

July 20, 2021

BEYOND PUBLIC HOUSING

By Greg Byrne

The public housing program is our oldest federal housing program, created with the Housing Act of 1937. Today, it accounts for about 1.0 million units nationally, administered by approximately 2,900 public housing agencies (PHAs). It is an incredibly important source of subsidized housing, part of our nation's assisted-housing infrastructure. We should do our best to preserve these assets. However, the best way to preserve them, and the best way to oversee them, is to leave the public housing program and move all of it over to the Section 8 program, which is also authorized by the '37 Act and shares many of the same requirements surrounding eligibility and tenant protections. There are several tools today to allow such conversions and, as is appropriate for now, these efforts are completely voluntary on a PHA's part. Eventually, though, the entire program should convert, which would benefit residents, PHAs, and HUD.

In this paper, I argue that public housing fails the most basic test of a housing program, namely, to provide for the periodic ability to replenish and upgrade building systems and structures by leveraging the equity in the property, i.e., to refinance the property. Having never incorporated this feature into the program, public housing fell way behind in its capital needs and never recovered. Public housing also remained isolated from the rest of the multifamily housing community, which bred bad practices and bad program decisions. But there are, understandably, many emotional ties to the program. Therefore, I also examine what drives this desire for program preservation and how to accommodate those features worth retaining.

In many ways, reviewing the comparative history of our assisted housing programs is like studying evolutionary biology. The public housing line was the first of our assisted housing programs.¹ Another line developed, matured, and prospered. But public housing went its own way, resulting, today, in a much weaker system and one that, if it doesn't evolve (convert to Section 8), will either fade or be forced to rely on the uncertainty of once-a-generation bailouts.²

¹ Arguably, the public housing line began with the Public Works Administration (1933), where some 25,000 units were built.

² At the time of publication of this paper, there are proposals to include some \$40 billion in infrastructure funding in the Administration's infrastructure bill (the "American Jobs Act"). Even if such a massive initiative were passed, the need to convert public housing to Section 8, as advanced in this paper, remains critical both to take advantage of the opportunity to leverage this infrastructure spending and to ensure that, once invested, these improvements are preserved. This topic will be the subject of a future "[Chalk Talk](#)." Stay tuned.

A Tale of Two Programs

When the public housing program began, the federal government paid to construct the buildings and local PHAs were expected to maintain the units based on the rents charged to tenants. Because there was no form of operating subsidy in those early days, PHAs had to lease to families who had modest incomes – essentially, the working-poor. PHAs are autonomous, quasi-public bodies created under state-enabling legislation and governed by boards appointed by local governments.³ As part of the deal with the federal government to pay for the construction of the units, PHAs entered into “cooperation agreements” with these local governments, essentially guaranteeing that the projects would receive the same level of municipal services (fire, police, etc.) as any other private apartment complex, but at a reduced level of taxation, called a Payment in Lieu of Taxes (PILOT).

Public housing had its best years in the first decade of the program. The units were new and there was a national housing shortage, creating strong demand. The units were also generally of high construction quality, although, by today’s standards, minimal in design and sparing in square footage. But with the post-war boom, public housing lost its appeal to the working-poor, who found that they could find housing elsewhere, often in the suburbs with government-supported home loans. The increasingly impoverished residents struggled to pay rents sufficient to maintain the buildings, no less to set aside funds for the routine replenishment of building systems and equipment, or what is known in conventional real estate as a “replacement reserve account.” Consequently, as buildings aged, and as refrigerators needed to be replaced, elevators refurbished, or parking lots resurfaced, there was generally no source of funds for those essential work items, leading to disrepair.

Despite these critical program flaws, and without any structural reform to the program, Congress, with all good intents, went on a post-war construction boom that added several hundred thousand units. This next wave of public housing was of much leaner (meaner) design, subjected to strict cost containment measures. Indeed, one of the easiest ways to get a construction project approved was to repeat the same (flawed) design of previously approved projects, resulting in a numbing sameness of public housing buildings throughout the country, even when climates would dictate otherwise.

Initially, the public housing program had strict project-level accounting rules, where each asset had to stand on its own. However, as the fiscal conditions of public housing deteriorated, the federal government buckled and allowed PHAs to move to a centralized accounting system, with the idea that PHAs could better spread dwindling revenues across projects. And PHAs jumped at that opportunity. But in addition to abandoning site-based accounting, PHAs also abandoned site-based management, which typically go hand-in-hand. Unfortunately, real estate is a

³ In rare occasions, a PHA is an instrument of local government.

“presence” business. You need staff assigned to each property who have the authority (over personnel, lease enforcement, etc.) and resources (project-based budgets) to respond to day-to-day needs. PHAs built some of the most centralized management structures among the larger multifamily housing industry. Whereas virtually the rest of multifamily housing would deploy management and maintenance staff at each project, PHAs operated large central maintenance teams (and large central maintenance warehouses) that required workers to travel cross-town to access materials or perform routine work orders.⁴

These centralized arrangements also led to burn-out and apathy among whatever site management staff remained at the properties, who could do little more than try to broker for services needed from the central shops.⁵ I remember speaking at an industry conference in the late 1990s on the benefits of site-based management when the director from a large PHA in the Midwest bellowed to the audience, “Over my dead body would I ever have my site managers supervise maintenance.” The comment was shocking in its blatant rejection of multifamily norms, but, of course, essentially enabled by HUD.

As public housing’s troubles mounted, Congress began to search for alternative housing delivery mechanisms, i.e., something other than the public housing program and something other than public ownership of the real estate. These early ventures included such programs as the Below Market Interest Rate (BMIR) program (1961) and the Section 236 Program (1968), both of which were “shallow subsidy” programs in that they reduced the cost of borrowing, which made units modestly less-expensive (than true market rate housing), but didn’t really do much to help reach very low income households.⁶ In 1974, Congress finally cracked the code and created the Section 8 rental assistance program (referring to Section 8 of the Housing Act of 1937).

The Section 8 program was elegant in its design in the sense that it provided no capital subsidy. Rather, it set up-front the contract rent levels (generally set at between 100-120% of the Fair Market Rent for newly constructed, non-luxury housing), with HUD essentially pledging to enter into a long-term subsidy contract at these agreed-upon rent levels, with built-in annual adjustments for inflation, as long as the sponsor found a way to finance and construct the project (in compliance with Davis-Bacon construction wages and other federal requirements). HUD would then pay the difference between the agreed-upon contract rents and tenant payments. Ultimately, about 850,000 units were built under the Section 8 Project-Based Rental Assistance (PBRA) program.⁷ Additionally, some 550,000 BMIR and

⁴ While some agencies were able to develop responsive centralized structures, the vast majority of these centralized systems were grossly inefficient and some spectacularly so. See my comments at the end of this paper on Chicago’s heating plants and exceptions to the rule.

⁵ Smaller PHAs benefitted from being closer to the action and were less affected by these centralized patterns.

⁶ Ultimately, about 188,000 BMIR units and 650,000 Section 236 units were produced.

⁷ The Section 8 production program was terminated in 1984, although prior authorizations continued to get built.

Section 236 units were later also awarded Section 8 subsidies under the Loan Management Set Aside (LMSA) program.

At the same time that Congress created the project-based Section 8 program, it also created a Section 8 voucher program, allowing low-income households to rent housing on the private market (often referred to as “the existing housing program”), up to published rent payment standards and meeting basic quality standards. There are now about 2.2 million housing vouchers in circulation nationally.

Altogether, then, there are three main “assisted” housing programs administered today by HUD: public housing, Section 8 PBRA, and Section 8 vouchers. Whereas once it dominated the landscape, public housing now accounts for just 22% of this assisted inventory.⁸

It would be reasonable to assume that, following the introduction of the Section 8 program, HUD and the Congress eventually brought public housing along with it, just as it did for the BMIR and Section 236 inventory. As those older shallow subsidy projects ran into distress, the vast majority were converted to Section 8. But that’s not what happened with public housing, which found itself in essentially the same fiscal and physical situation. Congress began tinkering with ways of introducing operating and capital subsidies for public housing but it never really adopted the reforms akin to Section 8 and, most notably, the essential trifecta of (1) a guaranteed contract rent, (2) a long-term subsidy contract, and (3) a built in mechanism for annually adjusting those rents for inflation. In fact, the exact opposite occurred, which was that Congress added requirements – community service, annual plans, non-smoking policies, etc. – that were unique to public housing, that failed to address the underlying financial weakness of the program, and that mostly only further segregated public housing from the rest of the multifamily community and added to already constrained budgets.

Public Housing’s Inferior Subsidy Mechanisms

Congress began tinkering with a subsidy program for public housing in the 1960s. Following several decades of incremental efforts, the Congress now provides funds for public housing under two different programs: the Operating Fund and the Capital Fund. In 2020, the Congress appropriated \$4.5 billion for the Operating Fund and \$2.9 billion for the Capital Fund.⁹ In addition, tenant rents accounted for another \$3.5 billion, for a combined total of \$10.9 billion.

⁸ Current unit counts include about 1.0 million public housing units, 1.3 million PBRA/LMSA units, and 2.2 million vouchers. Additionally, there are some 400,000 Section 202 (elderly) and Section 811 (persons with disabilities) units, which are subsidized under a Section 8-like program called PRACS, or Project Rental Assistance Contracts.

⁹ 2020 Operating Fund amounts exclude \$685 million in special CARES Act funding (Coronavirus Aid, Relief, and Economic Security Act).

On the face of it, the Operating and Capital Fund programs seem like a reasonable approach. They are formula-driven and PHAs have lots of discretion in how to use the funds. What's wrong with that? The real problem with this system can only be understood when one considers public housing's backlog of repair needs. About every 10-15 years, Congress asks HUD to conduct a study of public housing's physical needs. The last study was completed in 2010, which estimated backlog needs at about \$25.6 billion, or \$23,501/unit.¹⁰ But these estimates were prepared under what is known as a "fix as-is" research methodology, which means that, if you built a barren family project in 1954, with no air conditioning, only one bathroom per unit, and inadequate parking spaces, all you count are items that need repair, not redesign. Most industry leaders believe the real number is somewhere between \$60 and \$100 billion.

What does a PHA do if it gets, in Capital Funds, only a fraction of the actual need? One strategy is to plug holes in the dike, which is a reasonable response, but doesn't result in any fundamental change in the inventory. The other is to combine all your capital funding across your portfolio and concentrate those funds on just a few projects at a time, which is also a reasonable response but leaves most projects starving. Neither approach is very satisfying.

If you were particularly entrepreneurial, you might think, "Why doesn't a PHA just take out a mortgage to address these repairs, i.e., to finance the improvements like any other apartment owner?" Now, that's a novel idea. But public housing was never conceived to leverage private debt or equity. The first hurdle is something called the Declaration of Trust, or DOT, which is a form of use agreement recorded on public housing property to prevent anyone from placing a security interest (like a mortgage) on the property without HUD approval. While others have pointed to the DOT as the major problem, I find it more a hassle than anything else. The real problem is the nature of the subsidy commitment, which, in public housing, is no commitment at all. (The ACC requires the PHA to comply with all requirements promulgated by HUD but makes no pledge of funding.)

Assume that you are the director of a local PHA and you plan to sit down with a lender to take out a loan for one of your properties to address needed repairs (and, hopefully, to install air conditioning and other modern necessities). How will you explain your funding to the lender? Do you have a contract rent (no)? Do you have a long-term subsidy contract (no)? Do you have any mechanism that inflates your subsidy annually to account for inflation (no)? Do you have any funding guarantee (no)? In other words, do you have the characteristics that are present in the Section 8 program (no)? Not that it hasn't been done, but it is extremely hard to convince the lending community to pledge long-term capital to the public housing program without a subsidy contract that includes these core features.

¹⁰ Capital Needs in the Public Housing Program, Abt Associates, November 24, 2010. These amounts include inspection-based needs as well as additions for Guam, Hawaii, Virgin Islands, and Puerto Rico; lead-based paint abatement; accommodating persons with disabilities; and improving energy and water efficiency.

And what proof do we have that the Section 8 platform really makes that much of a difference in leveraging capital? We have the Rental Assistance Demonstration (RAD) program to thank for that. In 2010, HUD asked Congress to allow PHAs to convert their public housing assistance to Section 8 assistance. It was the first time that HUD really made the case for moving public housing to the Section 8 platform. HUD's initial proposal was to give PHAs the Section 8 Fair Market Rent (FMR), estimated to cost an extra \$1.0 to 1.5 billion in funding. The Congress liked the idea of PHAs leveraging their assets but not the additional funding. It counter-offered: "We'll let you give it a shot, on a demonstration basis. But if you want to get this program off the ground, you'll have to do it with the current public housing funding." HUD agreed to those terms, hoping to show 'proof of concept' and, therefore, an opportunity to re-open the deal sometime in the future. Thus, the RAD program was launched with its "no additional cost" provision.¹¹ Since 2011, 150,000 units have converted under RAD, resulting in \$12 billion in construction activity and over \$13.5 billion in private loans and equity. In other words, RAD, with no additional funding, and by converting public housing funding to a Section 8 rent, has amply demonstrated that the Section 8 funding structure – that good program design – makes an enormous difference, even without additional funding.

In fact, the impact of a true Section 8 contract on the ability to leverage private debt is probably no more dramatically illustrated than by examining the experience of Moving to Work (MTW) agencies with RAD. The MTW program was authorized in 1996, giving a limited number of PHAs enormous flexibility in how to run their programs and allowing them almost complete "fungibility" in the use of Operating, Capital, and Voucher funding.¹² But all this flexibility has still really made no difference in the ability of MTW PHAs to leverage their assets. It was not until RAD came along that MTW agencies – including Chicago, Cambridge, Philadelphia, and Baltimore – were able to substantially access private capital to address long-term physical needs. Why? Even with the program flexibility under MTW, PHAs could not replicate the kinds of long-term assistance contracts that are essential to multifamily lending. Just these four MTW agencies alone have raised hundreds of millions of dollars in private financing under RAD, something that was escaping them under public housing, even with all their MTW freedoms.¹³

¹¹ The initial RAD legislation authorized HUD to convert 60,000 units of public housing to Section 8. That cap has since been raised twice and now stands at 455,000 units.

¹² Initially limited to 30 agencies but since expanded to 80.

¹³ These agencies were successful in redeveloping various public housing projects prior to RAD but these efforts were dependent on grant-type programs, e.g., HOPE VI or 9% Low-Income Housing Tax Credits. The MTW program has had no real impact on the ability of these agencies to raise long-term mortgage proceeds to update building needs. Cambridge, in fact, has nearly completely converted its entire public housing program to Section 8, either through RAD or by project-basing TPVs under Section 18, so that they could take advantage of the leveraging opportunities available through long-term Section 8 contracts.

Widening the Section 8 Off-Ramp

Mostly as a result of the success of RAD, HUD in recent years has looked high and wide for other ways to get PHAs onto the Section 8 platform, including an expansion of eligible properties for demolition/disposition under Section 18 and the creation of the Streamlined Voluntary Conversion program.¹⁴ Under both programs, a PHA can remove units from public housing and receive Section 8 Tenant Protection Vouchers (TPVs), which can, under the right circumstances, be project-based to preserve hard units of assistance.¹⁵ The rents under the (standard) Section 8 program are often higher than current public housing funding, allowing PHAs to finance more repairs.

Indeed, the Congress, through the 2016 Housing Opportunities through Modernization Act (HOTMA), expressly encouraged the practice of project-basing TPVs in Section 18 actions by simplifying the requirements that govern such conversions.¹⁶ In effect, it said, “We understand that the rents are often higher and that you can leverage more via Section 8 than under public housing. Therefore, we’ll make it even easier for you to project-base the TPVs when you get approved for Section 18.” It is somewhat remarkable how much the Congress, with the HOTMA legislation, has essentially accepted the basic premise of repositioning public housing through Section 8.

Still, these efforts are way less than a complete set. They are HUD’s best attempt to work within existing legislative structures to move more inventory to Section 8 but, unfortunately, fall well short of what’s needed to convert all of public housing to Section 8. To date, HUD has only found a way to create, in effect, a right to Section 8 for very small PHAs (see [HUD’s Quiet Rescue Plan for Very Small PHAs](#)).

The Copy-Cat Fallacy

But why not just implement a Section 8-like program inside public housing? Why not, finally, make public housing more like Section 8? It’s an interesting idea but ultimately a trap. First, it would require lots and lots of hard legislative work to peel back the layers of special requirements unique to public housing. We might not be able to scrape off all the calcium that has built up over the years on public housing’s bones. We run the risk, then, of getting less than the whole package, with PHAs subjected to a “lesser” or second-rate program.

¹⁴ See PIH Notice 2018-04, Demolition and/or Disposition of Public Housing Property, Eligibility for Tenant Protection Vouchers and Associated Requirements, March 22, 2018, and PIH Notice 2019-05, Streamlined Voluntary Conversion of Last Remaining Projects of Small Public Housing Agencies, March 21, 2019.

¹⁵ The TPVs can be used to preserve the current buildings/units, to build replacement units on site, or to build or acquire units off site.

¹⁶ These include exempting former public housing units from standard PBV income mixing requirements as well as the limitation on the percentage of a PHA’s voucher program that can be project-based.

The bigger question, though, is, “Why?” Why would we spend the administrative energies to replicate the Section 8 program within public housing when we already have the Section 8 program? Why not just move public housing over to Section 8, which is the goal of RAD and other repositioning efforts? It would clearly be easier for residents; for PHAs; and for HUD.

Public Housing Heirlooms

But is there something inherently special about the public housing program that we want to preserve and we would lose if we were to convert to Section 8?

- It’s not who public housing serves. Public housing has essentially the same tenant income profile, and essentially the same eligibility requirements, as Section 8;
- It’s not the public housing resident protections provisions (model lease, etc.), which are also essentially the same in Section 8. Yes, there are modest differences but they are not substantive enough to punish public housing to a life of perpetual undercapitalization;
- It can’t be the programmatic isolation, which hinders growth and learning and causes PHAs to be slow to adapt;
- It can’t be the public housing funding system, with all its quirks and limitations; and
- It can’t be the notion that somehow public housing is “permanent” housing because it’s not. There’s nothing in the ‘37Act that ensures that public housing units are maintained in perpetuity and there’s no requirement for the Congress to fund public housing at any level in any year. Indeed, over the past 20 or so years, a remarkable 250,000 units have been removed from the public housing program, mostly as a result of obsolescence. We’re already losing the stock.

When it comes down to it, three issues raise the most static amid any talk of wide-scale plans of converting public housing to Section 8 – the loss of hard units, tenant displacement, and public control. All of these concerns can learn from the RAD program.

- Concerns over the loss of hard units can be handled by requiring, as with RAD, that all units be preserved, except for a de minimis amount.¹⁷ PHAs could then apply separately, as they can now, under Section 18 for projects that are not feasible to retain. It’s not realistic to require PHAs to maintain non-viable stock unless there is some special pot of funding to pay for the much higher tab to preserve or redevelop them. Section 18 is the appropriate vehicle for screening these inventory reduction requests.

¹⁷ Under RAD, the de minimis amount is equal to the greater of 5 units or 5%.

- Concerns over tenant displacement can be resolved by requiring, as with RAD, that existing tenants be given an absolute right to return and a prohibition on re-screening. The only exception would be units removed through Section 18, where, if units were not replaced, the PHA would be required to provide, as is the practice now, comparable assisted housing, e.g., housing vouchers.
- Finally, concerns over the loss of public control can also be accommodated by adopting provisions similar to RAD, where the converted project must either be owned or controlled by a public or non-profit organization, except in the case of tax credits, where the PHA must still maintain an “interest” in the project, including long-term ground leases, use agreements, etc. And, again, these additional provisions would not apply to any units approved under Section 18 that are not replaced.

Show Me the Money

The RAD program has been remarkable in its ability to demonstrate the viability of Section 8 as a leveraging tool. Although not quite the tip of the iceberg, there are still likely several hundred thousand units that could convert at current funding levels. But, eventually, the program will run out of steam without incremental funding. As previously indicated, HUD initially estimated that it would take about \$1.0 to \$1.5 billion a year in additional funding to allow all public housing projects to convert at market rents, which would allow them greater leveraging ability. So, yes, it’s eventually going to cost more. But this is not an argument to remain stuck in the public housing program, with little hope to get better. It calls for a larger effort. Likely what’s needed is some form of independent commission, initiated either by Congress or a private foundation/philanthropy, that is charged with the task of recommending what it will take, and over what time period, to convert all of public housing to Section 8. HUD can’t do this exercise on its own because, at least for now, it would be politically untenable to announce any formal goal or plan to move the entire public housing program to Section 8, even though all logic points in that direction. HUD needs the cover to march forward.

A Better Path

If you were to create a new federally-assisted housing program, would you model it off of public housing? Or, would you create something equivalent to Section 8?

Some 30 years ago, I was visiting the boiler rooms of different central heating plants in public housing projects in Chicago. For the most part, these facilities were something out of an apocalypse movie, with hulking rooms of corroding metal and standing water. Among them, though, were a few plants that were glistening models of excellence. How could this be, I wondered, with all the dysfunction within the agency? I came to understand that these were personal islands of excellence. They weren’t the product of the organization or the program but a reflection of the sheer

perseverance and professionalism of the heating plant's engineer. But we can't build systems or programs that rely on supermen or superwomen for their success. It's not sustainable. Although there have been many high-performing PHAs over the years, their performance should not be used as proof that the public housing program works or that the design is benign.

We need to change the terms of the debate. We should be talking about preserving the assistance, not the program. We need to move beyond public housing.

I end with the following lines from the song Momentum by Aimee Mann:

“But I can't confront the doubts I have
I can't admit that maybe the past was bad
And so, for the sake of momentum
I'm condemning the future to death
So that it can match the past.”

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