Dwindling public-sector support for affordable housing during the past several years has strained the creativity of housing finance professionals. But none of the government cutbacks thus far have had repercussions as serious as Congress' elimination of "incremental" Section 8 Existing Housing certificates and vouchers.

Last summer Congress rescinded over $2.6 billion in funding for new Section 8 vouchers and certificates that had already been appropriated, and the continuing resolutions that provide HUD its fiscal 1996 spending authority contain no new funding for the program. As the pipeline of Section 8 subsidies dries up, the housing community is only now beginning to appreciate the extent to which housing policies and practices will have to adjust.

Budget Casualty

Section 8 Existing Housing certificates provide the difference between 30 percent of a tenant's income and the HUD-established fair market rent (FMR), currently $817 per month for a two-bedroom apartment in New York City. Section 8 vouchers, a variation of the concept introduced in 1983, allow tenants to rent apartments for more than the FMR, but they must pay the difference. Households with incomes less than 50 percent of the area median are eligible for either, and may use them to lower rent burdens in their existing apartments or to rent new apartments, providing the units meet federal housing quality standards.

Because the program relies on private-sector housing supply and permits choice and mobility on the part of recipients, Section 8 has always enjoyed the support of economists, policy analysts and others who prefer market-oriented solutions to housing problems. The rent subsidy approach gained even wider appeal in recent years as a result of the research conducted by James E. Rosenbaum of Northwestern University. Studying public housing residents in Chicago relocated to private housing under the Gateaux desegregation order, Rosenbaum found that those families displayed significant increases in employment rates, while their children performed substantially better in school compared to those of a control group that remained in public housing. The Gateaux program utilizes Section 8 subsidies to facilitate desegregation, although participants receive much more assistance and counseling than in a conventional Section 8 program.

Since the Section 8 approach has ideological appeal to both conservatives and liberals, until recently it was considered the probable direction of federal housing policy. The Clinton Administration, in its Reinvention Blueprint of late 1994, proposed replacing public housing and other project-based subsidies with tenant-based vouchers, and Republican Senator Lauch Faircloth has proposed abolishing HUD entirely and replacing it with an Office of Federal Housing Voucher Assistance.

Section 8 certificates and vouchers are issued for five years (some were initially issued for 15), and have traditionally been renewed for additional 5-year increments. Although the federal government is not legally required to renew certificates and vouchers when they expire, it is generally considered to have a political, if not an ethical, responsibility to do so. In the 1994 to 1998 period, a confluence of renewals for both 15-year and 5-year subsidies has produced a severe budget bulge for Section 8 funding that is exacerbated by federal accounting rules that require the full cost of the subsidy to be charged against the current year's spending authority. A 1993 GAO study estimated that tenant-based Section 8 renewals would increase from about 150,000 per year in 1994 and 1995 to close to 300,000 per year during the 1996 to 1998 fiscal years. At a cost of about $6,900 per year per unit, renewal costs were expected to soar from $4.8 billion in fiscal 1995 to $11.2 billion in fiscal 1997. Further complicating the budget picture is a similar bulge in renewal costs for Section 8 project-based housing. Many of those 20-year contracts are now expiring, causing estimates of contract renewal costs to jump from about $800 million in fiscal 1994 to nearly $5 billion in fiscal 1996. These budget requirements come at a time of intense political debate over federal fiscal policy and have served to focus Congressional scrutiny on HUD.

Consistent with the recommendations of a House Republican Budget Committee Report prepared during the spring of 1995, the Republican-controlled 104th Congress took immediate action to restrain the growth of Section 8 spending. Last summer Congress rescinded appropriations for over 54,000 incremental certificates and vouchers, for which a notice of funding availability had

Continued on Page 2
already been issued. In the HUD appropriation bill for fiscal 1996 that has, in effect, been enacted through continuing resolutions, no new Section 8 certificates or vouchers were funded except for a minimal number associated with mark-to-market or public housing voucherization demonstrations. As long as the current political alignment prevails and a balanced federal budget within seven years remains a goal of both political parties, few observers expect funds for new Section 8 subsidies to be restored.

In addition to eliminating funding for new certificates and vouchers, Congress and the Clinton Administration have sought to curtail the costs of renewing existing subsidies. In 1994 the renewal term was cut from five years to two, thus reducing the budget authority necessary to renew each certificate from about $35,000 to $13,000. Congress is also trying to “recapture” previously-issued certificates and vouchers when their current holders die or become ineligible. The House Budget Committee recommended reissuing only 50 percent of the certificates and vouchers turned in; that was to be effectuated according to the House appropriations bill by requiring public housing authorities to delay, for six months, the reissuance of the subsidies. The appropriations bill later vetoed by the President included a three-month turnover delay, a provision incorporated into the temporary spending bills under which HUD now operating.

In recent years New York City had been receiving about 10,000 incremental Section 8 certificates and vouchers annually, with about 8,700 going to the New York City Housing Authority and the rest to HPD. In addition, about 3,600 out of NYCHA’s 71,000 previously-issued certificates and vouchers are returned to the agency each year and are available for reissue, while HPD is able to reissue several hundred annually. The net result of the funding termination and recapture provisions are that the number of certificates and vouchers available in the city will decrease from about 15,000 to 4,000 per year.

Renovating Rehab
The decreased availability of Section 8 subsidies will force a dramatic change in the way the city structures its in rem disposition, development and moderate rehabilitation programs. Currently, HPD utilizes Section 8 certificates to enhance cash flow in very-low income in rem buildings slated for disposition and to mitigate the effects of rent restructuring on low-income tenants in private buildings undergoing Participation Loan (PLP) or Article 8-A moderate rehabilitation.

Anticipating the vulnerability of in rem disposition efforts to potential federal cutbacks, the Giuliani Administration designed its in rem initiatives, particularly the Neighborhood Entrepreneurs (NEP) and Neighborhood Redevelopment (NRP) programs, to function without Section 8. City capital

subsidies and federal HOME dollars deliver the buildings to their new owners virtually debt-free, and occupied buildings are usually clustered with vacant buildings to achieve a better combined income mix. Federal low-income housing tax credits are used to provide operating reserves.

The older in rem programs, however, including the Neighborhood Ownership Works (NOW), LISC/Enterprise, and Tenant Interim Lease (TIL) programs, usually utilized Section 8 subsidies for their 30 percent homeless component, and many of those are well into the disposition process. Revising the underwriting of those buildings will be a difficult and time-consuming process, probably involving an infusion of additional HOME funds for operating reserves. Consequently, HPD is apparently intending to give those buildings priority for the limited amount of certificates that will be available through recaptures, and the agency is negotiating with the Housing Authority to get a portion of NYCHA’s recaptured certificates to use until its disposition programs can be “transitioned.”

Section 8 Reservations and Reissues:
FY1991 - FY 1994

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Source: U.S. Department of Housing and Urban Development and Mayor’s Management Report

For development programs that have relied heavily on Section 8, the loss of those subsidies means substantial retooling. The SRO Loan Program provides loans for the development of single room occupancy housing for homeless and other low-income singles; projects developed under the program are required to accept homeless placements for 60 percent of their units. In past years, the program has provided Section 8 subsidies for all formerly homeless placements. Under existing conditions, however, there are not enough certificates to meet the needs of completed projects, nor are any expected for future developments.

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In the absence of Section 8 subsidies, the program must now rely on the federal government’s substantially smaller SRO Moderate Rehabilitation and Shelter Plus Care rent subsidies to support its 60 percent homeless component. SRO sponsors are also exploring the possibility of diverting Low Income Housing Tax Credit equity to subsidize the rents of these tenants. In a worst-case scenario, the law authorizing the SRO Loan Program, Article XI of the New York State Private Housing Finance Law, would permit the program’s homeless placement requirement to be lowered to 30 percent. This is an outcome that both the city and housing sponsors hope to avoid.

The effects of rehabilitation programs aimed primarily at the private rental stock, notably PLP, will be profound. Since the late 1970s, the PLP program, the city’s principal neighborhood stabilization tool, has relied on Section 8 subsidies to mitigate the effects of rent increases for approximately 20 percent of tenants in renovated buildings. About 1,000 apartments are renovated annually through PLP, requiring roughly 200 certificates. With no possibility of rent subsidies, there are likely to be fewer rehabilitation jobs undertaken and more tenant resistance to them when they are. Use of the Low-Income Housing Tax Credit, which has increasingly become a part of PLP financing, requires annual certification of tenant incomes; cooperation may be harder to elicit without the promise of Section 8 subsidies for eligible households.

Many developers of projects underwritten with an anticipation of Section 8 availability have since been notified that the rent subsidies will not be forthcoming. Some are already under construction. The rent increases, which typically range from $5-$20 per month per room, may have to be absorbed by tenants if the city is unable to produce the certificates.

In the future, PLP rehabilitations will have to adapt because there will be less rental income to service debt and because the tax credit financing will increasingly have to go toward operating reserves rather than development. The options, however, are limited. HPD has already tightened the program guidelines in order to stretch its capital budget funds; the former 65 percent to 35 percent city-private loan blend has already been cut to 50-50, and that is now calculated net of tax credit funding. The potential to skew rent increases toward residents with higher incomes is limited because of prior litigation, in which the courts have ruled that rent increases imposed under the PLP law must be spread equitably among tenants. Some financing executives have suggested that the city could blend its funds somewhat more effectively than it does now; HOME funds, for example, could be earmarked for the acquisition cost portion of a project since tax credit rules exclude federal subsidies when determining eligible costs and acquisition costs are not a tax credit eligible expense in any event. Others predict that balloon payment mortgage structures on the city loan component will become an increasingly common feature of PLP financing.

Whatever techniques might be devised to further leverage available funds, future PLP rehabilitations will likely involve smaller work scopes and smaller rent increases. A significant portion of existing PLP volume may become infeasible, with a disproportionate impact coming in low-income neighborhoods where the availability of Section 8 subsidies is most critical. Moreover, the Low-Income Housing Tax Credit is an uncertain foundation on which to base so many of the city’s housing programs. Tax credits are capped at $1.25 per capita for each state (excluding that which is financed by tax-exempt bonds subject to private activity bond volume caps) and the volume cap may, for the first time, become a real constraint. The long-term future of the tax credit itself is in jeopardy. Despite fierce lobbying, Congress included a tax-credit sunset provision in its budget reconciliation bill that was vetoed by the President last fall.

Shelter Shakeout

While HPD has used Section 8 to support rehabilitation programs, the majority of certificates and vouchers allocated to New York City are provided through contracts with the New York City Housing Authority, which uses them to support a more conventional rental assistance program. Federal preferences, political pressures and legal concerns have made Section 8 an increasingly critical component of the city’s homeless policy, however, and the dramatic reduction in their availability would, by itself, force a fundamental rethinking of housing priorities. Combined with proposed federal and state welfare cuts and the possible elimination of Jiggets supplemental rent payments, homeless policy is heading for its biggest crisis since the early 1980s.

During each of the past 15 years from 10,000 to 15,000 families have streamed into the city’s homeless shelters, creating a persistent need for permanent housing into which they could be placed. City-owned in rem housing has served as the principal placement resource; over 13,000 families have been relocated from shelters into HPD-managed buildings since 1987. During the late 1980s and early 1990s, thousands were also placed in rehabilitated vacant buildings through a variety of HPD programs. For a time, NYCHA was also accepting about 2,500 referrals per year from the city’s homeless system.

Over the past several years each of those placement options has dwindled. Placements into in rem housing have been cut back in order to make the buildings more viable for disposition and all homeless placements into HPD buildings are slated to end by July. The city’s massive housing creation effort has dissipated as budgets and the supply of vacant buildings that can be rapidly restored were exhausted. NYCHA, concerned about a continual decrease in the number of working families in its projects and about the destabilizing effects of placing troubled families in its housing without adequate funding for services, negotiated an agreement with the Dinkins administration in 1992 that cut its quota of referrals to about 700 per year.

With those decreases in openings in publicly owned or financed housing, the city has come to rely more heavily on Section 8 subsidies to place homeless families into private

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Section Zero

Continued from Page 3

and individuals requesting “temporary housing assistance.” The regulations are intended to give localities new leverage to ensure that shelter is provided only to those who have no other available resources. They would require individuals and families to cooperate in an assessment process to determine whether other housing resources are available or if applicants have sufficient income to make them ineligible for shelter. They would prohibit shelter residents from unreasonably refusing permanent housing placements. And, they would require that shelter residents participate in prescribed social service programs and refrain from dangerous or illegal activity. In their most controversial provision, the regulations order social service districts to deny shelter for up to 30 days for individuals or families who violate these requirements.

| Apartments Allocated to Homeless Families and Individuals by Source: FY1992-FY1995 |
|---------------------------------|----|----|----------------|---|
| HPD                            | NYCHA | EARP/Sec. 8 | Total |
| FY1992                         | 3,643 | 1,666 | 1,422 | 6,731 |
| FY1993                         | 3,225 | 1,200 | 2,227 | 6,652 |
| FY1994                         | 2,563 | 1,026 | 3,406 | 6,995 |
| FY1995                         | 1,997 | 1,133 | 2,187 | 5,317 |

Source: Mayor's Management Report

Ten days after they were issued, New York State Supreme Court Justice Helen Freedman issued a temporary restraining order, which is still in effect, prohibiting the state from using the regulations to authorize the denial or discontinuance of emergency shelter for homeless families or children who lack other housing resources.

The Pataki Administration’s regulations represent a forceful challenge to the notion, argued by homeless advocates in a number of separate legal actions, that shelter is a right which may not be denied. Both the city and state have taken the position that shelter represents a form of public assistance; past court rulings have established that the state may apply conditions to public assistance and deny support if those conditions are violated. Despite over a decade and a half of litigation, no court has yet issued a decisive ruling on this issue.

Growing budget pressures have given city and state officials a new impetus to finally settle this legal question. The diminishing resources for housing development and preservation generally, along with the wrenching changes that will be set in motion by the termination of funding for additional Section 8 subsidies, suggest the need for a fundamental reassessment of the city’s housing priorities. That reassessment, however, is constrained by court orders and other legal considerations that define the city’s ability to choose among homeless, neighborhood preservation and other housing goals.

Litigating Priorities

The city believes that it needs greater legal authority to determine the eligibility of families for temporary, and ultimately, permanent housing. Recently, New York State has attempted to give the city more breathing room in fashioning its policies. In November 1995, the Pataki Administration issued new regulations defining responsibilities for families and rental housing. In 1989, Section 8 certificates and vouchers were combined with Emergency Assistance Rehousing Payments (EARP), which provides cash payments to landlords who accept families from city homeless shelters, creating a package of incentives that proved much more attractive to landlords than either program had separately. Between 1989 and 1995, nearly 13,000 homeless families were placed into apartments through the combined Section 8/EARP program.

With the reduction in Section 8 availability, maintaining the homeless placement rate of past years would require the city to devote its entire supply of recaptured certificates and vouchers to that purpose. Even then, if welfare cutbacks, recession, or other factors increase the numbers of families entering the shelter system, it could quickly become overwhelmed. In fact, the cutbacks in Section 8 and other low-income housing programs will make housing affordable to very low-income families even more scarce and increase the incentive for families to enter the shelter system in order to obtain it.

Since the Department of Homeless Services was created in 1993, the city has sought, through homelessness prevention and other casework techniques, to divert as many families as possible from the shelter system. In fiscal 1995 about 21 percent of families seeking shelter at the agency’s central intake center in the Bronx were diverted, helping to reduce the number of families entering temporary housing from 14,691 in 1993 to 10,996 in 1995.

The Giuliani Administration believes that dwindling placement resources make it imperative to limit emergency housing access to families with no other options. In particular, the city believes that it can no longer afford to offer permanent, subsidized housing to every young mother who seeks her own apartment; it would like to make access to housing conditional on welfare recipients’ participation in education, work and other programs aimed at achieving self-sufficiency.

The DHS began eligibility screening of public assistance families seeking shelter in Brooklyn during 1993, and has since expanded the program to other boroughs. In 1995 6,559 families were referred to the Eligibility Investigations Unit; 1,321 left the system before the investigation was complete and 365 were found ineligible for temporary housing.