

Demanding the Best: How to Restructure the Section 8 Household-Based Rental Assistance Program

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[The Section 8 household-based subsidy program] is a big and very effective program. It has virtually no downside except that it costs money to authorize more vouchers. . . . We don't have any problem getting landlords to accept Section 8 vouchers anywhere because they are guaranteed to be paid by the federal government.

— Henry G. Cisneros, Secretary of the United States Department of Housing and Urban Development (HUD)¹

Why don't *you* try to find a decent apartment in this city using Section 8?

— Andrell Crowder-Jordan, President of the Techwood-Clark Howell Public Housing Resident Association, addressing Renee Lewis Glover, Executive Director of the Housing Authority of the City of Atlanta²

Henry Cisneros and others believe that the Section 8 household-based rental assistance program can alleviate the housing problems of poor families. Under this program, the federal government allocates funds to local Public Housing Agencies (PHAs)³ which in turn subsidize qualifying families through partial rent payments to their landlords. Families can choose their own apartments in the local housing market, provided that both the apartment quality and lease

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1. Henry G. Cisneros, *Break Up Pockets of Poor in Cities*, USA TODAY, June 15, 1993, at 13A.

2. Meeting of the Planning Committee for the Techwood-Clark Howell Public Housing Development, in Atlanta, Georgia (July 14, 1995) (attended by author) (discussing difficulties that face public housing residents who try to use Section 8 certificates in private market as they attempt to relocate from public housing complex facing demolition and mixed-income redevelopment).

3. Although PHAs generally operate locally, some have statewide jurisdiction. See 42 U.S.C. § 1437a(b)(6) (1995). Unless otherwise specified, the term PHA refers here to local agencies. See Philip D. Tegeler, *Housing Segregation and Local Discretion*, 3 J.L. & POL'Y 209, 216 n.29 (1994). Recently revised certificate and voucher regulations use the term Housing Agencies (HAs). 24 C.F.R. § 982.1(a) (1996).

meet federal standards. Many conservatives assert that this demand-side program is more efficient than supply-side housing policies⁴ such as public housing and project-based housing assistance, and liberals generally believe that the program helps reduce the geographic isolation of the urban poor, particularly minorities. With broad bipartisan support, the program has expanded dramatically since its inception in 1974 and now serves close to a million and a half households nationally.

Many low-income families, however, know that the Section 8 program⁵ is seriously flawed in many ways. For example, recipients often cannot locate desirable apartments because many local landlords simply refuse to rent to Section 8 families. After searching for three months for an apartment that she could rent with her subsidy, Saria Johnson explained: "The problem with looking in the paper is you find something, in a nice area. You know exactly where this house is. You know what it looks like. The rent is perfect, it's got everything you need, but they don't accept Section 8."⁶ Unfortunately, low landlord participation is only one of the many serious problems with the existing Section 8 program.

How should the federal government improve Section 8 policy in order to help the Johnsons and other poor families obtain decent housing? This Note provides a comprehensive analysis of the program within a principled framework for evaluating national low-income rental housing policy. It proposes important and controversial reforms to the program, and it demonstrates that current congressional reform proposals are seriously misguided.

Part I establishes an analytical guide to evaluate national low-income rental housing policy in light of the critical housing problems of urban America: staggering rent burdens for poor households and intense geographic concentration of impoverished minorities. Part II explains that a well-designed demand-side policy could effectively address these problems. In comparison to public housing and other supply-side programs, for example, an appropriate demand-side policy would be less expensive and more conducive to residential choice. Part III then describes the nation's primary demand-side housing program, household-based Section 8, as structured in February 1996.

Unfortunately, the current Section 8 program does not fulfill the potential of demand-side rental housing policy. Part IV explains that the Section 8 eligibility requirements do not appropriately target the most needy families. Also, by requiring families to find quality apartments quickly, the Section 8

4. Supply-side programs target funds to specific units in the public and private housing markets, in contrast to demand-side programs that provide money to recipients to find housing on their own.

5. For convenience, this Note uses the term "Section 8 program" to refer only to the demand-side, or household-based, Section 8 program. See *infra* note 35 (listing supply-side Section 8 programs).

6. *HUD Voucher System Debate Steams Forward as Cuts Loom* (NPR radio broadcast, Sept. 26, 1995) (transcript on file with the *Yale Law & Policy Review*).

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policy has disadvantaged many minorities and large families who are unable to locate apartments and thus lose their housing subsidies. Reforms should be enacted to target assistance more narrowly and to help all qualifying families actually find apartments.

Part V demonstrates that the Section 8 program has not succeeded in its goal of promoting residential choice. Many Section 8 enrollees encounter landlords who are unwilling to participate in the program, because of regulatory burdens imposed by the program, or because they intentionally discriminate against minorities or families with children. At the same time, the program does not adequately encourage PHAs to promote landlord participation or interjurisdictional mobility. As a result, Section 8 enrollees in many cities have difficulty finding landlords willing to rent to them. Often, subsidy recipients can only find housing within a “Section 8 submarket,” typically located in neighborhoods with high rates of poverty and high concentrations of minorities. To address these problems, the federal government should restructure the manner in which PHAs provide assistance and it should reduce undue regulatory burdens currently placed on landlords. It also should establish strict anti-discrimination provisions that prevent landlords from refusing to rent to individuals on the basis of their status as Section 8 recipients or because of the requirements of the Section 8 program.

Part VI argues that the Section 8 program fails to harness the power of choice in order to ensure that residents live in quality affordable housing. The program consists of two variants, the certificate and voucher programs, each of which employs different payment structures to determine government payments at various rent levels. Neither the certificate nor the voucher program, however, provides sufficient incentives for households to improve housing quality or economize on rent. This Note therefore proposes a new payment structure that does incorporate proper economic incentives.

Part VII explains that a well-designed Section 8 program would be a valuable social welfare program, significantly better than the alternative of simple cash transfers to the poor. It concludes by demonstrating that current Republican proposals are unsound because they would redirect assistance to higher income families, fail to promote residential choice, and establish inappropriate payment structures. Finally, the Appendix explores various arguments of this Note by analyzing demographic, housing market, and Section 8 patterns in and around New Haven, Connecticut.

Many of the flaws of the Section 8 program result from the inappropriate use of certain supply-side housing policies in a demand-side program. For example, thousands of local PHAs, originally established to build and operate public housing, now administer most household-based Section 8 subsidies. This highly localized administrative structure generally limits the ability of poor urban residents to move to higher-income suburban areas.

A second vestige of supply-side housing policy is the Section 8 program's extensive regulation of the landlord-tenant relationship through federal eviction standards and housing quality requirements. The eviction standards make the Section 8 program significantly less appealing to many private landlords, thus limiting the residential choice of subsidy recipients that want to move to better neighborhoods. Moreover, the federal housing quality standards have caused a significant number of poor households to lose their housing subsidies completely because they have been unable to locate adequate apartments within the two month period generally allotted to them.

The payment structure of the Section 8 certificate program is another inappropriate carryover from public housing policy. Like public housing residents, certificate recipients pay a fixed portion (now thirty percent) of their adjusted income for their housing. Unfortunately, this payment structure completely fails to motivate certificate recipients to search for better housing deals. Because of these and other defects with the program, household-based Section 8 is an ineffective policy for promoting housing affordability and residential choice among poor households.

I. EVALUATING FEDERAL LOW-INCOME RENTAL HOUSING POLICY

This Note evaluates the household-based Section 8 program against a benchmark of objectives for federal low-income rental housing policy. Establishing these objectives requires a preliminary examination of the two fundamental residential problems facing the urban poor: the lack of affordable housing and the limitations on residential choice.

A. *Housing Problems of the Urban Poor*

Many of the nation's poorest urban families spend the majority of their income on housing. In 1993, for example, more than 4.4 million households with incomes less than 50% of area median income lived in adequate and uncrowded housing but spent over half of their incomes on rent and utilities.⁷ The housing affordability crisis has resulted from a combination of lower incomes and higher rents. Between 1975 and 1991, renters' real household incomes fell by roughly 5% at the twenty-fifth percentile of the income

7. *Housing and Urban Development Oversight: Hearings before the Subcomm. for Veterans' Affairs, Housing and Urban Development and Independent Agencies of the Senate Comm. on Appropriations*, LEXIS FDCH Cong. Testimony, Jan. 26, 1995 (statement of Michael A. Stegman, Assist. Sec. for Pol. Devel. and Research, HUD) (citing the 1993 American Housing Survey (AHS)). Some observers contend that this affordability data is unreliable because poor households tend to understate their actual income. See, e.g., Robert C. Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 HARV. J.L. & PUB. POL'Y 28, 28-30 (1992). But see CONG. BUDGET OFFICE, THE CHALLENGES FACING FEDERAL RENTAL ASSISTANCE PROGRAMS 16-18 (1994) (explaining that AHS indicators may understate the actual share of income that poorest households pay for housing) [hereinafter CONG. BUDGET OFFICE].

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distribution.⁸ During the same period, real gross rents increased by over 20% at the twenty-fifth percentile of the rent distribution.⁹ Although some poor households do live in substandard housing, the more serious problem is affordability, not housing quality.¹⁰

Another troubling aspect of the nation's housing situation is the severe isolation of the poor, particularly the minority poor, in central cities. Between 1970 and 1990, for example, the number of poor people living in urban Census tracts with at least 20% poverty levels increased from 4.2 million to 6.5 million.¹¹ The overwhelming majority of those living in extreme poverty areas are black or Hispanic.¹²

The isolation of the inner-city minority poor has several causes. First, many middle-class families have left central cities because of such factors as urban crime, suburban job growth, and government homeownership subsidies.¹³ Second, poor minority households have concentrated in certain urban areas because of discrimination in public¹⁴ and private¹⁵ housing, suburban zoning laws¹⁶ and transportation constraints,¹⁷ in addition to other factors.¹⁸

8. CONG. BUDGET OFFICE, *supra* note 7, xiii.

9. *Id.* at 18 (stating that improvements in quality account for only about thirty-five percent of total rent increases). One cause of the rental increases is the loss of inexpensive rental units in the central cities. See William C. Apgar, Jr., *An Abundance of Housing for All but the Poor*, in HOUSING MARKETS AND RESIDENTIAL MOBILITY 53, 120-21 (G. Thomas Kingsley & Margery Austin Turner eds., 1993) (describing large losses of urban low-cost rental units over past two decades) [hereinafter HOUSING MARKETS].

10. See John C. Weicher, *Private Production: Has the Rising Tide Lifted All Boats?*, in HOUSING AMERICA'S POOR 45, 45-51 (Peter Salins ed., 1987) (detailing continuing improvements in housing quality and size for poor and minorities). *But see* William C. Apgar, Jr., *Recent Trends in Housing Quality and Affordability: A Reassessment*, in HOUSING ISSUES OF THE 1990S 37 (Sara Rosenberry & Chester Hartman eds., 1989) (concluding that "improvement in housing conditions has stalled in the period since 1974").

11. John D. Kasarda, *Inner-City Concentrated Poverty and Neighborhood Distress: 1970-1990*, 4 HOUS. POL'Y DEBATE 253, 265 (1993).

12. *Id.* at 263 (stating that in 1990, 80% of those in tracts with at least 40% poverty rates were black or Hispanic). Even after controlling for housing affordability, both blacks and Hispanics are disproportionately concentrated in the central city. Margery Austin Turner & Ron Wienk, *The Persistence of Segregation in Urban Areas: Contributing Causes*, in HOUSING MARKETS, *supra* note 9, at 193, 197 (stating that 41% of low-cost housing units in central city are occupied by blacks compared to only 13% of suburban housing units in same price range).

13. EDWIN S. MILLS & BRUCE W. HAMILTON, URBAN ECONOMICS 313-21 (1989). Compare WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987) (claiming that flight of black middle-class is important cause of concentration of black poor) with Douglas S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, 96 AM. J. SOC. 329 (1990) (asserting that racial segregation is better explanation for concentration of black poverty).

14. Michael H. Schill, *Distressed Public Housing: Where Do We Go From Here*, 60 U. CHI. L. REV. 497, 504-17 (1993) (describing historical patterns of discrimination in siting of public housing).

15. In a national study of paired testers, blacks and Hispanics experienced a 53% and 46% chance respectively of experiencing discrimination when investigating any single advertised apartment for rent. MARGERY AUSTIN TURNER ET AL., HOUSING DISCRIMINATION STUDY: SYNTHESIS 42 (1991).

16. ADVISORY COMM'N ON REGULATORY BARRIERS TO AFFORDABLE HOUSING, "NOT IN MY BACK YARD": REMOVING BARRIERS TO AFFORDABLE HOUSING, 2-1 to 2-14 (1991).

17. Keith R. Inlandfeldt & David L. Sjoquist, *The Impact of Job Decentralization on the Economic Welfare of Central City Blacks*, 26 J. URB. ECON. 110, 125 (1989).

The concentration of the poor in central cities creates a number of serious social problems. In poor urban areas, children often attend schools of low quality,¹⁹ and adults tend to lack access to employment opportunities, especially to suburban jobs in the service sector.²⁰ The resulting social dynamics exacerbate behavioral problems such as educational failure,²¹ detachment from the labor force,²² teen-age pregnancy,²³ substance abuse,²⁴ and violent crime.²⁵ In turn, these social problems increase the class bias, racism, and fear of the middle class toward the minority poor, thus accelerating middle class flight to exclusionary suburbs.

B. Analytical Framework

In light of the housing problems of the low-income poor, two major objectives must guide federal low-income rental housing policies. First, policies should help poor households lower their rent burden while living in housing of adequate quality. Second, policies should allow the voluntary movement of poor households out of high poverty areas.²⁶

18. See, e.g., John D. Kasarda, *Urban Change and Minority Opportunities*, in *THE NEW URBAN REALITY* 33, 61 (Paul Peterson ed., 1985) (stating that urban social service delivery perpetuates concentration of inner-city poor).

19. COMMITTEE FOR ECONOMIC DEVELOPMENT, *CHILDREN IN NEED: INVESTMENT STRATEGIES FOR THE EDUCATIONALLY DISADVANTAGED* 39-40 (1987) (stating that inner-city public schools lack resources and employ poor pedagogy).

20. Michael H. Schill, *Deconcentrating the Inner City Poor*, 67 *CHI. KENT L. REV.* 795, 800 (1991) (stating that the weight of evidence confirms that location of inner-city poor households, especially black households in urban North and Midwest, constrains their ability to escape from poverty). If poor families move from areas of concentrated poverty to higher income areas, their educational attainment and employment rates increase significantly. For example, the Gautreaux Assisted Housing Program in Chicago allocated demand-side subsidies to poor households who were assigned to urban areas or wealthier suburbs in a mostly random fashion. Significant educational and employment benefits accrued to those households moving to the suburbs. See *Gautreaux v. Landrieu*, 523 F. Supp. 665, 668-69 (N.D. Ill. 1981), *aff'd sub nom. Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982); James E. Rosenbaum et al., *Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low-Income Blacks?*, 71 *N.C. L. REV.* 1519, 1523 (1993) (describing study methodology); James E. Rosenbaum & Susan J. Popkin, *The Gautreaux Program: An Experiment in Racial and Economic Integration*, 1 *THE CENTER REPORT: CURRENT POLICY ISSUES* 2-3 (1990) (presenting data showing that suburban movers demonstrated significant employment and educational advantages over urban movers).

21. Jonathan Crane, *The Epidemic Theory of Ghettos and Neighborhood Effects on Dropping Out and Teenage Childbearing*, 96 *AM. J. SOC.* 1226 (1991).

22. Douglas S. Massey et al., *Segregation, the Concentration of Poverty, and the Life Chances of Individuals*, 20 *SOC. SCI. RES.* 397, 409-11 (1991).

23. D. P. Hogan & E. M. Kitagawa, *The Impact of Social Status, Family Structure and Neighborhood on the Fertility of Black Adolescents*, 90 *AM. J. SOC.* 825 (1985).

24. ANNE C. CASE & LAWRENCE F. KATZ, *THE COMPANY YOU KEEP: THE EFFECTS OF FAMILY AND NEIGHBORHOOD ON DISADVANTAGED YOUTHS* 19 (National Bureau of Economic Research Working Paper No. 3705, 1991).

25. *Id.*

26. An alternative second objective could be to force certain poor households to move to higher-income neighborhoods. Forced dispersion, however, would anger many poor people, and it would probably provoke even more resistance among receiving neighborhoods than have programs of voluntary dispersion. For a description of neighborhood reaction to a voluntary mobility policy, see Mariano, *infra*

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In addition to these two objectives of housing affordability and residential choice, several principles also must shape rental housing policies. First, sound rental housing policies should be cost-effective to implement. Second, they should promote horizontal equity, treating similarly-situated households equally. Third, they should promote vertical equity, or progressivity, by providing more assistance to poorer households than to households with higher income. Fourth, they should not stigmatize recipients of assistance. Fifth, rental housing policies should not create significant work disincentives through indirect taxes on earnings.

These principles are not an exhaustive list, but they do suggest the range of inquiry necessary for an effective evaluation of low-income rental housing policies. Obviously, many tensions exist among the stated objectives and principles. For example, a cost-effective program providing very small subsidies to each household would not promote residential choice, because poor households would remain unable to rent more expensive apartments in better neighborhoods. Similarly, a progressive policy that provides less assistance to people as their incomes increase will necessarily generate work disincentives. Because of several such inherent tensions, no rental housing program will be able to maximize all of the above goals.

Nonetheless, this Note demonstrates how federal rental housing policies for low-income families can best fulfill the major objectives of limiting rent burdens and promoting residential choice for the poor while satisfying the subsidiary principles to the greatest extent possible. In order to narrow the scope of inquiry, this Note concentrates on federal rental housing policy for low-income, able-bodied recipients in metropolitan areas.²⁷ Even with this narrowed mission, however, it covers a wide range of issues relating to the Section 8 program and proposes several important reforms.

II. POTENTIAL OF DEMAND-SIDE POLICIES

This Part presents a brief historical overview of the evolution of the Section 8 program, and it compares demand-side and supply-side housing policies generally. It concludes that a well-designed demand-side rental housing program would help reduce the nation's urban housing problems. In particular, such a policy would be more cost-effective and more conducive to residential choice than public housing and other supply-side programs.

A. *Overview of Federal Rental Housing Policy*

Federal policy addressing the problems of low-income households who rent

note 207 (describing suburban resistance to special Section 8 mobility program).

27. This Note therefore does not address home-ownership programs; state or local housing policies; housing for the elderly or disabled; or rural housing issues.

apartments historically has consisted of two strategies. First, the federal government has employed supply-side policies, such as public housing²⁸ and project-based assistance,²⁹ that directly increase the number of affordable housing units in the public and private markets. Beginning with the Housing Act of 1937,³⁰ which created public housing, national low-income rental policy was exclusively supply-side for several decades.³¹

The second and more recent federal approach has been the demand-side household-based Section 8 program, which provides funding assistance to households who choose among existing housing units in the private market. After the turbulent events of the late 1960s, many housing experts and policy makers began to advocate demand-side policies. By promoting residential choice, demand-side policies supposedly would help disperse the inner-city poor and induce housing quality improvements.³² At the urging of the Nixon Administration, Congress established the Experimental Housing Allowance Program (EHAP) in 1970.³³ In 1974, Congress added to the National Housing Act several new housing programs,³⁴ including household-based Section 8.³⁵

Household-based Section 8 assistance has become an increasingly important component of national housing policy.³⁶ In 1995, the program subsidized approximately 1.5 million housing units, compared to 1.4 million units in the conventional public housing program, and 1.8 million in other project-based

28. 42 U.S.C. § 1437 (1995). See Fred Fuchs, *Introduction to HUD Conventional Public Housing, Section 8 Existing Housing, Voucher, and Subsidized Housing Programs: Part I: Conventional Public Housing*, 25 CLEARINGHOUSE REV. 782 (1991) [hereinafter Fuchs I].

29. Project-based assistance attaches tenant rental subsidies to specific units built and managed by private actors. § 1437f (1995). See Fred Fuchs, *Introduction to HUD Conventional Public Housing, Section 8 Existing Housing, Voucher, and Subsidized Housing Programs: Part II: Section 8 Existing Housing, Voucher, and Subsidized Housing*, 25 CLEARINGHOUSE REV. 990 (1991) [hereinafter Fuchs II].

30. Pub. L. No. 75-412, 50 Stat. 888 (1937), codified as amended at 42 U.S.C. § 1437 (1995).

31. See Marc Bendick, Jr. & Raymond J. Struyk, *Origins of an Experimental Approach, in HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL EXPERIMENT 23-27* (Raymond J. Struyk & Marc Bendick, Jr. eds., 1981) (describing history of congressional consideration of demand-side proposals). In 1965, Congress established the Section 23 leasing program and the rent supplement program, both of which helped tenants rent privately-owned housing units. Under these programs, however, subsidized tenants generally could not choose their own apartments because the subsidies were tied to specific units. See *id.* at 26-27.

32. PRESIDENT'S COMMITTEE ON URBAN HOUSING, *A DECENT HOME: THE REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING 47-48* (1968) (known as the Kaiser Committee Report).

33. Pub. L. No. 91-609, § 504. 12 U.S.C. § 1701z-3 (1970). Policy makers used the results of the EHAP demand experiments to develop and refine the Section 8 household-based subsidy program. See Marc Bendick, Jr. & Anne D. Squire, *The Three Experiments, in HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL EXPERIMENT 51, 57-58* (Raymond J. Struyk & Marc Bendick, Jr. eds., 1981) (describing demand experiments).

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

35. 42 U.S.C. § 1437f (1995); 24 C.F.R. Part 982 (1996). Note that the Section 8 housing program also includes several supply-side programs including new construction, substantial and moderate rehabilitation, and project-based existing housing. 24 C.F.R. Parts 880, 881, 882, 983 (1996).

36. From 1977 to 1994, the proportion of all federally-assisted renters receiving household-based subsidies increased from 8% to 28%. GREEN BOOK, U.S. HOUSE OF REPRESENTATIVES COMM. ON WAYS AND MEANS, *OVERVIEW OF ENTITLEMENT PROGRAMS: 1994 GREEN BOOK 819* (1994).

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programs.³⁷

In fact, both the Clinton Administration and Congress have plans to increase the role that Section 8 subsidies will play in federal housing policy. Under the Administration plan, for example, HUD would roll all project-based assistance, including public housing, into one housing certificate program to assist low-income households in paying rent and obtaining mortgages. A complete nationwide transition to household-based aid would occur within six years.³⁸ Similarly, a Republican bill that has passed the Senate would provide residents of distressed public housing with demand-side subsidies to use anywhere in the private rental market.³⁹

B. *Advantages of Demand-Side Housing Programs*

If it were structured appropriately, a demand-side program like Section 8 would be better than supply-side housing strategies in several respects. A sound demand-side housing program would be a comparatively inexpensive⁴⁰ policy to provide poor families access to many moderately priced housing opportunities throughout metropolitan areas.⁴¹ Although the economic effects of a large demand-side program are complex, one thorough study has concluded that “at least at a qualitative level, a rent subsidy policy would on balance have positive efficiency and equity consequences. Program participants would be aided with little likelihood of severe, unintended housing market repercussions.”⁴² Meanwhile, supply-side policies, despite their name, are generally inefficient at increasing the supply of low-income housing.⁴³

37. Rochelle L. Stanfield, *Vouching for the Poor*, 27 NAT'L J. 1094, 1095 (1995).

38. *Departments of Veterans' Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1996: Hearings before the Subcomm. for Veterans' Affairs, Housing and Urban Development and Independent Agencies of the Senate Comm. on Appropriations*, 104th Cong., 1st Sess. 26 (May 2, 1995) (statement of Henry G. Cisneros, Sec., HUD) (describing Administration's proposal).

39. S. 1260, 104th Cong., 2nd Sess. § 120 (1996) (requiring conversion of distressed public housing to tenant-based assistance).

40. Schill, *supra* note 14, at 537-38 (concluding that virtually all empirical studies agree that certificates and vouchers are cheaper than supply-side programs); PRESIDENT'S COMM'N ON PRIVATIZATION, *PRIVATIZATION: TOWARD MORE EFFECTIVE GOVERNMENT* 11 (1988) (stating that 20-year cost of a public housing unit is more than twice the cost of providing certificates or vouchers); U.S. DEP'T OF HOUS. & URB. DEV., *WILL IT COST MORE TO REPLACE PUBLIC HOUSING WITH CERTIFICATES?* (Issue Brief No. 1, 1995) (stating that Section 8 portable certificates are cheaper than public housing even if capital and modernization expenses of public housing are not considered).

41. *See infra* note 116 and accompanying text.

42. JEROME ROTHENBERG ET AL., *THE MAZE OF URBAN HOUSING MARKETS: THEORY, EVIDENCE AND POLICY* 300-01 (1991). Because a demand-side program would reduce demand for very low quality housing, owners of such buildings might tend to abandon them. *Id.* at 296. To avoid this problem, a demand-side program could be supplemented by a carefully targeted supply-side program that provides upgrading subsidies for these buildings. *Id.* at 301.

43. Weicher, *supra* note 10, at 59 (“[S]ubsidized housing production is in large part a substitute for private production that would probably have occurred without the program. The two most detailed studies, by Michael Murray and Craig Swan, conclude that most public housing has simply replaced private new construction in the long run, although the substitution effect takes a few years.”); *see also*

Perhaps most important, a well-designed demand-side housing program would be a superior means of promoting residential choice for low-income and minority households. If a demand-side program provides sufficient rental subsidies and housing search assistance, then recipient households can choose among housing options in higher-income urban and suburban neighborhoods. In contrast, public housing and other supply-side policies generally limit recipients to subsidized buildings in poorer and less politically powerful neighborhoods.⁴⁴ Furthermore, unlike many recipients of supply-side subsidies, recipients of a truly mobile demand-side subsidy would not bear the social stigma of residing in housing complexes created for the poor.⁴⁵

A demand-side housing program, therefore, can be a mobility strategy⁴⁶ to promote racial and socioeconomic integration throughout metropolitan areas.⁴⁷ Of course, many poor residents with demand-side subsidies may still face obstacles to residential choice, including racial discrimination and the lack of public transportation in suburban areas. Nonetheless, providing mobile rental subsidies and housing search assistance to poor families could be an important step toward reversing the increasing residential segregation of the minority poor. Moreover, a demand-side housing policy and other mobility programs would complement remote employment and place-based policies⁴⁸ and help to

ROTHENBERG ET AL., *supra* note 42, at 309-33 (detailing inefficiencies of supply-side new construction and rehabilitation programs).

44. Although households with demand-side subsidies may not be welcomed in some exclusionary neighborhoods, these individual families probably generate less antipathy than do supply-side multi-family housing structures. See Mary A. Davis, *Gautreaux Assisted Housing Program 2* (May 20-21, 1991) (unpublished manuscript submitted to the Urban Institute for its Urban Opportunity Conference on Housing Markets and Residential Mobility, on file with the *Yale Law & Policy Review*) (stating that siting supply-side housing programs for the poor often proves difficult in suburban and middle-income neighborhoods because of political opposition); Schill, *supra* note 14, at 504-17 (describing patterns of discrimination in siting of public housing); see also John C. Weicher, *The Voucher/Production Debate*, in *BUILDING FOUNDATIONS: HOUSING AND FEDERAL POLICY* 263, 277 (Denise DiPasquale & Langley C. Keyes eds., 1990) ("Production programs are sometimes favored over existing housing programs because they circumvent the problem of discrimination and directly provide minorities with access to decent housing. Production programs can certainly achieve these objectives, but the record of Section 8 New Construction indicates that success is not automatic.").

45. Although some supply-side projects reduce the stigmatization problem by incorporating middle-class tenants, this strategy is quite costly and results in scarce subsidy dollars being given to the less poor. Barbara Sard, *The Massachusetts Experience with Targeted Tenant-Based Rental Assistance for the Homeless: Lessons on Housing Policy for Socially Disfavored Groups, Part II*, 1 *GEO. J. ON FIGHTING POVERTY* 216, 218 (1994) [hereinafter Sard II].

46. Other mobility programs include reducing exclusionary land use regulations to allow multi-family housing in suburban areas, providing better public transportation and day care services in higher-income suburban and urban neighborhoods, and strictly enforcing anti-discrimination laws.

47. Some assert that dispersionist housing programs are dangerous because they may diminish the political power and cultural bonds of minorities. See, e.g., John O. Calmore, *Fair Housing v. Fair Housing: The Problems with Providing Increased Housing Opportunities through Spatial Deconcentration*, 14 *CLEARINGHOUSE REV.* 7, 9-12 (1980). Housing mobility programs, however, provide real and dramatic benefits to assisted households and thus allow poor residents to decide for themselves the importance of larger political and cultural objectives.

48. Remote employment policies provide inner-city workers with access to jobs in higher-income urban or suburban areas. See, e.g., Mark A. Hughes, *Antipoverty Strategy Where the Rubber Meets the*

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reverse the economic decline associated with the urban concentration of poverty.⁴⁹

A sound demand-side housing program should lie at the center of the federal government's rental housing policy. Note several caveats, however. First, the success of a demand-side program depends on its design. For example, a poorly structured demand-side policy that does not ensure housing mobility would not help reduce the concentration of poverty. Indeed, if the policy neither encouraged mobility nor provided strong incentives for rent bargaining, it would cause inflation in low-income rental housing markets, thus harming those poor people not receiving rental subsidies.⁵⁰ Second, demand-side programs alone may be inadequate in housing markets that lack a sufficient supply of adequate housing for reasons such as local rent control or natural disaster. Third, the general advantages of demand-side policies do not justify a hasty termination of existing supply-side programs. In particular, a quick end to direct subsidization of public housing units could unnecessarily ruin certain housing projects not yet ready to compete on the market and could provoke rapid decline of urban neighborhoods.⁵¹ Nonetheless, a well-structured demand-side program is an important means to promote affordable housing and residential choice for low-income urban families.

III. OVERVIEW OF THE SECTION 8 HOUSEHOLD-BASED PROGRAM

Does the current Section 8 program achieve the potential benefits of demand-side housing strategies? To prepare the groundwork necessary to answer this question, this Part describes the administrative structure of Section 8 policy as it exists in February 1996. Section 8 policy actually consists of two

Road: Transporting Workers to Jobs, in HOUSING MARKETS, *supra* note 9, at 283, 296-307 (giving examples of successful reverse commute programs). Place-based policies provide resources to low-income areas for objectives such as education, crime prevention, health care, housing, and economic development.

49. Reducing the concentration of poverty through residential mobility should stimulate economic development and residential growth, enhance job opportunities for remaining households, and increase per capita tax revenue that could be used to fund community services. Schill, *supra* note 20, at 816-17; see also Edwin S. Mills, *Open Housing Laws as Stimulus to Central City Employment*, 17 J. URB. ECON. 184, 188 (1985) (presenting evidence that facilitating black suburbanization may increase employment and residential growth in central cities).

50. Well-designed demand-side subsidies cause recipients to move from low-quality to moderate-quality housing, thus decreasing the price of low-quality housing. ARTHUR O'SULLIVAN, URBAN ECONOMICS 447-49 (1993). However, if recipient households are not able to rent in neighborhoods with moderate-quality housing and if the subsidy is not structured to encourage recipient households to bargain down rents with their landlords, then low-quality housing prices would actually increase.

51. See *Restructuring the Federal Government: Hearings before the Subcomm. for Veterans Affairs, Housing and Urban Development and Independent Agencies of the Senate Comm. on Appropriations*, 104th Cong., 1st Sess. 1035 (Feb. 9, 1995) (statement of Gordon Cavanaugh on behalf of the Council of Large Public Housing Authorities) (describing HUD transition plan away from public housing as "poorly conceived and disastrous" because it would "jeopardize the housing plant and leave housing hulks to blight neighborhoods").

similar programs known as the certificate and voucher programs. Both programs allocate resources to PHAs, allowing them to assist certain poor households in renting apartments in the private market.⁵² PHAs establish selection and waitlist priorities according to federal and local regulations, as described below. Once a household qualifies for assistance, it generally has 60 days to find a landlord willing to accept the subsidy, or else it loses its opportunity and must move to the bottom of the PHA waiting list.⁵³ If an owner agrees to lease to a Section 8 enrollee, the PHA inspects the apartment for compliance with federal housing quality standards and reviews the lease to ensure that it meets federal standards.⁵⁴ If the apartment and lease are satisfactory, the PHA signs a Housing Assistance Payment contract with the owner,⁵⁵ in which the PHA agrees to pay the owner a fixed monthly amount according to formulae described below. The PHA subsequently conducts rent adjustments,⁵⁶ housing reinspections,⁵⁷ and income reexaminations.⁵⁸ HUD reimburses the PHA for the subsidy and administrative costs.⁵⁹

The original Section 8 program, still predominant today,⁶⁰ is known as the certificate program. Households with certificates generally may only lease apartments which have gross rents:⁶¹ 1) at or below the local Fair Market Rent (FMR) established by HUD;⁶² and 2) reasonable under local market conditions and not in excess of comparable unassisted units.⁶³ The PHA pays to the landlord a subsidy representing the difference between the contract rent and 30% of the household's monthly adjusted gross income.⁶⁴ The PHA also

52. Section 8 certificates are largely household-based, but the PHA may use up to fifteen percent of its certificate resources on project-based assistance. 42 U.S.C. § 1437f(d)(2)(A) (1995).

53. The PHA also has the discretion to extend the search term up to 60 additional days. 24 C.F.R. § 982.303(b)(1) (1996).

54. *Id.* at § 982.305.

55. *Id.* at § 982.451.

56. *Id.* at §§ 882.108 (certificate), 887.353(b) (voucher).

57. *Id.* at §§ 982.153(11), 982.405(a).

58. *Id.* at § 982.153(15).

59. *Id.* at § 982.151.

60. In 1995, the household-based certificate program assisted approximately 1,142,000 households, while the voucher program assisted about 324,500 households. Telephone interview with Billy Hall, staff member, HUD Rental Assistance Division (Feb. 16, 1996).

61. Gross rent is the contract rent plus scheduled amounts for utilities. 24 C.F.R. § 813.102 (1996).

62. The FMR represents the fortieth percentile of local rents of comparably sized units that have turned over in the last two years. It estimates an appropriate level of contract rent plus utilities, except telephone service, by evaluating the cost of local housing, excluding public housing units, newly built units and substandard units. 24 C.F.R. § 888.113 (1996). In certain situations, the PHA may approve rents higher than the FMR in order to expand housing choice. 24 C.F.R. § 882.106(a) (1996) (explaining when a PHA may approve exception rent levels at up to 120% of the FMR).

63. 24 C.F.R. §§ 882.106(b)(1) (1996).

64. 42 U.S.C. § 1437a(a)(1) (1995). Technically, the PHA pays to the landlord the difference between the rent and either 30% of monthly adjusted gross income or 10% of monthly gross income, whichever is greater. In almost all cases, however, 30% of monthly adjusted gross income is larger than 10% of monthly gross income. MIREILLE L. LEGER & STEPHEN D. KENNEDY, 1 FINAL COMPREHENSIVE REPORT OF THE FREESTANDING HOUSING VOUCHER DEMONSTRATION 15 n.1 (1990) (concluding that 30% adjusted income larger than 10% gross income for 99.4% of Demonstration's 7,605 certificate

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pays a utility allowance to either the landlord or subsidy recipient.⁶⁵

The voucher program⁶⁶ is similar to the certificate program in many respects, but it has a different payment structure.⁶⁷ The PHA establishes a voucher payment standard schedule based on unit size, roughly equivalent to the FMR.⁶⁸ The PHA normally pays to the owner the difference between the payment standard and 30% of the family's monthly adjusted income.⁶⁹ The PHA payment to the owner, however, may not be more than the amount by which the actual rent to the owner (plus an applicable utility allowance) exceeds 10% of the family's monthly gross income.⁷⁰ Unlike certificate holders, therefore, households with vouchers do not always pay 30% of their adjusted income for rent. If a unit rents for less than the payment standard, a household with a voucher benefits by paying less than 30% of its adjusted income for rent, subject to the minimum rent computation. On the other hand, if a unit rents for more than the payment standard, a household with a voucher may rent the unit by paying more than 30% of its adjusted income for rent.

Eligibility for the certificate and voucher programs is generally limited to "very low-income" families whose annual income does not exceed 50% of the median income for the area, adjusted for family size. Certain exceptions exist for certain "low-income" families, with annual incomes less than 80% of adjusted median income, who have been displaced from other housing programs.⁷¹ Until recently, PHAs also were required to issue at least 90% of household-based subsidies to federal preference holders,⁷² defined as eligible households that were paying more than 50% of family income for rent, were living in substandard housing, or had been involuntarily displaced from their housing.⁷³ PHAs could implement their own systems of admission priorities, known as local preferences, provided that their prioritization schemes do not

recipients). Adjusted gross income represents total income minus specified deductions. 24 C.F.R. § 913.102 (1996).

65. 24 C.F.R. § 813.108 (1996).

66. The voucher program was enacted as a demonstration in 1983 and authorized permanently in 1987. Pub. L. No. 98-181, 97 Stat. 1178, 1181-1183 (codified as amended at 42 U.S.C. § 1437f(o) (1995)); Housing and Community Development Act of 1987, Pub. L. No. 100-242, 101 Stat. 1849-1853, 1878, 1890.

67. Note that a recent law imposes minimum rents of between \$25 and \$50 on both certificate and voucher recipients. 1996 Balanced Budget Downpayment Act, Pub. L. No. 104-99, § 402(a), 110 Stat. 26 (1996).

68. 42 U.S.C. § 1437f(o)(1) (1995); 24 C.F.R. § 887.351 (1996) (stating that payment standard may not be less than 80% of the FMR, nor more than either FMR or HUD-approved communitywide exception rent).

69. 42 U.S.C. § 1437f(o)(2) (1995); 24 C.F.R. § 887.353(a)(1) (1996).

70. 42 U.S.C. § 1437f(o)(2) (1995); 24 C.F.R. § 887.353(a)(2) (1996).

71. 24 C.F.R. § 982.201(a)(ii) (1996); *see also* 42 U.S.C. § 1437a(b)(2) (1995).

72. 24 C.F.R. § 982.207(b) (1996).

73. 24 C.F.R. § 982.207(a)(2) (1996). The PHAs could determine the relative weight of the federal preferences. 24 C.F.R. § 982.207(a)(3)(ii) (1996). About half of unassisted very low-income families could qualify for federal preferences, largely because they spent more than half their income on rent. Sard II, *supra* note 45, at 184.

conflict with the federal preference system or fair housing laws.⁷⁴ The 1996 Balanced Budget Downpayment Act, however, abolished the system of federal preferences,⁷⁵ but it continues to allow PHAs to employ local preferences.

A PHA may deny or terminate assistance only on grounds specifically identified in the regulations. For example, it may refuse to assist a household that owes money to the PHA, has committed fraud in a housing assistance program, has breached program rules, or has engaged in drug-related or violent criminal activities.⁷⁶ On the other hand, it may not deny assistance to a household which is a poor housekeeper, has a bad rent paying history, has previously been evicted, or has unfavorable landlord references.⁷⁷

Section 8 households tend to be poor families with children. Recipient households have an average annual income of less than \$8000⁷⁸ and receive annual housing subsidies of about \$4800.⁷⁹ About 60% of the households have children.⁸⁰

Over 2500 PHAs administer household-based subsidies, assisting low-income households in every state and metropolitan area.⁸¹ Most PHAs serve a single city or county and also operate public housing programs. In addition, 137 state and regional PHAs with multi-county service areas provide assistance to approximately 220,000 families.⁸²

IV. ENSURING EQUITY

Although household-based Section 8 has the potential to dramatically enhance the lives of poor people, it suffers from fundamental flaws that cause certain groups of potential recipients to be denied assistance unfairly. Remedying these problems requires radical solutions, including targeting assistance more narrowly and reducing failure rates by relaxing program rules.

A. *Targeting Assistance More Narrowly*

The federal eligibility rules for Section 8 certificate and voucher programs are fundamentally unfair. First, the rules set an upper income limit of 50% of area median income, adjusted for family size. Under this provision, many

74. 24 C.F.R. §§ 982.207(g) (1996).

75. 1996 Balanced Budget Downpayment Act, Pub. L. No. 104-99, § 402(d), 110 Stat. 26 (1996) (to be codified at 42 U.S.C. §§ 1437f(d)(1)(A), 1437f(o)(3)(B)).

76. 24 C.F.R. § 982.552(a) (1996).

77. Fuchs II, *supra* note 29, at 992.

78. Jim McTague, *So Long, Projects? Clinton Wants More Housing Vouchers for the Poor*, BARRON'S, Feb. 6, 1995, at 18 (examining voucher recipients).

79. OFFICE OF POL'Y DEV. & RES., U.S. DEP'T OF HOUS. & URB. DEV., SECTION 8 ADMINISTRATIVE FEES: A REPORT TO CONGRESS 6 (1994) [hereinafter HUD: ADMINISTRATIVE FEES] (1993 estimate).

80. CONG. BUDGET OFFICE, *supra* note 7, at 45 (1989 estimate).

81. HUD: ADMINISTRATIVE FEES, *supra* note 79, at 1.

82. *Id.* at 5.

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households with incomes far above the poverty line receive assistance.⁸³ At the same time, because of funding limitations, only about one-third of very low income households actually receive federal rental subsidies.⁸⁴ The current structure therefore violates concepts of vertical and horizontal equity.

Second, both the old and revised rules concerning assistance priorities among households are inadequate. Because the Section 8 program is not an entitlement program, it does not ensure housing assistance for all eligible households. Instead, poor families must often wait months, or even years, on PHA waiting lists in order to receive assistance.⁸⁵ Under the old system of federal preferences, PHAs were required to give priority status to three categories of applicants: those paying more than 50% of family income for housing, those living in substandard housing (including the homeless), and those involuntarily displaced from housing.⁸⁶ Recently, however, Congress eliminated the federal preference system entirely.⁸⁷

The old federal preference system created unfortunate inequities among poor households. For example, the preference for families with high rent burdens inadvertently penalized those families who had tried to make ends meet by renting units of somewhat inadequate quality or size, or in undesirable neighborhoods, rather than renting more expensive units that they could not afford.⁸⁸ These families could end up waiting years on the PHA waiting list, while other households (including those with incomes near 50% of area median income, or nearly twice the poverty line)⁸⁹ rented overly-expensive apartments and obtained priority housing status. Similarly, the federal preference for households living in housing of substandard quality created perverse incentives for households to take advantage of the system in order to avoid long stints on waiting lists.⁹⁰

83. Nationally, the poverty level is roughly equivalent to 35% of area median income. Kathryn P. Nelson & Jill Khadduri, *To Whom Should Limited Housing Resources Be Directed?*, 3 HOUSING POL'Y DEBATE 1, 3 (1992).

84. Together, all federal rental housing programs assisted just over 4 million households in 1989. Over 8.5 million households with incomes less than 50% of area median income were not served. CONG. BUDGET OFFICE, *supra* note 7, at xii, xiv.

85. For a description of a typical PHA waitlist, see *Section 8 Housing Assistance Payments Program: Hearing Before the Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs*, 103rd Cong., 1st Sess. 60 (Nov. 3, 1993) (testimony of Alyce Flanary on behalf of the National Association of Housing and Redevelopment Officials) (stating that in Belton, Texas, the average wait for Section 8 assistance was between two and three years in 1992).

86. See *supra* notes 72-73.

87. See *supra* note 75 and accompanying text.

88. CONG. BUDGET OFFICE, *supra* note 7, at 50.

89. See *Sard II*, *supra* note 45, at 197 n.10 (stating that in 1993 the federal poverty level for a family of three was \$11,980, while 50% of area median income for same family in Boston was \$23,050).

90. Although it may seem offensive to speak of people purposefully becoming homeless or moving into housing of inadequate quality, a Section 8 subsidy represents a large prize that certainly could induce voluntary displacement. Comprehensive longitudinal data from New York City confirms that

Although Congress was justified in ending preferences based on high rent burden and inadequate housing quality, it inappropriately terminated the preference for involuntarily displaced households. This preference ensured relatively rapid housing assistance for poor households who had lost their homes because of natural disaster, government redevelopment activities, a landlord's commercial conversion of the apartment, hate crimes, or other causes.⁹¹ By abolishing this preference, Congress abdicated its responsibility to the nation's neediest families.

A better eligibility standard would target federal rental housing assistance more narrowly than the current system, perhaps to households with incomes below 35% of area median income,⁹² while restoring the preference for involuntarily displaced households. Given budget constraints, the proposed policy would still only serve a portion of the eligible population. Nonetheless, by concentrating resources on a smaller pool of households, lowering the income limit would help reduce the horizontal and vertical equity problems inherent in the current system.⁹³ Moreover, this proposal would protect the most vulnerable poor families who become homeless through no fault of their own.

linking homelessness to priority for permanent housing led to a substantial increase in the homeless population, a conclusion reached by many observers including Nancy Wackstein, a former advocate for the homeless who headed the Mayor's Office on Homelessness and SRO Housing before resigning in frustration. Thomas Main, *Hard Lessons on Homelessness: The Education of David Dinkins*, 3 CITY J. 30 (Summer 1993) (describing rise in homeless population after policy change). *But see* Stanley S. Herr & Stephen M. B. Pincus, *A Way to Go Home: Supportive Housing and Housing Assistance Preferences for the Homeless*, 23 STETSON L.R. 345 (1994) (advocating preferences for homeless).

91. 24 C.F.R. § 880.615 (1996).

92. *See* Nelson & Khadduri, *supra* note 83, at 30 (stating that concentration of housing problems among extremely low-income households implies that income limits for all rental assistance should be reduced to around 35% of median income). Of course, imposing any income limit on Section 8 recipients creates the "notch effect" common to means-tested social welfare policies. By denying housing subsidies to families with incomes above a certain level, the program creates severe work disincentives for families with incomes just below the income limit. Policies to reduce these disincentives could include a graduated reduction in benefits as a family's income approaches the income limit, a system of earned-income disregards, and a policy requiring community service for unemployed adults receiving housing subsidies. One existing program to create work incentives among some recipients of Section 8 subsidies is the Family Self-Sufficiency (FSS) program. 42 U.S.C. § 1437u (1995). *See* 24 C.F.R. § 984.102 (1996) ("Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency. . . .").

93. Two arguments might be advanced against lowering the income eligibility level. First, limiting the Section 8 program to the extremely poor might further weaken political support for the program. R. ALLEN HAYS, *THE FEDERAL GOVERNMENT & URBAN HOUSING* 171 (1985). *But see* Nelson & Khadduri, *supra* note 92, at 51 (criticizing efforts to devote scarce housing resources to less needy). Second, assuming that higher-income households are better tenants than are lower-income households, lowering the income limit might expose landlords to less responsible tenants and decrease landlords' participation in the program. Other reforms suggested in this Note, however, should dramatically increase landlord participation, even with a poorer pool of Section 8 households. Also, lowering the income eligibility level would have the advantage of not depleting inner-city neighborhoods of higher-income households.

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B. *Reducing Failure Rates*

Another major defect in the Section 8 program is that certain program enrollees fail to find adequate housing within the required time limit. A household may spend years on the PHA waiting list only to be given sixty days⁹⁴ in which to find an apartment. If the household fails to identify an available unit that satisfies housing quality standards and federal rent requirements in the appropriate time period, it loses its eligibility for Section 8. If the household has not become entirely frustrated with the program, it would have to reapply for benefits and wait its turn again. Studies indicate that substantial failure rates exist around the country. A national study conducted from 1985 to 1987 found failure rates of 35% for the voucher program and 39% for the certificate program.⁹⁵ Another study conducted in 1993 showed a combined failure rate of 18%.⁹⁶

HUD officials mistakenly claim that the 1993 study demonstrates that high failure rates are no longer a problem.⁹⁷ This assertion, however, is incorrect for several reasons. First, the results of the 1993 study do not actually indicate that failure rates have decreased from the 1985-1987 study. Given the small overlap in PHAs included in both samples and the variability in their failure rates, the difference between the studies is not statistically significant.⁹⁸ Additionally, experts believe that a temporary looseness in the rental housing market may have caused the most recent drop in failure rates.⁹⁹ Moreover, even according to the 1993 study, failure rates remain particularly high in certain metropolitan housing markets. The New York City failure rate in 1993, for example, was thirty-eight percent.¹⁰⁰

Finally, even an eighteen percent failure rate is unacceptably high because the households that fail to find apartments are often those households most in need of assistance. Data from both Section 8 and EHAP studies indicate that "large families, single-parent households, and minority households are more likely than other groups to live in substandard housing" that does not meet

94. PHAs have the discretion, but not the obligation, to extend the time limit for households actively seeking housing. *See supra* note 53.

95. LEGER & KENNEDY, *supra* note 64, at 49.

96. STEPHEN D. KENNEDY & MERYL FINKEL, SECTION 8 RENTAL VOUCHER AND RENTAL CERTIFICATE UTILIZATION STUDY: FINAL REPORT 6 (1994).

97. *See, e.g.*, U.S. DEP'T OF HOUS. & URB. DEV., TENANT-BASED HOUSING ASSISTANCE WORKS (Issue Brief No. 2, 1995) [hereinafter HUD: TENANT-BASED HOUSING ASSISTANCE WORKS].

98. *See* KENNEDY & FINKEL, *supra* note 96, at ii.

99. *Id.* at Foreword. Section 8 Directors in PHAs attributed the decreased failure rates to looser rental markets. Although Census data on vacancy rates do not seem to support this conclusion, the data are for the entire Metropolitan Statistical Area and thus do not reflect the portion of the market relevant for Section 8. *Id.* at 14.

100. *Id.*

program quality standards.¹⁰¹ Because of the quality standards imposed by the Section 8 program, these households do not have the option of leasing their current apartments but instead must try to find adequate housing elsewhere. Unfortunately, these families often face substantial discrimination in the private housing market.¹⁰² Therefore, families who live in poor quality housing when they become eligible for Section 8 assistance are much more likely than families in adequate housing to lose their Section 8 subsidy by failing to find a qualifying apartment.¹⁰³ As currently implemented, the household-based Section 8 program violates the principle of progressivity because it fails to help those households most in need of assistance.

Several appropriate policy reforms would contribute to reduced failure rates. In the context of improving housing mobility, Part V will describe four such proposals: 1) the Section 8 program should improve PHAs' incentives to offer quality housing counseling and landlord outreach; 2) the program should allow enrolled households more time to search for an apartment; 3) the government should deregulate certain aspects of the landlord-tenant relationship in order to induce higher landlord participation, thus making the housing search easier for enrolled households; and 4) the program should include strict anti-discrimination policies to discourage landlords from flatly denying rental opportunities to Section 8 recipients.

These reforms, however, may not eliminate qualifying failures for those households facing intense discrimination in the local housing market, or for those households that are unable or unwilling to engage in an intensive housing search throughout the area. Policy makers should therefore consider a radical (and surely controversial) reform: the elimination of the housing quality and inspection system altogether for all able-bodied recipients (thus excluding the elderly and disabled), who would then be expected to make their own determinations regarding housing quality.

Paradoxically, the housing quality and inspection system, though designed to protect tenants, has actually harmed many of the poorest families. As

101. Rachel G. Bratt, *The Housing Payments Program: Its Possible Effects on Minorities, Poor*, 40 J. HOUSING 108, 109 (1983); see also Garland E. Allen et al., *The Experimental Housing Allowance Program*, in DO HOUSING ALLOWANCES WORK? 1, 25-26 (Katharine L. Bradbury & Anthony Downs eds., 1981) (stating that EHAP housing requirements induced high failure rates among minority, poor and large households because of quality of their original housing).

102. See MARGARET C. SIMS, *FAMILIES AND HOUSING MARKETS: OBSTACLES TO LOCATING SUITABLE HOUSING* 40-42 (1980) (citing studies showing rental discrimination against large families); TURNER ET AL., *supra* note 15, at 42 (demonstrating high rates of racial discrimination in rental markets).

103. See Leger & Kennedy, *supra* note 64, at 46 (reporting 58% failure rates among households with severely inadequate original housing, 37% for those in moderately inadequate units, and 26% for those in adequate units); LORENE YAP ET AL., *LOWER INCOME HOUSING ASSISTANCE PROGRAM (SECTION 8): NATIONWIDE EVALUATION OF THE EXISTING HOUSING PROGRAM: TECHNICAL SUPPLEMENT* 191 (1978) (indicating that 34% of those denied Section 8 assistance despite qualifying for certificate said that "finding a unit that would pass Section 8 inspection" was major problem).

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described above, families who live in poor quality housing are much more likely than families in adequate housing to lose their Section 8 subsidy by failing to find a qualifying apartment. Without the inspection requirement, households who are unable to locate housing that meets the federal guidelines would at least not lose their valuable subsidies.

Abolishing housing quality standards and inspections is unlikely to harm the health or safety of program participants for several reasons. First, the federal housing quality and inspection system has proven quite ineffective. For example, PHAs that operate project-based Section 8 units often fail to conduct inspections properly. According to the HUD Inspector General, for example, nationwide in 1993 only thirty-nine percent of the required inspections of project-based Section 8 units were actually conducted.¹⁰⁴ Administrative problems and shortages of inspectors are among the causes of this problem.¹⁰⁵

Moreover, a sophisticated empirical comparison between subsidized households with and without required inspections indicate that inspections have little effect on housing quality.¹⁰⁶ These data suggest that able-bodied households are generally quite capable of identifying quality housing. In removing minimum housing standards from its demand-side subsidy program, the U.S. would join the ranks of the Federal Republic of Germany, Finland, the Netherlands, Sweden, and the United Kingdom.¹⁰⁷

Finally, the other proposals in this Note would allay possible negative effects of an end to inspections. For example, the payment structure reforms suggested in Part VI would provide incentives for households to shop for better quality housing. At the same time, the mobility reforms outlined in Part V would ensure that new Section 8 recipients who did not want to stay in their original apartments could locate quality housing elsewhere, and that households could move from their existing dwellings if conditions deteriorate. In this context, ending the inspection system would allow the poorest and most vulnerable households to take advantage of the large benefits of household-based subsidies.

104. Serge F. Kovaleski, *Landlords Get Hefty Subsidies Despite Substandard Housing*, WASH. POST, July 27, 1994, at B1.

105. John J. Fialka, *U.S. Reports Say Some HUD Projects Are Like Slums Due to Mismanagement*, WALL ST. J., July 26, 1994, at B9.

106. Eric H. Hanushek & John M. Quigley, *Consumption Aspects*, in DO HOUSING ALLOWANCES WORK? 185, 229 (Katharine L. Bradbury & Anthony Downs eds., 1981) (analyzing EHAP data and concluding that "[w]hen the housing improvements for the constrained housing group are compared with the changes observed for the control group and the unconstrained group, the improvements appear rather small").

107. E. JAY HOWENSTINE, HOUSING VOUCHERS: A COMPARATIVE INTERNATIONAL ANALYSIS 116 (1986).

V. PROMOTING RESIDENTIAL CHOICE AND MOBILITY

One of the original objectives of household-based Section 8 was to promote residential choice and mobility among the urban poor. The 1974 Housing and Community Development Act itself stated that household-based subsidies were designed to assist in “the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower incomes”¹⁰⁸

Proponents of the Section 8 household-based subsidy program claim that it has succeeded in fulfilling this objective.¹⁰⁹ A comprehensive examination of existing evidence, however, indicates that the program has generally been unsuccessful in this regard. This Part examines the current obstacles preventing Section 8 recipients from exercising residential choice and proposes a number of policies to promote mobility.

A. *Constrained Mobility Among Section 8 Recipients*

Many families that receive Section 8 household-based subsidies would like to move to areas of higher income and lower minority concentration. A study in Hartford indicated that 68% of all Section 8 holders were interested in using their subsidies to move to the suburbs.¹¹⁰ Studies in Boston¹¹¹ and Chicago¹¹² also found that a large portion of Section 8 recipients, including minorities, wanted to move to higher income urban and suburban locations, where they perceived the quality of life to be high.¹¹³ Another recent study revealed that about 87% of black households are willing to move to a

108. Pub. L. No. 93-383, § 101(c)(6), 88 Stat. 633 (1974), codified at 42 U.S.C. § 5301(c)(6) (1995).

109. See, e.g., HUD: TENANT-BASED HOUSING ASSISTANCE WORKS, *supra* note 97.

110. KIM McCLAIN & DAVID DESIDERATO, CITIZENS RESEARCH EDUCATION NETWORK, REGIONAL HOUSING MOBILITY: A SURVEY OF NEED IN HARTFORD 5 (1992).

111. Elizabeth A. Mulroy, *Single-Parent Families and the Housing Crisis: Implications for Macropactice*, 35 J. SOCIAL WORK 542, 543 (1990) (stating that nearly all study participants wanted to relocate using Section 8 subsidies and describing how even those participants who used the subsidies to lease their current apartments “spent their entire search time trying to access the private rental market in areas of their preference”) (hereinafter Mulroy I).

112. The original evaluation of the Gautreaux mobility program found that about one-half of the regular Chicago Housing Authority Section 8 participants would have chosen to live in the suburbs if they had been permitted to move with their subsidies. KATHLEEN A. PEROFF ET AL., THE GAUTREUX ASSISTED HOUSING DEMONSTRATION: AN EVALUATION OF ITS IMPACT ON PARTICIPATING HOUSEHOLDS 173 (1979).

113. “Why would you live there [the projects] when you could move to the suburbs and pay the same kind of rent. . . . [In the suburbs I] only have to deal with people who don’t like me, right? They’re not doing anything to hurt me as far as I can see. They’re not trying to break into my house. They’re not trying to bust my child up the side of his head. They’re not trying to lure him into [gangs and drugs].” Section 8 certificate holder who moved to suburbs, *quoted in* Rosenbaum et al., *supra* note 20, at 1541 n.76 (brackets in original).

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neighborhood of twelve white families and only two black families.¹¹⁴

Moreover, sufficient rental housing suitable for Section 8 recipients exists throughout entire metropolitan regions. For example, HUD has analyzed census data for ten metropolitan areas to examine the distribution of rental housing units that would be affordable under the Section 8 program.¹¹⁵ Affordable units account for at least thirty percent of the rental stock in over two-thirds of all residential census tracts in the metropolitan areas.¹¹⁶ This estimate is conservative because it does not take into account PHAs' ability to approve exception rent levels of up to one hundred twenty percent of FMRs in order to expand housing choice in areas outside of high-poverty census tracts.¹¹⁷

Despite both the eagerness of Section 8 recipients to move and the wide availability of moderately priced rental housing, Section 8 has not significantly helped the poor move to higher income neighborhoods. The predecessor to Section 8, the EHAP demand experiment, found virtually no tendency for experimental households to move with increased frequency into areas with less poverty or reduced concentrations of their own racial or ethnic group.¹¹⁸ Similarly, a Houston study showed that Section 8 did not significantly help poor minorities to leave poor, minority neighborhoods.¹¹⁹ Little difference existed between the minority-percentage of the tracts lived in by certificate holders who had moved and the minority-percentage of the tracts lived in by certificate holders who had stayed in place.¹²⁰ Moreover, few minority tenants used their Section 8 certificates to move into neighborhoods of low poverty.¹²¹

114. Reynolds Farley et al., *Continued Racial Residential Segregation in Detroit: "Chocolate City, Vanilla Suburbs" Revisited*, 4 J. HOUS. RESEARCH 1, 23 (1993).

115. HUD, TENANT-BASED HOUSING ASSISTANCE WORKS, *supra* note 97 (examining units at or below fortieth percentile of area rents for standard quality, unsubsidized, recently occupied units); *see also* U.S. DEP'T OF HOUS. & URB. DEV., HUD REINVENTION: FROM BLUEPRINT TO ACTION 35 (1995) (stating that housing shortages in most urban housing markets "generally occur at the very low end of the rental market — well below the Fair Market Rent (FMR) calculated at the fortieth percentile of recently occupied, good quality units").

116. *Id.*

117. *See supra* note 62.

118. Peter Rossi, *Residential Mobility, in DO HOUSING ALLOWANCES WORK?* 147, 170 (Katharine L. Bradbury and Anthony Downs eds., 1981); *see also* Arthur P. Solomon & Chester G. Fenton, *The Nation's First Experience with Housing Allowances: The Kansas City Demonstration*, 50 LAND ECON. 213, 220 (1974).

119. Robert D. Bullard, *Does Section 8 Promote an Ethnic and Economic Mix?*, 35 J. HOUSING 364 (1978).

120. More than 78% of the minority nonmovers were in tracts with 70% or more minority population, while 70% of the minority movers ended up in these tracts. *Id.*

121. Less than 10% of the sampled minority households lived in tracts with substantially low poverty (i.e., less than 5% poverty). By contrast, 40% of white tenants interviewed lived in such low poverty areas. *Id.* at 365. More recent data on four metropolitan areas present only somewhat better results. HUD, FEDERAL RENTAL ASSISTANCE SHOULD PROMOTE MOBILITY AND CHOICE (Issue Brief No. 5, 1995) (citing General Accounting Office study concluding that only 36% of black households use their Section 8 subsidies in areas that have poverty rates of less than 10%).

A national study confirms that a household's use of Section 8 causes no statistically significant change in the minority concentration of its neighborhood.¹²² Recent data also indicates that a very small percentage of recipients in urban areas use their subsidies to move to suburban areas.¹²³ Perhaps largely as a result of this low mobility, many subsidy recipients remain dissatisfied with their neighborhood, housing conditions, or both.¹²⁴

B. *Reducing Housing Search Costs*

These studies of housing preferences, housing availability, and Section 8 outcomes suggest that the Section 8 program needs improvement. Evidently, serious obstacles face many Section 8 enrollees who wish to move to higher income, less minority-concentrated and/or suburban neighborhoods.

A full understanding of these obstacles requires a mobility model that describes the housing decisions of recipient households. Some social scientists examining people's housing choices employ descriptive models that separate the different components of a family's decision-making process. Rossi, for example, distinguishes between a household's decision to move and its decision to select a new dwelling. According to this model, the household makes plans to move when dissatisfaction with housing rises above a certain threshold, and it subsequently chooses a new dwelling among the alternatives evaluated in the search.¹²⁵ This model is inadequate, however, to explain Section 8 recipients' housing decisions, which are not simple and discrete but rather complex and dynamic. For example, depending on the results of its housing search, a household that originally wanted to move may nonetheless decide to "lease in place," meaning that it uses the Section 8 subsidy to help rent its original apartment.

The following model attempts to capture the dynamic nature of the housing decisions of families enrolled in Section 8. Consider a household living in an apartment that rents at a level below the FMR but does not satisfy federal

122. LAGER & KENNEDY, *supra* note 64, at 114-15 (stating that changes in minority concentration of neighborhood were not significant for households of any race). A previous survey found that recipients of household-based Section 8 subsidies experienced only modest changes in neighborhood minority concentration after enrolling in the program. Blacks, for example, experienced a mean change in minority concentration of only -7.8%, and they eventually resided in neighborhoods that were still about 48% minority. JAMES E. WALLACE ET AL., PARTICIPATION AND BENEFITS IN THE URBAN SECTION 8 PROGRAM: NEW CONSTRUCTION AND EXISTING HOUSING 247 (1981).

123. *Downsizing Government: Hearings before the Subcomm. on Veterans' Affairs, Housing and Urban Development and Independent Agencies of the House Comm. on Appropriations*, 104th Cong., 1st Sess. 711 (Jan. 24, 1995) (statement of John C. Weicher, Senior Fellow at the Hudson Institute) (citing American Housing Survey data showing that only about one-ninth of subsidy recipients move from cities to suburbs).

124. CONG. BUDGET OFFICE, *supra* note 7, at 48 (providing 1989 data showing that 35% of families with one or two children and 43% of families with three or more children were dissatisfied with housing obtained through household-based subsidies).

125. Rossi, *supra* note 118, at 151.

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quality standards. At the time the household enrolls in the program, it is dissatisfied with the overall residence¹²⁶ and decides that it wants to move (Step 1). If unsuccessful in its housing search (Step 2b), the family will reevaluate its search strategy (Step 3b). As the 60 to 120 day deadline approaches, the family may decide that it should try to stay in its original apartment in order not to lose the subsidy. It will then attempt to work with the landlord to upgrade the apartment to federal quality standards (Step 2a). Under the threat of losing the subsidy, therefore, a household may revise its decision regarding whether to stay in its original apartment or move elsewhere.

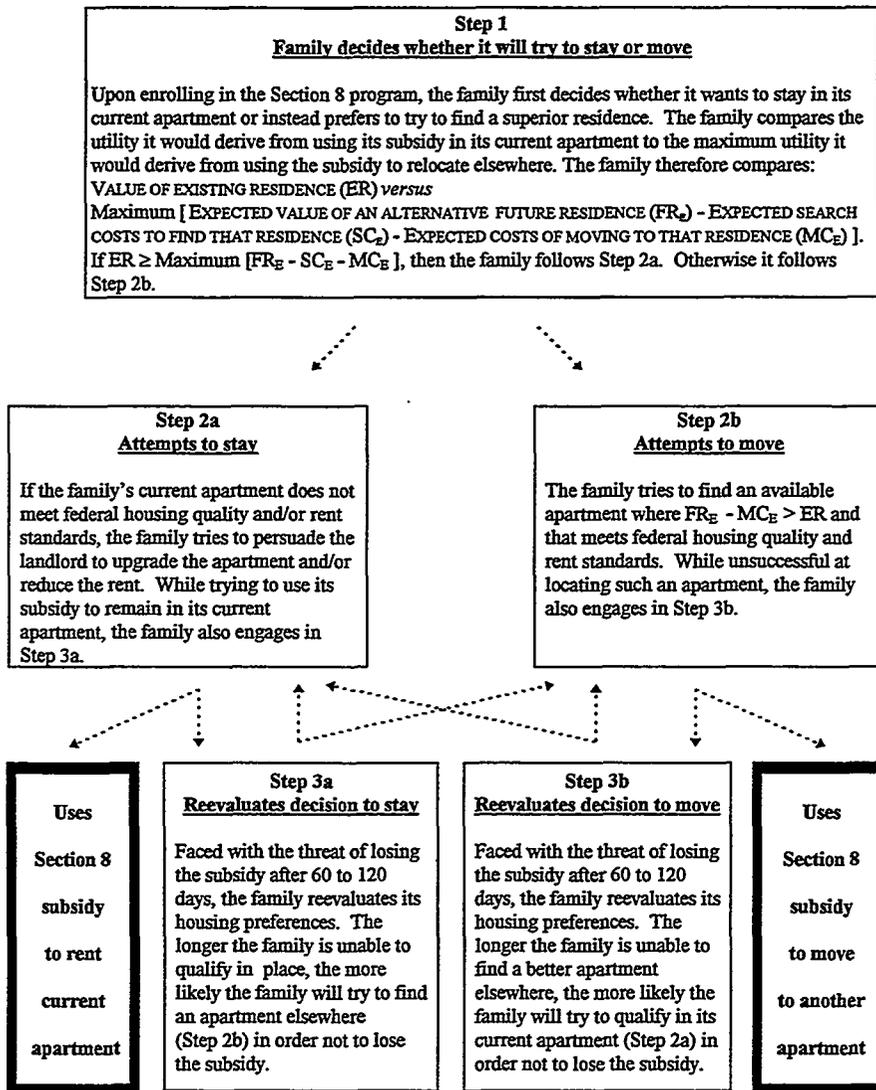
This model illustrates two important concepts. First, it suggests that a household's perception of the openness of the housing market plays an important role in the household's search activity. Consider a household that believes that landlords in desired areas would treat it unfavorably (i.e., refuse to rent to any Section 8 households, or turn the family away for racially discriminatory reasons). The household may decide against searching for better housing in those areas because it would value SC_e (expected search costs) high and FR_e (expected value of future residence) low. The household would therefore tend either to stay in its original apartment, if possible, or to look for housing only in neighborhoods perceived to be less closed.

Furthermore, the role of search costs in a family's moving decision helps explain why enrollees often fail to move outside of their original neighborhoods, particularly when given only a short time to conduct their housing searches. Studies have demonstrated that many families lack informal networks to help them find housing in neighborhoods outside their own, and many lack the transportation and day care services necessary to facilitate successful searches in other neighborhoods.¹²⁷ The minority poor also tend to face

126. "Residence" includes the characteristics of both the housing and the surrounding neighborhood. *Id.* at 149.

127. Elizabeth A. Mulroy, *The Search for Affordable Housing*, in *WOMEN AS SINGLE PARENTS: CONFRONTING INSTITUTIONAL BARRIERS IN THE COURTS, THE WORKPLACE AND THE HOUSING MARKET* 123, 145 (Elizabeth A. Mulroy ed., 1988) (hereinafter *Mulroy II*).

FIGURE 1: MOBILITY MODEL



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higher “generalized relocation costs”¹²⁸ than do poor white households.¹²⁹ These search and relocation costs may generally deter minority families from major residential moves.¹³⁰

C. *Promoting Landlord Participation*

Widespread landlord nonparticipation in the program is perhaps the most serious obstacle to residential choice facing Section 8 recipients. A recent national study of landlords¹³¹ and empirical evidence from many cities¹³² including Boston¹³³ show that many landlords simply refuse to participate in the Section 8 program. Landlord resistance significantly impedes residential mobility,¹³⁴ in part because residents narrow their housing searches to “Section 8 submarkets” where landlords have experience renting to Section 8 recipients.¹³⁵ As suggested by the mobility model, the limited search strategies of many minority households with housing subsidies show that they perceive that landlords in certain neighborhoods will simply refuse to rent to them.¹³⁶

Several aspects of the regulatory structure reduce landlord participation. First, a landlord may fear the limitations which Section 8 imposes on her usual

128. Generalized relocation costs include search, information and transactions costs, as well as the social and psychic costs of leaving familiar surroundings. FRANK W. PORELL, *MODELS OF INTRAURBAN RESIDENTIAL RELOCATION* 61 (1982).

129. *Id.* at 131 (presenting data from Wichita demonstrating that “the distance/generalized cost barriers faced by nonwhite households are more pervasive” than barriers facing “low-income white household counterparts”).

130. *Id.* at 145 (“Most researchers would attribute the powerful distance deterrent effects found in this study to a variety of factors, such as the limited spatial awareness of households, the costs of information and search, moving costs, the psychic costs of breaking social ties, or to institutional barriers such as housing market discrimination in the case of non-white households.”).

131. MERYL FINKEL, ABT ASSOCIATES, *FINAL REPORT ON RECOMMENDATIONS ON WAYS TO MAKE THE SECTION 8 PROGRAM MORE ACCEPTABLE IN THE PRIVATE RENTAL MARKET* 10-21 (1994).

132. *Section 8 Housing Assistance Payments Program: Hearing Before the Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs*, 103rd Cong., 1st Sess. 40-50 (Nov. 3, 1993) (testimony of David Bryson, National Housing Law Project).

133. 79% of enrollees reported contact with landlords who simply refused to participate in Section 8. Mulroy II, *supra* note 127, at 134. One enrollee reported that certain landlords “told me plain and simple they don’t take Section 8; that’s their policy.” *Id.* at 136.

134. *Departments of Veterans’ Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995: Hearings Before the Subcomm. on Veterans Affairs, Housing and Urban Development and Independent Agencies of the Senate Comm. on Appropriations*, 103d Cong., 2d Sess., Part 6 at 131 (April 26, 1994) (statement of Michael A. Stegman, Asst. Sec. for Pol. Devel. and Research, HUD) (stating that HUD research indicates that Section 8 does not promote much mobility or landlord participation).

135. STEPHEN D. KENNEDY & MERYL FINKEL, *SECTION 8 RENTAL VOUCHER AND RENTAL CERTIFICATE UTILIZATION STUDY: FINAL REPORT* iv, 72 (1994). These results are consistent with the mobility model presented above. In formulating its search strategy, a family will factor in the expected costs of its search and therefore might avoid searching in those neighborhoods where it believes that landlords will refuse Section 8 subsidies.

136. Francis J. Cronin, *Racial Differences in the Search for Housing*, in *MODELLING HOUSING MARKET SEARCH* 81, 85-103 (W.A.V. Clark ed., 1982).

ability to get rid of a "problem tenant." Typically, when an unassisted market lease expires, both the owner and tenant may decide whether or not to renew the lease under new terms and rent. A landlord who has problems with an unassisted tenant will avoid the difficulty and cost of an eviction process by simply refusing to renew the lease at the end of the lease term.¹³⁷ In some markets, owners reduce their risks further by setting short initial lease terms, such as ninety days.¹³⁸

Under the Section 8 program, by contrast, a landlord faces stringent barriers to removing a tenant. The initial lease term must be annual, with provisions for automatic renewal after the initial term.¹³⁹ The owner may only terminate the tenancy upon the grounds specified by the regulations.¹⁴⁰ Moreover, during the initial lease term, the owner may not terminate the tenancy for "other good cause" if the family is not at fault.¹⁴¹ After the initial lease term, the owner may choose not to renew the lease, but only if she is able to demonstrate "good cause" or other sufficient reason for eviction. Judicial interpretations of the renewal requirement have been strict. For example, one state court has held that, absent good cause for eviction, a Section 8 tenant "may remain in the housing for life, and his right to do so is a constitutionally protected property interest."¹⁴² The year-long initial lease term and eviction limitations may impose on the landlord significant impediments in weeding out disruptive tenants whose behavior does not quite rise to the level of the "good cause" provision of the regulations. According to one study, these substantive tenant protections have deterred landlords from participating in the program.¹⁴³

Second, landlords may decline to accept Section 8 tenants because of the

137. FINKEL, *supra* note 131, at 11.

138. *Id.*

139. 24 C.F.R. § 982.309(b) (1996).

140. The listed reasons include: serious or repeated violation of the terms and conditions of the lease; violation of federal state, or local law which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; any criminal activity engaged in by the tenant, family members or guests that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or nearby residents; drug-related criminal activity on or near such premises; and other good cause. 42 U.S.C. § 1437f(d)(1)(B)(ii)-(iii) (1995); 24 C.F.R. § 982.310(a),(c) (1996). "Other good cause" includes: failure by the family to accept the offer of a new lease; a family history of disturbance of property, or of living and housekeeping habits resulting in damage to the unit or property; criminal activity by family members involving crimes of physical violence to persons or property; the owner's desire to utilize the unit for non-residential use; and the owner's desire to terminate the tenancy for business reasons, such as sale of the property and renovation of the unit. 24 C.F.R. § 982.310(d)(1) (1996).

141. The owner may not terminate the tenancy for the following reasons: "failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit or a business or economic reason for termination of the tenancy." 24 C.F.R. § 982.310(d)(2) (1996).

142. *Gorsuch Homes, Inc. v. Wooten*, 597 N.E.2d 554, 558 (Ohio App. 1992).

143. FINKEL, *supra* note 131, at 11-12; *see also id.* at 7-8 (describing focus group methodology of the study).

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stringent federal procedural requirements involved in tenant evictions.¹⁴⁴ The owner, for instance, must notify the PHA in writing of the commencement of procedures for termination of the tenancy¹⁴⁵ and must obtain the PHA's authorization before carrying out an eviction.¹⁴⁶ The owner must also give the tenant written notice specifying the grounds for eviction,¹⁴⁷ with the length of the notice determined by state law,¹⁴⁸ and the owner must provide the tenant and PHA ninety days' notice when planning to terminate or refuse to renew an assistance contract.¹⁴⁹ Section 8 tenants under threat of eviction have standing to challenge deficiencies in the landlord's termination notices on Due Process and civil rights grounds,¹⁵⁰ and they may be constitutionally entitled to an oral hearing.¹⁵¹ A landlord's failure to comply with these procedures renders the eviction invalid.¹⁵² Like the substantive eviction protections mentioned above, these procedural rules tend to discourage landlords from participating in the Section 8 program.¹⁵³

The final major obstacle to increased landlord participation is that landlords generally can use Section 8 status as a pretext for discriminating against families on the basis of race, gender, or number of children. Case law makes clear that a potential tenant generally has no due process rights against a landlord because the landlord is "free to accept applications only from those persons he or she expects to be responsible tenants, and the Section 8 program does not constrain the owners' judgment on that question."¹⁵⁴ A landlord, therefore, can generally turn down an applicant simply on the basis of the applicant's status as a Section 8 recipient.¹⁵⁵ One observer believes that racial discrimination against minority families, rather than any shortage of rental units, is the main reason that Section 8 holders have such difficulty finding

144. The landlord, not the PHA, is responsible for evictions. *See* 24 C.F.R. § 982.310(e) (1996).

145. 24 C.F.R. § 982.310(e)(2) (1996). *See, e.g.*, *Lamton Development Corp. v. Owens*, 533 N.Y.S.2d 186, 187 (Dist. Ct. 1988) (barring summary eviction where landlord has not served copy of termination notice on PHA at same time notice served on tenant).

146. *See, e.g.*, *Jennie Realty Co. v. Sandberg*, 480 N.Y.S.2d 268, 270 (N.Y. Sup. Ct. 1984).

147. 42 U.S.C. § 1437f(d)(1)(B)(iv) (1995); 24 C.F.R. § 982.310(e)(1) (1996).

148. *See, e.g.*, *Gallman v. Pierce*, 639 F. Supp. 472, 477 (N.D. Cal. 1986).

149. 42 U.S.C. § 1437f(c)(9) (1995).

150. *See, e.g.*, *Gallman*, 639 F. Supp. at 482 (N.D. Cal. 1986).

151. *See, e.g.*, *Jeffries v. Georgia Residential Finance Authority*, 503 F. Supp. 610, 620 (N.D. Ga. 1980), *aff'd*, 678 F.2d 919 (11th Cir., 1982), *cert. denied*, 459 U.S. 971 (1982); *cf. Swann v. Gastonia Housing Authority*, 675 F.2d 1342, 1345 (4th Cir. 1982) (tenant must have opportunity to respond but no full-fledged hearing required).

152. *See, e.g.*, *Vanderveer Assoc., No. 5 v. Lewis*, 450 N.Y.S.2d 709, 711 (N.Y. Civ. Ct. 1982).

153. FINKEL, *supra* note 131, at 4.

154. *Germain v. Recht-Golding-Siegel Properties*, 745 F.2d 453, 460 (7th Cir. 1984).

155. *See, e.g.*, *Attorney General v. Brown*, 511 N.E.2d 1103 (Mass. 1987) (reversing grant of summary judgment against large landlord who systematically refused to rent to Section 8 holders for allegedly legitimate business reasons). *But see Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148 (S.D.N.Y. 1989) (enjoining landlord from denying admission to Section 8 holders based on factors that had disparate impact on minorities), *final judgment sub nom. Glover v. Crestwood Lake Section 1 Holding Corp.*, 746 F. Supp. 301 (S.D.N.Y. 1990).

available rental units.¹⁵⁶

Paradoxically, current law also discourages a landlord from trying out the Section 8 program. Once an owner accepts one Section 8 resident in any of her properties, the owner may not refuse to lease a unit renting at or below the FMR to any other certificate or voucher holder if the proximate cause of the refusal "is the status of such prospective tenant as a holder" of Section 8 benefits.¹⁵⁷ While this provision was intended to enhance residential choice, it probably discourages landlords from experimenting with the Section 8 program and further limits the acceptability of Section 8 in general.¹⁵⁸

Two reforms, adopted in conjunction, would remedy these problems of landlord participation. The first proposed reform would require owners to treat Section 8 tenants in the same way that they treat other tenants. Under this proposal, owners would have the right to limit the initial lease term, to decide whether or not to renew a lease, and to undertake evictions in accordance with state and local rules. Section 8 residents, however, could lodge a counterclaim against landlords who apply different lease or eviction standards to them as compared to other tenants. At the same time, Section 8 residents would retain the protections provided to all renters in the local jurisdiction, including, where allowed, the right to escrow rent for failure of the owner to provide quality housing as promised. Because the PHAs often pay most of the rent burden of Section 8 recipients, regulations would have to mandate that PHAs cooperate with Section 8 tenants who withhold rent for good cause.¹⁵⁹

This policy would generate significant benefits. It would promote residential choice and mobility because it would cause more landlords to participate in the program. It would protect the rights of Section 8 tenants by ensuring that landlords not impose different lease conditions on them than on other tenants in the property.¹⁶⁰ Finally, the proposal would promote horizontal equity. Current Section 8 eviction protections exacerbate the horizontal inequities already existing between recipients of household-based Section 8 recipients and

156. Anthony Downs, *A Strategy for Designing a Fully Comprehensive National Housing Policy for the Federal Government of the United States*, in *BUILDING FOUNDATIONS* 61, 86 (Denise DiPasquale & Langley C. Keyes eds., 1990).

157. 42 U.S.C. § 1437f(t)(1) (1995). A multifamily housing project is a residential building containing more than 4 dwelling units. *Id.*

158. FINKEL, *supra* note 131, at 10.

159. *Id.* at 25 n.18.

160. An important criticism of this proposal is that Section 8 tenants generally lack the legal resources to challenge landlords who might violate this equal treatment protection, particularly in light of current cutbacks in the resources and capabilities of legal services organizations that receive federal funding. See Bill Maxwell, *The Unfair Rationing of Justice*, *ST. PETERSBURG TIMES*, Jan. 14, 1996, at 1D (describing proposed congressional prohibitions on class action suits in landlord-tenant matters, and quoting one legal services lawyer stating that "the only thing less popular than a poor person these days is a poor person with a lawyer"). Perhaps one solution would be to establish a federal fair housing claim for tenants whose landlords treat them differently than other tenants with regards to leases or evictions. Because such an anti-discrimination provision would provide significant financial penalties and a federal cause of action, aggrieved Section 8 tenants would be better able to protect their rights.

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the millions of very low income families who do not receive housing subsidies. Non-recipients currently receive neither federal resources nor federal eviction protections. Under this reform, however, Section 8 tenants and other tenants would all be treated equally.

In addition, Congress should enact a federal source-of-income nondiscrimination law barring landlords from turning away Section 8 applicants because of their status as Section 8 holders or because of the requirements that the Section 8 program may impose on landlords.¹⁶¹ This nondiscrimination requirement would be similar to existing regulations imposed on landlords who have participated in certain federal housing programs.¹⁶²

Federal nondiscrimination provisions are necessary because state fair housing protections are insufficient. Only a few states bar landlords from refusing to rent to a family because the family receives housing subsidies or other public assistance.¹⁶³ Although these state statutes survive federal preemption challenges,¹⁶⁴ they probably do not significantly deter landlords because state enforcement of fair housing laws is generally inadequate.¹⁶⁵

Moreover, all of the existing state laws except the Massachusetts statute may allow landlords to refuse a tenant on the grounds that the Section 8 requirements are unduly onerous. The former Massachusetts law, which is

161. See, e.g., Bryson, *supra* note 132, at 25 (advocating Section 8 nondiscrimination law).

162. For example, landlords who acquire projects from HUD under its multi-family property disposition program cannot refuse tenants solely because of their status as certificate or voucher holders. 12 U.S.C. § 1701z-12 (1995).

163. As of May 1995, only nine states and the District of Columbia had such laws. CONN. GEN. STAT. ANN. § 46a-54c(a) (West 1995) (banning discrimination in housing rental and sales based on lawful source of income), § 46a-63(3) (West 1995) (defining lawful source of income to include housing assistance); D.C. STAT. ANN. § 1-2515(a) (1994) (banning discrimination in real property transactions based on source of income); MD. ANN. CODE art. 83b, § 9-109(3) (Michie 1994) (banning owner interference with efforts of tenants to obtain housing subsidies and banning discrimination in housing rentals on basis of source of income or receipt of housing subsidies); MASS. GEN. LAWS ANN. ch. 151B, § 4(7) (West 1995) (banning advertisements of housing rentals and sales which indicate preference or limitation based on public assistance reciprocity), § 4(10) (West 1995) (banning discrimination against recipients of public assistance or housing subsidies in housing rentals, either because the individuals are recipients or because of any requirements of the public assistance or housing subsidy programs); ME. REV. STAT. ANN. tit. 5 § 4582 (West 1995) (banning discrimination in housing rentals against recipients of public assistance, including housing subsidies, primarily because of individuals' recipient status); MINN. STAT. ANN. § 363.03(2) (West 1995) (banning discrimination in housing rentals and sales based on status with regard to public assistance); N.D. CENT. CODE § 14.02.4-02(3) and 4.12(2) (Michie 1993) (banning discrimination in real property transactions based on status with regard to public assistance); UTAH CODE ANN. § 57-21-5 (Michie 1994) (banning discrimination in housing rentals and sales based on source of income); VT. STAT. ANN. tit. 9, § 4503 (1993) (banning discrimination in housing rentals and sales based on person's status as recipient of public assistance); WIS. STAT. ANN. § 101.22(1)(1m)(nm), (1)(2) (West 1995) (banning discrimination in housing rentals and sales based on lawful source of income).

164. See, e.g., *Attorney General v. Brown*, 511 N.E.2d 1103, 1106 (Mass. 1987) (stating that nothing in federal statutes conflicts with Massachusetts' anti-discrimination provision).

165. James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1098 (1989) ("[M]ost states have had little experience investigating, processing, and resolving fair housing disputes, and some cities are not even aware that their city council once passed fair housing legislation.").

similar to the other existing state laws, prohibited discrimination against a tenant receiving rental assistance "solely because the individual is such a recipient."¹⁶⁶ In *Attorney General v. Brown*,¹⁶⁷ the Massachusetts Supreme Judicial Court reversed the grant of summary judgment against a large landlord who systematically refused to rent to Section 8 holders. The landlord claimed that he was not discriminating against Section 8 applicants on the grounds that they were recipients of such assistance.¹⁶⁸ He asserted that instead he had legitimate business reasons for refusing to accept Section 8 applicants, including the disadvantages of the Section 8 lease form and the program's limitations on required rent advances and security deposits.¹⁶⁹ The court held that these business reasons, if true, would legitimize the landlord's practices. As a result of this decision, the Massachusetts legislature subsequently added to the law a provision prohibiting discrimination "because of any requirement of such public assistance, rental assistance, or housing subsidy program."¹⁷⁰

An appropriate federal nondiscrimination provision, therefore, must bar two types of discrimination: discrimination based simply on the applicant's status as a Section 8 holder and discrimination based on the requirements of the Section 8 program.¹⁷¹ Such a provision might be expected to reduce discrimination against Section 8 recipients. Local fair housing centers could easily conduct fair housing audits to test the effect of "Section 8 status," just as they currently test for discrimination based on race, gender and presence of children.¹⁷² They could then bring suit against landlords under federal fair housing law which, unlike state law, imposes significant penalties.¹⁷³ Certainly some landlords who do not wish to accept Section 8 recipients might attempt to circumvent the provision by developing stringent requirements for applicants, including cosigner requirements, credit checks, and rent history checks,¹⁷⁴ all of which Section 8 holders might tend to fail more than non-Section 8 tenants applying for the same units. Nonetheless, a nondiscrimination requirement would at least discourage the egregious bans on Section 8

166. MASS. GEN. LAWS ANN. ch. 151B, § 4(10) (1985), cited in *Brown*, 511 N.E.2d 1103, 1105.

167. *Brown*, 511 N.E.2d 1103, 1105.

168. *Id.* at 1108.

169. *Id.* at 1108-09.

170. MASS. GEN. LAWS ANN. ch. 151B, § 4(10) (West 1995). As currently written, this law has imposed penalties on landlords who flatly refuse Section 8 tenants. See *Mills v. More et al.*, No. 87-BPR-0419 (1995), and *Harrison v. Horowitz*, No. 92-BPR-0230 (1995) (reported in *Massachusetts Lawyers Weekly*).

171. Preventing the latter type of discrimination might not be necessary if the Section 8 program were substantially deregulated, with inspections and special lease terms abandoned.

172. See Veronica M. Reed, *Fair Housing Enforcement: Is the Current System Adequate?*, in *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* 222, 226 (Robert D. Bullard et al. eds., 1994) ("To date, use of fair housing tests alone or to substantiate the claim of a bona fide applicant remains the single most effective method of identifying, substantiating, and prosecuting noncompliance with fair housing laws.").

173. See Kushner, *supra* note 165, at 1088-98 (describing federal fair housing provisions).

174. *Id.* at 1060 (stating ways in which rental agents may mask discriminatory practices).

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applicants practiced by many landlords.

D. *Encouraging Local Mobility*

Even if these reforms were adopted, however, some Section 8 enrollees may be unable to locate satisfactory apartments. This Section of the Note proposes essential reforms that would lower the housing search costs of Section 8 recipients, thereby reducing the enrollee failure rate and helping families to locate better housing opportunities in more widely dispersed areas. First, the federal government should impose PHA performance standards for housing counseling and landlord recruitment, including standards that require PHAs to identify appropriate housing opportunities outside of areas of concentrated poverty. Such a policy would encourage PHAs to stop their current practices of steering minorities inadvertently “to certain neighborhoods by passively providing rental listings that include primarily landlords who have notified the PHA of apartment openings.”¹⁷⁵

Effective housing counseling would both expand the geographic search of Section 8 enrollees and reduce failure rates. For example, EHAP studies revealed that minority movers receiving housing counseling services in tight markets succeeded in qualifying for the program 65% of the time, while only 26% of minority movers with no services succeeded.¹⁷⁶ Similarly, the Boston Department of Public Welfare (DPW) conducted a multi-year housing counseling effort involving active recruitment of landlords through mailings and contacts with local realtor groups.¹⁷⁷ DPW also authorized housing search workers to advance “holding” fees of one-half month’s rent to property owners to cover the period between the landlord’s agreement to rent to a homeless family and the local PHA’s housing inspection and subsidy authorization.¹⁷⁸ As a result, the failure rate of homeless families with children was 5% or less throughout the very tight rental market of 1985 to 1990.¹⁷⁹ By contrast, the Voucher Demonstration Study conducted in the mid-1980s found a failure rate of more than 53% among all enrollees in the Section 8 household-based subsidy program run by the Boston Housing Authority.¹⁸⁰

Outreach and counseling alone are important but not comprehensive

175. PHILIP D. TEGELER ET AL., *Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation*, 30 HARV. C.R.-C.L. L. REV. 451, 482-83 (1995).

176. James P. Zais, *Administering Housing Allowances*, in HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL EXPERIMENT 235, 257 (Raymond J. Struyk & Marc Bendick, Jr. eds., 1981).

177. Barbara Sard, *The Massachusetts Experience with Targeted Tenant-Based Rental Assistance for the Homeless: Lessons on Housing Policy for Socially Disfavored Groups, Part I*, 1 GEO. J. ON FIGHTING POVERTY 16, 22 (1993) [hereinafter Sard I].

178. *Id.* at 22 & n.72.

179. *Id.* at 18.

180. LEGER & KENNEDY, *supra* note 64, at 65.

elements of a complete assisted move strategy. The empirical data set forth above suggest that search costs severely constrain the housing choices of poor and minority families. The government should therefore consider providing resources to families to lower their expected search costs through targeted assistance for transportation and day care during the search.

Another important policy to promote residential choice would be to relax the time requirements for Section 8 enrollees' housing searches to 180 days. Under HUD's current regulations, Section 8 enrollees have as little as 60 days to find a willing landlord.¹⁸¹ These rules significantly narrow the housing opportunities of those who face serious transportation constraints or discriminatory barriers in the housing market. In some cases, these households end up returning their certificates or vouchers to the PHA. In other cases, time pressures may force them to choose housing units and/or neighborhoods of poor quality¹⁸² or to lease in place when they would prefer to move.¹⁸³ Extending the search time would significantly help those least able to find housing quickly.

E. *Encouraging Regional Mobility*

The reforms described above, while important, do not address the special obstacles facing families in central cities who wish to move to suburban areas under the jurisdiction of another PHA.¹⁸⁴ A household that receives a Section 8 demand-side subsidy from an urban PHA often faces serious difficulties in locating housing opportunities in suburban areas. Although the household is allowed to use the subsidy in a "portable" manner by moving to another jurisdiction,¹⁸⁵ the urban PHA loses significant administrative fees for transferred subsidies.¹⁸⁶ "Because of this potential loss of administrative fees, the current Section 8 portability system tends to threaten the PHA's vested interests and create an incentive to discourage participating families from

181. The regulations do allow the PHA to extend the search time to a maximum of 120 days, but they leave the PHA with absolute discretion not to do so. *See supra* note 53.

182. Bryson, *supra* note 132, at 46.

183. Mulroy I, *supra* note 111, at 543 (describing plight of certain families in study who could not "break through landlord barriers to relocate to better-quality housing or better locations" and therefore "scrambled at the last minute to lease the units they presently lived in and wanted to vacate to at least take advantage of much-needed lower rent").

184. For purposes of brevity, this section presents a description of a typical central city PHA with multiple suburban PHAs. For a description of some other jurisdictional structures, see TEGELER ET AL., *supra* note 175, at 464-67.

185. *See generally* 42 U.S.C. § 1437f(r) (1995); *see also* 24 C.F.R. §§ 982.351-982.355 (describing portability provisions). For a description for one minor limitation on portability, *see* 42 U.S.C. § 1437f(r)(1) (1995) (stating that if family applies as non-resident to PHA, it must then remain within the jurisdiction of that PHA for year).

186. 24 C.F.R. § 982.355(e)(2) (1996) (stating that issuing PHAs must forfeit 80% of ongoing administrative fee when another jurisdiction takes over administration of contract). Administrative fees are extremely lucrative for large urban PHAs, who derive a surplus of over 16% from them. HUD: ADMINISTRATIVE FEES, *supra* note 79, at 21.

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moving out of the jurisdiction.”¹⁸⁷

The urban resident typically faces similar resistance from suburban PHAs, many of whom want to exclude low-income minorities from neighboring cities. Suburban PHAs often employ local residency preferences¹⁸⁸ and various informal and illegal means¹⁸⁹ to avoid issuing subsidies to non-residents.¹⁹⁰ In light of these practices, a suburban PHA is also unlikely to be eager to assist a low-income minority household receiving Section 8 from an urban PHA who wants to find housing in the suburban PHA’s jurisdiction. The administrative system thus strongly discourages many urban families from finding housing in suburban areas. Moreover, urban PHAs are under no obligation to provide Section 8 enrollees with any information about suburban housing opportunities.

These limitations on interjurisdictional mobility result from the strong spirit of localism inherent in the 1937 Housing Act, which is supply-side in origin but provides the administrative structure for demand-side Section 8 policies. This legislation empowered local housing authorities (later named Public Housing Agencies) to control the construction and operation of public housing projects.¹⁹¹ PHAs usually formed at the “smallest possible political subdivision,”¹⁹² as part of the express federal policy of providing localities maximum control of housing policy.¹⁹³ Local control may have been a necessary element of a national supply-side housing policy because construction and siting decisions are, arguably, best performed by local authorities. However, by grafting demand-side Section 8 policy onto this system of local control, Congress impeded the very goal of regional mobility that it hoped demand-side Section 8 would advance. The self-interest of urban and suburban PHAs have combined to significantly limit residential choice for urban Section 8 residents.

Several different types of solutions could remedy this problem of limited interjurisdictional mobility. Abolishing the local Section 8 delivery system in

187. This disincentive occurs despite certain legislative efforts to encourage urban PHAs to promote mobility to the suburbs. TEGELER ET AL., *supra* note 175, at 479-80. For example, PHAs must inform subsidy recipients that they can move to other jurisdictions, and PHAs must advise families living in high poverty Census tracts of the advantages of moving to areas with lower concentrations of poor families. 24 C.F.R. § 982.301(a)(2)-(3) (1996). Additionally, 42 U.S.C. § 1437f(g)(1) (1995) permits HUD to compensate PHAs for any loss of certificates.

188. 24 C.F.R. § 982.208 (1996); *see* TEGELER ET AL., *supra* note 175, at 472 n.93 (citing internal HUD study conducted in 1994 showing that 46% of 2541 reporting PHAs had local residency preferences for household-based Section 8 programs).

189. Sard II, *supra* note 45, at 192-94.

190. *See, e.g.*, TEGELER ET AL., *supra* note 175, at 472 (stating that residency preferences in suburban Buffalo PHA caused black city residents to wait “over ten years for subsidies they would never receive,” while “white suburban applicants received subsidies within eighteen to twenty-four months”).

191. Local governments influence the development of public housing through appointments to the local authority and through veto power over the size, location, design and staffing of housing developments. Eugene J. Meehan, *The Evolution of Public Housing Policy*, in *FEDERAL HOUSING POLICY AND PROGRAMS* 287, 291 (J. Paul Mitchell ed., 1985).

192. Tegeler, *supra* note 3, at 218.

193. “It is the policy of the United States . . . to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs.” 42 U.S.C. § 1437 (1995).

favor of a state-run system would be the most radical and perhaps the most effective policy.¹⁹⁴ Residents would apply to a state-run waiting list, and states would contract with regional governmental or non-profit agencies that would certify income eligibility, provide housing counseling, and conduct landlord outreach throughout metropolitan areas.¹⁹⁵ The federal government could also establish performance-based incentives encouraging states to achieve low failure rates and high movement of recipient households away from neighborhoods of extreme poverty. Under this proposal, local PHAs would be stripped of their role in operating demand-side housing programs, but would still operate supply-side housing programs.

Regional housing mobility programs also represent a promising, though more limited, method of promoting residential choice among subsidy recipients. A federal regional housing mandate could require local PHAs to fund regional organizations that would operate housing mobility programs, such as housing counseling and landlord outreach, while the PHAs would still operate waiting lists and certify Section 8 eligibility. In certain cases, courts have required regional housing counseling and landlord outreach programs that have proven quite successful. For example, the Gautreaux Assisted Housing Program in Chicago, operated by the Leadership Council for Metropolitan Open Communities, provides a comprehensive counseling, placement and support program to help black¹⁹⁶ Section 8 holders locate apartments in metropolitan Chicago neighborhoods with minority populations of less than thirty percent.¹⁹⁷ Soon, the program will have placed over 7000 households,¹⁹⁸ more than half of them in the Chicago suburbs.¹⁹⁹ The Leadership Council operates a highly contested phone-in registration one day a year, registering 2000 families out of more than 10,000 estimated callers.²⁰⁰ Participants have one hundred

194. See TEGELER ET AL., *supra* note 175, at 475 (mentioning briefly strategy of "creating a centralized regional or statewide Section 8 administrator").

195. This proposal would represent a radical extension of current policy, which does allow some flexibility in the operation of Section 8 demand-side subsidies. PHAs eligible to operate Section 8 programs may include "[a]ny state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families." 24 C.F.R. § 982.4 (1996); see Tegeler, *supra* note 3, at 231.

196. Eligibility for the program is limited to black current or former public housing residents or applicants. Florence Wagman Roisman & Hilary Botein, *Housing Mobility and Life Opportunities*, CLEARINGHOUSE REV. 335, 340 (Special Issue, 1993).

197. *Id.* at 340.

198. From 1976 to 1981, the program operated as a demonstration program, at which point the court approved a consent decree establishing the Gautreaux program as a primary method of relief to continue until 7100 members of the plaintiff class had been given relief. See *Gautreaux v. Landrieu*, 523 F. Supp. 665, 668-69 (N.D. Ill. 1981), *aff'd sub nom. Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982); Davis, *supra* note 44, at 2; see also Flynn McRoberts, *Gautreaux Housing Program Nears End*, CHI. TRIB., Jan. 12, 1996, at 1 (stating that program will end by second half of 1996).

199. TEGELER ET AL., *supra* note 175, at 459 n.27.

200. Davis, *supra* note 44, at 3.

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eighty days from the time they attend a briefing to find housing.²⁰¹ A housing counselor discusses with the household members the application process, reviews their credit, rental, personal and family history, and assists them in submitting information to the landlord. The counselor is then available to assist the family for ninety days after the move-in date with any questions or concerns.²⁰² The program has generated significant employment and educational benefits from suburban moves²⁰³ at a cost of only about \$1000 extra per household.²⁰⁴

Despite the success of housing mobility programs in Chicago and elsewhere,²⁰⁵ the federal government has not adequately incorporated such features into its Section 8 program. In 1992, Congress did adopt a national pilot project known as the Moving to Opportunity for Fair Housing demonstration program.²⁰⁶ In the face of opposition from suburban residents in Baltimore and elsewhere, however, a Senate and House joint conference committee later killed a \$149.1 million provision that would have financed the program's expansion.²⁰⁷

Even if the federal government does not regionalize the operation of housing counseling and landlord outreach, it still should act more forcefully to encourage urban and suburban PHAs to promote interjurisdictional residential choice. For example, the government could provide fee incentives to encourage "receiving PHAs" in higher income areas to compete among each other for outside residents.²⁰⁸ Similarly, a revised administrative fee structure could encourage central city PHAs to place residents in other jurisdictions, especially in neighborhoods of low poverty concentration. Finally, the government could require all PHAs to be more aggressive in identifying potential landlords in less distressed neighborhoods,²⁰⁹ and could mandate the sharing of landlord information among PHAs within a metropolitan region. The Section 8 program will only be effective if PHAs begin to view interjurisdictional moves, especially moves from high to low poverty areas, to be in their best interest.

A few urban PHAs already have implemented sound housing mobility programs. For example, the Hartford PHA has contracted with a non-profit

201. *Id.*

202. *Id.* at 4.

203. See Rosenbaum & Popkin, *supra* note 20.

204. Roisman & Botein, *supra* note 196, at 340.

205. Other mobility programs currently operate in a handful of metropolitan areas, including Cincinnati, Dallas, Memphis, and Milwaukee. Roisman & Botein, *supra* note 196, at 340-44.

206. Housing and Community Development Act of 1992, Pub. L. No. 102-550 § 152, 106 Stat. 3672, 3716 (1992); see 42 U.S.C.A. § 1437f note (1995).

207. See Ann Mariano, *Hill Panel Halts Plan to Move Poor Families: U.S. Relocation Subsidies Spurred Complaints*, WASH. POST, Sept. 3, 1994, at E1. This expanded program, known as "Choice in Residency," would have provided housing mobility counseling for up to 300,000 additional families. HUD FY 1995 BUDGET: EXECUTIVE SUMMARY 17 (1994), cited in Tegeler, *supra* note 3, at 232 n.83.

208. Tegeler, *supra* note 3, at 232.

209. See, e.g., TEGELER ET AL., *supra* note 175, at 482-83.

organization that initiates outreach to suburban realtors, regularly collects and posts suburban rental listings, disseminates information about suburban transportation and services, and coordinates with volunteers in suburban towns willing to take Section 8 recipients on tours of their neighborhoods.²¹⁰ By April 1993, nearly three hundred families had permanently moved to suburban jurisdictions. More than ninety percent of participants were people of color who moved from impoverished urban areas to much more prosperous suburban neighborhoods.²¹¹

VI. HARNESSING THE POWER OF CHOICE WITH THE RENTAL PAYMENT STRUCTURE

As described in Part III, the certificate and voucher programs adopt somewhat different formulae for calculating the share of the rent paid by the household and the PHA at different rent levels. Unfortunately, neither payment structure adequately promotes important policy objectives of housing quality and cost-effectiveness because neither scheme fully motivates households to search for and negotiate better housing bargains. This Part proposes program consolidation under an improved payment structure.²¹²

In the certificate program, the household must find a unit renting at or below the Fair Market Rent (FMR).²¹³ PHAs pays to the landlord the difference between the contract rent and 30% of the household's monthly adjusted gross income. In the voucher program, the PHA sets a payment standard roughly equivalent to the FMR, but the household can choose a unit renting at any price. The PHA then pays the owner the difference between the payment standard and 30% of the family's monthly adjusted income. The PHA payment to the owner, however, may not exceed the amount by which the actual rent to the owner exceeds 10% of the family's monthly gross income.

Administrators hoped that the voucher program would encourage households to shop for apartments with lower rents by allowing households to capture the full benefit of the rent reduction. If a unit rents for less than the payment standard, the family benefits by paying less than 30% of its monthly adjusted income for rent, subject to the minimum rent computation. On the

210. SHAUN DONOVAN, MOVING TO THE SUBURBS: SECTION 8 MOBILITY AND PORTABILITY IN HARTFORD 7-8 (Joint Center for Housing Studies, Harvard University, Working Paper W94-3, 1994); Roisman & Botein, *supra* note 196, at 339-44.

211. DONOVAN, *supra* note 210, at 29 (showing that 91.5% of families were black or Hispanic); *id.* at 19 ("The average Hartford Section 8 certificate-holder living within the city resides in a census tract with a poverty rate of 28.7%, over four times greater than the poverty rate of 7% for a census tract where the average mobility participant lives.").

212. Consolidating both programs into a single policy would increase administrative efficiency because each currently requires separate budgeting and accounting. HUD: ADMINISTRATIVE FEES, *supra* note 79, at 32-33.

213. Assume that utilities are included in the contract rent that the household negotiates with the landlord.

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other hand, if a unit rents for more than the payment standard, the family is free to rent the unit, but it must pay the entire difference between the rent and the PHA's payment.

For detailed examples of these two payment structures, see Figures 2, 3 and 4. In both cases, the FMR is \$800, the household's gross monthly income is \$1200, and its adjusted monthly income is \$1000. This hypothetical household has a gross monthly income of \$1200 and an adjusted monthly income of \$1000, and it must find an apartment with a rent below the FMR of \$800. No matter how much the apartment rents for, the household will always have to pay \$300. Depending on the amount that the landlord charges, the PHA payment could range from \$0 to \$500 (the difference between the FMR and the household payment).

In the voucher example, the household will receive assistance if it rents any apartment priced above \$120 (10% of its monthly gross income). As rents increase from \$120 to the voucher payment "corner" of \$620 (10% of monthly gross income plus the difference between the FMR and 30% of adjusted monthly income), the PHA payment increases from \$0 to \$500 (the FMR minus 30% of adjusted monthly income) while the household payment remains constant at \$120. Above rents of \$620, the PHA payment remains constant at \$500 while the household payment increases to cover the difference.

The pricing structure of the certificate program violates several objectives of low-income rental housing policy. First, it is not a cost-effective means of assuring quality affordable housing. Because household payments are constant over the range of rents, recipients pay no additional out-of-pocket costs for higher rent units. They therefore have no incentive to economize on rent or negotiate with landlords. Instead, "it is in their interest to gain the greatest value of additional subsidy beyond their contribution. As a consequence, landlords of units somewhat below FMR submarket quality have an incentive to raise rents to FMR, even if they do not upgrade."²¹⁴ By contrast, voucher recipients do have an incentive to economize in negotiating rents for all rent levels above the voucher payment "corner" (\$620). A large national study confirms that certificate recipients pay significantly more than voucher recipients for housing at comparable quality levels.²¹⁵

214. See ROTHENBERG ET AL., *supra* note 42, at 302 (concluding that, because of lack of bargaining incentives, "some participants are induced to consume more housing than is optimal [given their preferences] and that rents for dwellings near and at such quality levels are unnecessarily inflated [at least in the short run]") (brackets in original).

215. LEGER & KENNEDY, *supra* note 64, at 111. Only at rent levels near the FMR do certificate holders have an incentive to economize, because exceeding the FMR generally causes them to fail to qualify for the program. *Id.*; see also HOWENSTINE, *supra* note 107, at 123 (presenting data showing that rent increases are considerably higher in certificate program than had occurred in BHAP program, where recipients had monetary incentive to search and bargain for lowest possible rent).

FIGURE 2: PAYMENT STRUCTURES OF CERTIFICATE, VOUCHER AND PROPOSED PROGRAMS

The following examples assume a household with a gross monthly income of \$1200 and an adjusted monthly income of \$1000. The household lives in an area where the FMR is \$800 for the relevant apartment size.

	Total rental payments per month											
	120	300	400	500	600	620	700	800	900	1000	1100	1200
CERTIFICATE PROGRAM												
Government payment per month	*	0	100	200	300	320	400	500	*	*	*	*
Household payment per month	*	300	300	300	300	300	300	300	*	*	*	*
Household disposable income per month	*	700	700	700	700	700	700	700	*	*	*	*
VOUCHER PROGRAM												
Government payment per month	0	180	280	380	480	500	500	500	500	500	500	500
Household payment per month	120	120	120	120	120	120	200	300	400	500	600	700
Household disposable income per month	880	880	880	880	880	880	800	700	600	500	400	300
PROPOSED PROGRAM												
Government payment per month	0	132	206	279	353	368	427	500	500	500	500	500
Household payment per month	120	168	194	221	247	252	273	300	400	500	600	700
Household disposable income per month	880	832	806	779	753	748	727	700	600	500	400	300

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FIGURE 3: CERTIFICATE PAYMENT STRUCTURE

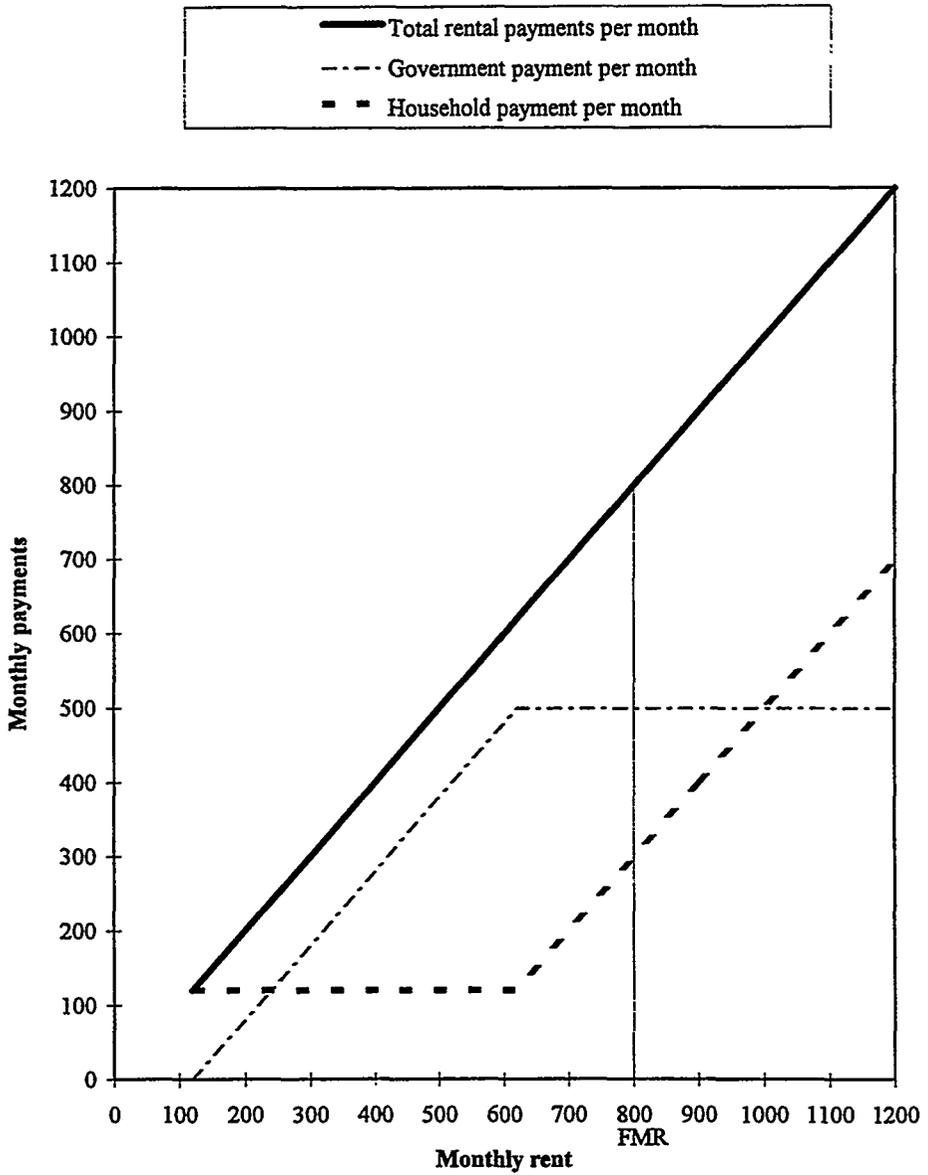
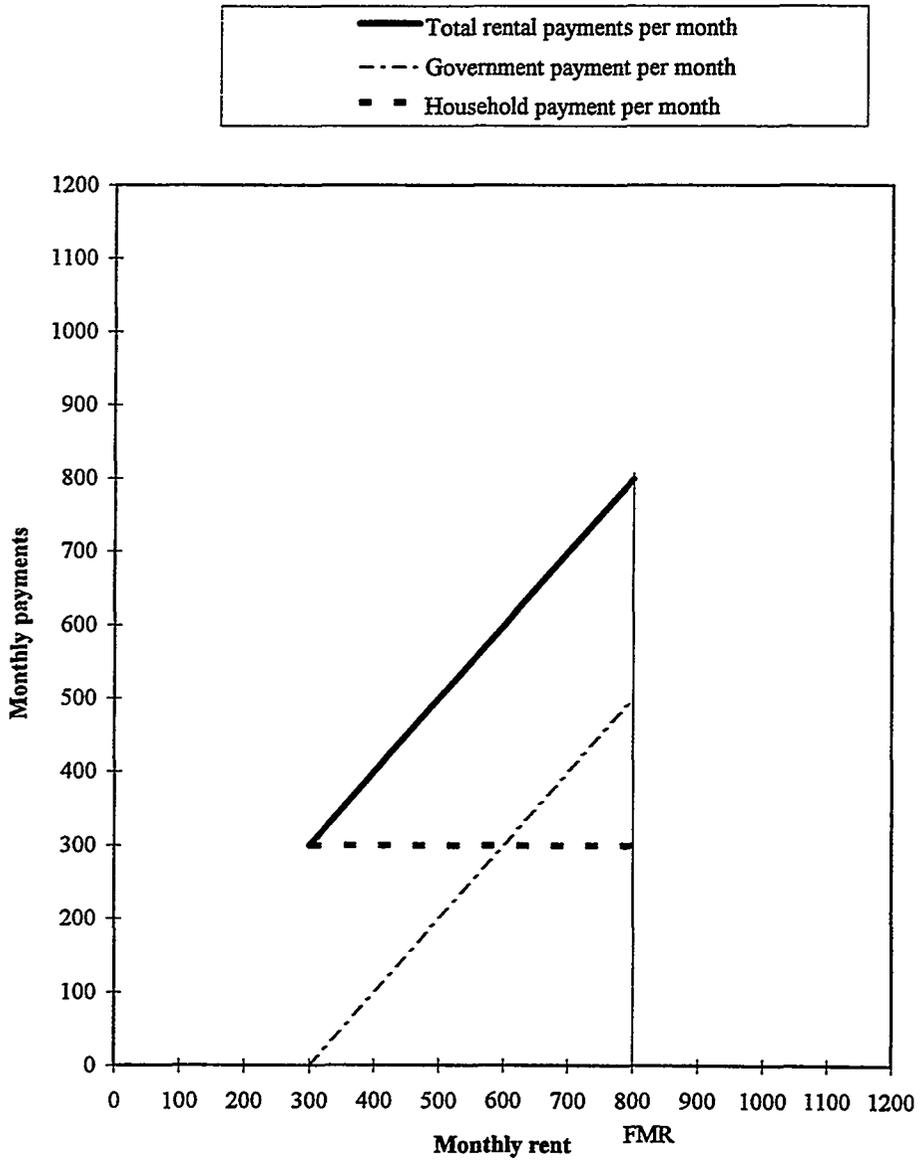


FIGURE 4: VOUCHER PAYMENT STRUCTURE



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A related incentive problem with the certificate program occurs during the succeeding years of a household's eligibility. Once a household qualifies in a dwelling, it has no reason to negotiate annual rent increases with the landlords; as long as the landlord will accept HUD-established adjustments, the certificate holder's situation is unchanged.

Moreover, the certificate program generally prevents households from spending more than 30% of their adjusted monthly income on housing. This provision runs counter to the principle of residential choice. For households that place a special premium on the quality of housing or neighborhood location in relationship to their other consumption possibilities, this limitation is particularly onerous.

Like many other problems with household-based Section 8, the poor design of the certificate program's payment structure is a legacy of supply-side housing programs. Since its inception, the certificate program has carried with it the same simple rent formula of public housing, in which households pay a fraction of their adjusted monthly income (now thirty percent) and the government makes up the difference. While this formula may make sense in the context of public housing, where tenants are unable to search for better housing bargains, it does not operate well in the private market because it provides no incentives for households to shop or bargain for quality affordable housing.

In different ways, the voucher program also fails to provide sufficient incentives for households to improve the quality of their housing. Consider a family living in an apartment that already qualifies under the housing quality standards and that rents an apartment priced below the FMR. For several reasons, the voucher program creates enormous incentives for that family to lease in place rather than attempt to find better or more economical housing. First, for all rents higher than the voucher payment "corner" (\$620 in this example), the PHA payments remain constant at \$500. A household currently renting an apartment at or above the "corner" amount has little incentive to move to better housing, because it would have to pay the full amount of any quality increases entirely out of its own pocket.

Second, households currently paying less than the voucher payment "corner" in rent can save an inordinate amount of rent (the difference between the current rent and 10% of monthly gross income) by simply using Section 8 subsidies to lease their current apartments. A household currently paying \$600 a month, for example, would receive a full \$480 a month from the PHA to remain in the same apartment. In light of these savings and the costs of a housing search, moving is hardly worthwhile. This lease-in-place effect is especially pronounced in rent-controlled areas. In New York City, for example,

an estimated 85% of voucher recipients remain in their same apartments.²¹⁶ Many of these households did not achieve an increase in housing or neighborhood quality but rather transformed the housing subsidy into a pure income transfer.

The final problem with the voucher program is that at rents below the voucher payment "corner," households living in low-cost apartments or searching in low-cost housing markets have little incentive to economize. Because household payments are constant at rents below the payment "corner," recipients who had been living in this range pay no additional out-of-pocket costs for higher-rent units. They therefore are not encouraged to bargain hard with their existing landlords to keep the rents low.

The proposed payment structure shown in Figure 5 largely remedies the problems caused by the payment structures of the certificate and voucher programs.²¹⁷ Under the proposed structure, a household can only rent units that cost at least 10% of the household's monthly gross income (\$120). At that level, all of the rent payments must be made by the household. As the rent increases from that level to the FMR, the PHAs payments increase from \$0 to the difference between the FMR and 30% of adjusted monthly income (to \$800 minus \$300, or \$500), while the household payments increase from 10% of monthly gross income (\$120) to 30% of adjusted monthly income (\$300). At rents above the FMR, PHA payments remain constant, as in the voucher program.

This proposal would have several advantages over the current certificate and voucher programs. Perhaps most important, it would restore the shopping incentive entirely absent from the certificate program and absent from the voucher program at rents up to the voucher payment "corner." By mandating that households always pay out of pocket in order to obtain higher levels of government subsidies, the proposal would hold down rents by encouraging households to search and bargain for good housing values.²¹⁸ Also, unlike the

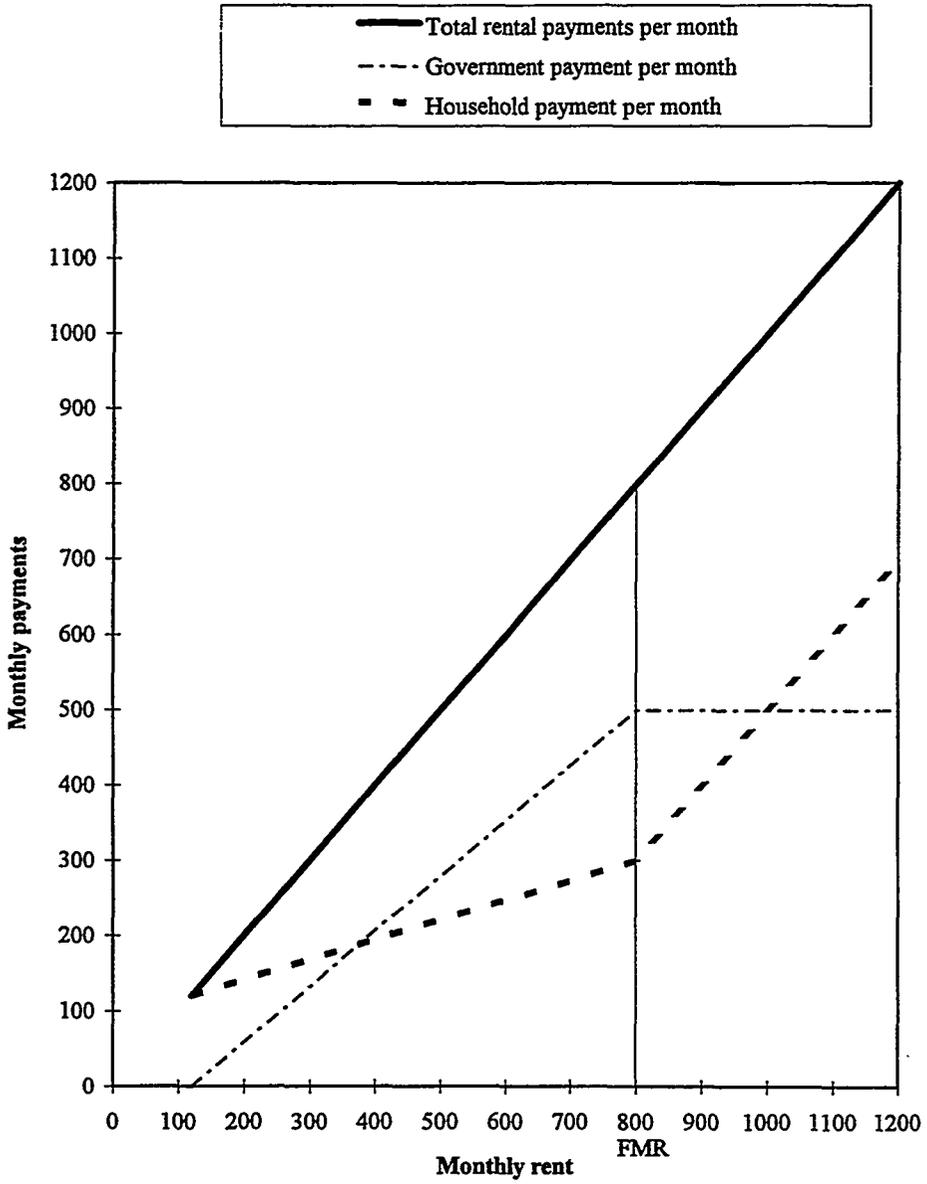
216. *Section 8 Housing Assistance Payments Program, Hearings before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs*, 103d Cong., 1st Sess. 17 (1993) (statement of Paul T. Graziano, Deputy General Manager for Operations, New York City Housing Authority, on behalf of the Council of Large Public Housing Authorities).

217. For a description of a similar payment structure, see ROTHENBERG ET AL., *supra* note 42, at 302-04. See also HOWENSTINE, *supra* note 107, at 71-99 (describing payment structures in a variety of countries).

218. See ROTHENBERG ET AL., *supra* note 42, at 303 (stating this type of payment structure would cause recipients to "have a vested interest in obtaining less expensive lodgings, thus tempering landlords' inflationary incentives"). Although this proposal seems more complicated than the certificate or voucher payment structures, PHAs could easily provide each Section 8 enrollee with a computerized printout showing household and landlord payments at different rent levels, similar to the schedule shown in Figure 2.

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FIGURE 5: PROPOSED PAYMENT STRUCTURE



current certificate program, the proposed payment structure would allow recipient families to pay more than 30% of their adjusted income if they wish, thus enabling certain families to place a premium on housing and neighborhood quality.²¹⁹

Moreover, this proposal would minimize households' incentives to lease in place. First, unlike the voucher program, the proposed payment structure would not hold PHA payments constant for all rent levels up to the FMR. Because the PHA would help pay for increases in housing quality, households currently renting inexpensive units would have a significant incentive to shop for better housing. Second, households under this program would not benefit as much from remaining in place as they would in the voucher program. As shown in Figures 4 and 5, the PHA payment in the proposed program would be less than the PHA payment in the voucher program for all rent levels below the FMR. Finally, the mobility provisions suggested in Part V would reduce incentives to lease in place by enabling households to engage in a wider search for housing that better satisfies their needs. The revised payment structure, combined with the mobility reforms, would motivate Section 8 recipients to shop and bargain for quality housing in locations of their choice.

VII. CONCLUSION

A. *Why Not Cash?*

In certain ways, many of the proposals in Parts IV and V would radically simplify the Section 8 program. Indeed, eliminating inspections and certain lease requirements could be viewed as the first step toward removing the federal government from the messy details of housing policy altogether. Ultimately, the federal government could provide assistance solely through crude means such as refundable shelter tax credits²²⁰ or direct cash transfers.

A restructured Section 8 program, however, would generate important benefits that an income transfer program would not. Because PHAs make payments directly to landlords under the proposed policy, the public cannot easily claim that recipient families are spending the benefits on non-housing goods, although some substitution certainly occurs. The program therefore maintains a certain amount of legitimacy even in times of fiscal tightening.

Furthermore, unlike an income transfer program, the proposed subsidy program involves PHAs in monitoring the lease arrangements, thus assuring

219. For a description of one potential adverse consequence of an unlimited rent provision, see LEGER & KENNEDY, *supra* note 64, at 21-24 (citing evidence from voucher program that 11% of households with unconstrained rent limits overestimate their ability to pay large rents and therefore fail out of program).

220. Elizabeth A. Roistacher, *A Modest Proposal: Housing Vouchers as Refundable Tax Credits*, in HOUSING AMERICA'S POOR 162, 162-70 (Peter D. Salins ed., 1987).

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that reported tenant rent payments correspond to actual payments. This oversight is necessary not only to save costs but also to ensure the effectiveness of the shopping and bargaining incentives built into the proposed payment structure.

A comprehensive demand-side housing policy also generates unique and important positive externalities.²²¹ For example, the system of program enrollment encourages responsible tenancies. Households are deterred from engaging in egregious conduct because they face potential eviction *and* the threatened loss of federal rental assistance.²²² Also, the program arguably creates beneficial side-effects from residential integration of different race and socioeconomic classes.

B. *The Republican Proposals*

Current Republican housing legislation in the House and Senate²²³ envisions dramatic changes to many federal housing programs, including the household-based Section 8 program. The Senate passed its housing reform bill on January 10, 1996,²²⁴ while the House version was reported to the full House on February 1, 1996.²²⁵ Although the two bills differ in several respects, careful examination reveals that both would exacerbate many of the Section 8 program's existing defects.

For example, the Republican proposals would increase current inequities in the Section 8 program. As described in Part IV, Congress should reduce the current income eligibility limit, which currently is 50% of area median income.²²⁶ The current legislation, however, would increase the limit by allowing PHAs to provide assistance to families with incomes at or below 80% of area median income.²²⁷ As one expert notes, "about 60 percent of all

221. In general, a policy to increase the total amount that individuals spend on housing has ambiguous effects on overall social utility. On the one hand, microeconomic theory suggests that generous housing subsidy programs are less effective than equal cash payments in improving individual utility. See MICHAEL L. KATZ & HARVEY S. ROSEN, *MACROECONOMICS* 72-74 (1994) (explaining that in-kind transfer program is inefficient if it provides individual with more of a good than she would have purchased absent program). On the other hand, the positive external or social benefits of housing would justify a program that causes people to increase total expenditures on housing. See JAMES HEILBRUN, *URBAN ECONOMICS AND PUBLIC POLICY* 324 (1987) (describing certain marginal social benefits caused by increased resources spent on housing provision).

222. See 24 C.F.R. §982.552(b) (1996) (stating that PHAs can terminate assistance to households for various reasons, including illegal subletting and violent criminal activity). PHAs must provide Due Process protections for tenants facing possible termination of assistance. 24 C.F.R. §982.554 (1996).

223. H.R. 2406, 104th Cong., 2nd Sess. (Version 2, 1996) [hereinafter House Bill]; S. 1260, 104th Cong., 2nd Sess. (1996) [hereinafter Senate Bill].

224. 142 Cong. Rec. S. 167 (Jan. 10, 1996).

225. 142 Cong. Rec. H. 1223 (Feb. 1, 1996).

226. See *supra* note 83-84 and accompanying text.

227. House Bill § 321 (establishing general eligibility for low-income families); Senate Bill § 201(o)(4) (providing assistance to low-income families if they meet eligibility criteria that PHAs may specify).

renter households and 40 percent of the U.S. population have incomes within 80 percent of the area median."²²⁸ Because these plans would not increase expenditures to cover the expanded pool of applicants, these proposals effectively would transfer substantial resources from the poor to the middle class, violating the principle of progressivity. Furthermore, the Republican proposals would not restore the important federal preference for involuntarily displaced families,²²⁹ nor would they end mandatory inspections,²³⁰ which achieve little benefit while imposing serious inequities on program recipients.

The current housing reform bills also would not promote residential choice and mobility. For example, neither bill requires PHAs to reduce search costs through such policies as improved housing counseling and landlord outreach, extended search times, or transportation and child care assistance. In fact, each bill contains provisions reflecting a bias against moves of poor people to urban areas. The Senate version, for example, explicitly repeals the Moving to Opportunity program referred to in Part V.²³¹ Similarly, the House bill would require a special study regarding the overconcentration of Section 8 recipients in Chicago suburbs, as proposed by a Republican Congressman who originally wanted to put a moratorium on the use of Section 8 in these areas.²³²

Also, the Republican proposals would not reduce the problems arising from the decentralized operation of Section 8 housing assistance. Neither bill, for instance, would encourage PHAs to work together to prepare and distribute regional information about available landlords.²³³ Moreover, the House bill would discourage urban PHAs from promoting interjurisdictional mobility because it would completely take away lucrative administrative fees from PHAs when subsidy recipients move to other jurisdictions.²³⁴ The House bill also would compound existing problems of undue local control by allowing PHAs the discretion to set subsidy levels. Potentially, PHAs experiencing pressure from middle-class residents could establish very low subsidy levels in order to prevent poor families from moving into higher-income neighborhoods.²³⁵

228. See Sard II, *supra* note 45, at 183.

229. See *supra* note 91 and accompanying text.

230. House Bill § 328 (requiring dwelling units to meet standards at least as stringent as federal housing quality standards to be promulgated by HUD); Senate Bill § 201(o)(8) (requiring initial and periodic inspections).

231. Senate Bill § 206(I).

232. House Bill § 373 (mandating study in metropolitan Chicago of "the adverse impact on local communities due to geographic concentration of assisted households"); see also Flynn McRoberts, *Weller Hopes Bill Will Lead to Review of HUD Vouchers*, Nov. 14, 1995, at 2; Anne Hazard, *Committee Passes Legislation Directing HUD to Study Low Income Housing*, STATES NEWS SERVICE, Nov. 9, 1995.

233. See *supra* Section V.E.

234. The current policy allows originating PHAs to retain twenty percent of the fees. See *supra* note 186.

235. House Bill § 322(a) (stating that family's rental contribution shall be determined based on factors "including the adjusted income of the family and any other factors that the [PHA] considers appropriate"). The family must pay at least \$25, and it must pay for its own utilities. *Id.*

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Additionally, the Republican legislation would not balance appropriately the rights of landlords and tenants. The bills do end certain unnecessary burdens on landlords, such as the endless lease requirement.²³⁶ Unfortunately, neither proposal would establish appropriate anti-discrimination provisions to prevent landlords from refusing to accept Section 8 families as tenants. Moreover, the House proposal would provide landlords with greater eviction powers over Section 8 tenants than they have over other tenants. The bill would permit a landlord to evict a Section 8 family at any time merely for “other good cause,”²³⁷ even though under most state laws a landlord may not evict a tenant during the lease if the tenant is not in breach of lease provisions.²³⁸

Finally, the House and Senate bills include payment schemes that would be significantly worse than the payment structure suggested in Part VI. The Senate bill, for example, would establish a payment schedule almost identical to the certificate program,²³⁹ thus discouraging households from bargaining for affordable, quality apartments. The House bill is no better. By allowing PHAs to develop their own methods for calculating subsidy levels,²⁴⁰ the bill would not ensure that appropriate shopping and bargaining incentives are built into the Section 8 payment structure.

In short, the Republican legislative proposals would not resolve the crises of unaffordable housing and limited residential choice facing poor urban families. The bills would redirect assistance to higher income families, fail to promote residential choice, and create perverse payment structures.

C. *The Potential for Reform*

Although the reforms proposed in this Note would dramatically improve the Section 8 program, they would undoubtedly encounter significant resistance from several interest groups. For example, local PHAs would strongly resist the proposal to end their involvement in the Section 8 program entirely. They probably also would resent the more limited proposal to require regional housing mobility programs operated by regional government agencies or non-

236. See *supra* note 142. The bills also would dispense with the ninety day termination notice requirement. See *supra* note 149.

237. House Bill § 325(a)(1) (stating that owner may terminate tenancy for “violation of the terms and conditions of the lease, violation of applicable federal, state, or local law, or other good cause”).

238. NATIONAL HOUSING LAW PROJECT, NATIONAL HOUSING ACT TRASHES AMERICAN DREAM 7 (1995).

239. In order to rent an apartment that costs less than the payment standard, a recipient family must pay a fixed amount (usually 30% of its adjusted monthly income) for rent regardless of the total rent level set by the landlord, and the PHA pays the landlord the difference between the rent and the required tenant payment. Senate Bill § 201(o)(2). A PHA must set payment standards between 90 and 120% of the local FMR. *Id.* at § 201(o)(1)(B). Unlike the certificate program, the Senate bill would allow families to rent apartments requiring them to spend more than 30% of adjusted family income on housing. At the time a family initially receives assistance, however, the total amount that it must pay for rent may not exceed 40% of monthly adjusted income. *Id.* at § 201(o)(2)-(3).

240. See *supra* note 235.

profit organizations.²⁴¹ Also, some white suburban residents would vigorously oppose mobility measures because of racism and out of fear that an influx of poor people would cause increased crime and would overburden local schools and social services.²⁴² Furthermore, some minority politicians in urban areas might oppose mobility efforts for fear that a dispersal strategy would weaken their power base.²⁴³ Landlord representatives would complain about certain features of the proposals, such as the source-of-income nondiscrimination requirement,²⁴⁴ and tenant advocates would denounce the proposed elimination of inspections and the proposed removal of certain eviction protections.²⁴⁵

Despite the breadth of potential opposition, the proposals outlined in this Note are necessary improvements to the Section 8 program. The revised enrollment procedures would more fairly allocate the limited assistance available and would ensure that subsidy recipients can actually use their subsidies in the private market. At the same time, the mobility provisions would provide poor residents with maximum residential choice, generating some corresponding increase in socioeconomic integration throughout metropolitan areas. Finally, the revised payment structure would capture the power of this increased choice, thus improving the program's cost-effectiveness and residents' housing quality. Once restructured, Section 8 can finally become an effective tool in the fight against the nation's housing problems.

241. See Tegeler et al., *Transforming Section 8 into a Regional Housing Mobility Program 21* (draft paper prepared for First National Conference on Housing Mobility as an Anti-Poverty Strategy, on file with the *Yale Law and Policy Review*) ("[The Section 8] institutional constituency now consists of over 2500 separate administering agencies and countless thousands of agency employees. They are far better organized and much better financed than the Section 8 applicants and tenants who are the intended beneficiaries of the program. The program has been molded to accommodate the concerns of the local interests that control these agencies and the well organized and influential national coalitions of program administrators who represent them. Their primary interests may ignore or even be at odds with housing mobility goals.").

242. See Karen de Witt, *Housing Voucher Test in Maryland Is Scuttled by a Political Firestorm*, N.Y. TIMES, Mar. 28, 1995, at B10.

243. See Hughes, *supra* note 48, at 289.

244. See *Section 8 Housing Assistance Payments Program: Hearing Before the Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs, 103rd Cong., 1st Sess. 25* (Nov. 3, 1993) (testimony of Thomas R. Shuler, Pres., National Apartment Association) (criticizing proposed non-discrimination provision and stating that "[w]e shouldn't try to paper over design flaws by legislatively mandating [landlord] participation").

245. See Bryson, *supra* note 132, at 46 (stating that National Housing Law Project favors strong eviction protections for tenants "as an important safeguard against them becoming homeless").

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APPENDIX

This Appendix confirms several arguments of the Note with reference to New Haven, Connecticut and surrounding suburbs. As occurs in many metropolitan areas, the City of New Haven has dramatically higher concentrations of poverty and racial minorities than do the nearby suburban towns.²⁴⁶ Even though the suburbs have significant numbers of apartments that are affordable under the Section 8 program,²⁴⁷ the overwhelming majority of black urban households receiving Section 8 remain in the poorest neighborhoods of the City of New Haven.²⁴⁸ Finally, like other urban PHAs, the Housing Authority of the City of New Haven does not provide significant suburban housing options to its Section 8 recipients.²⁴⁹

These data and maps obviously only provide a crude glimpse into the demography and Section 8 patterns of Greater New Haven, and the results are not necessarily indicative of other urban areas. Nonetheless, the following presentation suggests how quantitative tools and mapping technology can help policy makers and the public understand the geography of poverty and housing in urban areas.

1. *Urban Concentration of Poverty and Racial Minorities*

The socioeconomic characteristics of the City of New Haven contrast sharply with the features of twelve surrounding suburban towns shown in Map A. As seen in Figure 6, for example, the City of New Haven has only 30% of the total population of Greater New Haven, but the city has 62% of the area's population under the poverty line and 75% of the area's black and Hispanic populations.

Maps B through E further illustrate the geography of socioeconomic characteristics in the Greater New Haven area. Information was extracted from 1990 U.S. Census data available on CD-ROM²⁵⁰ and compiled using MapInfo, a Geographic Information Systems software package. The maps present the data at the smallest possible resolution, a Census unit known as a

246. *See supra* notes 11-12 and accompanying text (describing urban concentration of poverty nationally).

247. *See supra* notes 116-117 and accompanying text (demonstrating wide availability of apartments renting below FMRs throughout metropolitan areas).

248. *See supra* notes 118-123 and accompanying text (describing limited residential mobility of subsidy recipients).

249. *See supra* notes 175 and 185-187 and accompanying text (explaining why urban PHAs fail to promote mobility among subsidy recipients).

250. U.S. BUREAU OF THE CENSUS, 1990 CENSUS OF POPULATION AND HOUSING: SUMMARY TAPE FILE 3A (Connecticut, Maine, Rhode Island, Vermont) (CD90-3A-10).

"block group."²⁵¹

2. *Widespread Availability of Qualifying Housing*

Census data confirm that Section 8 recipients could access significant affordable housing opportunities throughout the Greater New Haven area in 1990. The one-bedroom and two-bedroom FMRs for that year were \$581 and \$684, respectively.²⁵² After subtracting utility allowances for natural gas appliances,²⁵³ households could pay \$501 and \$586 a month respectively for one-bedroom and two-bedroom apartments.

Figure 7 and Maps F, G, and H show the geographical distribution of units with contract rents at or below \$500, as revealed by the 1990 Census. Note that this investigative technique seriously underestimates the number of two-bedroom apartments available to Section 8 households because it fails to show the apartments with monthly rents between \$500 and the rental ceiling of \$586. Nonetheless, a comparison between these results and the distribution of public assistance recipients in Map D suggests that a significant amount of affordable housing did exist outside of the most impoverished urban neighborhoods in 1990.

3. *Geographic Concentration of Urban Section 8 Recipients*

Most black households receiving Section 8 assistance from the Housing Authority of the City of New Haven use their subsidies in poor neighborhoods within the city limits. In May 1995, black households received about 55% of the certificates and vouchers operated by the Housing Authority.²⁵⁴ Figure 8 shows that most of these black families remained in the City of New Haven,²⁵⁵ and Maps I, J, and K use geocoding technology to show that these

251. In 1990, the median population of block groups in Greater New Haven was 1109. *Id.* (author's calculations).

252. Fair Market Rents for Existing Housing, 54 Fed. Reg. 39,866, 39,873 (1989).

253. U.S. DEP'T OF HOUS. & URB. DEV., SECTION 8 EXISTING HOUSING ALLOWANCES FOR TENANT FURNISHED UTILITIES AND OTHER SERVICES (1990) (on file with the *Yale Law and Policy Review*).

254. Of 2066 total households holding Section 8 certificates and vouchers operated by the Housing Authority of the City of New Haven in May 1995, approximately 55% were black, 31% were Hispanic, and 11% were white. Housing Authority of the City of New Haven, Computer Printout of Race and Addresses of Households Receiving Section 8 Certificate and Voucher Subsidies from the Housing Authority of the City of New Haven (May 13, 1995) (on file with author).

255. In May 1995, the Housing Authority of the City of New Haven maintained assistance contracts with all Section 8 households who were residents of the city but then moved to surrounding suburbs. Federal regulations did encourage PHAs to take over administration of the assistance contracts of subsidy holders who move into their jurisdiction. *See* 24 C.F.R. § 887.555 (1995) (recommending but not requiring voluntary arrangements among PHAs to reassign contracts for families moving between PHA jurisdictions). Suburban PHAs in the Greater New Haven area, however, were under budgetary and political pressure not to take over the assistance contracts, in order not to use up subsidies which could be used for their own residents. As a result, the Housing Authority of the City of New Haven

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families concentrated in certain neighborhoods, particularly in areas with high poverty rates.

Absent in-depth interviews or regression analyses, these composite data do not explain the residential decisions of Section 8 recipient households in the City of New Haven. For example, some black families may choose to remain in low-income urban locations because of their desire to remain close to family and friends. Nonetheless, the national data presented in the Note²⁵⁶ suggest that a substantial portion of these households would prefer to move to affordable housing in better neighborhoods, either in the City of New Haven or its suburbs. Lack of housing information and lack of adequate transportation may limit recipients' ability to move to the neighborhoods of their choice.

4. *Lack of Suburban Housing Information for Urban Section 8 Recipients*

Urban PHAs generally are not effective at helping households to move to suburban locations.²⁵⁷ Not surprisingly, therefore, the Housing Authority of the City of New Haven provides only minimal information to households wishing to move to suburban locations, as demonstrated by the official landlord list the Housing Authority provided to Section 8 recipients in May 1995.²⁵⁸ Map L shows that the list contained 296 apartments, more than 95% of which were in the city itself, with only about 4% in Hamden and 1% in West Haven.²⁵⁹ The location of advertising landlords probably results from the nature and extent of the Housing Authority's outreach efforts, as well as from geographic variations in rental markets and landlord attitudes. Note the similarity between the distribution of advertised rental units and the areas of high minority concentration shown in Map J, providing confirmation of the Section 8 submarket effect suggested by national studies.²⁶⁰

(May 12, 1995).

256. *See supra* notes 110-114 and accompanying text.

257. *See supra* notes 175, 185-187 and accompanying text.

258. Housing Authority of the City of New Haven, Section 8 Landlord List, Apr. 7, 1995 (on file with the *Yale Law and Policy Review*).

259. *Id.*

260. *See supra* notes 135-136 and accompanying text.

FIGURE 6: DEMOGRAPHIC CHARACTERISTICS OF GREATER NEW HAVEN
(1990)²⁶¹

Demographic Characteristics	City of New Haven ²⁶²	Surrounding Towns ²⁶³	City of New Haven and Surrounding Towns ²⁶⁴
Total population	131,020	310,477	441,497
Whites (non-Hispanic)	64,402 49%	284,605 92%	349,007 79%
Blacks (non-Hispanic)	47,368 36%	15,294 5%	62,662 14%
Hispanics	15,273 12%	5,723 2%	20,996 5%
Household median income	\$27,551	\$43,631	\$38,907
% of population under poverty line	19%	5%	9%
% of households receiving public assistance	15%	4%	7%

261. U.S. BUREAU OF THE CENSUS, *supra* note 250 (author's calculations).

262. Consists of 128 block groups.

263. Consists of 270 block groups, representing Ansonia, Branford, Derby, East Haven, Hamden, North Branford, North Haven, Orange, Seymour, West Haven, and Woodbridge.

264. Consists of 398 block groups.

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FIGURE 7: AFFORDABLE HOUSING IN GREATER NEW HAVEN (1990)²⁶⁵

Housing Characteristics	Town of New Haven	Surrounding Towns	Town of New Haven and Surrounding Towns
Occupied rental units	33,349	34,848	68,197
Occupied owned units	15,847	84,810	100,657
One bedroom rental units with contract rent less than \$500	5226	3483	8709
Two bedroom rental units with contract rent less than \$500	3924	2358	6282

FIGURE 8: DISTRIBUTION OF BLACK RECIPIENTS OF SECTION 8 VOUCHERS AND CERTIFICATES PROVIDED BY THE HOUSING AUTHORITY OF THE CITY OF NEW HAVEN (MAY 1995)²⁶⁶

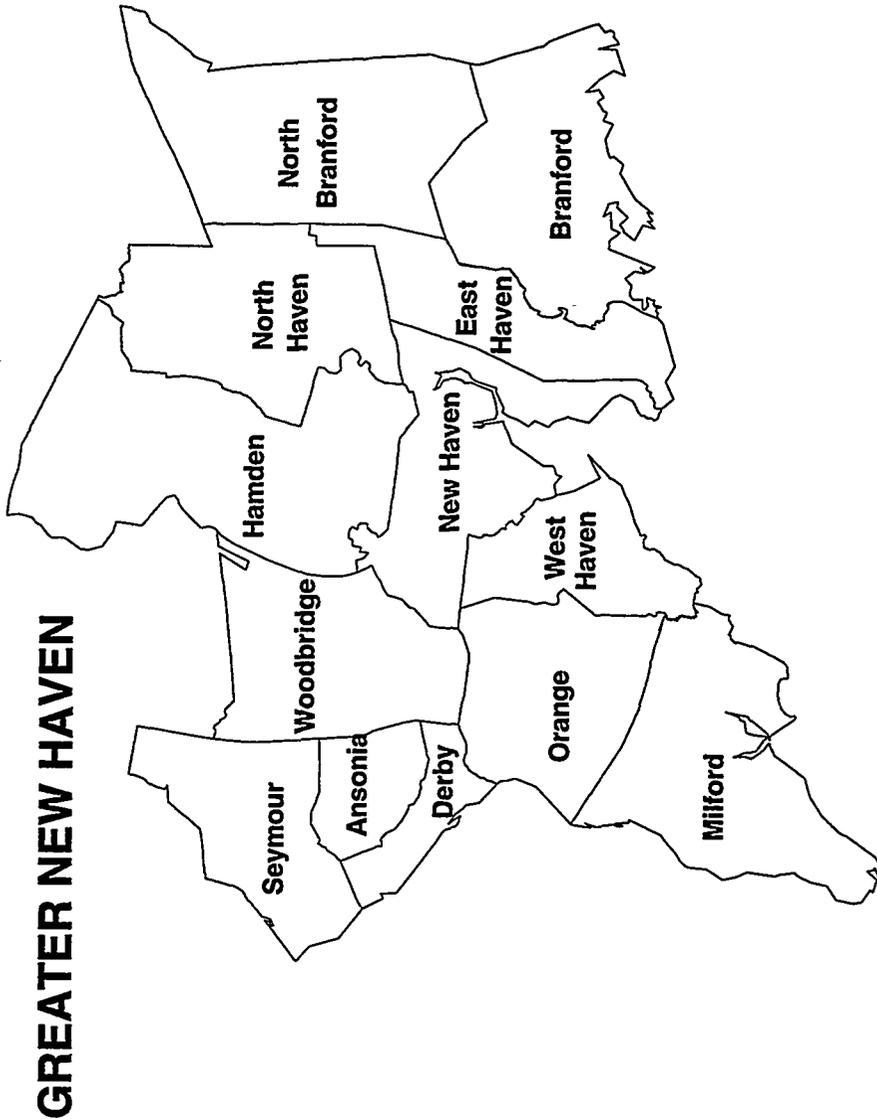
Ultimate location	Number of recipients	Percentage of total
New Haven	1096	95%
West Haven	34	3%
Hamden	18	2%
Waterbury	1	0%
Wallingford	2	0%
Connecticut, outside New Haven County	1	0%
Outside Connecticut	1	0%
TOTAL	1153	100%

265. *Id.*; Fair Market Rents for Existing Housing, *supra* note 252 (author's calculations).

266. Housing Authority of the City of New Haven, *supra* note 254 (author's calculations).

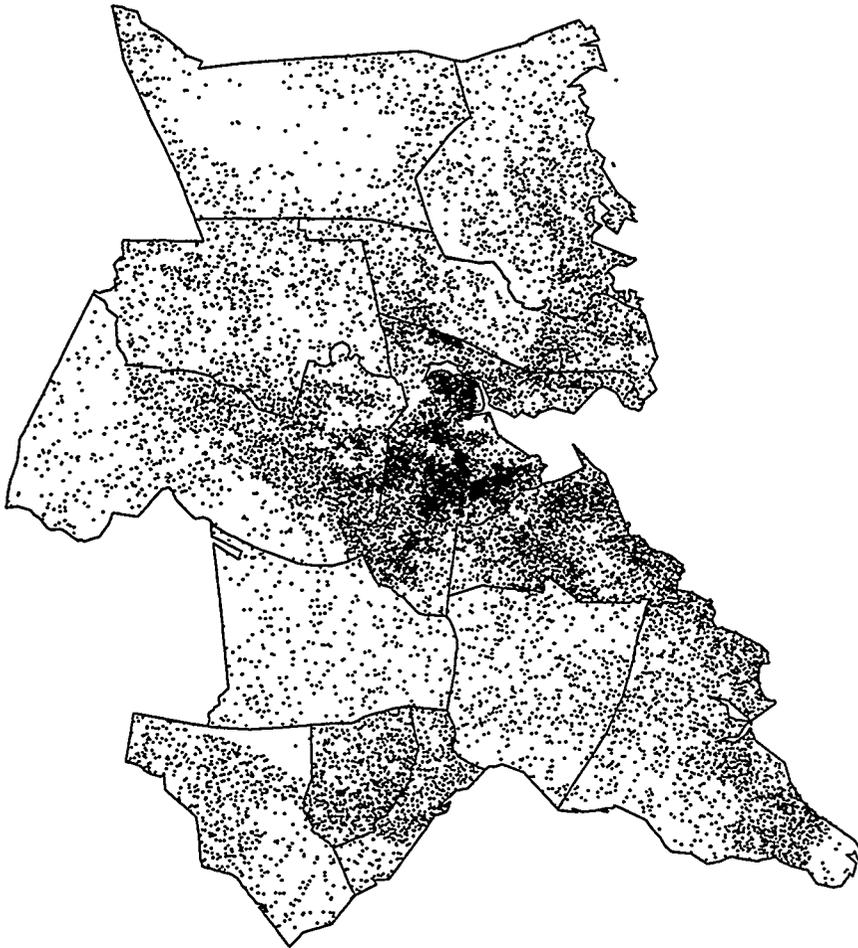
MAPS CONCERNING GREATER NEW HAVEN

MAP A: TOWNS OF GREATER NEW HAVEN



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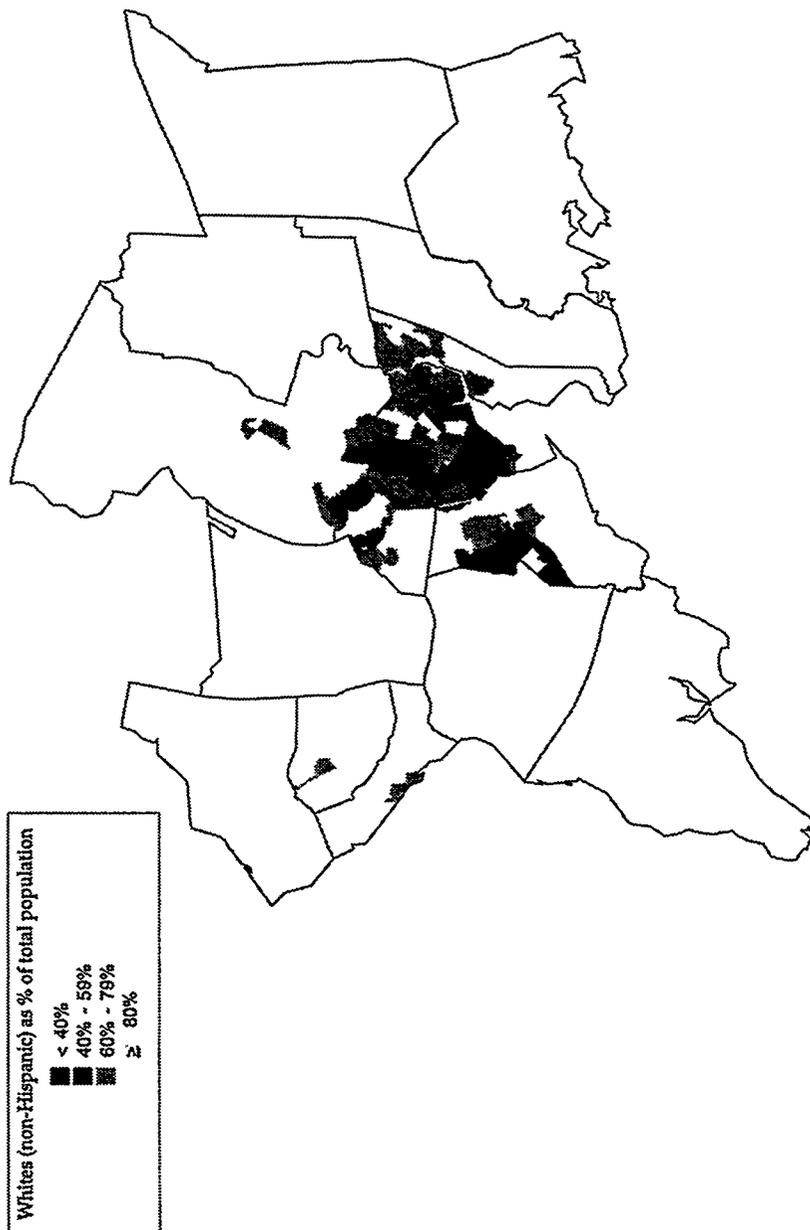
MAP B: POPULATION DENSITY²⁶⁷



Population density
1 Dot = 25 People

267. U.S. BUREAU OF THE CENSUS, *supra* note 250.

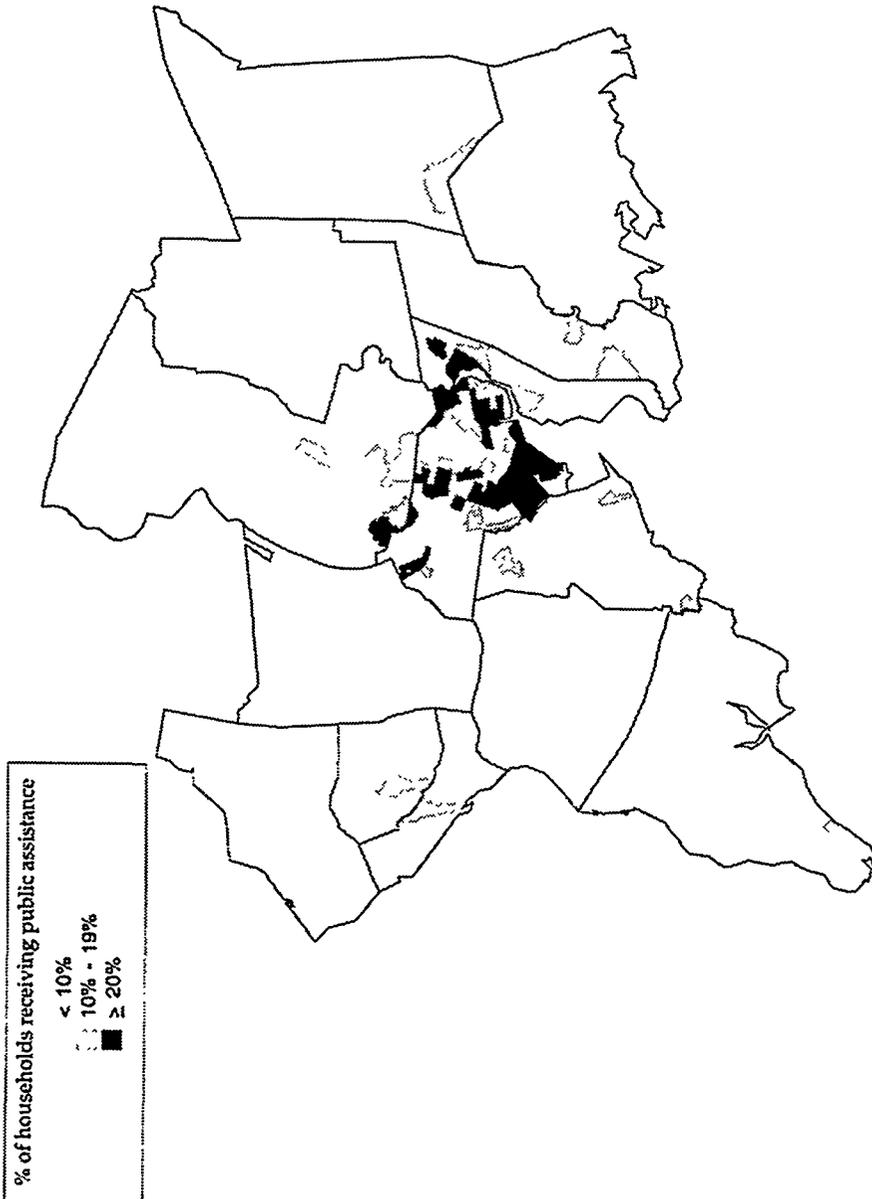
MAP C: PROPORTION OF WHITES (NON-HISPANIC)²⁶⁸



268. *Id.*

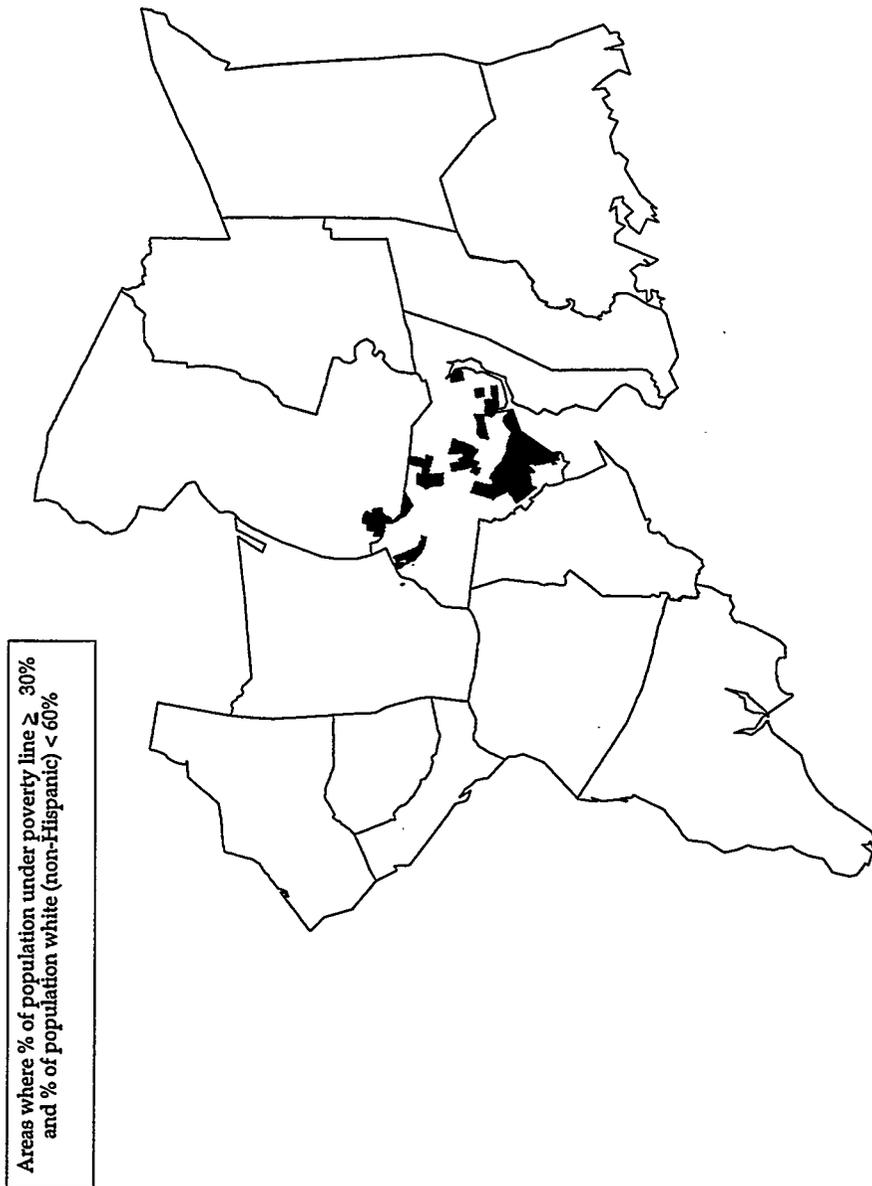
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MAP D: DISTRIBUTION OF RECIPIENTS OF PUBLIC ASSISTANCE²⁶⁹



269. *Id.*

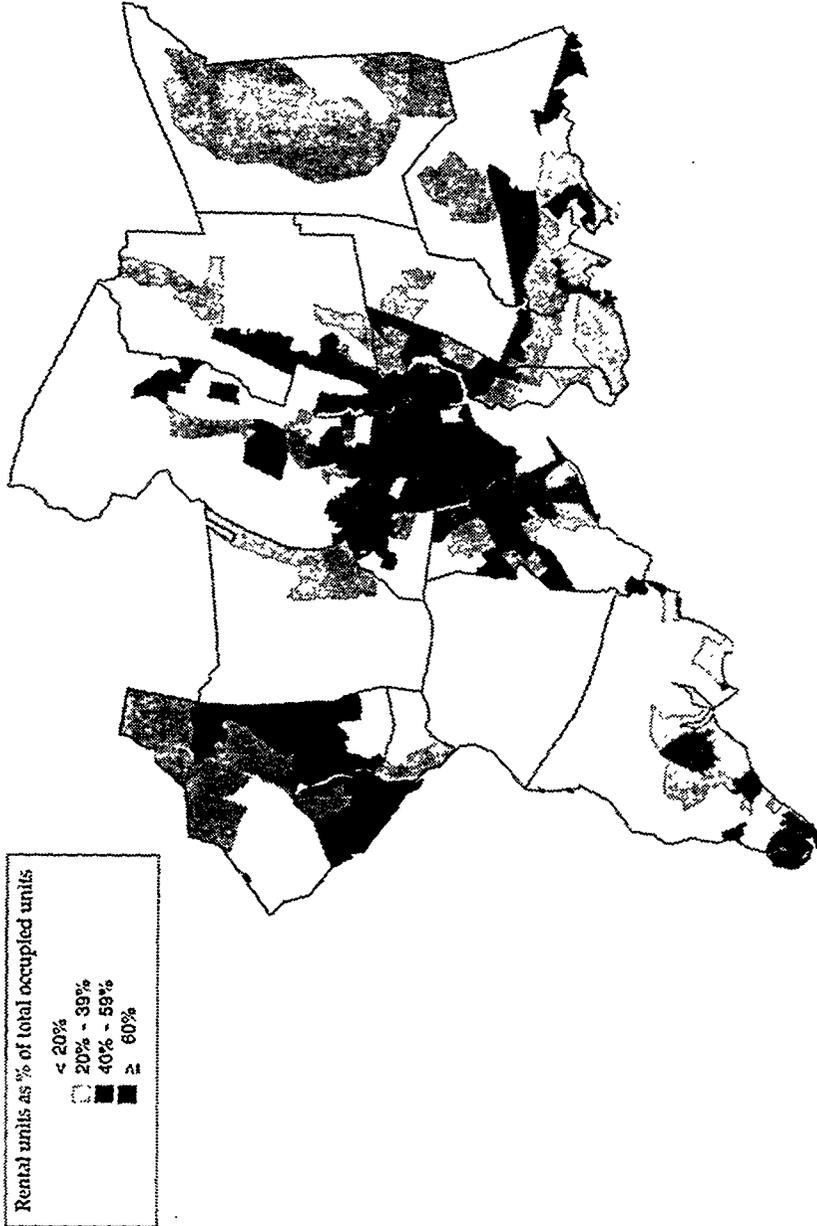
MAP E: CONCENTRATION OF POVERTY AND RACIAL MINORITIES²⁷⁰



270. *Id.*

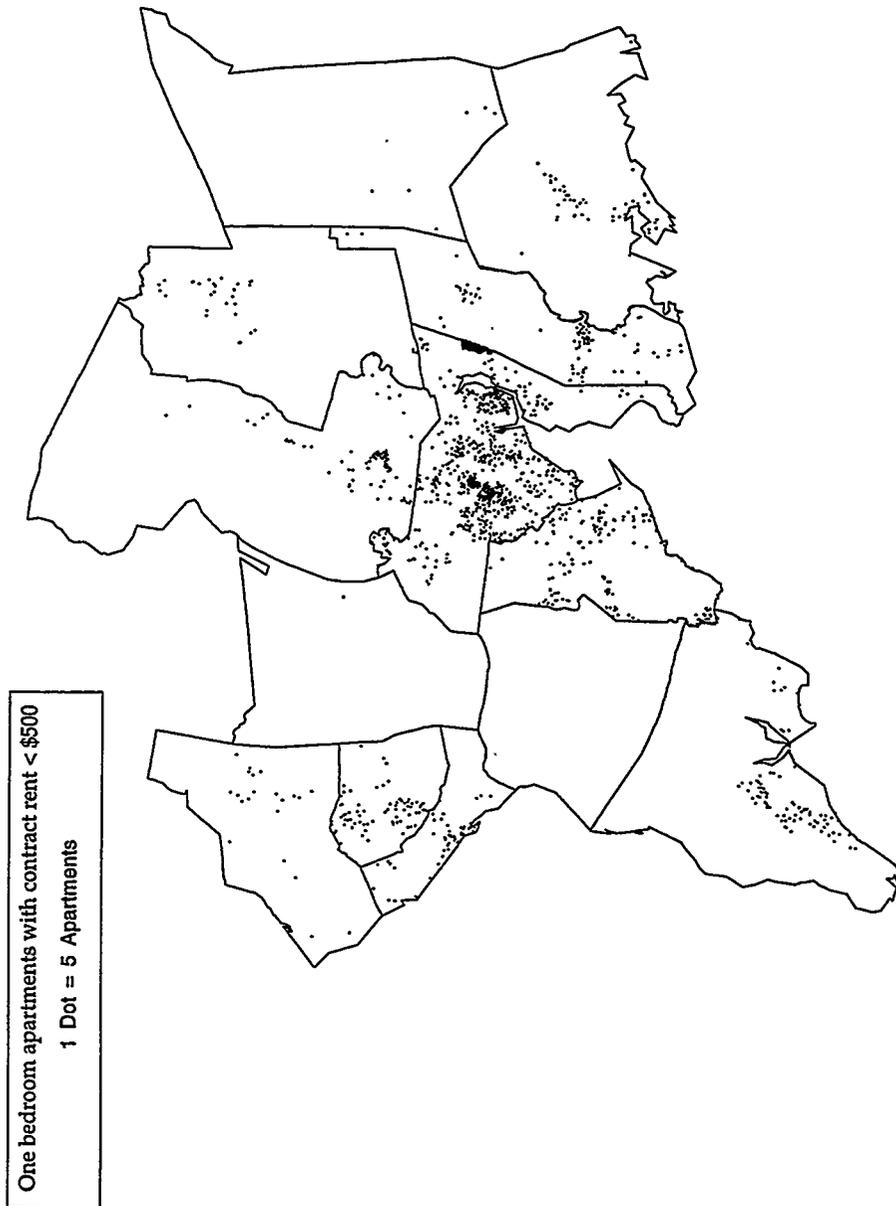
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MAP F: DISTRIBUTION OF RENTAL UNITS²⁷¹



271. *Id.*

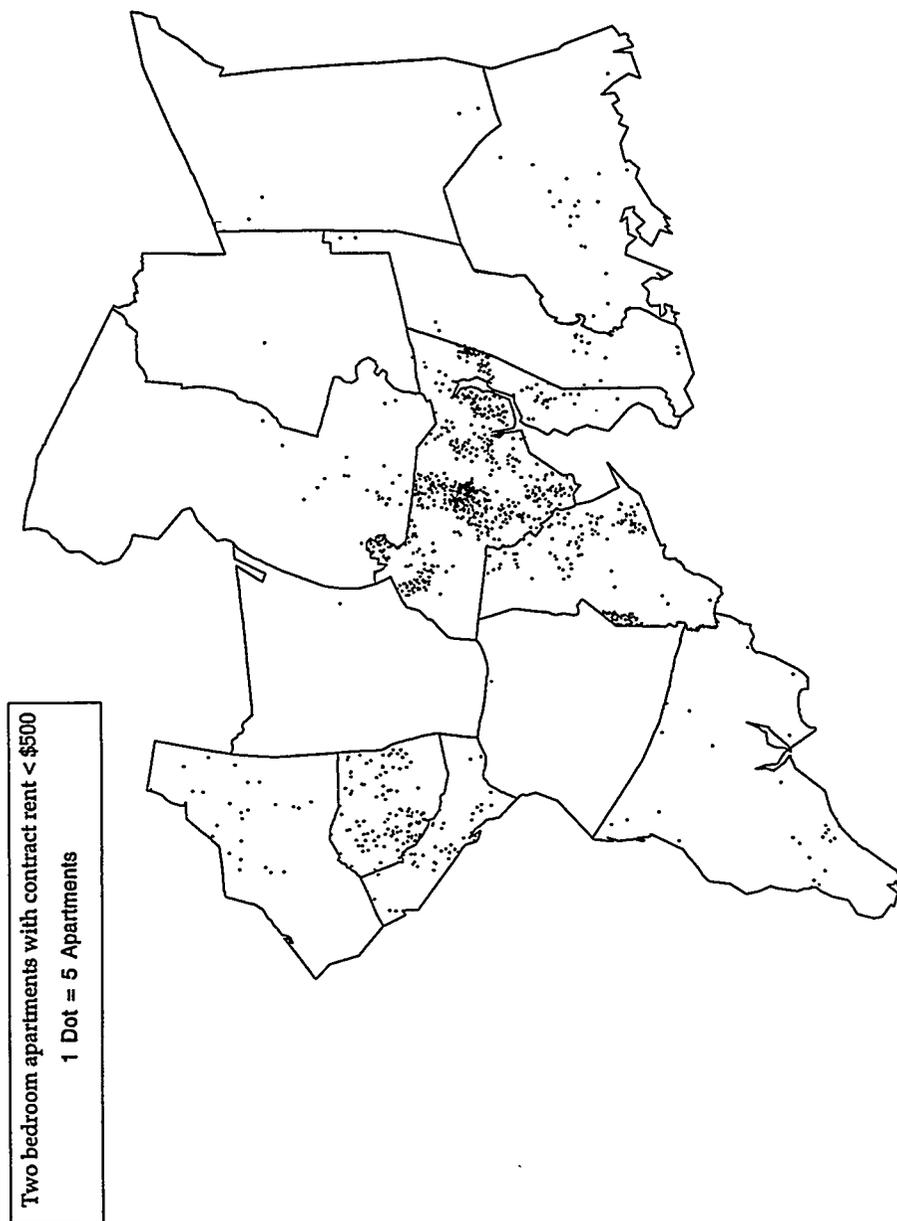
MAP G: DISTRIBUTION OF AFFORDABLE ONE-BEDROOM UNITS²⁷²



272. *Id.*; Fair Market Rents for Existing Housing, *supra* note 252.

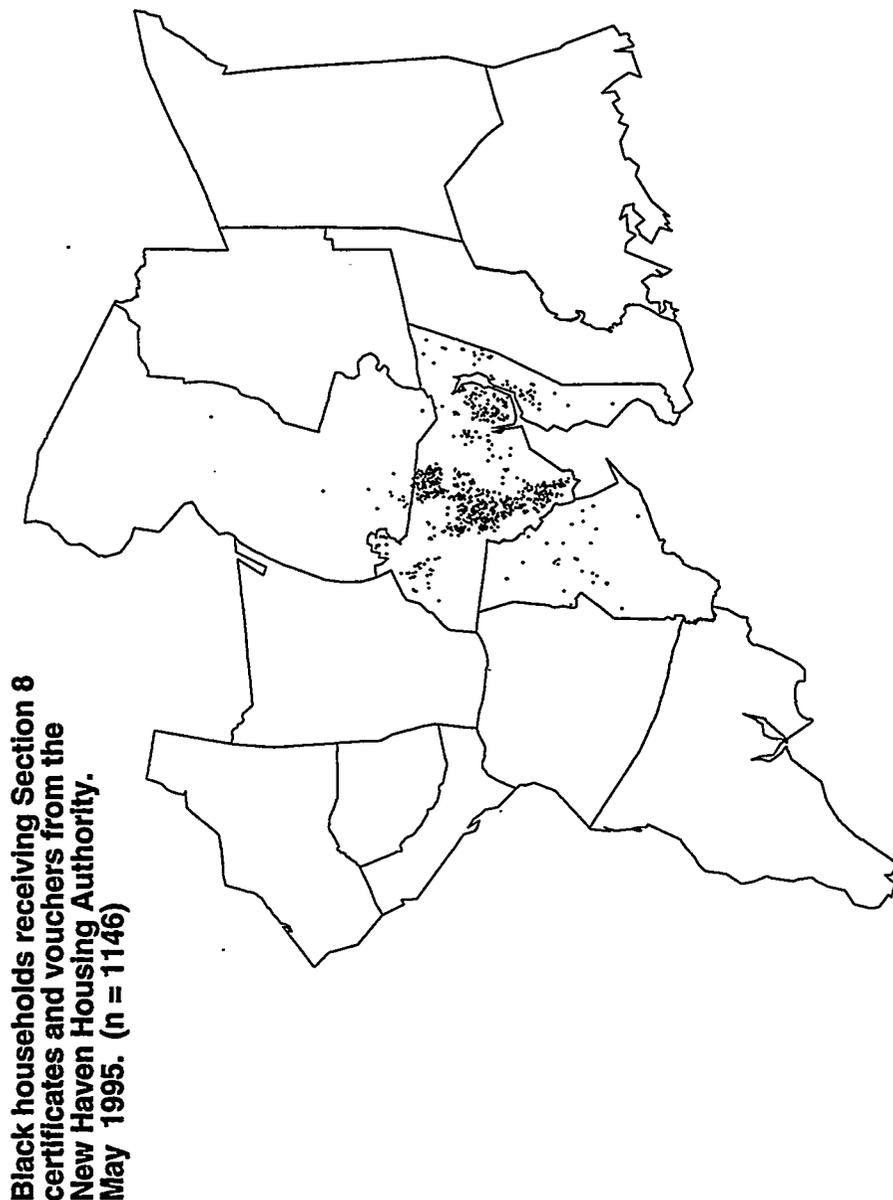
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MAP H: DISTRIBUTION OF AFFORDABLE TWO-BEDROOM UNITS²⁷³



273. U.S. BUREAU OF THE CENSUS, *supra* note 250; Fair Market Rents for Existing Housing, *supra* note 252.

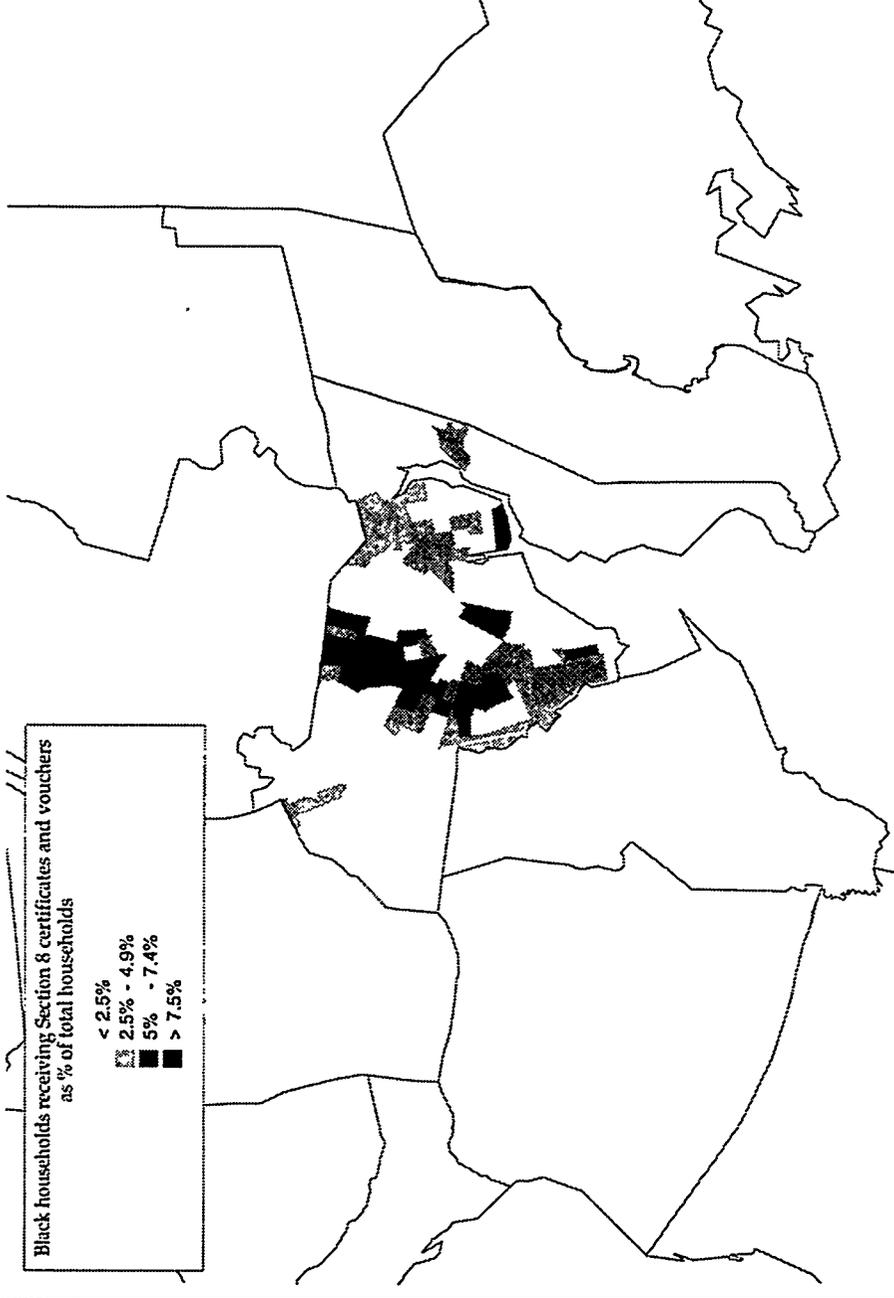
MAP I: DISTRIBUTION OF BLACK RECIPIENTS OF SECTION 8 CERTIFICATES
AND VOUCHERS²⁷⁴



274. Housing Authority of the City of New Haven, *supra* note 254.

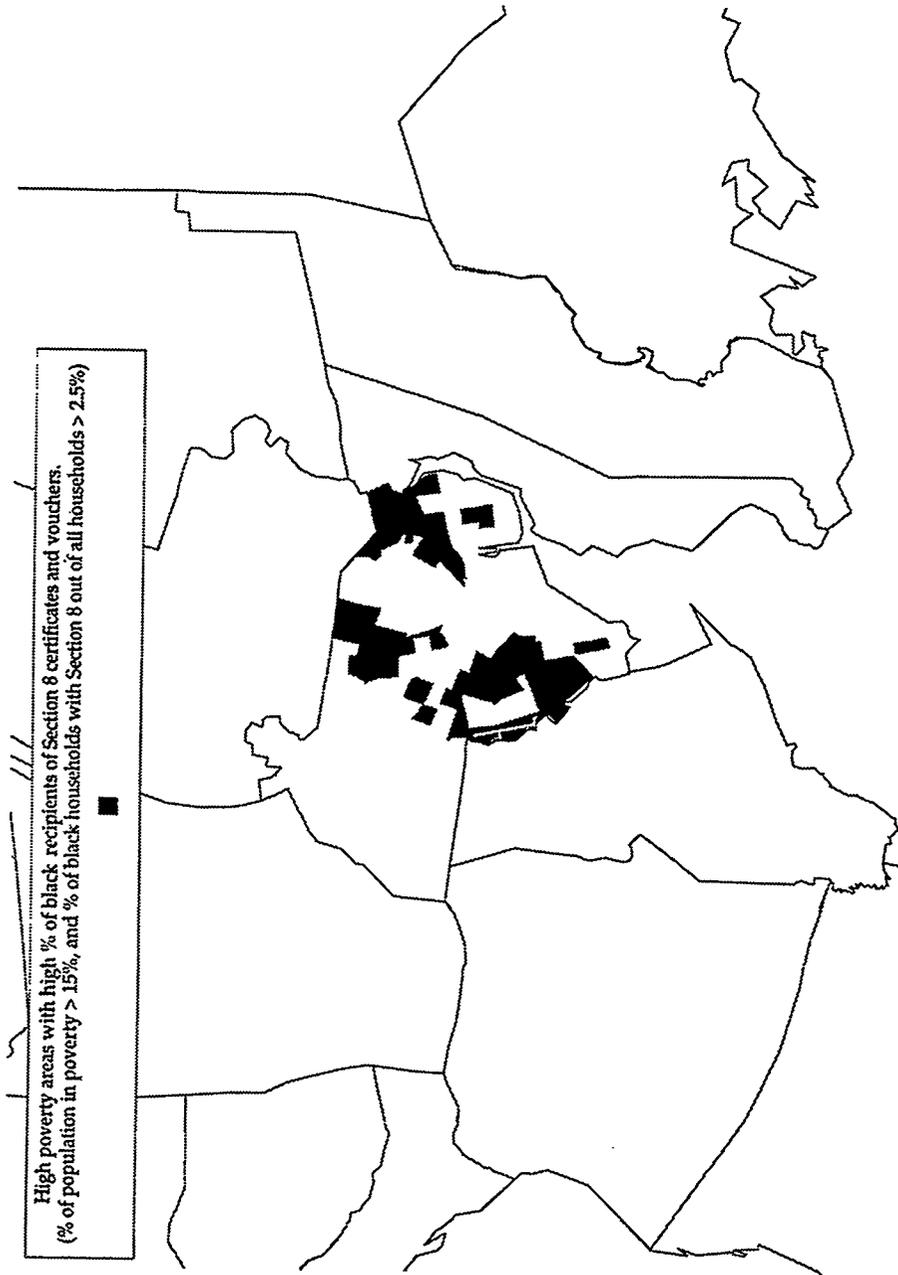
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MAP J: AREAS WITH HIGH CONCENTRATIONS OF BLACK SECTION 8 RECIPIENTS²⁷⁵



275. *Id.*

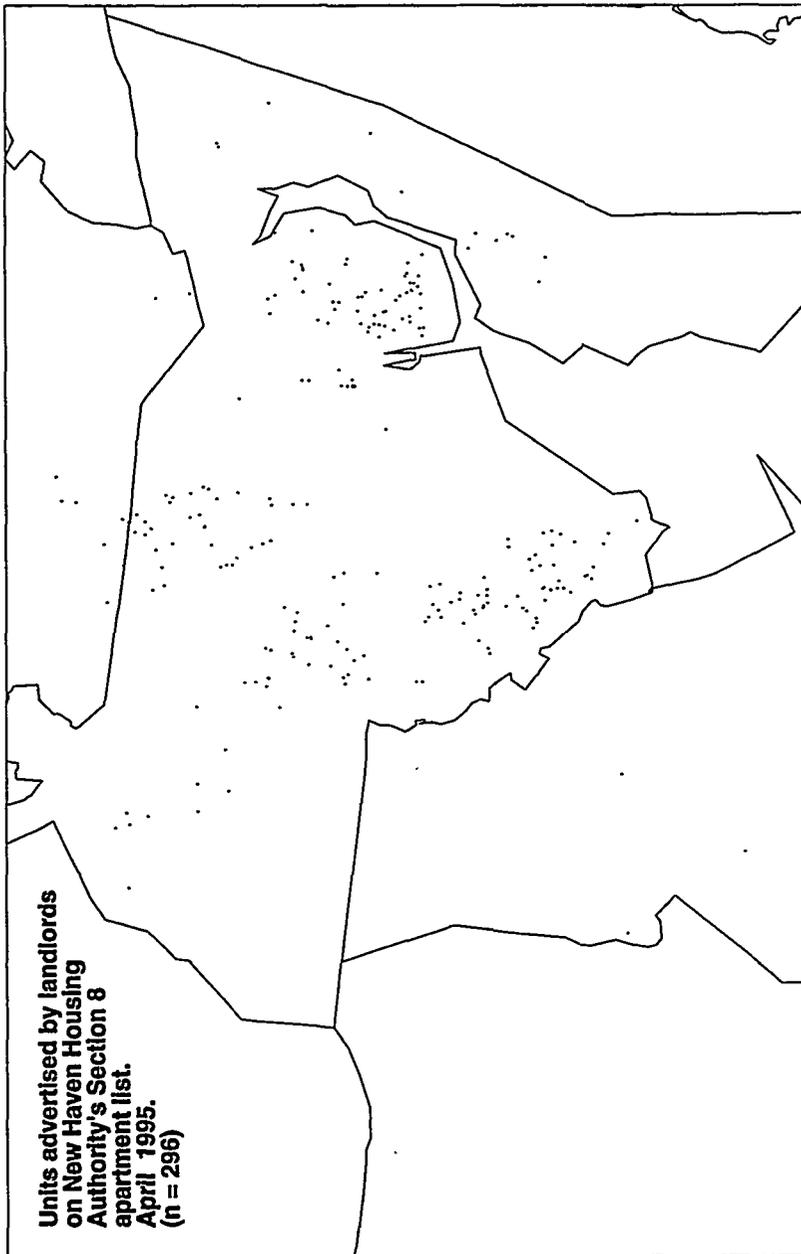
MAP K: BLACK SECTION 8 RESIDENTS AND HIGH POVERTY AREAS²⁷⁶



276. *Id.*; U.S. BUREAU OF THE CENSUS, *supra* note 250.

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MAP L: DISTRIBUTION OF APARTMENTS ON THE SECTION 8 AVAILABLE APARTMENT LIST²⁷⁷



277. Section 8 Landlord List, *supra* note 258.

