Renters' Tax Credits

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America is facing an affordable housing crisis that current policies have failed to mitigate. Even before the COVID-19 pandemic, half of American tenants were rent burdened, paying more than one-third of their income on rent. For this reason, Renters' Tax Credit (RTC) proposals are gaining traction in Washington and in policy circles. The most ambitious proposals would reimburse tenants for rent payments that exceed 30% of their income level, subject to rent limits. In scale and significance, such RTCs would almost certainly overshadow—or even replace—the nontax Housing Choice Voucher Program that has been the centerpiece of federal housing policy since 1974. It would be the first time since 1993 that a large, existing nontax public welfare program was shifted into the Tax Code, and it would be the first time that a major nontax, in-kind welfare benefit was integrated into the tax system.

Through a case study of the evolution of American housing policy, the recent failures of the Housing Choice Voucher Program, and current RTC proposals, this Article explores the potential and limits of in-kind integration of housing benefits into the tax system. Drawing on theory about the integration of tax and spending programs, it argues that an RTC may be appropriate if the goal is to expand access to housing. However, if the goal is to fight poverty by assisting rent-burdened tenants, then a more efficient and equitable approach would be to "cash out" the vouchers by converting them into unrestricted cash or tax credits. Cashed-out vouchers would have advantages over an RTC, including institutional design, simplification, efficiency, and distributive benefits. It would also fundamentally change the nature of the intervention from a public–private partnership model to a public assistance model, with consequences for program outcomes. This analysis provides essential context for policy debates about RTCs, advances theory about the integration of in-kind benefits, and highlights the urgent need for clarity in policy goals.

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INTRODUCTION

America is facing an affordable housing crisis that current policies have failed to mitigate. Even before the COVID-19 pandemic, half of American tenants were rent-burdened, spending more than one-third of their income on rent.[1] Low-income renters face the most severe housing burdens, yet only one in four eligible households receives any federal rental assistance.[2] The largest federal affordable housing program, the Housing Choice Voucher program, suffers from long waitlists and underfunding.[3] For this reason, Renters' Tax Credit (RTC) proposals are gaining traction in Washington, D.C., and in policy circles.[4] Two RTC bills are currently

1. Sara Kimberlin et al., *A Renter's Tax Credit to Curtail the Affordable Housing Crisis*, 4 RSF: RUSSELL SAGE FOUND. J. SOC. SCIS. 131, 131 (2018).
2. Peggy Bailey, *Rental Housing Programs for the Lowest-Income Households: Renters' Tax Credits*, *in* ADVOCATES' GUIDE '23: A PRIMER ON FEDERAL AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT PROGRAMS & POLICIES 4-108, 4-108 (2023), https://nlihc.org/sites/default/files/2023-03/2023AG4-19_Renters-Tax-Credit.pdf [https://perma.cc/VV4K-EV9E].
3. *See* Kimberlin et al., *supra* note 1, at 133 (regarding waitlists); WILL FISCHER, BARBARA SARD & ALICE MAZZARA, CTR. ON BUDGET & POL'Y PRIORITIES, RENTERS' CREDIT WOULD HELP LOW-WAGE WORKERS, SENIORS, AND PEOPLE WITH DISABILITIES AFFORD HOUSING: INVESTMENT WOULD HELP REBALANCE HOUSING POLICY 2 (2017), https://www.cbpp.org/sites/default/files/atoms/files/3-9-17hous.pdf?ts=1613413813016 [https://perma.cc/J2RP-8ZSQ] (citing budget constraints).
4. *See, e.g.*, Bailey, *supra* note 2, at 4-109.

pending in Congress,[5] and seven others have been introduced since 2018.[6] Though RTCs can take different forms, an example would be a tax credit for tenants that refunds part of their rent payments. Proponents hope that RTCs will provide much-needed public assistance to low-income tenants, but there has been no sustained legal academic research to examine the approach, which is radically different from other major tax-based welfare programs. Unlike most existing programs, which use tax credits to deliver cash-equivalent benefits to recipients, an RTC would deliver in-kind housing benefits to claimants.[7]

Over the past thirty-five years, Congress has relied so heavily on the tax code to accomplish nonrevenue raising goals that "[t]axpayers have quietly become accustomed to finding social and regulatory programs buried in the tax code."[8] It may seem like enacting an RTC would be a minor event, a mere continuation of an existing trend of embedding social policies in the tax system.[9] However, if an RTC were enacted, it would be the first time since 1993 that a large, existing nontax public welfare program was shifted into the tax code. That year, Congress dramatically expanded the Earned Income Tax Credit (EITC), making it as big as Aid to Families with Dependent Children, the country's largest cash welfare program.[10] The expansion radically changed the country's approach to cash welfare, and the EITC is now "the federal government's largest antipoverty endeavor" and has become the primary vehicle for new social welfare programs.[11]

When the EITC was expanded, tax scholars debated whether integration of welfare into the tax system was appropriate. Professor Anne Alstott argued that tax credits had significant limitations compared to traditional cash welfare.[12] In contrast, Professors David Weisbach and Jacob Nussim argued that the choice

5. *See generally* Rent Relief Act of 2023, H.R. 6721, 118th Cong. (2023) (proposed by Rep. Danny Davis); Decent, Affordable, Safe Housing for All Act (DASH Act), S. 680, 118th Cong. (2023) (proposed by Sen. Ron Wyden).

6. *See generally* Housing, Opportunity, Mobility, and Equity Act of 2022, S. 5223, 117th Cong. (2022) (proposed by Sen. Cory Booker); Housing, Opportunity, Mobility, and Equity Act of 2022, H.R. 9466, 117th Cong. (2022) (proposed by Rep. Jim Clyburn); Renters Tax Credit Act of 2021, S. 2554, 117th Cong. (2021) (proposed by Sen. Sherrod Brown); Rent Relief Act of 2019, S. 1106, 116th Cong. (2019) (proposed by Sen. Kamala Harris); Rent Relief Act of 2019, H.R. 2169, 116th Cong. (2019) (proposed by Rep. Danny Davis); Rent Relief Act of 2018, S. 3250, 115th Cong. (2018) (proposed by Sen. Kamala Harris); Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. (2018) (proposed by Sen. Cory Booker).

7. *See infra* Section IV.A.

8. Susannah Camic Tahk, *Everything Is Tax: Evaluating the Structural Transformation of U.S. Policymaking*, 50 HARV. J. ON LEGIS. 67, 67 (2013).

9. *See id.*

10. Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 533–34 (1995).

11. Tahk, *supra* note 8, at 69–70.

12. *See generally* Alstott, *supra* note 10 (urging policy analysts to consider the accuracy, responsiveness, and noncompliance of a tax-based program).

about where to locate a policy should be made by weighing any benefits from integration into the tax system against the benefits of separation (institutional design theory).[13] They argued that the EITC may have enough institutional design advantages over traditional welfare to make it a desirable policy choice.[14]

An RTC would disrupt the housing policy landscape just as dramatically as the EITC changed the cash welfare system. In scale and significance, RTCs would almost certainly overshadow—or even replace—the nontax housing voucher program that has been the centerpiece of federal housing policy since 1974.[15] It would also be the first time that a major noncash welfare program is integrated into the tax system, raising novel practical and theoretical issues that were not implicated by laws like the EITC.[16]

An RTC would integrate in-kind benefits—housing vouchers—into the tax system. This Article analyzes the implications of integrating in-kind benefits in the tax system, and it considers an alternative approach: "cashing out." Cashing out refers to the conversion of in-kind benefits into unrestricted cash benefits.[17] This could be accomplished by replacing an RTC with cash-equivalent tax credits like an expanded EITC.

However, for reasons to be explained, the decision to cash out an in-kind benefit would fundamentally change the nature of the policy intervention.[18] As this Article will discuss, all tax-based in-kind welfare benefits are rooted in a public–private partnership approach to social welfare that relies on private markets to deliver benefits to needy recipients.[19] This is a fundamentally different strategy than cash-based social welfare programs like the EITC. This Article explores these differences through a case study of the evolution of American housing policy, the recent failures of the Housing Choice Voucher program, and current RTC proposals. Ultimately, it argues that an RTC may have advantages over cashed-out benefits if the primary policy goal is to expand access to housing.[20] However, if the primary policy goal is to assist rent-burdened tenants, then cashing out may be a more efficient and equitable approach. This analysis provides essential context for policy debates about RTCs, advances theory about the integration of in-kind benefits, and highlights the urgent need for clarity in policy goals.

This Article makes several contributions to the tax law and housing law literatures. First, it contributes to tax theory about the integration of tax and spending programs by providing the first sustained analysis of in-kind tax benefits. It also

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13. David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955, 958, 995 (2004).

14. *Id.* at 1023, 1025.

15. *See* EVA ROSEN, THE VOUCHER PROMISE: "SECTION 8" AND THE FATE OF AN AMERICAN NEIGHBORHOOD 14 (2020).

16. As discussed below, the tax system does deliver some in-kind benefits to tax credit claimants. *See infra* Section III.A.2. However, the Author is unaware of any example of a large, existing in-kind welfare program that was subsequently incorporated into the tax system as a major tax-based welfare program.

17. *See* Weisbach & Nussim, *supra* note 13, at 1014.

18. *See infra* Section IV.B.

19. *See infra* Section III.B.

20. *See infra* Section IV.C.

provides a theory-driven analysis of the choice between in-kind tax benefits and cashed-out alternatives. This research is necessary to inform current debates surrounding RTCs and voucher integration and to evaluate other recent housing policy proposals. Researchers at the Department of Housing and Urban Development have proposed a pilot study that would provide some would-be voucher recipients with cash.[21] In other words, the pilot study would provide cashed-out housing vouchers. The analysis in this Article, which includes a discussion of cashing out, will help anticipate the strengths and limitations of that approach. Second, this Article contributes to the housing law literature by providing the first in-depth analysis of RTCs, which are poised to dramatically change the housing policy landscape. Even if a modest RTC were enacted—such as a capped credit limited to a small population of claimants—the introduction of demand-side tax subsidies would represent a significant shift in housing policy strategy. This Article surfaces the theoretical and practical implications of that shift, and it invites further debate as to the ideal housing policy strategy.

This Article proceeds as follows. Part I provides an overview of the affordable housing policy landscape. It identifies three ways to frame the underlying problem presented by affordable housing shortages: an access problem, a poverty problem, and an economic problem. It then recounts how the federal policy response has evolved over time and analyzes the limitations of the Housing Choice Voucher program that dominates today's housing policy landscape. Since RTC proposals are essentially an extension of housing vouchers, this background provides necessary context to evaluate the approach. Part II elaborates upon the concept of RTCs and examines the proposals that have been introduced. It identifies four basic types of RTCs and discusses the advantages and disadvantages of each. Part III locates RTCs within the social welfare system, arguing that RTCs are best understood as a tax-based public–private partnership welfare strategy. It then considers the efficiency and equity implications of that strategic choice. Part IV turns to the broader implications of shifting vouchers into the tax system, and it considers an alternative: cashing out. It demonstrates how cashed-out vouchers would move housing policy away from public–private partnerships and toward a direct public assistance model. The Article concludes that if policymakers' primary objective is to fight poverty, then cash or cash-equivalent tax benefits would be the best policy choice. On the other hand, if their primary objective is to expand housing access or correct market failures, then an RTC may have some advantages over cashed-out alternatives. Accordingly, this Article recommends a careful evaluation of the intended policy outcome when shaping future rental assistance proposals.

21. Rachel M. Cohen, *A Bold New Federal Experiment in Giving Renters Cash*, VOX (Sept. 12, 2023, 6:30 AM), https://www.vox.com/2023/9/12/23864165/affordable-housing-voucher-program-hud-federal-government-section-8 [https://perma.cc/8J9T-SDMH].

I. THE AFFORDABLE HOUSING POLICY LANDSCAPE

A. THE POLICY PROBLEM

America has an affordable housing shortage.[22] As of January 2023, the "typical" American renter—one who earns the median national income and pays the average amount of rent—was rent burdened under the official government definition.[23] According to the Department of Housing and Urban Development (HUD), housing is "affordable" when it costs less than 30% of the households' income, and tenants who pay more than that amount are considered rent burdened.[24] Broadly, RTC proponents present them as a tool to address the problem presented by housing shortages. However, the wisdom of an RTC may turn on how the policy problem is framed. This Section identifies three ways to understand the policy problem presented by affordable housing shortages, beginning with an access problem.

1. The Housing Access Frame

Affordable housing shortages are not new, but the nature of the problem has changed over time. Where the problem was once characterized by a "lack of decent, affordable units centered on the number of substandard accommodations in the market," the problem now centers on "the actual number of units available, the cost of obtaining a decent unit, and a household's ability to bear that cost."[25] A 2015 report published by the National Low Income Housing Coalition stated that, for every 100 extremely low-income Americans, there were only thirty affordable units available.[26] A more recent policy brief notes that "[t]he pandemic then exacerbated this issue" so that "[e]ven if people are able to afford rent, there may not be enough units available to them."[27]

One way to understand the policy problem presented by affordable housing shortages, therefore, is as an access problem that has both absolute and relative components.[28] All tenants may lack access to housing because there simply are not enough units available to rent.[29] The policy response to this problem would

22. Michael Diamond, *Affordable Housing: Of Inefficiency, Market Distortion, and Government Failure*, 53 U. RICH. L. REV. 979, 981 (2019) ("There is currently a shortage of millions of units of decent and affordable housing in the United States.").

23. Anna Kodé, *The Typical American Renter Is Now Rent-Burdened, a Report Says*, N.Y. TIMES (Jan. 25, 2023), https://www.nytimes.com/2023/01/25/realestate/rent-burdened-american-households.html.

24. *Defining Housing Affordability*, PD&R EDGE, HUD (Aug. 14, 2017), https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-081417.html [https://perma.cc/YF6D-B5L4].

25. Diamond, *supra* note 22, at 981.

26. NAT'L LOW INCOME HOUS. COAL., A BRIEF HISTORICAL OVERVIEW OF AFFORDABLE RENTAL HOUSING 1–10 (2015), https://nlihc.org/sites/default/files/Sec1.03_Historical-Overview_2015.pdf [https://perma.cc/WQ8G-B6WJ].

27. RESULTS, RENTER TAX CREDIT POLICY BRIEF 9 (2023), https://results.org/wp-content/uploads/2023-RESULTS-Backgrounder-on-RTC-Hill.pdf [https://perma.cc/84F4-QSWG].

28. For the purposes of this Article, absolute access problems refer to those that stand to impact all tenants (i.e., an insufficient supply of units relative to the total number of potential tenants). In contrast, relative access problems are those that prevent some groups of tenants from accessing housing even if sufficient units are available in absolute terms.

29. *See* RESULTS, *supra* note 27, at 9.

aim to increase the absolute number of residential units available for rent. To the extent that market rents are high due to constricted supply, economic theory predicts that increasing the number of units would help make housing more affordable, especially for middle-class renters.[30] However, low-income and minority tenants may face additional access problems attributable to discrimination in housing markets.[31] These tenants' housing opportunities may be limited to certain low-income neighborhoods, even when similarly priced units are available in higher-income neighborhoods.[32] Thus, the access framing points to an additional policy goal, which is to increase tenants' ability to choose where they live. As explained below, federal housing policy interventions have attempted to address these access problems, but with limited success.

2. The Antipoverty Frame

Another way to understand the policy problem presented by affordable housing shortages is through an antipoverty frame focused on the harms suffered by individuals. Low-income families are not the only ones affected by affordable housing shortages, but the harms suffered by those families are especially acute, and "[h]igh housing costs are a direct driver of poverty."[33] Millions of cost-burdened tenants are forced to shift resources away from basic needs like food, clothing, or health care in order to pay rent.[34] Unaffordable housing "negatively affects children's health and school performance, and interferes with parents' employment, parenting, and civic engagement."[35] It also contributes to housing insecurity, as rent-burdened families are more likely than others to "experience eviction and even homelessness—problems that can adversely affect children's development and adults' ability to find and keep a job."[36] Professor Michael Diamond has summarized the harms experienced by tenants:

> [E]xcessive rent burdens on households to secure such housing; doubling up in and overcrowding such units to be able to afford them; negative health effects due to housing conditions and cost burdens; lack of funds, due in part to excessive spending on rent, for health and wellness care; educational deficiencies for children due to physical illness, overcrowding, and stress; environmental issues such as noise, lack of privacy, lead paint, and mold; and losses in job productivity.[37]

30. *See* Edward Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSPS. 3, 4 (2018) (linking high housing prices to restricted housing supply due to land use regulation).

31. *See* Rigel C. Oliveri, *Vouchers and Affordable Housing: The Limits of Choice in the Political Economy of Place*, 54 HARV. C.R.-C.L. L. REV. 795, 795 (2019).

32. *See id.* at 802 n.37.

33. Kimberlin et al., *supra* note 1, at 133.

34. *See* FISCHER ET AL., *supra* note 3, at 1; John M. Quigley, *Just Suppose: Housing Subsidies for Low-Income Renters* 308 (Berkeley Program on Hous. & Urb. Pol'y, Working Paper No. W06-005, 2007), https://escholarship.org/content/qt0n43z5d2/qt0n43z5d2.pdf [https://perma.cc/R44F-6B55].

35. Kimberlin et al., *supra* note 1, at 132.

36. FISCHER ET AL., *supra* note 3, at 1.

37. Diamond, *supra* note 22, at 995.

In short, for many families, the affordable housing shortage contributes to the overall experience of poverty, and this alone may be a reason for policymakers to provide rental assistance as part of a comprehensive antipoverty response. As this Article will explain, the antipoverty frame may justify rental assistance programs, but it may also point to a more general need for public assistance programs that would increase the resources available to low-income families through cash or in-kind transfers.

3. The Economic Frame

A third way to understand the problem presented by affordable housing shortages, and an alternative justification for government intervention, focuses on the economic costs imposed on society more broadly.[38] The harms described above are costs borne by tenants, but those harms are also linked to costs borne by the rest of society.[39] These include not only costs associated with homelessness but also those associated with "health care, educational achievement, employment and productivity, and opportunity losses" for the housing insecure.[40] The costs of homelessness, which arise from "providing shelters, policing and incarceration, and health care, especially emergency room visits," have been estimated at $35,000 to $150,000 per person, per year.[41] But even when housing insecurity does not result in homelessness, it can create societal costs. Increased health care costs are incurred by people "residing in substandard units with a concomitant increased susceptibility to illness and injury" and the inability to afford preventative care.[42] School systems struggle with "churn" in classrooms when housing unstable children move between schools, and the harms affect not only students facing homelessness but also their peers.[43] The economy loses productivity when workers are absent or "function at less than an optimal level due to illness or injury."[44]

Despite the significant societal costs associated with the lack of affordable units—and the significant demand for affordable housing—private real estate markets have consistently failed to produce sufficient housing at affordable rent levels.[45] Barriers to producing affordable housing include significant development and operating costs,[46] regulatory burdens,[47] and political

38. *See id.*

39. *See id.* Economists refer to these societal costs as "externalities." *See* Victor Fleischer, *Curb Your Enthusiasm for Pigovian Taxes*, 68 VAND. L. REV. 1673, 1683–84 (2015).

40. Diamond, *supra* note 22, at 995.

41. *Id.* at 996.

42. *Id.* at 998.

43. *Id.* at 1004.

44. *Id.*

45. Brian Callaci & Sandeep Vaheesan, *The Market Alone Can't Fix the U.S. Housing Crisis*, HARV. BUS. REV. (Sept. 12, 2024), https://hbr.org/2024/09/the-market-alone-cant-fix-the-u-s-housing-crisis [https://perma.cc/Y5RL-BEEB].

46. *See* Diamond, *supra* note 22, at 986 ("There are development costs, planning costs, the cost of land, construction costs, and various fees, taxes, and miscellaneous costs . . . [and] operating costs, such as utilities, maintenance, salaries, taxes, and insurance.").

47. *Id.* at 989 (describing "environmental regulations, impact fees, building codes, zoning, parking space requirements, [and] labor requirements").

barriers.[48] Many "[r]ational developers of units do not see a return commensurate with their costs sufficient to induce them to develop units for low-income residents."[49] This is what economists would call a market failure.[50] As Diamond explains, "[t]he only player capable of influencing the market, by financial incentives or by compulsion, is the government."[51]

This economic framing shifts the focus away from the human experience of poverty and toward market failures and the insufficient supply of affordable housing.[52] Within this frame, the goal of government intervention is to correct market failures that constrain the market for affordable housing.[53] Today, the dominant policy interventions reflect this economic framing and rely on subsidies to help increase the supply of affordable housing. Some subsidies are targeted to developers to reduce production costs,[54] while others are targeted to consumers to reduce the cost of rental housing.[55] However, both types of subsidies have the same basic goal: to increase the number of units that tenants lease from private landlords at affordable rent levels.[56]

The next Section reviews how the policy response to these problems has changed over time. It shows that early interventions were safety net programs characterized by government-owned public housing projects. These programs were motivated by antipoverty objectives.[57] However, public housing programs were short-lived, and the dominant approach today uses subsidies to nudge private markets to provide affordable housing. Though many advocates support these programs for their potential to alleviate poverty and increase access to housing, incentive-based programs like these are rooted in the economic frame. The most significant market interventions are the low-income housing tax credit (LIHTC) and Housing Choice Vouchers. Both programs rely heavily on private landlords to deliver affordable housing to low-income tenants. As this Article will explain, the proposed RTCs are modeled after Housing Choice Vouchers and are best understood as an integration of housing vouchers into the tax system. For this reason, the next Section provides a brief history of Housing Choice Vouchers and explains their limitations as a policy response.

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48. *Id.* at 991–94 (discussing "not in my backyard ('NIMBY') syndrome" and "public choice theory").

49. *Id.* at 1007.

50. *See id.*

51. *Id.*

52. *See, e.g.*, Barry Zigas, *Learning from the Low Income Housing Tax Credit: Building a New Social Investment Model*, 9 CMTY. DEV. INV. REV. 47, 52–53 (2013).

53. *See* Diamond, *supra* note 22, at 983–84.

54. *See, e.g.*, I.R.C. § 42(a) (low-income housing tax credit). The low-income housing tax credit provides a tax credit for affordable housing development. *See id.*

55. *See*, *e.g.*, 24 C.F.R. § 982.1(a)(1) (Housing Choice Vouchers).

56. *See* Diamond, *supra* note 22, at 983–84.

57. *See* Gary Fields, *Housing Policy and Economic Restructuring in the United States*, 1 BERKELEY PLAN. J. 26, 26, 32 (1984) (explaining that public housing was created in 1937 as a "major component[] of the newly-formed welfare system" during the Great Depression).

B. THE EVOLVING POLICY RESPONSE

1. From Public Housing to Housing Choice Vouchers

a. Public Housing

The first major federal affordable housing program was introduced during the Great Depression by the U.S. Housing Act of 1937.[58] The economic downturn brought working class struggles to the forefront in cities that were already struggling with "slums overflowing with immigrants . . . and migrants from the south."[59] The law authorized the federal government to finance the construction of public housing buildings that would be owned and managed by local housing authorities.[60] However, relatively few public housing units were built under the Housing Act of 1937 due to the beginning of World War II.[61] Instead, most public housing was constructed under the Housing Act of 1949,[62] which "provided federal subsidies for slum clearance and urban redevelopment" and authorized the construction of 810,000 new public housing units.[63]

Over the next twenty years, cities used the federal funding to construct government-owned public housing projects.[64] Many cities used the public funds to erect government-owned high-rise towers that used modern technology and "promised health, safety, and efficiency."[65] Urban scholar Eva Rosen notes that "[f]or the early residents of public housing, the immediate improvement was dramatic," but "the gleam of the unblemished towers did not last long."[66] By the 1980s, "several high-profile examples of failed public housing projects had received national attention, including the Pruitt-Igoe project in St. Louis and the Cabrini-Green public housing projects in Chicago."[67] The buildings "harbored long lists of unfinished repairs creating hazards such as lead paint, cockroach and rodent infestations, and unrepaired elevators, leaving residents to climb the poorly lit stairwells besieged by drug dealers."[68] Public housing became popularly associated with "poverty, crime, segregation, poor living conditions and communal

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58. *See* Quigley, *supra* note 34, at 300; Pub. L. No. 75-412, 50 Stat. 888 (codified as amended at 42 U.S.C. § 1437).

59. ROSEN, *supra* note 15, at 8.

60. Quigley, *supra* note 34, at 300.

61. Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 877, 895 (1990).

62. Pub. L. No. 81-171, § 521(a)(1)(C), 63 Stat. 413 (codified as amended at 42 U.S.C. § 1490a).

63. Schill, *supra* note 61, at 895.

64. *See id.* at 895–96.

65. ROSEN, *supra* note 15, at 8.

66. *Id.* at 8–9.

67. Michelle D. Layser, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 922 n.21 (2018) (citing Colin Marshall, *Pruitt-Igoe: The Troubled High-Rise That Came to Define Urban America – A History of Cities in 50 Buildings, Day 21*, GUARDIAN (Apr. 22, 2015, 7:52 AM), https://www.theguardian.com/cities/2015/apr/22/pruitt-igoe-high-rise-urban-america-history-cities [https://perma.cc/WTW2-7W8W]).

68. ROSEN, *supra* note 15, at 9.

despair," and the projects were "almost universally viewed as failures that devour human lives and tax dollars."[69]

However, the popular account of public housing's failures obscures an important fact: "[I]n most places, public housing *worked*."[70] As Rosen points out, "it wasn't public housing itself that caused its own demise, but rather the government's failure to adequately fund and maintain it."[71] Due to the low rent levels, local housing authorities struggled to pay operating and maintenance expenses on aging buildings, and some local governments "deferred maintenance due to shortages of funds."[72] The federal government enacted subsidy programs to help local authorities pay for operations and maintenance expenses, but the subsidies were never fully funded.[73] Without adequate funding, "many [public housing authorities] further cut back on maintenance which led to structural deterioration and, in some extreme cases, the demolition of uninhabitable buildings."[74]

b. Housing Vouchers

In 1973, the Nixon Administration placed a moratorium on the use of funds appropriated to public housing.[75] The following year, Congress enacted the Section 8 tenant voucher program.[76] Under the voucher program, "participating households [were] issued a certificate that enable[d] them to rent dwellings owned by private landlords."[77] The Section 8 voucher program was the first widespread use of a demand-side subsidy for affordable housing.[78] In 1986, Congress enacted the LIHTC, a new supply-side tax credit to subsidize and encourage private development of affordable housing.[79] Meanwhile, the government phased out support for public housing, and "the net number of new federal commitments for housing . . . plummeted—by more than two-thirds from 1981 to 1997."[80] Thus, this period marked a significant shift away from public housing in favor of new market-based policies.

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69. Stanley Ziemba, *How Projects Rose to Failure*, CHI. TRIB., Dec. 2, 1986, at 1; *see also* Charles E. Connerly, *What Should Be Done with the Public Housing Program?*, 52 J. AM. PLAN. ASS'N 142, 146 (1986) (describing how the "poor public image" of public housing was influenced by "large, unsuccessful housing projects" receiving national publicity).

70. ROSEN, *supra* note 15, at 245.

71. *Id.* at 246.

72. Schill, *supra* note 61, at 896.

73. *Id.* at 897.

74. *Id.* (citation omitted).

75. Zigas, *supra* note 52, at 48.

76. *Id.*

77. Schill, *supra* note 61, at 899.

78. Zigas, *supra* note 52, at 48. Demand-side subsidies are provided to consumers, whereas supply-side subsidies are targeted at producers. *See id.*

79. *See* I.R.C. § 42(b); *see also Low-Income Housing Tax Credit (LIHTC)*, OFF. OF POL'Y DEV. & RSCH., U.S. HUD, https://www.huduser.gov/portal/datasets/lihtc.html [https://perma.cc/6S84-FL2C] (last visited Mar. 22, 2025) (explaining that after its creation in 1986, "the LIHTC program [gave] . . . authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households").

80. Quigley, *supra* note 34, at 303.

The Section 8 tenant voucher program grew in importance and soon became the federal government's largest affordable housing program.[81] In 1998, the program was reorganized, expanded, and renamed the Housing Choice Voucher program, reflecting "a new attitude about the purpose of the program and the new goal of promoting geographic opportunity through residential choice."[82] Accordingly, most Housing Choice Vouchers take the form of tenant vouchers that attach to individual tenants who are free to move from unit to unit without losing their vouchers.[83] Under the program, eligible low-income renters apply to their local public housing authority to request a voucher.[84] When tenants receive vouchers, they have sixty days to find housing in the private market.[85] The selected unit must meet housing quality standards,[86] pass an inspection,[87] have a rental rate that does not substantially exceed program maximums,[88] and—most importantly—it must be owned by a landlord who is willing to participate in the voucher program.[89]

If a landlord agrees to participate in the program, then the landlord will enter into a Housing Assistance Payment Agreement with their local public housing authority.[90] Under the agreement, voucher-holding tenants are "responsible for paying 30 percent of their household income in rent," and the federal government will pay the remaining portion of the rent directly to the landlord.[91] The highest rent that a landlord can charge a voucher-holding tenant is "typically set at or around Fair Market Rent, a measure defined as the 40th to 50th percentile of the area rent, adjusted for number of bedrooms."[92] Practically speaking, landlords propose a rental rate to the public housing authority, and the public housing authority will approve the rate as long as it is deemed reasonable.[93]

Another type of housing voucher available under the Housing Choice Voucher program is a project-based voucher.[94] Public housing authorities can use up to "20 percent of [their] authorized voucher units" to allocate vouchers to specific units in housing projects.[95] Developers often compete for the project-based

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81. *See id.* at 304–05; ROSEN, *supra* note 15, at 14.
82. ROSEN, *supra* note 15, at 14.
83. *See, e.g.*, 24 C.F.R. §§ 982.353–.354.
84. *See id.* §§ 982.201(b)(1), 202.
85. *See id.* § 982.303(a) (describing initial sixty-day term of voucher).
86. *Id.* § 982.401.
87. *See id.* § 982.405.
88. *See id.* § 982.503(c) (describing the "payment standards" that serve as the maximum subsidized rent); *id.* § 982.508 (specifying that, if actual rent exceeds the payment standard, the tenant's responsibility cannot exceed 40% of the family's adjusted monthly income).
89. *See id.* § 982.302(b).
90. *See id.* § 982.451.
91. ROSEN, *supra* note 15, at 16; *see* 24 C.F.R. § 982.1(a)(3) (describing the structure of the program and specifying that the tenant generally pays 30% of their family's adjusted monthly income); *id.* § 982.514 (describing the process for distributing housing assistant payments to landlords).
92. ROSEN, *supra* note 15, at 16.
93. *See* 24 C.F.R. § 982.305(a)(4).
94. *See id.* § 982.1(b)(1).
95. *See id.* § 983.6(a).

vouchers in a competitive process,[96] but sometimes projects are selected noncom petitively.[97] When project-based vouchers attach to a unit, tenants receive the same economic benefits as they would receive with a tenant voucher.[98] In other words, tenants' rent payments are capped at 30% of their household's monthly income, just as they would be with tenant-based vouchers.[99] However, if a family moves out of their unit, they cannot bring their voucher with them; it remains with the unit for the benefit of the next occupant.[100]

Since the 1990s, the Housing Choice Voucher program has become the largest rental assistance program in the country.[101] Legacy and state-funded public housing still exists, and it continues to house approximately 1.2 million households.[102] However, the federal government no longer funds new construction of public housing.[103] Instead, it subsidizes new construction by private developers through programs like the HOME Investment Partnerships Program[104] and the LIHTC, which provides tax credits to private developers that produce housing financed through the program.[105] Of these, the tax-based LIHTC has had more political support.[106] Congress has cut the budget for the HOME program by 62% from 2005 to 2015,[107] but it continues to expand the LIHTC program.[108] The LIHTC cost the government an estimated $11.8 billion in 2023.[109] By comparison, the 2022 budget appropriations for the Housing Choice Voucher program was $27.3 billion.[110] Today, more than 2.3 million households hold Housing Choice

96. *See id.* § 983.51(b).

97. *Project-Based Vouchers*, U.S. HUD, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project [https://perma.cc/D42W-CXZH] (last visited Mar. 22, 2025).

98. *See* 24 C.F.R. § 983.2(a) (stating that the tenant-based voucher rules described in 24 C.F.R. § 982 apply to project-based vouchers unless otherwise specified).

99. *See id.* §§ 982.1(a)(3), 983.2(a).

100. *See id.* § 983.2(b)(2).

101. Ingrid Gould Ellen et al., *Race, Space, and Take Up: Explaining Housing Voucher Lease-up Rates*, J. HOUS. ECON., Mar. 2024, at 1, 1.

102. *See* ROSEN, *supra* note 15, at 15.

103. *See* 42 U.S.C. § 1437g(g)(3)(A).

104. *See HOME Investment Partnerships Program*, U.S. HUD, https://www.hud.gov/program_offices/comm_planning/home [https://perma.cc/7S93-TM9C] (last visited Mar. 22, 2025).

105. *See* I.R.C. § 42(a).

106. *See* Howard Gleckman, *Congress May Expand the Low-Income Housing Tax Credit. But Why?*, FORBES (Feb. 14, 2024, 2:25 PM), https://www.forbes.com/sites/howardgleckman/2024/02/05/congress-may-expand-the-low-income-housing-tax-credit-but-why/?sh=5658b3a47e7e [https://perma.cc/FQG7-8NBQ].

107. *Declining Federal Housing Funding*, INCLUSIONARY HOUS., https://inclusionaryhousing.org/inclusionary-housing-explained/what-problems-does-iz-address/declining-federal-housing-funding/ [https://perma.cc/GU8L-XSUN] (last visited Mar. 22, 2025).

108. *See* Gleckman, *supra* note 106.

109. JOINT COMM. ON TAX'N, JCX-22-22, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2022-2026, at 35 (2022), https://www.jct.gov/publications/2022/jcx-22-22/ [https://perma.cc/R7SG-PWE8].

110. *See* OFF. OF PUB. & INDIAN HOUS., U.S. HUD, IMPLEMENTATION OF THE FEDERAL FISCAL YEAR (FFY) 2022 FUNDING PROVISIONS FOR THE HOUSING CHOICE VOUCHER PROGRAM 3 (2022), https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-14.pdf [https://perma.cc/8AAV-LENM].

Vouchers nationwide,[111] nearly twice as many as in 1993.[112]

Here, it is worth pausing to reflect upon the significance of these policy changes. During the 1980s, "the focus of anti-poverty policy shifted away from housing,"[113] and the focus of social policy shifted to markets.[114] The Reagan Administration championed the power of markets to solve social problems and, for that reason, favored market incentives over direct welfare programs.[115] So did the Clinton Administration in the 1990s.[116] In a political climate characterized by neoliberal politics[117] and media portrayals of "welfare queens,"[118] the private market approach adopted by housing vouchers and the LIHTC was strongly favored. Since then, those programs have proven to be more durable than the short-lived public housing program, and both have expanded over time.[119]

Yet, these programs have significant limitations. The LIHTC successfully funds affordable housing projects, but the units are often unaffordable to very low-income tenants.[120] LIHTC developers are required to set aside rent-restricted units, but the units will meet the statutory requirements as long as rent "does not exceed 30 percent of the *imputed* income limitation applicable to such unit."[121] The imputed rent limit requires only that rents be affordable to a hypothetical tenant whose income matches an imputed income limit. Depending on how many units have been set aside, the imputed income limit may be anywhere from 20%

111. *See* Ellen et al., *supra* note 101, at 1.

112. *See* ROSEN, *supra* note 15, at 15.

113. RESULTS, *supra* note 27, at 1.

114. *See* Schill, *supra* note 61, at 881–82.

115. *See* Neal M. Cohen, *The Reagan Administration's Urban Policy*, 54 TOWN PLAN. REV. 304, 304, 309 (1983).

116. Gregory Albo, *Neoliberalism from Reagan to Clinton*, 52 MONTHLY REV. 81, 82, 86 (2001).

117. *See id.* at 82; Jae-jin Yang et al., *What Makes Hybrid Insourcing Successful: A New Public–Private Partnership Model for Social Welfare Services*, ASIAN SOC. WORK POL. REV., Sept. 2019, at 1, 1.

118. *See* Gene Demby, *The Truth Behind the Lies of the Original 'Welfare Queen*,' NPR (Dec. 20, 2013, 5:03 PM), https://www.npr.org/sections/codeswitch/2013/12/20/255819681/the-truth-behind-the-lies-of-the-original-welfare-queen [https://perma.cc/PJ3H-8CLJ].

119. *See, e.g.*, ERIC S. BELSKY & MEG NIPSON, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., LONG-TERM LOW INCOME HOUSING TAX CREDIT POLICY QUESTIONS 5 (2010), https://www.jchs.harvard.edu/sites/default/files/longterm_low_income_housing_tax_credit_policy_questions.pdf [https://perma.cc/LF6T-R5EU] ("The consensus among our industry informants is that the LIHTC program is a durable, politically resilient, and popular program that benefits significantly from its enabling legislation as part of the tax code, its wide geographic scope, and its state-level implementation."); Will Fischer, *Housing Vouchers Work: Housing Vouchers' Success Reflects Bipartisan Collaboration*, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 17, 2017, 9:00 AM), https://www.cbpp.org/blog/housing-vouchers-success-reflects-bipartisan-collaboration (noting that the housing voucher program reflected "four decades of bipartisan collaboration that has made vouchers the nation's primary form of rental assistance"); MARK P. KEIGHTLEY, CONG. RSCH. SERV., RS22389, AN INTRODUCTION TO THE LOW-INCOME HOUSING TAX CREDIT 1 (2021) (describing an increase to the LIHTC credit amount under the 2018 Consolidated Appropriations Act); Press Release, U.S. HUD, HUD Expands More Housing Choices to a Total of 800,000 Households with Rental Assistance (Oct. 24, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_242 [https://perma.cc/J2JS-8UU7] (describing regulations to implement an expansion of HUD vouchers under the 2016 Small Area Fair Market Rent Final Rule).

120. *See* ROSEN, *supra* note 15, at 52–53, 134.

121. I.R.C. § 42(g)(2)(A) (emphasis added).

to 80% of the area median gross income (AMGI).[122] If a unit is rent-restricted to achieve affordability for tenants with 80% AMGI, then very low-income tenants with actual income closer to, say, 40% AMGI would face rental rates that are not affordable to *them*.

Roughly 40.9% of LIHTC residents depend on some other subsidy to help pay their rent, and voucher holders comprise 24.9% of LIHTC tenants.[123] For this reason, the Housing Choice Voucher program serves as an essential backstop to the LIHTC program, helping maintain affordability for many low-income tenants.[124] Importantly, though, the LIHTC program also serves as a backstop to the voucher program.[125] In fact, some voucher holders are unable to find landlords who will accept their vouchers other than landlords of LIHTC properties, and "[r]ecent work estimates that 30 percent of voucher holders end up 'cross-subsidizing' in this way."[126]

The next Section takes a closer look at the reasons why the Housing Choice Voucher program often falls short of its promise. Because an RTC would functionally integrate vouchers into the tax system, identifying the sources of the non-tax programs' failure is an important step toward evaluating whether an RTC would be more successful.

2. The Limitations of the Housing Choice Voucher Program

a. Underfunding

Critics of the voucher program observe that the program suffers from underfunding,[127] long waitlists,[128] and other limitations that have left many eligible tenants without rental assistance.[129] Only very low-income tenants—those whose income level does not exceed 50% of the area median income—are eligible for vouchers.[130] But only one in four of those eligible tenants receive a voucher, while the rest are added to waitlists, often to be stranded for years.[131] Many local governments have frozen waitlists entirely due to the delays, and they no longer

122. *See id.* § 42(g)(1)(C)(ii)(III).

123. *See* Peter Lawrence, *HUD LIHTC Tenant Report Highlights 47% of LIHTC Residents Earn at or Below 30% AMI*, NOVOGRADAC & CO. LLP (Apr. 20, 2021, 12:00 AM), https://www.novoco.com/notes-from-novogradac/hud-lihtc-tenant-report-highlights-47-lihtc-residents-earn-or-below-30-ami [https://perma.cc/K4P9-ZWZV].

124. *See* ROSEN, *supra* note 15, at 123.

125. *See id.*

126. *Id.*

127. *See* Bailey, *supra* note 2, at 4-108.

128. *See* Kimberlin et al., *supra* note 1, at 133.

129. *See* ROSEN, *supra* note 15, 247–48.

130. *See* 24 C.F.R. § 982.201(b)(1)(i)–(ii) (defining income eligibility as "very low income" or eligible for certain other HUD programs); *HUD's Public Housing Program*, U.S. HUD, https://www.hud.gov/topics/rental_assistance/phprog [https://perma.cc/RA6A-4LL8] (last visited Mar. 22, 2025) (defining "very low-income" as "50% of the median income for the county or metropolitan area" where the tenant lives).

131. *See* ROSEN, *supra* note 15, at 99, 102–03; Kimberlin et al., *supra* note 1, at 133; FISCHER ET AL., *supra* note 3, at 1.

add new names to the queue.[132] Meanwhile, many low-income tenants—those with income levels above 50% but below 80% of area median income—are not even eligible for vouchers.[133] Here, it is worth reiterating that the affordability crisis has now reached the typical tenant whose income is at the median.[134] Many RTC proponents hope the tax credits would reach a greater number of tenants and suffer from fewer funding constraints.[135]

However, if the only problem with the Housing Choice Voucher program is funding, then a simpler solution than an RTC would be to increase the size of the voucher program. In his 2023 budget request, President Biden "proposed increasing funding for tenant-based rental assistance to $32.1 billion for the Housing Choice Voucher Program, which would be sufficient not only to ensure all contracts are fully renewed but to extend the availability of tenant-based rental assistance to 200,000 additional households in need of voucher assistance."[136] Such an expansion would be small relative to the current gap, whereby insufficient funding leaves as many as 24 million eligible tenants without vouchers.[137] Nevertheless, it is worth asking whether further intervention would be necessary if the voucher program were fully funded. In fact, lack of funding is not the only reason that the Housing Choice Voucher program has struggled to meet affordable housing needs. The next Section explains how two shortages—housing shortages and landlord shortages—limit the program's ability to deliver affordable housing to voucher recipients.

b. Two Shortages: Housing and Landlords

In her new ethnographic book about the Housing Choice Voucher program, Professor Eva Rosen writes: "Finding a place to rent with a voucher, it turns out, is not as easy as it may seem. There are a number of barriers, including the availability of qualified homes, recipients' social networks, transportation to visit homes, access to information about properties, and landlord discrimination."[138] Of these barriers, "two facts—a shortage of quality homes on the one hand and a shortage of landlords willing to accept voucher holders on the other—account for much of the trouble that voucher holders have finding a place to use the subsidy."[139] In other words, even when a tenant holds a voucher, there may be a

132. *See* ROSEN, *supra* note 15, at 103.

133. *See* 24 C.F.R. § 982.201(b)(1); U.S. HUD, *supra* note 130.

134. *See* Kimberlin et al., *supra* note 1, at 132, 142.

135. *See* Bailey, *supra* note 2, at 4-108; Kimberlin et al., *supra* note 1, at 132, 135; FISCHER ET AL., *supra* note 3, at 1–3; Barbara Sard & Will Fischer, *Key Features of a Federal Renters' Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES (May 11, 2015), https://www.cbpp.org/research/housing/key-features-of-a-federal-renters-tax-credit [https://perma.cc/8YMD-HCLF].

136. *Analysis of President Biden's FY 2023 Budget Request*, NAT'L LOW INCOME HOUS. COAL. (Mar. 29, 2022), https://nlihc.org/resource/analysis-president-bidens-fy-2023-budget-request [https://perma.cc/Q4X4-PSET].

137. *See* Alicia Mazzara, *Expanding Housing Vouchers Would Cut Poverty and Reduce Racial Disparities*, CTR. ON BUDGET & POL'Y PRIORITIES (May 11, 2021, 1:44 PM), https://www.cbpp.org/blog/expanding-housing-vouchers-would-cut-poverty-and-reduce-racial-disparities.

138. ROSEN, *supra* note 15, at 23.

139. *Id.* at 102.

shortage of available units in which to use it. Since all units must pass an annual inspection, some units may simply fail to qualify as voucher-eligible housing.[140] And even when a unit does pass inspection, "there is no guarantee that the landlord will accept a voucher holder."[141]

Landlords may refuse to lease to a voucher holder because of stigma against low-income tenants, a reluctance to engage with housing authorities, the ability to lease at rates above the program's limits, administrative costs, racism, or other reasons.[142] While "Source of Income (SOI) discrimination protection laws exist in thirteen states and a number of cities and counties across the U.S., there is no federal SOI law," and SOI discrimination is legal in many jurisdictions.[143] Where no laws exist, "[l]andlords could simply say, 'No Section 8,'" but even where laws do apply, "recalcitrant landlords find ways to work around SOI laws . . . by setting the rent just above market rates, for example, or by citing some other reason, such as credit score, for renting to another qualified applicant."[144] Some landlords use the inspection process to avoid leasing to voucher holders.[145]

As a result, voucher holders often struggle to find eligible units offered by willing landlords.[146] Moreover, once awarded a voucher, a voucher holder only has sixty days to find a unit and execute a lease.[147] Rosen notes that voucher holders often struggle to find housing, and the most recent data showed that "nearly a third of households issued vouchers simply couldn't find a place to live with their voucher."[148]

For proponents of voucher expansion, this is a devastating statistic. At minimum, it suggests that even if the program were fully funded so that every single tenant received a voucher, many—perhaps a third or more—would nevertheless fail to secure housing using their voucher.

These housing and landlord shortages cast doubt on the efficacy of demand-side subsidies like RTCs to increase the supply of affordable housing. The purpose of tenant subsidies is not merely to provide financial assistance to tenants but also to create a market for affordable housing to meet societal needs.[149] In this market, landlords are key players, as they are expected to rent more units to low-income tenants who, thanks to their vouchers, can afford the market rates. However, the voucher program has often failed to motivate landlords to participate.[150] One HUD study found that the total number of vouchers increased

140. *See id.*
141. *Id.*
142. *See* HIREN NISAR ET AL., OFF. OF POL'Y DEV. & RSCH., U.S. HUD, LANDLORD PARTICIPATION STUDY: MULTIDISCIPLINARY RESEARCH TEAM 5–6, 24 (2018), https://papers.ssrn.com/abstract=3615792 [https://perma.cc/HY8H-JPXN].
143. ROSEN, *supra* note 15, at 118.
144. *Id.*
145. *See id.* at 119.
146. *See id.* at 122.
147. *See* 24 C.F.R. § 982.303(a) (describing initial sixty-day term of voucher).
148. ROSEN, *supra* note 15, at 122.
149. *See infra* Section IV.B.
150. *See* NISAR ET AL., *supra* note 142, at 5–6.

between 2010 and 2016, but the number of landlords participating in the program *decreased* from about 700,000 to 640,000 during that same period, "resulting in an overall increase in the number of vouchers per landlord from 2.6 vouchers per landlord in 2010 to 3.1 vouchers per landlord in 2016."[151]

An open question, then, is whether tenants would be able to access housing with an RTC or whether they would face similar barriers to finding housing as voucher holders. Proponents of the tax credits predict that RTC tenants would face fewer barriers than voucher holders. This prediction will be explored in Part IV below, but it is worth previewing that discussion here. That is, the outcomes described in this Section may signal fundamental limitations to the market-based approach embraced by the voucher program and implicitly adopted in RTC proposals.[152] First, as Rosen points out, "[w]hile policymakers have imagined vouchers to operate in an idealized market that provides information and choice to tenants," in reality, "landlords and tenants alike scramble to stay afloat and make ends meet amidst chronic financial insecurity."[153] Even with tenant subsidies, the housing market is not ideal: the same market dynamics that make it difficult for unsubsidized tenants to find housing—information gaps, discriminatory real estate practices, and power imbalances between landlords and tenants—continue to constrain the options of voucher holders.[154]

c. Economic and Distributional Outcomes

Housing shortages and landlord shortages constrain the number of units that become available to voucher holders, but many landlords *do* participate in the voucher program. Studying how these landlords respond to the voucher program can help predict their response to an RTC. When landlords participate in the voucher program, they often do so because it is profitable.[155] This is by design. As elaborated below, public–private partnerships leverage markets to deliver public goods, and they do so by creating a profitable market for that good.[156] Despite the landlord shortages described above, cottage industries of "voucher specialists" have developed in some communities.[157] These landlords actively court voucher holders and offer them units that they have been unable to fill with market-rate tenants.[158] Other landlords lease units that they *could* fill with market-rate tenants, but they participate in the program because they can charge a higher rate to voucher holders than they could charge to market-rate tenants (most of whom are also low-income renters).[159]

151. *Id.* at 13.
152. *See infra* Section IV.B.
153. ROSEN, *supra* note 15, at 24.
154. *See id.* at 23, 128.
155. *See id.* at 139–40.
156. *See infra* Section IV.B.
157. *See* ROSEN, *supra* note 15, at 59, 145.
158. *See id.* at 151.
159. *See* Eva Rosen, *Rigging the Rules of the Game: How Landlords Geographically Sort Low-Income Renters*, 13 CITY & CMTY. 310, 319 (2014).

Since the maximum rent that landlords can charge voucher holders is determined by a metro-level formula, the maximum is often higher than the market rate in low-income neighborhoods.[160] Some landlords in those neighborhoods respond by increasing the rent for units leased to voucher holders.[161] The tenants are indifferent; their maximum rent is 30% of their income, regardless of the rental rate. The loser in this arrangement is the government, which is responsible for paying the rest of the tenant's rent. To illustrate, consider a landlord who could lease a unit in the unsubsidized market for $700 per month. If a tenant has a $1,500 monthly income, then in the unsubsidized market, they would spend 47% of their income on rent ($700 rent/$1,500 income), leaving them with $800 after paying rent. This amount would be considered unaffordable under HUD's definitions.[162] With a voucher, the same tenant would pay only $450 out of their own income (30% of $1,500). After paying rent, they will have $1,050, which is $250 more than they would have had without the voucher. In other words, they will receive a $250 per month benefit from the voucher.

If their landlord does not raise the rent in response to the voucher, then the government will pay a $250 rent balance ($700 rent *less* $450 paid by the tenant). That amount corresponds to the benefit received by the tenant. However, assume that the statutory rent limit is $1,200, and their landlord chooses to increase the rent to that level. In that case, the government will pay a $750 balance ($1,200 rent *less* $450 paid by the tenant). The tenant is no better (or worse) off than before the landlord raised their rent. The landlord, however, is $500 better off than it would have been in a world without the subsidy. Though simplified, this example is not unrealistic. In her ethnography of voucher holders in Baltimore, Professor Eva Rosen described a transaction much like the one in this hypothetical, in which a landlord charged voucher holders "almost $500 per month more than the neighboring homes" that leased for about $700 a month.[163]

Housing policy experts have decried outcomes like these as "a complete reversal of the stated policy goals of the program, [because] a program meant to provide a safety net to tenants ends up acting as one for landlords."[164] As this Article will explain in Part III, this critique has merit but may be overstated. Housing Choice Vouchers—and RTCs—are not merely safety net programs. They create private–public partnerships with a goal to create a market for a good that would otherwise be underproduced.[165] Absent interventions, landlords do not offer housing to tenants at affordable rates because it is not profitable for them to do so. The voucher program is an intervention to encourage private landlords to provide affordable housing to low-income tenants. The additional profit landlords generate from participating in the program is the incentive that motivates them to

160. *See* ROSEN, *supra* note 15, at 138.
161. *See id.* at 52.
162. *See* PD&R EDGE, HUD, *supra* note 24.
163. ROSEN, *supra* note 15, at 52.
164. *Id.* at 24.
165. *See infra* Part IV.

deliver affordable housing to tenants.[166] Landlords that cannot profit from the voucher program—because they can already charge rents above those allowed under the program, for example—simply have no reason to participate.

To the extent that the financial incentives increase the number of units made available to low-income tenants, the program may help make the affordable housing market more efficient. However, policymakers should also consider the distributive impact of these outcomes. In an analysis of tax expenditures and distributive justice, Professor Linda Sugin has argued that policymakers should distinguish between subsidies and incentives.[167] Sugin explains that "[a] subsidy provides an economic benefit to a person or makes something cheaper for [them], while an incentive induces a person to behave in a particular way."[168] Ultimately, this distinction is relevant to evaluate the success of an intervention:

> If a provision is designed to provide a subsidy for particular people (like families with children) because Congress wanted to ensure they had sufficient resources, it is important that the market not shift the tax benefit to other people (who do not have children). If Congress's goal was instead to increase certain types of activity in the economy, market shifting of benefits would be less of a concern.[169]

In short, "[i]t matters *who* gets the subsidy, but not who is incentivized."[170] The question, then, is whether housing choice vouchers—and RTCs, which may produce similar outcomes for reasons explained in Part IV below—are subsidies for renters or incentives for landlords. The answer is not immediately obvious.

Vouchers provide necessary resources to renters, but "[t]o succeed, the HCV program must be attractive to private landlords."[171] In other words, the goal is not merely to subsidize individual tenants, but also to motivate private landlords to rent to low-income tenants—and landlords are most likely to participate in the program when they have a financial incentive to do so.[172] Public housing authorities implicitly acknowledge the need for incentives when they approve rental

166. *See* ROSEN, *supra* note 15, at 139–40.

167. *See* Linda Sugin, *Tax Expenditures, Reform, and Distributive Justice*, 3 COLUM. J. TAX L. 1, 23 (2011).

168. *Id.*

169. *Id.*

170. *Id.*

171. Philip M.E. Garboden et al., *Taking Stock: What Drives Landlord Participation in the Housing Choice Voucher Program*, 28 HOUS. POL'Y DEBATE 979, 980 (2018).

172. *See id.* (explaining that "the costs and benefits to the program are weighed against a hypothetical *counterfactual* tenant that a landlord might otherwise rent to in the open market" and noting that landlords are most likely to participate if they have a strong "financial incentive to rent through the program," such as higher rents or a more reliable market of tenants).

rates that are higher than unsubsidized comparisons.[173] For these reasons and others, this Article argues that the voucher program is both a landlord incentive, with a goal of creating a market for affordable housing, and a subsidy for low-income tenants.

Thus, the evolution of the affordable housing policy landscape reflects a steady march toward market-based incentives that nudge private developers and landlords to supply affordable housing. The largest of these programs, the Housing Choice Voucher program, provides affordable housing to over two million households,[174] but has nevertheless failed to meet the demand for affordable housing. This failure is due to a combination of public shortfalls (underfunding and regulatory burdens) and market shortfalls (housing and landlord shortages). Against this backdrop, housing advocates and policymakers are proposing federal RTCs to fill the gaps in the current housing policy landscape. The next Section will briefly summarize the major RTC proposals and highlight some of the most significant questions about how to design them.

II. RENTERS' TAX CREDIT PROPOSALS

Renters' Tax Credit (RTC) proposals are not entirely new, but they have been gaining momentum in Washington. Since 2018, RTC bills have been proposed by former Vice President Kamala Harris,[175] Senator Cory Booker,[176] Representative Danny Davis,[177] Representative Jim Clyburn,[178] Senator Sherrod Brown,[179] and Senator Ron Wyden.[180] Several policy organizations have highlighted RTC proposals as a promising affordable housing strategy, including Center on Budget and Policy Priorities,[181] "Bipartisan Policy Center, Center for American Progress, Urban Institute, Enterprise Community Partners, Center for Global Policy Solutions, Prosperity Now, Mortgage Bankers Association, and others."[182] In the past, most RTCs were modest, state-level tax credits designed to relieve renters of property tax burdens passed along by their landlords in the form of increased rents.[183] Today's proposals envision a much larger federal program designed to achieve housing affordability.

As this Section will explain, RTCs can be structured as tenant-side tax credits or as landlord-side tax credits, but all forms of RTCs seek to deliver benefits like

173. *See* Rosen, *supra* note 159, at 319.

174. *See* ROSEN, *supra* note 15, at 260.

175. Rent Relief Act of 2018, S. 3250, 115th Cong. (2018); Rent Relief Act of 2019, S. 1106, 116th Cong. (2019).

176. Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. (2018).

177. Rent Relief Act of 2023, H.R. 6721, 118th Cong. (2023); Rent Relief Act of 2019, H.R. 2169, 116th Cong. (2019).

178. Housing, Opportunity, Mobility, and Equity Act of 2019, H.R. 4808, 116th Cong. (2019).

179. Renters Tax Credit Act of 2021, S. 2554, 117th Cong. (2021).

180. Decent, Affordable, Safe Housing for All Act (DASH Act), S. 680, 118th Cong. (2023).

181. *See* FISCHER ET AL., *supra* note 3, at 1; Will Fischer, *Renters' Tax Credit Would Reduce Housing Cost Burdens*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 3, 2016, 1:00 PM), https://www.cbpp.org/blog/renters-tax-credit-would-reduce-housing-cost-burdens [https://perma.cc/V39Y-B786].

182. Bailey, *supra* note 2, at 4-109.

183. *See id.*

those available under the Housing Choice Voucher program. Some RTC proposals would create tenant-based RTCs that are analogous to tenant-based vouchers.[184] Tenant-based RTCs can be structured as tenant-side or landlord-side tax credits, and they can be capped or uncapped.[185] However, they always deliver housing assistance to individual tenants who are free to move around without losing their tax credits.[186] Other proposals would create project-based RTCs analogous to project-based vouchers.[187] Project-based RTCs would be structured as landlord-side tax credits, and they would require landlords to apply for tax credit allocations.[188] Project-based RTCs would attach to specific units and benefit tenants who occupy those units.[189] However, the RTCs would not follow individual tenants if they move, and they would not benefit any tenants who occupy a unit that has not received a tax credit allocation.[190]

Although all RTCs would deliver housing assistance to tenants to achieve housing affordability, these structures vary with respect to administrative burdens and may have different equity and efficiency outcomes. This Section compares tenant-based RTCs to project-based RTCs and introduces practical issues raised by each of them.

A. TENANT-BASED RTCS

Many RTC proposals envision tax credits that would deliver the same economic benefits that tenants would receive if they held a Housing Choice Voucher. These benefits include not only housing payment assistance but also the ability to choose housing in the open market and move around without losing benefits.[191] Recall that voucher holders are responsible for rent payments equal to 30% of their family's monthly adjusted income.[192] To the extent that the rental rate exceeds the tenant's payments, the government pays the landlord a Housing

184. *See*, *e.g.*, Rent Relief Act of 2023, H.R. 6721, 118th Cong. § 2(a) (2023) (proposed by Rep. Danny Davis); Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 3(a) (2018) (proposed by Sen. Cory Booker); Rent Relief Act of 2018, S. 3250, 115th Cong. § 2(a) (2018) (proposed by Sen. Kamala Harris); Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(a) (2019) (proposed by Sen. Kamala Harris).

185. *See infra* Section II.A. As explained below, capped tax credit programs are subject to rules that specify a maximum amount of tax credits that can be awarded to taxpayers. *See infra* Section II.A. Under a capped program, governments must allocate the tax approved amount of credits among eligible taxpayers. In contrast, uncapped tax credit programs are available to all taxpayers who meet the eligibility criteria.

186. *See infra* Section II.A.

187. *See, e.g.*, Decent, Affordable, Safe Housing for All Act (DASH Act), S. 680, 118th Cong. § 212 (a) (2023) (proposed by Sen. Ron Wyden); Renters Tax Credit Act of 2021, S. 2554, 117th Cong. § 2(a) (2021) (proposed by Sen. Sherrod Brown).

188. *See infra* Section II.B.

189. *See infra* Section II.B.

190. *See infra* Section II.B.

191. *See* WILL FISCHER ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, MORE HOUSING VOUCHERS: MOST IMPORTANT STEP TO HELP MORE PEOPLE AFFORD STABLE HOMES 1 (2021), https://www.cbpp.org/sites/default/files/4-14-21hous.pdf [https://perma.cc/7JNE-27MU].

192. *See* ROSEN, *supra* note 15, at 16; 24 C.F.R. § 982.1(a)(3).

Assistance Payment to cover the gap.[193] The rental rate is negotiated between the landlord and housing authorities;[194] in general, that rate must be comparable to area properties, and it is limited by Area Fair Market Rents (or Small Area Fair Market Rents) published by HUD.[195]

Many proposed tenant-based RTCs are designed to deliver the same economic benefits as the voucher program.[196] For example, Senator Booker's proposal would allow tenants to claim an RTC equal to 100% of the amount by which the taxpayer's rent payments exceed 30% of their adjusted gross income (limited by Fair Market Rent).[197] To illustrate, assume a tenant's adjusted gross income was $1,000 per month and her unit cost $700 a month. The tax credit base would be her rental payment ($700) to the extent it exceeds 30% of her income ($1,000 * 30% = $300), or $400 per month. Under Booker's proposal, the tax credit would equal $400 per month, and it would reduce the taxpayer's final tax bill on a dollar-for-dollar basis.[198] The economic benefit to the tenant would be nearly identical to what would be received under the Housing Choice Voucher program.[199]

Alternatively, tenant-based RTCs could be structured as landlord-side tax credits. Like the tenant-side RTCs described above, these tax credits would deliver housing assistance to tenants. However, these RTCs would be claimed by landlords. In the example above, the landlord would earn the tax credits by executing a rental reduction agreement directly with a tenant (or with a local housing agency) that caps the tenant's rent at 30% of her income, or $300. The landlord would be entitled to a tax credit equal to the extent that the rental rate (subject to a rent limit) exceeds the tenant's payment: in this example, $400 a month. In other words, where the tenant-side structure proposed by Booker envisions a tax credit that would reimburse the tenant for $400 of her rental payments, the landlord-side structure envisions a tax credit that would limit the tenant's out-of-pocket rent due, leaving the tenant with $400 in pocket while making the landlord whole.

As these examples demonstrate, in theory, tenant-based RTCs should provide economically equivalent benefits to tenants, regardless of whether they are administered as tenant-side or landlord-side tax credits. This is an illustration of the difference between statutory incidence—who is legally eligible to claim the

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193. *See* ROSEN, *supra* note 15, at 16; 24 C.F.R. § 982.1(a)(2).

194. *See* ROSEN, *supra* note 15, at 118; 24 C.F.R. § 982.451(b)(1).

195. *See Fair Market Rents*, U.S. HUD, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr [https://perma.cc/NV4Y-N6JJ] (last visited Mar. 22, 2025).

196. *See, e.g.*, Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 2 (2018) (proposed by Sen. Cory Booker); Housing, Opportunity, Mobility, and Equity Act of 2019, H.R. 4808, 116th Cong. § 2(n)(2) (2019) (proposed by Rep. Jim Clyburn).

197. *See* Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 3(a) (2018).

198. *See id.*

199. The benefit amount may differ from its calculation under the Housing Choice Voucher program because the tax law definition of income excludes some sources of income that may be includable under the voucher program. *See infra* notes 357–59 and accompanying text. Noneconomic implications of the RTC approach will be discussed later in this section.

tax credits and subject to audits—versus economic incidence, which refers to the person (or people) who receive the benefits.[200] In the examples above, the landlord charged the same $700 rent, regardless of the form of the tax credit. On that assumption, the only person to benefit from the RTC was the tenant. Under both structures, the landlord received the same $700 of value that it would have received in an unsubsidized market. The tenant, however, saved $400 under both structures.

This simplified example demonstrates that regardless of whether the *statutory* incidence falls on the landlord or tenant, the *economic* incidence of the tax credit can fall on the tenant. In reality, the economics would not be so simple. As explained in Part III below, the economic incidence of the tax credits would often be shared between landlords and tenants for the same reasons that the benefits of housing vouchers are often shared. Part III of this Article will explore how tenants and landlords may respond to an RTC, and Part IV will analyze how an RTC might perform relative to a cashed-out alternative. But first, this Section will introduce the three ways that tenant-based RTCs can be structured, and it will consider several preliminary issues related to timing, administration, and program size. The tenant-based tax credit structures include uncapped tenant-side RTCs, capped tenant-side RTCs, and uncapped landlord-side RTCs. A fourth type of RTC, project-based RTCs that correspond to project-based vouchers, are also discussed in this Part.

1. Uncapped Tenant-Side RTCs

Both then-Senator Harris and Senator Booker have proposed uncapped tenant-side RTCs that would be claimed directly by low-income tenants.[201] Uncapped RTCs would be available to as many eligible claimants as qualify, in the full amount allowed under the law. In contrast, the capped RTCs described below would be subject to a program maximum, whereby housing agencies would allocate tax credits to tenants (or landlords). Only tenants (or landlords) who receive allocations would be eligible to claim a capped RTC. Proponents of uncapped tenant-side RTCs hope they will reach more tenants, and give them more access to housing, than the nontax voucher program.[202] These claims will be considered

200. *See* Sugin, *supra* note 167, at 20.

201. *See* Rent Relief Act of 2018, S. 3250, 115th Cong. § 2(a) (2018) (proposed by Sen. Kamala Harris); Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(a) (2019) (proposed by Sen. Kamala Harris); Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. (2018) (proposed by Sen. Cory Booker).

202. *See, e.g.*, SARA KIMBERLIN & ELIZABETH KNEEBONE, TERNER CTR., U.C. BERKELEY, OPTIONS FOR ADDRESSING RENT BURDENS THROUGH THE TAX CODE: CONSIDERATIONS FOR DESIGNING A RENTER'S TAX CREDIT 7 (2024), https://ternercenter.berkeley.edu/research-and-policy/options-for-addressing-rent-burdens-through-the-tax-code-considerations-for-designing-a-renters-tax-credit/ [https://perma.cc/V9L2-4HNA] ("[W]hile many existing rental subsidies are rationed through waitlists or support specific housing units in limited geographic locations, tax credits are typically available to all eligible filers who file their taxes. This suggests that credits could potentially be designed as a complementary or supplementary policy tool to reach renters who do not benefit from existing subsidies.").

in Part IV below. This Section will analyze three other important issues raised by uncapped tenant-side RTCs: the compliance burdens placed on low-income tenants, timing problems associated with the tax credit form, and potentially high program costs. Then, it will consider whether these problems would be addressed by capped tenant-side RTCs or landlord-side RTCs.

Compliance Burdens. The compliance burdens of all tenant-side RTCs would fall directly on low-income tenants. These burdens arise from rule complexity, information complexity, and computational complexity.[203] Rule complexity refers to tax rules that are difficult for taxpayers to understand.[204] Though drafters can and should strive to draft RTC rules that would be simple enough for low-income tenants to understand, even the simplest versions of RTCs would contain some complexity. For example, all major tenant-side RTCs include some rental limit that may differ from the tenant's actual rent. Booker's proposal would be limited to 100% Fair Market Rent.[205] Harris' proposal would be limited by 150% of Fair Market Rent for tenants making under $100,000 annually—except in high-cost areas, where the limit would be 150% of Fair Market Rent for tenants making under $125,000 annually.[206] These limits help control program costs, but they also introduce complexity for the low-income taxpayers who need to understand them.

Rule complexity may also arise from income-level phase outs.[207] Under Booker's proposal, every taxpayer whose rent payments are more than 30% of their adjusted gross income would be eligible to claim the tax credit.[208] The tax credit would equal the full spread between 30% of the taxpayer's adjusted gross income and their rental payments (subject to the limits described above).[209] Though simple, this proposal would be very expensive, and some observers may object to the law because it would not limit the tax credits to low-income tenants. Perhaps for these reasons, Harris' proposal would phase out the tax credit as tenants' incomes rise.[210] Under her proposal, larger tax credits would be available for very low-income tenants than for higher-income tenants, and the tax credit would phase out entirely for taxpayers with income over $100,000.[211] For example, under Harris' proposal, taxpayers with incomes under $25,000 would be entitled to a full reimbursement of rent payments above 30% of their gross income.[212]

203. *See* DAVID F. BRADFORD, UNTANGLING THE INCOME TAX 266–67 (1986); Jacob Goldin, *Tax Benefit Complexity and Take-up: Lessons from the Earned Income Tax Credit*, 72 TAX L. REV. 59, 60 (2018).

204. *See* BRADFORD, *supra* note 203, at 267.

205. Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 3(a) (2018).

206. *See* Rent Relief Act of 2018, S. 3250, 115th Cong. § 2(a) (2018).

207. *See* BRADFORD, *supra* note 203, at 267.

208. *See* Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 3(a) (2018).

209. *See id.*

210. *See* Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(a) (2019).

211. *See id.*

212. *See id.*

However, taxpayers with income between $25,000 and $50,000 could only claim a tax credit for 75% of that amount.[213] These types of provisions may help address distributive concerns, but they also introduce complexity for taxpayers.

In addition to rule complexity, Professor Jacob Goldin has identified two major sources of compliance burdens faced by low-income tenants who must claim benefits through the tax system.[214] The first is informational complexity, which he defines as "the difficulty of obtaining the informational inputs that determine a taxpayer's eligibility for the benefit, and, if eligible, the benefit amount."[215] Here, informational complexity may arise from the rent limits, which most proposals tie to Area Median Rent.[216] This information is published by HUD,[217] but some tenants may struggle to find and navigate the agency's online system.

The second source of compliance burdens is computational complexity, which Goldin defines as "the difficulty a taxpayer faces in determining eligibility and benefit amount, on the basis of the required information."[218] Goldin argues that the pervasive use of assisted preparation methods, such as computer software, to prepare returns "mostly eliminates the computational complexity associated with claiming a benefit but does not meaningfully reduce a benefit's informational complexity."[219] It is conceivable that the relevant rental rate data could be incorporated into tax preparation software to help reduce not only computational complexity but also informational complexity associated with an RTC.

However, there are costs associated with tax filing, regardless of whether assisted preparation methods are used.[220] Professor Francine Lipman has argued that costs arise when taxpayers who may not owe any income are nevertheless required to file tax returns to claim benefits.[221] Lipman notes that "[t]he complexity of preparing and filing a tax return . . . transfers billions of dollars of low-income Earned Income Tax Credit (EITC) benefits to tax preparers each year for tax preparation, filing, and related services."[222] Many low-income tenants would not be required to file tax returns if they did not need to claim refundable tax credits.[223] For these tenants, an RTC may create unnecessary compliance burdens, such as time spent filing returns, the effort of engaging with tax complexity, and

213. *See id.*

214. *See* Goldin, *supra* note 203, at 60.

215. *Id.*

216. *See* Rosen, *supra* note 159, at 311.

217. *See Fair Market Rents (40th Percentile Rents)*, OFF. OF POL'Y DEV. & RSCH., U.S. HUD https://www.huduser.gov/portal/datasets/fmr.html [https://perma.cc/N983-E2WG] (last visited Mar. 22, 2025).

218. Goldin, *supra* note 203, at 60.

219. *Id.*

220. *See* Francine J. Lipman, *Access to Tax InJustice*, 40 PEPP. L. REV. 1173, 1187–88 (2013). Assisted preparation may include using tax filing software or accountants. *See id.* at 1188.

221. *Id.* at 1187.

222. *Id.* at 1188.

223. When a tax credit is refundable, it first lowers the taxpayer's tax bill to zero, and any unused tax credit is delivered to the taxpayer as a cash transfer. U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-558, FEDERAL LOW-INCOME PROGRAMS: ELIGIBILITY AND BENEFITS DIFFER FOR SELECTED PROGRAMS DUE TO COMPLEX AND VARIED RULES 2 n.3 (2017), https://www.gao.gov/products/gao-17-558 [https://perma.cc/FH56-9CZJ] ("The EITC can result in a cash refund for the taxpayer, if the credit exceeds the

costs of tax preparation services. That said, it is worth noting that many of these taxpayers probably do file tax returns under current law, precisely because the welfare system relies so heavily on refundable tax credits to deliver benefits.[224] Many low-income taxpayers already file tax returns to claim the EITC and the Child Tax Credit. An RTC may even create an additional incentive for taxpayers to file their taxes and claim these benefits.

Still, it is important to acknowledge that, when tax laws are used to deliver benefits to low-income taxpayers, they create costs and burdens that may harm low-income taxpayers.[225] They may also expose low-income taxpayers to audits. The IRS disproportionately audits EITC recipients, especially those from historically marginalized groups.[226] When taxpayers fail these audits, they may become ineligible to claim EITCs in future years.[227] This experience points to two risks associated with tenant-side RTCs. First, tenants who claim refundable RTCs may be subject to heightened scrutiny from the IRS and subject to additional audits. Second, since many RTC claimants would also be EITC claimants, increased audit rates may place taxpayers at heightened risk of losing their EITC benefits if they have made mistakes on their tax returns.

Timing. A second, and related, issue raised by tenant-side RTCs relates to timing. So far, this Article has described the effect of RTCs with reference to tenants' monthly income and rent payments.[228] This timeframe matches most renters' payment schedules. However, most individual taxpayers only file their taxes—or claim tax credits—once a year.[229] This timing mismatch presents a challenge for RTCs that seek to increase housing affordability. Cost-burdened tenants may be unable to wait for an annual payment. They need a way to access the tax credits in advance, ideally monthly. To solve this problem, Harris' proposal includes an elective Advanced Payment option that provides for monthly payments to tenants.[230] This would enable taxpayers to receive monthly cash transfers, and any over- or under-payment could be reconciled when the taxpayer files their tax return.[231]

The government experimented with advance payments like these during the COVID-19 pandemic when it administered Child Tax Credit (CTC) payments.[232]

taxpayer's tax liability."). This ensures that low-income taxpayers receive the full benefit of the tax credit even if they have little or no tax liability.

224. *See* Tahk, *supra* note 8, at 69.

225. *See* Lipman, *supra* note 220, at 1186.

226. *See id.* at 1190.

227. *See id.* at 1195–96.

228. *See, e.g.*, *supra* text accompanying notes 197–99.

229. *See* Weisbach & Nussim, *supra* note 13, at 981.

230. *See* Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(b) (2019).

231. *See id.* § 2(a).

232. *See Child Tax Credit*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/child-tax-credit [https://perma.cc/2V3R-TJYX] (last visited Mar. 22, 2025).

Though the program successfully reduced child poverty rates, the Urban Institute noted that "the advance CTC payments [were] not reaching many households likely eligible for them, and people with the lowest incomes report the lowest rates of receipt."[233] A voluntary advanced payment option for EITC claimants failed even more dramatically.[234] From 1979 to 2010, EITC claimants were permitted to participate in an advance payment program to receive their benefits in each paycheck.[235] Over the life of the program, "there was never a time that more than 2% of EITC claimants chose to receive advance payments, which eventually resulted in Congress eliminating the option in 2010."[236] One reason for the low participation rates is that taxpayers "may have been (accurately) afraid that they would be required to *pay back* some portion of what they received during the year." [237] This risk may be particularly chilling in the case of RTCs. If RTC claimants were required to repay their benefits, it may trigger renewed housing insecurity for tenants.

Cost. A third issue raised by tenant-side RTCs relates to the cost of potential RTC programs. Recall that tenant-side tax credits would provide tenants with the same economic benefits as the Housing Choice Voucher program. In effect, RTCs are simply a tax-based version of the voucher program with one very important difference. The voucher program is actively administered by housing authorities and limited by funding caps, but many proposed tenant-side RTCs would be uncapped and earned without the involvement of housing authorities.[238] Booker's RTC proposal would create an entitlement program in which *all* rent-burdened taxpayers could claim the tax credit, regardless of income level.[239] As a result, it would reach a much larger group of recipients than the voucher program; half of Americans are cost-burdened and potential RTC claimants.[240] The cost of this type of entitlement RTC has been estimated at $76 billion per year.[241] For

233. MICHAEL KARPMAN ET AL., URB. INST., WHO HAS RECEIVED ADVANCE CHILD TAX CREDIT PAYMENTS, AND HOW WERE THE PAYMENTS USED?: PATTERNS BY RACE, ETHNICITY, AND HOUSEHOLD INCOME IN THE JULY–SEPTEMBER 2021 HOUSEHOLD PULSE SURVEY 11 (2021), https://www.urban.org/sites/default/files/publication/105023/who-has-received-advance-ctc-payments-and-how-were-the-payments-used.pdf [https://perma.cc/73BH-JU7N].

234. *See* Alstott, *supra* note 10, at 581.

235. *See* Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 26 WASH. & LEE J. C.R. & SOC. JUST. 85, 133 (2019).

236. *Id.*

237. *Id.* at 133–34; *see* Alstott, *supra* note 10, at 581.

238. *See, e.g.*, Rent Relief Act of 2018, S. 3250, 115th Cong. § 2(a) (2018) (proposed by Sen. Kamala Harris); Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(a) (2019) (proposed by Sen. Kamala Harris); Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 3(a) (2018) (proposed by Sen. Cory Booker).

239. *See* Housing, Opportunity, Mobility, and Equity Act of 2018, S. 3342, 115th Cong. § 3(a) (2018).

240. *See* Kimberlin et al., *supra* note 1, at 131.

241. Bailey, *supra* note 2, at 4-109.

comparison, the 2023 appropriation to the Housing Choice Voucher program was only $27.4 billion.[242]

Harris' proposal would be more modest in scale than Booker's proposal. First, it would phase out benefits for higher-income taxpayers.[243] Lawmakers could significantly limit the population of tenants eligible to claim the credit, thereby lowering program costs. Second, the law would provide a shallower subsidy for all but the lowest income tenants.[244] Only the lowest income tenants would be eligible for a large enough tax credit to provide full affordability; the tax credit would reimburse their rental payments that exceed 30% of their income.[245] Higher-income tenants, on the other hand, would only be eligible for a more limited tax credit. For example, taxpayers with income over $50,000 but less than $75,000 would be eligible for a tax credit equal to 50% of the amount by which their rent exceeds 30% of their income.[246] This housing assistance payment would reduce housing cost burdens, but it would not achieve full affordability for the tenant (based on the HUD definitions discussed above).[247] These two features—income thresholds and shallow subsidies—could help control the costs of entitlement tax credits without placing an absolute cap on program size. As the next subsection explains, capped tenant-side RTCs would help control the program budget, but it would introduce additional compliance costs for tenants.

2. Capped Tenant-Side RTCs

One way to minimize program costs would be to cap the tenant-side RTCs. No legislators have proposed capped tenant-based RTCs, but it is useful to consider how this structure would compare to the others. Under a capped tenant-side RTC, public housing authorities would be authorized to award a fixed amount of tax credits among eligible tenants.[248] Tenants who wish to claim these RTCs would need to obtain a tax credit allocation from housing authorities before claiming the tax credits. As a result, the overall program costs could be more easily estimated and controlled, and housing authorities could prioritize the most cost-burdened tenants. Moreover, since fewer tenants would be eligible to claim the RTCs, landlords may be less likely to assume their tenants will claim the tax credits. For that reason, they may be less likely to raise their rents in response to these RTCs.[249]

242. Peter Lawrence, *House Appropriations Subcommittee Approves $68.2 Billion FY 2024 HUD Spending Bill, Effectively Reducing Funding, but Mostly Sparing Rental Assistance*, NOVOGRADAC & CO. LLP (July 13, 2023, 12:00 AM), https://www.novoco.com/notes-from-novogradac/house-appropriations-subcommittee-approves-682-billion-fy-2024-hud-spending-bill-effectively [https://perma.cc/87GN-B87K].

243. *See* Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(a) (2019).

244. *See id.*

245. *Id.*

246. *Id.*

247. *See supra* note 24 and accompanying text.

248. *See* Sard & Fischer, *supra* note 135 ("States could issue families credit certificates that they could use to rent a unit of their choice in the private market.").

249. *See infra* Section IV.B.2.

One obvious implication of this structure is that it would assist fewer tenants than the entitlement programs proposed by Senator Booker and then-Senator Harris.[250] Only tenants who receive allocations would be eligible, and the number of tenants who receive allocations would depend on program size. Public housing authorities could be required to prioritize the lowest income tenants, but ultimately the tax credits would be awarded to those who apply for them—and many who apply would not receive an allocation. Unlike the entitlement RTCs, the scale of these RTCs would depend on Congress' continual willingness to fund a large housing assistance program. Given lawmakers' apparent reluctance to expand the Housing Choice Voucher program,[251] it is likely that a capped tenant-based RTC would be similarly underfunded and oversubscribed.

This type of RTC would also place additional compliance and administrative burdens on tenants that further compound those described above.[252] Tenants would need to take additional steps to apply for the tax credits. This process may chill tenant participation, and it would also increase administrative burdens on the government. Housing authorities would need to allocate tax credits among a potentially large number of tenants. These reasons may explain why no legislators have proposed capped tenant-based RTCs.

3. Uncapped Landlord-Side RTCs

As explained above, tenant-based RTCs could be structured as landlord-side tax credits. In theory, these landlord-side tax credits could be uncapped, just like the uncapped tenant-side RTC described above. For example, a tenant could negotiate a rent reduction with their landlord, and the landlord could claim a tax credit for the balance. When the tenant moves, the tenant could negotiate a similar rent reduction with a new landlord. Even though the tax credit would be claimed on the landlord-side, the credits themselves would follow the tenants. No additional steps would be required of the landlord. The most significant difference between this structure and the project-based RTCs described below is that the tenant-based RTCs would be available to all landlords who provide rent reductions.

At least superficially, the most significant advantage of landlord-side RTCs relates to compliance. Unlike tenant-side RTCs, which place heavy compliance burdens on tenants, landlord-side RTCs would place the heaviest compliance burdens on landlords. This may be a preferable outcome. Landlords may be in a better position to bear the compliance burdens than their low-income tenants. Many landlords are already accustomed to navigating a highly regulated business environment.[253] Yet, compliance burdens are a known barrier to participation in the

250. *See infra* Section III.A.1.

251. As explained above, the Housing Choice Voucher program has long suffered from underfunding, suggesting that Congress has struggled to fund—let alone expand—the voucher program to meet demands. *See supra* Section I.B.2.

252. *See supra* Section II.A.2.

253. *See* Sharon Yamen, Hilary Silvia & Linda Christiansen, *In Defense of the Landlord: A New Understanding of the Property Owner*, 50 URB. L. 273, 279 (2021) ("The 'landlord' or property owner is

voucher program.[254] If landlords face heavy compliance burdens under an RTC, they may be similarly reluctant to participate—and their participation would be critical to program success.

The compliance burdens may be particularly heavy if uncapped landlord-side RTC include precertification requirements. For example, the law may require landlords to obtain preapproval from housing authorities before setting the rental rate. This process would mirror the Housing Choice Voucher program, and it would help increase administrative oversight (by requiring pre-approval by an agency) and discourage landlords from increasing rents in response to the RTC. However, it would also increase administrative burdens for the government and compliance burdens for landlords. This could discourage their participation, and it may create delays that would harm tenants seeking new housing. These outcomes would undermine program goals.

In sum, if tenant-based RTCs are administered on the tenant side, they may create significant compliance burdens for tenants, may expose them to increased audits, and may be very expensive. On the other hand, if they are administered on the landlord side, they may create compliance burdens for landlords that chill participation and undermine program goals. The next Section will consider the strengths and limitations of project-based RTCs.

B. PROJECT-BASED RTCS

Project-based RTCs are landlord-side tax credits that attach to units instead of individual tenants.[255] At first glance, a project-based RTC may appear to be a supply-side subsidy for landlords, but that characterization is incorrect. Project-based RTCs are analogous to the project-based housing vouchers described above.[256] As one housing policy analyst explained, "[e]veryone recognizes Section 8 as a demand-side subsidy—and paying it directly to the supplier in a Section 8 Project-Based Voucher doesn't magically turn it into an actual supply-side policy."[257] Here, too, a project-based RTC would be a demand-side subsidy used to lower tenants' housing costs in eligible units.

From the tenant's perspective, the most significant difference between project-based and tenant-based RTCs is that project-based RTCs would attach to units.

a market participant in the highly regulated business of housing."). Yamen, Silvia, and Christiansen note that small landlords may face greater burdens in this regulatory environment than larger commercial landlords. *See generally id.* (arguing that laws and regulations applicable to the housing industry apply equally to private and commercial landlords, but the compliance burdens fall more heavily on smaller businesses).

254. *See* ROSEN, *supra* note 15, at 153.

255. *See, e.g.*, Decent, Affordable, Safe Housing for All Act (DASH Act), S. 680, 118th Cong. § 212 (a) (2023) (proposed by Sen. Ron Wyden); Renters Tax Credit Act of 2021, S. 2554, 117th Cong. § 2(a) (2021) (proposed by Sen. Sherrod Brown).

256. *See supra* Section I.B.1.

257. Alex Armlovich, *Section 8's Big, Clumsy Brother: How the Low Income Housing Tax Credit Works*, NISKANEN CTR. (Dec. 15, 2022), https://www.niskanencenter.org/section-8s-big-clumsy-brother-how-the-low-income-housing-tax-credit-works/ [https://perma.cc/G3EH-9FD7]. For more examples of supply-side and demand-side subsidies, see *infra* Section IV.A.2.

For example, Senator Wyden's proposed RTC would require landlords to enter into a Qualified Rental Reduction Agreement with a state "rental reduction credit agency."[258] Under the proposed law, the agreement would allocate a maximum amount of tax credits to the landlord.[259] The landlord's annual RTC would equal the "aggregate qualified rental reduction amounts" extended to tenants but not more than the landlord's tax credit allocation.[260] For each unit, the qualified rental reduction amount would be the excess of the "applicable rent" for the unit over the "family rental payment."[261] Like the Booker and Harris proposals described above, the Wyden proposal would limit "applicable rent" to fair market rents.[262]

Though it would be possible to design an uncapped project-based RTC, all major proposals for project-based RTCs would create capped programs that are actively administered by state and local housing authorities.[263] Under these proposals, Congress would authorize a capped amount of RTCs available in each state, and state agencies would allocate those tax credits among landlords.[264] These caps could help control the cost of the tax credits and increase congressional oversight when authorized amounts are scheduled to sunset.[265] The tax credit allocation process would also increase regulatory oversight that may help minimize the extent to which landlords raise rents in response to an RTC.[266] However, the capped RTCs would also create additional administrative and compliance burdens for landlords, who would be required to participate in an application process in order to receive credits.[267] These compliance burdens may chill landlord participation. Since the success of project-based RTC would depend upon landlord participation, this outcome would be particularly concerning in this context.

Moreover, even if landlords do participate, the capped model would limit the number of tenants who would benefit under the program, and it would provide tenants with less choice about where to rent than under tenant-based RTCs.

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258. Decent, Affordable, Safe Housing for All Act (DASH Act), S. 680, 118th Cong. § 212(a) (2023) (proposing I.R.C. § 36C(g)(1)).

259. *See id.* (proposing I.R.C. § 36C(c)(2)(B)).

260. *Id.*

261. *Id.* (proposing I.R.C. § 36C(b)(1)(A)–(B)).

262. *Id.* (proposing I.R.C. § 36C(b)(2)). The applicable rent for every unit is capped at the lesser of Small Area Fair Market Rent or "the amount of rent which would be charged for a substantially similar unit with the same number of bedrooms in the same building which is not an eligible unit." *Id.* This language is likely intended to discourage landlords from increasing their rental rates in response to the tax credits.

263. *See* Decent, Affordable, Safe Housing for All Act (DASH Act), S. 680, 118th Cong. § 212(a) (2023) (proposing I.R.C. § 36C(c)(4)); Renters Tax Credit Act of 2021, S. 2554, 117th Cong. (2021) (proposing I.R.C. § 36C(c)(3)(B)).

264. *See* Sard & Fischer, *supra* note 135, at 2.

265. *See* Rebecca M. Kysar, *The Sun Also Rises: The Political Economy of Sunset Provisions in the Tax Code*, 40 GA. L. REV. 335, 350 (2006).

266. *See infra* Section IV.B.

267. It stands to reason that an application process would create opportunities for regulators to impose additional compliance obligations on landlords similar to those that burden landlords in the Housing Choice Voucher program. *See* ROSEN, *supra* note 15, at 253–54.

Tenant-based RTCs would enable tenants to rent from any private landlord willing to participate in the program.[268] Project-based RTCs would limit tenants' housing opportunities to units owned by landlords who have already received an allocation from housing agencies. This feature limits housing opportunities among tenants, and it may create an absolute barrier for low-income tenants who do not know how to locate this pool of landlords.[269] Finally, since the RTCs would attach to units instead of individual tenants, tenants' housing mobility would be further limited by their inability to transport the tax credit to a new housing unit.[270]

This Part has provided an overview of RTC proposals, including an analysis of the practical advantages and disadvantages of different structures. An important insight in this Part is that modern RTC proposals would create tax credits that closely parallel the Housing Choice Voucher program. In effect, an RTC would integrate housing vouchers into the tax system even though the nontax program has fallen short of expectations.[271] This raises important questions about the benefits and limitations of integrating housing vouchers into the tax system. Specifically, what are the likely equity and efficiency outcomes of an RTC, and what are the alternatives to integration of in-kind housing benefits?

The rest of this Article considers these questions and their implications for housing policy and tax theory. Part III places RTCs within the context of the social welfare system and argues that RTCs reflect a public–private partnership strategy like the Housing Choice Voucher program. It demonstrates that an RTC would integrate in-kind housing benefits into the tax system, and it argues that RTC would suffer from many of the same inefficiencies as Housing Choice Vouchers. Part IV evaluates the proposed choice to integrate in-kind benefits into the tax system. It argues that in-kind integration may have some benefits if the goal is to create landlord incentives to provide affordable housing, but cash-based alternatives would be a more efficient and equitable way to address poverty.

III. RENTERS' TAX CREDIT AS PUBLIC–PRIVATE PARTNERSHIPS

A. LOCATING RENTERS' TAX CREDITS WITHIN THE SOCIAL WELFARE SYSTEM

Thus far, this Article has framed the problem as follows. America has a longstanding affordable housing shortage, which has intensified in recent years. The primary federal intervention to assist low-income renters is the Housing Choice Voucher program, but that program has fallen short of its promise to provide affordable housing to those who need it. Today, half of American renters are cost-burdened.[272] For that reason, housing advocates and progressive leaders

268. In the case of tenant-side RTCs, landlords may be unwilling to rent to low-income tenants who would be unable to pay rent without the RTCs. In the case of landlord-side RTCs, landlords may simply be reluctant to participate in the tax credit program due to compliance burdens.

269. *See* Kimberlin et al., *supra* note 1, at 148; *see also* Rosen, *supra* note 159, at 323 (describing analogous challenges of voucher holders who have trouble finding participating landlords).

270. *See* Kimberlin et al., *supra* note 1, at 148.

271. *See supra* Section I.B.2.

272. *See* Kimberlin et al., *supra* note 1, at 131.

have proposed Renters' Tax Credits (RTCs) that would use the tax code to provide rental assistance to cost-burdened tenants. Though the proposed RTCs could take different forms, they all have one thing in common: RTCs are designed to deliver similar economic benefits to tenants as Housing Choice Vouchers, the nontax program that has fallen short of expectations. Therefore, from a housing policy perspective, the critical question is whether an RTC would be more effective than its nontax counterpart.

To answer this question, it is critical to clarify the policy objectives of rental assistance programs. Rental assistance programs are an important part of the U.S. welfare system, along with programs like "income transfers, food stamps, and the earned income tax credit."[273] However, these programs all embody different social welfare strategies, and it is impossible to understand the nature of rental assistance—or the policy options available to RTC proponents—without understanding their distinctions. One way to categorize social welfare programs is through a two-dimensional typology. The first dimension reflects a choice between direct public assistance or public–private partnerships.[274] The second dimension reflects the choice between tax or nontax instruments.[275] As this Section will explain, RTCs and all other tax-based in-kind assistance reflect the public–private partnership approach. For reasons that will be elaborated in Section III.B., public–private partnerships depend on private market participants to deliver benefits, and their efficiency and equity impacts depend on the behavior of those participants. In other words, outcomes under an RTC would depend on how landlords and tenants respond to the tax credits.

1. Direct Public Assistance

a. Nontax Instruments

Direct public assistance includes any assistance delivered directly from the government to recipients. This model of social welfare is consistent with a "state-driven system in which the government is both the manager and provider" of social welfare benefits.[276] In the nontax context, public assistance can be delivered to recipients through cash transfers (e.g., public welfare or universal basic

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273. Quigley, *supra* note 34, at 308.

274. *See* Marc Bendick, Jr., *Privatization of Public Services: Recent Experience*, *in* PUBLIC–PRIVATE PARTNERSHIP: NEW OPPORTUNITIES FOR MEETING SOCIAL NEEDS 153, 153 (Harvey Brooks et al. eds., 1984) (distinguishing market-based approaches from "the 'nonmarket' alternative of government agencies themselves directly producing a good or service"). This Article refers to market-based approaches as a "public–private partnership" strategy. *See* Harvey Brooks, *Seeking Equity and Efficiency: Public and Private Roles*, *in* PUBLIC–PRIVATE PARTNERSHIP: NEW OPPORTUNITIES FOR MEETING SOCIAL NEEDS 3, 18–20 (Harvey Brooks et al. eds., 1984) (characterizing market subsidies as public–private joint ventures).

275. *See* Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 718–19 (1970); Weisbach & Nussim, *supra* note 13, at 957.

276. Yang et al., *supra* note 117, at 2.

income), or it can be delivered to recipients in-kind.[277] Examples of in-kind public assistance include "municipal childcare centers, municipal homes for the elderly, hospitals operated by regional public bodies . . . [and] government-operated universities," which may deliver "free health care, free medicine, free dental care, and free meals for school children."[278] The key characteristic of public assistance programs is that the government delivers the benefits directly to recipients without reliance on private markets.[279] For example, the school lunch programs referenced above are provided by a federally funded National School Lunch Program that reimburses state and local agencies based on the number of meals served.[280] In this way, federal and local governments work together to deliver food directly to eligible children. The public housing programs described in Section I.B are an example of in-kind assistance delivered directly from the government.

b. Tax Instruments

The examples of direct public assistance programs described above are nontax programs, but public assistance can also be delivered through the tax code. Examples include the Earned Income Tax Credit (EITC), which delivers cash-equivalent tax benefits to eligible low-income taxpayers,[281] and the Child Tax Credit, which delivers cash-equivalent tax benefits to families with children.[282] Both the Child Tax Credit and the EITC are refundable tax credits that provide real cash benefits to taxpayers whose tax liability is too low to absorb the tax credit.[283] This ensures that claimants are able to claim the credit even if it "exceeds the tax they owe."[284] Even if those taxpayers have zero income tax liability, they can still claim refundable tax credits.[285] If a family with $0 tax liability is eligible for a $3,000 EITC, they will receive a check (or electronic transfer) for $3,000 cash. In this way, cash-based public assistance can be delivered through tax law. Since the tax code is only capable of transferring cash payments to recipients, in-kind public assistance cannot be placed in the tax code.[286] However, as the next Section will explain, tax law *can* be used to deliver in-kind assistance via public–private partnerships.[287]

277. Evert Vedung, *Policy Instruments: Typologies and Theories*, *in* CARROTS, STICKS & SERMONS: POLICY INSTRUMENTS & THEIR EVALUATION 21, 43 (Marie-Louise Bemelmans-Videc et al. eds., 1998).

278. *Id.* at 43, 47.

279. *See* Yang et al., *supra* note 117, at 2 (contrasting direct provision with "contracting-out," which integrates "private providers into the state-run system"). The public–private partnership model described below is consistent with the market-based approach Yang calls "contracting-out."

280. *See National School Lunch Program*, CAL. DEP'T OF EDUC. (May 14, 2024), https://www.cde.ca.gov/ls/nu/sn/nslp.asp [https://perma.cc/YL8G-CM86].

281. *See* I.R.C. § 32(a)(1).

282. *See id.* § 24(a).

283. *See id.* § 24(d); Alstott, *supra* note 10, at 534. Note that the Child Tax Credit is only partially refundable. *See* I.R.C. § 24(d).

284. *See* Alstott, *supra* note 10, at 534.

285. *See id.* at 544.

286. *See* Weisbach & Nussim, *supra* note 13, at 1012.

287. *See id.* at 1015; I.R.C. § 42.

2. Public–Private Partnerships

a. Nontax Instruments

Unlike direct public assistance programs, public–private partnership strategies rely on private markets to deliver public goods.[288] Public–private partnership interventions include supply-side market incentives and demand-side subsidies, both of which are used to create markets for public goods.[289] Examples of nontax, supply-side incentives include cash grants or loans given to suppliers to lower their production costs.[290] Nontax demand-side subsidies, on the other hand, typically take the form of restricted in-kind assistance, aiming to reduce customers' cost to purchase a particular type of good.[291] Examples include food stamps and vouchers like the Housing Choice Vouchers described above.[292] These demand-side subsidies provide restricted funds that can only be used for purchases in a particular market.[293] A food stamp holder cannot use the voucher to purchase clothing, even if they need clothing more than food. A housing voucher holder cannot use it to repair their car, even if they need a working vehicle to drive to work. Instead, these types of vouchers can only be converted into a particular type of good: food or housing, respectively. The goods themselves are delivered from private sellers: in this example, grocery stores or private landlords.

b. Tax Instruments

Like public assistance programs, public–private partnership programs can be incorporated into the tax code. The low-income housing tax credit (LIHTC) is an example of a tax-based supply-side subsidy to encourage private developers to produce and deliver affordable housing to low-income tenants.[294] Demand-side incentives, analogous to in-kind benefits like vouchers, are less commonly placed in the tax system. However, Weisbach and Nussim have noted that voucher benefits are "susceptible to a hybrid system in which the tax system provides credits or other benefits for expenditures . . . at authorized establishments."[295] They note that "[t]he Hope and Lifetime Learning tax credits, for example, work exactly

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288. *See* Jean-Etienne de Bettignies & Thomas W. Ross, *The Economics of Public-Private Partnerships*, 30 CANADIAN PUB. POL'Y – ANALYSE DE POLITIQUES 135, 135 (2004).

289. *See* Bendick, *supra* note 274, at 153.

290. *See* Gerd Schwartz & Benedict Clements, *Government Subsidies*, 13 J. ECON. SURVS. 119, 128–29 (1999).

291. *See id.* at 128.

292. *See* Vedung, *supra* note 277, at 47; Bettignies & Ross, *supra* note 288, at 141.

293. *See* Vedung, *supra* note 277, at 47.

294. *See* I.R.C. § 42; NOVOGRADAC & CO. LLP, LOW-INCOME HOUSING TAX CREDIT: ASSESSMENT OF PROGRAM PERFORMANCE & COMPARISON TO OTHER FEDERAL AFFORDABLE RENTAL HOUSING SUBSIDIES 2 (2011), https://www.novoco.com/public-media/documents/novogradac_hag_study_2011_graphics.pdf (describing the LIHTC as "the centerpiece of supply-side solutions to the lack of affordable rental housing").

295. Weisbach & Nussim, *supra* note 13, at 1015.

this way."[296] Childcare tax credits, which use tax credits to reimburse payments to certain childcare providers are another example of in-kind tax benefits.[297]

RTCs would be a new type of in-kind assistance located in the tax code. All RTCs are earned when a tenant rents an unaffordable unit in the private housing market. As described in Part II, tenant-side RTCs reimburse taxpayers for rent paid, while landlord-side RTCs make the landlord whole for rent reductions offered to tenants.[298] Regardless of structure, all RTCs have this in common: they are unavailable to taxpayers who do not rent housing units from private landlords, and they all rely on private landlords to deliver housing.[299] As such, RTCs would join the short list of in-kind social welfare benefits already located in the tax code, including the childcare tax credit and education tax credits.

Locating RTCs within the social welfare system is more than an academic exercise. This analysis will sharpen the focus on distributional and efficiency considerations and may help predict outcomes. The goals of public–private partnerships, like RTCs, are fundamentally different from the goals of social welfare policies that adopt a public assistance model. Where the goal of public assistance programs is to deliver resources to needy recipients, the goal of public–private partnerships is to create a market in a good that is undersupplied in private markets. Recognizing this distinction is key to surfacing the tradeoffs associated with alternatives to the RTC. An RTC would be a public–private partnership tool. Alternatively, housing assistance could be "cashed-out" through refundable tax credits that deliver unrestricted cash-equivalent benefits. However, cashing out vouchers would do more than simplify the program: it would convert the tax credits from a public–private partnership tool to tax-based public assistance.[300] The figure below summarizes the typology and the effect of "cashing out" an in-kind benefit. The rest of this Part will analyze the integration of vouchers into the tax system, including analyses of the in-kind structure and cashed-out alternatives.

296. *Id.* (explaining that the Hope and Lifetime Learning tax credits provide tax credits when taxpayers spend money at eligible educational institutions).

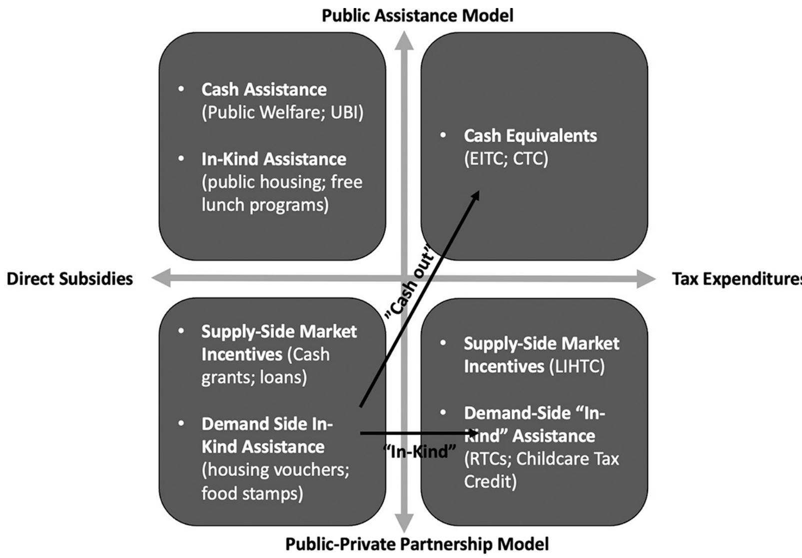
297. *See* I.R.C. § 21(a)–(b).

298. *See supra* Section II.A.

299. Note that tenants of public housing units already receive affordable housing and therefore would not receive any tax credits.

300. *See infra* Section IV.B.

Figure 1. Typology of Social Welfare Programs



B. THE PUBLIC–PRIVATE PARTNERSHIP MODEL AND THE LIMITS OF RTCS

Understanding RTCs as public–private partnerships helps predict the outcomes—and potential challenges—that may be associated with the approach. Consistent with the economic framing of the affordable housing problem,[301] the goal of public–private partnerships is to create a market in a good that is undersupplied in private markets.[302] These programs aim to increase market efficiency by encouraging the production of goods that are associated with public benefits (sometimes referred to as positive externalities).[303] In the case of affordable housing, private markets underproduce low-rent housing, despite its potential to reduce poverty, improve public health, and support healthy labor markets. If an RTC were to successfully increase renters' access to affordable housing, then the program could be deemed successful—even if landlords capture a substantial portion of the subsidy. In fact, experience with the Housing Choice Voucher program has demonstrated that financial incentives are essential to achieve landlord participation.[304]

301. *See supra* Section I.A.3.

302. *See* Bendick, Jr., *supra* note 274, at 153 ("One way that government can mobilize the business sector to contribute to the solution of social problems is by creating a market that provides a profit opportunity. That market can be created in direct and explicit ways, as when agencies 'contract out' public service delivery to private firms. Or government may enhance market demand at one remove, as when it issues vouchers to citizens for purchasing goods and services from firms. Or, still more indirectly, government can create opportunity not by increasing market demand but by subsidizing production costs on the supply side of the market.").

303. *See* Bettignies & Ross, *supra* note 288, at 142–43.

304. *See supra* Section I.B.2.

Rental housing markets are driven by relationship-specific contracts, whereby landlords and tenants (or, in some cases, landlords and the government) negotiate rental rates specific to those parties.[305] When this type of market is subsidized, "[t]ransaction costs arise because both the provider and the customer want to appropriate that surplus from trade, and the bargaining and opportunistic behaviour that is generated may in itself be costly."[306] Housing subsidies, therefore, create incentives for both landlords and tenants to attempt to negotiate terms that allow them to capture value from the subsidy. For reasons explained below, these negotiations may not *always* reflect inefficient outcomes—but they often will. This Section describes how both tenants and landlords may change their behavior in response to an RTC.

1. Tenants' Behavior

One way to predict how an RTC would affect tenant behavior is to look at how taxpayers have responded to other tax-based housing subsidies. For this, the mortgage interest deduction serves as a useful comparison.[307] The mortgage interest deduction allows homeowners to deduct the amount of interest paid on their residential mortgages.[308] This deduction subsidizes the cost of homeownership.[309] Although the stated purpose of the law was to increase homeownership rates, research suggests that it only rarely affects *whether* a person buys a home.[310] However, the deduction does seem to affect the *amount* that homebuyers pay for their homes.[311] In other words, by artificially increasing taxpayers' buying power, the mortgage interest deduction encourages homebuyers to buy larger, more expensive homes than they would otherwise purchase.[312] This

305. *See* Rosen, *supra* note 159, at 319. These relationship-driven markets can be contrasted to spot markets. Spot markets are markets in which "the asset being traded changes hands on the spot." Brian Nibley, *What is the Spot Market & How Does it Work?*, SOFI (July 7, 2023), https://www.sofi.com/learn/content/what-is-spot-market/ [https://perma.cc/22W4-CNXN]. Prices are set by the market, based on overall supply and demand. *Id*. Food stamps, referenced above, operate in a spot market because "the government provides a product (food) that requires no specific investment, via the spot market (supermarkets)." Bettignies & Ross, *supra* note 288, at 141. When a customer purchases food at a grocery store, it purchases food at a quoted price that is available equally to all customers. *See* Nibley, *supra* note 305. A food stamp holder faces the same food prices as any other shopper. If enough food stamp holders enter the market, food prices rise (for all shoppers) in response to the increased demand for food. *See* Alarice Rajagopal, *Food Stamp Expansion Linked to 15% Spike in Grocery Prices*, SUPERMARKET NEWS (Aug. 25, 2023), https://www.supermarketnews.com/retail-financial/food-stamp-expansion-linked-15-spike-grocery-prices [https://perma.cc/MS4L-B3EH]. However, prices are not subject to negotiation by individual shoppers, and they will not change simply because an individual shopper happens to hold food stamps.

306. Bettignies & Ross, *supra* note 288, at 140.

307. *See generally* I.R.C. § 163.

308. *See id.* § 163(c).

309. *See* Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 L. & CONTEMP. PROBS. 233, 280–81 (2010).

310. *See id.* at 281–82.

311. *Id.*; *see* David Albouy & Andrew Hanson, *Are Houses Too Big or in the Wrong Place? Tax Benefits to Housing and Inefficiencies in Location and Consumption*, 28 TAX POL'Y & ECON. 63, 89 (2014); Layser, *supra* note 67, at 947.

312. *See* Albouy & Hanson, *supra* note 311, at 89–90; Layser, *supra* note 67, at 961.

inefficient overconsumption drives up home prices and exacerbates existing barriers to homeownership.[313]

Returning to the RTC, it is important to recognize that rent subsidies may encourage tenants to pursue housing with higher market rents than they would pursue without the subsidy. In other words, an RTC would not merely make tenants' housing more affordable—it would also make *more expensive* housing more affordable for them. This may be an acceptable outcome in some cases. For example, policymakers may believe that unaffordable housing forces tenants to live in poor-quality housing in distressed neighborhoods. A decaying built environment can expose tenants to health risks, such as those associated with lead exposure, bad plumbing, or lack of heat and air conditioning.[314] Distressed neighborhoods may further expose residents to crime, pollution, food deserts, and insufficient access to medical care.[315] To the extent that the goal of an RTC is to increase tenants' access to improved housing conditions, it may be an efficient outcome for tenants to purchase higher rent housing in response to an RTC.

However, many RTC proposals would create a tax credit available to a large population of tenants, including those who do not have very low-income levels.[316] It is likely that many of those tenants *do not* currently live in subpar housing conditions. In other words, though these tenants may be cost-burdened, they already live in quality housing in safe and stable neighborhoods. In these cases, an RTC may only be efficient to the extent that it provides affordability relative to their *current* rent levels. To the extent that those tenants use the subsidy to "trade up" to nicer housing, tenants will receive more economic benefit from the RTC than was necessary to achieve affordability. The risk of this inefficient result may be especially high when the RTC lacks income-based phaseouts.

This analysis reflects an important insight: an RTC would create an incentive for tenants to consume more housing than they do in the unsubsidized market. But tenants do not *need* incentives to consume housing. Housing is a basic human need. To the extent that budget constraints prevent low-income tenants from satisfying that need—for example, by forcing them to accept subpar housing conditions—a subsidy that increases their purchase power is arguably justified. However, not all cost-burdened tenants have failed to satisfy their basic housing needs. For those tenants, an RTC would create an incentive to overconsume housing.

2. Landlords' Behavior

An RTC would also create incentives for landlords to increase rent levels, charging tenants more rent for the *same* housing that would have been available at lower rates without the subsidy. Since RTC claimants' rent is essentially

313. *See* Layser, *supra* note 67, at 962.

314. Michelle D. Layser, *How Place-Based Tax Incentives Can Reduce Geographic Inequality*, 74 TAX L. REV. 1, 20 (2020).

315. *Id.* at 20–21.

316. *See supra* Section II.A.

capped, they would be unaffected by these rent changes. Landlords, on the other hand, stand to capture significant value from the subsidy and have an incentive to negotiate the highest possible rate.[317] Here, experience under the Housing Choice Voucher program is useful to predict how landlords will respond to an RTC. Professor Eva Rosen describes how landlords negotiate different rates with voucher holders compared to unsubsidized tenants.[318] She recounts the following conversation with a landlord:

> [The landlord said,] "I mean you can't go ask a person for 1,500 dollars knowing they have a regular job . . . something like this [house], you have to stay within the budget that somebody can afford. Now most [market-rate tenants] can afford anywhere from 700 to 900. That's what they're willing to pay for rent." [The landlord] was pleased that morning because he had just found a voucher holder tenant and negotiated the rent at $1,500. This price differential is the primary reason that [the landlord] seeks voucher-holding tenants. Fifteen out of the 20 landlords in the sample reported that that they can get between 100 and 300 dollars more per month by renting through the voucher program.[319]

This conversation suggests that landlords are conscious of their tenants' purchase power and are willing to accept rents that are within tenants' price constraints. When the landlords know their tenant is subsidized, however, they negotiate higher rents to take advantage of the subsidy. Since the tenants are largely indifferent to these rent hikes, this first negotiation is easy. But landlords must also negotiate the rent with housing authorities.

Public housing authorities are not indifferent to rent increases because they create additional costs to the government. Yet, even here, there is "room for negotiation." [320] Rosen quotes another landlord, who explains:

> You request a rent. They'll come back and say, "Well, we can't give you that but we'll give you this." And you can choose to accept it or deny it . . . You ask over—and it can be way over—but if you ask under they're going to give you under . . . . If I do get a Section 8 tenant, depending on the bedroom size, I may ask for 1300, 1350 and see where they come back in, knowing that they'll probably come lower than that . . . . A market tenant would probably be around 900 . . . and that's a whole 900 you have to collect. That's the difference.[321]

This quotation illustrates how landlords can use the negotiation process to capture value from the subsidies, even when the government is a direct participant in the negotiation process.

317. The existence of "voucher specialists" in the Housing Choice Voucher program suggests that at least some landlords will behave in this way. *See supra* notes 157–59 and accompanying text.

318. *See* Rosen, *supra* note 159, at 319.

319. *Id.*

320. *Id.*

321. *Id.*

As explained above, capped RTCs, such as capped tenant-side RTCs and project-based RTCs, would require landlords to negotiate rental reduction agreements approved by government agencies. In those cases, the landlords would face two levels of negotiations: one rent negotiation with a tenant, who has little reason to object to the rent increase; and one rent negotiation with housing authorities, which would try to limit the amount of the rent increase.[322] Experience with Housing Choice Vouchers suggests that the negotiations with government agencies can help limit rent increases but are unlikely to prevent them entirely. Moreover, most tenant-based RTCs would not require landlords to negotiate with the government at all. Recall that many tenant-based RTCs would be administered on the tenant's side, based entirely on the rates tenants negotiate with their landlords (subject to rent limits).[323] Here, experience with Housing Choice Vouchers suggests that landlords will respond to tenants' increased purchasing power by raising rents as close to the limits as possible. If enough landlords respond in this manner, the limits themselves may even rise as the average rents in the area increase in response to the subsidy.

At least two additional points are worth mentioning here. First, RTC proponents occasionally predict that tax credits will have better outcomes than vouchers because they would be less dependent on landlord participation.[324] The logic goes like this: voucher holders often face discrimination in housing markets, but tenant-side RTC claimants would experience less discrimination because their landlords would not need to know they are relying on tax credits to make their rent payments. This argument is worth interrogating. If correct, it also implies that landlords would not negotiate higher rental rates in response to the tax credit because, in theory, they would be unaware that their tenant is relying on the RTC.

It is plausible that at least some landlords may unwittingly rent to tenants who will claim the RTC. However, there are reasons to question how often this would occur—or whether it would even be desirable. Landlords are deeply invested in understanding the financial condition of their tenants.[325] Landlords want to know that their tenant will pay their rent, and they want to charge rents that are at least equal to market rates. After all, there is a shortage of housing, not a shortage of tenants. Therefore, in the typical case, a landlord would decide whether to

322. *See supra* Part II.

323. *See supra* Section II.A.

324. *See, e.g.*, RESULTS, *supra* note 27, at 9–10 ("Tenants will have more options because they will not be constrained by the same stipulations present in other housing assistance programs. For example, they will not have to find a landlord who is able and willing to participate in a voucher program or a federally subsidized development. Second, because RTC payments would go directly to renters, neighbors and landlords do not need to know which tenants are receiving the RTC and which are not. This should cut down on discrimination and NIMBYism, both of which limit access to and supply of affordable housing."); Kimberlin et al., *supra* note 1, at 148 ("Targeting subsidies to renters directly also means that renters have more choice over the locations and characteristics of their housing, and are not limited to the units that developers or landlords have chosen for participation in subsidy programs. This might have the added benefit of promoting greater racial and socioeconomic integration, given that landlords in the housing voucher program have been known to concentrate units disproportionately in poor and high-minority neighborhoods.").

325. *See* MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 10 (2016).

approve a tenant based, in large part, on whether the tenant can prove they have enough income to pay market rents when due.[326] To the extent that tenants can prove sufficient income *without* a subsidy, they may be able to avoid telling their landlord about the RTC. In these cases, rent increases may be minimal, and the RTC would ensure that the housing is affordable to the tenant. This is the best-case scenario from an efficiency standpoint.

However, it is difficult to see how this scenario would increase tenants' *access* to affordable housing. In other words, consider an unsubsidized tenant whose income is too low to qualify for a lease at market rents. Landlords will not approve tenants with insufficient income. If an RTC is introduced, that tenant may have the capacity to pay rent—but unless the tenant discloses that they will use the RTC, the landlord will not know about this additional income source. Unless the RTC is disclosed, the landlord will simply deny the tenant's lease application. In this scenario, it is likely that the tenant *would* disclose that they will rely on the RTC. For reasons discussed below, some landlords may not approve an RTC tenant, but others probably would approve these tenants just as they would approve a voucher holder: with a rent increase. Though costly, this may simply be the price of increased access to housing.

However, opportunistic negotiations would often reflect inefficient market distortions. Recall that uncapped tenant-side RTCs would make the tax credits available to all or most tenants. In that case, the RTCs may be available (or partially available) to all tenants with income below a threshold. Since tenants would disclose their unsubsidized income to landlords when they apply for housing, landlords would know whether their tenants are eligible for RTCs. Moreover, since many landlords cater to lower-income tenants,[327] these landlords may assume that *all* their tenants will receive the RTC. If the RTC is administered on the landlord side, that would further increase the salience of the RTC to landlords. In all of these cases, landlords would be aware of the RTC and motivated to negotiate increased rents. In other words, many landlords would receive a subsidy for doing something they would have done anyway: rent to low-income tenants. This would be an inefficient outcome if the primary goal is to increase the number of units available to low-income tenants.[328]

One final point is worth highlighting here: since landlords would capture value from the subsidy through the negotiation process, the inefficient outcomes described here will arise when tenants execute *new* leases. If an RTC were enacted tomorrow, tenants with *existing* leases would be locked into contracted rents that would not immediately change in response to the subsidy.[329] These

326. *See* Kasia Manolas, *Tenant Screening Checklist for Landlords*, AVAIL (Oct. 28, 2024), https://www.avail.co/education/articles/tenant-screening-checklist-for-landlords [https://perma.cc/9DEZ-BBDY] (listing income as the number one criteria on the model tenant screening checklist).

327. *See* Rosen, *supra* note 159, at 311.

328. *See* David M. Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275, 320 (2015).

329. *See* Geoff Boeing et al., *Rental Housing Spot Markets: How Online Information Exchanges Can Supplement Transacted-Rents Data*, 43 J. PLAN. EDUC. & RSCH. 525, 530 (2023).

tenants would continue to pay the rents they agreed to pay before the RTC was enacted, and the RTC would make their rental rate newly affordable. The landlord would not receive any immediate benefit from the RTC with respect to leases occupied by tenants whose rents were set prior to the enactment of the RTC. However, landlords could begin charging higher rates to new tenants, as described above.

This has two important implications. First, it may take time for widespread rent increases to occur under an RTC, since the rent increases would phase in with new leases. Even without tax credits, researchers have noted significant gaps between transacted rents paid by existing tenants versus the asking rents faced by new tenants. [330] The introduction of an RTC would exacerbate these gaps. Second, to the extent that some existing tenants face housing insecurity unrelated to their capacity to pay rent, the RTC may increase their risk of eviction. Families with children, for example, face higher risk of eviction than families without children.[331] When an RTC is enacted, landlords will have a strong incentive to evict existing tenants so that they can lease their properties to newly subsidized tenants at higher rental rates. This could have the perverse effect of *increasing* housing instability for some families, at least in the short term, even as housing becomes more affordable.

3. A Closer Look at Landlord Incentives

The need for incentives to motivate landlord participation varies with program goals. First, consider the goal of making housing *affordable* to low-income tenants who already have access to housing but pay burdensome rents. Since these tenants already have access to housing—albeit at unaffordable rents—it is safe to assume that their landlords are willing to rent to low-income tenants without any additional subsidy. These landlords do not need an incentive to rent to low-income tenants; they already rent to that population. The RTC would transform these tenants' previously unaffordable rents into newly affordable rents. However, if their landlords increase the rents, the landlords will receive subsidies for doing something they did already: housing low-income tenants. The RTC would achieve its goal of affordability, but it would not necessarily increase the number of landlords who lease to low-income tenants, and it may over-subsidize those who do.

To increase *access* to affordable housing, the RTC may also need to increase the supply of units available to low-income tenants.[332] The goal may be to increase the overall supply of housing available to low-income tenants, or it may be to increase the supply of housing available to them outside of low-income neighborhoods.[333] In either case, the goal would be to induce *new* landlords to rent to low-income tenants so that more units would be available to house this population. If tenants' *only* barrier to access was economic, then no incentive would be necessary to motivate new landlords. Tenants could simply approach

330. *See id.* at 528.
331. Matthew Desmond et al., *Evicting Children*, 92 SOC. FORCES 303, 304 (2013).
332. *See supra* Section I.A.1.
333. *Id.*

these landlords with their subsidized income and rent a unit. However, the declining rate of landlord participation in the voucher program suggest that this outcome is unlikely.[334] Housing discrimination is pervasive despite laws like the Fair Housing Act, and economic discrimination is legal in most places.[335] If the goal is to increase access to affordable housing, many landlords will need an incentive to participate. That incentive is the rent increase.

Finally, landlord-side RTCs may require larger incentives than tenant-side RTCs because landlord-side designs place more burdens on landlords. As explained above, a significant barrier to participation in the Housing Choice Voucher program is landlords' reluctance to take on the regulatory and compliance burdens associated with the voucher program.[336] Since tenant-side RTCs do not place extra burdens on landlords, they may present fewer barriers to landlord participation than vouchers. Landlord-side RTCs, however, would require landlords to affirmatively opt into the program, often through a formal application process with housing authorities.[337] For that reason, landlord incentives may be particularly important in the context of landlord-side RTCs.

4. Note on Distributive Outcomes

The integration of a tax credit like the RTC could help make the tax system more equitable. The tax system was estimated to provide $29.2 billion of benefits to homeowners through the mortgage interest deduction in 2023.[338] Yet, that deduction is almost exclusively claimed by high-income taxpayers.[339] Meanwhile, tax preferences aimed at low-income tenants are small in comparison. The most significant of these is the LIHTC,[340] a $11.8 billion supply-side tax credit used to subsidize the development of low-income housing.[341] The addition of an RTC could increase equity within the tax system by providing a significant tax benefit to low-income taxpayers that would help counterbalance the benefits currently available to high-income taxpayers. However, the precise distributive impact of an RTC would depend on the economic incidence of the benefits.

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334. *See supra* note 151 and accompanying text.

335. *See* ROSEN, *supra* note 15, at 118–19, 136.

336. *See id*. at 253–54.

337. *See supra* Section II.A.3.

338. JOINT COMM. ON TAXATION, *supra* note 109, at 36 tbl.1.

339. *See* Layser, *supra* note 67, at 958. This is true not only because higher-income taxpayers are more likely to own homes but also because they are more likely to itemize their tax returns, and the mortgage interest deduction is only available to those who itemize. *See* Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. UNIV. L. REV. 329, 341 (2009). Taxpayers only claim itemized deduction when their aggregate itemized deductions exceed the standard deduction amount, which is currently $14,600 for unmarried taxpayers and $29,200 for married filing jointly taxpayers. *See* Rev. Proc. 2023-34, 2023-48 I.R.B. 1292. After Congress raised the standard deduction in 2017, the percent of taxpayers that itemized dropped to 14%. Aimee Picchi, *IRS Changed Its Tax Bracket for 2023. Here's What It Means for Your Taxes*, CBS NEWS (Feb. 13, 2023, 3:52 PM), https://www.cbsnews.com/news/taxes-2023-tax-brackets-irs-inflation-adjustments/ [https://perma.cc/RS4E-G77M].

340. I.R.C. § 42.

341. *See* JOINT COMM. ON TAXATION, *supra* note 109, at 35 tbl.1.

Recall that the economic incidence of a tax credit refers to the party—or parties—that receive the economic benefit.[342] The discussion above suggests that the economic incidence of an RTC would be shared between landlords (who capture value through the increased rents) and tenants (who receive rental assistance). Sometimes, shared economic incidence reflects a shifting of subsidies away from the targeted group.[343] Take, for example, food stamps. Since food stamps have a fixed value (up to $292 a month for a family of one in 2025), when suppliers increase food prices in response to the subsidy, food stamp holders are unable to buy as much food.[344] This result is not only inefficient, but it also raises distributive problems because it shifts the value of welfare support away from food stamp holders and toward suppliers.

An RTC would have a different distributive effect because it would not have a fixed value. Most proposed RTCs would cap tenants' rent payments at a percent of their income. As a result, tenants would receive the same benefit from an RTC *whether or not* landlords capture significant value from the subsidy. This is because even if landlords increase their rents, tenants' subsidies will always reflect the difference between a capped tenant payment and the unsubsidized market rate. Meanwhile, as this Article has shown, landlord incentives (in the form of rent increases) are probably a *necessary* feature of the law. The public–private partnership approach relies on private landlords to provide the housing.

If the goal is to increase access to affordable housing, these distributive outcomes are probably unavoidable given the public–private partnership approach. Those who do not want landlords to benefit from the intervention may simply prefer strategies that adopt a public assistance approach. In that case, policymakers should clarify their goals. If the goal is to increase the supply of housing for low-income tenants, the government could provide housing in-kind by reintroducing a fully funded public housing program. Under that model, landlord incentives would be unnecessary, and the distribution of benefits would be better targeted to low-income tenants. Alternatively, if the goal is simply to relieve cost burdens experienced by tenants, policymakers should consider unrestricted cash transfers to low-income tenants. For reasons elaborated in Part IV, such transfers would probably have better distributive outcomes than either housing vouchers or RTCs. However, since they would neither directly provide housing nor create landlord incentives, cash transfers may be more limited in their capacity to increase tenants' *access* to housing.

342. *See* Sugin, *supra* note 167, at 20.

343. *Id.* at 23.

344. CTR. ON BUDGET & POL'Y PRIORITIES, A QUICK GUIDE TO SNAP ELIGIBILITY AND BENEFITS 4 tbl.1 (2024), https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits [https://perma.cc/Z7RB-B8BZ]; *see* Justin H. Leung & Hee Kwon Seo, *How Do Government Transfer Payments Affect Retail Prices and Welfare? Evidence from Snap*, J. PUB. ECONS., Dec. 2022, at 1, 19–20 (concluding that retailers increase the price of food in response to SNAP benefits and arguing that "if the objective of SNAP is to guarantee a floor of *real* spending power on food, federal maximum benefits should be increased by about 7% to account for the price response").

IV. IN-KIND INTEGRATION VERSUS CASHING OUT

A. THE INTEGRATION OF HOUSING VOUCHERS

So far, this Article has described how a Renters' Tax Credit (RTC) would integrate in-kind housing vouchers into the tax code, and it has analyzed how tenants and landlords may respond to the intervention. This Section turns to questions of institutional design. A decision to enact an RTC would reflect two choices: a choice to use a tax instrument instead of a direct spending tool, and the choice to retain the in-kind form of housing vouchers instead of providing cash-equivalent tax benefits. This Section considers both choices under leading theories about the integration of welfare programs into the tax system. It begins by analyzing the tradeoff between tax and nontax forms.

An RTC is an example of a "tax expenditure," a concept introduced by Professor Stanley Surrey in the 1960s.[345] Surrey defined tax expenditures as "special provisions of the federal income tax system which represent government expenditures made through that system to achieve various social and economic objectives."[346] Surrey demonstrated that any social program can be designed as a direct spending program or a tax-based program, but he objected to tax expenditures as lacking transparency,[347] creating inequities,[348] and introducing unnecessary complexity[349] and inefficiencies[350] to the tax system. Over half a century and countless critiques later, Surrey's theory still looms large in the tax law literature, and many commentators begin from a place of skepticism about tax-based social policy.[351]

Nevertheless, lawmakers have continued to integrate social welfare programs into the tax system, and tax-based antipoverty, housing, and community development programs have increased over time.[352] Today, the Earned Income Tax Credit (EITC) is the largest federal welfare program,[353] the low-income housing tax credit (LIHTC) is the largest dedicated subsidy for new construction of

345. *See* Surrey, *supra* note 275, at 706.

346. *Id.*

347. *See id.* at 732 (referring to tax expenditures as "illusions" and "hidden expenditures," and suggesting that the public is not "fully aware" of the costs).

348. *See id.* at 720 (stating that most existing tax incentives provided more benefit to high-income taxpayers than lower-income taxpayers).

349. *See id.* at 717–18, 728 (describing both statutory and procedural complexities associated with tax incentives).

350. *See id.* at 725 (describing market distortions created by tax incentives).

351. *See, e.g.*, Eric T. Laity, *The Corporation as Administrative Agency: Tax Expenditures and Institutional Design*, 28 VA. TAX REV. 411, 413 n.2, 422 (2008); Schizer, *supra* note 328, at 305; Daniel N. Shaviro, *Rethinking Tax Expenditures and Fiscal Language*, 57 TAX L. REV. 187, 187 (2004); Jake Haselswerdt, *The Lifespan of a Tax Break: Comparing the Durability of Tax Expenditures and Spending Programs*, 42 AM. POL. RSCH. 731, 734 (2014); Jason S. Oh, *The Social Cost of Tax Expenditure Reform,* 66 TAX L. REV. 63, 63 (2012); Victor Thuronyi, *Tax Expenditures: A Reassessment*, 1988 DUKE L. J. 1155, 1155 (1988); Martin Feldstein, *Raising Revenue by Limiting Tax Expenditures*, 29 TAX POL'Y & ECON. 1, 3 (2015); David A. Weisbach, *Tax Expenditures, Principal-Agent Problems, and Redundancy*, 84 WASH. U. L. REV. 1823, 1823–24 (2006).

352. *See* Layser, *supra* note 314, at 12.

353. *See* Tahk, *supra* note 8, at 78; Susanna Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791, 794 (2014).

affordable housing,[354] and tax credits like the Child Tax Credit play critical roles in the social safety net.[355] However, tax-based welfare programs suffer from certain limitations arising from their tax-based form. When the EITC was expanded in the 1990s, Professor Anne Alstott wrote about the limits of the tax-based approach, arguing that the "tax system's limitations render the EITC inherently inaccurate, unresponsive, and vulnerable to fraud and error in ways that traditional welfare programs are not."[356]

Alstott observed that the federal tax law understates income by excluding some income from the tax law definitions of income and ignoring unrealized income.[357] For example, a taxpayer who receives a gift has income because the gift increases their wealth, but the tax law ignores the gift for tax purposes.[358] Taxpayers who have excludable income like gifts, or who have significant unrealized wealth, may qualify for income-based tax benefits, despite their lack of need.[359] An RTC may be particularly vulnerable to these inaccuracies because tenants' income may be relevant for several purposes: determining taxpayer eligibility, calculating the tax credit rate, and determining the tax base (i.e., rent payments that exceed a specified income threshold).[360] Since the tax definitions of income may understate renters' ability to pay, such inaccuracies stand to affect who receives RTCs and how much.

Alstott also argued that direct transfer programs are more responsive than tax laws because they measure changes in income and deliver benefits at shorter intervals.[361] Most RTC proposals provide for advanced payments,[362] but they may not recalculate the taxpayers' income over the course of the year. As a result, taxpayers might fail to receive sufficient assistance, or they might receive overpayments. This would expose them to audit risk.[363] The IRS regularly audits

354. *See* JOINT COMM. ON TAX'N, *supra* note 109, at 35 tbl.1 (estimating that the LIHTC cost $11.8 billion in 2023). By comparison, the 2023 appropriation for the HOME Investment Partnership Program was $1.5 billion. *See* HOUSE COMM. ON APPROPRIATIONS, CONSOLIDATED APPROPRIATIONS ACT, 2023: SUMMARY OF APPROPRIATIONS PROVISIONS BY SUBCOMMITTEE (2023), https://democrats-appropriations.house.gov/sites/evo-subsites/democrats-appropriations.house.gov/files/FY23%20Summary%20of%20Appropriations%20Provisions.pdf [https://perma.cc/XP3K-AKM9]. The HOME program is the largest direct spending program dedicated to affordable housing construction and rehabilitation. *See* U.S. HUD, *supra* note 104.

355. *See* Tara Watson, *The New Child Tax Credit Deal is Really a Safety Net Deal—and by That Measure It Is Only a Start*, BROOKINGS (Jan. 18, 2024), https://www.brookings.edu/articles/the-new-child-tax-credit-deal-is-really-a-safety-net-deal-and-by-that-measure-it-is-only-a-start [https://perma.cc/AS6C-JJCD].

356. Alstott, *supra* note 10, at 535.

357. *See id.* at 571.

358. *See* I.R.C. § 102(a).

359. *See id.*

360. *See supra* Part III.

361. *See* Alstott, *supra* note 10, at 580.

362. *See, e.g.*, Rent Relief Act of 2023, H.R. 6721, 118th Cong. § 2(b) (2023) (proposed by Rep. Danny Davis); Housing, Opportunity, Mobility, and Equity Act of 2022., H.R. 9466, 117th Cong. § 4(b)(1) (2022) (proposed by Rep. Jim Clyburn); Rent Relief Act of 2019, S. 1106, 116th Cong. § 2(b) (2019) (proposed by Sen. Kamala Harris).

363. *See* Lipman, *supra* note 220, at 1190.

EITC claimants,[364] and one might expect a similar allocation of resources to enforce an RTC. The IRS is already overtaxed and under-resourced, and the addition of an RTC may further burden the agency.

Furthermore, an RTC should also be evaluated with reference to administrative efficiency. Professors David Weisbach and Jacob Nussim have argued that the choice of whether to locate a "nontax" program in the tax system is a matter of institutional design.[365] Under their institutional design theory, integration may be appropriate when it would "enhance[] administrative efficiency by reducing bureaucratic costs and complexity."[366] In the context of welfare programs, "there are benefits to specialization and to coordination from integration."[367] The benefits arise from the fact that the IRS specializes in income measurement and can perform that function "more accurately and more cheaply than other agencies."[368] Integration could also reduce the costs that accrue when multiple agencies perform the same function, and it could "confer savings on recipients, eliminating the need to fill out multiple forms and visit multiple government offices."[369]

However, the in-kind integration of housing vouchers into the tax system would raise concerns under an institutional design theory. The IRS does not specialize in rental housing markets. Yet, to calculate the tax credit, the IRS would need to know the local rent limits for each tenant.[370] For this reason, even if the RTC were structured as a tenant-side tax credit, it would require a significant amount of coordination with both HUD and local public housing authorities to administer the program. If the RTC is structured as a landlord-side tax credit that includes landlord certification procedures, the need for coordination may be even higher. The IRS specializes in income measurement, but that benefit may not outweigh the significant administrative burdens that would be associated with integration. This may be particularly true given the concern that tax definitions of income are poorly suited for welfare programs.[371]

These challenges may be further exacerbated by the RTC's in-kind form. In their case study of food stamps, Weisbach and Nussim predicted that the integration of in-kind tax benefits would have fewer administrative advantages than cash-based tax credits.[372] They observed that "[i]ntegrating the [food stamp program] into the tax system would probably involve eliminating this in-kind delivery, because the tax system could not easily engage in this certification."[373] For the same reasons, the in-kind integration of housing vouchers through an RTC may not be supported under an institutional design theory.

364. *See id.*
365. Weisbach & Nussim, *supra* note 13, at 957.
366. *Id.* at 1001.
367. *Id.*
368. *Id.*
369. *Id.* at 1002.
370. *See supra* Section II.A.
371. *See supra* notes 356–59 and accompanying text.
372. *See* Weisbach & Nussim, *supra* note 13, at 1024.
373. *Id.* at 1012.

For these reasons, it may not make sense to integrate housing vouchers in-kind through an RTC. The question, then, becomes: What does make sense? One possibility is to refrain from integrating the voucher program into the tax system *at all*. The Housing Choice Voucher program is an established program, and many of its shortcomings could be addressed by fully funding it and relaxing regulatory burdens. It is possible that such reforms would have the same outcomes as an RTC. After all, the main benefits of a tenant-side RTC would be that it would reach more tenants and place fewer regulatory burdens on landlords. An expanded Housing Choice Voucher program with fewer program restrictions may be just as effective, and it would require less coordination among agencies. Alternatively, policymakers might consider reintroducing large-scale public housing programs. After all, the past failings had more to do with money and politics than the approach itself.[374]

However, political barriers continue to constrain expansion of nontax programs like Housing Choice Vouchers and public housing, and there may be more political support for tax credits than for proposals to expand nontax programs.[375] Tax credits could be presented to progressives as housing assistance, and they could be presented to conservatives as tax cuts.[376] Moreover, tax-based welfare is often preferred by the public, and there may be less public opposition to tax credits than to voucher expansion.[377] This may be particularly true if the pool of eligible beneficiaries extends beyond low-income tenants. Broad public support could help the political case for enacting a tax credit program. If enacted, tax credits may be less stigmatizing than vouchers, providing a psychological benefit to recipients.[378] In addition, path dependency may make the tax credits hard to repeal. This potential durability may make the approach particularly attractive given the long history of underfunded and discontinued programs.[379] These arguments provide some support for integration despite the challenges. The question is: *how* should housing support be integrated into the tax system? This question is taken up in the next Section.

B. ALTERNATIVES TO IN-KIND RTCS

This Article has demonstrated that an RTC would deliver in-kind benefits to tenants akin to housing vouchers. Since the tax system cannot deliver in-kind benefits directly, in-kind tax benefits necessarily embrace the public–private partnership approach.[380] Unlike cash-based tax credits, which deliver benefits directly to needy claimants, in-kind tax credits rely on private parties to deliver public goods. Alternatively, policymakers could choose to "cash out" housing vouchers.

374. *See supra* Section I.B.2.
375. *See* Tahk, *supra* note 8, at 85.
376. *See id.* at 84.
377. *See id.* at 85.
378. *See* Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 522 (2013).
379. *See supra* Section I.B.2.
380. *See supra* Section III.A.

Cashing out is the conversion of in-kind benefits into unrestricted cash benefits.[381] This could be achieved by providing direct cash transfers through nontax welfare or housing programs. Researchers at HUD are studying the possibility of providing unrestricted cash transfers to tenants in lieu of housing vouchers,[382] and some are floating the idea of Universal Basic Rent.[383]

Alternatively, Congress could provide financial assistance to tenants through cash-equivalent tax credits. Such tax credits could take several forms. First, Congress could enact a new refundable tax credit that delivers a uniform benefit to all taxpayers based on their status as tenants. Second, Congress could introduce cost-of-living adjusted refundable tax credits that tie the amount of tax credits to local housing prices. This Section will explain these options and discuss the effect of cashing out housing vouchers using approaches like these.

1. Uniform Tenant Tax Credits

One way to integrate cashed-out housing support into the tax system would be to provide a uniform refundable tax credit for tenants. For example, all tenants may qualify for the same $5,000 tax credit based solely on their status as a tenant. A uniform tax credit for tenants would increase the financial resources available to them without tying the amount to actual rent payments. Since the benefit would be uniform across all taxpayers, some taxpayers may receive smaller—and some may receive larger—benefits under this option than they would under an RTC. The extent to which they benefit may also vary depending on local housing costs. Taking cost-of-living into account, tenants in high-cost rental markets would not receive the same level of support as those in low-cost rental markets. For example, a tenant who receives $5,000 in rental assistance in a low-cost-of-living rural town would benefit more than a tenant who receives the same dollar amount but lives in New York City. Those who live in high-cost-of-living areas may view this result as unfair.

Nevertheless, tax scholars have traditionally assumed that, at least in theory, regional cost-of-living variation does not create fairness problems.[384] These scholars reason that labor markets will eliminate inequities associated with cost-of-living variation as taxpayers move to jurisdictions that provide them with the desired mix of taxes and amenities.[385] Specifically, if we assume that taxpayers are mobile and wage rates adjust to changing demand, in the long term, markets will achieve a state of equilibrium in which taxpayers would be indifferent to

381. *See supra* notes 18–19 and accompanying text.

382. *See* Cohen, *supra* note 21.

383. *See* Rachel M. Cohen, *The Simplest Fix to America's Rent Problem*, THE ATLANTIC (Oct. 20, 2021), https://www.theatlantic.com/politics/archive/2021/10/universal-basic-rent-section-8-voucher/620429/.

384. *See* Michael S. Knoll & Thomas D. Griffith, *Taxing Sunny Days: Adjusting Taxes for Regional Living Costs and Amenities*, 116 HARV. L. REV. 987, 988 (2003) ("[Tax commentators'] intuition is that no adjustment is necessary because there is no unfairness.").

385. *See id.* at 989; Louis Kaplow, *Regional Cost-of-Living Adjustments in Tax/Transfer Schemes*, 51 TAX L. REV. 175, 178 (1996).

living in regions with different costs of living.[386] If this is correct, then a uniform tenant tax credit may be acceptable on fairness grounds.

A uniform tenant tax credit may also have efficiency advantages over an RTC. Recall that under both housing vouchers and RTCs, landlords have an incentive to raise rents because they know the tenant is indifferent to the cost. If they keep the rent below program maximums, they can raise it without harming tenants; the government bears the cost. This would not be the case if vouchers were cashed out. Tenants would have more money to spend on rent, but they would not be obligated to spend their cash on housing. If a landlord raised rents in response to the uniform tenant tax credit, tenants would be harmed by the rent increase. They would be forced to spend more money to rent the same units that cost less without the subsidy. Tenants—not the government—would bear this cost. As a result, tenants would not be indifferent to the rent increases, and market competition should discourage at least some landlords from raising rents.

2. Cost-of-Living Adjusted Refundable Tax Credits

Alternatively, housing support could be integrated into the tax system through cost-of-housing adjustments to existing or new refundable tax credits. For example, instead of uniform tax credits for tenants, the amount of the tax credits could be adjusted based on local housing costs (but not the individual rent paid by tenants). Similarly, existing tax credit programs like the EITC could be adjusted or supplemented to reflect cost-of-housing. Such adjustments may be particularly justified if labor markets do *not* function to eliminate inequities due to cost-of-living variation.[387] Professor James Puckett has argued that the underlying assumptions about taxpayer mobility are unfounded, and labor markets cannot be trusted to eliminate inequities caused by cost-of-living variation.[388] For that reason, Puckett has defended that cost-of-living adjustments may be justified on equity grounds.[389]

However, inefficiencies may still exist due to features of the housing market. In many U.S. cities, housing markets include segregated neighborhoods with a high concentration of poverty.[390] A study of a cash-based housing allowance in New Zealand provides insight into how housing subsidies affect rents when a subsidy has an uneven geographic distribution.[391] The New Zealand program provided "a non-taxable cash income supplement to low income individuals or families with high housing costs relative to their income."[392] The country "was

386. *See* Kaplow, *supra* note 385, at 178.

387. *See supra* notes 384–86 and accompanying text.

388. *See* James M. Puckett, *Location, Location, Location: Using Cost of Living to Achieve Tax Equity*, 63 ALA. L. REV. 591, 592, 602 (2012).

389. *See id.* at 611–23.

390. *See* Douglas S. Massey, *Still the Linchpin: Segregation and Stratification in the USA*, 12 RACE & SOC. PROBS. 1, 5 (2020).

391. Dean R. Hyslop & David Rea, *Do Housing Allowances Increase Rents? Evidence from a Discrete Policy Change*, J. HOUS. ECONS., Oct. 2019, at 1, 1.

392. *Id.* at 2.

divided geographically into three [zones], determined by relative housing costs," and the amount of cash benefits varied across the zones.[393] In 2005, the amount of the subsidy was adjusted, and tenants in one zone received a significant increase in benefits relative to tenants in a neighboring zone.[394] A study of the policy change found that "just over one third of the increase in the Accommodation Supplement and related payments was absorbed by rent increases."[395]

In the U.S., the impact of cashing out housing vouchers would probably depend on program design. The New Zealand study suggests that even unrestricted cash supplements may drive up rents in housing submarkets where subsidized tenants are concentrated. Low-income tenants are often concentrated in low-income neighborhoods, as information gaps, social networks, and housing discrimination all tend to limit where low-income tenants live and contribute to low voluntary residential mobility among this population.[396] It is reasonable to predict that landlords in these neighborhoods would raise rents if their low-income tenants' incomes rose due to government subsidies. These outcomes may be particularly likely if the cash support is means-tested or varied by housing location. This analysis suggests that even unrestricted cash transfers may cause inefficient rent increases in at least some submarkets.

3. Effect of Cashing Out

This Section has introduced two possibilities for integrating cashed-out housing support into the tax system: uniform tenant tax credits and cost-of-living adjusted refundable tax credits. However, it is important to recognize that cashing out would fundamentally change the nature of the intervention: from the public–private partnership model embraced by housing vouchers and RTCs to the public assistance model embraced by cash welfare.

Weisbach and Nussim explored the cashing out option in the context of food stamps. As a preliminary matter, they considered whether cashing out would have different program outcomes than the in-kind food stamp program. They predicted that cashing out would have minimal impact on program outcomes, because evidence suggested that recipients would spend most of their unrestricted cash on food.[397] They observed that the "typical food stamp benefit is less than the monthly food budget for most beneficiaries," so "the program's decision to provide in-kind benefits or cash assistance should have no effect for these beneficiaries; the entire food stamp amount will be spent on food either way."[398]

393. *Id.* at 3.

394. *See id.*

395. *Id.* at 15. The researchers added the following caveat: "[I]t is not possible to ascertain the extent to which these measured rent increases were the result of landlords increasing rents as a result of increased housing demand, or if the policy enabled recipients to afford to spend more on improved housing quality or quantity." *Id.*

396. *See* ROSEN, *supra* note 15, at 23.

397. *See* Weisbach & Nussim, *supra* note 13, at 1013.

398. *Id.*

The same should be true for most RTC claimants. In theory, the largest RTCs would be claimed by tenants with the lowest incomes. According to the Census Bureau, in 2021, half of tenants in the lowest income quintile "paid gross rent that was more than 62.7% of their total household income."[399] Assume a tenant earns $1,600 income a month, but her monthly rent is $1,000. Without an RTC, that tenant would pay 62.5% of her income in rent per month, an amount that is comparable to the actual rent burden borne by many low-income tenants. If the tenant can claim an RTC equal to the excess over 30% of her income, her benefit would be $520 ($1,000 rent *less* $480). That amount, though significant, is far less than her monthly rent budget of $1,000. Since housing, like food, is a basic need, it is reasonable to predict that tenants would use cash benefits to meet their rent budget.

In other words, it is likely that if housing vouchers are cashed-out, tenants would receive the same economic benefit as they would receive under an RTC. Meanwhile, cashing out may have both efficiency and distributive advantages over an RTC. Much of this Article has focused on ways that landlords and tenants may change their behavior in response to rent subsidies.[400] When tenants receive restricted benefits that can *only* be used for rent, they have an incentive to maximize those benefits by inefficiently trading up for higher quality housing.[401] If, on the other hand, tenants were to receive unrestricted cash, they would be free to use that cash for any purpose. Some tenants might still use that cash to seek out more expensive housing, but others may choose to spend their extra cash on other items they value more highly. Assuming the primary goal of integration is to provide financial assistance to needy tenants, this may be an acceptable outcome.

C. THE NEED FOR GOAL CLARITY

The discussion above suggests that cashing out may have advantages over an RTC, including institutional design, simplification, efficiency, and distributive benefits. However, cashing out would also fundamentally change the nature of the intervention, shifting the housing policy from a public–private partnership approach—one that has dominated the housing policy landscape since at least the 1980s—to a public assistance approach. This raises an important question: if we assume that the economic benefit to tenants would be comparable either way, how would "cashing out" housing vouchers impact program outcomes? The answer depends crucially on the underlying policy objectives. As explained in Part I, possible policy objectives include increasing access to housing, fighting poverty, or correcting market failures.[402] Though a single policy could aim to meet

399. Peter J. Mateyka & Jayne Yoo, *Low-Income Renters Spent Larger Share of Income on Rent in 2021*, U.S. CENSUS BUREAU (Mar. 2, 2023), https://www.census.gov/library/stories/2023/03/low-income-renters-spent-larger-share-of-income-on-rent.html [https://perma.cc/D7KZ-9CDG].

400. *See supra* Section III.B.

401. *See supra* Section III.B.

402. *See supra* Section I.A.

more than one objective, it is important to recognize that these are different policy goals that may require different types of intervention.

If the goal of the policy is to address the affordable housing shortage by increasing access to housing, then cashing out may not be the best option. Cash transfers would not directly target housing markets. They would neither supply housing directly (like public housing), nor would they create incentives for private landlords to rent to low-income tenants at affordable rates. Instead, cashing out would advance fundamentally different program objectives than an RTC. The goal of an RTC would be to induce private landlords to supply affordable housing, and it would do so by creating public–private partnerships with landlords. Stated differently, an RTC is best viewed as an intervention to address market failures. If that is *not* the goal—and the goal is rather to increase housing access or fight poverty by providing public assistance to tenants—then cashing out may be a better choice. Doing so would make the program less dependent on private landlords.

If, instead, the goal is to fight poverty, then cashed-out vouchers, a public assistance intervention, would have several advantages over RTCs. First, if the primary goal is to help low-income tenants, then there are strong normative arguments in favor of cashing out. Professors Miranda Fleischer and Daniel Hemel have argued that cash transfers can be defended under several theories of justice.[403] From resource egalitarian and libertarian perspectives, unrestricted cash transfers are preferable over in-kind benefits simply because they are more consistent with respect for individual choice and liberty.[404] But cash transfers can also be defended on welfarist grounds because, when people have a choice about how to spend their dollars, they often choose to spend in ways that maximize welfare.[405]

To explain why, Fleischer and Hemel begin with the intuition that "[m]ost of us would prefer to receive one dollar in cash rather than either one dollar's worth of goods in kind or a one-dollar voucher to purchase particular goods and services."[406] Then they present empirical evidence that many food stamp recipients sell their food stamps, converting them to cash in order to buy items that are ineligible for purchase with the vouchers.[407] These inefficient transactions would be unnecessary if recipients simply received cash from the outset. Meanwhile, "[s]tudies in domestic contexts suggest that cash transfers are associated with improvements in infant health, increased test scores, additional years of schooling, and a lower rate of arrests among young adults."[408]

403. Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 649 (2020).
404. *See id.* at 654.
405. *See id.* at 650–51.
406. *Id.* at 650.
407. *Id.*
408. *Id.*at 651.

Nevertheless, the consequences of cashing out should be evaluated in terms of specific program objectives. As noted above, Weisbach and Nussim predicted that if food stamps were cashed out, recipients would still use the benefits to purchase food.[409] As a result, the decision to cash out the benefits probably would not significantly change program outcomes. However, they also note that "[i]f the purposes of the [food stamp program] cannot be served by cashing out the program" integration that retains the in-kind benefits may make more sense.[410] Whether cashing out makes sense, therefore, depends on the purpose of the program. If the purpose is to help rent-burdened tenants, then cashing out may be as effective as—or more effective than—in-kind benefits.

Many RTC proponents emphasize that when tenants spend too much of their income on housing, they do not have enough left over to satisfy other needs. As one policy analyst notes, "[f]amilies that pay too much for housing spend significantly less on food, health care, and retirement savings than those living in housing that is affordable."[411] These facts suggest that many advocates are not concerned about the supply of affordable housing, per se. They are concerned that unaffordable housing is exacerbating poverty. Policymakers could address this problem by increasing housing affordability, but they could also address it more directly by increasing tenants' income through cash transfers. Since money is fungible, it would not matter whether tenants use the cash transfers to pay rent or whether they use it to meet other needs. If the main policy goal is to help rent-burdened tenants, then cashing out may achieve program goals just as well as an RTC.

In sum, if the policy goal is to increase access to housing and the affordable housing supply, then an RTC may have some advantages over a cashed-out program. On the other hand, if the primary goal is to fight poverty and aid cost-burdened tenants, then a cashed-out program may be a more effective tool. Policymakers should clarify their objectives and implement the policy most suitable to advance them.

CONCLUSION

Renters Tax Credits are poised to disrupt the landscapes of both housing policy and tax policy—but are they a good idea? This Article has analyzed the potential and limitations of an RTC, which would integrate in-kind housing benefits into the tax system, retaining their in-kind form. Drawing on empirical research about Housing Choice Vouchers and the mortgage interest deduction, the analysis predicts that tax-based housing vouchers would induce inefficient behaviors in landlords and tenants. It may also have undesirable distributive outcomes. Despite these predictions, this Article has not provided a normative recommendation about whether to support proposed RTCs. Ultimately, this question rests on

409. *See* Weisbach & Nussim, *supra* note 13, at 1013.
410. *Id.* at 1016.
411. Kimberlin et al., *supra* note 1, at 132.

policy judgments. Reasonable people could conclude that an imperfect tax-based program would be better than a voucher program that has already proven itself woefully deficient.

Nevertheless, these judgments should be made with eyes wide open. What may at first look like a bug—that landlords would capture value from the subsidy—is merely a feature of in-kind tax interventions. Since the tax system cannot deliver in-kind tax benefits directly, in-kind tax benefits necessarily embrace a public–private partnership approach that uses private parties to deliver public goods. Here, the RTC would create economic incentives for private landlords to deliver affordable housing. This market-based intervention is a fundamentally different approach from public assistance interventions that deliver resources directly to needy parties. If policymakers' objective is to fight poverty and provide resources to cost-burdened tenants, then public assistance interventions may be more effective.

Public assistance interventions do not rely on private actors to deliver public benefits. Nontax public assistance, like direct cash transfers or public housing programs, could be used to deliver resources directly to needy tenants. However, nontax public assistance programs like these face steep political obstacles, while tax-based interventions may be more easily implemented. Instead of integrating housing vouchers in-kind (the public–private partnership approach), policymakers could integrate the program through cash-based tax credits. The latter approach would have institutional design benefits in addition to distributive advantages over an RTC.

However, the shift from a public–private partnership approach to a public assistance intervention would not be inconsequential. Cashed-out vouchers may be a better antipoverty intervention, but they may be less effective for increasing access to housing itself. This is because cashed-out vouchers would eliminate the incentives to lease to low-income tenants. This tradeoff highlights the urgent need for clarity as to program goals. America's affordable housing shortage is a pervasive and multifaceted problem that demands a policy response—to increase access to housing, reduce poverty, and correct market failures. Integrating housing vouchers into the tax system may not address all these problems. It may not even address the most urgent among them. Nevertheless, it is undeniable that many cost-burdened tenants would benefit from the integration of housing vouchers into the tax system, and policymakers should avoid making perfect the enemy of better.