

of income and many rents exceeded the fifty percent mark.²⁵⁸ Undeniably, the housing allowance payment was viewed by its recipients as a rental subsidy.²⁵⁹

D. Conclusion

If the housing allowance approach is to be taken seriously, it is important to realistically portray its benefits and burdens. EHAP clearly demonstrates that a housing allowance optimizes consumer choice and independence while minimizing governmental interference in the private market.

A restrictive view must be taken, however, as to the possible broader social goals of a housing allowance program. An allowance program will not serve to readjust the imbalance of economic and legal power between landlords and tenants. Nor will it ameliorate the existing racial segregation in cities. Nevertheless, these conclusions should not obliterate the fact that a housing allowance program would improve the living conditions of its participants and create new housing opportunities. An allowance program would effectuate these goals by placing a premium on self-reliance rather than on the usual governmental intermediation.

A look at the primary constituency of a housing allowance program—young, economically mobile homeowners living in the “open” housing markets of the Midwest and West—indicates that the housing allowance debate will once again divide along partisan lines. It would seem, though, that the housing allowance approach offers opportunities to those families who have not heretofore fit the public housing mold. If the concept were proposed as a supplement to, rather than a replacement for, conventional public housing programs, then it could well become a politically and economically feasible public housing strategy.

V. GOVERNMENTAL RELOCATION ASSISTANCE PROGRAMS

Owning property in the inner city has once again become attractive to middle- and upper-income persons. Close proximity to downtown activities, minimal fuel costs, and the desire to live in a traditional neighborhood setting have enticed the affluent to purchase homes in

258. *Id.*

259. *Id.* at 38-39.

central cities.²⁶⁰ Sharp rises in property values, however, have made it difficult for lower-income residents to remain in changing neighborhoods. The combination of conversion of low-rent units to condominiums and high-rent complexes, and the demolition of less structurally sound buildings has led to displacement of many lower-income persons.²⁶¹

Though much of the current rehabilitation occurs through purely private efforts, government agencies have aided the rebuilding process.²⁶² Both federal and state agencies have taken some responsibility for relocating those displaced as a result of governmentally-assisted redevelopment.²⁶³ States and municipalities have also attempted to impose restrictions on private development leading to displacement.²⁶⁴

The scope of governmental protection of displacees is a major issue at present. Many feel that governmental units should take more responsibility for their involvement in displacement-causing actions and, in certain situations, for private actions as well. Others believe that current assistance is sufficient and perceive any further assistance as interfering with the private market. This section examines the

260. Several studies indicate the types of people intent upon purchasing property in the city. See, e.g., U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, DISPLACEMENT REPORT 28-29 (1979) [hereinafter cited as DISPLACEMENT REPORT]. The report cites reasons people have given for moving into the Capitol Hill area in Washington, D.C. They include proximity to work, favorable price, historical/architectural character of neighborhood, closeness to cultural and social attractions, and investment potential. D. GALE, THE BACK-TO-THE-CITY MOVEMENT REVISITED: A SURVEY OF RECENT HOMEBUYERS IN THE CAPITOL HILL NEIGHBORHOOD OF WASHINGTON, D.C. (1978), cited in DISPLACEMENT REPORT, *supra*, at 29. See also M. SCHUSSHEIM, INNER-CITY RESTORATION AND FAMILY DISPLACEMENT 4 (1978) [hereinafter cited as SCHUSSHEIM].

261. For a comprehensive discussion of major causes of displacement, see H. BERNDT, DISPLACEMENT AND RELOCATION PRACTICES IN FIVE MID-WESTERN CITIES 12-59 (1978). Examples of displacing causes, other than those mentioned in the text accompanying this note, include code enforcement and increases in tax assessments.

The process by which upper-income persons purchase older urban properties, thereby displacing lower-income residents, is known as "gentrification." See K. COX, CONFLICTS, POWER AND POLITICS IN THE CITY 83-85 (1973). The gentrification process is not to be confused with "incumbent upgrading," which promotes rehabilitation of existing housing stock without displacing the lower-income residents. SCHUSSHEIM, *supra* note 260, at 5-7.

262. See, e.g., notes 265-70 and accompanying text *infra*.

263. See notes 271-77 & 301-09 and accompanying text *infra*.

264. See notes 310-16 and accompanying text *infra*.

scope of present protection and how that protection might expand in the near future.

A. *The Federal Response*

I. Current Law

Federal agencies, most notably the Department of Housing and Urban Development (HUD), take part in a wide variety of redevelopment programs that cause displacement. The following six categories illustrate the broad nature of federal participation:

- 1) *Federal acquisition and disposition of property*. Displacement occurs primarily as a result of foreclosures of federally-insured mortgages.²⁶⁵
- 2) *State and local governmental acquisition of property for federally assisted programs*. Programs aimed at the elimination of blight or the provision of public services are typical.²⁶⁶
- 3) *Other federally assisted activities performed by local agencies*.²⁶⁷

265. Aside from those occurring under the Federal Housing Administration (FHA) and Veterans Administration (VA) mortgage insurance programs, federal foreclosures occur under the § 221(d)(3) Below Market Interest Rate (BMIR) program, 12 U.S.C. § 1715(d)(3) (1976), and the § 236 subsidy program, 12 U.S.C. § 1715z-1 (1976). HUD predicted several years ago that by the year 2015, 3200 defaults will have occurred under these two programs. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSING IN THE SEVENTIES, cited in Kleinman, *Federal Subsidized Housing Acquired by HUD*, 10 URB. LAW. 289, 293 (1978).

Permanent displacement after foreclosure may result from demolition, rent increases after sale of the property, or change in the character of the building after a public housing agency acquires it. HUD formerly allowed sale of previously subsidized units without obtaining agreement from the purchaser to retain subsidized units. 24 C.F.R. § 290 (1980) now requires review of any disposition of multifamily buildings by HUD that might result in displacement. *See also* DISPLACEMENT REPORT, *supra* note 260, at 67, which indicates that HUD now may acquire properties while still occupied if certain conditions are met.

266. *See* Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. § 5305(a)(1)(A) (1976). Most activities performed to eliminate blight must occur within Neighborhood Strategy Areas (NSAs). 24 C.F.R. § 570.302(e)(1) (1970). The regulations mention two exceptional circumstances in which Community Development Block Grant (CDBG) funds may be used to eliminate blight outside NBAs: (1) Acquisition, demolition, historic preservation, and relocation necessary to eliminate "detrimental" conditions; and (2) Activities necessary to finish urban renewal projects. 24 C.F.R. § 570.302(e)(2), (3) (1980). The provision authorizing the use of CDBG funds for public services is 42 U.S.C. § 5305(a)(8) (1976). Typical acquisitions besides the above are for urban beautification, 42 U.S.C. § 5305(a)(1)(C) (1976), and for state highway programs, 23 U.S.C.A. §§ 101-156 (West Supp. 1980).

267. Municipalities may use general revenue sharing funds for urban projects if

- 4) *Private acquisitions undertaken with federal assistance.* Section 8 subsidized housing, various Community Development Block Grant (CDBG) programs, and federal mortgage insurance and loans would fall into this category.²⁶⁸
- 5) *Other nonacquisition private actions receiving federal assistance.* Rehabilitation under the section 8 and section 312 programs, and rental assistance under section 8 and older Rent Supplement programs apply.²⁶⁹
- 6) *Programs resulting in "secondary" or "indirect" displacement.* This category encompasses federal assistance that leads to revitalization in an area, which after time may result in private displacement.²⁷⁰

they so desire. *See* 31 U.S.C. §§ 1227, 1241 (1976). A program now funded under HCDA, and applicable here, is federally assisted code enforcement. 42 U.S.C. § 5305(a)(3) (1976). The HCDA code enforcement is an extension of the assistance provided for such activities under the Housing Act of 1949, 42 U.S.C. § 1468 (1976). Federally assisted code enforcement displaces a substantial number of persons. One report states that over 390 households in St. Louis and Cincinnati were displaced by federally assisted enforcement. G. GRIER & E. GRIER, *URBAN DISPLACEMENT: A RECONNAISSANCE* 24 (1978) [hereinafter cited as GRIER].

Another program that will likely cause displacement in the future is the Section 8 Substantial Rehabilitation Program for Neighborhood Strategy Areas. HUD funds agencies with section 8 funds to be used in conjunction with CDBG funds in NSAs to spur concentrated development. 24 C.F.R. § 881.300 (1980). HUD has recognized the potential for displacement in this program and has promulgated regulations to assist displacees. *Id.* § 881.309.

268. Section 8 subsidized housing, *see* 42 U.S.C. § 1437f (1976), may be a significant displacing factor. A developer acquiring property for the program may require tenants to move out; the number of units may diminish under the program; the number of families seeking tenancy under section 8 may increase; or the tenants not eligible for § 8 may have to leave the building.

Since 1977, the federal government has had the authority to provide private parties with CDBG funds for acquisition of property. *See* Housing and Community Development Act of 1977, Pub. L. No. 95-128, 91 Stat. 1111.

269. Again, section 8 plays a major role, most notably through the regular (non-NSA) substantial rehabilitation program. The developer performs the work and receives payment through a contract with either HUD or the local public housing agency. *See* 24 C.F.R. § 881 (1980). Section 312 rehabilitation, 42 U.S.C. § 1452b(c)(4)(A), (d) (1976), available to private developers as well as to agencies, may displace as does section 8, but may in some cases work against displacement, by making loans available to low- and moderate-income homeowners and to multi-family building owners.

270. This category in effect encompasses all of the above programs. The Urban Homesteading Program and its effect on neighborhood stability illustrates how indirect displacement works. One study of the program showed that although homeowner mobility in homesteading areas met the average for all neighborhoods, renter mobility in such areas was 58% above average. HUD concluded that though the pattern might indicate displacement it was not possible to make a definite statement

To aid persons displaced through federally assisted programs, Congress enacted the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA).²⁷¹ The federal government had previously protected certain displacees under various statutes. The URA changed the existing protection in two ways. First, it attempts to provide uniform treatment for displacees similarly situated, regardless of the federal program causing the displacement.²⁷² Second, it provides displacees with greater assistance than had previously been available.²⁷³

The URA protects homeowners and tenants statutorily defined as "displaced persons."²⁷⁴ Both may receive actual moving expenses or a fixed moving expense allowance.²⁷⁵ Those meeting specified length of residency requirements also receive compensation for the anticipated difference between present and future housing costs.²⁷⁶

about the effects without knowing people's reasons for moving. See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSEHOLD MOBILITY IN URBAN HOME-STEADING NEIGHBORHOODS: IMPLICATIONS FOR DISPLACEMENT (1979).

271. 42 U.S.C. §§ 4601-4655 (1976).

272. At the time of consideration of the URA, one Senator stated his belief that "the primary objective of S.1 is to establish a uniform policy among federal agencies, and state and local recipients of federal funds in their dealing with property owners and others displaced by federal or federally aided land acquisitions." 115 CONG. REC. 31533 (1969) (remarks of Sen. Muskie). See also H.R. REP. NO. 1656, 91st Cong., 2d Sess., reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850-52 [hereinafter cited as HOUSE REPORT]; 116 CONG. REC. 40172 (1970) (remarks of Reps. Koch and Annunzio).

273. The ever increasing number of programs that caused displacement was perhaps the principal purpose for enactment of the URA. See HOUSE REPORT, *supra* note 272, at 5851. Congress recognized that short of eminent domain in constitutional taking situations, there was no comprehensive legislation to protect displacees. *Id.* at 5850.

274. The term "displaced person" means any persons who, on or after [the effective date of this Act], moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of a written order of the acquiring agency to vacate real property, for a program or project undertaken by a federal agency, or with Federal financial assistance. . . .
42 U.S.C. § 4601(6) (1976).

275. *Id.* § 4622. The actual expense payment may include reasonable expenses and actual direct losses of personal property. See 24 C.F.R. § 42.301-.303-307. The fixed payment consists of a moving allowance not to exceed \$300 and a dislocation allowance of \$200. *Id.* at § 42.353.

276. Homeowners residing in the property for 180 days prior to negotiations for acquisition may receive compensation for the difference between the eminent domain award and the cost of comparable replacement housing that is decent, safe, and sani-

The URA also provides for relocation services. Any displacing agency, be it local, state, or federal, must create a relocation assistance advisory program upon initiation of displacement.²⁷⁷ Though the *creation* of such a program appears mandatory, the Act describes assistance as “assurances” rather than duties. A comprehensive relocation plan is thus not required under the URA.

Another URA provision mitigates some of the weakness inherent in the advisory program language. If a shortage of sufficient replacement housing exists in the displacement area, the agency may use project funds to build replacement housing.²⁷⁸ This “houser of last resort” provision allows forced displacement only when the displacing agency determines that sufficient replacements are available.²⁷⁹ Two major deficiencies underlie this provision. First, what the agency is satisfied with may not in fact constitute sufficient replacement housing. Second, HUD’s regulations under this section do not adopt the “one for one” requirement found in the earlier urban renewal program. Under that requirement, an additional unit had to be created whenever a unit was destroyed.²⁸⁰ Under the URA, if a displacee relocates, for example, to a subsidized unit, the number of subsidized units available to others is effectively decreased.

The definition of “displaced persons” has created the most conflict, as its interpretation determines coverage under the Act. By the terms of the definition, one is displaced who moves due to the acquisition of property or in response to an acquiring agency’s written order to vacate property for a program or project “undertaken by a federal agency or with federal financial assistance.”²⁸¹

tary. 42 U.S.C. § 4623 (1976). The homeowner also may obtain assistance for increased interest costs incurred in financing the new dwelling. The total aid to a homeowner cannot exceed \$15,000. *Id.* See also 24 C.F.R. § 42.401-.409. Tenants need only meet a 90 day residency requirement, and may receive up to \$4000 to apply to the difference between previous and anticipated rents for four years, or to pay down on a home. *Id.* at § 42.451.

277. 42 U.S.C. § 4625 (1976).

278. *Id.* § 4626(a). See also 24 C.F.R. § 42.601-.609.

279. 42 U.S.C. § 4626(b) (1976).

280. *Id.* § 1455(c). HUD has expressed the view that a one-for-one requirement was not mandated under the URA. 44 Fed. Reg. 30952 (1979). To support its view, HUD said that most of its programs do not mandate one-for-one upon demolition of housing for the particular program. That response only begs the question—if the URA did authorize one-for-one replacement in HUD’s view, would not the other programs then be able to include one-for-one authorization?

281. 42 U.S.C. § 4601(6) (1976). See note 274 *supra*.

The potential breadth of this provision has resulted in judicial interpretations limiting the scope of the URA. The Supreme Court has read two causation requirements into the language.²⁸² First, if a written order to vacate is involved, such order must come as the result of a contemplated or actual property acquisition. Second, the purpose for the acquisition must be to further a federally-assisted program or project.²⁸³ The Court has thus held that displacement as a result of HUD mortgage foreclosures does not merit coverage under the URA, as the purpose of the acquisition, default by the owner, furthers no specific "program or project."²⁸⁴

Several other judicially imposed limitations have eliminated large

282. *Alexander v. HUD*, 441 U.S. 39 (1979). In *Alexander*, HUD purchased a defaulted apartment building at a foreclosure sale, and soon closed the project, notifying tenants to leave but refusing to provide relocation benefits. *Id.* at 44. In the companion case, *Harris v. Cole*, HUD again, after acquiring a complex, decided that plans to rehabilitate it would be futile and ordered the tenants to leave so demolition could begin. *Id.* at 45-46.

283. The displacees and the Court relied on legislative history to further their arguments. The Court concluded that in the written order situation, Congress intended to extend benefits "for persons directed to move because of a complicated acquisition, whether the agency ultimately acquires the property or not." *Id.* at 59. The Court noted also that since the written order language's predecessor referred to movement "as a result of the acquisition or reasonable expectation of acquisition," *id.* at 54-55, quoting S. 1681, § 11(6), 89th Cong., 1st Sess. (1966), the causal connection was implied.

As for the second causation requirement, tenants claimed that the URA should cover any acquisition by an agency when subsequent displacement occurs. Their argument presumed that the "for a program or project" language in § 4601(6), see note 274 *supra*, referred solely to the written order clause. The Court looked to §§ 4622 and 4625, the moving expenses and advisory services sections, both of which begin "whenever the acquisition of real property for a program or project. . . ." 42 U.S.C. §§ 4622, 4625 (1976) (Emphasis added). The Court also looked to §§ 4623 and 2624, which provide replacement housing benefits only when the displacee resided in the dwelling for a given time "prior to the initiation of negotiations for the acquisition of property." *Id.* §§ 2624, 4623. The tenants' argument, the Court said, would breed ridiculous results because in certain cases one would have to live in a building for years prior to the written order to qualify. 441 U.S. at 61. See *Lake Park Home Owners' Ass'n v. HUD*, 443 F. Supp. 6 (S.D. Ohio 1976) (nine year lapse between acquisition and mention of federal funding for the area precluded presumption that acquisition was for a project undertaken with federal assistance).

284. 441 U.S. at 64, citing, S. REP. NO. 91-1488, 91st Cong., 1st Sess. 9 (1969). Put another way, the default acquisitions were not in furtherance of the purpose of the mortgage insurance program. See *Blount v. Harris*, 451 F. Supp. 275 (E.D. Mo. 1978), *aff'd*, 593 F.2d 336 (1978) (previous residents of nursing home not "displaced persons" when home closed subsequent to "involuntary" acquisition—namely, foreclosure—by federal government).

classes of potential applicants. Private developers who acquire property with federal assistance are not "acquiring agencies" under the statute.²⁸⁵ Furthermore, the Act has been held inapplicable where the governmental agency grants powers such as eminent domain to the developer of property.²⁸⁶ Nor will the cooperative efforts of a governmental agency and a developer trigger the Act, so long as the developer is the acquirer.²⁸⁷

285. *Moorer v. HUD*, 561 F.2d 175, 178-79 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978), forwarded the most coherent argument for such an interpretation. The case concerned Project Rehab, a cooperative public-private effort using mortgage subsidy and interest programs to support concentrated rehabilitation. See Comment, *Moorer v. Department of Housing & Urban Development, Relocation and Rehabilitation—"Fair and Equitable Treatment" Under the U.R.A.*, 46 U.M.K.C. L. Rev. 332, 335-38 (1977).

Other cases discussing this issue include *Parlane Sportswear, Inc. v. Weinberger*, 513 F.2d 835 (1st Cir. 1975), *cert. denied*, 423 U.S. 925 (1975) (private university providing housing for federally assisted research project), and *Dawson v. HUD*, 428 F. Supp. 328 (N.D. Ga. 1975), *aff'd*, 592 F.2d 1292 (5th Cir. 1979) (tenant evicted so developer could begin section 236 rehabilitation under Project Rehab).

Complicating the *Moorer* decision was the court's refusal to merely hold that "acquiring agency" in § 4601(6) relates only to public agencies. The court rather relied on other sections referring to state agencies and programs, which make no mention of private programs, 561 F.2d at 178-79. This reliance confuses the holding, because in *Moorer* there was a state agency participating, namely, the local agency implementing the Project Rehab program.

286. *Young v. Harris*, 599 F.2d 870 (8th Cir. 1979), *cert. denied sub nom. Young v. Landrieau*, 444 U.S. 993 (1979). The developer at issue had been statutorily granted the power of eminent domain. Missouri Urban Redevelopment Corporation Law, Mo. REV. STAT. § 353.010-180 (1979). The court refused to allow the developer to be an "acquiring agency" merely because of the eminent domain power. 599 F.2d at 878.

287. *Moorer v. HUD*, 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978). In *Young*, though the city had applied for CDBG funds for the area, the private developer and city were not so intertwined, the court said, so as to make the city the agency responsible for the acquisition. *Young v. Harris*, 599 F.2d 870, 877 (8th Cir. 1979).

For other limitations judicially placed on the "displaced person" language, see *Goolsby v. Blumenthal*, 590 F.2d 1369 (5th Cir. 1979), *rehearing denied*, 597 F.2d 934 (5th Cir. 1979), *cert. denied sub nom. Goolsby v. Miller*, 444 U.S. 970 (1979) (in construing "federal financial assistance," court said URA does not apply where only federal involvement is general revenue sharing funds); *Tulloch v. State Highway Comm'n*, 507 F.2d 712 (8th Cir. 1974) (Department of Transportation regulation limiting "displaced person" to one entering into occupancy prior to initiation of negotiations for acquisition violated URA, which only so limits for replacement housing benefits under §§ 4622 and 4623).

2. Potential for Change

A bill introduced in the 96th Congress seeks to enlarge the scope of the definition of "displaced persons."²⁸⁸ Anyone would be protected under the new provision when moving "directly or indirectly" as a result of either a federal agency program, or a program receiving federal assistance "undertaken by a State, State agency, or by a person."²⁸⁹ The proposed language would significantly expand coverage. No longer would the statute require acquisition for an individual to receive benefits. Additionally, a private developer receiving federal assistance would fall within the language, regardless of whether such developer had been granted governmental powers. In fact, developers with eminent domain powers receive explicit mention in a separate section of the amendments.²⁹⁰

One advantage of these changes is a uniformity of treatment not presently existant in the URA or its judicial progeny. The focus is less on how displacement occurs and the kind of agency causing it, and more on rendering aid when the government supports a displacing activity. The bill extends coverage beyond one purpose of the original URA, which was to provide assistance in taking situations.²⁹¹ Yet whereas the additional coverage may implicate situations beyond government takings, there is little doubt that much government-assisted revitalization involves no acquisition.²⁹² In that respect, the bill adds some much needed consistency.

The "indirect" language is of unknown potential. It conceivably could contemplate instances in which, for example, federal funding of scattered rehabilitation in an area triggers purely private acquisition or rehabilitation of neighborhood properties. It could also cover the HUD mortgage foreclosure context, since foreclosures result indirectly from loan or subsidization programs. Only judicial construction could settle the extent of coverage.

The proposed amendments also increase the amounts available to displacees for replacement housing.²⁹³ Furthermore, though the re-

288. S. 1108, 96th Cong., 1st Sess. (1979).

289. *Id.* § 2(d)(6)(A)-(B), amending 42 U.S.C. § 4601(6) (1977).

290. *Id.* § 2(d), amending 42 U.S.C. § 4601(3) (1977).

291. *See generally* Casnochs, *Relocation Assistance and Human Values: The Hobgoblin of Public Entities*, 4 ORANGE COUNTY B.J. 231 (1977). *See also* HOUSE REPORT, *supra* note 272, at 5850-52.

292. *See, e.g.*, notes 267 & 269-70 and accompanying text *supra*.

293. The amendments drop the \$15,000 ceiling for assistance to displaced home-

quirements that comparable and affordable replacement housing be available remain, the amendment alters the URA by providing that no displacee shall be denied benefits for moving into a substandard dwelling.²⁹⁴

The houser of last resort provision was left practically untouched by the amendments. The advisory services provision, however, makes minor inroads into the previous vague requirement that the agency head make "assurances" that sufficient replacement housing exists. First, if an agency finds that persons other than those at the site in question are "adversely affected because of such program or project," they will be treated as displaced persons.²⁹⁵ Second, assurances must be based on a written analysis of replacement housing needs that might arise.²⁹⁶ Finally, plans may be required in the unlikely event that the agency head is not satisfied that comparable replacement housing exists in sufficient quantity.²⁹⁷

Despite these proposed changes, HUD has not acknowledged the efficacy of full-fledged relocation planning; it claims that time is better spent reviewing compliance with the replacement housing requirements.²⁹⁸ HUD also argues that plans may become obsolete prior to displacement, and thus are only marginally effective.²⁹⁹

HUD unfortunately overlooks the benefits of relocation planning. Planning helps to ensure the availability of sufficient replacement housing³⁰⁰ and to preserve and encourage racial and economic inte-

owners, listing only the elements to be considered in making the award. S. 1108, 96th Cong., 1st Sess. § 5(1) (1979). The amount for tenant replacement housing is increased from \$4000 to \$8000, *id.* § 6(1), as are moving expenses from \$300 to \$600, and the dislocation allowance from \$200 to \$400. *Id.* § 4(b).

294. *Id.* § 6(3).

295. *Id.* § 7(a).

296. *Id.* § 7(d)(2).

297. *Id.* § 7(d)(3). The National Housing Law Project, in its comments on the amendments, also would see as beneficial a provision requiring written assurances that displacement has been minimized. Written Statement of the National Housing Law Project on S. 1108, Uniform Relocation Act Amendments, for the Senate Subcommittee on Intergovernmental Relations, September 5, 1979.

298. 44 Fed. Reg. 30947 (1979).

299. *Id.*

300. See Kushner and Werner, *Illusory Promises Revisited: Relocation Planning and Judicial Review*, 8 Sw. U. L. Rev. 751 (1976). The authors believe the guidelines established in 42 U.S.C. § 4625 (1976) constitute requirements for a relocation plan. While it seems that considerations of displacee needs, availability of comparable replacement housing, and effects of concurrent displacement from other programs

gration. While an agency may amend a plan when necessary, to ignore planning altogether reinforces inconsistent and inefficient redevelopment.

B. *The State and Local Response*

1. Current Law

State statutes vary wildly as to the amount of relocation assistance provided. An example of broad coverage is the California relocation act.³⁰¹ The statute covers private acquisitions both in connection with a public use when the relevant public agency could acquire the property, and when the developer acts with or on behalf of the public entity.³⁰² It encompasses private agencies with eminent domain power as well as cooperative public-private efforts. Hawaii's statute, also somewhat unconventional, includes as "displaced persons" those having to move as a result of code enforcement activities.³⁰³

Some states, though unwilling to extend benefits so broadly, provide assistance when a state or local agency acquires property for a state or local program.³⁰⁴ More often, however, state statutes merely authorize but do not require state and local agencies to provide benefits for relocation as a result of government acquisition.³⁰⁵ Some statutes are unclear as to whether coverage is optional or mandatory.³⁰⁶

States also vary in their non-benefit relocation provisions. A vast

would imply a planning requirement, HUD has avoided taking that step. Nevertheless, Kushner and Werner do present a good discussion of the weakness of administrative applications of § 4625.

301. CAL. GOV'T CODE §§ 7260-7276 (Deering 1973 & Supp. 1980).

302. *Id.* § 7260(c) (Supp. 1980).

303. HAWAII REV. STAT. §§ 111-2 (1976). *See also* IND. CODE 8-13-18. 5-2 (1976); MINN. STAT. ANN. § 117.50(3), (5)(b) (West 1977) (applies to both code enforcement and government assisted private development).

304. *See, e.g.*, VA. CODE § 25-238 (1980); WIS. STAT. ANN. § 32.19 (West 1973 & Supp. 1980). These statutes do not specifically exclude code enforcement; rather, they do not mention it at all and it is unlikely that language such as "acquisition for a program," especially in light of *Alexander*, would cover code enforcement.

305. *See, e.g.*, KY. REV. STAT. ANN. § 56.630 (Baldwin 1979); WASH. REV. CODE ANN. § 8.26.020 (West Supp. 1980).

306. In Illinois, for example, the relocation statute says an agency "may provide" assistance. The following subsection states that a displacee applying for an authorized payment "shall be" paid benefits. ILL. ANN. STAT. ch. 67 1/2, §§ 107.1a, 107.4(a)(2) (Smith-Hurd Supp. 1981). Similar ambiguity exists in Kansas. KAN. STAT. ANN. § 58.3502-3505 (1976).

majority of statutes have relocation advisory assistance sections.³⁰⁷ Whereas some states make these programs mandatory whenever statutory displacement results, others only give authorization for using program funds for the services. A few states require advance relocation planning in addition to other services.³⁰⁸ Houser of last resort provisions also appear in a number of states. The phrasing of many of these provisions is taken almost verbatim from the URA, but they vary greatly as to whether the requirement applies only to URA displacement or to non-federally assisted displacement as well.³⁰⁹

Scattered municipalities around the country, in regulating condominium conversions, have attempted to protect those tenants facing displacement.³¹⁰ Such relocation assistance has come in both financial and nonfinancial forms. The financial protection primarily involves provision of moving expenses.³¹¹ In some cities, assistance payments for replacement housing also have been made available.³¹² One state court has upheld the power of municipalities to require condominium developers to extend such benefits.³¹³ The rationale the court used to support the city's power was the need to preserve a

307. Among the only states not enacting advisory service provisions, other than references to coverage under the URA, are Arkansas, Kansas, Missouri, New Hampshire, New York, Pennsylvania, and South Dakota.

308. See MASS. ANN. LAWS ch. 79A, §§ 1-8 (Michie/Law Co-op 1978).

309. Regarding URA displacement only, see KY. REV. STAT. ANN. § 56.750 (Baldwin 1979); LA. REV. STAT. ANN. § 38.3110 (West 1979). For state and local government included, see TENN. CODE ANN. § 13-11-109 (1973); VA. CODE § 25-247 (1980).

310. See generally Lauber, *Let's Put Some Limits on Condo. Conversions*, PLANNING, Sept. 1977 at 25 [hereinafter cited as Lauber]; Richards and Rowe, *Restoring a City: Who Pays the Price?*, WORKING PAPERS FOR A NEW SOCIETY, Winter, 1977 at 54.

Municipal relocation assistance is primarily an offshoot of local attempts to minimize displacement. Lauber and Richards indicate some of the most common forms of protection from condominium conversion: giving a tenant right of first refusal on buying into the condominium; forbidding conversion when the vacancy rate in the community falls below a certain percentage, typically three percent; and extending tenants' leases to provide time to seek out new housing. See generally C. WEILER, NATIONAL ASS'N OF NEIGHBORHOODS HANDBOOK ON REINVESTMENT DISPLACEMENT 73-91 (1979); Kollias, *Revitalization Without Displacement*, HUD CHALLENGE, Mar. 1978, at 6.

311. See EVANSTON, ILL. SUBDIV. ORD., art. IV, § 4-103 (1979).

312. See D.C. CODE ENCYCL. §§ 5-1281 to 1282 (West Supp. 1978), as amended, D.C. CODE ANN. (Supp. VII (1980)).

313. *Rockville Grosvenor, Inc. v. Montgomery County*, Eq. No. 68203 (Montgomery County, Md. Cir. Ct. 1979).

decent supply of rental housing in the community.³¹⁴ Nonfinancial protections include extending tenants' leases so as to give them additional time to search for new housing,³¹⁵ and rendering relocation advisory assistance services.³¹⁶

2. Potential for Change

There is no reason why state statutes could not do for state-assisted programs what the proposed URA amendments would do for federally-assisted ones. The most inclusive state laws today still incorporate acquisition in the definitional sections. Those that cover nonacquisition situations, such as code enforcement and rehabilitation, make specific provision for them, rather than adopting generic language in the definition of displaced persons to include such situations.³¹⁷ Changing the focus from acquisition to displacement *per se* would add consistency.

A model state law proposed a decade ago encompasses the changes in the URA amendments and goes several steps further.³¹⁸ The model law covers voluntary moves from a redeveloping area made before a contract for state (or local) assistance is actually executed.³¹⁹ The rationale for this sweeping coverage is predicated on the shortcomings of relocation assistance in urban renewal, in which many persons voluntarily leave a redeveloping area in contemplation of future forced displacement.³²⁰ The model law also allows compensation for moves made after a designation that the property will be

314. *Id.*

315. *See, e.g.*, Bill No. 92-79, enacted February, 1980, repealing and reenacting 11A through 11A-11 of the Chapter Laws of Montgomery County, at 11A-5, 5A, giving elderly tenants the right to extend their leases beyond the 180 day notice period given all tenants.

316. *See, e.g.*, CITY AND COUNTY OF SAN FRANCISCO SUBDIV. ORD. art. IX (1979) (developer must provide free relocation services for low- and moderate-income tenants, and must set aside percentage of redeveloped units for low-cost housing).

317. *See, e.g.*, CAL. GOV'T CODE § 7267 (Deering 1973 & Supp. 1980); HAWAII REV. STAT. § 111-2 (1976).

318. Mandelker, *A Model State Relocation Law*, 1971 URBAN L. ANN. 117 [hereinafter cited as Mandelker].

319. *Id.* at 121.

320. *Id.* at 121-22. This problem may arise in other contexts. For example, under HUD's URA regulations, the section 8 program date is the date HUD notifies the state agency of final approval. Under the model law, those moving in anticipation of final approval are "displaced persons." *See* 24 C.F.R. § 42.79(e) (1980).

acquired in the future by a public agency.³²¹ Rehabilitation by private agencies receiving governmental assistance also results in relocation protection under the model law.³²²

The model law thus represents what are perhaps the outer boundaries of relocation assistance, taking a strong position that almost any government-assisted program resulting in movement must bear the relocation responsibility. Since any movement as a result of an overt government or government-assisted program triggers the model law, about the only non-covered action is purely private displacement.

The model law adopts a highly protective houser of last resort provision. If displacement results from a unit's removal from the housing market, the state agency must require construction of another unit.³²³ This proposal certainly guarantees some stability in the housing market, yet it leaves room for improvement. There might, for example, be an abundance of subsidized and lower-income housing in an area, so that building additional low-income units could deprive the area of natural redevelopment. In other instances, rehabilitation with government assistance might make even the resulting subsidized units unaffordable for very low-income persons.

A sensible approach, at both federal and state levels, would be to combine the one-for-one and housing of last resort provisions. For example, if the vacancy rate for comparable replacement housing in the area was dangerously low, the assisting agency would require the construction or rehabilitation of units so as to maintain a sufficient number of low and moderate income units in the area.³²⁴

A supplementary idea is to create local housing banks.³²⁵ A local agency may acquire vacated buildings and hold and operate them at

321. Mandelker, *supra* note 318, at 121-23. This refers to both formal designation, as by placing a proposed acquisition on a planning map, or informal designation, which, though difficult to define, would appear in the guise of an "official activity which marks the start of a project." *Id.* This definition might well reach a situation like the one in Appeal of Perfection Plastics, Inc., 28 Pa. Commw. Ct. 396, 368 A.2d 917 (1977), where the agencies sent notices of proposed acquisition to the plaintiff prior to actual acquisition.

322. Mandelker, *supra* note 318, at 124.

323. *Id.* at 128-29.

324. This notion is borrowed from the condominium conversion context. Since the police power that allows regulation of conversion is based upon retaining a reasonable supply of rental units, some local ordinances prevent conversion when the rental vacancy rate drops below a certain percentage, typically three to five percent. See Lauber, *supra* note 310, at 26.

325. See GRIER, *supra* note 267, at 28-29.

low cost. Agencies could support these banks with their own or federal funds. Such banks would operate to conserve the existing housing stock.

D. *Summary*

The current state of relocation law leaves much to be desired. Lacking first and most importantly is uniformity. Government involvement should be the key to awarding assistance, not who administers the displacing program or on what basis it is to be administered. Further, the multitude of redevelopment programs make it arbitrary to hinge benefits on the presence of a governmental taking.

The answer to whether private developers should provide relocation protection relates to the state of the housing market, as well as to the plight of individual tenants. It is at least debatable whether private displacement is merely a part of private market turnover. It is certain redevelopment eliminates a large portion of the rental market particularly for low- and moderate-income persons. The shortage of rental units may provide a state or locality with all the reason it needs to force certain developers to pay relocation assistance. Similarly, the shortage of lower-income and subsidized housing calls for replacement housing provisions more stringent than those that currently exist, and for advisory programs and relocation plans to help redevelopment efforts.

Those involved in revitalization should realize that displacement is the last alternative, a step to take only when all attempts to minimize displacement have failed. Perceiving displacement as a sometimes necessary evil, rather than as an excuse to rid an area of lower-income persons, will go a long way toward properly analyzing the relocation issue.

Susan E. Kaiser
Alan H. Lipkowitz
Mitchel H. Kider
Ross H. Briggs
Larry Levin

