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Housing the Homeless Through Expanding Access to Existing Housing Subsidies

Barbara Sard
Harvard University

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The premise of this article is that homelessness in America today is essentially a product of the lack of affordable housing for very low-income people. The article outlines this central income/housing gap analysis as the factual predicate of the goal to alleviate homelessness through securing subsidized housing resources for the homeless and imminently homeless. It explains why, based on the nature and number of annually available housing subsidies, expanding access to existing housing subsidies is a valuable, workable, short-term, at least partial solution to the immediate crisis of lack of affordable housing, albeit one which does not negate the acknowledged necessity of increasing the supply of such subsidies. It suggests six strategies legal advocates may pursue to expand access for the homeless to the existing housing subsidy resources in their community. Finally, questions are raised about the value of this approach, in contrast to a focus solely on increasing the overall supply of income or housing subsidies, for which space permits only limited and tentative answers.

Homelessness in America today is essentially a product of the lack of affordable housing for very low-income people. While "macro" solutions in the form of increased incomes, an increased number of subsidies for housing, and an increased supply of lower-cost housing are vital, they require years of political and legislative effort. If only macro solutions will solve the problem, what are lawyers representing homeless clients today to do? Is there a legal strategy available to assist these clients to solve their central problem, the lack of a place to live that they can afford? The answer is yes, through expanding access to existing housing subsidies.[1]

Why is Expanding Access a Worthwhile Approach?

The current crisis of homelessness in our society is primarily the result of the increasing gap between household income and housing costs. While individual dysfunctions may help determine which families or individuals are most vulnerable to the shortfall in the supply of housing that the poor can afford, the predominant

Barbara Sard, a lecturer at Harvard Law School, is managing attorney, Homelessness Unit, Greater Boston Legal Services.

cause of the worst homelessness epidemic since the Great Depression is increasing poverty in the face of a decreasing supply of low-cost housing.[2]

What the confluence of these forces means, in practical terms, with regard to the ability of the private housing market to meet housing needs, is that either there is too little low-cost housing in a community for those who need it or, particularly in many of the country's major urban areas, which experienced extreme inflation in housing costs in the 1980s, there is virtually no private market housing within the economic reach of the homeless. Nor can the private housing market, without substantial government subsidies, increase the supply of housing that the homeless or imminently homeless can afford.

Consequently, the solution to the income/housing gap lies in closing the gap from either, or both, directions: by increasing their income so the homeless can afford whatever housing there is, and/or by increasing the supply of housing subsidies. Even in areas of the country where the housing stock is such that increased incomes or housing purchasing power would substantially alleviate the problem, it is extremely difficult to muster the political will to expand and increase public assistance income maintenance programs, which could provide such income. This is even more true in communities where housing costs have escalated. The same can be said for the political barriers that exist to the creation of the kind of job training plus public employment (and child care) programs which are necessary if any substantial number of the homeless are to increase their incomes through employment rather than income transfers.

Thus, whether by choice[3] or necessity, the primary solution to the income/housing gap is to increase the amount of subsidized housing[4] available to the homeless and imminently homeless. One obvious way to accomplish this goal is to legislate an increase in deep subsidy housing programs and require all or some significant portion of the increased resources to go to the homeless and imminently homeless. In light of the enormous shortfall between housing needs and housing supply, a strategy directed at "more" is certainly vital. Without it, we will not end the national disgrace of homelessness.

However, whether it is possible to generate the political will to increase the supply of housing is perhaps as doubtful as the possibility of creating the political will to substantially increase the incomes of the poor. While the struggle to increase the total supply of housing continues in these tight fiscal times, to assist the currently homeless, it is imperative to look to whether the existing supply of subsidized housing is being fully utilized or is going to those legally entitled to, and most in need of, such subsidies. There are additional strategies available to homeless people and their advocates to increase the proportion of the existing supply of subsidized housing which goes to the homeless and imminently homeless. As these strategies can result in virtually immediate housing solutions for at least some of the homeless, they can be used by lawyers and others working with individual homeless clients and client groups to "solve" their clients' problems. I outline six strategies to maximize access of the homeless and imminently homeless to existing housing subsidies and briefly review some of the questions they raise. While I draw heavily on my experience in Massachusetts, the strategies should be replicable elsewhere.

Subsidies Exist

Currently, there are three major kinds of deeply subsidized federal housing programs. "Walk-around" rental subsidies, usually known as Section 8 certificates or

vouchers, issued by public housing authorities (PHAs), can be used by the holder to rent a housing unit of acceptable quality. Public housing consists of housing units owned and usually managed by a PHA, in which the tenant's rent is limited to 30 percent of income. Privately owned, federally subsidized developments have "project-based" subsidies available to some or all of the tenants who move into those developments. Some states also fund deep subsidy housing programs, which may be similar in program design to the federal programs.

As of 1988, 2.3 million households received Section 8 subsidies, most of which were walk-around certificates or vouchers. Also as of 1988, there were 1.4 million public housing units managed by PHAs. Of the privately owned housing constructed or substantially rehabilitated with federal funds, in addition to those with Section 8 subsidies included above, there are several hundred thousand deeply subsidized units.

Besides the relatively small number of additional new subsidies or subsidized units for which funds have been appropriated by Congress each year, a not insignificant number of units and subsidies annually become available as current tenants leave or become ineligible for continued subsidy. No national data appear to be maintained on the number and type of such "turnover" subsidies. If the Massachusetts experience is typical, however, approximately 10 percent of Section 8s turn over and are available for reissuance each year. The turnover rate for public housing in Massachusetts appears to be somewhat less: state officials have estimated that approximately 5 percent of public housing units turn over each year, although the rate is much higher at the violence-plagued inner-city projects in Boston. Extrapolating from these rates, it is likely that roughly 330,000 such units are available for reassignment each year.

While 330,000 deep subsidies, even were they all targeted annually to the homeless, are inadequate to meet the need (and we must not forget that the "need" extends beyond those who are already homeless or at immediate risk of becoming homeless), it is surely not an insignificant figure. Ironically, it is more than sufficient to house the number of homeless estimated by the Reagan administration in 1983.[5]

Potential Strategies to Maximize Access

My premise is that, currently, a relatively small proportion of the existing deeply subsidized housing resources which turn over each year are reissued to the homeless, or even the imminently homeless.[6] The reasons for this are several. First, households with a fairly broad range of incomes are eligible for federally subsidized housing programs. Families with incomes up to 50 percent of the area median income are eligible for all deeply subsidized federal housing assistance programs. Families with even higher incomes are eligible. While many families nearer the upper end of these income limits undoubtedly have housing needs, they are unlikely to be homeless without housing assistance. Second, Congress has defined the categories of applicants who must receive preference for federal housing resources far more broadly than the currently or imminently homeless or displaced, as applicants living in substandard housing or paying more than 50 percent of their income for housing costs also receive preference. Finally, many homeless applicants are excluded from participation in subsidized housing programs as a result of the policies and practices described below.

How existing deeply subsidized housing resources are distributed may usefully be categorized into six problem areas. Successful efforts toward challenge or reform in

the following areas should result in a substantial increase in the resources allocated to those whose need is the greatest:

1. The failure of subsidized housing owners and PHAs to utilize available contracted federally funded subsidies
2. The violation of the federal preference rules by many PHAs and subsidized owners
3. The failure of most public housing authorities and subsidized owners to give top priority to the homeless
4. The administrative maze through which subsidized housing resources are delivered, requiring literally hundreds of applications to be filed in order to maximize the opportunity for a homeless applicant to obtain available resources
5. Procedural barriers erected by the housing authorities and subsidized housing owners, which have a particularly harsh impact on the homeless
6. Discrimination by many public housing authorities and subsidized housing owners against disabled and handicapped applicants who are not mobility impaired.

Failure to Utilize Federally Funded Subsidies

When Section 8 new construction and substantial rehabilitation projects were funded by HUD in the 1970s, HUD entered into contracts with the owners to subsidize, through the Section 8 program, the rent of families in a specified number of units, so that each such family would have to pay only the percentage of family income for rent required under the Section 8 program. Rather than utilizing all these subsidies, owners of an increasing number of projects have been renting what should have been subsidized units at market rates.

Because of standing barriers erected by some federal courts to challenges to such underutilization by applicants, it has been difficult through litigation to remedy the problem and make these funded subsidies available to needy families. In the Cranston-Gonzalez National Affordable Housing Act, Congress has effectively reversed the prior appellate decision, as well as making clear that owners are legally obligated to use their full contract authority to rent to income-eligible families. Consequently, litigation to enforce the use of all available subsidies should now be possible. At least 70 percent of the subsidized units that become available under this law must go to federal preference holders, including the homeless.

While the Cranston-Gonzalez amendments have, on the whole, made it far more straightforward to achieve full utilization of deep subsidies in privately owned developments, the mere enactment of this law is not likely to alter the predilection of owners to rent to more affluent tenants. Thus, enforcement may well be necessary to realize the increased availability of subsidies that the law requires. Rather than the highly laborious work required to determine whether there are unutilized subsidies in any particular development,[7] it may be possible to induce, or require, a state agency, if not HUD, to undertake such enforcement work.

Public housing authorities administering Section 8 existing and Section 8 voucher programs may also have contracted and funded Section 8 subsidies available, which they are unlawfully failing to distribute. For the last several years, the Worcester, Massachusetts, Housing Authority failed to allocate over 340 Section 8 certificates and vouchers, approximately 30 percent of its total portfolio. In mid-1990, the Chelsea, Massachusetts, Housing Authority decided to stop issuing its available Section 8 subsidies. Neither of these housing authorities turned these funded resources

back to HUD for reallocation to PHAs willing to use them, so available federal funds for deep subsidies simply went unutilized. When legal services attorneys placed the HUD regional office formally on notice of the blatant failure of these PHAs to comply with federal policy, and, at least in Chelsea, the probable racially discriminatory motivation for such failure, HUD did intervene, without litigation, and require the PHAs to issue and lease, up to available subsidies, to applicants selected in accordance with federal law.

Violation of the Federal Preference Rules

Traditionally, subsidized housing resources were distributed on a first come, first served basis through a chronological waiting list maintained by each housing authority. In recognition of the enormous shortage of housing resources in relation to need, particularly after the drastic cutbacks in federal funding for low-income housing that began in the early eighties, Congress directed that certain categories of applicant families be given preference over earlier ("standard") applicants not qualifying for preference in the various federal housing programs. In January 1988, HUD finally promulgated regulations to implement these federal preferences.

Under current law, federal preference is given to three categories of applicants: those occupying substandard housing (including the homeless), involuntarily displaced, or paying more than 50 percent of their income for rent. The substantial majority of federally subsidized housing resources must be distributed to applicants qualifying for one of these preferences. While PHAs and owners may use "local" preferences to rank all federal preference holders, all applicants qualifying under at least one of the federal preference categories must come before applicants who do not qualify for federal preference, with minor exceptions.

Because of the preferred status that proper implementation of the federal preference regulations gives to homeless applicants (at least those who meet the federal definition), it is potentially critical to homeless applicants' achieving relatively quick receipt of a housing subsidy that PHAs and subsidized owners grant federal preference to homeless applicants who are entitled to it and that they abide by the requirement that federal preference holders come before standard applicants.

The only data HUD appears to keep on PHA implementation of the federal preference regulations are in the individual management audits of particular housing authorities. It appears that HUD audits emphasize units or certificates wrongly issued, rather than checking cases of applicants who may have been wrongly denied.

Based on two years of experience of the Greater Boston Legal Services (GBLS) Homelessness Unit representing applicants for federal preference at a variety of PHAs and private federally subsidized owners in eastern Massachusetts, however, I believe that there may be widespread violation of the federal regulations. For example, in a medium-size housing authority right next to Boston, GBLS discovered that 41 percent of the Section 8 certificates awarded in the first eighteen months after the federal preference regulations went into effect went to non–federal preference holders, at a time when the PHA admitted that it had federal preference holders on its waiting list.

Such a violation of the fundamental rule of federal preference holders first can occur for a variety of reasons, beyond the straightforward legal violation that appears to have occurred at this PHA. At many PHAs in Massachusetts, we have found that the PHAs' federal preference "system" does not on its face comply with

federal law, usually either because it omits any mention of groups mandated by the federal regulations as federal preference holders and/or because it explicitly places some groups, deemed to have "local" preference but who do not fit into any of the federal preference categories, in a ranking above federal preference holders. We have also found PHAs which, in their application of their preference plans, deny federal preference status to applicants who come within the federal definitions.

Such practices not only result in applicants who are legally entitled to federal preference status being denied such status, and therefore probably subsidized housing as well, but also make it possible, depending on the number of federal preference holders on the waiting list in relation to the number of available resources, for applicants without federal preference to obtain more of the available subsidies. In addition, if a PHA closes its waiting list for Section 8 applicants when its waiting list contains any standard applicants or when it has a ranked preference system and its list contains applicants with less than first preference, it is likely that the PHA is unlawfully denying the right of an applicant claiming federal preference status to be placed on the waiting list. As a consequence of such unlawful closing, applicants entitled to federal preference status are substantially delayed in their receipt of housing assistance, or totally denied such right.

By aggressive representation of applicants for subsidized housing resources, it should be possible to remedy these violations and enforce homeless applicants' rights as federal preference holders. However, it would certainly be more efficient if HUD could be made to take its role as grantor of federal funds more seriously, in light of the fact that actions may otherwise have to be brought against a very large number of PHAs (although class or group defendant actions could be possible). More aggressive congressional oversight could induce such action on HUD's part. It could also be a worthwhile strategy to sue HUD for its failure to properly implement the federal housing laws, including the fair housing laws, as violation of the federal preference rules is likely to have a racially discriminatory effect.

Failure to Give Top Priority to the Homeless

Public housing agencies and private subsidized owners administering federally subsidized housing programs subject to the federal preference regulations have the authority, under the HUD regulations, to rank the federal preference categories, or even subgroups within the categories. Where subsidized housing resources are insufficient to serve all applicants entitled to federal preference within a reasonable period of time, homeless applicants would benefit substantially if homelessness were to be ranked as the top preference category.[8] In addition, public housing authorities could require that the homeless receive all or a substantial portion of the 30 percent of units with project-based assistance for which they have discretion to set local, nonfederal preference for admission.

HUD does not keep any centralized records, nor has it issued any reports, of what preference systems have been adopted by PHAs, so it is impossible to say with any precision what percentage of PHAs or owners administering federal housing resources accord top preference to the homeless within a ranked preference system. If the Massachusetts experience is typical, however, most PHAs, at least the smaller ones, and most private owners of federally subsidized units do not rank the federal preferences at all. Of those which do have a ranked system, the homeless are ranked first in few cases.

There are basically two approaches to accomplishing top ranking of homeless applicants for federal housing resources in particular areas: persuasion or mandate. Persuasion may be grounded on public policy–relative need arguments alone,[9] or enhanced by a fiscal "incentive," such as occurs when the costs of emergency shelter will be reduced by targeting housing resources at the families who would otherwise be sheltered at enormous state expense. A mandate can be achieved through administrative rule making by a supervisory state housing agency, legislation,[10] or court order. Politics will probably dictate whether administrative or legislative advocacy is likely to be fruitful in a particular state. While no court has, to my knowledge, yet issued such an order, it is within a court's equitable power to do so where executive branch liability for homelessness of a particular group has been found, and where there may be no, or insufficient, appropriated funds available to fashion a remedy.

Balkanized Administration of Programs

When a person in the United States wishes to apply for Social Security benefits, he or she goes to the Social Security Administration office that serves the local area. The benefits the person is eligible to receive are the same regardless of where in the U.S.A. the person lives, and the time it takes to receive benefits after application is unlikely to vary according to where the person applies. The same situation occurs for persons wishing to apply for unemployment compensation or public assistance benefits, although the benefits vary in each state.

In contrast to virtually all other major government benefit programs for individuals, however, anyone wishing to apply for subsidized housing has to make literally hundreds of applications in any particular state in order to maximize the chances of receiving benefits. This can be true even in a state where the only subsidized housing programs are federally funded.

Such balkanized distribution of a basic resource is a product of the localized system of funding conduits established by Congress for federal housing dollars. In the first thirty years of federal housing programs, funding essentially went into public housing programs, through contracts with public housing authorities established pursuant to state law. Generally, the jurisdiction of a PHA follows city or town lines, although regional or even statewide PHAs are possible. While we have only fifty states, approximately 2,000 PHAs administer a federal Section 8 program. In some states, an applicant must file separate applications at literally hundreds of PHAs to maximize his or her chance of receiving a walk-around Section 8 subsidy, even though such subsidies can now be used anywhere in the state (and in some contiguous areas of neighboring states).

Complicating matters further, PHAs frequently require a separate application to be filed for their public housing and Section 8 project-based programs, in addition to the application for walk-around Section 8 certificates and vouchers. Then, in addition to the tens or hundreds of PHAs at which one might wish to submit one or several applications, to receive a project-based subsidized unit at one of the potentially hundreds of privately owned and federally or state subsidized developments in an area, a separate application must be made to *each* project.

Not only are there hundreds of PHAs or private developments to which one should apply to maximize one's chances of receiving a housing subsidy, but each PHA or private developer is free, under federal law, to adopt its own system for ranking the federal preferences. State-funded resources may be distributed under

rules different from the federal preferences. While at least the PHA plans and rules are technically publicly available,[11] there is no one place to get them. No government agency gathers them all, nor is any government agency required to collect turnover and waiting list information.

Consequently, it is impossible for a homeless applicant desperate for housing to act like the proverbial rational person, choosing to apply at those agencies/developments where they are likely to have the best chance of getting housing in light of the fit between their circumstances and the applicable tenant selection rules and the relative availability of new or turnover resources in the bedroom size they need.

While major urban centers may have years-long waiting lists even for federal preference holders, the experience in Massachusetts has been that PHAs in small communities frequently have relatively few federal preference holders on their waiting lists. A homeless applicant who is legally entitled to preference may then be able to receive a housing subsidy fairly quickly from an outlying community in the suburban ring or even in a distant rural area. Even if the family does not wish to move to the grantee community, a Section 8 walk-around subsidy can be used to rent housing in the urban area of origin, or any other community in the state to which the person wishes to move.

While federal law permits this balkanized "system" of distributing federal housing resources, it does not require it, at least in its current extreme form. Just as states could require all PHAs and private owners with federally subsidized resources to comply with a state-ordered system for ranking federal preference holders, states could also require PHAs and owners to submit information about likely availability of units to a central or regional clearinghouse, and litigation could provoke them to mandate such reporting. States could also reduce the barriers created by balkanized administration by requiring PHAs and private subsidized owners to accept applications by mail, and to use the same application form, which could be photocopied and sent to the long list of distributors of subsidized housing resources.

While such state-level strategies only tinker with the federally created balkanized system, which can best be altered by changing federal law, implementation of clearinghouses and streamlined application processes should help increase the consciousness of the sharp inconsistency between the nature of current housing subsidy programs, in which approximately half the resources are portable income subsidies, and the outdated localized manner in which housing resources are now distributed, and of the need for change.

Procedural Barriers

Achieving access to existing subsidized housing resources requires surmounting a number of procedural barriers, which create particular difficulty for the homeless. For example, PHAs frequently refuse to take any applications for their Section 8 programs, even from federal preference holders, on the grounds that their lists are "closed." People who do manage to get their names on the waiting list are frequently "purged," for failure to respond to a letter sent to an address they are no longer at, even though the PHA had no resource to offer the person at the time the letter was sent, but was simply "updating" its list. For those who do make it through to the eligibility determination process, a seemingly endless stream of verification require-

ments, often for pieces of paper a homeless person cannot possibly obtain,[12] creates a literal "paper chase" that inevitably winnows down the number of applicants able to complete the course. Finally, because the notices and appeal procedures used by many PHAs and private subsidized owners lack the basic rudiments of due process, applicants are frequently unable to effectively utilize the appeal process to vindicate their right to receive subsidized housing resources.

None of these procedural barriers is required by federal law, although some, such as the purging of the lists, appear to be encouraged by HUD. Some may be motivated in part by concerns of administrative efficiency. None was designed explicitly to exclude the homeless.[13] However, in each of these respects, PHAs are unfortunately following in the steps of other bureaucracies seeking to limit the number of applicants found eligible, without publicly admitting that they are narrowing the eligibility rules, with the effect of making the perceived need for subsidized housing substantially less than the reality.

PHAs may also, by creating such procedural hurdles, be purposely trying to exclude those least able to negotiate the obstacle course: the least literate, the least articulate, the least mobile (to get around to the required verification sources), and those without stable addresses. These are likely to be the poorest of the applicants, disproportionately language and/or racial minorities, and the handicapped. Such exclusionary tactics may be motivated simply by localism — a desire not to distribute scarce housing resources to people not seen as "theirs" — and/or by racial or class prejudice. Whatever the motivation, advocates for the housing needy in general, as well as the homeless, should expose such policies as having no proper place in government-funded housing programs and work to eliminate them.

All these procedural barriers are subject to legal challenge or could be altered by state-level rule making or legislation, as briefly suggested above, as well as, of course, by changes in federal regulations or statute. Such changes would benefit not only homeless applicants, but all applicants for public and subsidized housing resources. Why have few such challenges been brought? Probably because subsidized housing admissions issues have not been a primary focus of legal effort since initial, basic reforms were accomplished in the late sixties and early seventies, after federally funded legal services were first available, such as waiting lists, proscribing arbitrary exclusions of classes of potentially eligible applicants, and rudimentary notice and hearing requirements.

From the perspective of clients who are desperate for housing, however, overcoming these procedural barriers, particularly after the implementation of the federal preferences, is often the means to solving the clients' most critical problem. Such advocacy can not only help numerous individual clients as well as applicants overall, but can also eliminate structural barriers to homeless applicants' being able to benefit equally from publicly funded housing programs.

Discrimination

A significant proportion of the homeless, particularly of people without minor children, meet the federal definitions of "disabled" or handicapped." As a result, they meet not only the basic categorical eligibility requirement federal law has imposed on single applicants for housing,[14] but are eligible for special elderly/handicapped housing resources, in addition to family housing.

Some local housing authorities and private subsidized owners have unlawfully restricted elderly/handicapped housing to the elderly and the mobility-impaired handicapped, who need the alleged special amenities of such housing, prohibiting access to other handicapped and disabled persons. In some areas these unlawful practices have resulted in subsidized housing units remaining vacant because the aged applicants — those actually sixty-two and over — may not wish to go into the available units because of the neighborhood in which they are located. In addition, because relatively few such actually elderly applicants are entitled to federal preference, compared, for example, with the actually homeless or precariously housed disabled or handicapped, even if there were not units standing vacant, eliminating such discrimination should result in relatively rapid offers of turnover housing resources to applicants with federal preference status.[15]

In addition to removing such blanket exclusions of the non–mobility impaired disabled and handicapped from housing for which federal law makes them eligible, it will also be necessary, to open up such housing resources and all other family housing resources to many of the now homeless, to eliminate tenant suitability standards, which have a discriminatory impact on the handicapped, particularly the mentally handicapped. A landmark case on this issue was recently won.[16] Although the judgment technically applies only to the local PHA, HUD has written instructions to all PHAs to follow the court's ruling in that case, as HUD has agreed that the court's decision is required by the Fair Housing Act Amendments, which HUD is bound to uphold.

Even with such instructions, however, if past experience is a guide, the instructions will not automatically be complied with. As HUD is notorious for failing to supervise PHAs, and particularly private owners, actual enforcement will require state- and local-level vigilance. In addition, other common PHA or private subsidized owner systematic exclusions of applicants on suitability grounds, such as denials for prior records of "bad" tenancies, despite proof of subsequent rehabilitation from the substance abuse that caused the prior bad acts of failure to pay rent, damage to the apartment, and so on, may be challengeable on handicap discrimination grounds. This is a fertile area for creative legal work.

Long-term Questions about Subsidy Eligibility

In any single year, and perhaps over an even longer time frame, advocacy targeted at who gets available subsidized housing resources is admittedly a strategy that does not get beyond a zero-sum game, except in the instances when available subsidies are not being used. Therefore, focusing on access and eligibility issues on behalf of the homeless, particularly preference rules,[17] is potentially divisive of the broader constituency for increasing the supply of housing benefits and affordable housing programs.

Perhaps it is a sufficient justification that obtaining housing subsidies for otherwise homeless clients is a critical service to our arguably most needy clients. But when housing lawyer colleagues challenge this work as "merely rearranging the deck chairs on the *Titanic*," it would be preferable to have a better response than that all the applicants are not equally likely to drown.[18]

While there is not yet evidence to prove the proposition in the housing context, recent experience in other social welfare programs suggests that a potentially

expansive dynamic can result from making visible the "holes in the safety net." For example, concerted publicity about the cutoff of SSI and Social Security Disability benefits by the Reagan administration's severe review policy finally prompted not only judicial, but also congressional sanction to ensure that the disabled continued to receive benefits. In the mid-1980s, Congress also redressed a few of the eligibility restrictions it had imposed on the AFDC and food stamp programs, after hearing evidence that the harm inflicted was more severe than intended.

Similarly, one hoped-for result of struggling to expand subsidized housing priority for the homeless, in the rules both as written and as applied, is that increasing the number of applicants acknowledged to be entitled to preference will make the need even more visible, with a consequent increase in resources to respond to the need. True, homelessness is already the most visible part of the housing crisis. But many policymakers, as well as members of the public, nonetheless believe that the homeless are without housing because they are somehow not "housing ready" or don't want housing. Such detractions from the fundamental claim to housing should be undercut by cold proof of the numbers of applicants found eligible and entitled to priority status for subsidized housing whose needs cannot be met.

In addition, to the extent that housing authorities, legislators, and/or better-off applicants on the waiting lists object to the homeless being served "instead of" others, the challenge is to enlist the energy of these potentially more politically influential groups in the struggle to expand the supply of resources. Such hoped-for alliances may require that new resources be targeted to broader eligibility groups than the already homeless. But if the pot can truly be expanded more than homeless advocates could accomplish on their own, such an alliance is of general benefit.

The second major question raised by pursuing strategies to increase access to public and subsidized housing is whether increased centralization and standardization of programs and rules is really going to help low-income applicants in general, and homeless applicants in particular, over the long run. Advocacy pressure toward both centralization of formerly locally administered programs, and increased specification of eligibility rules and procedures, has been a key element of the welfare rights strategy for the last twenty-five years. While some proponents of progressive welfare programs have criticized these strategies for rigidifying welfare decision making,[19] and it is certainly true that rules can be as exclusionary as unfettered discretion, on balance it appears that the politically disfavored are generally best off when programs for their benefit are administered at a level more distant from local prejudice, and when decisions must be made in accordance with rules subject to review.[20]

Even if one accepts these general lessons drawn from the social welfare context, however, there is still a question whether the nature of housing programs requires or suggests an answer different from one in the welfare context. Arguably, the local nature of housing construction programs, with the inevitable issues of zoning, neighborhood mix, and the like, require as much locally based support as can be mustered. Even if that is true for construction programs, however, walk-around subsidies such as the federal Section 8 program are essentially income maintenance programs in a housing guise: they are income supplements earmarked for housing needs. Program beneficiaries are dispersed in the community, in whatever private units they can locate. No local support for building additional housing is necessary. Conse-

quently, whatever arguments for local administration of housing construction programs there may be do not appear to apply to programs that operate strictly as rent subsidies.[21]

While this discussion of the long-term implications of the strategies to increase access to existing subsidies and public/subsidized housing is necessarily preliminary, it suggests that a more thorough analysis of similar strategies used in other social welfare programs would be very helpful in the evolution of strategies to reform the administration of housing programs to meet the needs of our most low-income citizens. While such inquiry continues, however, and while efforts to increase housing resources go on, advocates should not overlook the substantial promise strategies such as those discussed in this article hold for creating real housing opportunities for homeless clients. ❧

Notes

1. The ideas presented here were generated and refined from the work of the Homelessness Unit of Greater Boston Legal Services in our representation of individual clients as well as the Massachusetts Coalition for the Homeless. Due to space constraints, most of the explanatory and supporting footnotes have been omitted from this article. A fully footnoted version, which is particularly useful for legal advocates, appears in the spring 1992 issue of the *Villanova Law Review*.

2. Useful readings on the economic causes of homelessness include P. Rossi, *Down and Out in America: The Origins of Homelessness* (Chicago: University of Chicago Press, 1989); K. Hopper and J. Hamburg,"The Making of America's Homeless: From Skid Row to New Poor, 1945–1984," in R. Bratt, C. Hartman, and A. Myerson, eds., *Critical Perspectives on Housing* (Philadelphia: Temple University Press, 1986); P. Leonard, C. Dolbeare, and E. Lazere, *A Place to Call Home: The Crisis in Housing the Poor* (Washington, D.C.: Center on Budget and Policy Priorities and Low Income Housing Information Service, 1989); C. Dolbeare, *Out of Reach: Why Everyday People Can't Find Affordable Housing* (Washington, D.C.: Low Income Housing Information Service, 1990); National Coalition for the Homeless, *The Closing Door: Economic Causes of Homelessness* (Washington, D.C., 1990).

3. Many housing advocates believe that it is preferable, as a policy matter, to close the income/housing gap from the housing side, through programs that not only subsidize but also control and reduce housing costs.

4. A "deep" subsidy is one that pays the difference between a percentage of tenant income — now 30 percent in the federal programs — and the full cost attributable to the housing unit. In contrast, a "shallow" subsidy is one that reduces housing costs, usually by reduction in the mortgage interest rate, or by syndication of tax credits, and/or by reduction in the cost of the land or buildings. Such shallow subsidies result in reduced rental prices in comparison with wholly private market housing, but they cannot, in light of the costs of building or purchasing and operating housing, bring costs within 30 percent, or even 50 percent, of a very poor family's income.

5. A 1984 HUD study numbered the homeless at 250,000–300,000. Most advocates for the homeless consider this an undercount. See Rossi, *Down and Out in America*, 37–38, and chap. 3. While any estimate of the number of homeless is necessarily inaccurate, given the difficulties of counting the homeless population, it is especially critical to remember that any such count is as of a single point in time, rather than the number of people who experience homelessness and therefore need housing over the course of a year. There are very few data on the duration of homelessness among various subpopulations of the homeless, although such data are critical for policy and planning purposes.

6. Unfortunately, there appears to be no data available on this question. There isn't even any federal data on the number of preference holders on PHA waiting lists. Conversation of Lisa M. Otero, my research assistant, with Jerry Benoit, HUD director of Rental Assistance, October 29, 1990. Based on available data in Massachusetts, I have estimated that only approximately 20 percent of the turnover deeply subsidized housing resources are issued to the homeless each year, including all state and federally funded housing resources, whether controlled by PHAs or by private owners.

7. Data on subsidy utilization should be available from HUD by means of a written request pursuant to the Federal Freedom of Information Act (FOIA). The most likely documents to contain the critical information for a subsidy utilization challenge are the Housing Assistance Payments (HAP) contract for each development and the owner's billing requests to HUD for the six or more months prior to the request.

8. It is probable that similar benefit would result even if homeless applicants were ranked after those involuntarily displaced, as the number of applicants displaced by natural forces, urban renewal activities, owners taking property off the rental market, or abuse are relatively small. In most jurisdictions, the largest group of preference applicants is likely to be those paying more than 50 percent of income for rent.

9. A PHA may also decide, based on its policy view and/or what it perceives as the particular needs in its area, to request that HUD approve an altered definition of "homeless." The Boston Housing Authority, for example, includes within its definition of homeless applicants who receive second preference and applicants who are doubled up in the home of another. HUD has recently approved this definition.

10. In a letter dated January 12, 1990, from Frank Keating, general counsel of HUD, to Alex Bledsoe, then deputy secretary of EOCD, Keating stated, "We find nothing in the United States Housing Act of 1937 or other Federal law which would constitute a legal impediment to PHAs following State-directed preferences for the homeless." The letter also says that whether a state housing agency, rather than a state legislature, could impose such state-required preference for the homeless on PHAs was a question of *state*, not federal law.

11. At least for PHAs, all tenant selection plans must be filed with the regional HUD field office, and therefore could be obtained through a Federal Freedom of Information Act request. The tenant selection policies and procedures used by PHAs in their public housing programs must be posted in each PHA office and made available to an applicant or tenant on request. 24 CFR §960.204(d)(2). Generally PHAs use the same federal preferences for their public housing and their Section 8 programs, although they do follow different tenant selection procedures in each program. Section 8 tenant selection preferences, policies, and procedures must be contained in a PHA's Administrative Plan for Section 8. 24 CFR §882.204(b)(3)(ii)(B). The HUD regional office may have the tenant selection plans used by private owners administering Section 8 project-based subsidies, and must make publicly available the plans it has under 5 U.S.C. §552.

12. One of the earliest clients of the GBLS Homelessness Unit presented a perfect example of the type of Catch-22 that PHA verification requirements often create. Our client had been homeless for two years as a result of the abandonment of his single-room-occupancy building by the owner, and its subsequent condemnation. The PHA in his hometown, a working-class suburb outside Boston, required him to provide verification from that landlord of his suitability as a tenant before it would approve him for public housing. Of course he couldn't provide such verification because the landlord was long gone: that was the reason he was homeless. After our office intervened and threatened to sue if the PHA didn't at least issue a decision on our client's eligibility based on his having provided all the requested verification he could obtain, the PHA accepted our client as a tenant, and he was housed within ten days!

13. After homeless advocates pointed out to officials of the Boston Housing Authority the particularly adverse effect on homeless applicants of the BHA's requirements that applicants list *all* their "residences" in the prior five years and provide verification other than from relatives from each location, the BHA official in charge readily conceded that BHA had never looked at its

admission practices from the perspective of the homeless, despite the fact that a very large proportion of current BHA applicants are homeless. The BHA agreed to alter many of these adverse practices.

14. This eligibility restriction remains in effect until HUD issues regulations to implement the November 1990 change in the federal statute.

15. Many housing advocates, as well as PHA managers, are concerned on a practical level that it is bad housing policy to "mix" substantial numbers of handicapped, particularly mentally handicapped, tenants with elderly residents of public or subsidized housing, and that such mixing will result in diminished quality of life for both the aged residents and the disabled, as well as leading to disproportionate "housing failure" for the handicapped. Any such concerns, however, should affect only the remedy sought, including "reasonable accommodations" to assist the mentally handicapped to maintain their tenancies, and not whether advocates seek to enforce the rights of the handicapped to public and subsidized housing.

16. *Cason v. Rochester Housing Authority*, 748 F.Supp. 1002 (W.D.N.Y. 1990).

17. Advocacy aimed at procedural fairness, such as adequate notices, reasonable verification requirements, and fair hearings, presumably inures to the benefit of all applicants, although such efforts may not be positively received by all nonprofit housing developers in their role as landlords.

18. One could also counter as to why this challenge should apply to the validity of representing applicants for a limited resource, but not to the defense of tenants facing eviction from the same limited resource. Many legal service programs devote substantial resources to such eviction defense (as I think they should).

19. For example, W. Simon, "Legality, Bureaucracy and Class in the Welfare System," *Yale Law Journal* 92 (1983): 1198.

20. See generally, B. Sard, "The Role of the Courts in Welfare Reform," *Clearinghouse Review* 22 (August/September 1988): 367.

21. Whether increasing the supply of rent subsidies to be used to pay uncontrolled rents to private landlords (as opposed to the construction, substantial rehabilitation, or purchase of publicly or nonprofit owned housing) is a good or the best use of public housing dollars is a serious issue of housing policy, which is beyond the scope of this article. However, the potentially greater accessibility of income maintenance types of housing subsidies to the politically and socially disfavored, for example, the homeless and traditional victims of prejudice, like racial and ethnic minorities, is a vital element of such an analysis.