
RESIDENTIAL REHABILITATION FINANCING: THE ELEMENTS OF A CITY-WIDE STRATEGY

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The past several years have seen the emergence of an urban-oriented rehabilitation/conservation ethos in metropolitan areas throughout the country. In most cities the process is only beginning, confined to discrete areas. In others, whole neighborhoods have already been transformed.¹ For the nation as a whole, housing rehabilitation expenditures doubled between 1970 and 1976, reaching a high of \$29 billion.² Public programs have worked in tandem with private sector initiatives including, in 1976, the allocation of twenty-one percent of all federal Community Development Block Grant funds to housing improvement and neighborhood conservation uses.³

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1. A recent survey by the Urban Land Institute found private market renovation occurring in one-half of all central cities and in nearly three-fourth of cities with populations over 500,000. See Black, *Private-Market Housing Renovation in Central Cities: A ULI Survey*, URBAN LAND, Nov. 1975.

2. Ehrman, *Community Development Block Grant Rehabilitation and the Role of Private Sector Lenders: The Benefits of Financial Leveraging*, in U.S. DEP'T HUD, COMMUNITY PLANNING AND DEVELOPMENT (draft Oct. 13, 1977) [hereinafter cited as Ehrman].

3. See R. NATHAN, P. DOMMEL, J. LIEBSCHUTZ & M. MARRIO, BLOCK GRANTS

Already the rehabilitation/conservation trend has generated serious new concerns deriving from the predictable concomitants of price and rent inflation and the consequent displacement of present residents.⁴

This trend stands in contrast to the main thrust of demographic movements that have dominated metropolitan growth since World War II.⁵ These changes have created the now virtually ubiquitous pattern of suburban growth and affluence surrounding declining core cities beset with social, economic and fiscal problems. The current conservation emphasis notwithstanding, that pattern still dominates metropolitan development. Most new housing production continues to provide dwellings for single family occupancy⁶ while squalid con-

FOR COMMUNITY DEVELOPMENT (1977) (Brookings Institution report for the United States Dep't of HUD) [hereinafter cited as BLOCK GRANTS]. See also note 18 and accompanying text *infra*.

4. See, e.g., H. SUMKA, DISPLACEMENT IN REVITALIZING NEIGHBORHOODS: A REVIEW AND RESEARCH STRATEGY (1978); C. WEILER, REINVESTMENT DISPLACEMENT: HUD'S ROLE IN A NEW HOUSING ISSUE (1978); Richard & Rowe, *Restoring a City: Who Pays the Price?* in WORKING PAPERS FOR A NEW SOCIETY (1977) [hereinafter cited as Richard & Rowe].

5. Recent population trends indicate a shift in growth from the urban core to suburban areas, and from the northeast and midwest toward the south and southwest. Migration from rural areas to cities has slowed to the point that metropolitan and non-metropolitan areas are growing at approximately the same rate. The share of U.S. population in metropolitan areas has remained unchanged at 7.3% from 1970 to 1975. This trend is cited as the result of increased migration to counties immediately outside urban areas. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION ESTIMATES AND PROJECTIONS, SERIES P-24, No. 709 (1977).

The economic, social and fiscal implications of this pattern are examined in Phillips & Agelasto, *Housing and Central Cities: The Conservation Approach*, 4 ECOLOGY L.Q. 797 (1975) [hereinafter cited as Phillips & Agelasto], and sources cited therein.

6. Recent data, however, indicates a significant increase in multifamily construction, projected at 700,000 units in 1978, a 30% increase over 1977 and almost double the 1976 production level. [1978] 5 HOUS. & DEV. REP. (BNA) 985.

For the period of February 1976 through July 1977, multi-family units constituted only 14% to 25% of all new housing starts. Housing Affairs Letter, No. 77-42, October 21, 1977. See also [1977] 5 HOUS. & DEV. REP. (BNA) 358-59 (discussing the current boom in single family home construction and accompanying lag in multi-family development. Robert Sheehan, National Association of Home Builders, blames the lag in apartment construction on rapid increases in building and financing expenses that have outstripped increases in rent).

Commenting on a 27% decline in multi-family projects from 1973 to 1974 (157,000 units to 114,000 units), one authority blamed the trend on increasing construction and borrowing expenses that put high-rent new buildings at a competitive disadvantage in the rental market with older lower-rent apartments. See R. FRANKEN & C. ASHMUN, RENT CONTROL: AN INTERIM REPORT TO THE ASSEMBLY COMMITTEE ON HOUSING

ditions persist in large areas of most American central cities.⁷

But certain significant determinants appear to have changed. One recent study emphasizes the marked increase in household formations now occurring and projected through 1990 as the baby-boom generation, born between 1940 and 1965, reaches the age of thirty.⁸ For many of this generation, as for others, a life style shift has occurred, reflecting disillusionment with suburban alternatives. Other contributing factors include an increased proportion of single person and childless households, including the elderly and divorced, the commonality of two-wage earner families, and fuel cost increases that add to the cost of commuting.⁹ Over time, these trends are expected to continue, with corresponding implications for future metropolitan growth patterns.¹⁰ Concurrently, inflation in the cost of land, building materials, construction labor and financing has increased the price of the average new single family home to more than \$50,000, representing a price rise of 58.4% for the period 1972 to 1977.¹¹ Unsubsidized new rental housing in central cities has become unaffordable for most families.¹² These factors combine to place a premium

AND COMMUNITY DEVELOPMENT (Sept. 1975) (report submitted to the California State Assembly) [hereinafter cited as FRANKEN & ASHMUN].

7. See, e.g., TIME, August 29, 1977, at 14-27. The article describes a permanent underclass of unemployed that exists in central cities. See also Phillips & Algelasto, *supra* note 5, at 800-09.

8. GEOTZ, COLTON & O'DONNELL, STABILIZING NEIGHBORHOODS, A FRESH APPROACH TO HOUSING DYNAMICS AND PERCEPTIONS at ii-iv (1977) (report prepared for HUD by Public Systems Evaluation, Inc.) [hereinafter cited as GOETZ].

9. *Neighborhood Diversity: Hearings Before the Comm. on Banking Housing and Urban Affairs of the U.S. Senate*, 95th Cong., 1st Sess. 133 (1977) (statement of Franklin James).

10. The continuing decrease in average household size is expected to accelerate the rate of new household formation, adding to the demand for new housing units. This trend is analyzed in D. BIRCH, R. ATKINSON, P. CLAY, R. COLEMAN, B. FRIEDEN, A. FRIEDLAENDER, W. PARSONS, L. RAINWATER & P. TEPLITZ, AMERICA'S HOUSING NEEDS: 1970-1980 (1973).

11. See TIME, Sept. 12, 1977, at 50-57 (story dealing with the rising costs of home ownership). The article indicates that the rising cost of land due to scarcity and zoning restriction has been a major contributor to the general inflation in new home prices. For instance, land prices have increased by a factor of 6. Land now constitutes up to 25% of builders' costs. *Id.* at 53.

12. Given the high level of production costs, building construction cannot effectively compete in the market with existing rental units or units for sale. One example of soaring apartment development and construction costs is Savo Island, a 57-unit apartment and town-house project proposed for a site in Berkeley, California. As of October 1977, the total estimated project cost for Savo Island exceeded \$3.7 million—an average of \$65,611 per unit. While Savo Island does offer more amenities

on conserving and upgrading the existing housing stock and revitalizing urban neighborhoods.

Belatedly, government at all levels may be starting to address the issues of central city economic and fiscal decline and the need for revitalization strategies aimed at conserving inner city housing stock. The 1974 Housing and Community Development Act¹³ amended the National Housing Goal to call for a greater effort.

. . . to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance in conjunction with the provision of adequate municipal services.¹⁴

The Community Development Block Grant (CDBG) program, created by that Act, provides federal funds to support local housing and development efforts.¹⁵ Each CDBG applicant must prepare and submit a housing assistance plan (HAP)¹⁶ with detailed data on local housing conditions and needs. A recent survey of 149 cities by the National Association of Housing and Redevelopment Officials (NAHRO) found that twenty-one percent of the 1976 CDBG funds had been allocated to housing rehabilitation.¹⁷ The 1974 Housing Act also established and gave primacy to the section 8 program,

than an absolute "bare bones" apartment complex, the point remains clear. Interview with Joel Rubenzal, Director, Savo Island Project, in San Francisco (December, 1977).

13. Pub. L. No. 93-383, 88 Stat. 633 (1974) (codified in scattered sections of 12, 42 U.S.C. (Supp. V 1975)). The complete text of the Act is printed in 1974 U.S. CODE CONG. & AD. NEWS 713. For the legislative history of the Act, see 1974 U.S. CODE CONG. & AD. NEWS 4273.

14. Housing and Community Development Act of 1974, § 801(2)(c), 42 U.S.C. § 1441(c) (Supp. V 1975) (amending 42 U.S.C. § 1441(a) (1970)).

15. *Id.* § 1401.

16. Although the HAP requirement constitutes a step toward the development of comprehensive local housing strategies, much remains before the congressional intent will be achieved. An evaluation by Berkeley Planning Associates found an insufficiency of implementation mechanisms at the local level that prevents cities from delivering what they planned for on their local HAP's. M. TEITZ, EVOLUTION OF HAP REQUIREMENTS (Report to HUD, October 1977).

17. See BLOCK GRANTS, note 3 *supra*. See also OFFICE OF EVALUATION, COMMUNITY PLANNING AND DEVELOPMENT, U.S. DEP'T OF HUD, COMMUNITY DEVELOPMENT BLOCK GRANTS: A PROVISIONAL REPORT (1975) (survey of 25 city recipients of 1975 block grants, which found that the cities budgeted \$16,123,000 for housing rehabilitation or 15% of their total grant amounts); OFFICE OF EVALUATION, COMMUNITY PLANNING AND DEVELOPMENT, U.S. DEP'T OF HUD, COMMUNITY DEVELOPMENT BLOCK GRANT: SECOND ANNUAL REPORT (1976) (survey of 151 CDBG metropolitan entitlement applications for Fiscal Year 1975 and 147 for Fiscal Year

which, in addition to subsidizing new construction, provides subsidy funds for units in the existing housing stock and for substantially rehabilitated buildings, representing in the latter respect a shift in emphasis toward improving existing housing.¹⁸ A potentially important "sleeper provision"¹⁹ authorized federal mortgage insurance for existing multi-family projects.²⁰

Most recently, the Housing and Community Development Act of 1977²¹ amended federal law to add, as a specific block grant objective, "the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas suffering from population out-migration or declining tax base."²² Housing, as well as community development needs, must be specified in CDBG applications,²³ and HAP's are required to identify deteriorated housing stock²⁴ and set forth specific plans for restoring and rehabilitating stable neighborhoods to the maximum extent possible.²⁵ Provision must be included for reclamation of the housing stock,²⁶ where feasible, with maximum priority given to the requirements of low-and moderate-income families, elimination of urban blight, or urgent community development needs.²⁷ Authority is provided to use CDBG monies for sub-grants to private entities for housing rehabilitation²⁸ and to neighborhood-based housing and

1976, which indicated that the localities budgeted 12.3% of their CDBG funds in 1975 and 21% of their CDBG funds in 1976 for housing rehabilitation).

18. Housing and Community Development Act of 1974, § 201(a), 42 U.S.C. § 1437 (Supp. V 1975).

19. See N.Y. Times, April 6, 1975, § R, at 1, col. 4. See also notes 108 & 131 and accompanying text *infra*.

20. Housing and Community Development Act of 1974, § 311, 12 U.S.C. § 1715n(f) (Supp. V 1975) (amending 12 U.S.C. § 1715n (1970)).

21. Housing and Community Development Act of 1977, 42 U.S.C.A. §§ 5301-08, 5313, 5318 (West Supp. 1978).

22. *Id.* § 5318. With the recent changes brought by the 1977 Act, HUD regulations identifying eligible activities for CDBG's are likely to change. See 48 Fed. Reg. 8434 (1978) (memorandum to HUD Field Staff addressing the intention to direct CDBG activities to benefit low-and moderate-income persons).

23. Housing and Community Development Act of 1977, § 104(a)(1), 42 U.S.C.A. § 5304(a)(1) (West Supp. 1978).

24. *Id.* § 5304(a)(4)(A).

25. *Id.* § 5304(a)(4)(C).

26. *Id.*

27. *Id.* § 5304(a)(3)(A)-(C).

28. *Id.* § 5305(a)(14).

community development organizations.²⁹ Substantial funding and higher loan limits for the section 312 rehabilitation direct loan program are authorized.³⁰ An Urban Development Action Grant program (UDAG) is established to provide grants "to seriously distressed cities and urban counties to help alleviate physical and economic deterioration through reclamation of neighborhoods having excessive housing abandonment or deterioration, and through community revitalization in areas of population out-migration or stagnating or declining tax base."³¹ A companion act to the 1977 Act establishes a new National Commission on Neighborhoods to develop recommendations that foster revitalization.³²

On March 27, 1978, President Carter presented his long-awaited National Urban Policy,³³ the first comprehensive federal commitment to urban revitalization the country has seen.³⁴ As stated in HUD's Fact Sheet outlining the Administration's Policy:³⁵

The Carter Administration's National Urban Policy is based on the premise that the vitality of cities, large and small, north and south, old and new is crucial to maintaining our nation's economic strength and quality of life. Cities are important national resources, representing massive economic, social and physical investments, but more than that, cities are centers of employment, communication and business, centers for learning, culture and entertainment.³⁶

The plan would reorient such federal programs as water, sewer, transportation and housing subsidies and supports toward central cities and other areas of need. Policies for investment and employment credits, federal procurement and federal facility siting would also be revised to channel resources toward central cities. More than 160 changes in some thirty-six federal programs are proposed to this end.³⁷ Major new proposals include a National Development

29. *Id.* § 5305(a)(15).

30. *Id.* §§ 1452b(c)(4)(A) & (d).

31. *Id.* § 5318(a). At this time HUD is still developing regulations for participant selection and administration of the UDAG program. *See* [1977] 5 Hous. & Dev. REP. (BNA) 449-51.

32. Pub. L. No. 95-24, 91 Stat. 55 (1977).

33. *See* N.Y. Times, March 28, 1978, p. 1, col. 8.

34. *See* Phillips & Agelasto, *supra* note 5, at 824-44.

35. *National Urban Policy—Conserving America's Communities and Neighborhoods*, HUD News, March 27, 1975.

36. *Id.* at 7.

37. *See* N.Y. Times, March 28, 1978, p. 1, col. 8.

Bank³⁸ and required "urban impact analyses" for all major federal programs.³⁹

There is much to criticize in the details of the new Policy. Most pertinent to this Article, the Policy entirely fails to examine the relative costs of federal housing programs and their consequent potential for significant outreach. It suggests no strategy to integrate the myriad housing and related community development aids into optimal local programs. Its half-hearted proposals for reorienting growth away from the suburbs and toward the central cities fail to take account of the dynamic forces that have produced present development patterns.⁴⁰ Even assuming full congressional support for the Policy package, an unlikely thesis, the inadequacy of proposed means to achieve a reordering of metropolitan patterns is clearly evident.

The National Urban Policy calls for \$200 million in "Incentive Grants" to the states to encourage and support planning that aids needy communities,⁴¹ and as part of the federal, state, local, and private sector partnership envisioned by the plan. As the Administration recognized,⁴² some states⁴³ are already making efforts to reorient past programs and practices to support central city revitalization. In California, Governor Brown recently proposed an "Urban Strategy"⁴⁴ that would commit the state to develop more compact urban areas, to the revitalization of existing cities and suburbs, and to continued protection of its best agriculture land.⁴⁵ To these ends, the California strategy emphasizes "curbing wasteful urban sprawl and directing new development to existing cities and suburbs."⁴⁶ Forty-five program recommendations, generally similar to those encompassed in the National Urban Policy Statement, are proposed.⁴⁷

38. HUD News, *supra* note 35, at 20.

39. *Id.* at 8.

40. HUD's explanations disavow even an intention to control growth in suburban areas. The Administration, however, "does plan to discourage urban sprawl . . . by increasing the attractiveness of urban residential environment." HUD News, *supra* note 35, at 13.

41. *Id.* at 17.

42. *Id.* at 12.

43. *Id.*

44. CALIFORNIA OFFICE OF PLANNING AND RESEARCH, AN URBAN STRATEGY FOR CALIFORNIA (1978).

45. *Id.* at 9.

46. *Id.*

47. *Id.* at 13.

Federal and state government leadership and assistance, including reexamination of the impact on central cities of various tax, subsidy and regulatory policies, are essential elements of a rehabilitation/conservation approach.⁴⁸ The major burden of action, however, necessarily falls on municipal governments. It is at the local level that goals and priorities must be set and specific programs developed and implemented. Only local government can coordinate the necessary program elements, and involve within that process lenders, developers, contractors, the building trades, neighborhood people and neighborhood associations. Accordingly, government agencies in many cities are giving high priority to developing, refining and implementing revitalization strategies and techniques.⁴⁹

All of this notwithstanding, local governments wishing to undertake rehabilitation/conservation efforts confront prodigious obstacles. The resources required for initiatives are scarce. CDBG funds, and section 8 allocations in particular, are insignificant relative to program requirements in all central cities.⁵⁰ Use of the former is limited by HUD regulations⁵¹ and may be preempted by commitments made to complete expensive urban renewal projects previously undertaken.⁵² Institutional arrangements within city governments, often imbedded in charter provisions or state law, commonly reflect earlier program priorities, particularly urban renewal and public housing. Agencies charged with those functions, and their constituencies, are likely to resist local government reorganizations that limit future funding and autonomy. Relaxation of unduly restrictive code

48. See Phillips & Agelasto, *supra* note 5, at 861-78.

49. See notes 188-219 and accompanying text *infra*.

50. The Housing and Community Development Act of 1977, Pub. L. No. 95-128, 91 Stat. 1111 (1977) (codified in scattered titles of 12, 40, 42 U.S.C.A. (West Supp. 1978)), authorizes block grants not to exceed \$3.5 billion for Fiscal Year 1978 nationwide. For a discussion of the insufficiency of CDBG funds, see Baer, *An Act to Bleed the Cities*, THE NATION, March 5, 1977, at 274; Hirshen & LeGates, *HUD's Bonanza of Suburbia*, 39 THE PROGRESSIVE 32 (1975); DeLeon & LeGates, *Beyond Cybernetic Federalism in Community Development*, 15 URBAN L. ANN. 17 (1978); LeGates & Morgan, *The Perils of Revenue Sharing for Community Development*, 39 J. OF AM. INST. OF PLANNERS 254 (1973).

51. HUD CDBG Limitations, 24 C.F.R. § 570(c) (1978).

52. For example, to complete urban renewal projects, the City of San Francisco budgeted \$15 million, 54% of its CDBG entitlement, in 1977 and \$14 million, 52% of its CDBG entitlement, in 1978. HUD regulations include within their definition of projects that prevent or eliminate slums or blight "activities necessary to complete federally assisted urban renewal projects which do not principally benefit low- and moderate-income persons." *Id.* at § 570.302(c)(3).

requirements that impede cost-effective rehabilitation is likely to be resisted by construction trade unions and city officials reluctant to compromise "safe and sanitary" housing standards.⁵³ As already noted, neighborhood upgrading programs perceived to threaten displacement of renters may generate political opposition and may even be stalled by litigation.⁵⁴ Finally, before rehabilitation/conservation programs can begin, local governments must address a range of program design issues, including area selection, rehabilitation standards, non-housing supports, financing and program management.

This Article is based on the findings and recommendations of a Residential Rehabilitation Financing Study, prepared for the San Francisco Department of City Planning in 1976 and 1977.⁵⁵ San Francisco's development strategy since the early 1950's had emphasized clearance and renewal of "blighted" areas. Concomitantly, the city implemented a variety of housing rehabilitation programs, including a Federally Assisted Code Enforcement (FACE) program in moderate income, single-family areas,⁵⁶ and a "systematic" code enforcement program aimed at health and safety code violations in apartment buildings and hotels. Following the 1973 federal moratorium on section 312 loan funds,⁵⁷ San Francisco sponsored the Marks-Foran Residential Rehabilitation Act,⁵⁸ which authorized eligible California cities to issue and sell revenue bonds to raise loan funds for residential rehabilitation and certain related uses. Pursuant to that authority, a Rehabilitation Assistance Program (RAP)⁵⁹ was adopted by city ordinance to provide loans, at 5.5% to 6.5% interest rate, primarily in code enforcement areas. Although three areas

53. See generally U.S. NAT'L COMM. ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY 199-322 (1969).

54. E.g., Haight-Ashbury Neighborhood Council v. Moscone, No. 77-0817 (N.D. Cal., filed April 21, 1977) (dismissed with prejudice, Feb. 8, 1978).

55. R. JONASH, E. CURTISS, R. KLEIN, E. MCCARTY, C. MCGUIRE, I. MUSSEN & K. PHILLIPS, A COMPREHENSIVE REHABILITATION STRATEGY FOR THE CITY AND COUNTY OF SAN FRANCISCO (1977) (prepared under contract for the San Francisco Department of City Planning) [hereinafter cited as SAN FRANCISCO STUDY].

56. The Federally Assisted Code Enforcement Program consisted of loans pursuant to The Housing Act of 1964, § 312, 42 U.S.C. § 1452 (1964), and grants made available by the Housing Act Amendments of 1965, § 311(a), 42 U.S.C. § 1468 (1970). From 1967-1976 San Francisco made loans of \$15 million pursuant to § 312 to rehabilitate 4,122 buildings containing 8,926 units. SAN FRANCISCO STUDY, *supra* note 55, at I-18.

57. [1973] 3 HOUS. & DEV. REP. (BNA) 07:0008.

58. CAL. HEALTH & SAFETY CODE §§ 37910-64 (Deering 1975).

59. SAN FRANCISCO, CAL., ADMIN. CODE ch. 32 (1976).

have been designated for the RAP program, it has only recently become operational.

Beginning in the mid-1960's, San Francisco's demolition-oriented approach faced increasing opposition from neighborhood organizations. Its Western Addition Redevelopment Project was challenged in the federal courts in 1968 and briefly enjoined.⁶⁰ In 1970, a continuing injunction, based on findings of non-compliance with federal relocation law, halted the city's major downtown renewal project, Yerba Buena.⁶¹ Also in 1970, community organizations from many areas of the city united in an "Emergency Task Force to Oppose San Francisco's Workable Program,"⁶² in an effort to reorient the city's housing strategy away from the demolition approach and toward a strategy of neighborhood improvement and broadscale moderate housing rehabilitation. By 1973 these and other pressures resulted in a formal commitment to rehabilitation as the city's highest housing priority.⁶³ It provided the framework for the San Francisco Study.

There are important differences involving rehabilitation objectives and program design between San Francisco and many other major cities, especially those northeast and midwest cities hardest hit by economic, social and fiscal difficulties.⁶⁴ San Francisco contains no hardcore poverty areas beset by massive unemployment and sub-employment,⁶⁵ crime,⁶⁶ and buildings undermaintained to the point of

60. *Western Addition Community Org. v. Weaver*, 294 F. Supp. 433, 436 (N.D. Cal. 1968).

61. *Tenants and Owners in Opposition to Redevelopment (TOOR) v. United States*, No. C-69 (N.D. Cal. April 29, 1970).

62. The Workable Program Act, 42 U.S.C. § 145(e) (Supp. 1966), required that every city receiving urban renewal and certain other types of federal assistance periodically submit a "workable program" for community development, required to be certified as such by HUD.

63. SAN FRANCISCO CITY PLANNING DEPARTMENT, COMPREHENSIVE PLAN: RESIDENCE ELEMENT, CITY AND COUNTY OF SAN FRANCISCO 6-7 (1975); SAN FRANCISCO CITY PLANNING DEPARTMENT, RESIDENCE: STRATEGY AND PROGRAMS 19-24 (1973).

64. Program strategies suitable for neighborhoods with varying economic and demographic characteristics are discussed in GOETZ, note 8 *supra*.

65. However, the unemployment rate for the City of San Francisco reached 8.4% in November 1977. Interview with Moira So, San Francisco City Planning Department, in San Francisco (February, 1978).

66. In 1976, the San Francisco Police Department recorded 77,727 major crimes. This represented a decline in reported major crimes from a high of over 80,000 in 1969. Figures for the year 1977 indicate a further 6% decline in the number of major reported crimes. Interview with Moira So, San Francisco City Planning Department, in San Francisco (December, 1977).

abandonment.⁶⁷ While the city experienced a considerable population decrease from a peak of 775,000 in 1950 to 665,000 in 1977, vacancy rates have remained very low, reflecting a trend toward smaller households.⁶⁸ In much of the city a high level of demand and property speculation have produced a rapid escalation in resale prices and rents.

In other respects San Francisco shares the common experience of other American cities. Over half of the city's housing stock of 339,260 units is more than fifty years old. 244,260 units are renter occupied, of which thirty percent rent for less than \$150 per month and only eleven percent rent for more than \$300 per month. Ten percent of the housing units are classified as "substandard" and another seventeen percent are in need of improvement, maintenance or modernization. Thirty-one percent of owner households and fifty-five percent of renter households are estimated to have incomes below \$12,000.⁶⁹

Most pertinent to the present discussion, San Francisco's commitment to a neighborhood conservation strategy involves most of the same problems, concerns, constraints faced by other cities. These include:

- (1) defining appropriate property improvement standards for a wide variety of neighborhoods, buildings, and socio-economic situations;
- (2) establishing optimal cost-effective financial systems to stretch available public and private resources;
- (3) providing supportive public services and facilities; and
- (4) adopting institutional changes necessary to enable local government to plan, manage, and coordinate a rehabilitation/conservation strategy.

The San Francisco Study addressed these four problem sets. Starting with a needs assessment, it reviewed past city programs, conducted several case studies, and sought to identify appropriate program objectives for various area types. This analysis provided the basis for the Study's financing recommendations. The major findings and conclusions that appear to be broadly applicable to cities undertaking rehabilitation/conservation strategies are:

67. Interview with Moira So, San Francisco City Planning Department, in San Francisco (February, 1978).

68. *Id.*

69. SAN FRANCISCO STUDY, *supra* note 55, at I-1, I-2.

(1) City-wide programs are possible and affordable, provided rehabilitation/conservation objectives are reasonably defined.

(2) Broad outreach will be achievable only to the extent cities are able to conserve and "leverage" the limited public resources available. This requires selective and coordinated utilization of the full range of conventional financing sources, all of the authorized federal, state, and local housing assistance and insurance programs, and the related non-housing support programs noted below. The Federal Housing Administration (FHA) programs, in particular, must be activated and utilized. Although a variety of technical and attitudinal factors have inhibited their availability to date, the Administration has promised "robust, active" FHA program participation, particularly in central city areas.⁷⁰

(3) Principal reliance must be placed on voluntary participation. The cooperation of building owners and homeowners will depend upon assuring an optimum mortgage financing package for each participating property. The critical factor is an avoidance or minimization of debt service increases. In rental situations, debt service increases will inevitably force rents higher and may cause displacements. Here, the technique of refinancing existing indebtedness can be particularly useful. Potential rent increase effects must be studied and rent regulation systems considered.

(4) Central coordination and close cooperation between city agencies and neighborhood organizations will be essential.⁷¹ The political and legal difficulties this coordination may entail are likely to require resort to interim institutional arrangements pending long-term reorganization.

Based on the San Francisco study, succeeding parts of this Article consider the objectives of rehabilitation/conservation (Part I), the spectrum of available mortgage finance (Part II), local government supports (Part III), and program management (Part IV).

PART I: THE OBJECTIVES OF REHABILITATION/CONSERVATION

The San Francisco plan's avowed goal is "to achieve and maintain decent, safe and sanitary living conditions at costs the City and its

70. See [1977] 5 HOUS. & DEV. REP. (BNA) 474.

71. Section 112 of the 1977 Housing Act authorized continued federal funding for comprehensive planning (the 701 program) that may be used to support planning elements of the work to be undertaken.

residents can afford."⁷² The latter phrase is crucial. The rehabilitation/conservation strategy raises critical issues of improvement for whom and at what price.⁷³ In cities like San Francisco, where vacancy rates are very low and sales prices and rentals are inflating rapidly, these issues are particularly acute. Conversely, cities with substantially under-utilized capacity have less cause for concern in these regards, even though rent effects and dislocation consequences need close attention everywhere.⁷⁴

A prime objective of the San Francisco Study was to ensure that benefits from the proposed improvements would enure to San Francisco's present population by minimizing rent increases and consequent potential displacement. This is achievable only through avoiding or minimizing debt service increases resulting from rehabilitation, by the imposition of rent controls, or by some combination of the two.

The issue of rent regulation is a complex one, both technically and politically.⁷⁵ Many economists are concerned that, by controlling only one element of the housing package, *i.e.* price, rent control tends to encourage undermaintenance and disinvestment, a result which conflicts with the neighborhood improvement objectives of a rehabilitation/conservation strategy.⁷⁶ Even where city-wide rent control or stabilization systems are in effect, owners are permitted to pass through rehabilitation and major repair costs to tenants, commonly

72. SAN FRANCISCO STUDY, *supra* note 55, at 3.

73. *See* note 4 *supra*.

74. *See* GOETZ, note 8 *supra*.

75. An analysis of the arguments for and against rent control is contained in FRANKEN & ASHMUN, note 6 *supra*. *See also* Brownfield, *How Rent Controls Hurt the Poor*, HUMAN EVENTS, Nov. 9, 1974, at 19. In the United States, rent controls are generally viewed as a short-run response to problems brought on by housing shortages. Some economists view rent control as all but a disaster. Rent ceilings cause "haphazard and arbitrary allocation of space, inefficient use of space, retardation of new construction and indefinite continuance of rent ceilings, or subsidization of new construction and a future depression in residential building." Frieman & Stigler, *Roofs or Ceilings—The Current Housing Problem*, 1 POPULAR ESSAYS ON CURRENT PROB. 2, 31 (1946). *See also* Grampp, *Some Effects of Rent Control*, 16 S. ECON. J. 425 (1950). *But see* Achtenberg, *Social Utility of Rent Controls*, in HOUSING URBAN AMERICA 434 (J. Pynoos ed. 1973).

76. *See* G. Sternlieb, *Housing and People in New York City* (January 1973) (report for the New York Housing and Development Admin., Dep't of Rent and Housing Maintenance). *See also* G. STERNLIEB, *THE REALITIES OF RENT CONTROL IN THE GREATER BOSTON AREA* (1972); G. STERNLIEB, *THE URBAN HOUSING DILEMMA: THE DYNAMICS OF NEW YORK CITY'S RENT CONTROLLED HOUSING* (1970).

with some add-on for overhead and profit.⁷⁷ Avoidance of undue rent increases thus inevitably requires careful attention to the costs of the improvements, which is in turn a function of efficiency, rehabilitation standards imposed, and utilization of the optimum available financing package for each rehabilitation situation.

The strongest case for controls can be made in a San Francisco-type situation, where inflationary effects are exacerbated by a supply/demand imbalance and by speculation.⁷⁸ Under San Francisco law, rent increases following improvements financed by city-issued revenue bonds are strictly limited, on a building-by-building basis.⁷⁹ This approach, however, fails to reach buildings not participating in the revenue bond-financed loan program. In these buildings rents may increase as a result of improvements in neighborhood facilities and services and the upgrading of nearby properties through privately financed rehabilitation. This method tends to decrease utilization of the revenue bond loans that, if used, would reduce debt service increases. In addition, because rent control continues only so long as the revenue bond-financed loan is outstanding, this approach encourages early private refinancing of buildings to free them from rent control limitations. On the other hand, because of the common unavailability of conventional financing, low rent properties may be most likely to participate in city loan programs and thus most likely to be subject to building-by-building rent control. The San Francisco report recommended continuation and increased stringency of rent increase limitations for participating buildings.⁸⁰

Alternatives to the San Francisco approach include state-wide, city-wide, or area-wide controls, the latter possibly limited to designated neighborhood conservation areas. The legality of local option rent control has been the subject of considerable litigation.⁸¹ A recent

77. See Blumberg, Robbins & Baar, *The Emergence of Second Generation Rent Controls*, 8 CLEARINGHOUSE REV. 240-49 (1974) (discussion of rent control law).

78. See GOETZ, *supra* note 8, at 60 n.53. Some cities have enacted anti-speculation ordinances. Washington, D.C. taxes any increase in value. Davis, Cal., requires that the purchaser of a home live in it for one year.

79. SAN FRANCISCO, CAL., ADMIN. CODE ch. 32, § 32-73 (1976). See also CAL. HEALTH & SAFETY CODE § 37922.5 (Deering 1975).

80. SAN FRANCISCO STUDY, *supra* note 55, at III-50.

81. See *Inganamort v. Borough of Ft. Lee*, 62 N.H. 521, 303 A.2d 298 (1973). See also *Bussman v. Rent Control Bd.*, 359 N.E.2d 29 (Mass. 1976); *Property Owners Ass'n. v. Township of North Bergen*, 74 N.J. 327, 378 A.2d 25 (1977); *Troy Hills Village v. Parsippany-Troy Hills Council*, 68 N.J. 604, 350 A.2d 34 (1975).

California Supreme Court decision, *Birkenfeld v. City of Berkeley*,⁸² struck down an initiative-adopted rent control system based on findings of administrative defects, but recognized the validity of local option rent control when properly designed.⁸³ The legality of a neighborhood-wide rent control program has not yet been judicially tested.⁸⁴ Manifestly, such an approach would involve a range of policy, technical and political problems in addition to the legal issues presented.

In a longer-term context, an appropriate policy response to price and rent escalation problems resulting from growing housing demand must necessarily emphasize production. Cities characterized by a supply/demand imbalance must anticipate price and rent increases regardless of whether government support for rehabilitation and conservation is provided. The policy implies a balanced program involving both careful consideration of program objectives for different kinds of neighborhoods and new construction in locations that anticipate future demand. Site selection choices and decisions with regard to income levels and other household characteristics of the intended occupants must derive from careful analysis of the relevant housing submarkets within both the city and the metropolitan area.

A. *Rehabilitation/Conservation Objectives by Area Type*

Reasonable housing rehabilitation objectives in any city will vary according to neighborhood characteristics. Four neighborhood prototypes were found useful for the San Francisco Study and form the basis for the discussion below: Type I areas, primarily sound and well maintained; Type II areas, primarily sound but under-maintained; Type III areas, widespread deferred maintenance but generally viable within the eligibility guidelines of various area-based programs; and Type IV areas, primarily deteriorating and unmaintained.⁸⁵

82. 17 Cal.3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976).

83. *Id.* at 150-52, 550 P.2d at 1017-18, 130 Cal. Rptr. at 480-81.

84. The City Attorney of San Francisco recently rendered an opinion favoring the validity of area-wide rent control for RAP areas. Letter from Thomas M. O'Conner, Esq., to Rai Okamoto (Nov. 17, 1977).

85. For area typologies, see U.S. DEP'T HUD & REAL ESTATE RESEARCH CORP., *EVALUATING LOCAL URBAN RENEWAL PROJECTS: A SIMPLIFIED MANUAL* (1975). See also G. Sternlieb & J. Hughes, *Analysis of Neighborhood Decline in Urban Areas* (1973) (Center for Urban Policy Research, Rutgers University, New Brunswick, N.J.). GOETZ, *supra* note 8, presents a neighborhood classification that combines the dimension of housing conditions with market perceptions of various key

Some scholars have identified as Type V areas hard-core central city poverty areas, characterized by high incidence of poverty, crime, unemployment and subemployment, undermaintenance of buildings to the point of abandonment, and concentrated, intense neighborhood decline. The cost, both direct and external, of the traditional clearance and renewal approach to such areas and its inadequacy to deal with the economic and social problems presented has become widely recognized. This Article, based on the San Francisco Study, where fortunately no Type V areas exist, will not attempt policy recommendations for such areas.⁸⁶

1. Type I: Sound and Well-Maintained Areas

Type I areas present few problems of serious code deficiency or lack of affordable financing. Buildings are generally in good condition. Owners and tenants can afford a continued high level of maintenance. City policy for Type I areas can encourage and support neighborhood association initiatives such as tree planting, undergrounding of wires, billboard controls, clean-up and fix-up. All of these should be undertaken on a low public cost basis, conserving limited resources for higher need areas.

2. Type II: Sound, but Undermaintained Areas

Type II areas also contain few serious problems of life/safety hazards, significant code deficiencies, or unavailability of convention-

actors as a guide to policy formulation. The approaches, financing mechanisms, and institutional arrangements herein suggested could effectively support judgments based on that model.

86. *But see* Phillips & Agelasto, *supra* note 5, at 825-29. Other useful sources of information on this subject include Sternlieb & Hughes, *Neighborhood Dynamics and Government Policy*, 1974 AM. REAL ESTATE & URB. ECON. A. J. 7-23. *See also* G. STERNLIEB, RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED (1973); G. STERNLIEB, THE URBAN HOUSING DILEMMA (1972); G. STERNLIEB, THE TENEMENT LANDLORD (1966). The works of Charles Leven in documenting neighborhood succession and explaining the process in St. Louis are particularly useful. *See* NATIONAL TECHNICAL INFORMATION SERVICE, URBAN DECAY IN ST. LOUIS (1972); J. Little, H. Nourse & D. Phares, *The Neighborhood Succession Process* (1975) (Institute for Urban and Regional Studies, Washington University, St. Louis, Mo.); J. Little, H. Nourse, R. Read & C. Leven, *The Contemporary Neighborhood Succession Process* (1975) (Institute for Urban and Regional Studies, Washington University, St. Louis, Mo.). *See also* W. GRIGSBY & L. ROSENBERG, URBAN HOUSING POLICY (1975); Phillips & Agelasto, *supra* note 5, at 807-09, 862-68; W. Grigsby, M. Stegman, L. Rosenberg & G. Liechty, *Housing and Poverty in Baltimore, Maryland* (1970) (Institute for Environmental Studies, University of Pennsylvania, Philadelphia, Pa.).

al financing. Many buildings in these areas do, however, have some code deficiencies or incipient code violations and are in need of moderate rehabilitation. In some cases, rehabilitation may result in economic hardship for owners and tenants. Historically these areas have been the target of FACE programs.⁸⁷

The suggestions noted above for Type I areas will also apply to Type II neighborhoods. In addition, if FHA insurance can be made widely available in these areas, conventional financing supplemented by revenue bond-funded public financing should meet almost all rehabilitation financing needs, and thus permit a significant increase in the number of Type II neighborhoods undergoing concentrated rehabilitation. Greater use of counseling services and low cost, high visibility public improvements will be appropriate. Advisory services might be provided to property owners on a fee basis to minimize public costs.

3. Type III: Declining and Undermaintained Areas

In Type III areas a large proportion of homes and apartments show signs of deterioration and health or safety hazards. Serious rehabilitation financing problems, due to lower rents and incomes, higher costs of rehabilitation, and reduced availability of conventional financing, are generally present. Many such areas continue to be effectively redlined by financial institutions.⁸⁸ Low rent multi-family buildings in particular are likely to have acute financing problems. These problems and concerns about displacement effects have limited rehabilitation assistance programs in such areas.

In Type III areas, concentrated area-wide approaches are likely to be most effective. The strategy should emphasize less costly preventative and owner-initiated approaches, combined with enforcement and abatement procedures as necessary to ensure priority elimination

87. See note 56 and accompanying text *supra*.

88. See *The Home Mortgage Disclosure Act: Hearings on S. 1291 Before The Senate Comm. on Banking, Housing and Urban Affairs*, 93d Cong., 2d Sess. (1975); *Equal Opportunity in Lending Enforcement by the Bank Regulatory Agencies: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 94th Cong., 2d Sess. (1976); F. DOYLE, *THE END OF THE (RED) LINE: A BIBLIOGRAPHY* (1975); OFFICE OF THE ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY, U.S. DEP'T OF HUD, *REDLINING AND DISINVESTMENT AS A DISCRIMINATORY PRACTICE IN RESIDENTIAL MORTGAGE LOANS* pt. III, at 102 (1977) (prepared by The Urban-Suburban Investment Study Group, Center for Urban Studies, Univ. of Illinois); Further discussion of anti-redlining activities is contained in *Housing Rehabilitation and Neighborhood Conservation*, [1977] 5 Hous. & Dev. Rep. (BNA) 14:0011-31.

of life/safety hazards and eventual full code compliance. Low cost high visibility capital improvements, tree planting, clean-up programs, commercial strip revitalization and improvements in public services will commonly be necessary.⁸⁹

Neighborhoods should be designated as target areas for state or local programs where: coordinated neighborhood improvement and code administration programs, backed by owners and residents, can assure timely code compliance with minimum hardship for the vast majority of properties, and public resources are available to provide necessary rehabilitation support and financial assistance. HUD certification of selected areas as Neighborhood Strategy Areas (NSA) can increase local access to FHA programs⁹⁰ and may result in a supplemental allocation of section 8 substantial rehabilitation units,⁹¹ where control is vested in the local government.⁹²

In California, this involves designations as "Residential Rehabilitation Areas" or "Neighborhood Preservation Areas" to qualify for lower interest, long-term revenue bond-funded public financing.⁹³ These areas may also be eligible for HUD support under the NSA program⁹⁴ or other proposals currently under consideration.⁹⁵ Most forms of subsidized financing and city intervention techniques discussed below, *e.g.*, hardship deferred payment loans and grants, partial interest supplements, down-payment assistance loans, emergency interim construction or repair loans, receiverships, limited acquisition/resale financing, and loan guarantees, will also be required in Type III areas.

89. A Housing Assistance Plan, prepared in applying for CDBG funding, could include these types of projects. *See* note 27 and accompanying text *supra*.

90. *See* notes 94 & 127-32 and accompanying text *infra*.

91. *See* note 170 and accompanying text *infra*.

92. *See* note 177 and accompanying text *infra*.

93. The terms for such financing are generally 6%-7% over 30 years. *See* notes 160-62 & 192 and accompanying text *infra*.

94. HUD recently established a Neighborhood Strategy Areas Program whereby cities, if they have approved plans for neighborhood improvement, will be eligible for set-aside section 8 substantial rehabilitation funds, and will also get a major role in stimulating and reviewing applications for HUD projects in the designated areas. 43 C.F.R. § 881 (1978). *See also* OFFICE OF PLANNING, DEVELOPMENT AND RESEARCH, U.S. DEP'T HUD, NEIGHBORHOOD STRATEGY AREAS: A GUIDEBOOK FOR LOCAL GOVERNMENT (1978).

95. *See* K. PHILLIPS & M. TEITZ, IMPLEMENTATION OF THE SECTION 223(f) MORTGAGE INSURANCE PROGRAM IN OLDER DECLINING URBAN AREAS (Aug. 10, 1975) (Berkeley Planning Assoc. Report to U.S. Dep't HUD) [hereinafter cited as K. PHILLIPS & M. TEITZ].

If the strategies in Type I and Type II areas are successful, available public resources will be conserved to support substantial rehabilitation initiatives in both Type III and Type IV areas. A critical factor in Type III areas could be the availability of FHA insurance⁹⁶ and revenue bond-financed loans,⁹⁷ particularly for refinancing. If these can be made generally available in Type III areas there will be only a limited need for direct financing assistance. In that event, public resources will be required only for administrative, counseling and support services.

4. Type IV: Deteriorating and Undermaintained Areas

Type IV areas, the lowest income sections of the city, contain many serious housing problems. Conventional mortgage financing is rarely available. Where it can be obtained, loan terms will tend to be short, interest rates high, and loan-to-value ratios low. Clearance and renewal has been the traditional answer for these deteriorated areas. The costs, both direct and external, and the failure of conventional renewal strategies to deal with underlying economic and social problems, have forced a reconsideration of the redevelopment approach.⁹⁸

It is important that rehabilitation standards for Type IV areas not be set too high. Full and uniform enforcement of code standards in these areas would require massive subsidy, or would cause rent increases not affordable by most area residents. Substantial displacement would inevitably result.⁹⁹ The San Francisco Study, accordingly, recommended a phased rehabilitation strategy for Type IV areas, giving priority to immediate abatement of life/safety hazards and cleanup-fixup programs. Concepts of habitability developed by the courts¹⁰⁰ can be applied to achieve substantial upgrading while avoiding undesired full code compliance standards.¹⁰¹

96. See notes 127-31 and accompanying text *infra*.

97. See notes 158-61 and accompanying text *infra*.

98. See Phillips & Agelasto, *supra* note 5, at 825-28.

99. See Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 745 (1971).

100. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970); *Green v. Superior Court*, 10 Cal.3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974). See also Phillips & Agelasto, *supra* note 5, at n.326-28.

101. See W. GRIGSBY & L. ROSENBERG, *THE URBAN HOUSING POLICY* ch. 9 (1975) [hereinafter cited as W. GRIGSBY & L. ROSENBERG].

Assistance to commercial facilities, low cost capital improvements, and directly assisted housing rehabilitation will also be needed.

That rehabilitation standards for Type IV neighborhoods need to be lower than those set for better-off neighborhoods in no sense suggests a downgrading in the importance of assistance to these areas. On the contrary, the need in these neighborhoods is most critical. Where CDBG funds will be used, federal law requires priority consideration to housing improvements for low and moderate income areas.¹⁰² These considerations are far from academic: Type IV areas are in direct competition with better-off neighborhoods, particularly Type III areas, for limited public funds. The financial strategies suggested below to minimize the public resource costs of programs in area Types I-III are intended to conserve funds to the maximum extent possible for Type IV area program requirements.

B. *Code Administration Recommendations, City-Wide*

City-wide administration of code requirements must be considered in light of area-specific objectives and strategies such as those discussed above. In this regard, the San Francisco Study recommended several innovations potentially useful for a rehabilitation/conservation strategy. These include:

(1) Periodic review of the housing code and other building-related codes by a technical advisory committee to ensure that code requirements are appropriate for the objectives suggested above, and to identify code changes needed at the state level.¹⁰³ The proposed committee would be comprised of city officials and representatives of citizen groups, the building industry, and the construction trades.

(2) Establishing a system of mandatory, fee-supported, pre-sale building inspections as part of an overall preventative maintenance strategy.¹⁰⁴ By identifying problems prior to final consummation of sales, purchasers can be protected against the costs of unexpected repairs. Financing to facilitate abatement of violations can be included in loans negotiated at the time of property acquisition. Correction of immediate life or safety hazards can be required either before consummation of the sale or within a specified time period.

102. Housing and Community Development Act of 1977, § 104(d), 42 U.S.C.A. § 5304(d) (West Supp. 1978). See 24 C.F.R. § 570.302 (1977).

103. See W. GRIGSBY & L. ROSENBERG, note 101 *supra*.

104. See SAN FRANCISCO STUDY, *supra* note 55, at II-15.

(3) Permit of occupancy inspections of hotels and apartments on a more intensive basis, with a checklist report to property owners. Hotels would continue to be inspected annually, but apartment buildings only once every three years in lieu of San Francisco's present practice of inspecting every eighteen months.

(4) Courtesy inspections on request, with assurance that violations, other than life/safety hazards, will not be prosecuted until the building becomes part of a regular code enforcement program.¹⁰⁵

(5) Provision of counseling and technical assistance to neighborhood organizations, owners, tenants and merchants,¹⁰⁶ as well as development and distribution of readable brochures and manuals on rehabilitation and neighborhood conservation.

PART II: THE SPECTRUM OF AVAILABLE MORTGAGE FINANCE

Inability of owners to obtain adequate long-term market or below market interest rate financing or refinancing has been a major factor encouraging disinvestment in rental properties¹⁰⁷ and in undercutting efforts by housing code enforcement agencies and tenant organizations to compel landlord compliance with basic housing, health, and safety code requirements.¹⁰⁸ Such financing is the necessary but not sufficient condition of any broadscale rehabilitation/conservation program. Neighborhood organization efforts, commercial strip revitalization, and improvements in public facilities and services are useful as additional support ingredients only after the financing precondition has been satisfied.

To the fullest extent possible, funding for rehabilitation must be obtained from banks, savings and loan associations and other non-governmental sources. Where conventional loans are not available,

105. A regular code enforcement program is a concentrated area program with systematic code enforcement or pre-scale inspection.

106. See notes 204-07 and accompanying text *infra*.

107. See G. STERNLIEB, *THE URBAN HOUSING DILEMMA: THE DYNAMICS OF NEW YORK CITY'S RENT CONTROLLED HOUSING* 616-20 (1970); G. Sternlieb, R. Burchell, & V. Paulus, *Residential Abandonment: The Environment of Decay* (December, 1972) (Council of Planning Librarians, Exchange Bibliography No. 342).

The lack of institutional financing forces an owner or investor to pursue noninstitutional financing, represented by the land installment contract or purchase money mortgage. Often these instruments do not offer the buyer sufficient protection from foreclosure and serve to aid the speculator in exploiting the low income resident. M. STEGMAN, *HOUSING INVESTMENT IN THE INNER CITY* 200 (1972).

108. See Hartman, Kessler & LeGates, *Municipal Housing Code Enforcement and Low Income Tenants*, 40 J. AM. INST. PLANNERS 90 (1974).

funding must be sought through available federal and state insurance and direct loan programs¹⁰⁹ and, to the extent they are available, through federal or state subsidized programs. Funding from general budgetary sources and resource limited programs, such as Community Development Block Grants, must be conserved for administrative costs, relocation payments, support facilities and services, and lending situations not otherwise reachable. Strict cost-effectiveness criteria will aid in selecting among the range of direct government assistance programs. Finally, cost-recovery provisions will commonly be necessary to recycle publicly provided funding.

The discussion below suggests a strategy for selecting among the myriad shifting federal, state and state-authorized programs and private sector initiatives. The spectrum extends from minimum city participation, in the area of unassisted or conventional financing, to directly assisted financing and direct city intercession to abate hazardous conditions.¹¹⁰

Coordination of these resources and financing techniques will be achievable and, more important, sustainable only if adequate institutional mechanisms are established. In most cities such agencies currently do not exist. The San Francisco Study recommended creating an Office of Housing Finance to coordinate all functions associated with rehabilitation financing and a Financial Advisory Committee to undertake an ongoing examination of financial issues and opportunities. Constant fluctuations in the relevant market elements, financial, economic and demographic, and in program availability and terms require anticipation and response at the local, state, and federal levels that will be achievable only through these vehicles.

A. *Conventional Financing*

Mortgage financing must be made available, to the greatest possible extent, by conventional market lenders acting without government insurance or support. In most cities these conventional lenders,

109. For example, VA and FHA programs are available at the federal level. California examples include the Cal Vet, California Housing Finance Agency, Marks-Foran and S. B. 99 programs.

110. Basic information about the federal mortgage and loan insurance program is available in U.S. DEP'T OF HUD, DIGEST OF INSURABLE LOANS (1975) (HUD Handbook 4000.1). More detailed information is provided in HUD Handbooks that govern individual programs, as well as various regulations promulgated by the Secretary of HUD, published in Title 24 of the Code of Federal Regulations. See also [1977] 5 HOUS. & DEV. REP. (BNA) 277; D. GRESSEL, FINANCING TECHNIQUES FOR LOCAL REHABILITATION PROGRAMS (1976).

commercial and savings banks, savings and loan associations, mortgage bankers, credit unions and finance companies, currently provide financing for most residential property. Their policy, however, is selective, *i.e.* loans in those neighborhoods and situations where yields are greatest and risks are minimal. Their preferences thus tend to be: (1) newly developed areas (suburbs); (2) higher income residents; (3) areas with a high level of municipal services; (3) homogeneity of improvements; (5) proper zoning; and (6) minimum deferred maintenance and economic obsolescence. They are reluctant to invest in inner city areas where neighborhoods show signs of wear and tear, properties are older, minority groups with lower income levels reside, and services are deteriorating. Where loans are made in such areas valuations and loan-to-value ratios may be unduly low, loan terms short, and interest rates high.¹¹¹

A key element in reducing the gap between the policies of the lending institutions and the needs of inner city property owners and residents is centralization of responsibility within city government. A coordinating vehicle such as an Office of Housing Finance is needed to expand access to mortgage financing and refinancing, and to seek improved loan terms. An Office of Housing Finance could also develop financial sources for pools of high risk loans,¹¹² publicize the availability of government programs and assist in their optimum utilization, press for high loan-to-value ratios and longer payback terms, establishment of blended rates¹¹³ for refinancing existing mortgages at low interest rates, seek waiver of pre-payment penalties in connection with refinancing, and might also address appraisal issues. In doing so, it could work closely with a Financing Advisory Committee comprised of representatives of the financial community, the real estate community, city government (mayor's office, real estate, planning, redevelopment, model cities), other public agencies (Federal Home Loan Bank, HUD, State Housing Finance Agency) and com-

111. See [1978] 6 HOUS. & DEV. REP. (BNA) 8. Recently, however, the Federal Home Loan Bank Board, which regulates federally chartered savings and loan associations, has moved to encourage urban reinvestment. A new five year program, announced June 8, 1978, will provide a total of \$10 billion in special advances to increase tax profitability to savings and loan associations of loans for low and moderate income housing in support of community preservation. Evaluation of this action must await events.

112. See [1977] 5 HOUS. & DEV. REP. (BNA) 277. Cities with such pooling arrangements include Atlanta, Chicago, San Francisco and Washington, D.C. *Id.* at 14:0028.

113. See note 124 *infra*.

munity organizations. By increasing communication among the actors involved, such an advisory committee would encourage both neighborhood and institutional participation in conservation strategies.

A Housing Finance Office would also be well suited to monitor data obtained pursuant to federal and state anti-redlining legislation. The federal Home Mortgage Disclosure Act of 1975¹¹⁴ requires financial institutions that make home loans and have assets in excess of ten million dollars to compile and disclose the number and volume of loans made, listed according to census tract or zip code numbers. State anti-redlining laws may go further. Recently enacted legislation in California,¹¹⁵ applicable to all financial institutions operating in the state, prohibits discrimination in the provision of home financing on the basis of race, color, religion, sex, or national origin or, except where "an unsafe and unsound business practice" would be involved, due to conditions, characteristics, or trends in the neighborhood or geographic area surrounding the housing accommodation. Enforcement procedures at the state level are provided.¹¹⁶ Using information obtainable pursuant to anti-redlining requirements, cities can work with conventional lenders to progressively increase the availability of mortgage funding on improved terms.¹¹⁷

Depository laws enacted in several states¹¹⁸ may provide a further important source of leverage to that end. These laws commonly require that deposits of municipal funds with financial institutions be linked to their lending and/or hiring practices. Similarly, the 1977 Housing Act authorizes recipients of CDBG funds to make lump sum deposits with financial institutions for use as revolving loan funds to support local rehabilitation programs.¹¹⁹ That Act also requires

114. Home Mortgage Disclosure Act of 1975, 12 U.S.C. §§ 2801-09 (1976). Further discussion of anti-redlining activities is found in [1977] 5 Hous. & Dev. Rep. (BNA) 14:0011-13.

115. The Housing Financial Discrimination Act of 1977, CAL. HEALTH & SAFETY CODE §§ 35800-33 (Deering Supp. 1978).

116. *Id.* at §§ 35815, 35820-23.

117. *See* note 88 *supra*. The Philadelphia experience of cooperative undertakings by lenders and community organizations is illustrative of opportunities existing in this area. Baltimore is a good example of evolving joint local government/private sector responses. [1977] 5 Hous. & Dev. Rep. (BNA) 14:0027.

118. Colorado, Connecticut, Hawaii, Illinois, Wisconsin, West Virginia, and Washington, D.C. have all passed depository laws. *See* [1977] 5 Hous. & Dev. Rep. (BNA) 14:0015.

119. Housing and Community Development Act of 1977, § 104(g), 42 U.S.C.A. § 5304(i)(1) (West Supp. 1978).

federal financial supervisory agencies to take various actions that encourage lenders "to help meet the credit needs of the local communities in which they are chartered, consistent with the safe and sound operation of such institutions."¹²⁰

It will be particularly important for cities to encourage conventional lender refinancing of existing indebtedness over sufficiently long terms. Traditional short-term add-on home improvement financing is sometimes adequate for rehabilitation, particularly where costs are below \$2000 per unit. However, their relatively short repayment periods, three to seven years, can mean prohibitive monthly costs—perhaps an additional fifty to sixty dollars per month for a \$3000 loan. This increase in monthly expense is avoidable by substituting long-term refinancing in lieu of an add-on home improvement loan. By refinancing an existing loan for a longer term and, where possible, at a lower interest rate,¹²¹ an additional principal amount can be made available for repairs without raising monthly debt service expense. Table 1 illustrates this point.

Table 1
Increasing Mortgage Principal Through Variation in Mortgage
Terms (Debt Service Remains Constant)

Terms		Debt Service	Mortgage Amount
9.5%,	10 years	129.40	10,000
8%,	12 years	129.00	11,900
7%,	15 years	129.40	14,400
7%,	20 years	129.40	16,700
6%,	20 years	128.95	18,000
6%,	30 years	129.01	22,000

The increase in mortgage amounts is an arithmetic derivative of the characteristics of the existing financing and debt service levels and future mortgage terms.¹²² Present debt service, current market interest rates and charges, and the future useful life of the property are independent variables. Housing improvements will be possible to the extent that the sum determined by these variables, plus such other

120. 12 U.S.C. § 2901(b) (1976).

121. Phillips & Bryson, *Refinancing: A First Step Toward a Realistic Housing Program for the Poor*, 39 GEO. WASH. L. REV. 835, 841-45 (1971) [hereinafter cited as Phillips & Bryson].

122. *Id.*

monies as the owner might provide, is sufficient to achieve the level of repairs required by applicable regulations and codes. The longer the term of the insured mortgage, the more funds will be available to support repairs.

Through refinancing, funds for rehabilitation can be secured at little or no increase in monthly debt service. Although owners will face an extended period of mortgage payments, the accompanying rehabilitation should extend the life of the structure.¹²³ Owners of buildings with outstanding mortgages at low interest rates could face increases in debt service if their properties were refinanced at today's higher rates. Negative impacts can be avoided or minimized, however, by the use of blended rates,¹²⁴ wrap-around financing,¹²⁵ or revenue bond-funded programs that provide for lower interest rates.

B. *Indirectly Assisted Financing*

The primary vehicle for providing mortgage financing for owners unable to obtain or afford conventional financing should be through mortgage loans supported by government insurance programs, revenue bond-financed mortgage lending, and federal housing subsidy programs. Except for the costs of program administration and associated public services or improvements, these loans will not impact on CDBG or general budget resources.

For reasons noted below, the Federal Housing Administration (FHA) market rate insurance programs have not been active in most central cities. If rehabilitation/conservation goals are to be reached, it is critical that this situation be changed. First, many homes and apartment buildings ought to qualify for reasonable term, market interest rate loans under these programs. This should commonly be the case in Type I and Type II areas, frequently in Type III areas, and occasionally even in Type IV areas. Second, the ability of states and cities to market revenue bonds, in large amounts and at acceptable terms, may be largely dependent on the availability of FHA in-

123. *Id.* at 849.

124. A "blended rate" is one that takes into account the amount, term and interest rates of both the old and new mortgage and arrives at a "blended rate" on a pro-rata basis.

125. See Gallowitz, *How to Use Wraparound Financing*, 5 REAL ESTATE L.J. 107 (1976). Wraparound financing is a method of refinancing in which a lender assumes a borrower's present mortgage and replaces the old loan with a new mortgage, usually at a higher interest rate. This is sometimes referred to as an "all-inclusive mortgage" because the deed of trust includes the obligations of the old deed of trust within the provisions of the new note. *Id.* at 107-08.

insurance programs.¹²⁶ Revenue bonds backed only by mortgages on rehabilitated housing are acceptable to the public bond market only if backed by sufficient funded reserves. Bond issuances that limit the use of the proceeds to FHA insured mortgage loans will be acceptable to the public bond market with greatly reduced reserves and better financial terms.

1. The FHA and VA Unsubsidized Programs

The FHA¹²⁷ and Veterans Administration (VA) mortgage insurance programs constitute the first category of indirectly assisted financing. If activated and utilized, they can absorb much of the social risk that deters conventional lending in less than optimum situations.¹²⁸ These programs have not, however, been a major factor in most central cities in the past. Their outreach has been inhibited by low loan limits, slow processing, unduly restrictive technical requirements and the FHA's basic orientation to new suburban development.¹²⁹

There are impressive reasons to believe that the FHA programs will become more available to support central city rehabilitation. Foremost is increased awareness at all levels of government, and among neighborhood organizations, of the critical importance of making conservation work. This is reflected in recent statements by legislators, officials of the administration, and lenders.¹³⁰ The FHA programs, if properly utilized, represent the most cost-effective and feasible method of federal assistance¹³¹ and are critical to the viability of local revenue bond-supported efforts. Taken together, within

126. See note 161 and accompanying text *infra*.

127. The Federal Housing Administration (FHA) is now part of the Department of Housing and Urban Development (HUD). The FHA's authorization for its various program derives from the National Housing Act of 1967, 12 U.S.C. § 1701c (1976).

128. To activate and utilize these programs, cities may find it necessary to centralize responsibility for rehabilitation/conservation programs and to establish standing financial advisory committees. See text following note 110 *supra*.

129. SAN FRANCISCO STUDY, *supra* note 55, at III-21. Also, § 303 of the recent 1977 Housing Act increased maximum mortgage amounts under various FHA programs, and § 304 decreased down payment requirements. 12 U.S.C.A. §§ 1709, 1715k, 1715l, 1715m, 1715y (West Supp. 1978).

130. See, e.g., [1977] 5 HOUS. & DEV. REP. (BNA) 474-75, 544-45.

131. S. Ward, *An Analysis of the Housing Improvement Efficiency of a Subsidy Introduction*, in MORTGAGE REFINANCING INSURANCE (1978) (unpublished study prepared for the Earl Warren Legal Institute, University of California-Berkeley).

specified limits, the FHA and VA programs can provide government-backed mortgage insurance and/or direct loans for a range of housing needs, which include new construction, substantial rehabilitation, and the acquisition or refinancing of existing single family or multi-family projects. The VA and FHA Programs most important to conservation needs are briefly outlined below:

a. Single Family Programs¹³²

(i) The Veterans Administration Program¹³³ guarantees against first loss on residential loans up to a maximum of \$17,600 for eligible borrowers and properties. No down payment is required.

(ii) HUD's Title I Home Improvement Loan Program¹³⁴ insures loans to finance alterations, repairs and improvements for existing structures that substantially protect or improve livability or utility. Loans are available up to \$15,000 per single family and up to \$5,000 per unit, not to exceed \$25,000 per building. Maximum maturity is fifteen years and thirty-two days. Interest rates are about 12%.

(iii) The section 203(b) Home Mortgage Insurance Program,¹³⁵ the basic FHA single family (one to four units) program, is available for new construction, substantial rehabilitation, and existing housing. The 1977 Housing Act increased section 203(b) lending limits, in other than outlying areas, to \$60,000 per single unit.¹³⁶ Loan terms are available up to thirty years. Current interest rates are 8.75%, plus one-half percent for the mortgage insurance premium (MIP). The program has recently been offered by FHA on a co-insurance basis.¹³⁷

(iv) The section 220 (Homes)¹³⁸ program is available only in urban renewal and code enforcement areas. The maximum loan amount for a single dwelling unit is \$60,000.¹³⁹ Terms extend as long as thirty-five years, five years longer than the section 203(b) program.

(v) The section 203(k) Loan Insurance Program for Major Home

132. In general, single family programs apply to housing that contain one to four dwelling units.

133. 38 U.S.C. §§ 1801-27 (1970, Supp. I 1971, Supp. II 1972, Supp. III 1973, Supp. IV 1974 and Supp. V 1975).

134. 12 U.S.C. § 1703 (1976).

135. *Id.* § 1709.

136. *Id.*

137. 24 C.F.R. §§ 204.1-381 (1977).

138. 12 U.S.C.A. § 1715k(d)(1) (West Supp. 1978).

139. *Id.* § 1715k(d)(3).

Improvements¹⁴⁰ insures loans to finance alterations, repairs and improvements on existing single family (one to four units) structures. The maximum term is twenty years. These are add-on loans up to a \$17,400 maximum.

(vi) The section 221(d) Home Mortgage Insurance Program for Low and Moderate Income Families¹⁴¹ insures loans for purchase or rehabilitation of homes purchased by low or moderate income families. Terms are up to thirty years. Interest is 8.75% plus one-half percent MIP.

b. Multi-Family Programs¹⁴²

(i) The section 207 Rental Housing Insurance Program¹⁴³ is the basic FHA multi-family (seven or more units) insurance program. The section 207 program insures financing for the construction or rehabilitation of detached, semi-detached, row, walkup, or elevator-type housing. The loan-to-value ratio is ninety percent and the maximum term is forty years. Interest rate is 9% plus one-half percent MIP, or 7.5% plus one-half percent if Tandem¹⁴⁴ is available. The maximum loan amounts are liberal, and depend on unit size and building type.

(ii) The section 220 Mortgage Insurance Program¹⁴⁵ is similar to the section 207 program but is limited to sites in federally assisted urban renewal areas, code enforcement areas, or urban areas receiving rehabilitation assistance as a result of natural disaster. Its terms are somewhat more favorable than those of the section 207 program.

(iii) The section 221(d)(3) Mortgage Insurance Program for Low and Moderate Income Housing Projects (market interest rates)¹⁴⁶ finances construction or rehabilitation of rental or cooperative detached, semi-detached, row, walkup, or elevator structures for the elderly or handicapped and for low and moderate income families.

140. 12 U.S.C. § 1709(k) (1976). *See also* 12 U.S.C.A. §§ 1715(h) & 1715(o) (West Supp. 1978). This program is now inactive due to the ceiling interest rate of 8.5% set by statute.

141. 12 U.S.C.A. § 1715/ (West Supp. 1978).

142. In general, the term "multi-family" relates to projects of not less than five dwelling units, although, as noted in the text, a greater minimum number is prescribed for some programs.

143. 12 U.S.C.A. § 1713 (West Supp. 1978).

144. *See* notes 186-87 and accompanying text *infra*.

145. 12 U.S.C.A. § 1715 (West Supp. 1978).

146. *Id.* § 1715/(d)(3)(i).

The loan-to-value ratio is ninety percent (limited dividend) or one hundred percent (non-profit sponsor). The maximum term is forty years and the interest rate is the same as section 207. Maximum loans depend on unit size and building type, and are relatively large amounts.

(iv) The section 221(d)(4) Mortgage Insurance for Low and Moderate Income Housing Projects (market rate)¹⁴⁷ is similar to section 221(d)(3), except that profit-motivated sponsors are also eligible.

(v) The section 223(f) program, Mortgage Insurance for the Purchase or Refinancing of Existing Multi-Family Housing Projects,¹⁴⁸ insures mortgages in connection with the purchase or refinancing of existing multi-family projects. Financing for rehabilitation is limited to fifteen percent of the mortgage amount. In appropriate cases, existing owners can refinance pursuant to section 223(f) to withdraw equity, reduce debt service, or both.¹⁴⁹ The program can also be used in purchase situations. Lower construction or rehabilitation costs may be obtained because of less exacting rehabilitation standards than apply to other FHA programs, and inapplicability of the Davis-Bacon prevailing wage requirements.¹⁵⁰ The maximum term is the lesser of thirty-five years or three-fourths of the future economic life of the structure.

Enactment of section 223(f) in 1974 marked the first time in which FHA mortgage insurance was authorized for existing multi-family projects without a requirement for substantial rehabilitation.¹⁵¹ At

147. *Id.* § 1715(d)(4)(ii).

148. 12 U.S.C. § 1715n(f) (1976). For background on the section 223(f) program, see Phillips & Bryon, note 121 *supra*; Phillips & Agelasto, note 5 *supra*.

149. HUD Handbook 4565.1, Sept. 24, 1975, § 6-2.

150. *Id.* § 3-5. The Davis-Bacon Act requires wage payments to all laborers and mechanics employed on construction that is under the Act's auspices to be not less than the level of wages for such work prevailing in the community. 40 U.S.C. § 276a to 276a-5 (1970). This Act is applicable to some of these housing programs. 12 U.S.C. § 1715c (1976).

151. HUD Handbook 4564.1, Sept. 24, 1975, § 1-1b. The Handbook further states:

This program can achieve the same role in multi-family housing long played by FHA insurance in the existing home market. It provides access to financing for the large stock of existing structures. The sound preservation, ownership and transfer of these properties depends in good part on the availability of credit on reasonable terms. The program helps owners maintain properties in good condition by providing financing to cover costs of repairs and deferred maintenance, and may, by providing government insurance, reduce interest and amortization costs and thus reduce upward pressure on rents.

Id.

present HUD has implemented two of the three components of the section 223(f) program. Insurance for projects started before June 30, 1974, and completed prior to June 30, 1976, was provided under a Special Eligibility Program. Existing properties at least three years old can be assisted through the General Eligibility component. HUD is currently developing regulations for a co-insurance variant of the 223(f) General Eligibility program, intended to expand program activity. HUD has yet to implement the third component of section 223(f), insurance for existing building in older urban areas, although demonstration projects are expected in the near future.¹⁵²

C. Other Notable FHA Insurance Programs

(a) The section 231 Elderly Housing Program¹⁵³ is similar to the section 207 multi-family program but allows builder and sponsor profit and risk allowance (BSPRA).

(b) The section 213 Cooperatives Program¹⁵⁴ provides mortgage insurance to facilitate a variety of cooperative-type arrangements, single family and multi-family, with eligibility extended to various mortgage sponsors. The multi-family program is generally similar to section 207, but has higher loan-to-value ratios. The single family program is similar to section 203(b).

(c) The section 225 program¹⁵⁵ provides additional loans where the original loan is FHA insured. Processing is relatively simple.

As noted earlier,¹⁵⁶ use of the FHA insurance programs in central cities has been limited by cumbersome and time-consuming processing, and restrictive limitations on eligibility, loan amounts and terms. Full performance on HUD's promise of greater program availability will be important to citywide revitalization efforts. The new co-insurance vehicles, which would permit delegation of loan processing and administration to participating conventional lenders, may simplify and expedite the lending process.¹⁵⁷ Allowable loan amounts and terms were liberalized by the 1977 Housing Act. Centralization of administrative responsibility within city government, as recom-

152. An implementation strategy has been recommended to HUD. K. PHILLIPS & M. TEITZ, note 95 *supra*.

153. 12 U.S.C. § 1715v (1976).

154. *Id.* § 1715e.

155. *Id.* § 1715p.

156. *See* note 129 and accompanying text *supra*.

157. Co-insurance regulations are expected to be issued for the 223(f) program shortly. *See* note 152 *supra*.

mended herein, would facilitate ongoing review of these problem areas and, in due course, should improve the availability of the various programs.

D. *Revenue Bond Financed Programs*

In many instances modest reductions in interest rates or modest extensions of repayment periods can significantly reduce monthly payments and make rehabilitation affordable. Below market interest rate rehabilitation loans under FACE and redevelopment programs have historically been available only in designated areas.¹⁵⁸ Limitations on appropriated resources have further restricted the outreach of these programs, particularly regarding the availability of refinancing. Where state law permits cities or state housing finance agencies to issue and sell revenue bonds to fund rehabilitation loans, it should be possible to fill this gap.

1. Local Government Programs

In California, the Marks-Foran Residential Rehabilitation Act¹⁵⁹ authorizes revenue bond sales by cities to fund rehabilitation loans in designated residential rehabilitation areas or for buildings outside such areas that will be occupied by low or moderate income persons. Low interest loans, expected to be between 5% and 7%, are authorized for rehabilitation costs up to \$30,000 per dwelling unit, with a maximum forty year repayment period. Financing may also be provided for associated commercial rehabilitation and for in-fill housing. Refinancing is authorized in specified circumstances.

Similarly, California's Redevelopment Construction Loan Act¹⁶⁰ authorizes redevelopment agencies to issue and sell revenue bonds to fund long-term construction lending in designated rehabilitation areas. Loans are expected to be available for up to ninety percent of cost, or higher for single family property, at about 7.25% interest, plus mortgage insurance premiums of one-half to one percent, with loans on a thirty year repayment basis. All loans must be insured.

Tax exempt bond financing, by municipalities or state housing finance agencies, could become the mainstay of neighborhood improvement programs wherever conventional financing is unavailable

158. See Phillips & Agelasto, *supra* note 5, at 815-60.

159. CAL. HEALTH & SAFETY CODE §§ 37910-64 (Deering 1973) [hereinafter referred to in text as Marks-Foran].

160. *Id.* §§ 33750-53.

or unaffordable, or where additional incentives are needed. To that end, it will be necessary to ensure that bonds not require issuer's credit in any way, but that they nevertheless have sufficient credit backing to achieve market acceptability (Standard and Poor's "AA" or "A"), thus enabling them to command an interest rate that permits relending at two to three percent below the conventional real estate loan market. Broad utilization of this financing device will depend on the availability of FHA, VA, SBA, or private mortgage insurance. Revenue bond issuances can be limited by their instruments to government-backed loans, as some state housing finance agencies have done.¹⁶¹ These bonds should enjoy the same general acceptance by the bond market as federally-backed housing authority bonds.

E. *State Housing Finance Agency Participation*

Many states have created housing finance agencies that provide or insure financing of housing for low and moderate income families.¹⁶² The California Housing Finance Agency (CHFA) is illustrative. Created in 1976,¹⁶³ CHFA is authorized to issue and sell up to \$450 million in revenue bonds and employ that money in a variety of lending and insurance programs. Its three major programs are multi-unit direct lending, mortgage purchases, and neighborhood preservation. The direct lending program finances apartment buildings on specified sites. As with similar programs of other state housing finance agencies, the direct lending program is supported by section 8¹⁶⁴ set-aside funds. The mortgage purchase program currently provides 7% loans, for thirty years, to FHA insured one to four unit properties.¹⁶⁵ The neighborhood preservation program provides loans to areas desig-

161. This statement is based on a telephone survey conducted by Ann Grani, in San Francisco (Sept. 1977). See also [1975] 3 HOUS. & DEV. REP. (BNA) 50:0011. See generally COUNCIL OF STATE HOUSING AGENCIES, ANNUAL REPORT (1977).

162. See Biasucci, *State Housing Finance Agencies: The Vital Search for Renewed Capacity*, [1976] HOUS. & DEV. REP. (BNA) 874. Thus, for example, the Minnesota State Housing Finance Agency (MHFA) funds a variety of housing programs through proceeds from the sale of state bonds. One MHFA Program provides housing rehabilitation loans, and another provides grants for resale. The loan program allows loans up to \$10,000 per single unit structure, with mortgage insurance from the FHA Title I program. A MHFA grant program provides outright grants to lower income households, with a maximum of \$5,000, to cover the cost of home repairs. *Id.*

163. CAL. HEALTH & SAFETY CODE §§ 50000-51900 (Deering Supp. 1978).

164. See CALIFORNIA HOUSING FINANCE AGENCY, ANNUAL REPORT 4 (1976-77).

165. *Id.* at 10-11.

nated by local governments and approved by the housing finance agency.¹⁶⁶ Loans to purchase housing that has been or will be rehabilitated, or to refinance and rehabilitate owner-occupied residences are also provided.¹⁶⁷ The one to four unit structure component of this program uses the Title I Home Improvement Loan Program,¹⁶⁸ but at interest rates reduced to approximately 8%.¹⁶⁹ Loan amounts and amortization schedules are limited by the Title I program.

State housing finance agency programs are particularly valuable for cities that lack legal authority to issue and sell revenue bonds for rehabilitation and related loans, or where programs are not large enough to warrant the administrative and financing costs involved with local bond issues. Even for cities with revenue bond authority and capability, the programs can provide a useful supplement. Cases will exist where the lending criteria permitted under state enabling legislation, FHA, or VA criteria cannot be met but where state housing finance agency loans are available. The latter, moreover, represent an added resource for below market interest rate lending in eligible situations.

F. *The Federally Assisted Programs*

To the extent available, the federal subsidy program will generally provide deeper per unit subsidies than those discussed above. Most relevant to city-wide housing conservation strategies are the following:

1. The Section 8 Housing Assistance Program¹⁷⁰

Section 8 has three major components: existing housing, new construction, and substantial rehabilitation. The section 8 program for existing structures, as administered by the public housing agencies (PHA's), subsidizes the rent of eligible tenants. Tenants receive eligibility certification from the PHA and can apply their subsidies towards the rent on any approved unit within Fair Market Rents.¹⁷¹

166. *Id.* at 13-15.

167. *Id.*

168. National Housing Act of 1974, § 2, 12 U.S.C. §§ 1702-06e (1976).

169. SAN FRANCISCO STUDY, *supra* note 55, at III-53.

170. Housing and Community Development Act of 1974, § 201(a), 42 U.S.C. § 1437f (Supp. V 1975).

171. Fair market rent levels are set by the local HUD office. Although commonly generous for small units, they are usually inadequate for three- and four-bedroom units in most locales.

The program permits eligible families to locate and lease units anywhere within the operating jurisdiction of the PHA.¹⁷² The unit must be approved by the PHA as decent, safe and sanitary.¹⁷³ Upon approval, the owner will receive monthly housing assistance payments equal to the difference between the rent payable by the family, generally twenty-five percent of income as defined, and the approved rent for the unit.¹⁷⁴ Targeting section 8 existing subsidies to certain neighborhoods or buildings is under consideration but has not yet received HUD approval.¹⁷⁵

Under the section 8 new construction and substantial rehabilitation programs, private developers, PHA's, and the two working together may submit development proposals in response to HUD-published invitations or may apply to a state housing finance agency for subsidies for new or substantially rehabilitated projects. While the section 8 program does not provide construction or permanent financing, it does provide long-term commitments of housing assistance payments that can be pledged as security for conventional mortgage loans or loans obtained through the issuance of tax exempt bonds by the state or PHA. City agencies and PHA's can facilitate the development process by working closely with private developers or by submitting independent proposals.¹⁷⁶ HUD is currently reviewing applications for a newly developed Neighborhood Strategy Areas (NSA) program, under which areas designated by cities and approved by HUD as NSA's could receive supplemental section 8 substantial rehabilitation allocations, substantial control over fund deployment and, perhaps most important, liberalized access to FHA programs.¹⁷⁷

172. Housing and Community Development Act of 1974, § 201(a), 42 U.S.C. § 1437f (Supp. V 1975).

173. *Id.*

174. *Id.*

175. One exception to this rule is HUD's Loan Management Set-Aside Program. HUD has allocated a portion of section 8 money as subsidies for units in financially troubled FHA-insured multi-family projects. These subsidies allow low income tenants to remain in the buildings in spite of rent increases necessitated by increased operating costs. HUD field offices negotiate the allocation of subsidies with sponsors and managers of FHA-insured projects. *See* note 95 *supra*.

176. The United States Conference of Mayors, in its recent study of local Housing Assistance Plans, advocates active city participation in the development process. *See* U.S. CONFERENCE OF MAYORS, GUIDEBOOK NO. 1, THE PRIVATE DEVELOPMENT PROCESS (1976) (materials prepared for U.S. Conference of Mayors—HUD Housing Conference).

177. 43 Fed. Reg. 4236 (1978) (to be codified in 24 C.F.R. § 881).

2. Section 312

Section 312¹⁷⁸ has been used extensively in federally-assisted code enforcement (FACE) areas to finance rehabilitation. The program provides 3%, twenty year loans for rehabilitation and permits limited refinancing. The 1977 Housing Act extended the section 312 program through October 1, 1979, authorized \$60 million for fiscal year 1978, and raised the maximum allowable loan amount for residences to \$27,000 per dwelling unit.¹⁷⁹

3. Section 202

This program¹⁸⁰ provides direct federal loans to aid in constructing or rehabilitating rental or cooperative housing for the elderly or handicapped. It is used in conjunction with section 8 and is an active program. Loan terms are up to forty years. Interest rates are based on current treasury rates. Only non-profit sponsors are eligible.

4. Public Housing

Many cities have substantial inventories of public housing, much of which, due to the financial and social problems that have beset public housing in recent years, is in need of rehabilitation. Federal funds are available to local housing authorities for new production, rehabilitation and the modernization of existing units.¹⁸¹

5. Section 235

As recently reactivated, the Mortgage Insurance and Assistance Payments Program for Home Ownership and Project Rehabilitation¹⁸² insures mortgages and provides payments to lenders to reduce the interest rate to 5%.¹⁸³ Homeowners must contribute twenty percent of their adjusted income to monthly mortgage payments and

178. Housing and Community Development Act of 1974, § 111, 42 U.S.C. § 1452b (Supp. V 1975).

179. Housing and Community Development Act of 1977, 42 U.S.C.A. §§ 1452b(c)(4), (d) & (h) (West Supp. 1978).

180. *Id.* 12 U.S.C. § 1701a (1976).

181. For a history of public housing, see Friedman, *Public Housing and the Poor: An Overview*, 54 CAL. L. REV. 642 (1966). See also U.S. NAT'L COMM. ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY 108-19 (1968).

182. National Housing Act of 1974, § 235, 12 U.S.C. § 1715z (1976).

183. 29 C.F.R. § 235.335 (a)(2)(ii)(1977).

make a six percent down payment on the cost of the home. The 1977 Housing Act increased mortgage limits, the maximum amount depending upon location and number of units.

6. The Urban Homesteading Program¹⁸⁴

This program allows for the write-down of the cost of HUD-held properties. Properties are sold, for a nominal fee, to individuals who agree to occupy the property for a minimum of three years and to bring property up to local codes. Section 312 loans may be available to finance improvements.¹⁸⁵

7. The GNMA-Tandem Plan¹⁸⁶

Under this program the Government National Mortgage Association (GNMA) purchases the mortgage on the building at the market rate, as originated by a private lender. GNMA, as permanent mortgagee, charges the mortgagor a below-market rate, 6% to 7.5%, and indirectly subsidizes the monthly debt service by absorbing the differential between the original interest rate and the lower interest rate earned on the mortgage. HUD recently announced a Targeted Tandem program that will provide \$500 million in mortgage money to finance production of some 16,500 new or substantially rehabilitated

184. Housing and Community Development Act of 1974, 12 U.S.C. § 1706e (1976). See OFFICE OF POLICY DEVELOPMENT AND RESEARCH, U.S. DEP'T HUD, EVALUATION OF THE URBAN HOMESTEADING DEMONSTRATION PROGRAM, FIRST ANNUAL REPORT (1977); Williams, *The New Urban Pioneers, Homesteading in the Slums*, THE SATURDAY REVIEW, July 23, 1977, at 9. See generally CAL. SENATE COMM. ON GOVERNMENTAL ORGANIZATION, URBAN HOMESTEADING: SWEAT EQUITY AT WORK HELPING TO SOLVE THE HOUSING PROBLEM (1974); Akre, *Urban Homesteading: Once More Down the Yellow Brick Road*, 3 ENV'T'L AFF. 563 (1974); Robinson & Weinstein, *Urban Homesteading: Hope or Hoax?* 30 J. HOUSING 395 (1973).

185. See [1977] 5 HOUS. & DEV. REP. (BNA) 14:0021.

186. Under the tandem plan, the Government National Mortgage Association (GNMA) purchases or commits itself to purchase mortgages covering government-selected types of housing, using its "special assistance" resources, at preferred prices. The mortgages or commitments are later resold at market prices. FNMA has been the most frequent purchaser. Although in some instances such transactions could result in losses, the government is relieved of the budgetary impact of continuing to own the mortgages. The United States Treasury continues to be the sole day-to-day source of funds for conducting the special assistance programs. For a discussion of the tandem plan, see Krooth & Spragens, *The Interest Assistance Programs—A Successful Approach to Housing Problems*, 39 GEO. WASH. L. REV. 789, 805 (1971). FNMA recently announced plans to purchase \$200 million in urban home mortgages. Wall Street Journal, Jan. 16, 1978, at 19, col. 1.

housing units for moderate and middle income families in 322 metropolitan cities that meet the eligibility requirements for the Urban Development Action Grant (UDAG) Program.¹⁸⁷

G. *Directly Assisted Financing and Intercession*

This Article has emphasized avoiding expenditure of city resources in all situations where adequate financing can be provided through the unassisted private sector, federally insured mortgages, self-supporting revenue bond sources, and federal below market interest rate loan and housing assistance programs. This approach is seen not only as means of protecting city budgets but as essential to conserving CDBG and other available city funds for situations where none of the above will be available or sufficient to achieve the standards prescribed. Cities will always face problems of housing rehabilitation financing that will require direct city assistance. In such cases, the objective must be to leverage the local subsidy to the greatest extent possible and to recover as much of the subsidy as possible at the earliest feasible time.

In virtually all cities, the limited amount of CDBG funds available will impose severe constraints on program levels. In San Francisco, for example, CDBG funds for fiscal year 1978 amounted to \$28 million. Of this, \$14 million was necessarily committed to complete expensive urban renewal projects previously undertaken.¹⁸⁸ This limitation on available resources reinforces the requirements for management efficiency, avoidance of unduly restrictive rehabilitation standards and leveraging subsidy funds. Some of the financing and intercession techniques involved are discussed below.¹⁸⁹

1. Hardship Loans and Grants

City-funded loan and grant programs will commonly be necessary to minimize hardships and provide affordable financing for improve-

187. HUD Release No. 78-60, Feb. 20, 1978.

188. See note 52 *supra*.

189. See U.S. LEAGUE OF SAVINGS ASSOC., SPECIAL MANAGEMENT BULLETIN, PARTICIPATION IN BLOCK GRANT REHABILITATION PROGRAMS, BULL. No. S-175 (May 31, 1978) (containing detailed information on programs to leverage CDBG funds for rehabilitation); OFFICE OF PROGRAM PLANNING AND EVALUATION, U.S. DEP'T HUD, A GUIDE TO LOCAL HOUSING REHABILITATION STRATEGIES IN HUD REGION IX (1977) (describing various leveraging methods used by western cities to stretch CDBG budgets); D. GRESSEL, FINANCING TECHNIQUES FOR LOCAL REHABILITATION PROGRAMS (1976); Ehrman, note 2 *supra*.

ments as part of a conservation/rehabilitation strategy. Thus, the San Francisco Study proposed provision of hardship loans of up to \$5,000 for code repairs by homeowners throughout the city.¹⁹⁰ Such loans would be at zero percent interest, with repayment of principal deferred until death or earlier transfer of the property. Rental units would also be included at lower per unit loan limits and in conjunction with rent stabilization guidelines. Provisions would be made for flexible repayment schedules geared to income levels. To permit faster recovery and recycling of hardship loan funds, periodic recertification of needs would be required from all hardship loan recipients. Consideration might also be given to a coordinate program of grants in hardship cases where the amounts involved are too small to justify the costs and burdens of loan administration.

Having in mind the leverage achievable through full utilization of revenue bond financing, a first use of CDBG funds might be to provide partial loan guarantees and support payments necessary to qualify particular prospective mortgagors for mortgage insurance. For example, where FHA insurance would be available but for the proposed mortgagor's insufficient repayment ability, the city could purchase GNMA or private pass-through securities,¹⁹¹ now conventionally available under a recent Bank of America program,¹⁹² and pledge these in amounts sufficient to supplement the borrower's mortgage installment payments to meet credit requirements. Here also, provision might be made for periodic income recertification and release of the pledged securities to the extent warranted by improved repayment capacity on the part of the mortgagor.

A second leveraged use of CDBG funds is attainable by providing reserves to support revenue bonds where the bond proceeds are not limited to FHA, VA or SBA insured loans. Leverage of up to twenty-to-one, with reduction of reserves over time, as outstanding loan amounts are reduced, should be attainable.¹⁹³

Finally, a wide variety of lender-based models for hardship loans has been developed and is in use by state housing finance agencies and city governments. New techniques and adaptations are constantly emerging. A recent HUD Region IX publication identifies the following techniques currently in use in California, involving in-

190. SAN FRANCISCO STUDY, *supra* note 55, at III-3.

191. *Id.* at III-95.

192. *The Growing New Market in Mortgages*, San Francisco Sunday Examiner and Chronicle, Nov. 6, 1977, § c, at 11.

193. SAN FRANCISCO STUDY, *supra* note 55, at III-79.

terest rate reduction or the establishment of reserve funds to underwrite or share the risk of loss with private lenders.¹⁹⁴

(1) Loan-by-loan relending model—The private lender receives city funds and loans them at an interest rate sufficient to cover administration expenses (3.75%). No leverage is achieved.

(2) Interest subsidy write-down model—City funds directly subsidize interest rates on bank-funded home improvement loans, sometimes utilizing FHA Title I insurance.

(3) Shared loan model—Under this model the city deposits with the lender a portion of the principal of each rehabilitation loan. Each loan is thus funded in part by the bank, at market interest rates, and in part by the city, at a subsidized rate. The net interest rate applicable to each loan derives from the proportion of the bank/city participation and from their respective interest rate charges. The city's funds, net of the subsidy, are recovered out of loan repayments.

(4) Compensating balance deposit model—City funds are deposited with the lender, pursuant to an agreement to lend a large amount of regularly deposited money. As loan commitments are made, an amount equal to perhaps ten percent of the loan principal is drawn from the city's deposits and placed in a loss reserve account which can be drawn upon by the lender in the event of default. A varying percentage of the city's deposit may be placed in a second non-interest bearing account that serves to write-down the loan interest rate.

(5) Tax exempt borrowing model—City funds are deposited, as a reserve account, with the private lender who lends a larger amount to a city agency for rehabilitation loans. Five-to-one leverage is common. Interest received by the lender on funds borrowed by the city agency is tax exempt. The resulting lower interest rate may be passed through to borrowers, providing rehabilitation loans at approximately 6% to 7% interest.

2. Emergency Rehabilitation

Where building owners are unwilling or unable to correct safety hazard code violations or meet other applicable standards, city agencies may order the work performed, placing a lien upon the property for costs plus interest and a charge for administration. Loan terms should be short and interest rates at least at market level to encourage early repayment.

194. REGION IX, U.S. DEP'T HUD, A GUIDE TO HOUSING REHABILITATION STRATEGIES (1977). See also Ehrman, note 2 *supra*.

3. Conversion to Owner Occupancy

Conversion of rental property to owner occupancy is an important way to encourage rehabilitation and adequate ongoing maintenance.¹⁹⁵ Yet high down payment requirements often discourage conversion. A home-ownership assistance program might provide for CDBG-funded down payment assistance loans in designated residential rehabilitation or code enforcement areas. Recapture provisions should be considered to prevent speculator abuse.

4. Acquisition and Rehabilitation Programs

Where owners are unable or unwilling to bring substandard buildings up to code, and all other methods fail, it is important for cities to have legal authority and adequate funding for expedited property acquisition.¹⁹⁶ A major problem with this acquisition-rehabilitation approach has been its high per unit cost resulting from the failure of "fair market appraisals" to fully account for the potential costs of bringing the property up to code. Where rehabilitation occurs while the property is in public ownership, however, available subsidies under federal income tax laws, particularly section 167(k)¹⁹⁷ which provides for accelerated depreciation, may not be utilized.¹⁹⁸ Further, the city may fail to avail itself of the special technical and management expertise available through specialized rehabilitation contractors or of subsidized credit available to small contractors under recently promulgated Small Business Administration regulations to support the acquisition, rehabilitation and resale of residen-

195. A number of economists and housing planners advocate home ownership as a means of encouraging neighborhood maintenance. See C. ABRAMS, HOME OWNERSHIP FOR THE POOR (1972). See also G. STERNLIEB & R. BUCHELL, RESIDENTIAL ABANDONMENT, THE TENEMENT LANDLORD REVISITED (1973); P. Walter, Home Ownership Programs for Lower Income Families: Legal and Financial Implications (1972) (unpublished Ph.D. dissertation in Univ. California, Berkeley library). The 1977 Housing Act increased maximum mortgage amounts and decreased down payment requirements. Housing and Community Development Act of 1977, Pub. L. No. 95-128, §§ 304-05, 91 Stat. 1133 (amending 12 U.S.C. § 1709, 1715k, 1715m, 1715y (1976)).

196. An alternative or complimentary approach might employ court-imposed receiverships. See generally Goddard, *Rent Receivership: An Evaluation of its Effectiveness as a Housing Code Enforcement Tool in Connecticut Cities*, 2 CONN. L. REV. 687 (1970).

197. I.R.C. § 167(k).

198. However, where the property is sold by the public entity after rehabilitation and before the property is placed in service, the new owner may claim the deductions. Treas. Reg. § 1.167(k)-1(b).

tial properties.¹⁹⁹

None of these problems are insurmountable. More rigorous code inspections and full documentation of code violations in advance of acquisition should reduce excessive purchase prices. Rehabilitation, or first post-rehabilitation occupancy, can be deferred until after resale of the property, thus taking advantage of the section 167(k) accelerated depreciation subsidy. By participating with lenders on a shared risk basis, cities can ensure "bridge" loans that cover the time gap commonly created by a need to sell prior to completion of new permanent financing arrangements.

The foregoing enumeration of financing and intercession techniques is neither all inclusive nor fully detailed. Its purpose, instead, is to illustrate the spectrum of mortgage finance, and suggests a wide range of techniques available. Cost effective utilization of public resources through some such model is essential for a city-wide conservation/rehabilitation strategy.

PART III: LOCAL GOVERNMENT SUPPORTS

Local government commitment manifested through a variety of neighborhood-directed supportive actions is another necessary ingredient for a successful rehabilitation/conservation program. CDBG funds, or other local resources, will be needed to cover the considerable administrative costs of a rehabilitation program and relocation payments, and for leveraged subsidies in support of hardship loans and other financing aids. In addition, it will commonly be necessary to upgrade public properties and services such as street repairs, sewers, lighting and tree planting, public transportation, police and fire protection, sanitation, child care facilities, drug rehabilitation centers, libraries and parks. Code enforcement agencies may need upgrading in manpower, technical skills and general capability. Special housing courts that deal with code violations and similar housing cases might be created.²⁰⁰ Mechanisms to permit mass purchasing can result in substantially reduced rehabilitation costs. Fair Plan programs, to ensure the availability of fire and vandalism insurance for renovated properties, may be necessary.²⁰¹ Finally, every effort

199. 13 C.F.R. § 120 (1977). *See also* Small Business Act Amendments of 1976, 15 U.S.C. § 636 (1976) (authorizing SBA guarantees of loans to small builders).

200. *See* Phillips & Bryson, *supra* note 121, at 867-68.

201. The Urban Property Protection and Reinsurance Program was extended until April 30, 1978. National Insurance Development Act of 1975, Pub. L. No. 94-13, 89 Stat. 68 (amending Housing and Urban Development Act of 1968, 12 U.S.C. §

should be made to coordinate rehabilitation activities with manpower programs under the Comprehensive Employment and Training Act of 1973 (CETA)²⁰² or the proposed public service job legislation, if enacted.²⁰³

The role and functions of neighborhood organizations, counseling programs, capital improvements, shopping district improvements following rehabilitation, and potential disincentive effects of property tax reassessments require special attention. Each of these is briefly considered below.

A. *Neighborhood Organizations*

Implicit in an emphasis on voluntary rehabilitation is the need for city agencies to work closely with neighborhood organizations and associations. These organizations are the most useful vehicle for developing and sustaining resident understanding and support for rehabilitation. Even in Type III and Type IV areas it is not uncommon to find neighborhoods with high levels of general maintenance and livability because of the efforts of a neighborhood improvement group. Revitalization programs must be, and must be seen as, neighborhood programs based on neighborhood priorities, even though supported by government funds and technical assistance.

Organizing neighborhood improvement associations capable of surviving over a long period in low and moderate income areas is, however, a difficult undertaking. Survival requires a history of successful solutions to specific issues. There is no shortage of issues in these areas, but successful accomplishments are not easily achieved. Even self-starter associations need the environment and the resources to achieve enough early successes to develop an on-going organization. In those areas where associations are most needed, few can meet this test.

1749bbb (1976). See 24 C.F.R. § 1905 (1977). Fair Plan programs currently operate in California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin, District of Columbia, and Puerto Rico.

202. 29 U.S.C. §§ 801-992 (Supp. IV 1974).

203. President Carter, in his National Urban Policy, asked Congress for \$1 billion per year for a program of labor-intensive public works for communities with high unemployment. See U.S. CODE CONG. & AD. NEWS, 95th Cong., 2d Sess. 841 (April 1978).

City assistance in creating that climate and providing the minimum resources necessary for early success should be an integral part of a rehabilitation/conservation strategy. Such assistance might include: financial support for personnel, possibly an organizer/planner; funding for small, high-visibility neighborhood public improvement projects; self-help funds for assisting home repair efforts (tool loan program and materials) and to support necessary technical assistance; and technical assistance and resources for neighborhood-initiated efforts such as painting, clean-up, tree planting, and other visual improvements. While these supports may be made available to neighborhood groups in all parts of the city, particular emphasis should be given Type III and Type IV Areas. The 1977 Housing Act authorizes cities to make CDBG grants to neighborhood-based private, non-profit groups, local development corporations, and minority small businesses to aid eligible neighborhood revitalization and economic development activities.²⁰⁴ In funding these activities, however, cities find it necessary to strike a balance between the encouragement of resident participation and the need to avoid wasteful duplication of facilities and expertise.

B. *Counseling*

Counseling will be necessary both to identify rehabilitation requirements and priorities for each home or building situation and to obtain the best available financing. Contractor-type skills are required to assist owners in identifying the repairs and improvements needed, obtaining bids, ensuring adequate contract protections, choosing a contractor, and inspecting performance. Technical assistance in this area will discourage overcharging and shoddy workmanship by contractors who want to maintain eligibility to participate in the program.

Selection of the best financing among the myriad of sources and programs, public and private, subsidized and unsubsidized, will require expert advice. Each program contains detailed eligibility requirements that may include area limitations, specific loan limitations with regard to maximum amounts, loan-to-value ratios, maximum mortgage term, interest rates, points, and other technical but important factors. Some are easily accessible. Others involve laborious and time-consuming processing.

204. *See, e.g.*, Small Business Investment Act, § 106, 15 U.S.C.A. §§ 681-92 (West Supp. 1978).

Closely related to financial decisionmaking is tax planning for both property tax and income tax effects. It may be possible in some instances to allay over-concern by accurate estimates of the property tax effects. Where increases will occur, it is important for future financial projections to accurately assess the property tax consequences.

Owners of low or moderate income properties may be unaware of the special five year write off for qualified rehabilitation expenditures, which might otherwise constitute a significant inducement to undertake rehabilitation.²⁰⁵ These deductions are available only upon scrupulous compliance with exacting provisions governing the dwelling units involved, including allocation rules and limitations to first users.²⁰⁶ Owners should also understand the essentials of the applicable recapture²⁰⁷ and roll-over²⁰⁸ provisions.

C. *Low Cost Neighborhood Improvements*

Many neighborhoods, especially in Type III and IV areas, have low levels of such amenities as street landscaping, mini-parks, traffic control and parking, street and sidewalk repair, and adequate trash receptacles. Public as well as private properties may be poorly maintained. The lack of public action to remedy these often simple problems undercuts community pride and evidences a failure of city government concern. Past efforts by residents to obtain stop signs, speed bumps, or tree planting may have been frustrated by bureaucratic delays. Often much can be done to improve conditions and encourage private upgrading by low cost, high visibility, public capital improvements. CDBG funds should be available for such purposes in high need areas.²⁰⁹

205. I.R.C. § 167(k). The five year write-off for low income rehabilitation has been extended through Dec. 31, 1978.

206. See Treas. Reg. § 1.167(k).

207. I.R.C. § 1250.

208. I.R.C. § 1039.

209. The 1977 Housing and Community Development Act requires funds to be allocated to achieve a reasonable balance among program objectives, which include installation or construction of public facilities and site improvements. 42 U.S.C.A. § 5305(a)(14) (West Supp. 1978). See generally NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, A LAWYER'S MANUAL ON COMMUNITY-BASED ECONOMIC DEVELOPMENT 696 (1974).

D. *Neighborhood Shopping District Improvement*

The financial and physical condition of the local shopping strip is a strong indicator of neighborhood health. Shopping strips in Type III and IV areas commonly suffer from uninviting appearance and insufficient public services, transit accessibility, and parking. In these neighborhoods effective merchant groups rarely exist.

Plans for shopping district improvement will vary according to local needs and priorities, ranging from spot rehabilitation to comprehensive programs, possibly in conjunction with the organization of a Local Development Corporation.²¹⁰ Improvements in the appearance of both publicly and privately owned areas will be necessary. Accessibility can be improved through transit routing and limited street parking or by providing off-street parking. If these public improvements can be provided, and if financing is made available to renovate shops and facades, a better business climate and increased patronage should result.

E. *Adverse Property Tax Consequences of Rehabilitation, Real and Perceived*

Concerns about increased property tax assessments can impede neighborhood conservation and housing rehabilitation efforts. A substantial body of recent literature supports the proposition that property taxes are a direct tax on housing and often operate regressively to impose the heaviest relative burden on those least able to pay.²¹¹ For most cities, however, the relative inelasticity of other revenue sources requires that proposals tending to reduce the tax base be given critical study.

Property owners' concerns as to the potential tax increase effects may be exaggerated.²¹² Past tax increases may only reflect general inflationary increases in property value. In most cities many repairs and improvements can be undertaken without an increase in assess-

210. 15 U.S.C.A. § 696 (West Supp. 1978); 13 C.F.R. §§ 108, 502, 502.1 (1977). See generally NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, A LAWYER'S GUIDE TO COMMUNITY-BASED ECONOMIC DEVELOPMENT 696-99 (1974).

211. See studies cited in Phillips & Agelasto, note 5 *supra*.

212. This element regarding concern over potential property tax increases is a very significant factor today because of the overwhelming support given California's Proposition 13, the statewide referendum that served as the focal point in a new "taxpayer's revolt." Taxpayer concern, however, generally centers on systemic problems involving inflated assessments, while tax increases following rehabilitation stem from actual increases in property value.

ments.²¹³ Even where the assessment will increase, it will be based on an increase in the value of the property that will rarely, if ever, equal the full cost of the rehabilitation. The market value of many properties involved in improvement programs will not increase. This is particularly true in poorer areas, where assessed values have not followed declines in market value. Finally, if reassessment is based on income-producing capacity, the imposition of rent stabilization as part of a financing package will tend to offset the effect of the improvements on value.

A number of cities have adopted property tax relief measures in support of housing rehabilitation objectives.²¹⁴ In Boston, the Mayor's Housing Improvement Program (MHIP), established in 1973, precludes reassessment for repairs unless they significantly improve market value.²¹⁵ In addition, a tax credit equal to ten percent of the value of work performed is allowed, direct grants equal to twenty percent of repair value are made to homeowners, and counseling services are provided.²¹⁶ Boston Mayor Kevin White estimated that the ten percent tax credits cost the city \$2 million annually while generating approximately \$20 million in home improvements.²¹⁷

Cities may wish to undertake studies of the potential costs and benefits of a property tax credit or assessment stabilization approach to stimulate rehabilitation. Property tax credits may require changes in state laws and constitutions, but have the virtue of relatively easy administration. On the other hand, each tax dollar waived amounts to a direct dollar grant. This may result in a lack of optimum targeting among neighborhoods and buildings with no assurance of an optimal financial packaging for each property.

213. See Gergen, *Renewal in the Ghetto: A Study of Residential Rehabilitation in Boston's Washington Park*, 3 HARV. C.R.-C.L. L. REV. 243, 275-76 (1968).

214. See PRICE, WATERHOUSE & COMPANY, A STUDY OF THE EFFECTS OF REAL ESTATE PROPERTY TAX INCENTIVE PROGRAMS UPON PROPERTY REHABILITATION AND NEW CONSTRUCTION (1973) (Report to the U.S. Dep't HUD). See also J. HEILBRUN, REAL ESTATE TAXES AND URBAN HOUSING (1966); Agapos & Dunlop, *Elimination of Urban Blight Through Inverse Proportional Ad Valorem Property Taxation*, 32 A.J. EC. & SOCIOLOGICAL 143 (1973); Alpert, *Property Tax Abatement: An Incentive for Low-Income Housing*, 11 HARV. J. LEGIS. 1 (1973); Meir & Morris, *Tax Shelters and Real Estate: The Rehabilitation of Low Income Housing*, 17 TAX COUNSELOR'S Q. 214 (1973); Nemann, *The Value of Tax Incentives as a Means of Encouraging the Rehabilitation of Low-Income Housing*, 41 U. CIN. L. REV. 151 (1972).

215. See PRICE, WATERHOUSE & CO., note 214 *supra*.

216. *Id.*

217. See N. Rogg, *Urban Housing Rehabilitation in the United States* (1977) (report to the U.S. League of Savings Associations).

One approach in areas with increasing property values is to provide for state payment to cities of all or a portion of the additional property tax obligation of low or moderate income property owners resulting from rehabilitation. A similar approach might be worked out for low and moderate income rental properties. In either event, the state could obtain a lien on the property dischargeable with interest at the time of the owner's death or improved financial condition, or in the event of sale.²¹⁸

PART IV: PROGRAM MANAGEMENT

The administrative organization for conducting a city-wide housing rehabilitation and neighborhood improvement program is necessarily a key determinant of its success. The administrative organization of most cities is likely to reflect earlier program priorities such as urban renewal and public housing. Responsibility for housing finance and condition is commonly fragmented among various departments and agencies, each with narrowly defined program expertise. Key management functions and responsibility for coordination may, however, have been left unprovided. Major changes in administrative organization may require charter amendments or even legislation at the state level. Resistance is likely to come from the various interest groups that will be affected. Yet centralization of program responsibility and information systems is a vital first step in the adoption and implementation of a city-wide conservation/rehabilitation strategy.

In the short term, pending more extensive reorganization, two critical elements would seem to be required: an Office of Housing Finance, possibly joined with the office responsible for CDBG allocations, and a Financial Advisory Committee.

The Office of Housing Finance²¹⁹ would require a staff of planners, counselors, real estate, and financial experts. Its key functions might include responsibility for coordination with HUD, state and private lenders, and neighborhood-based organizations; administration of all indirect financial assistance including, if possible, designation as an FHA approved mortgagee; monitoring redlining data; coordination of municipal bond financing programs; financial coun-

218. In California, Proposition 16, approved by the voters on June 8, 1976, authorized the legislature to provide for state subventions to localities to pay, on behalf of low and moderate income persons aged 62 or older, property taxes assessed on their principal places of residence. See CAL. CONST. art. XIII, subsec. 8.5.

219. See notes 112-19 and accompanying text *supra*.

seling and preparation of financial assistance manuals; and establishment and management of a revolving rehabilitation assistance fund to consolidate all direct financial assistance.

The Office of Housing Finance should establish and work closely with a financial advisory committee comprised of citizens, representatives from the financial and real estate communities, and representatives from the appropriate city, state, and federal governmental units and public agencies (HUD, VA, state housing finance agency). Financial Advisory Committee should serve as a forum for the identification of constraints in both private and public sector lending, and the development of innovative solutions.

The various activities performed under the name of "community development" are closely related in thrust, target population and area. Substantial reductions in administrative costs with consequent expanded program activity should result from a more unified organization and management framework. Accordingly, cities committed to a rehabilitation/conservation approach may find it desirable to consolidate all housing and community development program activities into a single department responsible to the mayor or chief administrative officer. For most cities the potential savings and improved effectiveness will warrant close examination of implementing such reorganization.

V. CONCLUSION

The difficulties of urban revitalization are real and substantial, but the imperatives are clear. Already a variety of revitalization models reflecting economic and political factors and life style preferences appear in various regions and cities. Public sector commitments supporting revitalization programs are increasing, although the full implication of these commitments remains to be perceived. Increasingly, attention is being directed toward the development of a technology of revitalization, and the design of the requisite institutional and financial machinery. This Article is intended to assist policymakers in that effort by pinpointing some of the issues an urban revitalization strategy will require them to address.

