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## FOREWORD

The first part of this two-issue symposium on Housing has pointed out many of the major problems that must be confronted and solved before the nation's housing needs can be met.<sup>1</sup> This issue discusses the institutions and programs that constitute the federal government's response to these needs.

Housing problems are far from static. In fact, daily they become more acute as (1) new family formations attributable to the post-World War II "baby boom" in particular, and rising population in general, create enormous pressure for new dwelling units; and (2) the continuing urbanization of the nation's population is reflected in rising population densities in the core areas of our major cities, accelerating the decay of their aging multi-family residences. Additional dimensions of complexity are provided by the fact that, for both urban and rural dwellers, housing deficiencies correlate closely with low income levels, inferior employment and educational opportunities, and, frequently, racial discrimination. These socioeconomic complexities compound the difficulty of achieving the national goal of standard housing for every citizen at a price that he can afford.

In some instances, solutions to housing problems must be sought at the state and local levels. More often, however, adequate solutions will require federal participation of various types. The optimum form and scope of this federal participation are subjects of continuing public debate, which reflects basic disagreement concerning both the permissible objectives of federal assistance and the means by which it can legitimately be implemented. Typically, advocates of a federal role subordinate to and supportive of private housing markets are deployed against proponents of federal programs of greater magnitude. Within the Congress, this unresolved controversy provides one explanation for the Executive's inability to mobilize sustained legislative support for the creation and funding of new housing assistance programs.

The federal programs more specifically oriented to housing<sup>2</sup> have shown, over the years, not only a great increase in number but also a broadening in approach. Among the earliest federal activities which directly concerned housing was the drafting of model zoning, subdivision control, and planning legislation for enactment

<sup>1</sup> Other symposia on these problems that have appeared in this publication are *Low-Cost Housing and Slum Clearance*, 1 LAW & CONTEMP. PROB. 135-256 (1934); *Housing*, 12 *id.* at 1-205 (1947); *Land Planning in a Democracy*, 20 *id.* at 197-350 (1955); *Urban Housing and Planning*, 20 *id.* at 351-529 (1955); *Urban Renewal, Part I*, 25 *id.* at 631-812 (1960); *Urban Renewal, Part II*, 26 *id.* at 1-171 (1961).

<sup>2</sup> Of course, federal influence on housing is not limited to programs chiefly designed for that purpose. For example, defense policy affects the availability of men, material, and financing for housing construction. Similarly, federal fiscal and monetary decisions concerning balance of payments, rediscount rate, and the like, help determine how many units of housing will be built at a particular time. Federal labor policy may affect construction costs and techniques. Prevailing wage, equal employment opportunity, payment and performance bond, and other requirements applicable to federal and federally-assisted construction tend to influence what housing is built and by which developers.

by state legislatures.<sup>3</sup> Then, during the Depression, the Federal Housing Administration (FHA) was created by the Housing Act of 1934<sup>4</sup> to lure private investment funds into the housing market at a time when many home owners were facing foreclosure. In addition to the funds (and the possibilities of home ownership) it made available, the FHA also had a significant impact on financing and construction practices. For example, developers were required to meet design specifications in order to qualify for FHA financing. In addition, many municipalities conformed their land use controls to the stricter FHA requirements.

A few years after the federal government began assisting private investment in home mortgages, it entered the field of public housing. Local housing authorities have served as the vehicle for this program. These authorities, with the backing of a federal annual contributions contract, could borrow the funds for construction of public housing projects in the private market. Since the obligations of the local housing authorities enjoy certain exemptions and immunities from taxation, they have been attractive to investors. Just as many local ordinances were drafted or revised with an eye to FHA requirements, so also state legislation in the field of public housing was drafted in a way that would enable local projects to qualify for federal contributions.

The federal government originally entered urban renewal chiefly as a means for meeting national housing needs.<sup>5</sup> The original urban renewal legislation contained no "non-residential exception."<sup>6</sup> Just as in the case of public housing, the form of state urban renewal enabling legislation was affected by the desire to qualify for federal grants.

In connection with urban renewal, public housing, and certain FHA programs, Congress introduced in 1954 the requirement of a local "workable program."<sup>7</sup> By means of this requirement, municipalities were placed under heavy pressure to prepare a comprehensive community plan, make a neighborhood analysis of blight, and adopt adequate codes and ordinances.

Since that time federal housing programs have displayed increased emphasis on comprehensive community planning. In urban renewal, local public agencies were encouraged to develop "general neighborhood renewal plans"; and, more recently, funds have been made available for localities to prepare community renewal plans. To some extent, the Model Cities legislation<sup>8</sup> may be viewed as a further step in

<sup>3</sup> The Department of Commerce proposed certain Model Acts. See C. HAAR, *LAND-USE PLANNING* (1959).

<sup>4</sup> National Housing Act, ch. 847, 48 Stat. 1246 (1934).

<sup>5</sup> Urban renewal was authorized by the Housing Act of 1949, ch. 338 63 Stat. 413. Furnishing employment, as well as adequate housing, may also have been a legislative objective. See generally Foard & Fefferman, *Federal Urban Renewal Legislation*, 25 *LAW & CONTEMP. PROB.* 635 (1960).

<sup>6</sup> Foard & Fefferman, *supra* note 5, at 657. The project had to be "predominantly residential." A variety of factors have influenced the creation of the "nonresidential exception." Among them was the belief that the entire living environment of the community should be renewed and that redevelopment which was limited to residential areas would not be fully successful. *Id.* at 662-72.

<sup>7</sup> Housing Act of 1954, ch. 649, § 303, 68 Stat. 623. See generally Rhyne, *The Workable Program—A Challenge for Community Improvement*, 25 *LAW & CONTEMP. PROB.* 635 (1960). In Mr. Rhyne's view, the "workable program" requirement "marks a milestone in federal-city relations." *Id.* at 688.

<sup>8</sup> 42 U.S.C. §§ 1453, 3301-13 (Supp. II, 1965-66). See generally Taylor & Williams, *Housing in Model Cities*, in this symposium, pp. 397-408.

this same direction; and the creation of a Department of Housing and Urban Development embodies the same assumption that housing needs should be met as part of a comprehensive, and well-planned, program of community development.

The federal efforts to provide adequate housing have also been characterized by increasing emphasis on conservation and rehabilitation. The change in nomenclature from "urban redevelopment" to "urban renewal" was part of this trend, as was the "workable program" requirement of adequate codes and ordinances.<sup>9</sup> Federal funds are now available on a matching basis to help expand local inspection and code enforcement efforts. Loans and grants are available to individuals for rehabilitation purposes in urban renewal projects. Housing projects are being rehabilitated by their owners for lease or sale to local housing authorities.

In connection with federal housing programs, a variety of relationships have been developed with local agencies. To a considerable extent the federal government has underwritten local efforts—by loans, grants, annual contributions contracts, tax exclusions, and payments in lieu of taxes.<sup>10</sup> Obviously, the power of the purse has been used to provide considerable, and often detailed, guidance to the municipalities—for example, as to the wording and enforcement of housing and occupancy codes. Through the "workable program" requirement and otherwise, this federal influence has been pervasive at the local level.

With respect to the private sector, federal programs have moved towards creation of a more effective partnership in meeting housing needs: (1) Through expansion of FHA programs, private developers are being induced to provide housing for low- and middle-income groups that were previously neglected. (2) By reason of the federal income tax exclusion with respect to interest on municipal obligations, public housing and urban renewal projects have been financed, for the most part, by loans from private investors, rather than by direct federal loans.<sup>11</sup> (3) In urban renewal, local eminent domain powers are invoked, with federal financial backing, to assemble property which, under restrictions contained in the urban renewal plan, will be disposed of to private redevelopers; these redevelopers may, in turn, finance their construction of new housing with section 220 loans, payable over long terms at low interest rates, guaranteed by FHA, and backed by the Federal National Mortgage Association. (4) In public housing, this partnership has been marked by the development of the Turnkey principle—which is now being extended from construction to management.<sup>12</sup> (5) Another spectacular example is the rent supplement, which is made available to low-income tenants in private housing projects.<sup>13</sup>

<sup>9</sup> This requirement was a main impetus for the adoption of housing and occupancy codes in a number of cities. These codes, of course, were not limited in applicability to the particular area of an urban renewal project.

<sup>10</sup> The payment in lieu of taxes (PILOT), which has been used in connection with public housing, has been recommended by some in connection with other federal activities or programs which immunize considerable property from local or state taxes.

<sup>11</sup> The availability of the federal loan or grant is itself the chief security for the obligations issued by the local housing authority or local public agency.

<sup>12</sup> Federal contributions for public housing can also be made available in connection with the leasing of units from private landlords.

<sup>13</sup> The National Association of Homebuilders was among the groups that seemed to favor rent supplements. Interestingly, in 1937, when public housing legislation was being considered, the Chamber

In dealing with the private sector, federal housing programs have recognized the acceptability of the profit motive. Although a nonprofit sponsor can obtain a larger loan (percentagewise) for construction of a below-market-interest-rate 221(d)(3) project, a limited distribution sponsor is also permissible. The developer who sells a Turnkey project to a local housing authority is not subject to the limitations on profit provided by competitive bidding or cost certification.<sup>14</sup> And perhaps the most powerful incentive for development of new housing, both federally-assisted and "conventional," has been provided by the availability of accelerated depreciation.

In addition to participation by local officialdom and by private business in the effort to enlarge the inventory of adequate housing, the federal government is also seeking to enlist citizen participation, especially by those who are receiving special benefits from federal assistance. The "workable program" requires citizen participation, and has led to the creation of local citizens' advisory groups. In connection with antipoverty programs of the Office of Economic Opportunity, local organizations have been formed to represent the indigent, or in which the indigent have a substantial voice; these organizations have frequently been active in negotiations or consultations with local housing authorities and urban renewal agencies. The Turnkey III program contemplates that families in public housing projects will obtain a "sweat equity" through maintenance of their units, and through this equity will ultimately be able to obtain home ownership. The federal programs which seek to facilitate home ownership are predicated to some extent on the assumption that a person with an equity in his home will be more strongly motivated to maintain it properly than would a mere tenant.

By now, however, it is clear that neither federal programs nor private market forces have sufficed to meet the nation's ever-increasing housing needs. Several pending legislative proposals envisage an extension of federal programs to foster a more meaningful partnership with private capital in housing construction and rehabilitation.<sup>15</sup> It is to be hoped that, when domestic problems can again command serious attention in Congress and at the highest levels of the Executive, new proposals for federal action to meet the developing housing crisis will receive the consideration they deserve.

Meanwhile, as the development of the Turnkey program attests, considerable progress can also be made through legitimate innovation in the administration of existing federal laws. It is, perhaps, in this regard that lawyers can make a unique contribution to federal efforts to provide adequate housing for every American.

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of Commerce favored rent supplements in preference to public housing. See Note, *Government Housing Assistance to the Poor*, 76 YALE L.J. 508 (1967).

<sup>14</sup> Cost certification is necessary in some instances when the developer does not carry through the project but sells the land and his plans to the local housing authority.

<sup>15</sup> Senator Robert Kennedy and Senator Percy, among others, have made far-reaching proposals for new federal programs.