Year (“FY”) 2012 HUD budget Congress approved in November 2011 included only \$1.88 billion for capital needs, which was 8 percent below the FY 2011 level and 22 percent below the requested amount.<sup>24</sup> Is it realistic to expect Congress to appropriate the billions of dollars needed to modernize the public housing inventory in the face of the current debt and deficit concerns? How much will the private sector invest to align public housing structures with present standards, considering the available subsidy stream and the age and deterioration of the inventory? Will a major emphasis on resident mo-

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<sup>21</sup> FRIEDMAN, *supra* note 15, at 106.

<sup>22</sup> See 24 C.F.R. § 941.202 (2011). State statutes typically require public housing projects to comply with state and local building and zoning laws. See, e.g., FLA. STAT. § 421.13 (2007) (“All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.”); N.Y. PUB. HOUS. LAW § 155 (McKinney 1989) (housing projects must follow the “[z]oning regulations [and] other restrictions enacted by . . . municipalit[ies] to adequately protect the area or areas of a project”).

<sup>23</sup> A HUD-sponsored study estimated the total national existing capital needs for public housing to be \$25.6 billion. HUD, CAPITAL NEEDS IN THE PUBLIC HOUSING PROGRAM 34 (2010), available at [http://portal.hud.gov/hudportal/documents/huddoc?id=PH\\_Capital\\_Needs.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf). The average per-unit need was estimated to be \$23,365, although existing needs for one-quarter of the units are less than \$5,248 per unit, while existing capital needs for another quarter of the units exceed \$28,570. *Billions in Repairs Needed for Public Housing Stock*, HUD.GOV, [http://www.huduser.org/portal/periodicals/ResearchWorks/RW\\_august\\_11.html#1](http://www.huduser.org/portal/periodicals/ResearchWorks/RW_august_11.html#1) (last visited Mar. 2, 2012).

<sup>24</sup> Consolidated and Further Continuing Appropriations Act of 2012, Pub. L. No. 112-55, § 4, 125 Stat. 552, 679 (2011); *Final FY12 Budget Cuts HUD, Rural Housing Programs*, MEMO TO MEMBERS (Nat’l Low Income Hous. Coal., D.C.), Nov. 18, 2011, at 1, 2, available at <http://nlihc.org/doc/Memo16-45.pdf>. HUD’s FY 2013 budget, released February 13, 2012, proposes a 10 percent increase in the capital fund to \$2.07 billion which, if enacted, would restore the fund to slightly above the FY 2011 level. HUD, FY 2013 BUDGET: HOUSING AND COMMUNITIES BUILT TO LAST, at B-1 (Feb. 13, 2012).

bility and private management of public housing units undermine the resident/tenant management movement?

Part I of this Article discusses the public housing program, including a major rent strike in St. Louis that helped lead to dramatic changes in the administration of public housing. Part II chronicles a series of efforts by succeeding administrations to encourage greater investment in public housing by the private sector and to reduce the role of the federal government. Part III examines the Choice Neighborhoods Initiative, the Obama Administration's effort to transform whole neighborhoods while shoring up public and assisted housing within those neighborhoods. Part IV asks whether public housing has a future. The Article answers the question in the affirmative, concluding that the Choice Neighborhoods Initiative is a promising component of that future.

## I. THE PUBLIC HOUSING PROGRAM

The public housing program originated in the Housing Act of 1937, which authorized federal financial support through Annual Contribution Contracts ("ACCs") with local PHAs for the construction of heavily subsidized rental housing units to be owned and managed by the PHAs.<sup>25</sup> The Act defined a PHA as any "governmental entity or public body . . . which is authorized to engage in or assist in the development or operation of public housing."<sup>26</sup> In most states, enabling legislation created independent local PHAs but conditioned their ability to act upon a declaration by the governing body of a city or county that such an authority was needed in that jurisdiction.<sup>27</sup> The program was slow in getting started because of its complex nature and the intervention of World War II. After the war, a fifteen-year building boom following enactment of the Housing Act of 1949 produced most of the approximately 1.4 million public housing units constructed.<sup>28</sup> PHAs raised funds for the construction of those units through the issuance

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<sup>25</sup> See 42 U.S.C. § 1437c(a)(1) (2006); see also FRIEDMAN, *supra* note 15, at 94-113; Peter W. Salsich, Jr., *Toward a Policy of Heterogeneity: Overcoming a Long History of Socioeconomic Segregation in Housing*, 42 WAKE FOREST L. REV. 459, 479 (2007).

<sup>26</sup> See 42 U.S.C. § 1437a(a)(6)(A); William H. Ledbetter, Jr., *Public Housing—A Social Experiment Seeks Acceptance*, 32 LAW & CONTEMP. PROBS. 490, 493-95 (1967).

<sup>27</sup> See, e.g., MO. REV. STAT. § 99.040.1 (2000).

<sup>28</sup> NAT'L COMM'N ON SEVERELY DISTRESSED PUB. HOUS., THE FINAL REPORT 5 (1992). The 1949 Act was a major stimulus to public housing construction. See generally Alexander von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUSING POL'Y DEBATE 299, 299-303 (2000) (discussing the "bitter legislative stalemate" over the Act); Salsich, *supra* note 25, at 480-81. With the enactment of programs in the 1960s and 1970s encouraging housing production by private entities, new construction of public housing units was curtailed. See *infra* Part I.B.

and sale of long-term, tax-exempt municipal bonds.<sup>29</sup> The federal government pays principal and interest costs on those bonds in fulfillment of commitments made through ACCs. Those commitments, in turn, are backed by the full faith and credit of the United States.<sup>30</sup>

While the federal government paid for public housing construction costs through the ACC structure, maintenance costs were a local responsibility to be paid by rents received from public housing tenants.<sup>31</sup> In the early years, this arrangement worked reasonably well because rents could be kept low as a result of the federal subsidy.<sup>32</sup> Over time, though, changes in the makeup of the tenant population, coupled with inflation, put heavy pressure on the public housing rental structure and management system.<sup>33</sup>

By the fall of 1968, public housing in the major urban centers of America was in crisis. Thirty years after Congress created the public housing program, major shifts in the demographics of public housing residents from predominantly white, middle-class families made “temporarily” unemployed by the Great Depression to predominantly black, chronically unemployed individuals and families had created serious budgetary pressures for PHAs.<sup>34</sup> Even though the federal government picked up the tab for construction of public housing, urban PHAs faced substantial deficits in their operating budgets because their new tenant cohort could not afford rents high enough to cover all of the PHAs’ operating expenses.<sup>35</sup> To stave off default on their obligations, many PHAs shifted from income-based rental

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<sup>29</sup> See 42 U.S.C. § 1437c(a)(1); FRIEDMAN, *supra* note 15, at 108-09; Salsich, *supra* note 25, at 480.

<sup>30</sup> See 42 U.S.C. §§ 1437c(c)(3), 1437d(d); FRIEDMAN, *supra* note 15, at 108; Salsich, *supra* note 25, at 480.

<sup>31</sup> See FRIEDMAN, *supra* note 15, at 109 (“The requirement of a rental sufficient to meet expenses would . . . tend to restrict public housing to the honest, working poor.”).

<sup>32</sup> *Cf. id.* at 109 (“The projects would mainly be filled with deserving but underpaid workers . . .”); MARGERY AUSTIN TURNER & G. THOMAS KINGSLEY, FEDERAL PROGRAMS FOR ADDRESSING LOW-INCOME HOUSING NEEDS: A POLICY PRIMER 1 (2008), available at [http://www.urban.org/UploadedPDF/411798\\_low-income\\_housing.pdf](http://www.urban.org/UploadedPDF/411798_low-income_housing.pdf).

<sup>33</sup> See FRIEDMAN, *supra* note 15, at 119 (“In the opinion of the experts, public housing has been misdesigned, misconceived, and misdirected.”).

<sup>34</sup> *Cf. von Hoffman, supra* note 28, at 316.

<sup>35</sup> Robert Gladstone & Assocs., *The Outlook for United States Housing Needs*, in THE REPORT OF THE PRESIDENT’S COMMITTEE ON URBAN HOUSING: A DECENT HOME 54, 57 (1968) (“During the post-war years, Public Housing slowly lost many of its working class residents and came to house large concentrations of poor families, many with serious social problems.”); *id.* at 61 (“Given the inadequate coverage and size of welfare payments, there are still millions of families who are too poor to live in public housing projects. Even those who live there may have to commit a disproportionate share of their incomes to pay the low rents.”); see also BUILDING THE AMERICAN CITY: REPORT OF THE NATIONAL COMMISSION ON URBAN PROBLEMS 115-16 (1969) (noting “that public housing ha[d] been reaching further down the income scale”).

policies to space-based ones,<sup>36</sup> which resulted in increased rents, particularly for families occupying three- and four-bedroom apartments.<sup>37</sup> The impact of decisions to change rental policies and/or raise rents was so great that tenants in a number of cities went on strike and refused to pay the higher rents.<sup>38</sup>

#### A. *St. Louis Public Housing Rent Strike*

One such strike occurred in St. Louis, Missouri. Following the St. Louis Housing Authority's shift from an income-based rental policy to a space-based rental policy in November of 1968, residents in several public housing complexes in the city protested the higher rents and stated their willingness to begin withholding rents on February 1, 1969.<sup>39</sup> Tenant councils and charismatic tenant activists in the Carr-Square Village, Cochran Gardens, Vaughn, and Blumeyer Village projects on the city's north side and Darst-Webbe and Clinton-Peabody on the south side, led the rent strike.<sup>40</sup> Pruitt-Igoe, the most well-known project because of its size and

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<sup>36</sup> See generally MAGGIE McCARTY ET AL., CONG. RESEARCH SERV., OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY 4-8 (2008) (charting the history of income-based rent and the shift from income-based rent programs to vouchers). Income-based rent levels will fluctuate based on the income of the tenant. For example, an income-based rent policy may set rents at 25 or 30 percent of tenant income. Under such policies, two tenants with the same income will pay the same amount of rent, even though one occupies a one-bedroom apartment and the other a three-bedroom one. Space-based rent levels will fluctuate based on the size of the rental unit. For example, rent can be \$600/month for a one-bedroom apartment and \$800/month for a two-bedroom apartment. Two tenants occupying the same size and type apartment will pay the same rent, even though one tenant's income may equal 50 percent of the other tenant's.

<sup>37</sup> See generally Scott Susin, *Rent Vouchers and the Price of Low-Income Housing*, 83 J. PUB. ECON. 109 (2002) (discussing the increase in rental costs for low-income households since the early 1980s).

<sup>38</sup> See, e.g., Glenn Fowler, *Tenant Activists Gaining Momentum in the Nation*, N.Y. TIMES, Oct. 26, 1969, § 8, at 1 ("In a growing number of cities, tenants are forming associations to protect their interests, engaging in rent strikes and on occasion throwing picket lines around their landlords' property.")

<sup>39</sup> See generally Richard D. Baron, *Community Organizations: Antidote for Neighborhood Succession and Focus for Neighborhood Improvement*, 21 ST. LOUIS U. L.J. 634, 648-54 (1978) (reviewing the strike based on personal experience as the lead attorney for the tenants); Phillip Thigpin, *Did the Rent Strike Succeed?*, FOCUS/MIDWEST, July-Aug. 1969, at 32, 32-33 (evaluating whether the rent strike was successful in eliminating the "disparity between the continually rising costs of running public housing, and the reduction in the ability of tenants to pay adequate rents"); see also Charles Kimball Cummings, *Rent Strike in St. Louis: The Making of Conflict in Modern Society* 398-400 (Jan. 1976) (unpublished Ph.D. dissertation, Washington University) (on file with Washington University Library) (discussing the rent increases of 1968).

<sup>40</sup> Rhonda Y. Williams, "Something's Wrong Down Here": Poor Black Women and Urban Struggles for Democracy, in AFRICAN AMERICAN URBAN HISTORY SINCE WORLD WAR II 316, 325 (Kenneth L. Kusmer & Joe W. Trotter eds., 2009).

notoriety,<sup>41</sup> was not an official participant in the strike, but individual tenants in Pruitt-Igoe did withhold rents.<sup>42</sup>

When several thousand tenants withheld rents and deposited the funds in escrow accounts at several banks, it became obvious that the striking tenants were serious and that evicting all of the tenants who had not been paying rent could, and most likely would, lead to chaos.<sup>43</sup> The major stakeholders held a series of meetings during February 1969 in an effort to find a satisfactory resolution of the rent strike.<sup>44</sup> This author participated in the meetings as one of several legal aid lawyers representing tenants and others involved with the rent strike.<sup>45</sup>

Two recollections remain from those meetings. The first concerns the attendees. About twenty to twenty-five persons, representing various agencies and organizations, sat around a large oval conference table. As individuals introduced themselves, each one stated that his or her organization either was not responsible for finding a solution or did not have the resources to do so, thereby creating the impression that no one in the room was responsible.

The second recollection is of a consultant to HUD who had flown in from Washington, D.C., for one of the meetings. After listening to the discussion, he declared that a solution to the problem would cost millions of dollars. Stating that he did not have access to that amount of money, he announced that he had to catch a plane and left the meeting. The cynical definition of an expert as one who is 150 miles from home comes to mind whenever I think of that meeting.

At the height of the rent strike in the late winter of 1969, a public hearing was held in Jefferson City, Missouri, to discuss pending state legislation that would provide financial support for the St. Louis Housing Authority,

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<sup>41</sup> The notoriety of Pruitt-Igoe is explored in the documentary film, *THE PRUITT-IGOE MYTH* (First Run Features 2011). See Steve Giegerich, *Film, Residents Recall Housing Complex*, ST. LOUIS POST-DISPATCH, Apr. 10, 2011, at B1-B2; see also Tim O'Neil, *Pruitt-Igoe's Hopeful Vision Imploded as Housing Failure*, ST. LOUIS POST-DISPATCH, July 25, 2010, at B2 (describing the Pruitt-Igoe development as a "symbol of hopelessness" in public housing).

<sup>42</sup> Cummings, *supra* note 39, at 435-36.

<sup>43</sup> Letter from Richard S. Jones, President, Health & Welfare Council of Metro. St. Louis, Inc., to Peter W. Salsich, Jr., Attorney, Legal Aid Soc'y, Ctr. for Urban Programs Office, Saint Louis Univ. (Feb. 21, 1969) (on file with author) (reporting a request for a "moratorium on eviction of any tenants . . . on the grounds that such action would be detrimental to the present situation").

<sup>44</sup> Letter from Richard S. Jones, President, Health & Welfare Council of Metro. St. Louis, Inc., to Peter W. Salsich, Jr., Legal Aid Soc'y for Urban Programming (Feb. 4, 1969) (on file with author) (inviting St. Louis Mayor Alfonso J. Cervantes, government officials, and civic leaders to a meeting on February 12, 1969, "to discuss the potential impact of the current rent strike in public housing and to seek ways to resolve the basic issues: inadequate income of many tenants and the requirement for the Housing Authority to operate on break-even terms").

<sup>45</sup> Several months earlier this author left private practice and was employed by the St. Louis Legal Aid Society and Saint Louis University School of Law.



enabling it to scale back its rent increases.<sup>46</sup> This author helped arrange for public housing tenants to speak at the hearing. One of the spokespersons for striking tenants was an elderly single woman who was a long-time resident of public housing. After she finished her prepared remarks emphasizing the need for state financial support of public housing, this author recalls that a state representative from suburban St. Louis County asked her a few questions, the substance of which are as follows:

Q: What is your monthly income?

A: I receive \$90 per month from the state Welfare Department.

Q: How much is your rent?

A: I am charged \$70 per month.

Q: How do you eat?

A: The dumpsters behind my building usually have a lot of food in them.<sup>47</sup>

This author witnessed that exchange and saw the incredulous looks on the faces of the legislators. Despite the shocking revelation concerning the woman's living conditions, the proposed legislation did not pass.

Tenant leadership initially aimed its efforts primarily at a return to a more affordable, income-based rental policy (rent levels at no more than 25 percent of income), but tenant participation in public housing management later became an additional important goal.

Repeated negotiations between HUD, City, and Authority representatives made it clear to the rent strike leaders that a fundamental change in the institution of public housing was needed in order to protect the interests of the residents. . . . The strike leaders became increasingly convinced that a reduction in rent levels, without a simultaneous realignment in the traditional lines of authority and methods of operation within the Authority, would accomplish little. Rents could always be raised again. This fact suggested both that tenants had to participate in the management of the public housing program and in the development of policy regarding the future operation of public housing.<sup>48</sup>

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<sup>46</sup> See Peter W. Salsich, Jr., *Reform Through Legislative Action: The Poor and the Law*, 13 ST. LOUIS U. L.J. 373, 380-81 (1969) (discussing the Missouri legislature's proposed legislation on public housing in 1969).

<sup>47</sup> This dialogue reflects the author's best recollection.

<sup>48</sup> Baron, *supra* note 39, at 649.

The idea of tenant participation in management struck some observers as a conflict in interest but made sense to others.<sup>49</sup>

The rent strike was settled the following October. An ad hoc organization, the Civic Alliance for Housing, organized by local Teamsters Union leader, Harold J. Gibbons, at the request of Ms. Jean King, one of the tenant rent strike leaders, played a key role in negotiating a settlement.<sup>50</sup> Enactment of federal legislation in 1969 known as the Brooke Amendment<sup>51</sup> enabled the Authority to reverse its controversial rental policy.<sup>52</sup> The Brooke Amendments (two additional ones were enacted in 1970 and 1971) established the principle that public housing residents did not have to pay more than 25 percent (later raised to 30 percent) of their income for housing (rent and utilities),<sup>53</sup> authorized HUD to provide operating subsidies to PHAs to make up the difference,<sup>54</sup> and permitted tenants to be elected or appointed to governing boards of PHAs.<sup>55</sup>

The Civic Alliance played a key role in implementing the tenant-participation aspects of the settlement agreement by providing training and technical assistance to a newly created Tenant Affairs Board (“TAB”) made up of elected representatives from each of the nine conventional public housing developments in the City. The Civic Alliance also provided administrative and management assistance to the Authority as it reorganized and installed a decentralized management structure.

TAB and the Authority collaborated on creation of a series of new policies and programs, including a new standard lease form and a grievance procedure; rent collection and extension policies; security, social services, and modernization programs; and annual budget policies. They established a tenant management program that enabled tenant associations to screen prospective tenants, assist in the preparation of annual development budgets, and use modernization funds. Tenant associations helped contact delin-

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<sup>49</sup> *Id.* at 654 (“The tenant management program represents a pragmatic response by the St. Louis Housing Authority to the aspirations of its public housing residents and illustrates the impact of involving indigenous community organizations in efforts to stabilize and redevelop distressed neighborhoods.”).

<sup>50</sup> *St. Louis Rent Strike Settled*, 26 J. HOUSING 549, 549 (1969).

<sup>51</sup> The amendment was named after former Senator Edward Brooke of Massachusetts although the legislation originally was introduced by other former representatives, including Leonore K. Sullivan (D-St. Louis). *Cf.* 115 CONG. REC. 25,650 (1969).

<sup>52</sup> Mary Schwartz & Ellen Wilson, *Who Can Afford To Live in a Home?*, U.S. CENSUS BUREAU 1, <http://www.census.gov/hhes/www/housing/special-topics/files/who-can-afford.pdf> (last visited Mar. 1, 2012).

<sup>53</sup> *Compare* 42 U.S.C. § 1437a(1) (2006) (specifying that residents do not have to pay more than 30 percent of their income for housing), *with* 42 U.S.C. § 1437a(1) (1976) (“The rental for any dwelling units shall not exceed one-fourth of the family’s income . . .”).

<sup>54</sup> 42 U.S.C. § 1437g(c)(1) (2006).

<sup>55</sup> *Id.* § 1437c-1(e)(1).

quent tenants<sup>56</sup> and handled rent extension questions along with social service referrals.<sup>57</sup>

Two years later, a series of Ford Foundation grants enabled the Authority to establish tenant management corporations in five public housing developments.<sup>58</sup> The experience in St. Louis helped spur a nationwide movement toward tenant management, but the movement lost steam due to continuing budgetary pressures on public housing and tenant difficulties in keeping their heads above water. However, the principle of tenant representation on housing authority governing boards, as well as establishment of resident advisory boards at individual public housing developments, became accepted policy.

Perhaps the high point of the tenant management movement came in 1988 when then president Ronald Reagan invited three leaders of the movement to join him while he signed the Housing and Community Development Act of 1987: Kimi Gray of Kenilworth-Parkside Resident Management Corporation in Washington, D.C.; Bertha Gilkey of Cochran Tenant Management Corporation in St. Louis, Missouri; and Mildred Hailey, the founder of the tenant management movement at the Bromley-Heath Tenant Management Corporation in Boston, Massachusetts.<sup>59</sup> President Reagan's three female guests, and the organizations they headed, became national symbols of the tenant management movement. "[T]hey remind us that ownership or control of one's own residence should be an opportunity for every citizen," he stressed.<sup>60</sup>

The movement faltered in the 1990s. While the movement gave tenants a sense of control over their environments, it did not succeed in improving the living conditions in urban public housing. A negative audit by the HUD Inspector General in 1995 led to concerns about the future of the tenant (now resident) management movement.<sup>61</sup> The 1998 Housing Act<sup>62</sup> threw a lifeline to functioning resident management corporations ("RMCs")

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<sup>56</sup> Tenant representatives were very conscientious and often tougher on their colleagues than traditional management, as this author discovered while serving as an advisor to the Carr Square TAB. On several occasions this author had to remind TAB members that statutory tenant protections, such as notice and an opportunity to be heard before eviction, had to be observed.

<sup>57</sup> Baron, *supra* note 39, at 653.

<sup>58</sup> *Id.* at 653-55.

<sup>59</sup> Remarks on Signing the Housing and Community Development Act of 1987, 24 WEEKLY COMP. PRES. DOC. 175, 176 (1988) (President Ronald Reagan).

<sup>60</sup> *Id.*

<sup>61</sup> OFFICE OF THE INSPECTOR GEN., HUD AUDIT REPORT NO. 95-HQ-154-0002, at 4 (Aug. 31, 1995), available at <http://archives.hud.gov/offices/oig/reports/internal/ig5h0002.pdf>; see also C. THEODORE KOEBEL & MARILYN S. CAVELL, TENANT ORGANIZATIONS IN PUBLIC HOUSING PROJECTS: A REPORT ON SENATE RESOLUTION NO. 347, at 6-7 (1995), available at <http://www.vchr.vt.edu/pdfreports/phtext2.pdf> (discussing OFFICE OF THE INSPECTOR GEN., *supra*).

<sup>62</sup> Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 532, 112 Stat. 2461, 2574-75 (1998) (codified as amended at 42 U.S.C. § 1437r (2006)).

by requiring PHAs to make a portion of their capital and operating funds available to RMCs that assume “primary management responsibilities” if the RMCs request management funds from HUD and HUD “determines that the corporation[s] have] the capability to effectively discharge such responsibilities.”<sup>63</sup>

But, as the Boston Globe noted in a November 14, 2010, editorial, “over the years, it grew harder to maintain a base of highly motivated tenants willing to undergo the intensive training” necessary to become successful managers.<sup>64</sup> For example, the Chicago Housing Authority declined to renew its contract with the Cabrini-Green Rowhouse Resident Management Corp. in 2005<sup>65</sup> in preparation for the closing and demolition of the Cabrini-Green project.<sup>66</sup> By 2010, Boston’s Bromley-Heath resident management corporation was one of only six such corporations remaining in existence.<sup>67</sup>

### B. *Housing Production Shift to Private Sector Focus*

Most public housing units continued to provide decent housing for low-income households. However, serious controversies over the location and condition of high-rise public housing complexes within isolated urban ghettos led Congress and the country to shift focus to the private sector in the 1960s and 1970s.<sup>68</sup> Remarkably, the public housing complexes that elicited such a spirited reaction constituted less than 10 percent of the 1.4 million total public housing units in operation.<sup>69</sup> No new public housing developments were authorized after 1965 as federal support for housing production shifted to private developers through the Section 236 interest subsidy program authorized in 1968<sup>70</sup> and the Section 8 new construction and substantial rehabilitation rental subsidy programs authorized in 1974.<sup>71</sup> An additional shift in emphasis from supply-side housing production support to demand-side tenant rental support led Congress to repeal the Section 8 new

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<sup>63</sup> 42 U.S.C. § 1437r(e)(1).

<sup>64</sup> Lawrence Harmon, Op-Ed., *Landlord in Residence*, BOS. GLOBE, Nov. 14, 2010, at K9.

<sup>65</sup> Andrew L. Wang, *Cabrini Tenants Blast New Management Firm*, CHI. TRIB., Nov. 10, 2005, § 2, at 4.

<sup>66</sup> Pat Curry, *Last Cabrini Green High-Rise Coming Down Today*, WGN-TV (Mar. 30, 2011, 5:31 AM), <http://www.wgntv.com/news/local/breaking/chibrknews-last-cabrini-green-building-comes-down-today-20110330,0,6236705.story>; Monroe, *supra* note 1.

<sup>67</sup> See Harmon, *supra* note 64, at K9.

<sup>68</sup> See Salsich, *supra* note 25, at 482-83 (discussing the 1974 enactment of a housing program designed to give private housing developers incentives to provide substitutes for public housing).

<sup>69</sup> See *id.* at 462 n.10.

<sup>70</sup> Housing and Urban Development Act of 1969, Pub. L. No. 91-152, § 107, 83 Stat. 379, 381 (codified as amended at 12 U.S.C. § 1715z-1 (2006)).

<sup>71</sup> Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201, 88 Stat. 633, 662-66 (codified as amended at 42 U.S.C. § 1437f).

construction and substantial rehabilitation programs in 1983<sup>72</sup> in favor of Section 8 existing housing certificates and vouchers.<sup>73</sup> Both programs were merged into the Housing Choice Voucher program in 1998, which local PHAs administered.<sup>74</sup> As the name implies, the Housing Choice Voucher program places responsibility on prospective low-income tenants to locate private landlords willing to accept a voucher as a portion of the rent.<sup>75</sup>

Despite the fact that the original subsidy of public housing, payment of the capital costs of new construction, continues to be the deepest housing subsidy ever created in the United States,<sup>76</sup> tenant rents do not and cannot cover the full cost of managing and maintaining the rental units owned by housing authorities. Lingering effects of the public housing rent strikes, coupled with a general consensus that urban high-rise public housing developments had become undesirable urban ghettos, led to a series of experiments seeking answers to what had become an intractable problem—thousands of extremely low-income households trapped for generations in poorly designed, obsolete, and deteriorating high-rise slums. In the six years between 1992 and 1998, five demonstration programs were established: Moving to Opportunity, Family Self-Sufficiency, Jobs-Plus, Moving to Work, and HOPE VI.<sup>77</sup>

### 1. Moving to Opportunity

In 1992, Moving to Opportunity for Fair Housing (“MTO”) engaged five large housing authorities in a demonstration of the potential alleviation of poverty through dispersal by means of vouchers coupled with extensive counseling.<sup>78</sup> Of the twenty-one largest PHAs invited to apply, the housing

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<sup>72</sup> Supplemental Appropriations Act of 1984, Pub. L. No. 98-181, § 209(a)(1)-(2), 97 Stat. 1153, 1183 (amending Section 8, 42 U.S.C. §§ 1437f(a), (b)(2) (1982), by substituting “existing housing” for “existing, newly constructed, and substantially rehabilitated housing” and deleting authorization for “assistance payments for newly constructed or substantially rehabilitated” assisted housing).

<sup>73</sup> Section 8 certificates, authorized in 1974, are attached to units owned by private landlords and provide payments to those landlords to make up the difference between fair market rents approved by HUD and tenant rental payments that are limited to 30 percent of tenant income. *See* 42 U.S.C. §§ 1437a(a), 1437f(c)(3) (2006). Section 8 vouchers, authorized in 1983, are provided to qualified tenants enabling them to negotiate a lease with a private landlord. *Id.* § 1437f(d).

<sup>74</sup> *Id.* § 1437(b)(1).

<sup>75</sup> *See* 24 C.F.R. § 982.302 (2011).

<sup>76</sup> *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-76, FEDERAL HOUSING ASSISTANCE: COMPARING THE CHARACTERISTICS AND COSTS OF HOUSING PROGRAMS 4 (2002), available at [www.gao.gov/new.items/d0276.pdf](http://www.gao.gov/new.items/d0276.pdf).

<sup>77</sup> Rachel Garshick Kleit & Stephen B. Page, *Public Housing Authorities Under Devolution*, 74 J. AM. PLAN. ASS'N 34, 36-37 (2008).

<sup>78</sup> John Goering et al., *What Have We Learned about Housing Mobility and Poverty Deconcentration?*, in CHOOSING A BETTER LIFE?: EVALUATING THE MOVING TO OPPORTUNITY SOCIAL EXPERIMENT 3, 6-7 (John M. Goering & Judith D. Feins eds., 2003).

authorities of Baltimore, Boston, Chicago, Los Angeles, and New York City were selected.<sup>79</sup> MTO “tests the impact of housing counseling and other assistance on the housing choices of Section 8 households . . . [with the goal of developing] more effective mobility strategies for recipients of tenant-based housing assistance.”<sup>80</sup>

## 2. Family Self-Sufficiency

The Family Self-Sufficiency (“FSS”) program, created by Section 554 of the Cranston-Gonzalez National Affordable Housing Act of 1990,<sup>81</sup> sought ways to provide necessary social services to enable public housing residents to become self-sufficient.<sup>82</sup> It required participating housing authorities to provide the services themselves or negotiate with third parties for the services.<sup>83</sup> FSS, a successor to Project Self-Sufficiency and Operation Bootstrap,<sup>84</sup> is an active program that receives annual funding from the Housing Choice Voucher-FSS escrow.<sup>85</sup> Participating families enter into a five-year “contract of participation” with their housing authorities that spells out the steps both parties will take as the family seeks economic independence.<sup>86</sup> As families’ earned income increases, a portion of their increased rent is deposited in an interest-bearing escrow account maintained by the housing authority.<sup>87</sup> Upon successfully completing the five-year program, families receive the funds that have accrued in their escrow accounts, which they can use as they see fit.<sup>88</sup>

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<sup>79</sup> *Moving to Opportunity for Fair Housing*, HUD.GOV, <http://portal.hud.gov/hudportal/HUD?src=/programdescription/mta> (last visited Mar. 1, 2012).

<sup>80</sup> *Id.*

<sup>81</sup> Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 554, 104 Stat. 4079, 4225 (1990) (codified as amended at 42 U.S.C. § 1437u (2006)).

<sup>82</sup> 42 U.S.C. § 1437u.

<sup>83</sup> Kleit & Page, *supra* note 77, at 36.

<sup>84</sup> HUD established Project Self Sufficiency in 1984 to demonstrate the potential of providing social services, housing assistance, job training, and job placement in a “comprehensive and coordinated” way to very-low-income single parents. Press Release, PR Newswire, HUD Official to Announce Project Self Sufficiency (Oct. 9, 1984), *available at* <http://www.highbeam.com/doc/1G1-3470356.html>. Five years later, HUD’s Operation Bootstrap initiative made a similar services package available to all low-income families in sixty-one PHAs, rather than limiting the program to single-parent families. HUD provided two rounds of Section 8 voucher funding in FY 1989 and 1990, then replaced it with the FSS program. *See OPERATION BOOTSTRAP REPORT*, HUD.GOV (Mar. 30, 2005), <http://www.huduser.org/portal/publications/pubasst/bootstrap.html>.

<sup>85</sup> *Housing Choice Voucher (HCV) Family Self-Sufficiency*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/fss](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/fss) (last visited Mar. 1, 2012).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *See id.* HUD reports that many families use the funds for housing, debt reduction, college education, or starting a business. HUD, EVALUATION OF THE FAMILY SELF-SUFFICIENCY PROGRAM:

A four-year study of a sample of FSS participants, the second of three planned analyses of the program, reported that FSS program graduates during that four-year period had accumulated an average of \$5,300 in their escrow accounts, approximately 27 percent of their income upon entering the program.<sup>89</sup> During the four-year study period, 24 percent of 170 study participants successfully graduated, 37 percent withdrew, and 39 percent remained enrolled.<sup>90</sup> The study suggests that families that remain in and graduate from the FSS program receive substantial benefits.<sup>91</sup> Based in part on the results of this study, HUD awarded more than two hundred PHAs almost \$15 million to continue enrolling housing authority residents in the FSS program.<sup>92</sup> What may be the first “closed-end rental agreement” requiring public housing residents who are not elderly or disabled to obtain jobs and agree to leave their units within five years is being promulgated by the Chattanooga, Tennessee, Housing Authority for an eighteen-unit development that will replace twenty-eight 1970s-vintage public housing units that were demolished in 2010.<sup>93</sup> The Chattanooga FSS Program will assist residents in preparing for self-sufficiency by establishing escrow accounts on their behalf.<sup>94</sup>

### 3. Jobs-Plus

Jobs-Plus, a 1998 demonstration program, utilized six urban housing authorities (Baltimore, Chattanooga, Dayton, Los Angeles, St. Paul, and Seattle) “to test the impact of saturated, community-based employment services on public housing residents’ ability to secure and retain jobs.”<sup>95</sup> The Jobs-Plus programs combined three “core elements”: (1) “Employment-related services”; (2) “Financial incentives to work”; and

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PROSPECTIVE STUDY 2 (2011), available at <http://www.huduser.org/Publications/pdf/FamilySelfSufficiency.pdf>.

<sup>89</sup> HUD, *supra* note 88, at 45.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at x.

<sup>92</sup> Press Release, HUD, HUD Awards \$15 Million to Help Public Housing Residents Obtain Jobs, Economic Independence (May 27, 2011), available at [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2011/HUDNo.11-104](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-104).

<sup>93</sup> Yolanda Putman, *Chattanooga: New Public Housing Units Will Require Residents To Be Out in Five Years*, TIMESFREEPRESS.COM (June 21, 2011), <http://timesfreepress.com/news/2011/jun/21/chattanooga-new-public-housing-units-will-require/>.

<sup>94</sup> *Id.*

<sup>95</sup> Kleit & Page, *supra* note 77, at 36 (citing James A. Riccio, *A Research Framework for Evaluating Jobs-Plus: A Saturation and Place-Based Employment Initiative for Public Housing Residents* (MDRC Working Paper, May 1998), available at <http://www.mdrc.org/publications/151/workpaper.html>).

(3) “Community support for work.”<sup>96</sup> During the four years (2000–2003) that the Jobs-Plus program was active, participating residents in a study sample experienced average earnings increases of 6 percent.<sup>97</sup> A later study followed participants at three of the sites (Dayton, Los Angeles, and St. Paul) until 2006 because those three sites were able to maintain all three core elements.<sup>98</sup> During that period, participants’ earnings increased by an average of “14 percent over the amounts earned by the comparison group.”<sup>99</sup> While employment impacts were smaller than the earnings impacts, study directors concluded that “there is untapped potential for the housing system—working with institutional partners—to increase the earnings of the people who depend on it for housing assistance.”<sup>100</sup>

#### 4. Moving to Work

In 1996, MTW recruited eighteen housing authorities, later expanded in stages to thirty-three, to test the potential of allowing local housing authorities greater flexibility in the use of public housing, Section 8, operating assistance, and modernization funds.<sup>101</sup> Combined funds may be used, under MTW agreements between PHAs and HUD, for a variety of activities, including supportive housing, homeless/transitional housing, local rental subsidy programs, homeownership assistance, gap financing, tax credit partnerships, services for low-income non-residents, and supportive services subsidies for low-income families.<sup>102</sup> In 2008, HUD entered into MTW agreements with twenty-nine participating PHAs that extended their participation in the MTW program until 2018.<sup>103</sup> The proposed Section 8 Voucher Reform Act includes a provision that would allow up to eighty state and local housing authorities to participate in the MTW program.<sup>104</sup>

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<sup>96</sup> JAMES A. RICCIO, MANPOWER DEMONSTRATION RESEARCH CORP., SUSTAINED EARNINGS GAINS FOR RESIDENTS IN A PUBLIC HOUSING JOBS PROGRAM 2-3 (2010), available at <http://www.mdrc.org/publications/542/policybrief.pdf>.

<sup>97</sup> *Id.* at 3.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 5-6.

<sup>101</sup> Kleit & Page, *supra* note 77, at 36-37.

<sup>102</sup> HUD, NOTICE PIH-2011-45 (HA), PARAMETERS FOR LOCAL, NON-TRADITIONAL ACTIVITIES UNDER THE MOVING TO WORK DEMONSTRATION PROGRAM 3-4 (2011), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=11-45pihn.doc>.

<sup>103</sup> See *History of Moving to Work (MTW)*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/mtw/history](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/history) (last visited Mar. 1, 2012).

<sup>104</sup> Will Fischer, *Sharp Expansion of HUD’s “Moving-to-Work” Demonstration Raises Serious Concerns*, CENTER BUDGET & POL’Y PRIORITIES 1 (2010), available at <http://www.cbpp.org/files/1-22-10hus.pdf> (“Unless important limitations are added, this expansion would reduce the number of families receiving housing assistance by shifting funds out of the Section 8 housing voucher program. It also



## 5. HOPE VI

HOPE VI<sup>105</sup> has provided competitive grants since 1993 to encourage the leveraging of private capital in order to transform urban high-rise public housing projects into low-rise, mixed-income neighborhoods.<sup>106</sup> HOPE VI began on a demonstration basis following publication of a report in 1992 that referred to severely distressed public housing as “a national disgrace.”<sup>107</sup> In response to recommendations of the National Commission on Severely Distressed Public Housing, Congress authorized the Urban Revitalization Demonstration (“URD”), the precursor to HOPE VI, as part of HUD’s FY 1993 appropriation.<sup>108</sup> URD grants were made to urban PHAs to enable them to demolish severely distressed projects and build new public housing with social services provided to their residents.<sup>109</sup>

Near the end of URD’s first year, Richard Baron, a St. Louis developer who had been the lead attorney for the tenants during the previously discussed St. Louis public housing rent strike,<sup>110</sup> wrote a memo to HUD officials proposing to expand the URD program by authorizing PHAs to leverage URD funds with low-income housing tax credit equity,<sup>111</sup> and other state and local resources.<sup>112</sup> When Nelson Diaz, HUD’s general counsel in 1994, opined that nothing in the public housing enabling statute prevented a private entity from owning public housing so long as it “followed the rules that applied to public housing,” the basic structure of HOPE VI was estab-

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would expose more low-income families to risky policies than is necessary to test innovative approaches, and allow local policies to diverge to a degree that could weaken housing assistance programs.”)

<sup>105</sup> 42 U.S.C. §§ 1437v, 1437z-7 (2006). The HOPE program was introduced as a homeownership program for low-income families in the Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, 104 Stat. 4079 (1990).

<sup>106</sup> See Kleit & Page, *supra* note 77, at 36 (explaining that HOPE VI sought to achieve its goal of redeveloping thousands of distressed public housing units in part by requiring participating PHAs “to leverage private revenues to complement HOPE VI funds”).

<sup>107</sup> NAT’L COMM’N ON SEVERELY DISTRESSED PUB. HOUS., *supra* note 28, at 2.

<sup>108</sup> Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, 106 Stat. 1571, 1579 (1992); NAT’L COMM’N ON SEVERELY DISTRESSED PUB. HOUS., *supra* note 28, at 31.

<sup>109</sup> See Kleit & Page, *supra* note 77, at 36.

<sup>110</sup> See *supra* notes 39-60 and accompanying text.

<sup>111</sup> The Low-Income Housing Tax Credit (“LIHTC”) was created by the 1986 Tax Reform Act and is codified at I.R.C. § 42 (2006). The LIHTC offers a dollar for dollar credit against ordinary income for ten years in return for a fifteen-year commitment to provide affordable housing. Alex Schwartz & Edwin Meléndez, *After Year 15: Challenges to the Preservation of Housing Financed with Low-Income Housing Tax Credits*, 19 HOUSING POL’Y DEBATE 261, 263 (2008). Developers are able to raise equity for affordable housing developments by selling these credits to investors, usually through the mechanism of syndicated limited partnerships. *Id.* at 265.

<sup>112</sup> Richard D. Baron, *The Evolution of HOPE VI as a Development Program*, in FROM DESPAIR TO HOPE: HOPE VI AND THE NEW PROMISE OF PUBLIC HOUSING IN AMERICA’S CITIES 31, 31-35 (Henry G. Cisneros & Lora Engdahl eds., 2009).

lished.<sup>113</sup> In 1998, HOPE VI became a permanent HUD program with enactment of legislation authorizing PHAs to “own, operate, assist, or otherwise participate in” mixed-finance projects,<sup>114</sup> and authorizing HUD to make grants to such agencies to enable them to participate in public-private partnerships seeking to develop mixed-income, mixed-financed housing.<sup>115</sup>

Since the program’s inception, HUD has awarded 254 HOPE VI grants, totaling more than \$6.1 billion, to 132 local PHAs.<sup>116</sup> Displacement has been an issue with HOPE VI, as approximately 84 percent of resident households moved from HOPE VI sites, “most with relocation assistance, to private-market housing, mixed-income developments, or other traditional public housing sites.”<sup>117</sup> Reported cases tend to focus on allegations that racial discrimination is behind the displacement in HOPE VI projects.<sup>118</sup> The Choice Neighborhoods Initiative was developed to respond to weaknesses and limitations in the HOPE VI program.<sup>119</sup>

In addition to authorizing the HOPE VI program, the Quality Housing and Work Responsibility Act of 1998 made major changes in the public housing program, most of which were designed to give housing authorities greater flexibility in managing units under their control.<sup>120</sup> One of the major changes was the creation of a separate Public Housing Capital Fund with the merger of the Comprehensive Grant Program (which applies to housing authorities with more than 250 units) and the Comprehensive Improvement

<sup>113</sup> *Id.* at 37.

<sup>114</sup> Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, § 539, 112 Stat. 2461, 2594 (codified as amended at 42 U.S.C. § 1437z-7 (2006)).

<sup>115</sup> *Id.* § 535, 112 Stat. at 2581 (codified as amended 42 U.S.C. § 1437v).

<sup>116</sup> *Choice Neighborhoods: History and HOPE*, EVIDENCE MATTERS (HUD Off. Pol’y Dev. & Res., D.C.), Winter 2011, at 3, available at [http://www.huduser.org/portal/periodicals/em/EM-newsletter\\_FNL\\_web.pdf](http://www.huduser.org/portal/periodicals/em/EM-newsletter_FNL_web.pdf).

<sup>117</sup> *Id.* at 5 (citing Susan J. Popkin et al., *Has HOPE VI Transformed Residents’ Lives? New Evidence from the HOPE VI Panel Study*, 24 HOUSING STUD. 477, 486 (2009)).

<sup>118</sup> See, e.g., *Darst-Webbe Tenant Ass’n Bd. v. St. Louis Hous. Auth.*, 417 F.3d 898, 902-04 (8th Cir. 2005) (holding legitimate, non-discriminatory policy objectives supported decision to approve HOPE VI revitalization proposal); *Thompson v. HUD*, 220 F.3d 241, 243-44, 248-50 (4th Cir. 2000) (holding approval of HOPE VI plan modification changing project from rehabilitation of public housing family units to new construction of elderly units violated provision of consent decree settling fair housing class action lawsuit). See generally MARTIN D. ABRAVANEL ET AL., *THE UNCHARTED, UNCERTAIN FUTURE OF HOPE VI REDEVELOPMENTS: THE CASE FOR ASSESSING PROJECT SUSTAINABILITY 1* (2009) (discussing and generally supporting the HOPE VI concept but arguing that sustainability is unknown); SUSAN J. POPKIN ET AL., *A DECADE OF HOPE VI: RESEARCH FINDINGS AND POLICY CHALLENGES 2* (2004) (commenting that HOPE VI was an “ambitious effort to build economically integrated communities and give existing residents more choice in the private housing market”).

<sup>119</sup> See *infra* Part III for a more detailed discussion of the Choice Neighborhoods Initiative.

<sup>120</sup> See *supra* note 114-15 and accompanying text. See generally Kleit & Page, *supra* note 77, at 37-40 (discussing the 1998 Act’s changes to public housing); Peter W. Salsich, Jr. & Nathan A. Orr, *Legislative Note—Congress Approves Major Housing Legislation*, 8 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 175 (1999) (discussing the 1998 Act).

Assistance Program (which applies to housing authorities with fewer than 250 units) in order to provide financial assistance for renovating aging public housing units, “an acknowledgment that the funding formula supporting PHAs did not cover the actual costs of managing and maintaining public housing in serviceable physical condition.”<sup>121</sup>

Continued efforts to correct public housing ills, including the HOPE VI program aimed at replacing blighted high-rise urban ghettos with new mixed-income, mixed-use urban neighborhoods, resulted in some improvements but did not resolve the budgetary problems of urban PHAs or the isolation of most urban public housing residents. HOPE VI, in using a mixed-financing, mixed-income model, “shift[ed] the emphasis of housing policy from output (units built and managed) to outcomes—housing quality, safety, resident outcomes, economic opportunity, and the vitality of the surrounding neighborhood.”<sup>122</sup> A continuing study of the impact of HOPE VI on residents of five public housing developments receiving HOPE VI funds concluded that residents “improved the quality of their housing” and “felt significantly safer and less fearful of crime,” but they did not experience improvement in employment prospects or self-sufficiency.<sup>123</sup> The study authors noted, though, that employment outcomes improved significantly in Chicago “when tenants left public housing either by using vouchers or moving into mixed-income housing.”<sup>124</sup> HUD officials believe the research findings “speak volumes about the most intractable barriers to fighting the consequences of concentrated poverty.”<sup>125</sup> Many HOPE VI residents “remained economically at risk or were in poor health” despite improvements in the quality and safety of their neighborhoods.<sup>126</sup>

Sheila Crowley, executive director of the National Low-Income Housing Coalition (“NLIHC”), criticizes the implementation of HOPE VI because of the resulting “involuntary displacement of tens of thousands of poor, predominantly African American families from their homes and communities.”<sup>127</sup> She acknowledges that HOPE VI has resulted in better housing in safer neighborhoods for significant numbers of relocated households.<sup>128</sup> However, she argues it has had the effect of “disempowering” res-

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<sup>121</sup> Kleit & Page, *supra* note 77, at 35.

<sup>122</sup> *Choice Neighborhoods: History and HOPE*, *supra* note 116, at 3.

<sup>123</sup> *Id.* at 5.

<sup>124</sup> *Id.* (citing VALE & GRAVES, *supra* note 4, at 72).

<sup>125</sup> *Id.* at 6.

<sup>126</sup> *Id.* (citing Susan J. Popkin, *A Glass Half Empty? New Evidence from the HOPE VI Panel Study*, 20 HOUSING POL’Y DEBATE 43, 43-63 (2010)).

<sup>127</sup> Sheila Crowley, *HOPE VI: What Went Wrong*, in FROM DESPAIR TO HOPE, *supra* note 112, at 229, 229-30 (stating that over 72,000 households had been relocated from public housing between 1993 and 2008 as a result of HOPE VI grants).

<sup>128</sup> *See id.* at 232 (“The one improvement that studies of HOPE VI outcomes have consistently shown is that people feel safer. . . . While families that relocated with vouchers are in safer neighbor-

idents.<sup>129</sup> Resident participation in the planning and implementation of HOPE VI grants “has been weak and ineffectual,” and many residents who were not able to return to new HOPE VI units felt “misled . . . that the redevelopment was really for them.”<sup>130</sup> She further argues that HUD “failed to accurately assess the serious challenges” public housing residents encounter in their daily lives; it thus failed to provide an appropriate level of social and economic support.<sup>131</sup>

In a May 2010 visit to St. Louis, HUD Secretary Shaun Donovan reflected on the failure of urban, high-rise public housing, exemplified by the long-ago demolished Pruitt-Igoe project in the city, which he considers “the most potent symbol in the country of the failure of what was an ambitious experiment in not only developing public housing but also . . . in rethinking cities that have been over decades suffering broader post-industrial decline and the ravages of segregation and concentrated poverty.”<sup>132</sup> The demolition of the Pruitt-Igoe in 1974 led to “‘a withdrawing of ambition not only for architects but (also for) planners, policymakers (and) urban officials’, [he] said. ‘But I think what has emerged over the last decade is a new sense of ambition . . . directed really in a very different way.’”<sup>133</sup>

Racial segregation has plagued the public housing program from its inception.<sup>134</sup> For example, the plan for the infamous Pruitt-Igoe public housing project in St. Louis designated the 1134-unit William L. Igoe apartments for whites and the 1736-unit Wendell Oliver Pruitt Homes for blacks.<sup>135</sup> Before long, black families occupied virtually the entire development because of the reluctance of white families to reside there.<sup>136</sup> Ten years of class action litigation in the Chicago case, *Gautreaux v. Chicago Housing Authority*,<sup>137</sup> brought the problem to national attention. Court approval of a metropolitan-wide remedy featuring the use of housing vouchers<sup>138</sup> led

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hoods and higher-quality housing, they also face higher levels of economic hardship and housing instability . . .”).

<sup>129</sup> *Id.* at 234.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 234-37.

<sup>132</sup> Editorial, *Unfinished Business: Ghosts of Pruitt-Igoe Stir New Ambitions for Urban Revival*, ST. LOUIS POST-DISPATCH, June 7, 2010, at A12 (alteration in original) (quoting Shaun Donovan, HUD Secretary) (internal quotation marks omitted).

<sup>133</sup> *Id.* (first, second, and fourth alterations in original) (quoting Shaun Donovan).

<sup>134</sup> Friedman, *supra* note 15, at 123 (“Race discrimination in public housing was at one time fairly open and explicit.”).

<sup>135</sup> Alexander von Hoffman, *Why They Built Pruitt-Igoe*, in FROM TENEMENTS TO THE TAYLOR HOMES 180, 197 (John F. Bauman et al. eds., 2d prtg. 2003).

<sup>136</sup> *See id.*

<sup>137</sup> 296 F. Supp. 907 (N.D. Ill. 1969).

<sup>138</sup> *See Gautreaux v. Chi. Hous. Auth.*, 503 F.2d 930, 931-32, 939 (7th Cir. 1974) (describing the posture of the litigation and how the plaintiffs had won their case back in 1969 but were now at risk of losing the “war” requiring the rapid implementation of a comprehensive plan), *aff’d sub nom. Hills v. Gautreaux*, 425 U.S. 284 (1976); Salsich, *supra* note 25, at 481.

to a consent decree providing major changes in the manner in which members of the *Gautreaux* class were to be housed.<sup>139</sup> Another twenty years would pass before the 7,100 families affected by the consent decree would secure residence in private housing.<sup>140</sup>

Despite the *Gautreaux* litigation and numerous other cases around the country,<sup>141</sup> the problem of racial segregation in public and assisted housing is far from being solved. A penetrating analysis of post-Katrina New Orleans by Tulane Law Professor Stacy E. Seicshnaydre makes that point clear.<sup>142</sup> The heart of her article is a detailed examination of actions taken by neighborhood groups and suburban communities to block plans announced by the Housing Authority of New Orleans and other government agencies to rebuild New Orleans by encouraging movement of affordable housing away from low-lying areas and toward a less concentrated environment. In doing so, she describes what she terms the conflict between “two impulses pulling in opposite directions that operate in tandem to perpetuate concentrated poverty and segregation.”<sup>143</sup> “One impulse,” to which people she terms the “anywhere-ists” respond, “is to take any affordable housing that can be acquired and use it to meet critical housing shortages.”<sup>144</sup> The other impulse, to which “nowhere-ists” respond, is to “block affordable housing in all forms.”<sup>145</sup> The “‘path of least resistance’ for both groups is . . . continued creation of government-assisted housing in impoverished, isolated, or resegregating communities.”<sup>146</sup> Professor Seicshnaydre reaches three conclusions: the “path of least resistance” is not compatible with fair housing law, regional distribution and management of government-assisted housing is essential for compliance with fair housing mandates, and “federal inter-

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<sup>139</sup> See *Gautreaux v. Landrieu*, 523 F. Supp. 665, 668-69 (N.D. Ill. 1981) (evaluating challenges to the propriety of the negotiations leading to the consent decree based on exclusion of affected parties), *aff'd sub nom. Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982).

<sup>140</sup> ALEXANDER POLIKOFF, *WAITING FOR GAUTREUX: A STORY OF SEGREGATION, HOUSING, AND THE BLACK GHETTO* 243-44 (2006). See generally *id.* (telling the full story of the litigation from the perspective of Alexander Polikoff, lead counsel for the original plaintiff, the late Dorothy Gautreaux).

<sup>141</sup> See, e.g., *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 269-70 (1977) (holding that minorities adversely affected by a denial of a rezoning application necessary to proceed with a subsidized housing project did not make a sufficient showing of discriminatory purpose); *Arthur v. City of Toledo*, 782 F.2d 565, 568 (6th Cir. 1986) (holding that referenda led by opponents of public housing projects to repeal necessary sewer extension ordinances did not have discriminatory purpose or effect); *Smith v. Town of Clarkton*, 682 F.2d 1055, 1068-69 (4th Cir. 1982) (noting that a municipality cannot operate its public housing in a discriminatory manner).

<sup>142</sup> See Stacy E. Seicshnaydre, *How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans*, 60 CATH. U. L. REV. 661, 662 (2011).

<sup>143</sup> *Id.* at 671.

<sup>144</sup> *Id.* at 671-72.

<sup>145</sup> *Id.* at 672.

<sup>146</sup> *Id.* at 673.

vention in the housing market must encompass more than [merely] providing a subsidy.”<sup>147</sup>

## II. MOVES TOWARD PRIVATIZING PUBLIC HOUSING

During the thirty-plus-year transformation from federal support for construction of new public housing units to the Housing Choice Voucher program, federal appropriations for repairs, maintenance, and overall management of the 1.4 million public housing units that had been constructed decreased considerably. One study noted that funds for housing assistance programs, including public housing maintenance and operations were cut almost in half, from \$56.4 billion to \$29.2 billion per year (in 2004 constant dollars) between 1976 and 2004, while funding for vouchers rose to \$37.3 billion in 2004, an increase of over 400 percent since 1976.<sup>148</sup> By FY 2012, total funding for all HUD programs had been reduced to \$37.4 billion, a 9 percent cut from FY 2011.<sup>149</sup> The last three presidential administrations have sought to move the federal government away from its direct responsibility for administering the public housing program and closer to a program that private actors would own and operate.

### A. HUD Reinvention: From Blueprint to Reinvention

In 1995, the Clinton Administration introduced a series of proposals designed to shift federal housing policy from the public housing program to a system of tenant-based certificates. The Administration’s proposal, included in a proposed reorganization of the Department of Housing and Urban Development, *HUD Reinvention: From Blueprint to Action*, called for a three-year “transition from public housing to tenant based assistance,” with larger PHAs to be given two additional years to complete the transition.<sup>150</sup> In commenting on the proposal several months later, then-HUD Secretary Henry Cisneros argued that the existing system of capital and operating subsidies, and complex management rules should be replaced with a system that required public and assisted housing managers to compete with “simi-

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<sup>147</sup> *Id.* at 673, 708-18 (first internal quotation marks omitted).

<sup>148</sup> CUSHING N. DOLBEARE ET AL., CHANGING PRIORITIES: THE FEDERAL BUDGET AND HOUSING ASSISTANCE 1976-2005, at 4 (2004), available at <http://www.nlihc.org/doc/cp04.pdf>; see also Kleit & Page, *supra* note 77, at 34-38 (describing the decreased role of the federal government in both the management and funding of public housing).

<sup>149</sup> *Final FY12 Budget Cuts HUD, Rural Housing Programs*, *supra* note 24, at 1. HUD’s FY 2013 budget proposes to cut another \$1.8 billion from HUD’s discretionary budget authority. HUD, *supra* note 24, at B-5.

<sup>150</sup> HUD, HUD REINVENTION: FROM BLUEPRINT TO ACTION 43 (1995).

larly priced housing for the assisted tenants.”<sup>151</sup> If they did not “improve the quality of their housing,” they would “go the way of the dinosaur.”<sup>152</sup>

Two different ideas competed for attention in Congress at that time: (1) convert public housing to vouchers to maximize tenant mobility and choice regarding where to live, and (2) convert funding to block grants to states to improve efficiency through competition.<sup>153</sup> Congress did not accept the Administration’s full proposal, but the 1998 Housing Act did take several steps in the direction of privatization, including authorization of the HOPE VI program, consolidation of PHA funding into two accounts (a capital account and an operating account), and limited authorization for PHAs to seek private sector investment.<sup>154</sup>

### B. *Public Housing Reinvestment Initiative*

Several attempts were made during the Bush Administration to respond to the increasing backlog in public housing maintenance and preservation activity. In 2003 and 2004, HUD proposed a Public Housing Reinvestment Initiative (“PHRI”) that would have shifted funding of public housing maintenance and capital expenditure needs from congressional appropriations to private sector mortgage financing.<sup>155</sup> Former HUD Secretary Mel Martinez, in testimony before a House subcommittee, called PHRI “our vision for the future of public housing,” and “also [one that] will encourage development-based financial management and accountability in PHAs.”<sup>156</sup>

PHRI would authorize HUD to approve PHAs’ requests to convert public housing developments, or units, to project-based vouchers, which would make it possible for PHAs to pledge the public housing property as collateral for private capital improvement loans.<sup>157</sup> The 2004 proposal added

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<sup>151</sup> Henry G. Cisneros, *Legacy for a Reinvented HUD: Charting a New Course in Changing and Demanding Times*, 1 CITYSCAPE 145, 148 (1995), available at <http://www.huduser.org/Periodicals/CITYSCPE/VOL1NUM3/cisneros.pdf>.

<sup>152</sup> *Id.*

<sup>153</sup> *The Administration’s Proposal to Preserve and Transform Public and Assisted Housing: The Transforming Rental Assistance Initiative: Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. 173 n.5 (2010) [hereinafter *Hearing*] (letter from nineteen urban academic scholars).

<sup>154</sup> See 42 U.S.C. § 1437g(a)-(e) (2006) (originally enacted as Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 519, 112 Stat. 2518, 2551 (1998)) (providing for both a capital and operating fund for PHAs, while also authorizing housing authorities to develop housing projects using a mix of private and federal funding).

<sup>155</sup> See HUD, PUBLIC HOUSING REINVESTMENT INITIATIVE 2 (2003), available at [http://www.hud.gov/offices/pih/publications/phri\\_brochure.pdf](http://www.hud.gov/offices/pih/publications/phri_brochure.pdf).

<sup>156</sup> *Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for Fiscal Year 2004: Hearings on H.R. 2861 and S. 1584 Before the H. Subcomm. of the Comm. on Appropriations*, 108th Cong. 17 (2003) (statement of Mel Martinez).

<sup>157</sup> *Id.*

a federal guarantee of up to 80 percent of loan principal.<sup>158</sup> The FY 2004 budget request included \$131 million to enable HUD to guarantee almost \$2 billion in loans.<sup>159</sup> Congress did not fund PHRI, and the Bush Administration did not pursue the matter.<sup>160</sup>

### C. *Transforming Rental Assistance (TRA/PETRA)*

Responding to the loss of over 150,000 public housing units through demolition or sale and a backlog of maintenance and rehabilitation requirements potentially exceeding \$20 billion,<sup>161</sup> the Obama Administration proposed the Transforming Rental Assistance (“TRA”) initiative, a major restructuring of public housing as well as numerous private rental assistance programs.<sup>162</sup> TRA was presented legislatively in 2010, first as the Preservation, Enhancement and Transformation Assistance Act (“PETRA”), and later that year as the Rental Housing Revitalization Act (“RHRA”).<sup>163</sup>

The President included PETRA in his FY 2011 Budget Request.<sup>164</sup> The proposal sought to preserve 300,000 public housing units in the first year and an increasing number in subsequent years by reorganizing the administration of rental assistance programs and by encouraging housing authorities to leverage billions of dollars in private capital by borrowing from private investors.<sup>165</sup>

HUD Secretary Shaun Donovan, in a statement released with the proposed PETRA legislation, identified three fundamental principles guiding PETRA. First, the legislation will change how public housing developments are financed, not who owns them or can live in them.<sup>166</sup> “What this bill *won’t* do is ‘privatize’ public housing,” he emphasized.<sup>167</sup> Second, PETRA is designed to lessen the complexity resulting from multiple rental assistance programs by merging other rental assistance programs “with our core Section 8 program, creating new opportunities for long-term property based contracts to preserve these units.”<sup>168</sup> The third principle is to “encourage resident choice” and “allow us to provide portable vouchers to residents so

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> See *Hearing, supra* note 153, at 173.

<sup>161</sup> *Id.* at 47 (written testimony of Shaun Donovan, HUD Sec’y); see also *PETRA, and What It Means for the “Public” in “Public Housing”*, SHELTERFORCE, Spring 2010, at 30, 30.

<sup>162</sup> See *Hearing, supra* note 153, at 173.

<sup>163</sup> See *infra* notes 173, 187 and accompanying text.

<sup>164</sup> *PETRA, and What It Means for the “Public” in “Public Housing”*, *supra* note 161, at 30.

<sup>165</sup> *Id.*

<sup>166</sup> Shaun Donovan, *Making Public Housing Work for Families*, HUFFINGTON POST (May 26, 2010), [http://www.huffingtonpost.com/shaun-donovan/making-public-housing-wor\\_b\\_590407.html](http://www.huffingtonpost.com/shaun-donovan/making-public-housing-wor_b_590407.html).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*



they can move to another unit if needed, but also allow us to preserve the original unit for another vulnerable family.”<sup>169</sup>

Secretary Donovan stressed that the three principles guiding the PETRA legislation are designed to build a “strong foundation” for public and assisted housing, and “put an end to the parallel system” of housing in which the 2.5 million poor families served by HUD’s oldest programs live.<sup>170</sup> Invoking *Brown v. Board of Education*,<sup>171</sup> Secretary Donovan asserted, “I believe a separate housing system for low-income families is also inherently unequal.”<sup>172</sup>

### 1. Draft Legislation

The proposed PETRA legislation<sup>173</sup> made three findings related to the current state of housing administration:

(1) HUD “provides rental assistance to more than 4.8 million households through at least 13 different programs that are implemented through an infrastructure comprised of some 4,200 public housing agencies . . . 18,000 individual Federal contracts with private owners, and hundreds of non-profit rental program administrators”;<sup>174</sup>

(2) “[S]ubstantial unmet capital needs” of public and assisted housing units “hinder [government] efforts to provide safe, high-quality, sustainable, energy-efficient affordable housing”;<sup>175</sup>

(3) The current arrangement “unnecessarily increases transaction costs,” adds to the difficulty of obtaining rental assistance, “impedes fair access to scarce resources,” and fails to reduce the concentration of poor and minority families, all at a time when “worst-case housing needs and homelessness are increasing significantly.”<sup>176</sup>

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> 347 U.S. 483 (1954).

<sup>172</sup> Donovan, *supra* note 166.

<sup>173</sup> Proposed PETRA legislation includes HUD’s revised Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010, 111th Cong. (Discussion Draft, Oct. 21, 2010) [hereinafter October 2010 PETRA Discussion Draft] (released in October 25, 2010, by Representative Keith Ellison (D-MN), a member of the House Committee on Financial Services), *available at* [http://www.nlihc.org/doc/ELLISO\\_087\\_xml.pdf](http://www.nlihc.org/doc/ELLISO_087_xml.pdf); and HUD’s initial draft, Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010, (Discussion Draft, May 11, 2010), *available at* <http://www.nlihc.org/doc/PETRA-BillI-Text-2010-05-11.pdf>. For HUD’s summary of the PETRA bill, see *What Change Means: Overview of the Preservation, Enhancement, and Transformation of Rental Assistance Act of 2010*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/fy2011budget/signature\\_initiatives/transforming\\_rental\\_assistance/faqs/general\\_faqs](http://portal.hud.gov/hudportal/HUD?src=/fy2011budget/signature_initiatives/transforming_rental_assistance/faqs/general_faqs) (last visited Mar. 1, 2012).

<sup>174</sup> October 2010 PETRA Discussion Draft, *supra* note 173, § 2(a)(1).

<sup>175</sup> *Id.* § 2(a)(2).

<sup>176</sup> *Id.* § 2(a)(3).

PETRA has five purposes, including (1) preservation of “affordable housing opportunities for the long term”; (2) “enhance[ment of] housing choice for residents”; (3) “streamlin[ing] and improv[ing] the delivery and oversight of rental assistance”; (4) creation of more uniform policies “to increase administrative efficiency at all levels of program operations”; and (5) “facilitat[ing] adoption of energy-efficient and green technologies . . . to reduce operating costs, improve residents’ quality of life, and enhance and protect the value of such housing.”<sup>177</sup>

The proposed legislation adds subsections (m) and (n) to Section 8 of the United States Housing Act of 1937.<sup>178</sup> It also modifies existing Section 8(o)(13).<sup>179</sup> Section 8(n) covers long-term, property-based assistance contracts (“PB contracts”).<sup>180</sup> Amended Section 8(o)(13) covers project-based voucher rental assistance contracts (“PBV contracts”).<sup>181</sup> Section 8(m) provides the basic authority for HUD to establish procedures and provide funding to enable housing authorities and other owners of assisted housing to convert their existing project-based rental housing assistance contracts, including annual contribution contracts, into Section 8(n) PB contracts or Section 8(o)(13) PBV contracts.<sup>182</sup>

Properties eligible for conversion include project-based Section 8 units, public housing units, rent supplement units, 236 interest subsidy units, and “other Federal affordable housing programs, as authorized by statute.”<sup>183</sup> PETRA requires HUD to establish uniform policies and procedures for a number of matters, including resident access to housing choice vouchers, recognition of legitimate tenant organizations, applicant and tenant procedural rights, nondiscrimination and affirmative furthering of fair housing, administration of the new rental assistance program, uniform physical condition standards, disposition of properties in foreclosure or bankruptcy, and HUD’s enforcement of the new rental assistance contracts.<sup>184</sup>

Residents who have occupied properties being converted would have access to housing choice vouchers (the “Choice Option”), “to the extent of available resources,” enabling them to move if they have lived in the property being converted for at least two years.<sup>185</sup> PHAs administering tenant-based voucher programs for properties selected for conversion must offer up to one-third of vouchers available through turnover to families exercis-

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<sup>177</sup> *Id.* § 2(b).

<sup>178</sup> *Id.* §§ 3-4.

<sup>179</sup> *Id.* § 5.

<sup>180</sup> October 2010 PETRA Discussion Draft, *supra* note 173, § 4.

<sup>181</sup> *Id.* § 5.

<sup>182</sup> *Id.* § 3 (adding 42 U.S.C. § 1437f(m)(1)(A)).

<sup>183</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(1)(C)).

<sup>184</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(1)(B)).

<sup>185</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(1)(A)(i)).

ing the Choice Option, and may establish a separate waiting list for the Choice Option.<sup>186</sup>

## 2. RHRA

RHRA, a revised version of PETRA, was introduced December 1, 2010, as H.R. 6468 by Representative Keith Ellison, (D-MN).<sup>187</sup> RHRA retains the findings and purposes of PETRA,<sup>188</sup> as well as the same fundamental organization.<sup>189</sup> By adding two new subsections to Section 8 of the 1937 Housing Act and amending another, it would authorize conversion of public housing and project-based rental housing assistance contracts<sup>190</sup> through the execution of PB contracts<sup>191</sup> or additional PBV contracts.<sup>192</sup> An additional new subsection spells out in greater detail HUD's obligation to "promote informed choice regarding housing opportunities";<sup>193</sup> to protect tenants' rights to organize and be represented by tenant organizations;<sup>194</sup> and detailing procedural rights of applicants for, and tenants of, converted units.<sup>195</sup> The NLIHC identified a number of improvements in RHRA, including a requirement that HUD offer and PHAs extend the initial twenty-year rental assistance contract;<sup>196</sup> new authorization to provide regional portability agreements and one-stop area waiting lists;<sup>197</sup> new statutory rights for tenants to organize;<sup>198</sup> new procedural rights concerning denials of admission and "adverse actions involving income determinations, tenant contributions, unit size, other conditions of continuing eligibility . . . and eviction or termination of assistance";<sup>199</sup> and new access to building information by "legitimate tenant organizations."<sup>200</sup> Building information in-

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<sup>186</sup> October 2010 PETRA Discussion Draft, *supra* note 173, § 3 (adding 42 U.S.C. § 1437f(m)(1)(A)(ii)).

<sup>187</sup> See Rental Housing Revitalization Act of 2010, H.R. 6468, 111th Cong. (2010).

<sup>188</sup> Compare *id.* § 2 (retaining the same findings and purposes section as PETRA), with October 2010 PETRA Discussion Draft, *supra* note 173, § 2 (findings and purposes section).

<sup>189</sup> Compare H.R. 6468 § 1(b) (retaining essentially the same table of contents as PETRA), with October 2010 PETRA Discussion Draft, *supra* note 173, § 1(b) (table of contents).

<sup>190</sup> H.R. 6468 § 3 (adding 42 U.S.C. § 1437f(l), the equivalent of Section 8(m) in PETRA).

<sup>191</sup> *Id.* § 5 (adding 42 U.S.C. § 1437f(n)).

<sup>192</sup> *Id.* § 6 (amending 42 U.S.C. § 1437f(o)).

<sup>193</sup> *Id.* § 4 (adding 42 U.S.C. § 1437f(m)(1)).

<sup>194</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(2)(A)).

<sup>195</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(2)(B)).

<sup>196</sup> H.R. 6468 § 5 (adding 42 U.S.C. § 1437f(n)(2)(B)).

<sup>197</sup> *Id.* § 4 (adding 42 U.S.C. § (m)(2)(D)).

<sup>198</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(2)(A)).

<sup>199</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(2)(B)).

<sup>200</sup> *Id.* (adding 42 U.S.C. § 1437f(m)(2)(A)). A tenant organization is "legitimate if it meets regularly, operates democratically, is broadly representative, is independent of the public housing agency,

cludes the identity of owners, annual operating statements of profit and loss, subsidy contracts, HUD-conducted management reviews, and information regarding replacement reserves and other escrow funds.<sup>201</sup> One concern NLIHC expressed is the failure of RHRA draft legislation to authorize new housing choice vouchers sufficient to meet the demand the resident choice option is anticipated to trigger.<sup>202</sup> Instead, housing agencies would be limited to their existing pools of vouchers, resulting in applicants remaining on waiting lists for prolonged periods.<sup>203</sup>

a. *Replacement of Destroyed or Demolished Public Housing Units*

Advocates for low-income households have long feared that controversies over public housing would lead to a decline in the number of affordable housing units in their communities.<sup>204</sup> The so-called one-for-one replacement rule, which required PHAs to replace any destroyed or demolished public housing units with an equal number of comparable units,<sup>205</sup> enabled public housing residents and advocates to block efforts to remove units from the public housing inventory.<sup>206</sup> But the rule also frustrated public housing managers who believed it unreasonably restricted their efforts to replace units that had deteriorated, had been abandoned, or had become dangerous.<sup>207</sup> HUD suspended the rule in 1995 to enable the HOPE VI experiment to proceed,<sup>208</sup> and Congress formally repealed it in 1998.<sup>209</sup> Since that time, advocates have sought its reinstallation.

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owners, management, and their representatives, and has been established" by tenants, voucher holders, or "a combination of tenant organizations." *Id.*

<sup>201</sup> H.R. 6468 § 4 (adding 42 U.S.C. § 1437f(m)(2)(G)).

<sup>202</sup> *Ellison Introduces Rental Housing Revitalization Act*, MEMO TO MEMBERS (Nat'l Low Income Hous. Coal., D.C.), Dec. 3, 2010, at 3, available at [http://www.nlihc.org/detail/article.cfm?article\\_id=7524](http://www.nlihc.org/detail/article.cfm?article_id=7524).

<sup>203</sup> *Id.*

<sup>204</sup> *Cf., e.g.,* Michael Abramowitz, *Rehabbing the Projects: Chicago High-Rise Plan Rekindles Debate*, WASH. POST, Aug. 5, 1991, at A1, A6 (discussing how the Chicago Housing Authority's 1991 plan to refurbish old public high-rise buildings ignited debate over the role of public housing in the city).

<sup>205</sup> 42 U.S.C. § 1437p(b)(3) (1988) (Section 1437p(b)(3) was stricken by Act of July 27, 1995, Pub. L. No. 104-19, § 1002, 109 Stat. 194, 235 (1995)).

<sup>206</sup> See Jerry J. Salama, *The Redevelopment of Distressed Public Housing: Early Results from HOPE VI Projects in Atlanta, Chicago, and San Antonio*, 10 HOUSING POL'Y DEBATE 95, 96 (1999).

<sup>207</sup> *Cf. Hope VI in San Francisco*, NEWSLETTER/CALENDAR (S.F. Planning & Urban Research Ass'n, S.F., Cal.), Mar. 2005, at 9 (explaining how resource-poor local housing authorities declined reconstruction funds because of their inability to finance construction or maintenance of the same number of units).

<sup>208</sup> Act of July 27, 1995 § 1002, 109 Stat. at 235.

<sup>209</sup> Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, § 531, 112 Stat. 2461, 2573 (1998) (amending 42

RHRA includes a modified replacement rule. A “plan acceptable to the Secretary for timely replacement of each unit” must be presented whenever a conversion request includes demolition, disposal, or conversion of public or assisted housing units.<sup>210</sup> Replacement housing must “reflect the number of bedrooms that are needed to adequately serve returning tenants, households currently on the waiting list and to meet future needs based on other market data,”<sup>211</sup> and it must not result in fewer disability-accessible housing units.<sup>212</sup> Replacement housing may be located as far as twenty-five miles from the property being converted when “necessary to—(I) comply with fair housing requirements; (II) deconcentrate poverty; (III) provide appropriate densities for the property being converted; (IV) promote location-efficient communities; or (V) meet other factors as determined by the Secretary.”<sup>213</sup> Off-site replacement housing must provide “access to economic opportunities and public transportation,” must “not be located in areas of minority concentration . . . or in areas of extreme poverty, except in areas that qualify as revitalizing neighborhoods, as defined by the Secretary.”<sup>214</sup>

Though generally supportive of the RHRA provisions, NLIHC announced that it “will seek an improved one-for-one replacement policy for *hard* housing units” in lieu of the emphasis the bill places on use of replacement vouchers.<sup>215</sup> Representative Maxine Waters (D-Cal.) has continued to press for restoration of the one-for-one replacement policy, as illustrated by her proposed Public Housing Reinvestment and Tenant Protection Act of 2011, which she introduced in February 2011.<sup>216</sup>

#### b. *Rental Assistance Demonstration*

Congressional preoccupation with debt and deficit problems, coupled with Republican control of the House of Representatives, brought legislative action on most domestic issues to a virtual standstill in 2011. Congress took no action on PETRA or RHRA, leading HUD to recast its basic Trans-

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U.S.C. § 1437p(b)(3)) (repeal of one-for-one replacement rule); Quality Housing and Work Responsibility Act of 1998; Initial Guidance, 64 Fed. Reg. 8192, 8203 (Feb. 18, 1999) (Section 531 “repeals one-for-one replacement requirements”).

<sup>210</sup> Rental Housing Revitalization Act of 2010, H.R. 6468, 111th Cong. § 3 (2010) (adding 42 U.S.C. § 1437f(1)(5)(A)).

<sup>211</sup> *Id.* (adding 42 U.S.C. § 1437f(1)(5)(B)).

<sup>212</sup> *Id.* (adding 42 U.S.C. § 1437f(1)(5)(C)).

<sup>213</sup> *Id.* (adding 42 U.S.C. § 1437f(1)(5)(D)).

<sup>214</sup> *Id.* (adding 42 U.S.C. § 1437f(1)(5)(E)).

<sup>215</sup> *Ellison Introduces Rental Housing Revitalization Act*, *supra* note 202, at 2-3 (emphasis added).

<sup>216</sup> See Public Housing Reinvestment and Tenant Protection Act of 2011, H.R. 762, 112th Cong. § 102(b)(2) (2011) (listing the purposes of the bill, including to “provide for the one-for-one replacement of public and assisted housing dwelling units that are demolished or disposed of”).

forming Rental Assistance initiative underlying those legislative proposals.<sup>217</sup>

HUD included a scaled back Rental Assistance Demonstration (“RAD”) in its 2012 budget request.<sup>218</sup> It sought \$200 million to support conversion of approximately 255,000 public housing units, 1600 Rent Supplement and Rental Assistance Program units, and 6000 Moderate Rehabilitation units.<sup>219</sup> Funds will be used to convert the units to “an improved form of long-term, project-based Section 8 contracts.”<sup>220</sup> HUD estimates that participation in the conversion process, which would be voluntary, “will enable PHAs to leverage over \$6 billion in private debt and equity capital” and “to address immediate and long-term capital needs, improve operations, and implement energy-efficiency improvements.”<sup>221</sup> The final FY 2012 bill authorizes a smaller RAD for a total of sixty thousand public housing and mod rehab units.<sup>222</sup> The proposed legislative language implementing the demonstration requires HUD to include in the demonstration a variety of public housing units in PHAs of various sizes and in a “broad range of locations and markets.”<sup>223</sup> Residents in at least 90 percent of participating units must be given the choice to move with continuing Section 8 assistance “within a reasonable time.”<sup>224</sup> Conversion selection criteria and procedures must include “reasonable requirements for consultation” with affected residents and their resident advisory boards.<sup>225</sup> Converted units must be owned or controlled by public or nonprofit entities, except that “capable other entit[ies]” may own or control converted units if no capable public or nonprofit entities are available as a result of “foreclosure, bankruptcy, or termination and transfer of assistance for material violations or substantial default.”<sup>226</sup>

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<sup>217</sup> *NHC’s Analysis of HUD Budget Proposal for Fiscal Year 2012*, NAT’L HOUSING CONF., [http://www.nhc.org/media/files/NHC\\_Budget\\_Analysis\\_FY\\_2012.pdf](http://www.nhc.org/media/files/NHC_Budget_Analysis_FY_2012.pdf) (last visited Mar. 1, 2012).

<sup>218</sup> *Compare* HUD, INVESTING IN PEOPLE AND PLACES: FY 2011 BUDGET 16 (2010) [hereinafter FY 2011 BUDGET SUMMARY], *available at* [http://www.nhc.org/media/files/NHC\\_Budget\\_Analysis\\_FY\\_2012.pdf](http://www.nhc.org/media/files/NHC_Budget_Analysis_FY_2012.pdf) (stating the FY 2011 budget request was approximately \$300 million), *with* HUD, FY 2012 BUDGET SUMMARY 42 (2011) [hereinafter FY 2012 BUDGET SUMMARY], *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=fy2012budget.pdf> (stating the FY 2012 budget request was \$200 million).

<sup>219</sup> FY 2012 BUDGET SUMMARY, *supra* note 218, at 43.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 42-43.

<sup>222</sup> Consolidated and Further Continuing Appropriations Act of 2012, H.R. 2112, 112th Cong. § 4 (2012). HUD’s FY 2013 budget recommends a \$100 million appropriation for RAD. HUD, *supra* note 24, at B-3.

<sup>223</sup> Rental Assistance Demonstration Act § 1(b)(2)(A) (HUD’s Proposed Draft, Aug. 3, 2011), [http://nlihc.org/doc/RAD\\_Proposal\\_8-3-11.pdf](http://nlihc.org/doc/RAD_Proposal_8-3-11.pdf).

<sup>224</sup> *Id.* § 1(b)(2)(C).

<sup>225</sup> *Id.* § 1(b)(4).

<sup>226</sup> *Id.* § 1(c)(1)(B)(i).

### III. CHOICE NEIGHBORHOODS INITIATIVE

While continuing to seek legislative reform of public and assisted housing programs, the Obama Administration has implemented an extension of the HOPE VI program called the Choice Neighborhoods Initiative.<sup>227</sup> Rather than focusing exclusively on distressed public housing projects, the Choice Neighborhoods Initiative expands the HOPE VI concept by applying it to distressed neighborhoods in which public and/or assisted housing developments are located.<sup>228</sup> The Choice Neighborhoods Initiative originally was designed to replace HOPE VI, but Congress retained HOPE VI in HUD's 2010 appropriation at \$200 million and allocated a portion of that amount (\$65 million) to the Choice Neighborhoods Initiative.<sup>229</sup> A competitive grant program, the Choice Neighborhoods Initiative has two stages: planning grants (the first seventeen grants, totaling \$4 million, were awarded in March 2011 to cities in fourteen states)<sup>230</sup> and implementation grants (five cities—Boston, Chicago, New Orleans, San Francisco, and Seattle—were awarded the first implementation grants totaling \$122 million in August 2011).<sup>231</sup> While Congress cut the HOPE VI/Choice Neighborhoods appropriations for FY 2011 in half to \$100 million,<sup>232</sup> the Obama Administration requested \$250 million for the Choice Neighborhoods Initiative in FY 2012. Congress subsequently approved \$120 million.<sup>233</sup>

The Choice Neighborhoods Initiative was established to respond to the limitations faced by HOPE VI residents, which include displacement from public housing and lack of employment and self-sufficiency gains.<sup>234</sup> In announcing the Choice Neighborhoods Initiative, HUD stressed the im-

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<sup>227</sup> See HUD, FY 2010 CHOICE NEIGHBORHOODS PLANNING GRANT AGREEMENT 1, available at [http://portal.hud.gov/huddoc/cn\\_grant\\_agreement.pdf](http://portal.hud.gov/huddoc/cn_grant_agreement.pdf) (last visited Mar. 1, 2012). A revised excerpt of this Part of this Article appears in the March-April 2012 issue of *Probate & Property Magazine*, published by the American Bar Association.

<sup>228</sup> *Id.* at 3.

<sup>229</sup> Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, § 4, 123 Stat 3034, 3080-81 (2009).

<sup>230</sup> Press Release, HUD No. 11-032, HUD Awards First Choice Neighborhood Grants (Mar. 18, 2011), available at [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2011/HUDNo.11-032](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-032).

<sup>231</sup> Press Release, HUD No. 11-181, HUD Awards First-Ever Choice Neighborhood Implementation Grants (Aug. 31, 2011), [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2011/HUDNo.11-181](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-181).

<sup>232</sup> *FY 2011 Choice Neighborhoods Planning Grant NOFA*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/cn/fy11funding](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn/fy11funding) (last visited Mar. 1, 2012). Applications for grants totaling \$3.6 million were due August 8, 2011. *Id.*

<sup>233</sup> *Public and Indian Housing, Choice Neighborhoods, 2012 Summary Statement and Initiatives*, HUD, at P-1, [http://portal.hud.gov/hudportal/documents/huddoc?id=Choice\\_Neighborhoods\\_2012.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Choice_Neighborhoods_2012.pdf) (last visited Mar. 1, 2012). Choice Neighborhoods was funded at \$120 million in FY 2012. HUD's FY 2013 budget recommends an increase to \$150 million. HUD, *supra* note 24, at B-1.

<sup>234</sup> *Choice Neighborhoods: History and HOPE*, *supra* note 116, at 3.

portance of emphasizing neighborhood transformation rather than focusing solely on public housing redevelopment. Assisted housing would be included along with public housing, and public funds would be used to leverage investments from the private sector.<sup>235</sup> Perhaps most importantly, residents and neighborhood institutions were to be involved “in all phases of planning and implementation.”<sup>236</sup>

Choice Neighborhoods seeks to respond to HOPE VI’s “inability to address multi-faceted problems in residents’ lives, such as health issues and employment.”<sup>237</sup> In requesting funding for the Choice Neighborhoods Initiative, HUD described three “core goals” for the program:

1. Housing: Transform distressed public and assisted housing into energy efficient, mixed-income housing that is physically and financially viable over the long-term;
2. People: Support positive outcomes for families who live in the target development(s) and the surrounding neighborhood, particularly outcomes related to residents’ health, safety, employment, mobility, and education; and
3. Neighborhood: Transform neighborhoods of poverty into viable, mixed-income neighborhoods with access to well-functioning services, high quality public schools and education programs, high quality early learning programs and services, public assets, public transportation, and improved access to jobs.<sup>238</sup>

#### A. *First Implementation Grants*

The five Implementation Grants support complex public-private partnership developments that go well beyond the traditional focus on redeveloping housing. For example, in New Orleans, the Housing Authority is joining forces with the City of New Orleans, two for-profit real estate development companies,<sup>239</sup> the Recovery School District, the New Orleans Police Department, the Tulane Community Health Clinic, and several non-profit agencies engaged in workforce development, community organizing, and early childhood education to transform the historic Iberville/Treme neighborhood, which is dominated by the seventy-year-old Iberville Public Housing project.<sup>240</sup> The \$30.5 million Choice Neighborhood grant pales in comparison to the \$1.15 billion in private and public commitments from the Housing Authority’s partners, but it serves an important leveraging function for the initial phase of the neighborhood transformative effort.

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<sup>235</sup> Press Release, *supra* note 230.

<sup>236</sup> *Choice Neighborhoods: History and HOPE*, *supra* note 116, at 3.

<sup>237</sup> *Id.* at 6.

<sup>238</sup> HUD, *supra* note 227, at 3.

<sup>239</sup> HRI Properties (“HRI”), New Orleans, Louisiana, and McCormack Baron Salazar, Inc. (“MBS”), St. Louis, Missouri. Richard Baron, CEO of MBS, was the lead attorney for the tenants during the St. Louis public housing rent strike. *See* discussion *supra* Part I.A.

<sup>240</sup> *Choice Neighborhoods Project Summaries FY 2010/2011*, HUD.GOV 5, <http://portal.hud.gov/hudportal/documents/huddoc?id=CNFY2010-2011.pdf> (last visited Mar. 1, 2012).



Under the Iberville/Treme Transformation Plan, twenty-four of the seventy-four low-rise brick buildings in Iberville will be renovated, and the other fifty will be demolished.<sup>241</sup> A total of 913 new and rehabilitated units will replace the original 821 obsolete and distressed units.<sup>242</sup> 304 of the 913 new units will be public housing available to current Iberville residents.<sup>243</sup> The balance will be allocated evenly between low-income housing, tax credit-eligible, and market-rate units.<sup>244</sup> The plan also calls for an additional 1518 rental units to be developed, one-third of which will be public housing or project-based Section 8 units.<sup>245</sup> Fifteen sites have been identified for homeownership units.<sup>246</sup>

In addition to housing, “[t]he development team will implement a results-oriented case management model to help adults achieve self-sufficiency, place-based job training and readiness programming and to help children access targeted education/training and literacy strategy.”<sup>247</sup> “The New Orleans Police Department will collaborate to implement a sustainable violence prevention program that includes . . . organized neighborhood watches, youth mentoring programs and a renter/homeowners association.”<sup>248</sup>

Other grant cities are pursuing similarly comprehensive and complex neighborhood transformative efforts. Boston’s Quincy Corridor Transformation Plan, which received \$20.5 million, is a \$92 million effort to replace a blighted, scattered, 129-unit, HUD-assisted housing development with forty-nine new and eighty-nine renovated units.<sup>249</sup> Existing vacant and foreclosed properties will be redeveloped to provide new affordable housing, housing for elderly residents, and workforce housing.<sup>250</sup> The education portion of the plan, emphasizing early learning quality and accessibility, will be carried out in conjunction with “Boston’s Circle of Promise Initiative, a comprehensive community integration plan to transform public education.”<sup>251</sup> The Dudley Street Neighborhood Initiative, coordinator of the comprehensive community effort, has received a Promise Neighborhoods

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<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *See id.*

<sup>246</sup> *Choice Neighborhoods Project Summaries FY 2010/2011*, *supra* note 240, at 5.

<sup>247</sup> *Id.* Partners in these activities include the Workforce Investment Authority, the Early Childhood & Family Learning Foundation’s Outreach Program, the Recovery School District, the Afterschool Partnership, and the Boys and Girls Club. *Id.*

<sup>248</sup> *Id.* at 6.

<sup>249</sup> *Id.* at 1-2.

<sup>250</sup> *Id.* at 1.

<sup>251</sup> *Choice Neighborhoods Project Summaries FY 2010/2011*, *supra* note 240, at 2.

Planning Grant to help “connect housing and development resources to education and access to economic opportunity.”<sup>252</sup>

MBS and the San Francisco Housing Authority received \$30.5 million as seed money for the \$245 million Eastern Bayview/Alice Griffith Comprehensive Transformation Plan targeting the Alice Griffith public housing development and its surrounding neighborhood in southeastern San Francisco.<sup>253</sup> A total of 1126 units will be developed, including replacements for all 256 units of the two-story townhouses in Alice Griffith.<sup>254</sup> Job readiness, training, and placement programs will be offered to Alice Griffith residents.<sup>255</sup> Health care access will be improved through expansion of the Southeast Health Center and the development of a senior center and aging campus.<sup>256</sup> Educational programs, including principal leadership, teacher effectiveness, data-driven instructional improvements, and wrap-around services provided by family support nonprofits will be added, as well as an early learning center on the Alice Griffith site.<sup>257</sup>

Chicago’s \$30.5 million grant is to a partnership formed by the non-profit development company Preservation of Affordable Housing, Inc., with the City of Chicago, the Jane Adams Hull House, the University of Chicago, LISC Chicago, and others to redevelop Grove Parc Plaza, a blighted 504-unit, project-based Section 8 development and the surrounding Woodlawn neighborhood on the city’s south side.<sup>258</sup> The University of Chicago will open its Laboratory High School to neighboring residents and will extend the range of its security operations to the neighborhood.<sup>259</sup> The Chicago Police Department will carry out several major anti-gang initiatives previously shown to succeed in dramatically reducing violence in similar urban settings.<sup>260</sup> Hull House will coordinate social services and provide case management to residents of both Grove Parc and the surrounding neighborhood.<sup>261</sup> An education collaborative, the Woodlawn Children’s Promise Community, is assisting the Chicago School District and individual school

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<sup>252</sup> Press Release, U.S. Dep’t of Educ., U.S. Department of Education Awards Promise Neighborhoods Planning Grants (Sept. 21, 2010), *available at* <http://www.ed.gov/news/press-releases/us-department-education-awards-promise-neighborhoods-planning-grants>. The Promise Neighborhoods program is the Department of Education’s counterpart to HUD’s Choice Neighborhoods Initiative. The two programs are designed to complement each other and increase the interdisciplinary scope of community development programs. *See id.* *See generally* *Promise Neighborhoods: Purpose*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/programs/promiseneighborhoods/index.html> (last visited Mar. 1, 2012).

<sup>253</sup> *Choice Neighborhoods Project Summaries FY 2010/2011*, *supra* note 240, at 7.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* at 7-8.

<sup>258</sup> *Id.* at 3.

<sup>259</sup> *Choice Neighborhoods Project Summaries FY 2010/2011*, *supra* note 240, at 4.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

principals in providing teacher training and accountability programs, extending learning environments, and involving parents and family in the education of their children.<sup>262</sup>

The Housing Authority of the City of Seattle received \$10.27 million to support a fifteen-year, multi-million dollar plan for the transformation of the Yesler neighborhood.<sup>263</sup> The Choice Neighborhoods grant will support the first phase—the demolition of forty public housing units at Yesler Terrace, a 561-unit public housing project, and construction of ninety-seven replacement units, as well as 141 new market rate and affordable housing units.<sup>264</sup> The overall plan calls for demolition of the entire Yesler Terrace project and the development of up to six thousand mixed-income units along with “retail, educational facilities, health clinics, urban agriculture, parks, new transportation infrastructure and other community amenities in the neighborhood.”<sup>265</sup> Other partners in the Yesler neighborhood plan include the City of Seattle, Seattle University, Seattle Public Schools, Historic Seattle, Neighborcare Health, Neighborhood House, the Workforce Development Council, the Seattle Department of Transportation, and Perry Rose Development, a Denver-based company that specializes in green urban infill development.<sup>266</sup>

#### B. *Model Cities by Another Name?*

At first glance, the Choice Neighborhoods Initiative resembles the Model Cities program of the 1960s. As part of President Lyndon Johnson’s War on Poverty, Congress initially created the Model Cities program as a demonstration of the possibilities of coordinated federal action to revitalize urban ghettos.<sup>267</sup> The Model Cities program ended the traditional practice of awarding a series of uncoordinated “categorical” grants to cities for various types of physical development and social services programs.<sup>268</sup> Instead, it

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<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at 9.

<sup>264</sup> *Id.*

<sup>265</sup> *Choice Neighborhoods Project Summaries FY 2010/2011*, *supra* note 240, at 9.

<sup>266</sup> Press Release, HUD No. 2011-08-31, Seattle Housing Authority Wins \$10.27 Million in HUD Choice Neighborhoods to Begin Transformation of Yesler Terrace (Aug. 31, 2011), *available at* <http://portal.hud.gov/hudportal/HUD?src=/states/washington/news/HUDNo.2011-08-31>.

<sup>267</sup> The original legislation was titled the Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, 80 Stat. 1255 (1966), but after the urban riots of 1967 and 1968, the program title was changed to Model Cities. John H. Strange, *Citizen Participation in Community Action and Model Cities Programs*, 32 PUB. ADMIN. REV. 655, 656 (1972) (explaining that the word, “Demonstration,” was said to have “unsavory connotations in the White House” (first internal quotation marks omitted)).

<sup>268</sup> Otto J. Hetzel & David E. Pinsky, *The Model Cities Program*, 22 VAND. L. REV. 727, 731 (1969).

provided federal funds to enable recipient cities to prepare local plans for targeted areas (“model neighborhood[s]”).<sup>269</sup> The recipient cities were tasked with developing “project proposals, including budget summaries, for such functional areas as housing, social services, education, health, manpower training and employment, transportation, recreation, and economic development.”<sup>270</sup> A total of 150 cities received one-year planning grants.<sup>271</sup>

Consistent with the philosophy of the War on Poverty, the Model Cities program required participating cities to include citizens and their representatives in the local planning process.<sup>272</sup> However, Congress gave local governments, rather than private, nonprofit community action agencies, ultimate responsibility for local programs.<sup>273</sup> “[P]articipation of the poor (or neighborhood residents) was to be limited rather than maximized, and governmental and business participation was to be guaranteed.”<sup>274</sup>

But cities were new to the idea of citizen participation and its corollary, advocacy planning, a “[t]erm coined by the American planner Paul Davidoff in 1965, meaning architectural design and planning for powerless, inarticulate inner-city groups, notably when resisting destructive schemes by planning authorities, government agencies, or similar bodies.”<sup>275</sup> In a concentrated period during the 1960s, the idea that nonprofessional residents of low-income neighborhoods could plan and run local neighborhood development and social services programs manifested itself in several settings: the citizen participation requirement in the federal Community Action Program (“CAP”) of the Kennedy-Johnson War on Poverty in 1964;<sup>276</sup> the advocacy planning movement of 1965;<sup>277</sup> the Model Cities program of 1966, which incorporated the advocacy planning movement but in a more limited fashion;<sup>278</sup> the advent of the Community Develop-

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<sup>269</sup> *Id.* at 732-33.

<sup>270</sup> HUD, THE MODEL CITIES PROGRAM 11 (1973).

<sup>271</sup> *Id.* at 7.

<sup>272</sup> *See id.* at 9.

<sup>273</sup> John H. Strange, *The Impact of Citizen Participation on Public Administration*, 32 PUB. ADMIN. REV. 457, 459 (1972).

<sup>274</sup> *Id.*

<sup>275</sup> JAMES STEVENS CURL, A DICTIONARY OF ARCHITECTURE AND LANDSCAPE ARCHITECTURE 9 (2d ed. 2006).

<sup>276</sup> Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 202, 78 Stat. 508, 516 (1964) (“The term ‘community action program’ means a program . . . (3) which is developed, conducted, and administered with the *maximum feasible participation* of residents of the areas and members of the groups served; and (4) which is conducted, administered, or coordinated by a public or private nonprofit agency (other than a political party), or combination thereof.” (emphasis added)), *repealed by* Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 683(a), 95 Stat. 357, 519 (1981) (codified at 42 U.S.C. § 2701 (2006)). For a critical assessment of the CAP program, see DANIEL P. MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING: COMMUNITY ACTION IN THE WAR ON POVERTY 128-64 (1969).

<sup>277</sup> CURL, *supra* note 275, at 9.

<sup>278</sup> *See* 42 U.S.C. §§ 3303(a)(2), 3304(b) (1970) (originally enacted as Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, §§ 103-04, 80 Stat. 1255, 1256-57 (1966))

ment Corporation in 1967 with the Bedford Stuyvesant Restoration Corporation of New York;<sup>279</sup> and the tenant management movement which originated in the public housing rent strikes of 1969.<sup>280</sup>

The early days of the citizen participation and advocacy planning movements often were chaotic. For example, the author's first client in private practice was the newly created St. Louis Model City Agency. The city designated as its Model Neighborhood Area a large swath of the near-north side containing five neighborhoods: Carr Square Village, Montgomery-Hyde Park, Murphy Blair, Pruitt-Igoe, and Yeatman.<sup>281</sup> Two of the neighborhoods—Carr Square and Pruitt-Igoe—contained public housing developments, and the other three contained subsidized housing developments.<sup>282</sup> The city was to use the Model Cities funds to prepare a comprehensive plan for the Model Neighborhood Area.<sup>283</sup>

This author, along with neighborhood residents, participated in a week-end charette organized by a young architect<sup>284</sup> to give residents an opportunity to express their views on what should be the Model City plan priorities.<sup>285</sup> By Sunday afternoon, the residents and their advisors had prepared a plan addressing the neighborhoods' child care, employment, health care, housing, and social-services needs.<sup>286</sup> But when local and federal offi-

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(omitted 1975) (including grants available to programs "of sufficient magnitude . . . to provide . . . widespread citizen participation" and planning grants "only if . . . the application for such assistance has been approved by the local governing body of the city").

<sup>279</sup> The Bedford-Stuyvesant Restoration Corporation was created after residents of the Brooklyn neighborhood challenged then-senator Robert Kennedy, who was on a walking tour of the neighborhood, "to support their vision of grassroots development." David Holtzman, *The Emergence of the CDC Network*, 144 NHI SHELTERFORCE ONLINE (Nov./Dec. 2005), <http://www.nhi.org/online/issues/144/cdcnetworks.html>. Kennedy assisted neighborhood leaders in organizing the corporation "as a means of reinventing the local economy and renewing hope." *Id.* The corporation celebrated its 40th anniversary in 2007 with an oral history project. Sady, *Coming Up in Bed Stuy*, BROOK. HIST. SOC'Y BLOG (July 29, 2009), <http://brooklynhistory.org/blog/2009/07/29/bedford-stuyvesant-restoration/>.

<sup>280</sup> See *supra* notes 39-58 and accompanying text.

<sup>281</sup> Saint Louis Model City Agency, Model City Land Use Plan 3 (1972) (on file at the Missouri History Museum, St. Louis, Mo.).

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> "The Charette Procedure is a group idea generating and prioritizing tool. Its strength is its ability to address several issues at once in a highly interactive group setting." *Tips for Charette Procedure*, IOWA ST. U. EXTENSION, <http://www.extension.iastate.edu/communities/tools/decisions/charette.html> (last updated Mar. 1, 2001).

<sup>285</sup> Peter W. Salsich, Jr., *Grassroots Consensus Building and Collaborative Planning*, 3 WASH. U. J.L. & POL'Y 709, 713 n.18 (2000); see also Strange, *supra* note 267, at 656 (arguing that participation by residents of low-income neighborhoods was limited by the fact that "ultimate responsibility for the development of programs and, more importantly, the expenditure of significantly large amounts of money, [was] in the hands of local elected officials" and noting that "[p]articipants . . . were also to be businessmen and public officials, each equally represented").

<sup>286</sup> Cf. Salsich, *supra* note 285, at 713 n.18 ("Residents participated enthusiastically in the charette.").

cials analyzed the residents' plan, they determined that the implementation price tag was well beyond the expected allocation of funds for the St. Louis program.<sup>287</sup> The plan would have to be cut back severely. The residents were extremely disappointed, leading this author to question whether unrealistic expectations and insufficient resources would cause the Model Cities program to founder.<sup>288</sup>

The Model Cities program was absorbed by the Community Development Block Grant ("CDBG") in 1974, after only eight years of existence.<sup>289</sup> But the idea of citizen participation endured, although the CDBG citizen participation requirements "only allow one-way communication of information to the public; any response of approval or disapproval by the community need not impact the final outcome."<sup>290</sup> In the decades since the War on Poverty and the Model Cities program, citizens and local officials became used to the idea that a forum would be made available for citizens to communicate ideas about, and respond to, local development initiatives.

The Choice Neighborhoods Initiative, while it resembles the Model Cities program, differs from it in several important ways. It is a competitive grant program at both the planning and implementation phases. Model Cities was a competitive planning grant program, but implementation funds had to be cobbled together from categorical grant programs.<sup>291</sup>

In the first year of Choice Neighborhoods awards, seventeen successful applicants received planning grants ranging from \$167,000 (Jackson, Tennessee, Housing Authority) to \$250,000 (awarded to thirteen of the seventeen grantees), and five other grantees received implementation awards of \$10 (Seattle), \$20 (Boston), and \$30 million (Chicago, New Orleans, and San Francisco).<sup>292</sup> While local housing authorities received the bulk of the planning grants (thirteen of seventeen grantees were local housing authorities), grants also went to the Community Action Project of Tulsa, Inc., Jubilee Baltimore, Inc., Mt. Vernon Manor, Inc., in Philadelphia, and the Northwest Louisiana Council of Governments.<sup>293</sup> In announcing the grants, HUD stated that it was "focused on directing resources to address three core

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<sup>287</sup> *Id.*

<sup>288</sup> *Cf. id.* (finding program design and lack of experience resulted in the Model Cities program foundering on unrealistic expectations and insufficient resources).

<sup>289</sup> See Housing and Community Development Act of 1974, Pub. L. No. 93-383, §§ 101, 116(a), 88 Stat. 633, 633-35, 652 (codified as amended at 42 U.S.C. §§ 5301, 5316 (2006)); Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 BROOK. L. REV. 861, 880 (2000).

<sup>290</sup> McFarlane, *supra* note 289, at 881 n.77.

<sup>291</sup> HUD, *supra* note 270, at 6-7.

<sup>292</sup> See Press Release, *supra* note 231; Press Release, *supra* note 230; *Choice Neighborhood Planning Grantees*, HUD.GOV, [http://portal.hud.gov/hudportal/documents/huddoc?id=choiceawards\\_grantees.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=choiceawards_grantees.pdf) (last visited Feb. 22, 2012).

<sup>293</sup> *Choice Neighborhood Planning Grantees*, *supra* note 292.

goals—housing, people and neighborhoods.”<sup>294</sup> The funds are to be used to build capacity “to undertake a successful neighborhood transformation” and to “enable [grantees to] create a comprehensive ‘Transformation Plan,’ or road map, to transforming distressed public and/or assisted housing within a distressed community.”<sup>295</sup> In addition to housing, grantees were said to be committed to “leveraging investments to create high-quality public schools, outstanding education and early learning programs, public assets, public transportation, and improved access to jobs and well-functioning services.”<sup>296</sup> The recipients of the first group of Implementation Grants “have already undertaken the comprehensive local planning process”<sup>297</sup> and have established partnerships to which they have committed millions of dollars.<sup>298</sup>

The Choice Neighborhoods Initiative is designed to build on the strengths—mixed-income, mixed-use development, private investment—and the weaknesses—displacement and inability to affect surrounding neighborhoods—of HOPE VI, a program that has been in existence for almost twenty years.<sup>299</sup> The Model Cities program, by contrast, was part of the groundswell of the mid-1960s Great Society.<sup>300</sup> As one of the first serious efforts to coordinate federal urban revitalization programs, it had very little experience from which to draw ideas and approaches.

As the author’s St. Louis experience suggests, Model Cities in many ways was starting from scratch. Citizen participation still was a new idea—the CAP was only two years old and quite controversial. For example, prior to the author’s brief stint in private practice and his experience with Model Cities, he worked for the Missouri state agency responsible for implementing the CAP in Missouri. His territory was the five-county “boot heel” of the state. When he returned to his office in Jefferson City, Missouri, the day after his first meeting—an organizational meeting of a not-for-profit community action agency that began at 6 o’clock p.m. and lasted until after 2 o’clock a.m.—he was called to the Governor’s office to explain what he was doing in the boot heel. The Governor, the late Warren Hearnes, a native of that part of the state, told the author that some of his friends had called inquiring about the reason for the meeting. They expressed particular con-

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<sup>294</sup> Press Release, *supra* note 230.

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> Boston, over \$43 million; Chicago, \$125 million; New Orleans, \$1.15 billion; San Francisco, \$245 million; Seattle, \$64 million. *Choice Neighborhoods Project Summaries FY 2010/2011*, *supra* note 240, at 1-10.

<sup>299</sup> See POPKIN ET AL., *supra* note 118, at 1; Press Release, *supra* note 230.

<sup>300</sup> See McFarlane, *supra* note 289, at 871, 874 (stating the 1960s Great Society was also known as the War on Poverty, and “[t]he urban development component of the War on Poverty was the Model Cities program”).

cern that state and federal officials had organized the meeting without input from local public officials.<sup>301</sup>

Citizen participation in the 1960s was a new idea. Neighborhood advocates and citizen organizers had little in the way of national advocates and back-up research support in those days.<sup>302</sup> Local public officials were suspicious of advocacy planners and their citizen clients. They in turn were suspicious of local public officials.<sup>303</sup> Today, citizen participation is an accepted part of federal, state, and local relationships, although sometimes honored in the breach.<sup>304</sup> A host of national advocates and research centers, such as the National Law Center on Homelessness and Poverty, the NLIHC, the Enterprise Foundation, the Local Initiatives Support Corporation, and others, provide national advocacy and research support for local planning and citizen participation efforts.<sup>305</sup>

The Choice Neighborhoods Initiative has the makings of a successful program if it can survive the vicissitudes of Washington political and legislative life. The HOPE VI/Choice Neighborhoods appropriation for

<sup>301</sup> One of the most controversial parts of the CAP program was the organization of not-for-profit corporations independent of traditional local governments that became recipients of millions of dollars in Federal “anti-poverty” funds. *See generally* MOYNIHAN, *supra* note 276, at 128-66 (detailing the growth and operations of these not-for-profits and identifying the numerous controversies surrounding them).

<sup>302</sup> Federally funded legal backup centers such as the National Housing Law Project established in 1968, *About NHLP*, NAT’L HOUSING L. CENTER, <http://www.nhlp.org/aboutnhlp> (last visited Mar. 1, 2012), were in their infancy or merely on the drawing boards during Model Cities days. *See* Strange, *supra* note 267, at 657-58 (suggesting community organizations did not have adequate support or funding at the start of the Model Cities program).

<sup>303</sup> For example, Daniel Moynihan wrote the following about Mayor Richard J. Daley of Chicago: Mayor Daley wanted the poor to be employed *by* the program. *He* wanted to make the decisions about it. From the point of view of the tradition of working class politics, his position was impeccable. From the point of view of the middle class liberals who devised and . . . ran the antipoverty program, it was sinister, evil, hateful.

MOYNIHAN, *supra* note 276, at 145.

<sup>304</sup> Marie Kennedy, *Transformative Community Planning: Empowerment Through Community Development* (1996) (1996 Planners Network Conference, Working Paper), <http://www.plannersnetwork.org/publications/combased.htm>.

[A]dvocacy planning made great strides in institutionalizing the notion of community participation in planning, at least planning in the public sphere. Today, nearly everyone in the US takes this for granted and in most publicly supported planning, at least lip service is paid to citizen participation in the planning process. But, this wasn’t always true, and it was something that had to be won. Although participation can be used in a negative way—as a smokescreen to obscure real power relations and agendas, the fact that we have a right to that citizen participation provides an important opening for struggle.

*Id.*

<sup>305</sup> *About the Law Center*, NAT’L L. CENTER ON HOMELESSNESS & POVERTY, [http://www.nlchp.org/about\\_us.cfm](http://www.nlchp.org/about_us.cfm) (last visited Mar. 1, 2012); *About Us*, ENTERPRISE COMMUNITY PARTNERS, <http://www.enterprisecommunity.org/about/> (last visited Mar. 1, 2012) (formerly the Enterprise Foundation); *About Us*, LOC. INITIATIVES SUPPORT CORP., <http://www.lisc.org/section/aboutus> (last visited Mar. 1, 2012); *History*, NAT’L LOW INCOME HOUSING COALITION, <http://www.nlihc.org/template/page.cfm?id=174> (last visited Mar. 1, 2012).



fiscal year 2011 was cut in half, and a House Appropriations Subcommittee eliminated the Obama Administration's \$250 million request for Choice Neighborhoods for FY 2012.<sup>306</sup> Congress subsequently approved \$120 million.<sup>307</sup>

Choice Neighborhoods incorporates insights gained from HOPE VI. Development teams receiving implementation grants plan to stress "[i]nteraction and connectivity" throughout the targeted neighborhoods.<sup>308</sup> Collaboration among developers of physical space and providers of neighborhood social services is a hallmark of both planning and implementation grant recipients, whose interdisciplinary teams anticipate being able to achieve leverage ratios of approximately 9 to 1 "[b]y tapping a variety of funding sources both public and private."<sup>309</sup> The Choice Neighborhoods Initiative is starting slowly, which is both good and bad. It is good because ideas and approaches can be tailored to unique aspects of target communities and can be tested and evaluated before "going national"; but it is bad because the need for transformative activity across the country is so great and the resources to support such activity are so thin at the present time.

The keys to its success are likely to be its ability to garner greater public support while avoiding the urban renewal legacy of displacement and gentrification which has hurt the HOPE VI program.<sup>310</sup> Can the Choice Neighborhoods Initiative truly transform distressed communities without replacing the people who live in them? Planning and implementation grant recipients will attempt to do just that. For example, Chicago's 504-unit Grove Parc Plaza will be demolished and replaced with approximately 510 Section 8 units, 210 on the Grove Parc site and 300 in the neighborhood surrounding Grove Parc, as well as approximately 460 non-Section 8 units, some on the Grove Parc site and the rest in the neighborhood.<sup>311</sup> If Chicago and the other grant recipients succeed, the answer will be yes, and the pro-

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<sup>306</sup> See *supra* notes 232-33 and accompanying text.

<sup>307</sup> See *supra* note 233; see also Press Release, Nat'l Low Income Hous. Coal., Congress Poised to Pass HUD Budget that Could Strand Low Income Families (Nov. 17, 2011), available at [http://www.nlihc.org/detail/article.cfm?article\\_id=8305&tid=48](http://www.nlihc.org/detail/article.cfm?article_id=8305&tid=48); Press Release, Nat'l Low Income Hous. Coal., House T-HUD Appropriations Draft Comes Up Short for Public Housing (Sept. 8, 2011), available at [http://www.nlihc.org/detail/article.cfm?article\\_id=8127&tid=48](http://www.nlihc.org/detail/article.cfm?article_id=8127&tid=48).

<sup>308</sup> *Choice Neighborhoods: HUD's New Urban Remedy Takes Shape*, NEW URB. NEWS, Oct.-Nov. 2011, at 1, 14 (internal quotation marks omitted).

<sup>309</sup> *Id.* at 3 (explaining how one project's "\$30.5 million Choice Neighborhoods grant is estimated to produce total direct investment of \$272 million").

<sup>310</sup> See *supra* notes 127-33 and accompanying text.

<sup>311</sup> Press Release, Pres. of Affordable Hous., Inc., First-Ever Choice Neighborhoods Initiative Grant Awarded to Woodlawn \$30.5 Million to POAH Will Yield \$270 Million in Investments (Aug. 31, 2011), available at <http://www.poah.org/pdf/WoodlawnRibbonCuttingRelease.pdf>; *Grove Parc—Woodlawn, PRESERVATION AFFORDABLE HOUSING*, <http://www.poah.org/portfolio/illinois/illinois-all.htm> (last visited Mar. 1, 2012) (follow "Grove Parc-Woodlawn").

gram will deserve the transformative label. If the answer is no, the Choice Neighborhoods Initiative is simply Model Cities by another name.

#### IV. DOES PUBLIC HOUSING HAVE A FUTURE?

Three successive Administrations (two Democratic and one Republican) have sought to move the federal government away from ownership and management of housing, arguing that the private sector can better handle development and management responsibilities.<sup>312</sup> Congress has resisted efforts to give up on the public housing model while acknowledging, with its legislative authorization of the HOPE VI program,<sup>313</sup> that the model as originally implemented in urban high-rise developments fostered isolation rather than integration and helped trigger serious declines in the quality of urban life.

But often lost in the debate about the future of public housing is the fact that the high-rise ghettos at the center of public housing controversies represent less than 10 percent of the total public housing units in existence.<sup>314</sup> More than 90 percent of the 1.4 million units were providing “an important rental housing resource” in cities, towns, and villages throughout the nation when the National Commission on Severely Distressed Public Housing reported on their status in 1992.<sup>315</sup> Since that time, units have aged, and repair and maintenance concerns naturally have increased. In an age of extraordinary budget deficits, prudence dictates that efforts be made to find ways to reduce public expenditures while preserving as much of the public housing inventory as possible.

Advocates for low-income families are well-advised to closely monitor HUD’s PETRA/RHRA/RAD strategy. Leveraging private investments to raise funds for badly needed public housing repairs and renovations makes sense, particularly in the current period of stringent budgets. But the recent collapse of the private housing market and the resulting foreclosure crisis raise the specter of a similar calamity were public housing to become privatized, something that HUD Secretary Shawn Donovan stresses is not part of the current strategy.<sup>316</sup>

Public housing has remained a fixture of American life because a small but substantial, and growing, segment of society lacks the resources to compete for housing in the private market. The severity of the current

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<sup>312</sup> See *supra* Part II.

<sup>313</sup> See Kleit & Page, *supra* note 77, at 36-37 (discussing multiple congressional acts in the 1990s aimed at reforming the HOPE VI program by placing greater obligations on PHAs, while giving them more discretion over projects).

<sup>314</sup> See Salsich, *supra* note 25, at 462 n.10.

<sup>315</sup> See NAT’L COMM’N ON SEVERELY DISTRESSED PUB. HOUS., *supra* note 28, at 2.

<sup>316</sup> See Editorial, *supra* note 132, at A12 (explaining Secretary Donovan’s commitment to at least “[t]wo HUD programs” that “bring federal support to projects of high ambition”).

situation is illustrated by the Census Bureau's 2010 data on income and poverty showing that 15 percent of the total population (over 46 million people) had incomes below the poverty line (approximately \$22,000 for a family of four) in 2010.<sup>317</sup> While current housing voucher programs can offer an effective way for low-income families to obtain housing through the private market, these voucher programs are woefully underfunded and have their own ghetto-creating propensities because of the longstanding reluctance of residents and landlords in more stable neighborhoods to welcome voucher holders.<sup>318</sup>

A Department of Justice ("DOJ") lawsuit against the City of Joliet, Illinois, illustrates a fundamental weakness in the voucher programs. The DOJ sued the City on August 4, 2011, to block an eminent domain action by the City against the owners of Evergreen Terrace, an eight-building apartment complex with 356 units subsidized since 1982 through the Section 8 project-based program.<sup>319</sup> The development is located across the Des Plaines River from the downtown area of the City.<sup>320</sup> Over 95 percent of its residents are African-American.<sup>321</sup> In the late 1980s, the City developed a revitalization plan for the downtown and riverfront calling for mixed-income housing to replace Evergreen Park.<sup>322</sup> Since that time, according to the complaint, Joliet officials have continued to express "opposition and hostility" to the development and tried to block restructuring of the twenty-year Section 8 Housing Assistance Payment contract into new thirty-year affordable housing regulatory and use agreements in return for multimillion-dollar direct loans from HUD to enable substantial rehabilitation of Evergreen Terrace units under the Mark-to-Market ("M2M") Program.<sup>323</sup>

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<sup>317</sup> NEERA TANDEN ET AL., CENSUS DATA UNDERScore THE URGENCY OF ENACTING JOB-CREATION MEASURES 5 (2011), available at [http://www.americanprogress.org/issues/2011/09/pdf/census\\_memo.pdf](http://www.americanprogress.org/issues/2011/09/pdf/census_memo.pdf) (discussing U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010, at 14 (2011)). A significant increase in suburban poverty also was reported. Sabrina Tavernise, *Outside Cleveland, Snapshots of Poverty's Surge in the Suburbs*, N.Y. TIMES, Oct. 25, 2011, at A1.

<sup>318</sup> See Marc Seitles, Comment, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89, 118-19 (1998) (describing "reluctant landlords, who do not want to participate in the program, and the limited quantity of affordable housing" as two forces that undermine the effectiveness of Section Eight voucher programs); see *supra* Part I.B for background on housing vouchers.

<sup>319</sup> Complaint at 1, 6, *United States v. City of Joliet*, No. 1:11-cv-05305 (N.D. Ill. Aug. 4, 2011).

<sup>320</sup> *Id.* at 13.

<sup>321</sup> *Id.*

<sup>322</sup> CITY OF JOLIET, JOLIET CITY CENTER DEVELOPMENT PLAN 20 (1990), available at <http://www.cityofjoliet.info/documents/CityCenterDevelopmentPlan1990.pdf>; *Update from the Field: At Request of City and Congressman, HUD Sec'y Blocking Preservation Deal*, MEMO TO MEMBERS (Nat'l Low Income Hous. Coal., D.C.), Sept. 26, 2003, at 7.

<sup>323</sup> Complaint, *supra* note 319, at 4-12. The M2M Program was established by the Multifamily Assisted Housing Reform and Affordability Act of 1997, Pub. L. No. 105-65, § 501, 111 Stat. 1384-85, 1395 (1997) (codified as amended at 42 U.S.C. § 1437f note (2006)).

When the M2M refinancing was approved, the City Council passed a resolution declaring the apartment complex “a public nuisance and a blighted area.”<sup>324</sup> Shortly after the refinancing agreement was signed, the City filed suit to condemn the property.<sup>325</sup>

The City’s lawsuit prompted a resident of Evergreen Terrace to file a housing discrimination complaint with HUD alleging that the City’s eminent domain action constituted racial discrimination in violation of the Fair Housing Act.<sup>326</sup> HUD transferred the complaint to the DOJ, which subsequently filed a complaint seeking monetary damages and an injunction blocking the condemnation proceeding “unless [the City] develops and implements a plan providing for sufficient adequate and affordable housing” for anyone displaced from Evergreen Terrace.<sup>327</sup>

While Evergreen Terrace is a privately owned development, the Joliet controversy is relevant to the future of public housing. The fact that the Section 8 subsidy is tied to the particular units making up Evergreen Terrace creates an operational structure that resembles public housing in that all units are concentrated in one place, rather than scattered throughout the community as Housing Choice vouchers are designed to be. The DOJ’s complaint alleges that, rather than continue Evergreen Terrace as a privately owned, federally subsidized development offering affordable housing to public housing-eligible, low-income families and individuals in a concentrated area, the City consistently has argued that Evergreen Terrace should be closed down and that Section 8 Housing Choice vouchers, along with a smattering of public housing units and homeownership opportunities, should be offered to the 764 residents of Evergreen Terrace’s 356 units.<sup>328</sup>

But locating private landlords willing to accept prospective tenants holding such vouchers has been a consistent problem. For example, in 2003 the Housing Authority of Joliet “sent out over 1,000 letters to Joliet landlords seeking Section 8 rentals for 88 families. After five months, the Housing Authority was only able to place half of those families.”<sup>329</sup> That same year, the Illinois Housing Development Authority (“IHDA”), acting as Evergreen’s Participating Administrative Entity (“PAE”)<sup>330</sup> for the M2M refinancing program, prepared a Rental Assistance Assessment Plan (“RAAP”) to assess the impact of transferring Evergreen Terrace residents to alterna-

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<sup>324</sup> City of Joliet, Ill., Resolution No. 5655 (Aug. 30, 2005) (recorded with Will Cnty., Ill., Recorder of Deeds, No. R2005-149404).

<sup>325</sup> Complaint, *supra* note 319, at 11.

<sup>326</sup> *Id.* at 12-13.

<sup>327</sup> *Id.* at 15-16.

<sup>328</sup> *Id.* at 9.

<sup>329</sup> *Id.*

<sup>330</sup> PAEs are public agencies, nonprofits, and other organizations that have administrative capabilities and demonstrated experience with multifamily restructuring and financing. 42 U.S.C. § 1437f note (2006). PAEs prepare and implement, under contracts with HUD, mortgage restructuring and rental assistance sufficiency plans for federally-insured, multi-family housing developments. *Id.*

tive housing paid for by Section 8 housing vouchers.<sup>331</sup> Upon conducting the Evergreen RAAP, the IHDA concluded that displaced Evergreen Terrace families would be unable to find housing sufficiently close to the City of Joliet.<sup>332</sup> Two years later, a private consulting agency could only find five landlords with a total of thirty-nine units who were willing to accept tenants holding Section 8 Housing Choice vouchers, despite the fact that the consultant had ascertained that 790 vacant housing units were located within a fifteen-mile radius of Joliet.<sup>333</sup>

Public housing offers an alternative that in the vast majority of instances provides decent housing at affordable prices. It is a resource that should be strengthened, not sacrificed. Secretary Donovan asserts that PETRA/RHRA/RAD is designed to do just that with its emphasis on the leveraging possibilities of private sector financing.<sup>334</sup> But the NLIHC and other housing advocates fear that a loosely drawn bill, as some critics contended the first PETRA draft was,<sup>335</sup> could tempt a future presidential administration to use the private financing mechanism as an opening to fully privatize public housing and open a much larger segment of public housing residents to the displacement possibilities that plagued some HOPE VI developments.<sup>336</sup>

Perhaps the strongest criticism has come from a group of urban policy academics and researchers who, in written testimony before the House Committee on Financial Services in May 2011 claim that the Transformative Rental Assistance initiative (i.e., PETRA/RHRA) “is not meant to truly help poor households and individuals but a means of getting the federal government out of the low-income affordable housing business.”<sup>337</sup> The signers of the academics’ letter expressed concern over weaknesses they identified regarding mortgage regulation.<sup>338</sup> They determined the proposal lacked regulations such as caps on interest rates and prohibitions against securitization of PHA loans.<sup>339</sup> Furthermore, uncertainties remained over the

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<sup>331</sup> Complaint, *supra* note 319, at 5-6.

<sup>332</sup> *Id.* at 8.

<sup>333</sup> *Id.* at 10.

<sup>334</sup> *Hearing, supra* note 153, at 2-3 (statement of Shaun Donovan, HUD Sec’y).

<sup>335</sup> See Sheila Crowley, *PETRA Perspectives: National Low-Income Housing Coalition, SHELTERFORCE* (Summer 2010), [http://www.shelterforce.org/article/2017/petra\\_perspectives\\_national\\_low-income\\_housing\\_coalition/](http://www.shelterforce.org/article/2017/petra_perspectives_national_low-income_housing_coalition/) (“We are optimistic that PETRA can be improved and that NLIHC will be able to wholeheartedly endorse it. We are not there yet.”).

<sup>336</sup> See *Selling Off Public Housing: PETRA and the Neoliberal Agenda—Alarm, Debate and Confusion Over Obama Administration Public Housing Policy*, PROGRESSIVE PLAN., Fall 2010, at 8-10, available at [http://www.plannersnetwork.org/publications/2010\\_fall/petra.html](http://www.plannersnetwork.org/publications/2010_fall/petra.html) (criticizing the acceptance of risk created by private financing under PETRA and comparing the potential for displacement of public housing residents to the results of HOPE IV).

<sup>337</sup> *Hearing, supra* note 153, at 172 (letter from nineteen urban academic scholars).

<sup>338</sup> *Id.* at 175.

<sup>339</sup> *Id.*

extent of capital needs, the amount of private financing that could be leveraged, and the priorities regarding properties needing significant capital improvement.<sup>340</sup> Given that the quality of the property pledged as security is an important lender consideration, “[t]he properties with the greatest need are liable to be locked out or to borrow at a reduced volume.”<sup>341</sup>

One of the academics’ main concerns is the increasing instability of the private sector subsidy programs. They note that federally assisted housing programs, particularly the Section 8 project-based certificate program, have lost twice as many units, 360,000, to “private owners opt-out” as have been lost to public housing, 165,000, following removal of the one-for-one replacement rule by Congress in 1998,<sup>342</sup> with another 335,000 project-based units scheduled for renewal or opt-out in 2010.<sup>343</sup> The academics conclude from this comparison that “[w]hile PETRA introduces additional aspects to Section 8, the huge losses indicate the instability and risk to the long term affordability of privately owned and operated rental assistance.”<sup>344</sup>

The proposed RAD discussed above<sup>345</sup> illustrates that HUD has not given up on the privatization idea. All three privatization proposals, Re-inventing HUD, PHRI, and PETRA/RHRA, reflect an almost naïve belief that the private housing market will respond effectively to the housing needs of very-low-income households. But by Congress’ original definition, low-income families are families “who cannot afford to pay enough to cause private enterprise . . . to build an adequate supply of decent, safe, and sanitary dwellings.”<sup>346</sup> As Peter Marcuse and Dennis Keating argue in their 2006 work, *The Permanent Housing Crisis*, “the bottom rungs of the economic ladder in the United States have always been excluded from the benefits of adequate housing.”<sup>347</sup> The original public housing legislation was carefully crafted to exclude the destitute—the “Okie means you’re scum,” of *The Grapes of Wrath*<sup>348</sup>—in favor of the “worthy poor” who had fallen

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 173. The original one-for-one replacement rule was found in 42 U.S.C. § 1437p(b)(3) (1994), amended by Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, § 531(a), 112 Stat. 2461, 2570-73 (codified as amended at 42 U.S.C. § 1437p (2006)) (removing any reference to the one-for-one requirement).

<sup>343</sup> *Hearing, supra* note 153, at 173 (letter from nineteen urban academic scholars).

<sup>344</sup> *Id.*

<sup>345</sup> *See supra* Part II.C.2.b.

<sup>346</sup> 42 U.S.C. § 1402(2) (1958) (current version at 42 U.S.C. § 1437a(b)(2) (2006)).

<sup>347</sup> Peter Marcuse & W. Dennis Keating, *The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism*, in *A RIGHT TO HOUSING* 139, 157 (Rachel G. Bratt et al. eds., 2006).

<sup>348</sup> JOHN STEINBECK, *THE GRAPES OF WRATH* 206 (Penguin Books 2006) (1939).

on hard times temporarily as a result of the Great Depression.<sup>349</sup> The private real estate sector, immediately before and immediately after the Second World War, wanted nothing to do with people who could not afford its product and was willing to tolerate governmental involvement in housing so long as that housing did not compete with private housing development. As a result, the public housing product was a “no frills” apartment development “on the other side of the tracks,” which in urban America meant isolated and segregated high-rise towers.<sup>350</sup>

Public dissatisfaction with the public housing product produced the decades-long proliferation of housing subsidy programs, originally a blend of supply-side and demand-side approaches, but increasingly tilted toward the demand side with the emphasis on housing vouchers.<sup>351</sup> The acceptance of the percentage-of-income rental formula, brought about in large part by the public housing rent strikes, in the Section 8 program created a potentially successful approach to extremely-low- and very-low-income households. However, the drag on the federal budget of twenty- to forty-year commitments to make up the difference between what tenants were responsible for and what landlords could charge in the private market became so great that Congress repealed the Section 8 new construction program after only nine years.<sup>352</sup> While thousands of units were built in those nine years,<sup>353</sup> they did not come close to satisfying the demand.

Three fundamental problems have plagued the demand-side programs: private landlord reluctance to participate in rental subsidy programs, often intense local-government and neighboring resident opposition to the presence of voucher holders in their neighborhoods, and chronic underfunding of vouchers leading to unconscionably long, several-year waiting periods for those on waiting lists. These problems, coupled with the increasing desire of private landowners to leave the project-based certificate program when their long-term commitments expire, suggest that reliance on the private sector to take up the slack should public housing be privatized would lead to disappointment.

One often-cited measure of a democracy is how well it responds to the needs of its citizens.<sup>354</sup> In contemporary America, a significant number of

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<sup>349</sup> FRIEDMAN, *supra* note 15, at 109.

<sup>350</sup> *See id.* at 112-13, 120-23.

<sup>351</sup> *See* Charles J. Orlebeke, *The Evolution of Low-Income Housing Policy, 1949 to 1999*, 11 HOUSING POL'Y DEBATE 489, 491 (2000).

<sup>352</sup> Act of Nov. 30, 1983, Pub. L. No. 98-181, § 209, 97 Stat. 1153, 1183 (amending 42 U.S.C. §§ 1437f(a), (b)(2)).

<sup>353</sup> *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1986, at 724 tbl.1297 (106th ed. 1985).

<sup>354</sup> *See, e.g.,* Condoleezza Rice, Sec'y of State, Remarks at Georgetown University: Transformational Diplomacy (Jan. 18, 2006), available at <http://2001-2009.state.gov/secretary/rm/2006/59306.htm> (defining success in diplomacy as building and supporting “well-governed [democratic] states that will respond to the needs of their people”).

citizens (more than 44 million), for one reason or another—vestiges of segregation, disability, lack of education, chronic unemployment, ill health—are not able to compete effectively in the private market for decent housing that also is affordable.<sup>355</sup> Many of these households will find a way to get by, but others risk falling by the wayside. For example, in one pilot program to resettle homeless families living in a motel in Cambridge, Massachusetts, the Metropolitan Boston Housing Partnership found that only 19 percent of the families had income from wages, 32 percent had no rental history, 13 percent had been evicted from their apartments, 17 percent had a household member with a criminal record, and 10 percent did not have permanent legal residency (a disqualifying factor for the federal program to rapidly re-house homeless families, the Homelessness Prevention and Re-Housing Program).<sup>356</sup>

Expecting private landowners to take on all the housing needs of American society is not realistic, nor is it fair to them. Private landowners are private for a particular reason—they are free to choose to whom they wish to make their property available and for what price. Unless they are nonprofit organizations, they will be guided, at least in part, by the profit motive. Assuming no dishonesty, unless a prospective tenant or purchaser can pay their asking price, private owners have no obligation to do business with people who cannot afford their housing. In the absence of effective incentives that will persuade private developers and managers to provide housing for those who cannot afford private market prices, public housing has a vital future.

## CONCLUSION

For over seventy years, public housing has filled a valuable niche in the housing sector, one that should be preserved. The rent strikes of the 1960s and rise of the tenant management movement are reminders of how important public housing is to its residents. As Sheila Crowley points out, “[t]he importance of ‘home’ to the physical and mental health of human beings cannot be overstated.”<sup>357</sup> Cabrini-Green was a mess before it was torn down, but it was home to Annie Ricks and her children.<sup>358</sup>

Public housing certainly has had, and continues to have, serious problems. Much of it is obsolete. A huge backlog of unfunded capital improve-

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<sup>355</sup> See JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION'S HOUSING* 27 (2010) (reporting that over 18 million households containing 44.2 million Americans spent more than fifty percent of their income for housing in 2008).

<sup>356</sup> METRO. BOS. HOUS. P'SHIP, *RAPID RE-HOUSING OF MOTEL-SHELTERED FAMILIES: MBHP'S PRELIMINARY ASSESSMENT 2* (2010), available at [http://www.mbhp.org/MBHP\\_HPRP\\_Report\\_11-10.pdf](http://www.mbhp.org/MBHP_HPRP_Report_11-10.pdf).

<sup>357</sup> Crowley, *supra* note 127, at 230.

<sup>358</sup> Monroe, *supra* note 1.



ments exists. Secretary Donovan is right to emphasize the need to complete the modernization of management techniques begun by his predecessors,<sup>359</sup> but care should be taken to avoid increased micromanagement and excessive administrative burdens in the process.<sup>360</sup>

Richard Baron perhaps said it best over forty years ago when reflecting on the St. Louis public housing rent strike:

[R]edevlopment succeeds best when it proceeds in manageable increments and utilizes the resources of indigenous community groups. Every effort should be made to involve community organizations in the redevelopment process in a meaningful way. The distressed neighborhood is the context of its residents' social and economic problems and should be used as the staging area for attacking those problems. . . . Moreover, an objective of any successful program of long-term stabilization must be to create cohesive communities and to encourage residents to work together toward a stabilized and revitalized neighborhood. The most effective type of community redevelopment program will be the one which originates with the residents and derives its vitality from the intelligent use of their talents and leadership.<sup>361</sup>

The first implementation grants from the Choice Neighborhoods Initiative show evidence of the type of inclusive planning Mr. Baron called for in 1978.

Perhaps private sector participation can help resolve the funding problems. But any such participation should be structured in a way that prevents a repeat of the kind of mortgage-backed securities debacle that devastated the single-family housing market. PHAs should not be forced into public-private partnerships. Participation should be voluntary and only after full consultation with public housing resident leaders, as well as inclusion of provisions protecting residents from displacement in the event that PHAs or entities they created default on repayment obligations.

Public housing is a valuable community asset and should be recognized as such. As the National Commission on Severely Distressed Public Housing emphasized in its 1992 report, "approximately 94% of [all public housing] units . . . continue[] to provide an important rental housing resource for many low-income families and others."<sup>362</sup> What has been missing is full integration of public housing and their occupants into surrounding

<sup>359</sup> Regulations issued in 2005 require PHAs owning 250 or more public housing units to establish a project-based management ("PBM") system "tailored to the unique needs of each property, given the resources available to that property." 24 CFR §§ 990.255, 990.275 (2006).

<sup>360</sup> Meena S. Bavan & Shomon R. Shamsuddin, *The Transition to Asset Management in Public Housing*, 9 CITYSCAPE 185, 186, 191 (2007), available at <http://www.huduser.org/periodicals/cityscape/vol9num2/cityscapevol9num2.pdf> (describing the shift from a PHA-level of generality to an individual project-level of generality and expressing concern about the workload, micromanagement possibility and funding issues).

<sup>361</sup> Baron, *supra* note 39, at 640. The Choice Neighborhoods implementation grants for New Orleans and San Francisco went to public-private partnerships that include Mr. Baron's firm, McCormack, Baron Salazar, Inc. See *supra* notes 239-57 and accompanying text.

<sup>362</sup> NAT'L COMM'N ON SEVERELY DISTRESSED PUB. HOUS., *supra* note 28, at 2. The Commission's focus was on approximately 86,000 severely distressed urban, high-rise units. *Id.*

neighborhoods. Initiatives such as Choice Neighborhoods appear to have great potential for accomplishing that goal. But Choice Neighborhoods grantees must find a way to do so without involuntarily displacing current residents.