

THE HUD REINVENTION: A CRITICAL ANALYSIS

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HUD's Reinvention Blueprint is a flawed concept — the program is not sufficiently thought-out. There is no one solution to the problems of public housing, and even if the Reinvention Blueprint were successful, we've got to ask, "What's accomplished by this?" We didn't get into the business because we wanted to be private market landlords.¹

I. INTRODUCTION

In response to congressional threats of extinction² and mounting popular criticism of public housing conditions,³ the Department of Housing and Urban Development (HUD or the "Department") has proposed to reinvent itself, thereby transforming federal support for housing in America. HUD outlines its reorganization plans in the 1994 "Reinvention Blueprint,"⁴ and the 1995 "HUD Reinvention: From Blueprint to Action."⁵ Both proposals suggest implementing aggressive reforms, including consolidation of the agency's sixty active programs into three performance-based funds, and implementing a universal voucher-based system for subsidized housing programs.⁶

Experts agree that HUD's programs are in need of reform. While dismissing the stereotype perpetuated by the popular media that the worst projects typify all public housing,⁷ industry analysts contend that public and

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¹ Telephone Interview with Dan Wuenschel, Executive Director, Cambridge Housing Authority (Apr. 27, 1995) [hereinafter Wuenschel Interview].

² See Catherine S. Manegold, *Secretary Proposes Reshaping HUD to Save It*, N.Y. TIMES, Mar. 20, 1995, at 17; PUBLIC HOUS. AUTHS. DIRECTORS ASS'N, REINVENTION: THE PHADA PLAN AND THE HUD MYTH 17 (1995) [hereinafter PHADA PLAN].

³ See, e.g., *HUD Dud*, THE NEW REPUBLIC, Jan. 2, 1995, at 8.

⁴ U.S. DEP'T OF HOUS. & URBAN DEV., REINVENTION BLUEPRINT 3 (Dec. 1994).

⁵ U.S. DEP'T OF HOUS. & URBAN DEV., HUD REINVENTION: FROM BLUEPRINT TO ACTION 11 (Mar. 1995) [hereinafter HUD REINVENTION].

⁶ See *id.*; REINVENTION BLUEPRINT, *supra* note 4.

⁷ See Stephen B. Kinnaird, *Abandon HOPE, But Not Privatization*, 103 YALE L.J. 961, 966 (1994) ("Public housing is far more diverse than the crime-ridden, deteriorating, urban high-rise projects that haunt the popular imagination."); PHADA PLAN, *supra* note 2, at 9 (noting that the worst problems are found in less than three percent of public housing authorities).

assisted housing is in a state of crisis.⁸ The majority of developments provide decent and safe housing for residents;⁹ however, Public Housing Authorities (PHAs)¹⁰ can be poorly managed,¹¹ often deferring maintenance expenditures by failing to collect sufficient rents to meet ongoing capital needs.¹² Burdened also by HUD's poor monitoring and contract enforcement record, project-based developments often fall below the Department's Housing Quality Standards (HQS).¹³ This has sometimes forced tenants to live in barely habitable conditions.¹⁴ As a consequence of such deferrals, the total cost of modernizing public housing currently stands at \$16.65 to \$29.2 billion.¹⁵ In a small but growing percentage of public housing developments, neglect has led to physical and social distress.¹⁶ HUD policies have concentrated low-income families in densely populated high-rise public housing projects. They also have forced families to live in high poverty inner-city areas where job opportunities are low, two-parent families are rare, welfare dependency is common, and rates of drug abuse, crime and violence are high and increasing,¹⁷ HUD policies are thereby exacerbating already serious problems.

On a theoretical level, voucherization¹⁸ has been heralded as a cost saving program that provides for individual choice.¹⁹ Proponents have also observed that voucherization may alleviate the concentration of poverty by enabling low-income families to move out of poor, inner-city neighborhoods.²⁰ Given

⁸ See Kinnaird, *supra* note 7, at 966.

⁹ See Michael H. Schill, *Distressed Public Housing: Where Do We Go from Here?*, 60 U. CHI. L. REV. 497, 501-02 (1993); 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).

¹⁰ PHAs contract with HUD to provide low- and moderate-income public housing. See *infra* notes 23-24 and accompanying text.

¹¹ Interview with William C. Apgar, Jr., Executive Director, Joint Center for Housing Studies, John F. Kennedy School of Government, Harvard University, in Cambridge, Mass. (Apr. 18, 1995).

¹² See Kinnaird, *supra* note 7, at 969.

¹³ 24 C.F.R. § 882.109 (1995).

¹⁴ See Rochelle L. Stanfield, *Slum Fund*, NAT'L J., Sept. 3, 1994 at 2017, 2017 (describing HUD's Section 8 project-based assisted Edgewood Terrace I in Bethesda, Maryland as follows: "Half the windows are boarded. Weeds choke the grounds. Graffiti and trash are everywhere. A foul odor is discernible.").

¹⁵ See Kinnaird, *supra* note 7, at 968. Note that this figure only represents the cost of rehabilitating PHAs, and not HUD-assisted buildings.

¹⁶ See Schill, *supra* note 9, at 501.

¹⁷ See HUD REINVENTION, *supra* note 5, at 1, 6.

¹⁸ In this article "voucherization" refers to assisting families with either housing certificates or vouchers.

¹⁹ See Ronald D. Utt, *Improving America's Housing by Shutting down HUD*, Heritage Found. Rep., Mar. 16, 1995, available in LEXIS, Nexis Library, NWLTRS file *7.

²⁰ See *id.* at *9.

that members of racial minority groups are more likely than whites to live in high-poverty areas,²¹ such an exodus theoretically would foster the development of racially-integrated neighborhoods. Nevertheless, while HUD's voucherization proposal is rhetorically compelling, a more careful analysis indicates that, in practice, the above assumptions would not hold true or be practical on a universal basis. Not only would housing certificates cost more on a national level than current HUD subsidies, but also, depending on neighborhood dynamics, certificates might fail to enable recipients to exercise free choice in deciding where to live, and fail to reduce the concentration of poverty. While voucherization might represent an effective policy for the most troubled and most unfavorably located PHAs by enabling low-income residents to escape the worst public housing developments, demand-side programs could create unfavorable effects in other neighborhoods. HUD should assess more critically the consequences of universal voucherization before overhauling the Department and changing the way housing assistance has been administered to date.

After describing the HUD Reinvention proposal in Part II, Part III of this article explores the plan's cost, choice, and de-concentration implications. In Part IV, this article recommends that HUD adopt a more flexible approach to housing policy, involving both targeted demand- and supply-side programs.

II. THE HUD REINVENTION PROPOSAL

The federal government currently funds four types of housing assistance programs for low- and middle-income families. Under the United States Housing Act of 1937,²² municipalities establish PHAs that build, own and operate low- and middle-income housing. PHAs enter into Annual Contributions Contracts with the federal government whereby PHAs fund land purchases and construction costs through the issuance of long term bonds. In turn, the government pays the debt service on these bonds, including principal and interest.²³ Through its Performance Funding System, HUD provides operating subsidies to PHAs, and PHAs agree to operate in accordance with federal statutes and regulations.²⁴ HUD also finances low-income housing by providing housing subsidies to private market landlords. HUD-subsidized housing developments have insured, assigned, or non-insured mortgages and are subsidized

²¹ See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 58 (1987) (noting that in 1980, 68% of poor whites, 15% of poor blacks and 20% of poor Hispanics lived in non-poverty areas of the five largest U.S. cities, and that only 7% of poor whites lived in extreme poverty areas, as compared with 39% of poor blacks, and 32% of poor Hispanics).

²² 42 U.S.C. §§ 1437-1437aaa (Supp. V 1993).

²³ See 42 U.S.C. § 1437b(a).

²⁴ See 24 C.F.R. § 990 (1995) (establishing standards and policies for the distribution of operating subsidies). For a more detailed analysis of the public housing program, see Schill, *supra* note 9, at 501-02; Fuchs, *supra* note 9, at 782.

under HUD's Section 221(d)(3),²⁵ Section 236,²⁶ and Section 202²⁷ programs. HUD's Rent Supplement,²⁸ Set-Aside,²⁹ New Construction,³⁰ Substantial Rehabilitation,³¹ and Property Disposition Set-Aside³² programs provide rent subsidies.³³

In addition to public and subsidized housing, HUD operates two demand-side programs. Under the Section 8 Existing Housing Program ("Rental Certificate"),³⁴ HUD signs annual contributions contracts with PHAs or other agencies willing to administer the program.³⁵ Administering agencies contract directly with the owners of existing units to subsidize tenant rents, and agree to pay landlords the difference between the contract rent, which cannot exceed established HUD forty-fifth percentile Fair Market Rents (FMRs),³⁶ and thirty percent of the tenant's adjusted income (the tenant's share of the rent). The administering agency approves leases between tenants and landlords and ensures that units meet HQS. The Housing Voucher Program³⁷ is similar to the Section 8 Existing Housing Program, except that administering agencies directly supply tenants with vouchers. Voucher recipients are responsible for locating rental units that meet HQS, after which the administering agencies approve leases and enter into contracts with landlords for assistance payments. Vouchers also differ from certificates in that voucher recipients are permitted to pay in excess of thirty percent of their adjusted incomes for rent, and landlords may charge more than forty-fifth percentile FMRs. The administering agency continues to limit its payments to the difference between such FMRs and thirty percent of tenants' adjusted incomes, allowing tenants to finance any excess rental costs.³⁸

²⁵ 12 U.S.C. § 17151(d)(3) (1994).

²⁶ *Id.* § 1715z-1.

²⁷ 12 U.S.C. § 1701q (1994).

²⁸ *Id.* § 1701s.

²⁹ 24 C.F.R. § 215.10 (1995).

³⁰ 24 C.F.R. § 880 (1995).

³¹ 24 C.F.R. § 881 (1995).

³² 24 C.F.R. §§ 886.301-.338 (1995).

³³ 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, 996-97 (1991).

³⁴ 42 U.S.C. § 1437f (1988 & Supp. V 1993).

³⁵ Section 8 certificates are portable within the state. See Fuchs, *supra* note 33, at 990.

³⁶ FMRs are set on a county basis in areas other than New England, and on a comparable basis within New England. FMRs under the Section 8 program are currently set at the 45th percentile of newly rented properties in the area. Telephone Interview with Gerald Benoit, Director of Rental Operations, Section 8 Housing, U.S. Department of Urban Development (Apr. 24, 1995) [hereinafter Benoit Interview].

³⁷ 42 U.S.C. § 1437f(o).

³⁸ See Fuchs, *supra* note 33, at 995.

Under the proposed HUD Reinvention, HUD would consolidate its sixty active programs into three performance based funds: the Community Opportunity Fund (COF); the Affordable Housing Fund (AHF); and the Housing Certificates Fund (HCF).³⁹ Through the HCF, HUD would universally replace federal subsidies to public and assisted housing developments, serving 1.2 and 1.4 million families respectively, with direct tenant assistance in the form of housing certificates distributed by PHAs.⁴⁰ The HCF would also provide certificates to the current 1.5 million⁴¹ Section 8 Existing Housing and Housing Voucher programs' participants. Certificate holders would be entitled to use their certificates, set at fortieth percentile FMRs minus tenant contributions, to live in former public or assisted housing, or to rent housing on the private market.⁴² Certificates would entitle recipients to receive the difference between fortieth percentile FMRs and thirty percent of their adjusted income. Moreover, as with the Housing Voucher program, landlords would be able to charge in excess of FMRs, and certificate recipients would be able to spend more than thirty percent of their adjusted income on housing.⁴³

III. CRITICAL ANALYSIS

A. *The Relative Cost of Housing Certificates*

If lawmakers genuinely are interested in helping the poor, they would eliminate the trickle-down programs that throw dollars at the housing industry and use this money to fund many more vouchers.⁴⁴

HUD's comparison of Section 8 costs with public housing is seriously misleading. Public housing costs less, not more than, Section 8, when true costs are considered on a long-term basis.⁴⁵

Critics have characterized HUD's current subsidy programs as "costly and

³⁹ The purpose of the COF would be to stimulate revitalization. The fund would consolidate all current HUD community and economic development programs, including Community Development Block Grants and Economic Development Initiative Grants. The COF would also include a new job creation performance program. See HUD REINVENTION, *supra* note 5, at 11, 17. The AHF would support the production and rehabilitation of affordable housing, and would include all current HUD programs for the development of low- and moderate-income housing. See *id.* at 11.

⁴⁰ See *id.* at 11, 28, 33; Stanfield, *supra* note 14, at 2018.

⁴¹ Benoit Interview, *supra* note 36.

⁴² See HUD REINVENTION, *supra* note 5, at 28.

⁴³ Benoit Interview, *supra* note 36.

⁴⁴ Stuart M. Butler, *Only Vouchers Can Stop 'HUDscams'*, L.A. DAILY J., Aug. 15, 1989, at 6.

⁴⁵ See Council of Large Public Hous. Auths., *Every Time You Turn Around, Someone from HUD Insists That Public Housing Costs More Than Section 8. Is This Statement True?*, 15 CLPHA NEWS 5 (Apr. 13, 1995) [hereinafter CLPHA NEWS].

counterproductive."⁴⁶ Proponents of household-based programs, including voucher and certificate programs whereby the government gives families the means to purchase housing, contend that such demand-side assistance is more efficient, and thus less costly, than project-based, supply-side programs. First, it is argued that more of each subsidy dollar goes to housing consumption because funds are applied directly towards family rents.⁴⁷ Funding rents eliminates the transaction costs incurred when middlemen — such as developers, consultants, and landlords — are involved.⁴⁸

Second, supporters maintain that funding public housing through portable certificates would subject landlords to private market discipline, causing them to act in more profit-maximizing ways. Assuming that private landlords pursue their self-interest and attempt to maximize the discounted stream of income from their housing stock, they would reduce waste⁴⁹ and channel assets, including land and housing stock, to their most valued uses.⁵⁰ Buildings would be constructed more efficiently,⁵¹ and operating costs would be reduced.⁵² Landlords would be more likely to better maintain and rehabilitate their housing stock to attract tenants. Where economically rational, buildings would be razed.⁵³ In short, landlords would be motivated to reduce costs, and would thus better maintain their properties⁵⁴ because certificate holders would no longer be tied to specific buildings and could choose where to live.⁵⁵

⁴⁶ See, e.g., Utt, *supra* note 19, at *1.

⁴⁷ See Kinnaird, *supra* note 7, at 965.

⁴⁸ See *id.* at 985 (noting that in HUD's Housing Supply Experiment undertaken in the 1970s, 85% of program dollars went to serve low-income voucher recipients, as compared with 34% of public housing dollars that went to tenants under supply-side assistance); Butler, *supra* note 44, at 6.

⁴⁹ See Butler, *supra* note 44, at 6. Butler notes that under the current system of supply-side assistance, "developers and owners reap enormous profits yet face virtually no financial risk, while loan and rent guarantees encourage inflated housing costs. With a captive market of tenants, the landlord has little incentive to keep his property well maintained and attractive." *Id.* See also Schill, *supra* note 9, at 535 (noting that "[t]he government is frequently considered to be an inefficient provider of goods and services, for only private entrepreneurs will be driven by the profit motive to minimize costs and maximize productivity").

⁵⁰ See Kinnaird, *supra* note 7, at 982.

⁵¹ See *id.* at 972 (noting that "a 1982 study done for HUD found that it cost 40% more per-unit to build conventional public housing than unsubsidized FHA housing"). *But see id.* at 984 n.164 (describing the Supply Side Experiment, and noting that "[p]redictably, vouchers did not stimulate new housing production").

⁵² See *id.* at 972 (describing a second 1982 HUD study that found PHA per-unit operating costs were 61% higher than private sector operating costs); Schill, *supra* note 9, at 536-37 (noting that statistical studies have shown that the operating costs of public housing are approximately 30% higher than the operating costs of similar private sector housing).

⁵³ See Kinnaird, *supra* note 7, at 982.

⁵⁴ See Schill, *supra* note 9, at 535.

⁵⁵ See Kinnaird, *supra* note 7, at 971 (arguing that "the public housing official does

Supporters of demand-side housing assistance have estimated the cost savings that would be achieved through voucher-based programs. Based on the 1988 Report of the President's Commission on Privatization, some contend that project-based programs cost twice as much as voucherization.⁶⁶ This implies that the government could provide higher quality assistance, or double the number of families it currently serves, for the same amount of housing expenditures. Others point to a 1988 Congressional Budget Office study which estimated that the twenty-year cost of housing an elderly household in public housing would be thirty percent more costly than housing the same family through a Section 8 certificate.⁶⁷ Recently, Housing Secretary Henry G. Cisneros estimated that the HUD Reinvention would save \$60 billion over the next five years, including \$800 million in administrative costs.⁶⁸

In spite of the theoretical merits of demand-side arguments, however, voucherization would be more expensive than project-based assistance in the context of the current U.S. housing market. Indeed, demand-side assistance has been criticized even by its most ardent proponents. A 1992 HUD analysis found that the average twenty-year cost of maintaining existing public housing inventory on a per unit basis was less than the cost of converting subsidies to vouchers.⁶⁹ Moreover, in a 1995 analysis, HUD maintained that the per unit cost of current supply-side programs and Section 8 certificates were equivalent.⁶⁰

An analysis of the actual costs of voucherization demonstrates that, on a national basis, the HUD Reinvention plan is more expensive than current HUD supply-side programming. Based on fiscal year 1995 appropriations for its Performance Funding System (PFS), HUD's Office of Policy Development and Research calculated the per unit month (PUM) subsidy for an occupied unit of public housing to be \$481.⁶¹ National housing associations have reacted

not have to be directly responsive to tenant needs because (a) the public housing tenant cannot transfer his subsidy to another supplier and (b) PHA revenues depend largely on budgetary allocations, and only partly on tenant rents").

⁶⁶ See REPORT OF THE PRESIDENT'S COMM'N ON PRIVATIZATION, *PRIVATIZATION: TOWARD A MORE EFFECTIVE GOVERNMENT* 11 (1988) (comparing the 20-year cost of per-household household-based assistance programs — \$27,892 for the Housing Voucher Program and \$27,955 for the Section 8 Existing Housing Program — with similar costs for project-based assistance programs — \$35,210 for the Farmer's Home Section 515 Program, \$53,500 for the Rental Housing Development Grant Program, \$53,575 for the Section 8/292 Housing Program, and \$69,863 for public housing); Butler, *supra* note 44, at 6; Utt, *supra* note 19, at *7 n.5.

⁶⁷ See, e.g., Schill, *supra* note 9, at 538.

⁶⁸ See Manegold, *supra* note 2, at 17.

⁶⁹ See *Department of Veterans Affairs and Hous. and Urban Dev. and Indep. Agencies Appropriations, Fiscal Year 1993: Hearings Before Comm. on Appropriations*, 102d Cong., 2d Sess. 310 (1992); Kinnaird, *supra* note 7, at 988.

⁶⁰ See CLPHA NEWS, *supra* note 45, at 5.

⁶¹ See OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., *ISSUE BRIEF, HUD REINVENTION: FROM BLUEPRINT TO ACTION, WILL IT COST MORE*

with a flurry of cost critiques, universally concluding that voucherization costs more than current HUD subsidies. On the national level, the National Association of Housing and Redevelopment Officials (NAHRO) and the Council of Large Public Housing Authorities (CLPHA) have estimated that voucherization costs exceed current public housing costs by \$46 and \$63 PUM, respectively.⁶² Other associations have compared subsidy and voucherization costs across a handful of U.S. states and cities. The Public Housing Authority Directors Association (PHADA), which compared costs across ten states, concluded that, on average, voucherization costs would exceed subsidy costs by \$126 PUM.⁶³ In a second regional study, the Association of Community Organizations for Reform Now (ACORN) examined HUD expenditures for eighteen PHAs and found the average cost of voucherization to be \$75 in excess of current public housing expenditures.⁶⁴

As calculated by HUD, components of the cost included \$191 in operating subsidies, \$20 for the Public Housing Drug Elimination Program (PH-DEP),

TO REPLACE PUBLIC HOUSING WITH CERTIFICATES? 1 (1995) [hereinafter REPLACE-
MENT COSTS]. Michael Stegman, the Assistant Secretary of the Office of Policy Development and Research, has apparently retreated from his former endorsement of expanding the public housing production program. See Michael A. Stegman, *The Role of Public Housing in a Revitalized National Housing Policy*, in BUILDING FOUNDATIONS: HOUSING AND FEDERAL POLICY 333, 334 (Denise DiPasquale & Langley C. Keyes eds., 1990).

⁶² NAHRO estimates the cost of current subsidies to be \$425 and the cost of voucherization to be \$471 PUM. See NATIONAL ASS'N OF HOUS. & REDEV. OFFICIALS, COMPARING PUBLIC HOUSING AND SECTION 8 COSTS 1 (1995). See also Letter from Richard Y. Nelson, Executive Director, National Association of Housing and Redevelopment Officials, to Michael Stegman, Assistant Secretary for Policy Development and Research, U.S. Department of Housing and Urban Development 2, 6 (Apr. 7, 1995) (on file with author) [hereinafter Nelson Letter]. CLPHA assesses the current subsidized cost to be \$377 PUM, and compares this expense with HUD's estimated \$440 PUM under voucherization. See CLPHA NEWS, *supra* note 45, at 5.

⁶³ See PHADA PLAN, *supra* note 2, at 25-26. The states PHADA examined were Alabama, California, Florida, Maryland, Massachusetts, Michigan, Missouri, New York, Ohio, and Tennessee. While cost differentials varied from 104% in Missouri to virtual equality in Ohio, average subsidy costs were \$343 and average voucherization costs were \$469 PUM.

⁶⁴ See Memorandum from Jerry Jones, Executive Director, Association for Community Organizations for Reform Now, to Michael Stegman, Assistant Secretary for Policy Development and Research, U.S. Department of Housing and Urban Development 2 (Feb. 12, 1995) (on file with author). PHADA conducted an examination of the following PHAs: Little Rock, Ark.; Oakland, Cal.; Washington, D.C.; Miami/Dade, Fla.; Atlanta, Ga.; New Orleans, La.; Chicago, Ill.; Baton Rouge, La.; Baltimore, Md.; Boston, Mass.; Minneapolis, Minn.; St. Paul, Minn.; St. Louis, Mo.; Kansas City, Kan.; New York, N.Y.; Dallas, Tex.; Houston, Tex.; and Milwaukee, Wis. Average current public housing expenditures were found to be \$491 and average voucherization costs to be \$566 PUM.

and \$270 for modernization expenditures.⁶⁵ HUD compared the \$481 with its estimated \$440 PUM of replacing PFS subsidies with certificates. Voucherization costs were derived by taking the FMR of \$571 based on the fortieth percentile of rents in the metro areas for the bedroom sizes of current public housing tenants, adding a \$46 administrative fee calculated at eight percent of such FMRs, and subtracting the \$177 tenant's share of the rent payment calculated at thirty percent of the PFS rent roll.⁶⁶

HUD's analysis is faulty in several respects. First, the PFS, which allocates operating subsidies to PHAs, is inadequate. Not only did the program's original design underestimate the true costs of operating PHAs, but also PFS subsidies have failed to keep up with inflation.⁶⁷ While the \$2.618 billion⁶⁸ in HUD's analysis may accurately represent PFS costs, the expenditures should be adjusted upwards to reflect adequate subsidy payments.

Second, HUD should include the expenditures for its Public Housing Drug Elimination Program in voucherization costs. Under the HUD Reinvention, such assistance will continue during the first stage of the transformation through HUD's Operating Fund.⁶⁹ Moreover, issuing certificates will not guarantee a reduction in drug use and crime. Given that police departments commonly have failed to provide adequate assistance to housing developments with high concentrations of drug-related crime,⁷⁰ and because most tenants will either remain in or move to new poverty-concentrated areas,⁷¹ landlords will be forced to raise their rents to pay for the costs of crime. If such increases resulted in rents at or below fortieth percentile FMRs, HUD would continue to finance these costs. Even if rents exceeded such FMRs, adding PH-DEP costs to voucherization expenditures accurately reflects the fact that the federal government is merely cost-shifting this burden onto private landlords, rather than eliminating an expense.

Third, HUD's modernization costs, which include expenditures for its Comprehensive Improvement Assistance (CIAP),⁷² Comprehensive Grant (CGP),⁷³ HOPE VI, and Vacancy Reduction programs, are artificially inflated and misleading.⁷⁴ HOPE VI expenses, which would continue under the HUD Reinven-

⁶⁵ See REPLACEMENT COSTS, *supra* note 61, at 4.

⁶⁶ See *id.*

⁶⁷ See Kinnaird, *supra* note 7, at 989.

⁶⁸ See REPLACEMENT COSTS, *supra* note 61, at 4.

⁶⁹ See HUD REINVENTION, *supra* note 5, at 39. The HUD Reinvention proposal would be implemented according to a three-stage process, and all subsidized housing would be converted to voucherization by the year 2002. See *id.* at 43.

⁷⁰ Telephone Interview with Carolyn Samuels, Publisher, CLPHA News (Apr. 26, 1995) [hereinafter Samuels Interview].

⁷¹ See *infra* notes 151-59 and 180-83 and accompanying text.

⁷² 42 U.S.C. § 1437l(b) (1988).

⁷³ 42 U.S.C. § 905.102 (1992).

⁷⁴ Telephone Interview with Peter Henderson, Housing and Community Development Officer, National Association of Housing and Redevelopment Officials (Apr. 19, 1995) [hereinafter Henderson Interview]; Telephone Interview with Wayne Sherwood,

tion,⁷⁶ should be added to voucherization costs to reflect this fact. Furthermore, public and assisted housing requires \$16.65 to \$29.2 billion in repairs due to longtime maintenance neglect.⁷⁶ In recent years, Congress has appropriated historically high levels of funds to address such neglect through the newly created CIAP, CGP, and Major Reconstruction of Obsolete Projects (MROP)⁷⁷ programs.⁷⁸ HUD's use of such inflated maintenance figures in its analysis are misleading.⁷⁹ A more accurate assessment of PFS subsidies and certificates would compare the expected long-term costs of the respective programs. Based on an Abt Associates/ICF study which demonstrated that, assuming good public housing stock conditions in 1987, maintenance expenditures would be \$2 billion per year or \$125 PUM, CLPHA has calculated PFS subsidized housing maintenance expenditures to be \$166 PUM.⁸⁰ Substituting this figure for HUD's \$270 PUM for modernization expenditures decreases total PFS-based expenditures to \$377 PUM, or \$63 less than HUD's estimated \$440 PUM voucherization cost.⁸¹ As an alternative to the above analysis, the costs of HUD's CIAP and CGP programs could be added to certificate costs. These programs would continue under the HUD Reinvention to enable the public and assisted housing stock to compete with private market housing.⁸²

Even if costs were not adjusted in these ways, HUD's analysis is far from conclusive. If fiscal year 1995 modernization costs were reduced by \$562 million per year (fifteen percent of current spending), subsidy and predicted voucherization costs would be equivalent.⁸³ In light of probable HUD budget

Council of Large Public Housing Officials (Apr. 20, 1995); Samuels Interview, *supra* note 70.

⁷⁶ Nelson Letter, *supra* note 62, at 2.

⁷⁶ See *supra* note 15 and accompanying text. The \$16.65 billion would cover only mandatory backlog modernization needs. See *Department of Veterans Affairs and Hous. and Urban Dev. and Indep. Agencies of the House Comm. on Appropriations*, 103d Cong., 1st Sess. 85 (1993) (statement of Michael B. Janis, General Deputy Assistant Secretary, Office of Public and Indian Housing); Kinnaird, *supra* note 7, at 968.

⁷⁷ 57 Fed. Reg. 27330 (1992).

⁷⁸ CIAP, CGP, and MROP were initiated in 1988, 1991, and 1992, respectively. See Schill, *supra* note 9, at 522.

⁷⁹ See Nelson Letter, *supra* note 62, at 2 ("A primary reason for the backlog in modernization today is that federal funding prior to the Comprehensive Grant Program . . . had been inadequate for meeting accrual needs. Thus the cost of public housing was kept low in the past and now *appears* to be growing because of this change.").

⁸⁰ CLPHA increased the Abt Associates/ICF costs by one-third to account for inflation and the continued aging of public housing, obtaining an annual maintenance expenditure of \$2.8 billion, or \$166 PUM. See CLPHA NEWS, *supra* note 45, at 5.

⁸¹ See *id.*

⁸² See Nelson Letter, *supra* note 62, at 2.

⁸³ With a subsidy cost of \$440 and a certificate cost of \$481 PUM, certificate costs would have to decrease by \$41 PUM, or \$492 per year, to equal subsidy costs. Multiplying \$492 per year by the 1.142 million units of occupied PFS housing, moderniza-

cuts,⁸⁴ a reduction in modernization costs of this magnitude is possible. Thus, in spite of the analysis conducted by HUD's Office of Policy and Development Research, voucherization costs would exceed current HUD program assistance on a per unit basis if this reduction obtains.

Assuming supply-side programs are cheaper, the primary argument in support of voucherization arguably is negated. It should be noted, however, that these calculations are highly dependent on the data employed and that the comparable costs of subsidization and voucherization are relatively close. Moreover, the decision to voucherize is highly political in nature, and Congress will ultimately determine the amount HUD will spend on either type of housing program. Given these factors, it is questionable as to whether the decision to voucherize should be based solely on a cost comparison.

The debate over voucherization costs has been centered on the national level. This focus is largely a response to HUD's universal model analysis.⁸⁵ Nevertheless, critics note that selectively voucherizing some, but not all, PHAs would provide for a more prudent program.⁸⁶ While voucherization might be an economical way by which to provide housing in certain circumstances — for example, in the case of the most troubled and least favorably located PHAs — such a strategy could be disastrous in other contexts. Accordingly, HUD should develop a more flexible approach that would allow for targeted voucherization among and within public housing developments.

B. *Housing Certificates and Tenant Choice*

Demand-side approaches directly attack the root of the problem in most markets — the inability of some households to afford decent-quality housing at current rents for such.⁸⁷

tion expenses would need to decrease by \$562 million, a 15% reduction from current modernization costs. Adding \$20 PUM to certificate costs for the PH-DEP program would require only a \$288 million dollar, or 7.8%, reduction in modernization expenditures for a certificate program to equal PFS subsidy costs.

⁸⁴ See NATIONAL HOUS. LAW PROJECT, SEVERE RESCISSIONS OF HUD FUNDS 1 (Feb. 1995) (reporting that the House Appropriations Subcommittee covering HUD approved a rescission bill that would reduce HUD's current budget of \$26 billion by \$7 billion, or by 27%, and noting that "[e]ven if the Senate or the President were to reject [the bill], the handwriting for the [fiscal year] 1996 budget deliberations is on the wall").

⁸⁵ Telephone Interview with Peter Henderson, Housing and Community Development Officer, National Association of Housing and Redevelopment Officials (May 16, 1995) [hereinafter Henderson Interview II].

⁸⁶ *Id.* Henderson notes that many are opposed to the one-size-fits-all programs currently administered by HUD, and that the HUD Reinvention merely calls for the replacement of universal HUD programs with a new one-size-fits-all model. *Id.*; see also Wuenschel Interview, *supra* note 1.

⁸⁷ JEROME ROTHENBERG, ET AL., THE MAZE OF URBAN HOUSING MARKETS: THEORY, EVIDENCE, AND POLICY 355 (1991).

Rather than enhancing resident choice, HUD's blueprint would seriously constrict residents' already-limited options by lowering Fair Market Rents and by eliminating the only permanent source of affordable housing reserved for low income families — an investment of nearly \$100 billion.⁸⁸

Proponents of demand-side assisted housing have lauded certificates and vouchers for promoting household choice by cutting tenant ties to particular buildings and enabling them to live in public or private housing at a variety of locations. While individuals who are able to escape the inner cities enjoy high returns,⁸⁹ studies and anecdotal evidence concerning voucherization indicate that not all certificate and voucher recipients are able to exercise such free choice. Although 1994 HUD studies found that eighty percent of certificate and voucher holders living in large, urban areas found housing,⁹⁰ these success rates were achieved only because of significant assistance from programs designated for that purpose. In the Gautreaux program, for instance, a management agency actively "finds landlords willing to participate in the program, notifies families as apartments become available, and counsels them about the advantages and disadvantages of the move; counselors accompany them to visit the units and communities."⁹¹ Smaller housing-search assistance programs also contribute to success rates for finding housing as the movement of fewer assisted families into wealthier neighborhoods is less apparent than the arrival of large groups.⁹²

Earlier studies of non-search-assisted voucherization programs demonstrate less favorable results. In a 1986 housing voucher program, forty percent of the recipients returned their vouchers unused, even with extensions beyond the sixty-day search period.⁹³ Moreover, in a 1990 study, success rates were as low

⁸⁸ PHADA PLAN, *supra* note 2, at 9.

⁸⁹ See HUD *Dud*, *supra* note 3, at 8 ("[P]eople who escape the inner city stay in school and keep jobs at higher rates than people who remain in poor neighborhoods.").

⁹⁰ See HUD REINVENTION, *supra* note 5, at 36.

⁹¹ 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, 1522 (1993). The Gautreaux Assisted Housing Program in Chicago resulted from a 1976 United States Supreme Court decision that found that the Chicago Housing Authority (CHA) had engaged in racially discriminatory practices. See *Hills v. Gautreaux*, 425 U.S. 284 (1976). In response, the CHA developed a program whereby it assists current public housing residents, as well as those on waiting lists, in finding housing in low-poverty areas partially funded by Section 8 subsidies. See Kinnaid, *supra* note 7, at 986. In spite of this search assistance, in the case of the Gautreaux program, only half of participating families were able to find housing in one of the six outlying counties of Chicago. See PHADA PLAN, *supra* note 2, at 29. As described in section B.2, *infra*, discrimination may have played a role.

⁹² See Laurie Abraham, *Foes Kill Housing Plan Funds: Low-Income Renters Call Move Racist*, CHI. TRIB., Dec. 15, 1994, at 33.

⁹³ See Joann S. Lublin, *Uncertain Solution: Vouchers for Housing Help Some of the Poor, Fail to Benefit Others*, WALL ST. J., Nov. 19, 1986, at 23.

as sixty-five percent for rental vouchers, and sixty-one percent for Section 8 certificates.⁹⁴ These utilization rates are even less impressive since, in most instances, families do not use certificates and vouchers to move to new geographical areas. In the 1974 Experimental Housing Allowance Program (EHAP), many voucher and certificate holders who actually used their assistance stayed in their same neighborhoods, and often in their current apartments.⁹⁵ HUD found that while one-third of program participants use their assistance to stay in place, only fifty-two percent of those who move from their current apartments find housing.⁹⁶ Voucher recipients searching for housing in rent-controlled areas have an even lower degree of success.⁹⁷

1. Availability of Affordable Units

[T]he administration . . . wants to cut the dollar value of housing vouchers, in effect pricing poor people out of unshabby areas and keeping them warehoused within urban slums. The administration hasn't only tossed another unsolicited bone to Republicans who . . . have never liked the possibility that a few poor kids might end up in their districts' public schools; it has also forsaken its professed commitment to policies that help the poor help themselves.⁹⁸

The lack of housing-search assistance is not the only barrier to family choice. One leading constraint on tenant choice concerns the availability of affordable, privately-owned apartments.⁹⁹ According to a 1994 Congressional Budget Office study, the supply of affordable housing is decreasing, particularly for the poorest families. In 1975, just enough units rented at thirty percent or less of the annual income of the 5.9 million renters in the lowest quartile of the income distribution to meet housing demand. Subsequently, a gap between the number of renting families and number of available units has developed and widened, however, resulting in a shortfall of 3.4 million units for this group as of 1991.¹⁰⁰ Even though the HUD Reinvention would allow families with housing certificates to spend more than thirty percent of their annual income on housing, estimates indicate that even sixty to seventy per-

⁹⁴ See *Department of Veterans Affairs and Hous. and Urban Dev. and Indep. Agencies Appropriations, Fiscal Year 1992: Hearings Before the Senate Comm. on Appropriations*, 102d Cong., 1st Sess. 523 (1991).

⁹⁵ See Schill, *supra* note 9, at 532.

⁹⁶ See HUD REINVENTION, *supra* note 5, at 36.

⁹⁷ See ROTHENBERG ET AL., *supra* note 87, at 354; Wuenschel Interview, *supra* note 1. Landlords of rent-controlled buildings cannot raise their rents; thus the market for rent-controlled units is usually tight. Section 8 certificates, which exempt landlords of rent-controlled buildings from adhering to rent-control regimes, enable assisted tenants to find housing at higher rates. *Id.*

⁹⁸ HUD Dud, *supra* note 3, at 8-9.

⁹⁹ This section does not address the problems of discrimination discussed in Section B.2, *infra*.

¹⁰⁰ See PHADA PLAN, *supra* note 2, at 17, 28.

cent of their incomes is often insufficient to enable these families to live where they wish.¹⁰¹ Consequently, the privately-owned housing stock may be unable to absorb significant numbers of the households currently living in public and assisted housing, especially if tens of thousands of families enter the housing market at the same time.¹⁰²

A related concern is that voucherization will lead to large reductions in the number of available units in the public housing stock.¹⁰³ HUD estimates that under the Reinvention, the government will demolish approximately 80,000 to 100,000 of the worst public housing units, plus additional units which would have trouble competing on the private market.¹⁰⁴ PHAs are unlikely to build new public housing, given that the HUD Reinvention loosens demolition regulations¹⁰⁵ and revokes the current one-for-one replacement rule under which PHAs must replace demolished units with an equal number of new units.¹⁰⁶ In addition, experts predict that under the HUD Reinvention fortieth percentile FMRs will be insufficient to meet maintenance and finance expenditures. This will force public and assisted housing developments to increase rents beyond such FMRs, as permitted under the HUD Reinvention,¹⁰⁷ in order to make necessary repairs.¹⁰⁸ The fact that public housing is generally of lower quality and often of lesser durability¹⁰⁹ than private market units would exacerbate such maintenance expenses. These dynamics could have the effect of pricing the poorest families out of certain public and assisted housing markets. Tight public and private housing markets would lower certificate recipients' chances

¹⁰¹ See National Hous. Law Project, *A Critique of HUD's Reinvention Blueprint*, 25 HOUS. LAW BULLETIN 29, 33 (1995) [hereinafter NHLP Critique].

¹⁰² See *id.* at 29.

¹⁰³ This concern is of particular significance, given that many families will stay in their current apartments or move to alternative public housing under the HUD Reinvention. See HUD REINVENTION, *supra* note 5, at 35.

¹⁰⁴ See *id.* at 37. The National Housing Law Project estimates that 150,000 units would be demolished. See NATIONAL HOUS. LAW PROJECT, *THE CHANGES FOR PUBLIC HOUSING RECOMMENDED IN HUD'S REINVENTION: FROM BLUEPRINT TO ACTION 8* (Apr. 7, 1995).

¹⁰⁵ Currently, projects may not be demolished unless they are "unusable for housing purposes, and no reasonable program of modifications is feasible to return the project or portion of the project to useful life." 42 U.S.C.A. § 1437p(a)(1) (West Supp. 1993).

¹⁰⁶ While some support the one-for-one replacement rule since it preserves the number of public housing units in the housing stock, others note that the rule has prevented "crime-ridden, Stalinesque projects" from being torn down. See, e.g., *HUD Dud*, *supra* note 3, at 8. The one-for-one replacement requirement will likely be replaced with a relocation requirement under which PHAs would be required to assist families in finding alternative housing. See CLPHA NEWS, *supra* note 45, at 4.

¹⁰⁷ Benoit Interview, *supra* note 36.

¹⁰⁸ See Wuenschel Interview, *supra* note 1; NHLP Critique, *supra* note 101, at 33.

¹⁰⁹ See Schill, *supra* note 9, at 502-03 (noting that "[t]he 1937 Act placed relatively low ceilings on construction expenditures to ensure that the units would not be desirable enough to compete with private-sector housing").

of finding housing even further.¹¹⁰

Based on this analysis, in areas where the supply of housing stock shrinks, landlords will raise their rents in response to the increased demand for housing. Critics could argue that such dynamics would not affect certificate holders because FMRs are pegged to the fortieth percentile of local metropolitan area rents. Nevertheless, this reasoning may not hold true for two reasons. First, FMRs will not keep up with actual market rents because of the time lag involved in the annual rate setting process. In highly dynamic, gentrifying¹¹¹ markets, FMRs might consistently trail market rents, making it even more difficult for certificate holders to afford housing. Second, even if FMRs keep pace with market rents, a certificate holder's ability to obtain housing depends on housing vacancy rates. A NAHRO study found a four percent vacancy rate and a three percent vacancy rate at the forty-fifth and fortieth percentiles of local metropolitan area rents, respectively, leading to the conclusion that such vacancy rates are insufficient to accommodate certificate holders.¹¹² A second study, however, determined that units which rent to families with incomes at or below thirty percent of the average median income show a fifty to eighty percent vacancy rate, indicating that in these markets housing would be sufficiently available.¹¹³ Such market specific differentials serve to support the development of a targeted, as opposed to a universal, voucherization strategy.

HUD's proposal to lower FMRs from the forty-fifth to the fortieth percentile of local metropolitan area rents also would reduce the number and quality¹¹⁴ of available affordable units.¹¹⁵ While HUD maintains that this five per-

¹¹⁰ See Lublin, *supra* note 93, at 1 (noting that while in San Antonio, Texas, the 20% vacancy rate forced landlords to reduce rents, enabling most voucher holders to obtain housing within 30 days, many tenants in areas with tighter housing markets are forced to return their vouchers unused).

¹¹¹ See *infra* note 185 and accompanying text.

¹¹² Henderson Interview II, *supra* note 85.

¹¹³ *Id.* Henderson notes that even if housing were available, legislators still need to consider whether landlords will be willing to participate in the program, and where landlords who do accept certificates are located. Often, affordable low-income housing is not dispersed widely. *Id.*

¹¹⁴ See WALLACE F. SMITH, *FILTERING AND NEIGHBORHOODS CHANGE* 17-33 (1964). According to the filtering model, wealthier households will outbid poorer households for the same apartments. *Id.*

¹¹⁵ Some fear that certificates will ultimately end up being lower than the 40th percentile. See, e.g., Wuenschel Interview, *supra* note 1. Peter Henderson explains that while private landlords would receive the full value of the voucher under the HUD Reinvention, HUD has stated that PHAs would keep less. He further points out that PHAs will still be responsible for modernization costs, and notes that it is unlikely that PHAs will receive enough money during the transition period to make all needed repairs. The fact that PHAs will receive less than the full value of the certificates will only serve to exacerbate their current modernization problems. Henderson Interview II, *supra* note 85.

cent decrease¹¹⁶ will not have a great impact on certificate recipients, evidence points to the contrary.¹¹⁷ Enthusiastic proponents of voucherization admit that, even without such a decrease in assistance, public housing is more affordable than rents subsidized by housing certificates.¹¹⁸ Rent subsidies have proven insufficient in private market areas with high vacancy rates,¹¹⁹ and have forced families to forgo moving when confronted with even minimal rent increases.¹²⁰ Moreover, a reduction in rent subsidies from forty-five to forty percent of FMRs may force public and assisted housing landlords to raise rents to cover maintenance and finance costs.¹²¹ While in theory one might predict that new units would be built to meet certificate recipient demand, in practice new construction has not resulted. Studies indicate that voucherization neither preserves nor adds to the low-income housing stock.¹²² Private builders are deterred from building low- and mixed-income housing, given that they are seldom assured of a steady income stream to finance projects.¹²³ Traditionally, Congress has had to provide private developers and investors with tax incentives and direct rental project-based subsidies to induce building develop-

¹¹⁶ See NATIONAL HOUS. LAW PROJECT, *THE TIME OF RECKONING FOR NATIONAL HOUSING POLICY: TO BE OR NOT TO BE* 8 (Jan. 1995) (estimating that this figure averages \$15 per family per month).

¹¹⁷ Benoit Interview, *supra* note 36; HUD REINVENTION, *supra* note 5, at 35 (stating that based on an analysis of census data for 13 metro areas, at least 40% of all two-bedroom units rent at or below FMR). Others note that HUD carefully selected these metro areas. See, e.g., Henderson Interview, *supra* note 74.

¹¹⁸ Schill, *supra* note 9, at 527.

¹¹⁹ Estella Sanchez, a warehouse worker earning \$5.25 per hour, became the nation's first housing voucher recipient. Ironically, she was unable to find decent affordable housing despite high vacancy rates, and returned her voucher. See Lublin, *supra* note 93, at 23.

¹²⁰ See *id.* (noting that one family was unable to use its voucher because alternative housing cost an additional \$41 per month).

¹²¹ Lowering FMRs might also frustrate the objective of decreasing the concentration of poverty, as discussed in Section B.2. In an earlier response to the Office of Management and the Budget's budget passback, HUD noted the following:

A reduction in FMRs to the 40th percentile will have adverse program impact. We are still receiving complaints from many PHAs that families continue to encounter problems in finding units below . . . FMRs at the 45th percentile. The reduction in FMRs would greatly impede the Department's efforts to facilitate families' moves to areas with low concentration of poverty because these areas tend to have higher rents. Since units at the 40th percentile rent are usually concentrated in the lower income neighborhoods, a reduction of the [FMR] would have the effect of decreasing family choices for housing outside areas of low income concentrations and will further concentrate families in very low income neighborhoods.

PHADA PLAN, *supra* note 2, at 30.

¹²² See *id.*; Stanfield, *supra* note 14, at 2018; Lublin, *supra* note 93, at 1.

¹²³ See NHLP Critique, *supra* note 101, at 10.

ment.¹²⁴ Because HUD Reinvention certificates are portable, income streams would remain uncertain.

2. Discrimination Against Voucher Holders and Low-Income and Minority Families

Assuming that affordable housing were available, landlord discrimination might still prevent certificate holders from exercising free choice in determining where to live. Currently, private market landlords discriminate against Section 8 certificate and voucher holders in a variety of ways. A Rutgers University study found that private landlords often refuse to accept tenants by virtue of their certificate- or voucher-holding status.¹²⁵ Landlords have been deterred from participating in Section 8 programs due to the "cumbersome and unwieldy process imposed by HUD"¹²⁶ and current Section 8 regulations, including the prohibition against tenant evictions,¹²⁷ as well as the requirement that units meet HQS and pass annual HUD inspections.¹²⁸ Because the HUD Reinvention would not require landlords to accept certificates,¹²⁹ once the twenty-year Section 8 certificate and voucher contracts expire as they will between now and 2002, PHAs and HUD-assisted housing developments that currently accept such assistance would be free to reject certificate recipients.

Private landlords also discriminate against certificate and voucher holders because they do not want low-income¹³⁰ and minority tenants. Landlords reject poor tenants based on the belief that such individuals will inject the problems of public housing into their own neighborhoods.¹³¹ Moreover, de facto racial segregation exists in many private housing markets.¹³² As noted in the HUD Reinvention, a recent General Accounting Office study of the Section 8 certificate program found that "55 percent of white recipients but only 36 percent of black recipients live in neighborhoods where fewer than ten percent of the residents are poor."¹³³ The EHAP study found that minority participants had lower success rates for securing housing as compared with white applicants.¹³⁴

¹²⁴ See Stanfield, *supra* note 14, at 2018 (noting that "in 1974, Congress added [S]ection 8 to the 1937 U.S. Housing Act to use generous tax incentives along with direct rental subsidies to get private investors to do what neither the housing industry nor the federal government wanted to do").

¹²⁵ See PHADA PLAN, *supra* note 2, at 27.

¹²⁶ See *id.* at 28.

¹²⁷ See Fuchs, *supra* note 33, at 993 (noting an exception for serious or repeated lease violations, violations of federal, state, or local law, or other good cause).

¹²⁸ See Lublin, *supra* note 93, at 23.

¹²⁹ See Stanfield, *supra* note 14, at 2018.

¹³⁰ See Lublin, *supra* note 93, at 23.

¹³¹ See Utt, *supra* note 19, at *10.

¹³² See Kinnaird, *supra* note 7, at 985.

¹³³ HUD REINVENTION, *supra* note 5, at 28.

¹³⁴ See Schill, *supra* note 9, at 531. An analysis of one 1990 New York City program demonstrated that while 64% of white applicants found housing, only 23% of

When minorities obtain housing, they often are forced to pay a larger percentage of their income for it than whites.¹³⁵

Anecdotal evidence also supports findings of discrimination. One prospective tenant who attempted to move to a nicer neighborhood explains that she was told by a landlord "that I wouldn't be happy because there were no other colored."¹³⁶ When she inspected the unit, she noted that a white neighbor said, "We can't have colored no more."¹³⁷ The HUD Reinvention, which would deregulate public and assisted housing and allow landlords to refuse certificates, would give such providers more leeway to discriminate against certificate holders, as is the practice in private markets.

C. *Fighting the Concentration of Poverty*

Proponents of demand-side assistance support voucherization as a way to deconcentrate the number of poor families living in high-poverty neighborhoods by enabling certificate recipients to buy into higher income areas.¹³⁸ PHAs often are located in inner-city neighborhoods where the concentration of poverty is highest.¹³⁹ Currently, the median income of families living in public housing is less than \$6,500, and three-quarters of non-elderly households have incomes below the poverty level. One-half of these families receive public assistance, and over ninety percent of the families living in some of the large PHAs receive welfare.¹⁴⁰ The degree of poverty among public housing residents has increased; between 1980 and 1995, tenants' income decreased from thirty-three to seventeen percent of median income.¹⁴¹ The incidence of pov-

blacks and 30% of Hispanics found apartments. *See id.* at 532. *But see* Meryl Finkel & Stephen D. Kennedy, *Racial/Ethnic Differences in Utilization of Section 8 Existing Rental Vouchers and Certificates*, 3 HOUS. POL'Y DEBATE 463, 480 (1992) (noting that racial differences "essentially disappear" outside of New York City). One Pittsburgh experiment noted that 21% of black families encountered discrimination. *See* Kinaird, *supra* note 7, at 985-86 n.179.

¹³⁵ *See* John C. Boger, *Race and the American City: The Kerner Commission in Retrospect — An Introduction*, 71 N.C. L. REV. 1289, 1335-36 (1993).

¹³⁶ Lublin, *supra* note 93, at 23.

¹³⁷ *Id.*

¹³⁸ *See, e.g.,* Utt, *supra* note 19, at *9; Schill, *supra* note 9, at 499. HUD argues that its proposal will lead to the deconcentration of poverty. *See* HUD REINVENTION, *supra* note 5, at 33.

¹³⁹ The number of people with incomes below the poverty level living in inner-cities increased 29.5% — from 1.9 to 2.4 million individuals — between 1970 and 1980. *See* Paul A. Jargowsky & Mary Jo Bane, *Ghetto Poverty in the United States 1970-1980*, in THE URBAN UNDERCLASS 235, 252 (Christopher Jencks & Paul E. Peterson, eds., 1991). The concentration of poverty has continued to grow in urban areas since 1980. *See* John D. Kasarda, *Inner-City Poverty and Economic Access*, in REDISCOVERING URBAN AMERICA: PERSPECTIVES ON THE 1980s 4-1, 4-39 to 4-44 (Jack Sommer & Donald A. Hicks, eds., 1993).

¹⁴⁰ *See* Schill, *supra* note 9, at 517-18.

¹⁴¹ *See* NHLP Critique, *supra* note 101, at 2.

erty is tied closely to race; two-thirds of non-elderly families living in public housing are black and approximately one-fifth are Hispanic.¹⁴² Overall, thirty-nine percent of subsidized units are occupied by minorities.¹⁴³ Given the consequences of the concentration poverty which, according to William Julius Wilson, results in problems of a unique kind and magnitude,¹⁴⁴ eradication of densely populated, high-poverty areas is a laudable goal.¹⁴⁵

Nevertheless, the HUD Reinvention ignores the consequences of a massive demand shock to stable housing markets, as well as the potential significance of neighborhood dynamics in the context of current patterns of development.¹⁴⁶ HUD and other demand-side proponents presume that affordable housing is widely dispersed across geographic areas, that private landlords will be willing to participate in the certificate program, that certificate holders will be able to find housing in a variety of neighborhoods, and that neighborhoods exist in a state of equilibrium such that they are able to withstand significant shocks without becoming stabilized. HUD's failure to fully consider the impact the Reinvention would have on certificate-holding and low-income, non-certificate-holding households has resulted in an incomplete cost benefit analysis. Such lack of proper reflection could lead to significant unanticipated costs which, if considered initially, might alter HUD's voucherization strategy.¹⁴⁷

¹⁴² See Schill, *supra* note 9, at 518.

¹⁴³ See NATIONAL HOUS. LAW PROJECT, WHAT'S IN THE FUTURE FOR FAIR HOUSING? 2 (Apr. 7, 1995).

¹⁴⁴ See WILSON, *supra* note 21, at 58. According to Wilson, "the communities of the underclass are plagued by massive joblessness, flagrant and open lawlessness, and low-achieving schools, and therefore tend to be avoided by outsiders. . . . [T]he residents of these areas . . . have become increasingly socially isolated from mainstream patterns of behavior." *Id.*

¹⁴⁵ Families who were able to move to Chicago suburbs under the *Gautreaux* program were positively impacted. "Not only has the program given families the chance to upgrade their housing, but it has had significant positive second-order effects on the educational performance and employment status of children whose families moved to less segregated suburbs." Kinnaird, *supra* note 7, at 986.

¹⁴⁶ Current patterns of development are explained by the ring theory and filtering model. According to the ring theory of development, given differences in income level and the historical development of public transportation, households are segregated by class in concentric rings around city centers, with the poorest living in inner city areas and the wealthiest living in the most distant suburbs. See SAM BASS WARNER, JR., STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900 at 46-64 (2nd ed. 1978). For an explanation of the filtering model, see SMITH, *supra* note 114, at 17-33.

¹⁴⁷ See William C. Apgar, Jr., *Which Housing Policy Is Best?* HOUS. POL'Y DEBATE 1, 27 ("Externality effects, be they pecuniary or real, must be accounted for in any complete assessment of alternative subsidy approaches.").

1. Consequences of a Massive Demand Shock

The HUD Reinvention would lead to a massive and sudden demand shock to the current private sector housing market. This demand shock would result from the reduction in¹⁴⁸ and gentrification of¹⁴⁹ the current public housing stock, and the choice of certificate holders to use their certificates in what is now the private housing market.

HUD exaggerates the degree of flexibility that certificates would provide to their holders. Although HUD assumes that certificate holders would be able to use their certificates to move to a variety of different neighborhoods,¹⁵⁰ in reality they would be forced to concentrate in lower- and lower-middle-income areas, or might be unable to move at all. First, certificates would be pegged to fortieth percentile FMRs, and because of their low-income status, certificate holders would find it difficult to spend much more than the value of their certificates on housing. Poor tenants would be priced out of tight markets in which landlords can charge rents well above certificate values.¹⁵¹ According to the ring theory and the filtering model,¹⁵² this dynamic would occur most often in middle-income neighborhoods where certificate-holders could be consistently outbid for desirable housing.¹⁵³ Thus, certificate-holders would be limited to areas where housing rents for certificate rates, neighborhoods which are predominantly lower- and lower-middle-income.

Second, even if some housing in middle-income neighborhoods rented for fortieth percentile FMRs, certificate-holders, many of whom are members of minority groups, would not obtain such housing due to racial discrimination by the predominantly white population of residents and landlords.¹⁵⁴ Studies have demonstrated that increases in income, and thus spending power, among blacks have failed to alter levels of segregation in housing markets.¹⁵⁵ Third,

¹⁴⁸ See *supra* Section B.1.

¹⁴⁹ See *infra* Section C.2.ii.

¹⁵⁰ HUD maintains that "in most housing markets there is an adequate supply of housing available for certificate recipients . . . units renting for less than the FMR are quite widely dispersed geographically, accounting for at least 30 percent of the rental stock in over two-thirds of all residential Census tracts." HUD REINVENTION, *supra* note 5, at 35. As discussed earlier, however, this these data may be highly selective.

¹⁵¹ See *supra* notes 109-110.

¹⁵² See *supra* note 146. Thus, certificate holders would be outbid in neighborhoods where residents could spend larger sums of money on housing than certificate holders, who would be able to spend the value of their certificates plus any additional portion of their income above the thirty percent they could afford.

¹⁵³ See Duncan Kennedy, *Neither the Market Nor the State: Housing Privatization Issues, in A FOURTH WAY? PRIVATIZATION, PROPERTY AND THE EMERGENCE OF NEW MARKET ECONOMICS* 253, 257 (Gregory S. Alexander & Grazyna Skanska eds., 1994).

¹⁵⁴ See *supra* Section B.2.

¹⁵⁵ DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 85 (1993) ("[N]o matter how much blacks earned they remained spatially separated from whites.").

residents and landlords who do not discriminate against certificate-holders because of their race might discriminate against them because of their low-income status.¹⁶⁶ While some landlords in middle-income areas might rent to a small number of low-income certificate holders whose entry into the neighborhood would be barely perceptible, other landlords would refuse to rent to certificate holders fearing negative neighborhood effects.¹⁶⁷ Fourth, even if certificate holders were not the victims of racial or socioeconomic discrimination, landlords might discriminate against them on the basis of their certificate-holding status in order to avoid entanglements with HUD bureaucracy.¹⁶⁸ Such discrimination would occur most often in desirable neighborhoods where landlords have the highest degree of bargaining power.

The significant influx of certificate-holders into now private sector housing in lower and lower-middle-income neighborhoods would cause prices in such neighborhoods to rise.¹⁶⁹ Current residents in these neighborhoods are low-income families, many of whom qualify for but do not receive public or assisted housing.¹⁶⁰ Since housing assistance is not an entitlement program, such families may not be able to obtain certificates under the HUD Reinvention. Although the HUD Reinvention requires PHAs to issue certificates to current residents of public and assisted housing and to other low-income households, PHAs may also reserve half of all incremental and turnover certificates for working or work-ready families.¹⁶¹ While higher rents resulting from increased demand would affect both certificate and non-certificate-holders, certificate-holders would be best able to bear price increases because they receive rent subsidies.¹⁶²

Some non-certificate-holders would stay in their current neighborhoods and pay higher rents for their same apartments, representing a net transfer of wealth from non-certificate-holders to landlords.¹⁶³ Others would leave their current residences due to price increases, and move to vacated units in the reduced-in-size former public housing market, bidding competitively for apartments with the certificate-holders who remain.¹⁶⁴ Because such families would lack certificates, they would pay the full cost of what the market would bear

¹⁶⁶ See *supra* Section B.2.

¹⁶⁷ See Utt, *supra* note 19, at *10 ("Rent subsidies . . . aim at dispersing poor families rather than concentrating them. In practice, this has often meant injecting the problems of public housing into previously stable neighborhoods.").

¹⁶⁸ See *id.*

¹⁶⁹ See Apgar, *supra* note 147, at 9.

¹⁶⁰ The number of needy families has been estimated at five million. See NATIONAL HOUS. LAW PROJECT, *THE BOTTOM LINE FOR HOUSING REFORM 1* (Feb. 1995).

¹⁶¹ See HUD REINVENTION, *supra* note 5, at 28.

¹⁶² See Apgar, *supra* note 147, at 13.

¹⁶³ Much of the rent increases would result from rent inflation as opposed to improvements in apartments. See *id.*

¹⁶⁴ See *id.*

for the units, possibly more than thirty percent of their adjusted incomes.¹⁶⁵ Given their low-income status, non-certificate-holders would be forced to move into the cheapest and worst projects as certificate-holders move out. Furthermore, because landlords who do not accept certificates would not be required to comply with HUD's HQS, they could refuse to maintain these apartments properly.¹⁶⁶ Adverse neighborhood effects would be exacerbated if decrepit buildings were abandoned. Depending on the availability of units, non-certificate-holders could be priced out of housing markets altogether,¹⁶⁷ ultimately becoming homeless.

2. The Impact of Neighborhood Dynamics

The study of neighborhood dynamics is rooted in a discourse that seeks to explain systemic change.¹⁶⁸ This discourse begins with the idea that systems consist of a set of factors which are causally interrelated in complex ways.¹⁶⁹ Such sets of factors are characterized by a dynamic of "circular causation" in which change in one factor affects other factors.¹⁷⁰ Most systems exist in a state of equilibrium, such that disturbances, or inputs, to the systems do not significantly alter them.¹⁷¹ When systems undergo a significant enough shock, however, they can become destabilized, destroying the former equilibrium.¹⁷² When a system becomes destabilized, a change in one factor in a certain direction causes other factors in the system to change in the same direction. This phenomenon creates a cumulative "feedback loop" whereby the latter factors that are affected, in turn, impact the initially affected factors, causing them to change again in the same direction, thereby creating a "spiraling" effect, mag-

¹⁶⁵ See *id.*

¹⁶⁶ See Kennedy, *supra* note 153, at 259 (noting that "low-income apartments will deteriorate and have a very low 'floor,' meaning that conditions in the worst-maintained units will be likely to violate cultural norms about squalid living conditions"). See also Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, FLA. ST. U. L. REV. 485, 489 (1987) (explaining that in deteriorating neighborhoods, landlords may find it economically rational to "milk" their buildings by charging tenants what the market will bear and refraining from providing building maintenance. This practice results in building deterioration and early retirement from the housing stock.). Although most jurisdictions formally impose a warranty of habitability, in practice such warranties are selectively enforced.

¹⁶⁷ See NHLP Critique, *supra* note 101, at 13-14.

¹⁶⁸ See MICHAEL A. GOLDBERG, ON SYSTEMIC BALANCE: FLEXIBILITY AND STABILITY IN SOCIAL, ECONOMIC, AND ENVIRONMENTAL SYSTEMS 12, 14, 15, 18 (1989) (applying this discourse to grasslands, pesticide spraying, urban transportation and rent control); GUNNAR MYRDAL, AN APPROACH TO THE ASIAN DRAMA: METHODOLOGICAL AND THEORETICAL 1859 (1970) (explaining dynamics of development in South Asian countries).

¹⁶⁹ See MYRDAL, *supra* note 168, at 1846.

¹⁷⁰ See *id.*

¹⁷¹ See GOLDBERG, *supra* note 168, at 22.

¹⁷² See *id.*

nifying the initial change.¹⁷³ This cumulative process can continue indefinitely, and can lead to undesirable results.¹⁷⁴

Neighborhood dynamics draws on this analysis to explain changes in housing markets, including deterioration and gentrification. In particular, neighborhoods may be susceptible to changes due to factors related to stigma or status,¹⁷⁵ such as the opinions and future expectations of residents, real estate agents and banks as to the character of a given neighborhood,¹⁷⁶ as well as media attention.¹⁷⁷ Moreover, individual neighborhood systems are not isolated; the destabilization of one neighborhood may contribute to the destabilization of another.¹⁷⁸

The HUD Reinvention fails to consider the effect that the demand shock that voucherization would have on existing neighborhood equilibria. While it is impossible to predict precisely what effect such a demand shock would have, experience indicates that such a significant market input is likely to cause widespread destabilization of housing markets. This section explores three possible scenarios that could result: downward spirals characterized by neighborhood deterioration leading to new areas of poverty concentration and abandonment; upward spirals characterized by gentrification and displacement of low-

¹⁷³ See MYRDAL, *supra* note 168, at 1847.

¹⁷⁴ See GOLDBERG, *supra* note 168, at 19. For this reason, policy analysts often tend to disfavor top-down, wide scale initiatives, in favor of more localized and gradual approaches to change. Goldberg states:

Future decisions should be made on a smaller scale and implemented more slowly. Smaller and slower interventions permit the systems, upon which these disturbances have been imposed, to evolve a systemic response which honors the complexity and stability of the system itself.

They are top-down system-wide responses, often aimed at surprisingly specific and localized problems. Better targeted and more localized responses would appear to be in order. Such responses are less likely to disturb the workings of entire systems and can avoid the simplified and ultimately counterproductive outcomes.

See id. at 19, 24.

¹⁷⁵ See ROLF GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE 31 (1979) ("The stigma or status conferred on living in a particular neighborhood distorts how resources are allocated. People are now willing to pay much more than average to live in what is considered the right neighborhoods.").

¹⁷⁶ *See id.* at 11-12 (describing how a young couple decides against buying a house in a neighborhood when a current resident, real estate agent and bank have low expectations about the neighborhood's future, and how the same couple wishes to buy in the same neighborhood eight years later when public opinion is highly positive).

¹⁷⁷ *See id.* at 60-61 (explaining how the deteriorating neighborhood of Jamaica Plain in Boston, Massachusetts, was transformed by a highly positive television special and advertising by the Boston Redevelopment Authority. This media attention resulted in reinvestment in the neighborhood and upgrading of the housing stock.).

¹⁷⁸ See Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 J. URB. & CONTEMP. LAW 195 (1985) (discussing the relationship of gentrification and abandonment in New York City).

income tenants; and the interaction between downward and upward spirals. These possibilities are far from exhaustive. Rather, they are meant to suggest that by failing to take into account the destabilizing effects of voucherization on neighborhoods, HUD has neglected to account for a significant cost.

i. Scenario One: Downward Spirals and New Areas of Poverty Concentration

If landlords in "healthy" middle- and lower-middle-income neighborhoods agreed to rent to certificate holders, the arrival of a handful of families might be accommodated by the neighborhoods. However, the entry of a critical number of certificate recipients could cause one current residential household to move out, based on its expectations about future neighborhood changes that would be generated by the arrival of certificate holding tenants. Given circular effects,¹⁷⁹ the departure of this family would, in turn, influence other original residents to leave. That is, the concomitant decrease in the number of wealthier residents and influx of low-income and/or minority residents might cause wealthier residents to fear that neighborhood property values will decrease in the future, and to cut their losses by relocating.¹⁸⁰ A cumulative feedback loop would be established with the result that, as more certificate holders moved in and original neighbors left, more of the original residents would flee to wealthier neighborhoods. In turn, this would ease the entrance of new certificate holders into the area. Ultimately, these dynamics would destabilize the area, causing the neighborhood to enter a downward spiral.¹⁸¹ While units would be required to meet HUD's HQS, in practice landlords might violate this obligation, forcing certificate recipients, in time, to live in poor quality apartments.¹⁸² Thus, in the end, predominantly low-income certificate holders would be left in a newly transformed, poverty-concentrated neighborhood.

ii. Scenario Two: Upward Spirals and Gentrification

While tenants who live in decent quality public and assisted housing in good neighborhoods may wish to keep their apartments, this might not be possible if these neighborhoods become gentrified. Depending on the desirability of the units and the number of wealthier families who want to move in, landlords might be able to increase rents in excess of fortieth percentile FMRs.¹⁸³ As a result, certificate holders would be forced to commit greater portions of their incomes and, therefore, sacrifice other necessities, such as food and clothing, to

¹⁷⁹ See MYRDAL, *supra* note 168, at 1847.

¹⁸⁰ See M. Edel, *Filtering in a Private Housing Market*, in READINGS IN URBAN ECONOMICS 204-15 (M. Edel & J. Rothenberg eds., 1972).

¹⁸¹ See GOETZE, *supra* note 175, at 95-100.

¹⁸² See NHLP Critique, *supra* note 101, at 3 (noting that such activities occur in practice).

¹⁸³ See Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, FORDHAM URB. L.J. 507, 512 (1991).

remain in their apartments.¹⁸⁴ Given cumulative change and feedback effects, as greater numbers of higher-income families rent or purchase apartments, the neighborhood would enter an upwards spiral, and begin the process of gentrification.¹⁸⁵ Indeed, the presence of the first higher-income pioneers and early settlers could cause mainstream households and, ultimately, stragglers,¹⁸⁶ to move in, permitting landlords to steadily raise their rents, and forcing more certificate holders out of their current apartments.¹⁸⁷ Such neighborhoods could eventually reach a state of complete gentrification, thereby transforming once lower-income areas into middle-income enclaves.

iii. Scenario Three: Interaction Among Downward and Upward Spiraling Markets

It is possible that downward and upward spiraling markets would interact across housing markets, providing for a more complex set of neighborhood dynamics. For example, certificate holders who are priced out of gentrifying neighborhoods would be forced to reduce their consumption of housing by competing for less expensive apartments in more densely populated areas. Depending on neighborhood dynamics, these households may be required to search for housing in downward spiraling areas with the other certificate holders described above. Given their low-income status, they too would ultimately end up being forced to rent lower quality apartments located in areas of high poverty concentration.

In sum, taking into consideration neighborhood stratification by class and income, and incorporating housing market dynamics, the HUD Reinvention could fail in its objective of easing the concentration of poverty. While the impact of voucherization is idiosyncratic to individual housing markets, it is possible that a universal demand-side program would create new high poverty neighborhoods and transform lower and lower-middle income areas into middle-income neighborhoods not affordable by certificate holders. The implication that voucherization would have different effects on different neighborhoods further supports the adoption of a program of targeted, rather than

¹⁸⁴ See Kennedy, *supra* note 153, at 258.

¹⁸⁵ Gentrification involves the process by which low-income residents are bought or forced out by upper-income families who are able to outbid them. See *id.* at 260; GOETZE, *supra* note 175, at 100-03. Peter Marcuse maintains that:

Gentrification occurs when new residents — who disproportionately are young, white, professional, technical, and managerial workers with higher education and income levels — replace older residents — who disproportionately are low-income, working-class and poor, minority and ethnic group members, and elderly — from older and previously deteriorated inner-city housing in a spatially concentrated manner, that is, to a degree differing substantially from the general level of change in the community or region as a whole.

Marcuse, *supra* note 178, at 198-99.

¹⁸⁶ See GOETZE, *supra* note 175, at 101-02.

¹⁸⁷ See Kolodney, *supra* note 183, at 511.

universal, voucherization.

III. CONCLUSION

While HUD and other demand-side enthusiasts claim that converting current federal housing subsidies to certificates would result in a less costly program that would allow for tenant choice and provide for the de-concentration of poverty, in practice these objectives would not be achieved. Although certificate proponents aspire to commendable goals, as the above analysis demonstrates, voucherization is not the correct method for achieving them. Indeed, contrary to HUD's Office of Policy Development and Research's cost study and the theoretical support for demand-side assistance, certificates, as provided for in the HUD Reinvention, would be more expensive than current HUD subsidies. Certificate holders would often be prevented from exercising free choice in where to live due to constraints on the availability of affordable apartments and landlord discrimination. In addition, certificate holders would be forced to use their certificates in lower- and lower-middle-income neighborhoods, raising housing prices in such areas and adversely affecting low-income, non-certificate-holders. Moreover, given neighborhood effects and circular causation, the HUD Reinvention might create housing market instability, resulting in the segregation of certificate-holders in new areas of poverty concentration, and the forced departure of certificate-holders from gentrifying areas.

Although universal voucherization is not the correct solution, it is important to recognize that HUD programs are in need of reform. Especially in light of impending budget cuts,¹⁸⁸ it is critical that HUD increase its efficiency in providing housing assistance to low-income families. HUD should embark on a more careful reassessment of its current programs, and develop a tightly-reasoned program that will enable the Department to effectively meet its praiseworthy goals. As this article demonstrates, a flexible policy, incorporating supply- and demand-side programs both within and among public and assisted housing developments, would be most effective in addressing differing neighborhood conditions and dynamics. Indeed, rather than subjecting all federally assisted housing to the rigor of the private market system, HUD's investment in public and assisted housing should be strategically sustained.

¹⁸⁸ See NATIONAL HOUS. LAW PROJECT, *supra* note 84.