Notes and Comments

Government Housing Assistance To The Poor

Low-income families are usually understood to have a special claim to government housing assistance. When Congress offers a housing benefit to the rest of the population, the subsidy is disguised as a low-interest loan, mortgage insurance, or the sale of land at less than fair market value. Only units that serve the poor receive direct, cash contributions. This attitude is reflected in federal housing legislation which, as often as not, contains some sort of income limitation.

But the result of thirty years of federal intervention in the housing market has not been a bonanza for the poor. Critics regularly expose programs which, either in design or administration, exclude low-income families from their benefits. Programs that do reach poor people—in particular, traditional public housing—are considered unimaginative and badly administered. The disillusionment with public housing has increased interest in other forms of housing assistance which offer an escape from the inhumane environment of the public project. This paper considers three approaches which have become a part of the federal housing program (§ 221(d)(3) Below Market Interest Rate (BMIR) mortgages, the Widnall "leased units" plan, and rent supplements) in addition to traditional public housing. The final section of the paper considers alternative criteria for low-income housing assistance and applies these standards to the four programs.

I. Four Low-Income Housing Programs

A. *The Public Housing Program*

The United States Housing Act of 1937,[1] which developed the basic public housing formula, retreated from the more radical New Deal policy of federal sponsorship of subsidized housing developments.[2] It

1. 50 Stat. 888 (1937), as amended, 42 U.S.C. § 1401 *et seq.* (1964). For a description of the public housing program, see R. FISHER, TWENTY YEARS OF PUBLIC HOUSING (1959) and the Annual Reports of the Housing and Home Finance Administration and the Department of Housing and Urban Development.

2. Emergency Relief Appropriation Act of 1935 § 1, 49 Stat. 115. See McFarland, *The Administration of the New Deal Greenbelt Towns*, 32 J. AM. INST. OF PLANNERS 217 (1966). See also, National Industrial Recovery Act § 202(d), 48 Stat. 201 (1933).

placed responsibility for project design and administration in independent local authorities, which have retained control ever since. This decision was prompted by local resentment against the federal Public Works Administration, and by a Sixth Circuit decision that slum clearance and construction of low-rent housing were not a legitimate public purpose for the federal exercise of eminent domain.[3] The independent authority form, typified by an unpaid board or commissioners appointed by the mayor, was chosen to insulate the program from "politics" and municipal corruption and to avoid municipal debt limitations.[4] The federal Public Housing Administration (PHA) acts only at the summons of local officials. States can veto public housing projects by failing to enact enabling legislation,[5] and municipalities and counties commonly refuse to establish housing authorities.[6] In particular, suburban governments are reluctant to subsidize shelter for low-income migrants from core cities. Even a municipality with an authority need not have an active public housing program. The city council can veto a project that its housing authority proposes by refusing to sign the cooperation agreement which PHA requires or by refusing to assent to the loan request.[7] In practice, the local governing body is unlikely to consent to any projects outside of slum areas.[8] Many jurisdictions require public housing projects to be approved by voters in referenda.[9] Public housing was rejected in over 60 per cent of the ref-

3. United States v. Certain Lands in the City of Louisville, 9 F. Supp. 137 (W.D. Ky. 1935), *aff'd*, 78 F.2d 684 (6th Cir. 1935), *dismissed on motion of the Solicitor General*, 294 U.S. 735 (1935).

4. MEYERSON & BANFIELD, POLITICS, PLANNING, AND THE PUBLIC INTEREST 38-39 (1955).

5. At the end of 1964, the only state without PHA-aided low rent projects operated by local authorities was Oklahoma. 18 HOUSING & HOME FINANCE ADMIN. ANN. REP. 235 (1964).

6. As of March 3, 1963, the incidence of housing authorities in cities of various sizes was as follows:

Population of City in 1960	Number of Cities	% with Local Housing Authorities
Over 1,000,000	5	100%
250,000-999,000	47	87%
50,000-249,999	284	62%
25,000-49,999	434	37%

Derived from PHA REP. No. 102.1 (Statistics Branch, July 1, 1963).

7. Housing Act of 1949 § 301(7)(a)(i), 63 Stat. 422, 42 U.S.C. § 1415(7)(a)(i) (1964).

8. For the history of a controversial attempt to locate public housing projects in nonslum areas of Chicago, see MEYERSON & BANFIELD, *op. cit. supra* note 4.

9. See, *e.g.*, CALIF. CONST. art. XXXIV, § 1. Restrictions in several appropriations bills have explicitly required PHA to honor a local decision not to construct public housing, *e.g.*, 65 Stat. 277 (1951), and 67 Stat. 306 (1953).

erenda held during the early nineteen-fifties; often, however, the ballot question was slanted against the proposed projects.[10]

A public housing project receives at least four subsidies. Its development cost is permanently financed with long-term serial bonds of the local authority. Interest from these bonds is exempt from the federal income tax[11] and from most state income taxes. These exemptions lower the interest rates on the bonds by at least 1 per cent, and possibly 2 per cent.[12] The PHA assures the security of these bonds by contracting with the local authority to pay annual contributions equal to their debt service charges. Since the authorities apply their net resources toward debt service, the federal government usually bears only a fraction of debt service costs while in effect insuring the remainder.[13]

The PHA is also authorized to pay a local authority an additional $120 per year for the benefit of each elderly family and certain displaced families.[14] The project itself is exempted from all real or personal property taxes imposed by the state or its subdivisions, but the project does make a payment in-lieu-of taxes to the local governing body.[15] The in-lieu payment is normally computed at 10 per cent of the annual shelter rents received by a project. Finally, the federal government absorbs the administrative costs of the PHA—approximately $16 million in 1964.[16]

These subsidies make public housing so cheap that if it were widely available, it might deter private housing construction and damage private owners. As a protective buffer Congress established a "gap" of 20 per cent between (1) the income which enables a family to afford adequate private housing with one-fifth of its income, and (2) the income limit for eligibility in public housing.[17] This gap has since been eliminated for the elderly, those displaced by government action,[18] and for

10. MEYERSON & BANFIELD, *op. cit. supra* note 4, at 24.
11. INT. REV. CODE OF 1954, § 103(a)(1).
12. Since municipal bonds are ideal for investors in high tax brackets, Rep. Henry Reuss (Dem., Wis.) has even charged that the public housing program primarily helps the rich. *Hearings on H.R. 5840 and Related Bills Before the Subcommittee on Housing of the House Committee on Banking and Currency*, 89th Cong., 1st Sess. 476 [hereinafter cited as *1965 House Hearings*].
13. For example, Table IV-11, 18 HHFA ANN. REP. 265 (1964) reveals that in fiscal 1964 federal contributions were only 56% of the maximum possible under its annual contributions contracts.
14. Housing Act of 1961 § 203, 75 Stat. 163 (1961), 42 U.S.C. § 1410(a) (1964).
15. Housing Act of 1949 § 305(h) (first proviso), 63 Stat. 428, 42 U.S.C. § 1410(h) (1964).
16. Table IV-15, 18 HHFA ANN. REP. (1964).
17. Housing Act of 1949 § 301(7)(b)(ii), 63 Stat. 422, 42 U.S.C. § 1415(7)(b)(ii) (1964).
18. United States Housing Act of 1937 § 15(7)(b)(ii), as amended by Housing Act of 1961 § 206(a)4, 75 Stat. 165, 42 U.S.C. § 1415(7)(b)(ii) (1964).

the handicapped.[19] Since 1961, local authorities have had considerable discretion in fixing income limits and rents.[20] Their decisions on these matters, however, must still be ratified by PHA. Local authorities overwhelmed by applications for their projects commonly set income limits at levels below those required to maintain the "gap." Income limits also vary with size of family and geographical area. At the end of 1964 the median income limit for admission of a family of two adults and two children, in localities within urbanized areas, was $4,000. The highest limit ($5,760) was in New York City.[21]

Limits for continued occupancy are normally set at 125 per cent of the limits for admission; tenants who earn more than that amount are ultimately evicted.[22] Although local practice in setting rents varies considerably, most authorities use a graded scale which requires the tenant to pay around 20 per cent of his net income for rent. Net income is gross income less exemptions, *e.g.*, a fixed amount for each child, the first several hundred dollars of a child's earnings, etc. Minimum and maximum rents are established in some localities.[23] Besides approving income limits and rents, PHA supplies local authorities with technical assistance, budgets the available funds, and conducts periodic reviews and surveys. The local authorities, however, make the basic development decisions, such as site selection and project design, and manage the projects. Graft has not been a serious problem.

By February 28, 1966, the federal public housing program included 608,601 units, which housed slightly over two million persons.[24] These impressive figures conceal the fact that public housing has ceased to perform its most important social function. Of the 26,000 new units constructed annually,[25] about half are designed exclusively for the elderly,[26] and many of the rest are located in small towns just beginning participation in the program. The program no longer provides much new housing for the non-elderly low-income families living

19. Housing Act of 1964 § 203(d), § 401(a), 78 Stat. 784, 794, amending Housing Act of 1937 § 2(2), 42 U.S.C. § 1402(2) (1964). The 1964 act included handicapped persons under the definition of "elderly," and thus excepted them from the "gap" requirement.
20. Housing Act of 1961 § 205(a), 75 Stat. 164, 42 U.S.C. § 1410(g) (1964).
21. *Annual Report of Maximum Income Limits and Rents in Low-Rent Housing*, PHA REP. No. 222.0 (Statistics Branch, Dec. 31, 1964).
22. Housing Act of 1961 § 205 10(g)(3), 75 Stat. 164, 42 U.S.C. § 1410(g)(3) (1964).
23. PHA REP. No. 222.0, *op. cit. supra* note 21.
24. *Program Status*, PHA REP. (Statistics Branch, March 15, 1966). On September 30, 1965, 29% of all public housing units were occupied by elderly persons or families, 50% by non-whites, and 26% by one adult with minors.
25. Derived from Table 2, Part 1, PHA REP. No. 600.10 (Statistics Branch, Feb. 23, 1966).
26. On February 28, 1966, 22,157 of the 43,565 public housing units under construction were designed exclusively for the elderly. PHA REP. No. 600.10, *op. cit. supra* note 24.

in urban ghettos. One important reason is that the concentration of "problem type persons" in the projects has diverted public housing officials from building new units to supplying their tenants with social services.[27] As problems with tenants have multiplied, public housing officials have become increasingly authoritarian in their approach. Tenants are bound by complex regulations, much more stringent than those imposed by private landlords. Admission and continued occupancy standards are used as weapons for inculcating middle-class standards, and as shields for protecting the image of the program. Thus the New York City Housing Authority excludes applicants who present a "clear and present danger" to the project,[28] and some authorities evict women tenants who become illicitly pregnant.[29] All too often the main objective of the public housing bureaucracy has become its own self-preservation. In the words of Ira S. Robbins, vice chairman of the New York City Housing Authority:

> Taking tenants indiscriminately would mean the end of public housing. It would be disastrous for the people who need it. . . . The image of public housing is already very bad, so even though we think it is a highly successful program we now find it very hard to get more money and new sites. Therefore, if the image got worse it would mean the end of the program.[30]

The future hope of public housing lies not in its traditional formula, but in its recent innovations—the program for purchase and rehabilitation of existing units ("flexible formula"),[31] the Lavanburg plan involving purchase of an undivided interest in a privately owned building, and the "turnkey" approach in which private builders develop new projects and sell them to local authorities.[32] Another recent, but perhaps less promising, innovation is the leased housing program.

B. *The Widnall Plan*

The Widnall Plan,[33] called the "leased housing program" by the PHA, authorizes local housing authorities to pay rent subsidies to

27. See, *e.g.*, Elizabeth Wood, *Public Housing and Mrs. McGee*, 13 J. OF HOUSING 242 (1956). See generally Catherine Bauer Wurster, *The Dreary Deadlock of Public Housing*, Architectural Forum, May, 1957, p. 140.
28. N.Y. Times, April 10, 1966, § 1, p. 47.
29. A. SCHORR, SLUMS AND SOCIAL INSECURITY 112 (Department of Health, Education & Welfare Research Report No. 1, 1963).
30. N.Y. Times, April 10, 1966, § 1, p. 47.
31. Housing and Urban Development Act of 1965 § 502, 79 Stat. 487, 42 U.S.C. § 1410(c) (Supp. I, 1965). A PHA Circular dated November 12, 1965, explains its implementation.
32. *Hearings on S.1354 and Other Pending Bills to Amend the Federal Housing Laws Before the Subcommittee on Housing of the Senate Committee on Banking and Currency*, 89th Cong., 1st Sess. 346, 806-07 (1965) [hereinafter cited as *1965 Senate Hearings*].
33. Housing and Urban Development Act of 1965 § 23, 79 Stat. 455, 42 U.S.C. § 1421(b) (Supp. I, 1965).

private landlords on behalf of tenants eligible for admission to public housing. Enacted in 1965, the Widnall Plan has as yet assisted only a very few families. By March, 1966, only 81 units were under management, although local authorities had filed applications for 6,125 units with PHA.[34] The program produces no new housing, but simply helps tenants pay rents on existing units. Much of the benefit redounds to landlords, who might otherwise have to choose between leaving apartments vacant or lowering the rent. Not surprisingly, the National Association of Real Estate Boards (NAREB), long the staunchest foe of public housing, was the main force behind passage of the Widnall Plan.

Unlike public housing, Widnall Plan units can be located in communities without workable programs; however, the local governing body must agree to receive the program.[35] After obtaining such approval, the local housing authorities apply to the PHA for the necessary funds. PHA has indicated, quite properly, that it will take into account the possible inflationary effect on the private market when it considers applications:

> A proposed leasing program which would reduce . . . a vacancy rate to less than 3 per cent for any unit size will not be approved unless the Local Authority satisfies the PHA that the leasing program will not have a substantial inflationary effect on the private rental market or that the program is justified by the exigencies of a particular situation, such as a critical immediate need for relocation housing.[36]

The danger of course is that the leasing program will pinch the supply of rental housing for people who earn slightly more than public-housing families. The housing shortage, however, may often seem more critical to the PHA than the danger of inflation in low-vacancy areas; it quickly approved a 500-unit program for New York City,[37] where vacancy rates on average size apartments are closer to 2 per cent.[38] Once it has secured its annual contributions contract from PHA, the local authority proceeds to find units of "decent, safe, and sanitary" housing. The statute cautions the authority to choose no more than 10 per cent

34. PHA Weekly Rep. on Activity, Week Ended March 18, 1966 (Statistics Branch, March 22, 1966).
35. Housing and Urban Development Act of 1965 §§ 23(a)(2), 23(f), 79 Stat. 455, 456, 42 U.S.C. §§ 1421(a)(2), 1421(b)(f) (Supp. I, 1965). A "workable program" is defined in note 54 *infra*.
36. PHA Circular, October 6, 1965, p. 1.
37. N.Y. Times, January 1, 1966, p. 1.
38. N.Y. Times, October 17, 1965, § 8, p. 6.

of the units in any single structure, but they may ignore this requirement for any reason.[39] As a reward for rehabilitation, units which have been brought up to standard in order to qualify for the program are supposed to receive special consideration.[40]

The local authority enters into one- to three-year leases, renewable by consent of both parties, at rents which allow the landlord a limited profit. The difference between the rent and the tenant's contribution will be paid by the local authority with funds received from PHA under the annual contributions contract. The amount received from PHA for the entire project "shall not exceed the amount of the fixed annual contribution which would be established under this Act for a newly constructed project by such public housing agency designed to accommodate the comparable number, sizes, and kinds of families."[41] This fixed amount is calculated under the "flexible formula" of the third proviso of section 10(c) of the United States Housing Act of 1937, as amended.[42] In addition, the authority may receive up to $120 per year for each elderly family and certain displaced families. The contributions paid by tenants, together with the annual contribution from PHA, must be sufficient to cover rents paid to the landlords and administrative costs borne by the local authority. Leased units are not exempt from property taxes, and thus the locality is excused from the subsidy which it must extend to tax-free public housing units. Because the total possible subsidy is less, Widnall units will often not present a realistic housing alternative for the poorest families.

Income limits for tenants are still set by local authorities, but the twenty per cent gap which protects the private market from public housing does not apply.[43] Tenants are selected under a method specified in the contract between the landlord and the local authority.[44] If the landlord chooses the tenants (subject to local authority's determination of eligibility), the authority typically will not pay rents when the apartment is vacant. Otherwise, the authority "insures" the term of the lease unless the landlord arbitrarily refuses to house tenants

39. Housing and Urban Development Act of 1965 § 23(c), 79 Stat. 455, 42 U.S.C. § 1421*b*(c) (Supp. I, 1965).
40. See PHA Circular, *supra* note 36.
41. Housing and Urban Development Act of 1965 § 23(e), 79 Stat. 456, 42 U.S.C. § 1421*b*(e) (Supp. I, 1965).
42. See note 31 *supra*.
43. Housing and Urban Development Act of 1965 § 23(f), 79 Stat. 456, 42 U.S.C. § 1421*b*(f) (Supp. I, 1965).
44. Housing and Urban Development Act of 1965 § 23(c)(1), 79 Stat. 456, 42 U.S.C. § 1421*b*(d)(1) (Supp. I, 1965).

suggested by the authority.[45] The local agency has "sole right to give notice to vacate, with the owner having the right to make representations to the agency for termination of a tenancy."[46]

C. *Below Market Interest Rate Loans Under Section 221(d)(3) of the National Housing Act* (221(d)(3) BMIR)

The Kennedy Administration introduced the 221(d)(3) BMIR[47] program in 1961 to increase the supply of housing available to families of moderate income, *i.e.*, those above the income limit for admission to public housing. The program provides low-interest mortgage loans from FNMA to sponsors for permanent financing of qualifying projects which involve either new construction or rehabilitation. FHA insures these mortgages, without fee, and in return exacts the power to supervise project development and operation. During the early years of the program, interest rates on these loans were computed through a formula based on the average market yield on all outstanding marketable obligations of the United States.[48] By July, 1965, this formula rate had risen to 4⅛ per cent, compared to the FHA market rate of 5¾ per cent (including the ½ per cent insurance fee) existing at that time. But in August, 1965, Congress greatly increased the subsidy available under the 221(d)(3) BMIR program by reducing the maximum interest rate to 3 per cent or the formula rate, whichever is less.[49]

To be eligible for BMIR loans under the program, a sponsor must be a nonprofit, cooperative, or limited-dividend corporation or association, or a federal or state agency other than a local housing authority.[50] Section 221(d)(3) BMIR mortgages may exceed neither $12,500,000 in total amount[51] nor somewhat stringent per-unit limitations, which depend on geographical location, the number of bedrooms, etc.[52] Nonprofit, cooperative, and public sponsors may secure mortgages of up to 100% of replacement cost on completion, including land, utilities, and

45. See PHA Circular, October 6, 1965, pp. 4-5.
46. Housing and Urban Development Act of 1965 § 23(d)(3), 79 Stat. 456, 42 U.S.C. § 1421*b*(d)(3) (Supp. I, 1965).
47. Housing Act of 1961, 75 Stat. 149 (1961), 12 U.S.C. § 1715*l* (1964).
48. Housing Act of 1961 § 101(a)(11), 75 Stat. 152, 12 U.S.C. § 1715*l*(d)(5) (1964).
49. Housing and Urban Development Act of 1965 § 102(b), 79 Stat. 454, 12 U.S.C. § 1715*l*(d)(5) (Supp. I, 1965).
50. Housing Act of 1961 § 101(a)(6), 75 Stat. 150, 12 U.S.C. § 1715*l*(d)(3) (1964); 24 C.F.R. § 221.510 (1966).
51. National Housing Act § 221(d)(3)(i), as amended, 75 Stat. 150 (1961), 12 U.S.C. § 1715*l*(d)(3)(i) (1964); 24 C.F.R. § 221.514(a)(1)(i) (1966).
52. National Housing Act § 221(d)(3)(ii), as amended, 75 Stat. 150 (1961), 78 Stat. 775 (1964), 79 Stat. 467 (1965), 12 U.S.C. § 1715*l*(d)(3)(ii) (Supp. I, 1965); 24 C.F.R. § 221.514 (a)(1)(ii), (b), (c) (1966).

fees incident to construction. The provisions for limited distribution sponsors are only slightly less generous: mortgage loans of up to 90 per cent of total project replacement cost, plus a profit allowance of 10 per cent of replacement cost exclusive of land.[53]

The majority of 221(d)(3) BMIR projects consist of newly constructed row-houses and walk-up apartments. They must be located in communities which have developed a HUD approved "workable program for community improvement"[54]—a broader category than cities with housing authorities. Perhaps as much as half of all 221(d)(3) BMIR housing is located in urban renewal areas. Local redevelopment agencies often encourage wary sponsors by obtaining preliminary commitments from FHA on illustrative plans.[55] The median 221(d)(3) BMIR project insured in 1964 had 104 units; rent per unit (exclusive of cooperatives) was $102; mortgage amount per unit was $12,432; and the ratio of the mortgage amount to the replacement cost on completion was 97.9 per cent.[56]

Families and single elderly and handicapped persons are eligible tenants for 221(d)(3) BMIR housing provided that they earn less than the relevant maximum income limit set by FHA.[57] These limits are usually several thousand dollars higher than the equivalent limit for admission to public housing in the same area. In August, 1965, the maximum income limit for a family of four was $8,200 for New York City; $6,800 for Wichita, Kansas; and $6,150 for Birmingham, Alabama.[58] Probably a majority of American families fall beneath these income limits. The project owner is solely responsible for tenant selection. However, in the case of 221(d)(3) BMIR cooperatives, FHA must approve the credit standing of potential members. Through its regulatory agreement, FHA retains the power to veto any important management decisions (*e.g.*, changes in rents) and is authorized to assume management of the project if the Regulatory Agreement is broken.

53. National Housing Act § 221(d)(3)(iii), as amended, 75 Stat. 150 (1961), 78 Stat. 779 (1964), 12 U.S.C. § 1715*l*(e)(3)(iii) (1964); 24 C.F.R. § 221.514(2)(ii) (1966).

54. Housing Act of 1949 § 101(c), as amended, 68 Stat. 623 (1954), 42 U.S.C. § 1451(c) (Supp. I, 1965). In theory a "workable program" includes "an official plan of action . . . for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life. . . ." *Ibid.*

55. 17 HHFA ANN. REP. 387 (1963).

56. 18 HHFA ANN. REP. 159 (1964).

57. The formula for computing income limits for admission to 221(d)(3) BMIR housing is described in *1965 House Hearings* 266.

58. *Maximum Income Limits for Occupancy of § 221(d)(3) BMIR Housing*, FHA REP. No. 748 (August, 1965).

Although popular with Congress, the 221(d)(3) BMIR program has been plagued by a number of problems. Defaults averaged 4 per cent in the early 1960's, the highest rate under any FHA mortgage insurance program.[59] Then in December, 1965, a *Washington Post* survey revealed that many families in 221(d)(3) BMIR projects in the Washington area had incomes which exceeded the generous income limits for occupancy. FHA promptly responded with new rules that required a review of tenant incomes every two years; tenants whose incomes exceed 105 per cent of the limit must now pay higher rents which exclude them from the benefits of subsidized financing.[60] Because they involve a high initial outlay of Treasury funds, FNMA's purchases of BMIR mortgages have a severe impact on the federal budget. The Johnson Administration has sought to reduce the budgetary impact by pooling such mortgages, and by selling participations in the pool to private investors. Premium interest rates are paid on such participations in order to attract investors. The federal government then makes up the difference between the premium rate and the below-market rate with annual appropriations, which in effect "amortize" the budgetary impact. This approach no doubt diverts some funds from the market for ordinary real estate mortgages, and may thus contribute to increased costs in private mortgage financing.

Most serious of all, the 221(d)(3) BMIR program has failed to generate much new construction.

MORTGAGES INSURED FOR NEW CONSTRUCTION UNDER THE 221(d)(3) BMIR PROGRAM[61]

Year	*Units*
1961	320
1962	3,182
1963	6,889
1964	13,905
1965	11,099
Total	35,396

The program should have done very well in 1965 after the interest rate had been reduced to a maximum of 3 per cent, as market interest rates were at an unusually high level in that year. The table shows the num-

59. Testimony of Phillip Brownstein, FHA Commissioner, *1965 Senate Hearings* 190.
60. *Occupancy Controls in Section 221(d)(3) Below Market Interest Rate Projects*, FHA REP. No. MF-67 (January 4, 1966).
61. Sources: Table III-6, 18 HHFA ANN. REP. 80 (1964); FHA MONTHLY REP. OF OPERATIONS (Statistics Section, December, 1965).

ber of units insured actually dropped from 1964 to 1965; other FHA figures show that applications under the program have not increased significantly since the amendment in the interest rate.[62] One explanation is that many private sponsors were drawn away from the 221(d)(3) BMIR program by passage in 1965 of the rent supplement program, whose more lucrative subsidies are available to most of the same sponsors.

D. *The Rent Supplement Program*

The rent supplement program, section 101 of the Housing and Urban Development Act of 1965,[63] is potentially the most important development in federal housing policy since the advent of urban renewal in 1949.[64] It would shift responsibility for building and operating low-cost housing from the public sector (public agencies are not eligible sponsors) to certain "non-profit" and "limited profit" organizations outside government, such as labor unions, churches, cooperatives, limited dividend corporations. Although these groups have always been eligible to sponsor 221(d)(3) BMIR projects, the rent supplements enable private sponsors, for the first time, to construct presentable new housing that low-income tenants can afford. Thus the principal purpose of the rent supplement program is to eliminate local authorities as intermediaries between the welfare recipient and his patrons in the federal government.

Rent subsidies are government payments which make up the margin by which rent levels exceed the amount which a tenant can reasonably be expected to pay for shelter. Under the rent supplement program the tenant family pays 25 per cent of its income toward rent, and the federal government pays any remainder directly to the landlord.

1. *History of the rent supplement idea*[65]

The U.S. Chamber of Commerce first proposed rent subsidies to Congress, during the 1937 hearings on the public housing program.[66] A year later, the editors of *Architectural Forum* concluded that rent subsidies would be the best feasible form of housing assistance,[67] and

62. *Id.* at 3.
63. 79 Stat. 451, 12 U.S.C. 1701s (Supp. I, 1965).
64. Housing Act of 1949, Title I, as amended, 63 Stat. 414, 42 U.S.C. §§ 1451-68 (Supp. I, 1965).
65. For the history of congressional consideration of rent subsidies prior to 1953, see THE PRESIDENT'S ADVISORY COMMITTEE ON GOVERNMENT HOUSING POLICIES AND PROGRAMS, RECOMMENDATIONS ON GOVERNMENT HOUSING PROGRAMS 323-30 (Comm. Print 1953) [hereinafter cited as GOVERNMENT HOUSING PROGRAMS].
66. *Id.* at 323.
67. Subsidies for Housing, 68 Architectural Forum, April, 1938, pp. 309, 315-16.

in 1943 NAREB, the Realtors' Association, formally endorsed them as the "straightforward American way of handling this problem."[68] All these early proposals called for subsidies payable on units in existing housing (like the Widnall Plan), and thus they would not have added directly to the housing stock. Eisenhower's Advisory Committee on Government Housing Policies and Programs, after a broad evaluation of federal housing policy, concluded that public housing was preferable to any rent subsidy program,[69] even one which was keyed to new construction.[70] Among its objections, few of which seemed to have much substance, the Committee concluded rent subsidies would require an administrative apparatus so complex that "the program would fall of its own weight."[71] However, some of the more acute observers of the urban scene, notably Jane Jacobs,[72] continued to advocate the use of rent subsidies to induce the private sector to upgrade neighborhoods.

The federal government began experimenting with rent subsidies under the Low-Income Housing Demonstration Program of 1961.[73] In 1964 Congress devised a rent subsidy formula for relocation payments to assist families displaced by urban renewal.[74] The Johnson Administration's rent supplement proposal of 1965 was the first attempt to key the subsidy device to new construction and rehabilitation on a large scale.

2. *The political history of the rent supplement program*

The National Association of Home Builders, whose members had more than a detached interest in the program, claim to have proposed the rent supplement approach to President Johnson in 1964.[75] The Administration's bill, as introduced to Congress, restricted eligibility

68. GOVERNMENT HOUSING PROGRAMS 324.

69. *Id.* at 257, 261-64.

70. *Id.* at 262-63.

71. *Id.* at 263.

72. JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 321-37 (Vintage ed., 1961). See also suggestions by Vernon Demars, in *The Dreary Deadlock of Public Housing—How to Break It?*, 106 Architectural Forum, June, 1957, pp. 139, 224, 226.

73. Housing Act of 1961 § 207, 75 Stat. 165, as amended, 42 U.S.C. 1436 (Supp. I, 1965). Nine rent subsidy projects had been begun under this program by September, 1965. Four projects utilized existing housing; three involved new construction of rental units, and two involved single family units on which participating families obtained options to purchase, exercisable when they were no longer dependent on rent subsidies. See HHFA, LOW INCOME HOUSING DEMONSTRATION PROGRAM: PROJECT DIRECTORY (September, 1965).

74. Housing Act of 1949 § 114(c)(2), 78 Stat. 789, as amended, 42 U.S.C. § 1465(c)(2) (Supp. I, 1965).

75. Testimony of Perry Willits, President of the National Association of Home Builders, *1965 House Hearings* 548.

for supplements to families whose incomes were in the "gap" between the income limits for admission to public housing and 125 per cent of those limits—*i.e.*, the level at which families can afford standard housing with 20 per cent of their income.[76] The President gave the program active support during its entire journey through Congress, calling it "[t]he most crucial new instrument in our effort to improve the American city. . . ."[77]

The original decision to make only a moderately needy group the beneficiary of the program was based on several considerations. The Administration was disenchanted with the 221(d)(3) BMIR program, largely because of its adverse impact on the budget, and announced its intention to phase out the program after 1969.[78] This would create a vacuum in the area of subsidized housing for families of moderate income. HHFA Commissioner Weaver also doubted that there were enough private sponsors who would be able and willing to provide proper management for projects housing low-income families.[79] Finally, it is cheaper for government to supplement the rent of a "gap" family than a public housing family of the same size. Thus the Administration could generate more units for its money with a program of the sort it proposed. HHFA estimated an annual appropriation of 200 million dollars could generate 500,000 units of new housing for families of moderate income within a four-year period[80]—perhaps 7 per cent of all new residential units built during that period. The benefit of this large infusion would then trickle down to relieve the shortage of standard housing faced by families of low income.

At the hearings on Capitol Hill, most lobbyists supported the rent supplement concept,[81] but many urged that the units be made available to low-income families rather than families in the "gap" range.[82] Lobbying organizations for all the major groups of mortgage lenders

76. H.R. 5840, 89th Cong., 1st Sess. § 101(d)(1), reprinted in *1965 House Hearings* 2.
77. President's Message to Congress on Housing, reprinted in *1965 House Hearings* 72.
78. *Ibid.*
79. *1965 Senate Hearings* 22, 32.
80. President's Message to Congress on Housing, *supra* note 77.
81. For example, see testimony by representatives of: AFL-CIO, *1965 House Hearings* 484; the National Council on Aging, *id.* at 393; the National Association of Home Builders, *id.* at 548; the National Housing Council, *id.* at 325; and the National Farmer's Union, *id.* at 386. In general opposition were such organizations as: the U.S. Chamber of Commerce, *id.* at 1005; and the National Lumber and Building Materials Dealers Association, *id.* at 1110.
82. *E.g.*, The Americans for Democratic Action, *id.* at 1138; the Cooperative League, *id.* at 313; the Mortgage Bankers Association of America, *id.* at 673; the U.S. Savings and Loan League, *id.* at 1123; and the National Association of Mutual Savings Banks, *1965 Senate Hearings* 588.

supported the program,[83] which relies primarily on private market interest rate financing. The opposition came from the two extremes of the housing lobby. NAREB, the realtors' organization, maintained its strong opposition to government intervention by announcing that it would oppose the rent supplement program even if it were restricted to low-income families.[84] The National Association of Housing and Redevelopment Officials (NAHRO), the professional organization of local public housing officials, thought the low-income group worthier of subsidy, but also feared greater costs and inexpert management in any rent supplement program.[85] Of course, these local housing officials were testifying on a program which, if successful, might make their jobs obsolete.[86]

Congress followed the advice of most of its witnesses and redirected the rent supplement program to serve families eligible for public housing, not those above that level.[87] Even with this concession, the rent supplement program survived on the floor of the House by only six votes. In addition, Congress ignored the Administration's plan to bury the 221(d)(3) BMIR program and greatly strengthened that program by reducing the maximum interest rate to 3 per cent.

After failing to get appropriations in 1965,[88] the President asked

83. See authorities cited note 82 *supra*, and testimony of representatives of the American Bankers Association, *1965 House Hearings* 707.

84. *1965 House Hearings* 891. The National Association of Real Estate Boards (NAREB) has since decided to support the program. Statement of Policy, adopted by the NAREB Delegate Body, Chicago, Nov. 18, 1965, p. 2.

85. See, *e.g.*, statement of Ira S. Robbins, President of NAHRO, *1965 Senate Hearings* 324-27.

86. Senator Douglas (Dem., Ill.) concluded their evaluation of the program might not be entirely objective:

> And I may say the public housing people have not liked [the rent supplement program] either. They haven't liked the proposal because they want to keep the poor as their special provinces; "Keep off the grass," they say.

1965 Senate Hearings 525.

87. This change was engineered in the Senate by the Banking and Currency Committee, and in the House, by floor approval of the "Stephens Amendment." Note that elderly, handicapped, and displaced individuals or families in the "gap" income range were eligible for supplements under the Administration proposal, and are still eligible under the program as enacted.

88. On September 28, 1965, seven weeks after the 1965 housing legislation had been signed into law, the FHA distributed to its insuring offices a package of instructions for implementing the rent supplement program. FHA, RENT SUPPLEMENT PROGRAM PACKAGE (Sept. 28, 1965). This proved to be a mistake. In October while the President was hospitalized, the House rebelled and defeated appropriations for the measure by twenty-three votes. In leading the attack on funding the program, Rep. James Harvey (Rep., Mich.) claimed that the September package had betrayed Congress' intent by permitting some elderly families with assets of up to $25,000 to qualify for supplements. Perhaps of greater underlying concern was an assertion in the package that the program would be used affirmatively to promote integration, see text accompanying note 139. The only concessions the Senate Conferees could force were appropriations of $450,000 to FHA and $300,000 to the Housing Administrator for preparation of plans for the program, Sup-

Congress in February, 1966, to appropriate $30 million for rent supplements in fiscal 1966—the full amount of the authorization. The Independent Offices Subcommittee of the House Appropriations Committee cut the figure to $12 million, and, more importantly, added a rider excluding rent supplement projects from communities that both lack a workable program, and whose local governing body refuses to ratify the project. After the "biggest lobbying effort of the year,"[89] the Administration got its $12 million, and the debilitating rider.[90]

3. The structure of the rent supplement program

The form of the rent supplement program as it will be administered by HUD and FHA is best outlined in a handbook[91] and a set of regulations[92] issued in May, 1966. The new version differs in a number of details from earlier ones released in September and December of 1965,[93] and no doubt will be frequently modified in the future.

(a) Eligible housing owners and their supervision by FHA

Although the statute places operation of the rent supplement program under the Secretary of HUD,[94] the Secretary has chosen to delegate most of his powers to the FHA, one of the principal component agencies of the Department.[95] The Secretary will retain only the powers to make regional and local allocations of rent supplement funds, to

plemental Appropriation Act for Fiscal 1966, 79 Stat. 1135 (1965), and a statement that funds for subsidies had been denied without prejudice.

Acting to correct its blunder, the Administration withdrew the September package, and in December, 1965, issued a new package which gracefully avoided every controversial issue in the program. *Rent Supplement Program, Preliminary Information*, FHA REP. No. 2504 (November, 1965); distributed under a covering letter on December 6, 1965. The December package reduced asset limitations to $5,000 for the elderly, and to $2,000 for others, and eliminated the statement on integration.

89. Tom Wicker, N.Y. Times, April 3, 1966, § 4, p. 3.

90. The rider reads:

> . . . no part of the foregoing appropriation or contract authority shall be used for incurring any obligation in connection with any dwelling unit or project which is not either part of a workable program for community improvement meeting the requirements of section 101(c) of the Housing Act of 1949, [added by 68 Stat. 623 (1954)], as amended (42 U.S.C. § 1451(c)), or which is without local official approval for participation in this program.

U.S. CODE CONG. & AD. NEWS 1296 (1966). See 31 Fed. Reg. 7564 (1966) adding 24 C.F.R. § 5.15(c) (1966).

91. *Rent Supplement Program: Public Information Guide and Instruction Handbook*, FHA REP. No. 2504 (May, 1966) [hereinafter cited as MAY HANDBOOK].

92. 31 Fed. Reg. 7563-66 (1966). Most are codified under 24 C.F.R. §§ 5.1-5.80 (1966).

93. See note 88 *supra*.

94. Housing and Urban Development Act of 1965 §§ 101(a), (e) and (g), 79 Stat. 451, 12 U.S.C. §§ 1701*s*(a), (e) and (g) (Supp. I, 1965). Department of Housing and Urban Development Act § 5(a), 79 Stat. 669 (1965), 5 U.S.C. § 624c(a) (Supp. I, 1965), transferred to the Secretary of HUD all the "functions, powers, and duties" of the pre-existing Housing and Home Finance Agency (HHFA) and its Administrator.

95. 31 Fed. Reg. 7565 (1966), adding 24 C.F.R. § 200.95(aa).

establish income ceilings for geographical areas, and to conduct surveys to determine aggregate need for housing in various areas.[96] FHA has traditionally maintained close ties with the lenders and builders in the housing industry, and is almost totally without experience in programs involving housing for low-income families. Nevertheless the choice of FHA to administer the program seems proper. FHA's ties with the private sector are a great asset since the success of the program is entirely dependent on the enthusiasm of private developers. Moreover, the only other existing agency capable of handling the program, PHA, could hardly be expected to give enthusiastic support to a program which preempts the role of the PHA's constituent local housing authorities.

A rent supplement project begins when a private sponsor applies to a local FHA insuring office. The sponsor (or "housing owner") must be either a private nonprofit organization,[97] a limited dividend mortgagor, or a cooperative housing corporation.[98] Public mortgagors are not eligible for sponsorship. Final approval for a project must come from the appropriate FHA regional office. A would-be sponsor can appeal an unfavorable decision by the local insuring office within the agency, and ultimately in the courts, although the final step is extremely unlikely. Sponsors are judged by the agency for integrity, motivation, continuity, and expertise. A particularly important consideration will be the capacity of the sponsor to provide, or hire, management competent to administer a project housing primarily low-income tenants.[99] There is always some danger that another qualification will be the sponsor's political connections.

FHA enters into three principal contracts with the housing owner of an approved project. First, FHA insures the mortgage on the project under the 221(d)(3) market interest rate program.[100] Most primary

96. MAY HANDBOOK 1.

97. For example, a religious, labor or public service organization.

98. Housing and Urban Development Act of 1965 § 101(b), 79 Stat. 451, 12 U.S.C. § 1701*s*(b) (Supp. I, 1965). 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.15.

99. MAY HANDBOOK 2-3.

100. Housing and Urban Development Act of 1965 § 101(b), 79 Stat. 451, 12 U.S.C. § 1701*s*(b) (Supp. I, 1965), referring to 75 Stat. 150 (1961), 12 U.S.C. § 1715*e* (1964), as amended, 79 Stat. 505, 12 U.S.C. § 1715*l*(d)(3) (Supp. I, 1965). 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.15(a). For experimental purposes a few projects insured under the § 221(d)(3) BMIR, market interest rate elderly, and below-market interest rate elderly, mortgage insurance programs will qualify for rent supplements. Housing and Urban Development Act of 1965 § 101(j), 79 Stat. 453, 12 U.S.C. § 1701*s*(h) (Supp. I, 1965). 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.15(b). See 73 Stat. 665, 667 (1959), 12 U.S.C. §§ 1715*v*(c)(3), 1701*q* (1964) (market interest rate elderly and below-market interest rate elderly programs); 75 Stat. 150 (1961), 12 U.S.C. § 1715*l* (1964), as amended, 79 Stat. 505, 12 U.S.C. § 1715*l* (Supp. I, 1965) (221(d)(3) BMIR program).

mortgagees will be private lenders. Rent supplement projects are eligible for FNMA special assistance and FNMA is authorized to purchase appropriate mortgages on these projects through its normal secondary market operations. Except in experimental cases,[101] the mortgages will bear the FHA market interest rate for multi-family mortgages, which, in April, 1966, was an unusually high 5½ per cent.[102] The mortgagor, in addition to his interest payments to the mortgagee, pays FHA an annual mortgage insurance premium equal to ½ per cent of the declining balance due on the mortgage.[103] Mortgages may not exceed $12,500,000 in amount,[104] nor forty years in term.[105] Loan-to-value ratios will be the same as under the 221(d)(3) BMIR program; for example, FHA will insure loans to nonprofit sponsors up to 100 per cent of the replacement cost of the project on completion. If the housing owner defaults on its mortgage payments, FHA pays off the mortgagee[106] in cash and/or debentures,[107] and, in effect, takes over management of the project, through hired agents, until the property or the mortgage on it can be sold.

The second principal document is the Regulatory Agreement between FHA and the housing owner which sets out FHA's powers to supervise the operation of the project. The Regulatory Agreement typically requires that the housing owner clear the rents it charges with the FHA, maintain certain reserves, and keep its books and building in satisfactory condition.[108] In addition, FHA must approve the housing owner's choice of a management agent. Projects will be inspected at least once a year by FHA officials to assure proper management and physical maintenance. Breach of the Regulatory Agreement constitutes a default on the mortgage which empowers FHA to require the mortgagee to demand that the mortgagor accelerate payments.[109]

In the third document, a rent supplement contract,[110] FHA promises to make monthly rent supplement payments to the housing owner on behalf of his eligible tenants for a term equal to the term of the project mortgage. This long term, usually forty years, is necessary to insulate

101. See authorities cited note 100 *supra*.
102. 31 Fed. Reg. 5757 (1966), amending 24 C.F.R. § 221.518(a) (1966).
103. 24 C.F.R. §§ 221.755, 207.252(d) (1966).
104. See note 51 *supra*.
105. Housing and Urban Development Act of 1965 § 101(a), 79 Stat. 451, 12 U.S.C. § 1701*s*(a) (Supp. I, 1965).
106. See generally, 24 C.F.R. §§ 221.751, 221.762-.790, 207.255-.259 (1966).
107. 24 C.F.R. §§ 221.762, 207.259 (1966).
108. See generally, 24 C.F.R. §§ 221.529-.535a (1966).
109. 24 C.F.R. §§ 221.751, 207.255-.257 (1966).
110. For a sample rent supplement contract, see FHA FORM No. 2503.

housing owners from possible changes in federal policy which would otherwise deter them from undertaking these projects. FHA can terminate the contract if the housing owner violates either it, or the Regulatory Agreement, or makes false representations.[111]

The rent supplement program gives the entrepreneur many opportunities to make a legal limited profit. Rents in nonprofit and cooperative projects are limited by FHA to an amount sufficient, at 93 per cent occupancy, to cover operating costs, debt service, and reserves. Limited distribution mortgagors, however, are entitled to charge rents which will allow them a profit of up to six per cent on their own investment.[112] The possibility for profit may induce some entrepreneurs to sponsor rent supplement projects, since the availability of supplements greatly reduces risks of loss or reduced profit. However, there are other strong financial incentives which are present irrespective of the type of sponsorship. When the mortgage has been retired, the sponsor owns the project free and clear of FHA regulation. In addition, builders, materialmen, lawyers, architects, management firms, building trade unions, and others can earn a normal profit on extra business by providing goods and services to rent supplement projects. For example, a builder seeking to increase his volume would obviously be attracted to this program.

Illegal profits are likely to be a serious problem. FHA programs for insurance of mortgages with high loan-to-value ratios have always appealed to those who are inclined to defraud the government.[113] They require the entrepreneur to put up little risk capital, and give him an opportunity, without proper supervision, to "mortgage out"—that is, make no out-of-pocket investment at all. The principal danger during the construction period is that the sponsor will pad his costs and accept kickbacks from suppliers. As a preventive measure, FHA requires all sponsors to certify costs[114] and to contract on a cost-plus basis with builders who are not at arm's length from them.[115] Sweetheart contracts are also possible after construction has been completed. The sponsor may pay lucrative fees to a management firm in identity of interest with him. The problem arises because there are few market pressures to deter such behavior. So long as there are sufficient supple-

111. *Ibid.*
112. 24 C.F.R. § 221.532 (1966).
113. See HAAR, FEDERAL CREDIT AND PRIVATE HOUSING 260-66; ABRAMS, THE CITY IS THE FRONTIER 87-90 (1965).
114. 24 C.F.R. §§ 221.547-.558 (1966).
115. 24 C.F.R. § 221.548(c) (1966).

ment funds available, the sponsor is indifferent to increased costs. High rents do not drive away subsidized tenants, since they pay only 25 per cent of their income for rent regardless. FHA and the tenants not receiving supplements bear the entire cost of illegal practices. In cooperatives, the problem is more acute; subsidized members have little reason not to vote for every proposed expenditure. In all these cases, the remedy is sharp scrutiny by FHA, but there are so many opportunities for abuse that it would be foolhardy to expect FHA to keep the program free of scandal.

(b) Computation of rent supplement payments

FHA's monthly payments under the rent supplement contract are made directly to the housing owner. The amount paid equals the sum of the supplements due on behalf of all the eligible tenants in the project, unless that sum exceeds the project maximum explained below. A tenant's supplement equals the difference between the rent payable on his apartment and 1/4 of his family's income.[116] Twenty-five per cent is an unusually high portion of income for a family to spend on housing. Alvin Schorr has suggested that 20 per cent is a more realistic limit.[117]

Although the housing owner is entirely responsible for collecting the tenant's share of the rent, FHA continues to pay supplements on behalf of tenants who default on their contribution. No supplements are payable, however, on vacant units. All tenants are required to report permanent increases in income which end their eligibility for supplements[118] to the housing owner, and nonelderly tenants must have their incomes recertified annually, so their supplements can be recomputed.[119] If a tenant's income drops after initial occupancy, he must persuade both the housing owner[120] and FHA[121] that he should receive an increased supplement.

To make budgeting easier, FHA sets a maximum supplement for the project as a whole after a short introductory rent-up period. Housing owners will find it advantageous to start off with very low income tenants, thus increasing their project maximum. The original computation of the maximum project payment under the contract will

116. Housing and Urban Development Act of 1965 § 101(d), 79 Stat. 452, 12 U.S.C. § 1701*s*(d) (Supp. I, 1965).
117. SCHORR, *op. cit. supra* note 29, at 101-02.
118. MAY HANDBOOK 12.
119. 31 Fed. Reg. 7565 (1966), adding 24 C.F.R. 5.55. See also Housing and Urban Development Act of 1965 § 101(d)(2), 79 Stat. 452, 12 U.S.C. § 1701*s*(d)(2) (Supp. I, 1965).
120. MAY HANDBOOK 13.
121. 31 Fed. Reg. 7565 (1966), adding 24 C.F.R. 5.60.

include a 10 per cent contingency allowance.[122] If this allowance is exhausted, tenants who suffer reductions in income will be unable to get increased supplements, and the housing owner may not have enough supplements available to attract new low-income tenants. The rent supplement contract can be reopened and the project maximum renegotiated upward, but only if FHA has unallocated rent supplement funds available. Thus housing owners will try to maintain a margin of safety between the total of individual tenant supplements computed under the 25 per cent formula and the project maximum.

(c) Eligible tenants

Housing owners, or their management agents, are responsible for tenant selection, and "can evict tenants for violation of lease provisions as permitted by local or state laws."[123] To be eligible for supplements, however, a tenant must meet three requirements: (1) an income limitation; (2) an asset limitation, and (3) a "categorical" requirement. The statutory income limits are identical to those applicable to public housing.[124] To be brief, they vary with the size of family and geographical location, and depend further on whether the 20 per cent gap requirement is inapplicable because the tenant is elderly, handicapped, or displaced by government action. Local housing authorities, it will be recalled, often set their own limits for admission well below the statutory formula. The Secretary of HUD, who has retained the power to set income limits for admission to rent supplement projects, has chosen not to let rent supplement limits exceed public housing limits in the same locality.[125]

In May, 1966, the income limit for a family of four was $5,760 for New York City, and $3,600 for both Witchita, Kansas and Birmingham, Alabama.[126]

Rent supplement projects are not subject, however, to the income limits for continued occupancy that help to make unstable communities of public housing projects. While local housing authorities ultimately evict tenants whose incomes rise above 125 per cent of the income limit for admission, such prospering tenants are permitted to stay on in rent supplement projects. They simply lose part, or all, of their supplement.[127]

122. 31 Fed. Reg. 7565 (1966), adding 24 C.F.R. 5.40.
123. MAY HANDBOOK 13.
124. Housing and Urban Development Act of 1965 § 101(c)(1), 79 Stat. 451, 12 U.S.C. § 1701s(c)(1) (Supp. I, 1965).
125. MAY HANDBOOK at last two printed pages.
126. *Ibid.*
127. 31 Fed. Reg. 7565 (1966), adding 24 C.F.R. § 5.80.

In one sense, the income limits are wholly unnecessary. HUD could have relied solely on the 25 per cent formula to prevent middle-income tenants from benefiting from the subsidy available. But the income limits set by the Secretary do help prevent rent supplement projects from competing with the private market for middle-income families. By restricting admission on a supplement basis to low-income families who are hardly served at all by the market in new housing, the program probably adds more net units to the housing stock.

The asset limitation, the second requirement for admission, was made much stricter, after the generous September limits almost killed the program in Congress. The maximum net worth permissible is $5,000 for the elderly and $2,000 for all other tenants.[128] Furniture and personal effects are not to be counted.[129] FHA pronouncements do not yet reveal what happens to a tenant whose assets, after his admission, rise above these figures. He might lose his eligibility for supplements, or if a reasonable formula were devised, forfeit only part of his supplement.

The third requirement is satisfied if the tenant fits in any of the following categories:[130] (1) displaced by governmental action; (2) at least 62 years of age; (3) physically handicapped; (4) lives in substandard housing,[131] or (5) occupies living units destroyed or extensively damaged by natural disaster. These are all reasonable distinctions to apply given a permissive income limitation that creates many more eligible applicants than there is room for in projects. The danger of narrowing the class of tenants eligible for subsidy is that potential sponsors may be deterred from building projects by fear of insufficient demand for supplemented units. In the immediate future this is likely to be an academic problem as most communities are well supplied with families which meet all three requirements for admission to projects on a supplement basis.

The housing owner is free to admit to the project tenants who do not qualify for supplements. Such tenants, of course, must pay the entire rent themselves. The proportion of families receiving supplements will vary substantially from project to project. Only projects with large supplement maximums will be able to house mostly subsidized tenants.

128. 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.20(a)(2) and (3).
129. MAY HANDBOOK 11.
130. Housing and Urban Development Act of 1965 § 101(c)(2), 79 Stat. 451, 12 U.S.C. § 1701s(c)(2) (Supp. I, 1965).
131. This provision might have the ironic effect of encouraging low-income families to move into substandard housing in order to become eligible for supplements.

Prospective tenants will be assisted by the housing owner in filling out their applications for eligibility for supplements. Applications are then forwarded to local FHA offices for final review of eligibility under the income, asset, and categorical requirements.[132] FHA will require annual recertifications from all tenants except the elderly. Applicants who succumb to the obvious temptation to cheat are open to criminal prosecution for fraudulent misrepresentation.[133] During the hearings, HHFA Administrator Robert Weaver predicted that nosy neighbors would provide a practical check on tenants who hide their wealth.[134] This method would give a rent supplement project all the communal virtues of a partnership whose members report each other's tax evasions.

(d) Tenant selection and integration within rent supplement projects

Housing owners will have discretion in choosing among eligible tenants, subject only to covenants in the Regulatory Agreement against discrimination on account of race, color, creed, or national origin, or presence of children. They may evict tenants as permitted by state or local law, and more important, can arbitrarily refuse to renew leases. This delegation of the power to choose the beneficiaries of governmental subsidies invites abuse. Nepotism, and political, ethnic, and religious discrimination will probably all occur to some degree; and none of them will be easy for FHA to prove. The most common use of racial classifications will no doubt be unwritten benign quotas designed to promote racial integration. The current administration of HUD would probably not find such action a breach of the covenant of nondiscrimination. How the courts would handle this uncomfortable issue is another question.

If rent supplement projects successfully integrate different economic groups, it will be in spite of the fact that they are more expensive for unsubsidized tenants than comparable private housing. The management will be encouraged to supply social services to his low-income tenants; and the cost will be reflected in the rent. How many people would pay this premium to live in rent supplement housing without a deep personal attachment to a particular project? If rent supplement projects were financed with BMIR mortgages (as an experimental 5-10 per cent of the units built under the 1965 Act will be[135]) there would

132. MAY HANDBOOK 11.
133. 18 U.S.C. § 1001 (1964).
134. *1965 House Hearings* 263.
135. See note 100 *supra*.

be an economic incentive for over-income tenants to stay. HUD could also achieve greater integration by encouraging rent supplement proposals which involve community facilities shared with middle-income projects constructed concurrently by the same sponsor.

In addition, after the maximum supplement for the project is set, housing owners will find it in their interest to take the richest and most stable of the eligible applicants. This group will cause fewer management problems, default less often on their rents, and generally make the project more attractive to the community and the other tenants. The housing owner will also want to keep a margin of safety between the sum of the individual supplements and the maximum project supplement. These two factors—the exodus of the wealthy and the conservative bias of the housing owner—will tend to produce projects inhabited mainly by lower-middle-income families (and low-income elderly) with relatively few disturbing social problems.

(e) The location of projects, and the integration of neighborhoods

One great virtue of the rent supplement program, as originally enacted, was its freedom from the geographical limitations that constrain other forms of federal housing assistance. Unlike public housing, rent supplement projects were not dependent on the existence of a local housing authority; and unlike 221(d)(3) projects, they were not restricted to communities with HUD-approved "workable programs."[136] Thus the program opened up communities which, if left to their own devices, would never make affirmative efforts to provide housing for low-income families. In particular, the rent supplement projects could be located on the comparatively cheap land available at the urban fringe, thus aiding in the deghettoization of the central cities and of their suburbs. The appropriation bill rider seriously crippled the program's capacity to achieve this goal. Nevertheless the rider still permits projects to be built in fringe areas whose governments have passed "workable programs," or who have explicitly assented to them.

But rent supplement projects will by no means be located exclusively in "suburban" locations. Projects may be located in any area

136. Housing Act of 1949 § 101(c), 68 Stat. 623 (1954) (first proviso), as amended, Housing and Urban Development Act of 1965 § 101(f), 79 Stat. 453, 42 U.S.C. § 1451(c) (first proviso) (Supp. I, 1965). However, a community which has once received urban renewal or public housing assistance cannot be the site of a rent supplement project unless it has an active workable program. *Ibid.* At the end of 1966 over 1400 localities had failed to keep their workable programs active. HHFA, STATUS REPORT: THE WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT (Dec. 31, 1966).

which a HUD survey finds to have an inadequate supply of low-cost housing.[137] For example, churches and private schools in central cities threatened by surrounding blight may sponsor projects designed to upgrade their immediate neighborhoods. In addition, urban renewal areas make excellent sites for projects.

Rent supplements are the only practical means through which a New Town developer can provide low-cost housing in his community. Of course, a developer might choose to construct such housing voluntarily, either to create a labor pool for local unskilled jobs or to achieve what he believes to be a desirable social balance. Thus far, however, the social vision of New Town developers has been clouded by the prospect of a middle-class flight from the community at the first sign of a low-income settlement. The federal government might make future aid to New Towns contingent on their providing some housing for low-income families. As a last example, smaller communities may opt to use rent supplement projects where they had formerly relied on public housing. Thus voters in two Iowa towns reportedly defeated proposed public housing projects in recent referenda because of the availability of rent supplements.[138]

But if middle-class suburbs are not the only sites for rent supplement activity, they are the places where projects will be most controversial. Communities that fear the end of class homogeneity can be expected to fight rent supplement projects through political pressure at the federal level, and through such legal devices as restrictive zoning, stringent enforcement of building codes, and hostile use of the power of eminent domain. In fact the rider on the appropriation bill means that these communities have already won a major victory.

There is no doubt that HUD planned to use the rent supplement program to break up the ghettos. The short-lived September package declared that HUD would consider a proposed project's "contribution to assisting in integrating income groups and furthering the legal requirements and objectives of equal opportunity in housing."[139] There is no evidence that HUD has abandoned this intention. But the integration that is likely to occur by means of rent supplement projects will hardly turn a Shaker Heights into an East New York. Housing owners will tend to admit families who will create few social difficulties in the project and in the neighborhood. Suburban projects should

137. MAY HANDBOOK 4, 5.
138. National Association of Real Estate Boards, The Rent Supplement Program, internal memorandum, Jan. 17, 1966.
139. *Rent Supplement Program Package*, FHA MF LETTER No. 63 (Sept. 28, 1965).

prove popular with eligible tenants who are not slum-dwellers at all, but rather middle-class pensioners of low income. Moreover, residents of the ghetto, while dissatisfied with their miserable living conditions, may not want to move very far from the central city.[140] By leaving for the suburbs they would lose valuable services and would have to do without decent public transportation. In addition, the ghetto offers a style of life which many of its inhabitants find more appealing than suburban living.[141]

(f) Structural and legal forms of rent supplement projects

Most rent supplement projects will be newly constructed. Vastly rehabilitated projects can also qualify,[142] but HUD has indicated that it will approve few of them during the first few years of the program.[143] New construction on vacant sites increases the total housing stock as well as the supply of standard housing. Rehabilitation achieves only the second objective, although it is often the most efficient way to improve a low-cost housing stock of adequate size. Therefore, the priority of new construction is probably appropriate wherever a general housing shortage exists.

Any type of residential structure may qualify as a rent supplement project, but most units will probably be built as row-houses or garden apartments, rather than high-rise apartments.[144] FHA will establish per-unit mortgage limitations for each locality to assure "modest" design.[145] "Swimming pools, two bathrooms per unit, air conditioning, and similar items will not be permitted."[146] Rent supplement projects will probably rank in architectural quality somewhere between recent public housing projects and 221(d)(3) BMIR projects.

Cooperative projects will face special problems. Members will have to make small initial down payments to provide the cooperative with working capital. As members' equities increase over the years, memberships in these cooperatives would become prohibitively expensive for most low-income families if the ownership interests were directly transferable.

140. FOOTE, ABU LUGHAD, FOLEY & WINNICK, HOUSING CHOICE AND HOUSING CONSTRAINTS 123-24 (1960).
141. See MEYERSON & BANFIELD, *op. cit. supra* note 4, at 31.
142. 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.10; MAY HANDBOOK 9.
143. Testimony of HHFA Administrator Robert Weaver, 1965 *House Hearings* 249; *1965 Senate Hearings* 20.
144. See MAY HANDBOOK 2: "Generally, because of higher construction costs, elevator buildings will be feasible only if the community provides long term real estate tax abatement and/or land costs are reduced by write-down or donation."
145. *Id.* at 4.
146. *Id.* at 2.

Consequently the statute requires departing members who have received subsidies to sell their membership to the cooperative itself at a price equal to their equity less their equity increment accumulated through rent supplements.[147] This permits sale of cooperative memberships to new members at lower prices.

Some units will be built under a lease-with-option-to-purchase scheme[148] patterned after an experimental project in Tulsa, Oklahoma.[149] Such projects will usually consist of groups of single-family homes, or row-houses, leased by tenants receiving supplements and covered by a blanket mortgage. Tenants whose incomes have risen sufficiently can choose to spin off their unit from the project, and to purchase it, without subsidy, under an individual mortgage insured under section 203 of the National Housing Act.[150] In a few cases, tenants will be able to spin off units in garden apartment structures, and purchase them as condominiums. Only tenants who demonstrate capacity for potential home-ownership will be chosen as original tenants for such projects.[151]

The success of the cooperative, condominium, and lease-with-option-to-purchase aspects of the rent supplement program will be of great interest. They represent the first serious effort by the federal government to bring the Jeffersonian dream of "homeownership" within the reach of low-income families. Desire for homeownership is as strong among these families as it is in any economic class.[152] Under none of these plans, however, do the supplements aid the "homeowner" in building up disposable equity in his unit. Congress did apparently not want the "homeowner" to receive a large liquid windfall from the government.

(g) Termination

A housing owner cannot sell or refinance his project without the consent of the FHA Commissioner.[153] Thus a project might continue to receive supplements for the entire term of the mortgage and its concurrent rent supplement contract. Neither the statute nor the FHA pronouncements shed any light on the important question of who gets

147. Housing and Urban Development Act of 1965 § 101(c), 79 Stat. 452, 12 U.S.C. § 1701*s*(c) (Supp. I, 1965). 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.30(a).
148. Housing and Urban Development Act of 1965 § 101(e)(3), 79 Stat. 452, 12 U.S.C. § 1701*s*(e)(3) (Supp. I, 1965); MAY HANDBOOK 14.
149. *1965 Senate Hearings* 45-46, 127-29.
150. 48 Stat. 1248 (1934), as amended, 12 U.S.C. § 1709 (Supp. I, 1965).
151. See 31 Fed. Reg. 7564 (1966), adding 24 C.F.R. § 5.25(b).
152. FOOTE, *et al.*, *op. cit. supra* note 140, at 187-93.
153. See 31 Fed. Reg. 7566 (1966), adding 24 C.F.R. § 221.524(a).

what when the mortgage has been retired. Under its ordinary regulatory agreements, the mortgagor is freed from FHA's controls at that point, since the FHA is no longer securing his debt. If this is true in the case of rent supplement projects, the project owner receives precisely the windfall that the government withholds from subsidized tenants in co-ops, condominiums, or Tulsa-type projects. Although the building itself may be obsolete, and not worth much more than the cost of wrecking it, the land below should be quite valuable. To obtain this benefit the housing owner had to put up very little capital and, because of the supplements, exposed himself to only a small risk of loss. The availability of a windfall sometime in the twenty-first century is probably unnecessary to attract sponsors today. The other incentives should be sufficient. Consequently FHA ought to limit the housing owner's rights on expiration of the rent supplement contract. For example, FHA could obtain an option to purchase at a reduced price, or an option to renew the contract and its powers of supervision under the Regulatory Agreement. Such measures would reduce the costs of the program to the federal government and prevent empire building by sponsors.

4. *Progress under the rent supplement program*

The Housing and Urban Development Act of 1965 authorized the Secretary of HUD and his delegates to negotiate rent supplement contracts involving, by July 1968, up to $150 million a year in payments to housing owners.[154] If all the contracts had terms of forty years, the potential long-run cost of the program would be $6 billion. Gradual increases in tenant incomes might reduce the total paid over a forty-year period by a third or a fourth of that amount. Congress appropriated only $12 million for fiscal 1966.[155] The Department estimates that $12 million will be sufficient to generate 20,000 units of housing.[156] This works out to an average supplement of $50 a month for each eligible family.

By the end of March, 1966, sponsors of 561 rent supplement projects had filed applications with FHA.[157] The applications involved 97,983 units, more units than were involved in all applications received under the 221(d)(3) BMIR program since its start in 1961. About half the

154. Housing and Urban Development Act of 1965 § 101(a), 79 Stat. 451, 12 U.S.C. § 1701*s*(a) (Supp. I, 1965).
155. Second Supplemental Appropriation Act, 80 Stat. 141 (1966); 1966 U.S. CODE, CONG. & AD. NEWS 1296.
156. N.Y. Times, October 20, 1965, p. 32.
157. N.Y. Times, April 4, 1966, § 4, p. 3.

sponsors were limited distribution mortgagors, and half, cooperative and nonprofit organizations.[158] This "dramatic and positive response"[159] was not entirely spontaneous. HUD drummed up as many applications as possible to prove to Congress that the private sector would support the program. Also, the appropriations bill rider may have washed out a large fraction of these applications. Nevertheless, the rent supplement program seems to have validated its major assumption. It has succeeded in attracting many private entrepreneurs to the task of providing new housing for low-income families.

II. Standards for Evaluating Housing Programs

A. *Assistance to the Poor*

Federal housing programs redistribute income by subsidizing housing costs for selected recipients. The theory of almost all redistributive programs is that poor people deserve subsidies, in cash or in kind, either because they are the victims of imperfections in the labor market or simply because their incomes will not support an acceptable standard of living. In the case of housing assistance, there are additional reasons for directing subsidies to low-income families; for it is poor people who seem to be the least effective consumers of housing. The poor generally have little bargaining power and are often victims of unfair selling practices—principally fraud, coercion, and contracts of adhesion. Their lack of education or access to information obscures the full range of choices available to them. Also a disproportionate number of low-income families are nonwhite and therefore are confined by real estate selling practices to ghettos where this restriction on their freedom of movement is reflected in higher rents. Housing assistance to low-income families, although it does not achieve perfect, or even near perfect, resource allocation, may offer rough compensation for these disadvantages in the marketplace.

Of the programs considered, the 221(d)(3) BMIR program clearly provides the least direct assistance to the poor, although it may help them indirectly through the trickling process. The maximum income limits for tenants in 221(d)(3) BMIR buildings are often generous enough to admit half the families in a city. There is little correlation between financial need and the size of the subsidy a family receives. The other three programs primarily benefit low-income families.

Despite their low-income limits for admission, public housing or

158. President's Special Message to Congress on Improving Nation's Cities, N.Y. Times, Jan. 27, 1966, p. 20.
159. *Ibid.*

rent supplement projects have far too few spaces available to house all qualified applicants. Subsidies are allocated among the eligible families either through statutory preferences (*e.g.*, for old people or veterans) or local administrative rules. The income criteria are thus modified to favor certain families (say, a blind, elderly couple displaced by urban renewal) while other families—perhaps less able to purchase decent housing—remain on the waiting list. For some categories of recipients there are good reasons for departing from a strictly financial standard of admission: for example, nonwhites who are discriminated against in the private housing market, or families whose poverty is probably permanent (the handicapped, the elderly, or unwed mothers with children). Giving preference to families living in substandard housing may facilitate clearance operations. But it is more difficult to justify subsidies going to other favored groups, *e.g.*, veterans,[160] when there are other, poorer applicants available. When a relatively high income limitation simply gives discretion to the landlord or administrator, his selection of tenants is likely to reflect his social prejudice or an aversion to "troublemakers," and the most needy families are likely to be left out.

The public housing program may produce the best record of administrative discretion within the terms of a statute that provides an excess of eligible applicants. Most housing authorities set local income limits below the level prescribed in the statute. Although the local authorities usually try to screen out "difficult" tenants, their selections are on the whole a truly destitute group, as indicated by a median annual income of $2,575 in September, 1965.[161] The most prominent bias in the public housing program is its solicitude for old people, who are the exclusive occupants of half the recent additions to the public housing stock.

The rent supplement legislation prescribes certain preferences through the categorical requirement, but these rules still leave room for wide discretion—a freedom managers of rent supplement units share with Widnall Plan and 221(d)(3) BMIR landlords. The manager can be expected to prefer applicants who are financially and socially stable in order to minimize management headaches. Nonprofit owners may select a somewhat needier group of tenants. However, because of the financial interdependence between their members, cooperatives

160. Local housing authorities are required to give preferential treatment to veterans who apply for admission to public housing projects. United States Housing Act of 1937 § 10(g)(2), as amended, 75 Stat. 164 (1961), 42 U.S.C. § 1410(g)(2) (1964).

161. See note 24 *supra*.

may prove to be the least generous in their admission policies. If private groups are delegated the power to choose the recipients of federal housing subsidies, their discretion should be limited through a narrow definition of the class of eligibles. Housing owners of 221(d)(3) BMIR projects, for example, now have scandalously broad discretion in choosing tenants. If private groups abuse the power of tenant selection, this power should be taken away from them and vested in local public agencies or, at last resort, in local FHA offices.[162]

B. *Cost Per Unit Added to the Housing Stock*

Cost-per-unit-subsidized is usually an unreliable index of the effectiveness of a government assistance program. Cheap subsidies may simply reflect low-quality service or a choice of recipients who need little help. But in the case of housing programs, there are reasons for choosing subsidy techniques that create acceptable new housing units as cheaply as possible. So long as there is some interplay between different sectors of the housing market, an addition to the stock of housing relieves prices for everyone. Therefore, the housing program which on a given budget creates the largest number of new units probably assists low-income families in related submarkets even when they are not its direct beneficiaries.

Moreover, there is evidence that the capital market consistently underestimates the return on investment in housing and that as a result there is a general underallocation of resources to housing construction. The FHA and FNMA programs, which were designed to undertake risks that scared off private investors, have yielded regular profits for the government.[163] It is possible that the FHA, because of its large scale of operations, is able to bear risks profitably that are too big for any private lender. That alternative, however, merely points to another imperfection of the capital market for housing—an atomized structure with undersized units that are unable either to coordinate their activities, or to undertake productive risks individually. If it is true that private industry adds new units to the housing stock at an insufficient rate, it is the business of government to correct the shortage, preferably as cheaply as possible.

Groups within the housing industry and government have made an astonishing number of unsubstantiated claims about the relative costs of these programs. There has never been a thorough comparison of

162. See Housing and Urban Development Act of 1965 § 101(e)(3), 79 Stat. 452, 12 U.S.C. § 1701*s*(e)(3) (Supp. I, 1965).
163. 18 HHFA ANN. REP. 178, 284, 290-91 (1964).

their costs. At a minimum, analysis would have to account for differences in available sites, design quality, financing methods, cost of program administration, cost of project management, cost of tax exemptions, profit allowances, probabilities of illegal profits, availability of accelerated depreciation to the sponsor, and external economies and diseconomies.

Nevertheless, rough estimates are not impossible. The 221(d)(3) BMIR program without question costs the government less per unit than the other three programs. Under typical conditions, say a $12,000 per unit mortgage for a term of forty years, and a prevailing government borrowing rate of 6 per cent, the maximum cost of the liberal financing is $23 per unit per month. The total cost to government is slightly greater, because of its administrative expenses and its assumption of the risk of loss. It is also necessary to take into account the additional housing that might have been constructed privately if there had been no BMIR program.

The public housing program is probably the most expensive of the four on a per unit basis, at least when all of its principal subsidies are considered. The average monthly federal contribution to a public housing unit built in 1965 is about $60.[164] To this one must add the cost of the tax exemption on its bonds, the cost to the local government of the exemption of the project from property taxes (less the in-lieu payment), and the administrative costs of PHA. Local authorities may ultimately recoup some of the total cost by selling the projects and their sites. Of course, public housing assists a much poorer class of tenants than the BMIR program.

Rent supplements should cost significantly less per unit than public housing. Owners of rent supplement projects will tend to select a substantially wealthier group of tenants and these tenants will pay 25 per cent of their incomes for rent, instead of the 20 per cent or thereabouts charged tenants in public housing projects. The more stable composition of the residents will result in savings in management expenses. As a result tenants in rent supplement projects will bear a significantly greater fraction of project operating costs. As mentioned, HUD has estimated the average per-unit subsidy during the early years of the rent supplement program at $50 per month.

The Widnall Plan, which subsidizes rents in apartments in existing buildings, does not improve the housing stock in any significant respect. Therefore, even if this leasing program had a lower per-unit

164. NAHRO statement, *1965 Senate Hearings* 342.

cost than the others, it would not necessarily be preferable to them. As it is, because of its decentralized administration the Widnall Plan's per-unit costs may not prove to be substantially less than the cost of public housing.

C. *Eliminating External Diseconomies*[165]

At one time improved housing was regarded as a panacea for urban social disorders. Take, for example, this assertion by Gunnar Myrdal in 1944:

> . . . [A]ny common sense evaluation will tell us that the causation, in part, goes *from* poor housing *to* bad moral, mental, and physical health.[166]

Or Myres S. McDougal's and Addison A. Mueller's reference in 1942 to:

> . . . the well documented facts that slum clearance and the provision of sanitary, low-rent housing decrease danger of epidemics, raise general public health, reduce crime, cut juvenile delinquency, reduce immorality, lower economic waste by reducing health, police, and fire protection costs, make better citizens, eliminate fire hazards, increase general land values in the vicinity, cut the accident rate, and prevent the cancerous spread of the slums to uninfected areas.[167]

Soon, however, social scientists realized that these estimates of the external diseconomies of substandard housing were greatly exaggerated.[168] The "well documented facts" had been based on studies which had merely found correlations, not causation, between slum housing and social infirmities.[169]

165. See generally, SCHORR, *op. cit. supra* note 29, at 11-33.

166. GUNNAR MYRDAL, AN AMERICAN DILEMMA 1290 (1st ed. 1944).

167. McDougal & Mueller, *Public Purpose in Public Housing: An Anachronism Reburied*, 52 YALE L.J. 42, 47-48 (1942).

168. Dean, *The Myths of Housing Reform*, 14 AM. SOCIOLOGICAL REV. 281 (April 1949). See Dunham & Grundstein, *The Impact of a Confusion of Social Objectives on Public Housing: A Preliminary Analysis*, 17 MARRIAGE AND FAMILY LIVING 111 (May 1955):

> [Recent experience suggests] that the often repeated notion that better housing will help to lessen the impact of social problems on the community is without foundation. It is naive at this date to saddle public housing with a burden of social reform that it cannot carry.

For a less restrained view see EDITORS OF FORTUNE, THE EXPLODING METROPOLIS 124 (1958):

> Once upon a time we thought that if we could only get our problem families out of these dreadful slums, then papa would stop taking dope, mama would stop chasing around, and Junior would stop carrying a knife. Well, we've got them in a nice new apartment with modern kitchens and a recreation center. And they're the same bunch of bastards they always were.

169. See, *e.g.*, MERTON, *The Social Psychology of Housing*, in CURRENT TRENDS IN

Studies of juvenile delinquency, for example, have concluded that the physical condition of the delinquent's home and neighborhood are not themselves significant causes of his deviant behavior.[170] Although children who live in standard housing are more likely to be promoted regularly (perhaps because they are healthier and attend school more often),[171] housing quality does not significantly affect school performance as measured by intelligence tests.[172] There is no firm evidence that better housing improves personal and family relations.[173] A number of investigators have found improved morale and higher levels of aspiration in families who have moved to public housing, but these attitudes may change simply because social services are more accessible in public projects and a housing subsidy leaves families with more money to spend on other things.

Certain diseconomies have been definitely established for substandard housing. Low-quality housing tends to be more combustible, increasing the risk of fire loss on nearby units. More important, better housing significantly reduces the incidence of illness and accidents, at least in persons under thirty-five.[174] Childhood infectious and paralytic illnesses are particularly sensitive to the quality of housing. But if health problems were the only object of housing subsidies, the money might be better spent on public health programs. As Louis Winnick has pointed out, the Soviet Union, where housing is roughly twice as crowded, has used medical subsidies to achieve as good a health record as the United States.[175]

The aesthetic diseconomies of poor housing have the clearest impact on people who live outside the slums. External aesthetic diseconomies are subjective, and often nonquantifiable. There is little doubt, however, that the removal of aesthetic diseconomies is what prompts much of the rejoicing that accompanies slum clearance. The new buildings

SOCIAL PSYCHOLOGY 176 (1948), criticizing the findings of Chapin in *An Experiment on the Social Effects of Good Housing*, 5 AM. SOCIOLOGICAL REV. 868-79 (Dec. 1940).

170. A. Goldfeld, Substandard Housing as a Potential Factor in Juvenile Delinquency in a Local Area in New York City (unpublished Ph.D. thesis); B. LANDER, TOWARDS AN UNDERSTANDING OF JUVENILE DELINQUENCY (1954). See also S. & E. GLUECK, UNRAVELING JUVENILE DELINQUENCY 281-82 (1950), for the general conclusion that the best causal formula for delinquency would be based on a child's (1) physique, (2) temperament, (3) attitude, (4) psychology, and (5) socio-cultural environment. The best recent study of the causes of delinquency focuses on changes in income and employment. B. FLEISHER, THE ECONOMICS OF DELINQUENCY (1966).

171. WILNER, WALKLEY, PINKERTON & TAYBACK, THE HOUSING ENVIRONMENT AND FAMILY LIFE 225-37, 251-52 (1962).

172. *Id.* at 148-59, 249.

173. *Id.* at 245-63.

174. *Id.* at 100-10.

175. WINNICK, AMERICAN HOUSING AND ITS USE: THE DEMAND FOR SHELTER SPACE 92 (1957).

themselves are probably more attractive to outsiders than the old. Improved housing is also likely to keep out of sight people (and their debris) whom the rest of the community would rather not look at.

Rehabilitation has the most immediate effect on the stock of substandard housing and its attendant discomforts for society. But neither 221(d)(3) BMIR loans, rent supplements, nor public housing projects produce much rehabilitation activity. Widnall Plan subsidies are sometimes conditioned on slight renovations in the leased units, and there is some renovation work under a new PHA scheme for purchase of existing structures for use as public housing projects. By its depressing effects on rents, any addition to the stock of low-cost housing tends to reduce the value of run-down buildings and brings closer the day when they will return to the dust. As the rent supplement program is the most efficient at producing new housing for low-income families, it is probably the one that is most likely to facilitate slum clearance. The 221(d)(3) BMIR program might also be quite efficient in this, assuming favorable linkages between housing submarkets.

Buildings constructed under the various programs may differ considerably in their architectural excellence. Judging solely by per unit mortgage limitations, 221(d)(3) BMIR projects are the most likely to be assets to the urban landscape. The cost limitations imposed by the rent supplement and public housing programs will make it difficult for architects to prevent these projects from becoming eyesores. Rent supplement projects will at least tend to be more diverse in design than public housing, because of the greater variety in their sponsors. The architectural excellence of these projects depends in large part on the interest shown by PHA and FHA in their design.

D. *Residential Integration of Different Racial and Economic Groups*

Greater racial and economic integration of neighborhoods would seem advantageous in the long run in terms of reducing conflict,[176] improving the geographical distribution of the work force, and promoting the equality of opportunity of the ghetto dweller. The public housing program has contributed egregiously to the segregation of racial and economic groups within both neighborhoods and buildings. This might be an inherent defect in any program which requires local approval of projects involving a large number of low-income families.

176. See Merton, *op. cit. supra* note 169, at 151, 209-13; Schorr, *op. cit. supra* note 29, at 48.

But in contrast, the Widnall Plan, while also administered by local housing authorities, is an excellent means of achieving integration. Only a few families are subsidized in each building and neighborhood. Since the "invasion" is almost invisible, and the "burden" can be spread throughout the community, many local governing bodies may be amenable to using this program as an affirmative means toward integration. The 221(d)(3) BMIR program provides an inconspicuous method for integrating moderate-income families into higher income neighborhoods, or into urban renewal areas. Rents in these projects, however, are beyond the reach of low-income families. The rent supplement program is second only to the Widnall Plan as a means of integration within projects. The incomes of the tenant families will cover a broader range than in either public housing or 221(d)(3) BMIR projects. More important, the rent supplement program is the most powerful tool for the integration of neighborhoods, and will become a more powerful one if in the future Congress refrains from attaching riders on appropriations for the program.

E. *Political and Administrative Feasibility of the Program*

1. *Political support at the federal level*

Of the four programs, only rent supplements have failed to obtain solid bipartisan support in Congress. Congress almost refused to fund the program for fiscal 1966, and ultimately conditioned its appropriations on emasculating the strategy of preemption of local governing bodies. The 221(d)(3) BMIR program has proved to be very popular with the two Housing Subcommittees, as indicated by their rescue of the program in 1965. There is little real antagonism to public housing in Congress, but at the same time the program has lost most of its enthusiasts. Congress seems at best resigned to its continuation. The Widnall Plan has received little political attention, in part no doubt because the news media tend to confuse it with rent supplements. As this program becomes better understood, it may become politically vulnerable.

The Johnson Administration has given energetic support to the rent supplement program. In contrast, it has expressed doubts about continuing the 221(d)(3) BMIR program as its main aid to families of moderate income. HUD never openly sought the Widnall Plan, but tolerated its addition to the 1965 Act. Its strong espousal of the rent supplement program indicates that the Administration may have unexpressed reservations about the future usefulness of the traditional public housing program.

2. *Support from project sponsors*

In addition to political support at the federal level, housing programs must be accepted by the groups which carry them out. The private sector has been receptive to rent supplements and seems to prefer them to the 221(d)(3) BMIR program which does not offer enough in subsidies to motivate sponsors to contend with its red tape. Many local governing bodies are disenchanted with public housing. Central cities now use the program mainly to build projects for the elderly, perhaps because it is easier to find uncontroversial sites for these projects. The Widnall Plan is likely to become increasingly popular in communities where the construction of new public housing projects is politically impractical.

3. *Demand for program units by eligible tenants*

Lastly, the size of a program is limited by the demand among eligible tenants for units subsidized under it. Of the four, only the public housing program could conceivably have any problem attracting tenants to its units. Public housing offers a living environment that a large majority of poor families find unacceptable.[177] This lack of popularity could ultimately limit its expansion in some areas.

III. Conclusion

1. *Public housing*

The public housing program suffers from archaic systems for project financing and sponsorship. At present it is both a very expensive and slow means of increasing the housing stock and a contributor to residential segregation. It places unwarranted power to control tenants' lives in the hands of the local housing authorities. However, the public housing program has one redeeming feature. It has by far the most progressive economic effect of any of the federal housing programs, helping primarily families of very low income. Nevertheless, the program should be drastically reformed in its site selection techniques, its financing methods, and its administrative practices.

2. *Widnall Plan*

The only important positive feature of the Widnall Plan is its capacity to integrate neighborhoods. The plan produces at most token

177. SCHORR, *op. cit. supra* note 29, at 64, 114; Hollingshead & Rogler, *Attitudes toward Slums and Public Housing in Puerto Rico*, in THE URBAN CONDITION 238 (Duhl. ed. 1963); Hartman, *The Limitations of Public Housing*, 29 AM. INST. OF PLANNERS J. 284 (1963); Abrams, *op. cit. supra* note 113, at 35.

improvements in the housing stock. It is moderately progressive and is somewhat better than public housing in fragmenting power. Much of the benefit of this program redounds to private landlords in the form of inflated rent levels. If the rent supplement program gains momentum, providing an alternative means of integration within neighborhoods, the Widnall Plan should be repealed. Welfare and relocation payments can suffice to help scattered needy families pay their rents.

3. *221(d)(3) BMIR program*

As long as its presence doesn't deter private builders from constructing unsubsidized projects, the 221(d)(3) BMIR program is the most efficient means of increasing housing production. It also can be used to promote integration and best prevents governmental interference in the lives of its tenants. The critical flaw of the program is that it fails to provide housing for the poor, and to correlate subsidy with need. If Congress ever provides adequate funds for the rent supplement program, the 221(d)(3) BMIR program should be phased out.

4. *Rent supplements*

Although untested in practice, the rent supplement program seems the best of the four. It is an efficient way to increase housing production, even if somewhat more expensive than the 221(d)(3) BMIR program. It is the best tool for integrating neighborhoods, and would become a better one if unemcumbered by riders on its appropriations. It is an excellent means for getting government out of the business of managing low-cost housing projects. It is fairly progressive, although not so much as public housing. Experience under the program will no doubt expose defects which will necessitate revisions in the present structure. However, the kernel ingredient of the rent supplement program may be enduring—namely, maximum feasible participation by the private sector in the implementation of national welfare policy.

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