

# THE EROSION OF RIGHTS



## *Declining Civil Rights Enforcement Under the Bush Administration*

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## CHAPTER 7

*New Directions for U.S. Housing Policy: The Unmet Potential of Two Large Housing Programs*

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If the United States had a truly open housing market, it would supply housing to people at all levels of the economic spectrum in every community. But the housing market has been so distorted by government intervention at every level that it fails to supply a decent and affordable housing for many poor and working class families (NLIHC 2005)—a burden that falls most heavily on poor people of color (Pelletiere 2005). Government intervention has also created deeply segregated housing markets, which exacerbate these disparities.

The role of government in distorting the housing market and promoting segregation has included decades-old government decisions to eliminate integrated neighborhoods through urban renewal and replace them with racially and geographically isolated public housing developments; the delegation of land use and zoning powers from states to local governments and assignment of property tax based school revenue systems to these same exclusionary suburbs; the development of the interstate highway system in the 1950s and 60s, the continuing subsidization of exurban sprawl by the of the mortgage tax deduction (a modern cousin of the white flight promoted by the discriminatory government mortgage programs of the 1950s); and so on (Sheryll Cashin provides a powerful overview of this historical research in her recent book, *The Failures of Integration: How Race and Class are Undermining the American Dream*).

The geographic distribution of assisted housing, even today, has tended to follow the path of least resistance—to areas where affordable housing can feasibly be built within government and market constraints—rather than to areas of high employment, safe and healthy streets, and high quality educational programs. But this passivity is not inevitable—it is possible to envision a national housing policy that is more proactive and choice-driven. This essay will focus on the potential of our two largest low income housing programs—the Section 8 Housing Choice Voucher Program and the Low Income Housing Tax Credit (LIHTC) Program—to work together to promote new access to opportunity.

## THE SECTION 8 PROGRAM AND ACCESS TO OPPORTUNITY

Virtually alone among federal housing programs, the Section 8 program has provided an option to families who

choose to move from higher-poverty segregated neighborhoods to less segregated areas. Unfortunately, this benefit of the voucher program is not automatic, and is highly dependent on program features that include how higher-rent areas are treated, how public housing agencies (PHAs) receive their funding, how PHAs interact with families and with each other when a voucher is used across jurisdictional lines (“portability”), and the extent to which families receive housing search assistance (Sard 2005; Tegeler, Hanley & Liben 1995). Each of these program features is subject to competing political, administrative and policy demands, and since the voucher program has no significant constituency outside of the housing industry, housing mobility becomes simply one goal among many (Khadduri 2005).

Although HUD and Congress took some promising steps during the Clinton administration with a series of housing mobility policies designed to help families move to lower poverty neighborhoods, these policy interventions only lasted a few years, and we are currently in the midst of a policy retrenchment, which has restricted families’ geographic choices in the voucher program, and is likely now leading to greater residential concentration among poor Black and Latino participants in the program.

The recent assault on housing mobility in the voucher program began in 2002, with the elimination (by HUD and Congress) of federal funding for regional housing mobility programs, and the consequent shutdown of dozens of such programs around the country. Then, in 2003, HUD began affirmatively restricting housing choice by cutting back on the use of Section 8 “exception payment standards,” which permit families to move to lower-poverty areas that have higher rents. In 2004, the administration’s original flexible voucher proposal (successfully resisted by Congress) would also have discouraged housing mobility by changing each agency’s Section 8 allocation to a single block-grant system, rather than paying each agency for all the vouchers that they are able to use. In the same way, HUD’s decision in June of 2004 to retroactively cut voucher funding in PIH Notice 2004-7 increased incentives for PHAs to adopt policies that discourage or prohibit families from moving to higher-rent areas—including across the board reductions in payment standards that restrict the choice of available neighborhoods. HUD further restricted mobility in a guidance issued in July of 2004 that would permit PHAs to restrict voucher holders’ portability rights, where PHAs make a showing that they would suffer financial harm.\*

\* HUD retracted this ambiguous and unlawful guidance in 2006, but only after much damage had been done. Little has been done to reinstate full portability rights for participating families.

It is time to undo this systematic dismantling of the Section 8 program, and to reinstate two of the program's original goals of housing choice and deconcentration of poverty. To accomplish this, the new Congress and HUD could take the following steps:

- Elimination of financial penalties imposed on PHAs when families move from one jurisdiction to another. Currently, a "sending" PHA has to pay a premium to a neighboring PHA for higher rents in the receiving town, with no possibility of reimbursement from HUD. A proposal in the pending 2007 Appropriations Bill would eliminate this penalty by allowing PHAs to seek reimbursement of excess "portability" costs from a HUD Central Reserve Fund.
- Reauthorization of the system in effect prior to 2000 that permitted the payment of somewhat higher Section 8 rents in more expensive, lower poverty areas. This system of "Exception Payment Standards" is still part of the Section 8 regulations, but, as noted above, its use was suspended unlawfully by HUD in 2003.
- Statutory changes to eliminate the byzantine administrative system of "portability" and replace it with a simpler system that allows families to move from jurisdiction to jurisdiction without bureaucratic complications. One leading proposal is to require receiving PHAs to simply "absorb" incoming families into their program, so long as spaces remain for families on the PHA waitlist.
- Reauthorization of an improved version of the Regional Opportunity Counselling Program, a multi-city program that helped families move to lower poverty neighborhoods (defunded in the first two years of the Bush administration).
- Experimentation with new approaches to cooperation among PHAs operating similar voucher programs in the same metropolitan areas. The Center on Budget and Policy Priorities has proposed a system of financial incentives for PHAs that take steps such as sharing waitlists, adopting common application forms, etc.
- Passage of a new national housing mobility program modeled on the successful Gautreaux Assisted Housing Mobility Program in Chicago. An estimated 50,000 new vouchers per year, dedicated to deconcentrating poverty

in 10–15 of America's most severely segregated urban neighborhoods, could have a substantial impact in ameliorating the impacts of concentrated poverty over a 10-year period.

The Poverty & Race Research Action Council (PRRAC), recently published a review of the best practices and most promising administrative approaches to promoting housing mobility in the Section 8 voucher program, in our report of the Third National Conference on Housing Mobility: *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program*. The main lesson of this report is that housing mobility is feasible, we know how to make it work, and, given the assistance, many families in high poverty neighborhoods will make a choice to move to safer and higher opportunity areas.

## THE LOW INCOME HOUSING TAX CREDIT PROGRAM

The Section 8 program alone is not sufficient to provide opportunities for poor families outside of segregated, high poverty metropolitan neighborhoods. A housing production strategy is also needed to provide the units for families in areas of opportunity.

The Federal Low Income Housing Tax Credit (LIHTC) Program, as the nation's largest low income housing production program, would seem to be the obvious answer to this problem. But the LIHTC program has failed in two major ways to increase racial and economic integration. First, the program has replicated some of the economic and racial geographic concentration of the old public housing program; and second, there is a significant question about whether those units that are being built outside higher-poverty neighborhoods are being managed in a way that promotes integration and choice.

The LIHTC program has operated with little civil rights oversight since its inception in 1986. The mandate of the Fair Housing Act—that all federal agencies take steps affirmatively to further fair housing—while binding on the Department of Treasury, is not directly incorporated in the LIHTC statute, and the Treasury has provided no fair housing guidance to the state housing finance agencies that administer the program. The program's fair housing responsibilities are alluded to only once in the Internal Rev-

enue Service (IRS) regulations, in a broad incorporation by reference to general housing regulations governing HUD-assisted housing. There are no specific site selection requirements in the Department of Treasury's LIHTC regulations, and decisions about which projects to fund are entirely delegated to state housing finance agencies (HFAs).

The Department of Treasury's failure to explicitly to require compliance with fair housing policy is accompanied by specific competing incentives in the LIHTC statute that promote a low income housing development in certain poor neighborhoods as a kind of community development incentive. The statute also directs states to give priority to projects that serve "the lowest income tenants... for the longest periods," and further encourages developers to fill these projects with the poorest of the poor. The LIHTC statute fails to give direction as to how much priority to assign these two goals, or how to reconcile them with the compelling goals of poverty deconcentration and racial integration mandated by the Fair Housing Act.

The Poverty & Race Research Action Council, along with the National Fair Housing Alliance, recently sponsored research on the degree to which LIHTC family housing was being sited to give families access to low poverty, integrated communities. The report, prepared by Abt Associates, *Are States Using the Low Income Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?* (Abt Associates 2006), showed a consistent trend throughout the country to locate LIHTC family housing in neighborhoods with a greater-than-average percentage of "minority" residents. In addition, only 22 percent of metropolitan LIHTC units are large enough to be occupied by families and are located in low poverty census tracts.

Because LIHTC siting policy is under the control of state housing finance agencies, the Abt report devotes considerable attention to state-by-state variations in the location of LIHTC family housing. States are ranked by the percentage of LIHTC family units found in low poverty locations. Because states vary in the overall extent of poverty in their large metropolitan areas, the paper also ranks states by comparing the proportion of LIHTC units in low poverty locations with the overall proportion of rental housing in such locations. States vary a great deal by either measure, suggesting that some states are focusing much more than others on the policy goal of increasing opportunities for families with

children to live in low poverty neighborhoods. States that appear to have made positive efforts are Utah, New Hampshire, New York, Wisconsin, Delaware, Nebraska, and Colorado. In contrast, Illinois, South Carolina, Kentucky, Pennsylvania, Connecticut, Massachusetts, Idaho, Arizona, and the District of Columbia place only small fractions of their LIHTC family housing in census tracts in which fewer than 10 percent of all people are poor.

In another report, *Building Opportunity: Civil Rights Best Practices in the Low Income Housing Tax Credit Program*, PRRAC and the Lawyers' Committee for Civil Rights Under Law undertook a 50-state survey of state "Qualified Allocation Plans" governing annual allocations of the LIHTC program by state housing finance agencies. Again, the survey found wide variations in practices, and—despite positive language in some of the state plans—an overall lack of priority given to civil rights and fair housing concerns in the program.

The overall message of these recent reports is that the federal agencies charged with administering the LIHTC program can no longer continue their "hands-off" approach to civil rights oversight of the program. The Department of the Treasury and the Internal Revenue Service have a direct responsibility under the Fair Housing Act, 42 U.S.C. §3608, and Executive Order 12892, to provide guidance to state grantees on fair housing performance. This guidance must include, at a minimum:

- Collection of racial and economic data: The most glaring omission in IRS oversight of the LIHTC program is the absence of any requirement for the collection and reporting of meaningful racial and economic data on project residents and applicants. This type of data collection activity is routine for HUD projects, but has generally not been required of LIHTC development
- Affirmative marketing and access to units in low poverty areas is essential to open up opportunities for low income families of color in developments located in higher opportunity areas.
- The IRS should require and encourage project siting that avoids perpetuation of segregation and furthers fair housing goals. Some examples of steps to encourage project siting and design to promote integration in state QAPs are set out in PRRAC's Best Practices survey.

- The IRS should prohibit some of the most exclusionary techniques used by the state housing finance agencies to limit development of LIHTC units in high-opportunity areas. For example, in some states, the approval of the municipality's chief elected official is listed as threshold requirement or as one of the bases upon which projects will be evaluated—which virtually guarantees rejection of developments that are not wanted by officials in a particular town.
- The LIHTC statute should be amended to eliminate the disproportionate emphasis on developments located in Qualified Census Tracts (QCTs); instead, priority should be given to family developments located in neighborhoods with low crime rates and high functioning and well resourced elementary and secondary schools.
- Using Section 8 and LIHTC together: One of the best ways to promote economic and racial integration in the voucher and LIHTC programs is to use the programs together, building on the LIHTC statutory requirement barring discrimination against Section 8 voucher holders in LIHTC developments. This could be accomplished by a simple set aside of family units for voucher holders in each LIHTC development, or by affirmative marketing efforts targeted to inner city voucher programs and regional housing mobility programs, to ensure that low income city residents are encouraged to take advantage of and actually benefit from developments in lower-poverty areas.

## CONCLUSION: NO MORE MISSED OPPORTUNITIES

All government housing programs operate in the context of housing markets that tend to sort people by race and class, a tendency that is further distorted by government interventions like delegation of zoning authority to local jurisdictions, drawing of school district boundaries, siting of public housing, and subsidization of sprawl to distort property values on the metropolitan periphery. If HUD and Congress are serious about promoting fair housing, they should recognize these market and regulatory distortions, and compensate not just with new fair housing enforcement programs, but with programs that actually promote racially and economically integrated housing.

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