

# University of Michigan Journal of Law Reform

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Volume 8

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1975

## Federal Leased Housing Assistance in Private Accommodations: Section 8

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### Recommended Citation

Nancy S. Cohen, *Federal Leased Housing Assistance in Private Accommodations: Section 8*, 8 U. MICH. J. L. REFORM 676 (1975).

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## FEDERAL LEASED HOUSING ASSISTANCE IN PRIVATE ACCOMMODATIONS: SECTION 8

[T]o promote the general welfare of the Nation by employing its funds and credit . . . to alleviate present and recurring unemployment and to remedy the unsafe and insanitary [*sic*] housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income . . . that are injurious to the health, safety and morals of the citizens of the Nation.<sup>1</sup>

With this declaration in the Housing Act of 1937,<sup>2</sup> Congress first articulated federal housing policy. While this policy has remained essentially intact, the legislative and administrative means to its implementation have been replaced periodically with new and allegedly more efficient strategies. Public housing "projects," such as those created by the original legislation,<sup>3</sup> were the dominant mediums for housing the poor and the elderly well into the 1960's.<sup>4</sup> The Housing and Urban Development Act of 1965 added Section 23 leasing,<sup>5</sup> under which the United States Department of Housing and Urban Development (HUD) began leasing privately owned units and subletting them to low-income tenants. Under this program, HUD paid the difference between the market rental price and what the low-income sublessee would have had to pay for public housing. Implementation of Section 23 was limited, however, by provisions requiring local approval<sup>6</sup> and restricting its use to instances where it was more economical than public housing.<sup>7</sup>

Although Section 23 was retained in the Housing and Urban Development Act of 1968,<sup>8</sup> it was less important than the key programs of that legislation, Sections 235<sup>9</sup> and 236,<sup>10</sup> which provided as-

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<sup>1</sup> 150 Stat. 888, *as amended*, 42 U.S.C. § 1401 (1971).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Catz, *Historical and Political Background of Federal Housing Programs*, 50 N.D. L. REV. 25, 26-33 (1973).

<sup>5</sup> 42 U.S.C. § 1421b. (1970). See generally Friedman & Krier, *A New Lease on Life: Section 23 Housing and the Poor*, 116 U. PA. L. REV. 611 (1968).

<sup>6</sup> 42 U.S.C. § 1421b.(a)(2) (1971).

<sup>7</sup> *Id.* § 1421b.(a)(1) (1971).

<sup>8</sup> 42 U.S.C. § 1421b. (1971).

<sup>9</sup> 12 U.S.C. § 1715z (1971).

<sup>10</sup> 12 U.S.C. § 1715z-1 (1971).

sistance to low income families by paying a large portion of the mortgage interest payments on their homes.<sup>11</sup>

From the time of their enactment until 1973, Sections 235 and 236 of the 1968 Act became the object of increasing attack from Congress and the Administration. The problems centered around poorly built housing, excessive profit-taking, and other abuses by speculators and unscrupulous developers.<sup>12</sup> The abandonment, vandalism, and neglect associated with the Section 235 program eventually led to charges and convictions of fraud against HUD officials.<sup>13</sup> An investigation by the United States Department of Justice revealed that certain Federal Housing Administration agents had become involved in payoff schemes.<sup>14</sup> Moreover, roughly 26 percent of the mortgages under the Section 236 program were in default status by 1972.<sup>15</sup>

The public housing program, which does not involve private developers, was also criticized as wasteful, poorly conceived, and inequitable.<sup>16</sup> Further, it appeared to some that the federal government was assuming the losses caused by the accelerating decline of large cities.<sup>17</sup> As a result of various investigations and HUD audits, the FHA was in a state of chaos after recurring reorganizations.<sup>18</sup> The administration's suspension of housing subsidies on January 5, 1973<sup>19</sup> was an added impetus for the passage of a new act.

The resulting legislation, the Housing and Community Development Act of 1974,<sup>20</sup> is the federal government's first significant set of housing programs since the 1968 Act.<sup>21</sup> Although there are eight titles in the Act,<sup>22</sup> this article will examine only one major provision: leased

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<sup>11</sup> *Id.* See generally SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, 93D CONG., 1ST SESS., AN ANALYSIS OF THE SECTION 235 AND 236 PROGRAMS (Comm. Print 1973).

<sup>12</sup> See N.Y. Times, Feb. 1, 1972 at 27, col. 3; Note, 45 TEMP. L.Q. 461 (1972).

<sup>13</sup> N.Y. Times, Apr. 2, 1972, § 4, at 12, col. 1.

<sup>14</sup> There has been a continuing investigation by the Federal Bureau of Investigation and the Department of Justice since 1972. As of February, 1975, there were more than 150 guilty pleas or convictions in the Eastern District of Michigan alone. These cases involved real estate brokers and salespeople, contractors, and HUD employees. At least twenty more were expected to face charges in the immediate months thereafter. Detroit News, Feb. 12, 1975, at 22A, col. 5.

<sup>15</sup> N.Y. Times, July 24, 1972, at 1, col. 3.

<sup>16</sup> *Id.*, Jan. 2, 1972, at 1, col. 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, July 24, 1972, at 1, col. 3.

<sup>19</sup> *Id.*, Jan. 9, 1973, at 1, col. 1; See 32 CONG. Q. 692 (Mar. 16, 1974) (a rebuttal of administration charges that the programs were scandal ridden, inequitable, too costly, and ineffective).

<sup>20</sup> 42 U.S.C.A. §§ 1401 *et seq.* (Supp. 1975).

<sup>21</sup> The only other omnibus housing bill which Congress considered after the 1968 Act was killed by the House Rules Committee in 1972. S. 3248, 92d Cong., 1st Sess. (Aug. 22, 1972).

<sup>22</sup> The following are the major titles in the Act: Title I, Community Development, 42 U.S.C.A. § 1401 (Supp. 1975); Title II, Assisted Housing, *id.* § 1437; Title III, Mortgage Assistance, 12 U.S.C.A. § 1707 (Supp. 1975); Title IV, Comprehensive Planning, 40

housing in private accommodations, better known as Section 8.<sup>23</sup> This section is a revival, in modified form, of Section 23 leased housing. The creation of Section 8 will be briefly reviewed,<sup>24</sup> followed by an examination of its mechanics.<sup>25</sup> The advantages of leased housing over public housing will be assessed,<sup>26</sup> and Section 8 will be compared with its predecessor, Section 23 of the Housing and Urban Development Act of 1965.<sup>27</sup> Finally, some possible weaknesses of Section 8 will be noted.<sup>28</sup>

## I. LEGISLATIVE HISTORY

The leased housing assistance provisions of the Housing and Community Development Act of 1974 were among the major points of contention between the House and the Senate.<sup>29</sup> The Senate bill<sup>30</sup> would have reinstated for an indefinite period the subsidized home ownership (Section 235 Housing) and rental and cooperative housing provisions (Section 236 Housing) of the Housing and Urban Development Act of 1968. It was argued that, in contrast to leased housing, these programs had good records of furthering new housing construction.<sup>31</sup>

The House bill<sup>32</sup> would have continued Section 235 and Section 236 only through fiscal 1975.<sup>33</sup> Most new funds would have been channeled into a rental assistance subsidy program. The original form of rental assistance, Section 23 leasing, had never developed into a program of major proportions;<sup>34</sup> the revival of the program may be viewed as a reaffirmation by the House of the potential benefits to be

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U.S.C.A. § 461 (Supp. 1975); Title V, Rural Housing, 42 U.S.C.A. § 1471 (Supp. 1975); Title VI, Mobile Homes, 88 Stat. § 700 (1974); and Title VII, Home Mortgage Assistance, 12 U.S.C.A. § 1464 (Supp. 1975).

<sup>23</sup> 42 U.S.C.A. § 1437f. (Supp. 1975).

<sup>24</sup> See part I *infra*.

<sup>25</sup> See part II *infra*.

<sup>26</sup> See part III *infra*.

<sup>27</sup> 42 U.S.C. § 1421b. (1971).

<sup>28</sup> See part IV *infra*.

<sup>29</sup> 120 CONG. REC. 14,879 (daily ed. Aug. 13, 1974); 32 CONG. Q. 1702 (June 29, 1974).

<sup>30</sup> S. 3066, §§ 402, 502, 93d Cong., 1st Sess. (1974).

<sup>31</sup> 120 CONG. REC. 14,895 (daily ed. Aug. 13, 1974).

<sup>32</sup> H.R. 1114, 93d Cong., 1st Sess. (1974).

<sup>33</sup> *Id.* § 207(a).

<sup>34</sup> From inception of the program in 1965 to 1974, only 150,000 units were leased under § 23. S. REP. NO. 693, 93d Cong., 1st Sess. 43 (1974). See Catz, *supra* note 4, at 34-35 for some suggested reasons for this slow implementation: Among these are the limitations on rentals which the agency was authorized to pay, segregation practices, and a HUD freeze on funds if the vacancy rate in the community fell below 3 percent.

In contrast to Section 23, the number of subsidized starts for new construction under other federal programs was 1,527,098 for the same years. A. DOWNS, FEDERAL HOUSING SUBSIDIES: THEIR NATURE AND EFFECTIVENESS AND WHAT WE SHOULD DO ABOUT THEM 11 (1972).

derived from leased housing assistance in private accommodations.<sup>35</sup>

The final 1974 provision was an expedient compromise<sup>36</sup> between the divergent positions of the House and Senate which ended a month-long deadlock of the Joint Conference Committee.<sup>37</sup> In general, the House provisions for subsidized leasing of private accommodations prevailed. The final bill continues Sections 235 and 236 only through fiscal 1976.<sup>38</sup> Further, Section 236 is to be implemented only when Section 8 will be inadequate.<sup>39</sup> The funding authorization for Section 8 can not at present be compared with that of Sections 235 and 236, because, although funds are earmarked for all other programs in the 1974 Act, there is no specific statutory authorization for Section 8.<sup>40</sup> Although the House preferred to channel most funds into Section 8,<sup>41</sup> leased housing assistance will not be the exclusive form of housing assistance under the Act. Public housing, under Sections Four through Seven of the Act,<sup>42</sup> will continue to have an important role in the overall federal housing program.

## II. SUMMARY OF SECTION 8

The overall effect of Section 8 is to enable low-income families to rent from private landlords housing units which, absent the subsidy, they could not afford. Section 8 does not subsidize projects by paying a part of the mortgage interest as did Sections 235 and 236.<sup>43</sup> Unlike

<sup>35</sup> See part III A *infra*.

<sup>36</sup> Former HUD Secretary James T. Lynn said that the original Senate bill would have been vetoed by the administration. 32 CONG. Q. 2253 (Aug. 17, 1974). This is apparently because of the administration's steadfast opposition to Sections 235 and 236. N.Y. Times, Jan. 14, 1973, § 4, at 3, col. 2.

<sup>37</sup> See Nenzo, *The Housing and Community Development Act of 1974: An Interpretation; Its History*, 31 J. HOUSING 344 (1974).

<sup>38</sup> 12 U.S.C.A. §§ 1715z(m) and 1715z-1(n) (Supp. 1975).

<sup>39</sup> 1974 U.S. CODE, CONG. & ADMIN. NEWS 3892 (JOINT CONFERENCE REPORT NO. 93-1279, 2d Sess.) [hereinafter cited as CONFERENCE REPORT].

<sup>40</sup> The issue is further confused by the fact that different reports on the Act state differing amounts as the Section 8 authorization. See 1974 U.S. CODE, CONG. & ADMIN. NEWS 3866 for a quotation of \$440 million. In contrast, see *Extension and Major Reforms of Existing Housing Assistance Programs*, 31 J. HOUSING 355, 356 (1974), for an estimate of \$619 million. Significantly, neither report cites a source for these figures.

<sup>41</sup> The House Banking and Currency Committee reported that

despite the reluctance of the committee to rely on a single program to meet the Nation's diverse housing needs, it concurs in the intention of the Administration to utilize section 23(h) as the primary vehicle for providing housing assistance. The new program, if properly administered, can be an effective substitute for all existing housing programs except the section 235 homeownership program.

H.R. 1114, *supra* note 32, at 18. The exception was understandably made for Section 235 since that provides for homeownership rather than leasing.

<sup>42</sup> 42 U.S.C.A. §§ 1437b.-1437e. (Supp. 1975).

<sup>43</sup> See note 11 *supra*.

earlier programs such as Section 221(d)(3) of the 1963 Act,<sup>44</sup> Section 8 does not authorize loan funds for the construction of housing units. Instead, Section 8 authorizes "rental assistance payments" on behalf of low-income families.<sup>45</sup> The following subparts of this note discuss the most important facets of this program.

### *A. Contracting by the Secretary or Local Housing Agency*

Section 8 of the Act authorizes contracts under which a housing agency would agree to make rental assistance payments to participating owners of existing rental properties for the benefit of qualifying "low-income families."<sup>46</sup> Such contracts will normally run between local public housing agencies (PHA) and private owners; however, in areas in which no local housing agency exists or when it can not perform this function, the Secretary of HUD may contract directly with private lessors.<sup>47</sup> Similar contracts may be entered into with prospective owners of newly constructed or substantially rehabilitated rental housing.<sup>48</sup>

### *B. Amount of Assistance Payments*

The amount of the assistance payment for any participating rental unit will be the difference between the "maximum monthly rent"<sup>49</sup> and the amount the tenant is required to pay.<sup>50</sup> This assistance payment is paid directly to the landlord by the PHA (or by the Secretary when no PHA is participating).<sup>51</sup>

"Maximum monthly rent" is a term of art signifying a ceiling on the rental charge specified in every assistance contract.<sup>52</sup> The local PHA and the Secretary of HUD have limited discretion to set this ceiling. Normally the "maximum monthly rent" will closely approximate the "fair market rental" of similar units in the area, a figure established by HUD.<sup>53</sup> An allowance for utilities and other services is included in

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<sup>44</sup> 42 U.S.C. § 1410(g)(3) (1971).

<sup>45</sup> See note 46 and accompanying text *infra*.

<sup>46</sup> 42 U.S.C.A. § 1437f.(a). "Low income family" is defined in 42 U.S.C.A. § 1437a. (Supp. 1975).

<sup>47</sup> 42 U.S.C.A. § 1437f.(b)(1) (Supp. 1975).

<sup>48</sup> 42 U.S.C.A. § 1437f.(b)(2) (Supp. 1975).

<sup>49</sup> 42 U.S.C.A. § 1437f.(c)(3) (Supp. 1975).

<sup>50</sup> *Id.*

<sup>51</sup> 42 U.S.C.A. § 1437f.(b)(1) (Supp. 1975).

<sup>52</sup> 42 U.S.C.A. § 1437f.(c)(1) (Supp. 1975).

<sup>53</sup> 42 U.S.C.A. § 1437f.(c)(2)(C) (Supp. 1975). The "fair market rental" is established on a citywide basis rather than varying according to neighborhoods. Within a city, the rental varies according to the classification of the unit. There are two basic factors in classifying: type of unit and amenities. The rental rate structure for existing units differs from that of

the "fair market rental" as established by HUD.<sup>54</sup> However, if the owner can show increased operating costs,<sup>55</sup> the "maximum monthly rent" may exceed the "fair market rental" by 10 percent.<sup>56</sup> If the Secretary determines that special circumstances exist, the "fair market rental" may be surpassed by 20 percent.<sup>57</sup> Annual adjustments of maximum monthly rents, or more frequent "interim revisions . . . as market conditions warrant,"<sup>58</sup> are provided to ensure that the owner's total reimbursement is an accurate reflection of the current market rental level.

The tenant's contribution to his rent is a percentage of his monthly income, varying from 15 percent to 25 percent, depending upon factors such as income, family size, medical expenses, and unusual nonrecurring expenses.<sup>59</sup>

### C. Housing Unit Qualification

Only units leased to an "eligible family"<sup>60</sup> qualify for assistance payments; however, up to 100 percent of the units in any building may be eligible.<sup>61</sup> The election of the number of participating units is left primarily to the owner, although the Secretary of HUD may give preference to applicants who limit their subsidy participation to 20 percent in any large building.<sup>62</sup>

### D. Tenant Selection and Eviction

Whether a unit is classified as "existing," or "newly constructed," or "substantially rehabilitated," selection of tenants is made by the

newly constructed or substantially rehabilitated units. Within the class of existing units, rentals vary according to number of bedrooms, whether or not there is an elevator, and whether the unit is detached or not. Proposed HUD Reg. § 1280.101 (Schedule A), 39 Fed. Reg. 43,944 (1974). Rentals vary according to the number of bedrooms and presence of an elevator but not according to detachment within the class of newly constructed or substantially rehabilitated. Proposed HUD Reg. § 1280.102 (Schedule B), 40 Fed. Reg. 1902 (1975).

It is significant that increasing rentals are provided for units which have zero to four bedrooms. This reflects at least a possible interest in the larger units and recognizes the fact that the Joint Conference Report of the House and Senate pointed out "the conferees wish to emphasize the urgent need to provide adequate housing for large families through the construction or substantial rehabilitation of units containing three or more bedrooms." CONFERENCE REPORT, *supra* note 39, at 3969.

<sup>54</sup> 42 U.S.C.A. § 1437f.(c)(1) (Supp. 1975).

<sup>55</sup> Proposed HUD Reg. § 1275.103(d)(1)(ii), 39 Fed. Reg. 43,182 (1974). These costs are limited to "real property taxes, utility rates or similar costs." *Id.*

<sup>56</sup> 42 U.S.C.A. § 1437f.(c)(1) (Supp. 1975).

<sup>57</sup> *Id.*

<sup>58</sup> Proposed HUD Reg. § 1277.103(h)(2)(i), 39 Fed. Reg. 45,135 (1974).

<sup>59</sup> 42 U.S.C.A. § 1437f.(c)(3) (Supp. 1975).

<sup>60</sup> This is defined as "those families whose incomes do not exceed 80 per centum of the median income for the area." 42 U.S.C.A. § 1437f.(f)(1) (Supp. 1975).

<sup>61</sup> 42 U.S.C.A. § 1437f.(c)(5) (Supp. 1975).

<sup>62</sup> 42 U.S.C.A. § 1437f.(c)(5) (Supp. 1975).

owner.<sup>63</sup> Presumably the PHA, when it participates, will act as a rental agent, maintaining a list of applicants and a list of eligible units and referring qualifying applicants to the landlords participating in the program.

Eviction rights vary with the type of housing unit. In the case of existing units, the agency has the sole right to give notice to vacate.<sup>64</sup> For newly constructed or substantially rehabilitated units, the owner has that right.<sup>65</sup> Apparently the PHA will act as arbitrator between landlord and tenant to determine whether a landlord's complaint justifies eviction.<sup>66</sup> No such finding is required of owners of newly constructed rental housing, however:

### *E. Responsibility for Maintenance and Management*

The customary practice, both in federally financed programs and in private leasing, is that the owner assumes responsibility for maintenance. This is true of Section 8 leasing as well.<sup>67</sup> For existing units, maintenance and repairs must be made "in accordance with the standard practice for the building concerned as established by the owner and agreed to by the agency."<sup>68</sup> At present no HUD regulations clarifying management and maintenance standards exist.

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<sup>63</sup> 42 U.S.C.A. §§ 1437f.(d)(1)(A), (e)(2) (Supp. 1975). This may appear to grant more freedom to the owner than will actually be the case. Section 23 also provided that "the selection of tenants . . . shall be the function of the owner." 42 U.S.C. § 1421b.(d)(1) (1971). However, a subsequent Public Housing Authority Circular elaborated on this. There were three possible methods of tenant selection under this circular: agency selection; owner choice from a housing agency list; or owner selection on his or her own, so long as there was no discrimination. Although the owner chose among the three methods, agency selection was the most frequently chosen method though the owner had no right of final approval. This was selected most often because only this option provided for agency payments if the unit became vacant. Friedman, *supra* note 5, at 623; REPORT OF THE PRESIDENT'S COMMISSION ON URBAN HOUSING, A DECENT HOME 16 (1969) [hereinafter cited as DECENT HOME].

<sup>64</sup> 42 U.S.C.A. § 1437f.(d)(1)(B) (Supp. 1975). This poses a curious dilemma with respect to existing units. The owner may have the freedom to choose the tenants; however, if he later judges it to be a wrong decision, there might be no recourse. At best, this would seem to encourage the owner to select conservatively. At worst, the owner of existing units may be dissuaded from entering into the program at all. It appears arbitrary to designate the owner's rights according to what point in the life of the unit the contract was formed because all new construction or substantial rehabilitation will eventually, as the contract runs, become as aged as some of the existing units which are later just entering the program. If this in fact discourages the implementation of Section 8 with respect to existing units, the program might be significantly hampered.

<sup>65</sup> 42 U.S.C.A. § 1437f.(e)(2) (Supp. 1975). The expenses involved in eviction might also be looked upon as a burden. However, this is probably offset by the delay and paperwork involved with dependence on the agency.

<sup>66</sup> 42 U.S.C.A. § 1437f.(d)(1)(B) states that "the agency shall have the sole right to give notice to vacate, with the owner having the right to make representation to the agency for termination of tenancy" [emphasis added]. Arguably, this indicates that the owner has a right to have his complaints considered with the PHA acting as arbitrator.

<sup>67</sup> 42 U.S.C.A. §§ 1437f.(d)(1)(C), (e)(2) (Supp. 1975).

<sup>68</sup> 42 U.S.C.A. § 1437f.(d)(1)(C) (Supp. 1975).



### F. *Terms of Contracts and Construction Financing*

Section 8 provides flexibility in the duration of assistance contracts. For existing structures, contracts may run from a minimum of one month to a maximum of fifteen years.<sup>69</sup> Newly constructed and substantially rehabilitated projects, financed by traditional means, are eligible for contracts of up to twenty years' duration,<sup>70</sup> while those same projects financed by a state or local housing agency are eligible for a forty-year contract.<sup>71</sup> Newly constructed or substantially rehabilitated units to be assisted under this program are eligible for FHA mortgage insurance.<sup>72</sup> In addition, an owner may pledge his prospective assistance payment contract as security for a construction loan.<sup>73</sup>

## III. ALTERNATIVE HOUSING PROGRAMS

The new legislation, as indicated above, effectively subordinates such programs as Sections 235 and 236 to public housing and leased housing assistance.<sup>74</sup> PHA officials apparently have considerable discretion to implement that of the two programs which best suits their local needs. With this in mind, this part explores some of the social, economic, and political considerations which might persuade PHA officials to choose a leased housing program over public housing and prefer its formulation in Section 8 over its predecessor, Section 23.

### A. *Public Housing Compared with Leased Housing*

In contrast with assisted leased housing under either Section 23 or Section 8 as described above, traditional public housing involves a "project" which is planned, supervised in the construction phases, owned, operated, and managed by the local housing authority.<sup>75</sup> The contention that such public ownership is the source of the adverse conditions which are prevalent in most public housing<sup>76</sup> is examined below.

1. *Tenant Selection: Achieving "Horizontal Equity"*—Public housing tenants are selected by the agency from the pool of families who

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<sup>69</sup> 42 U.S.C.A. § 1437f.(d)(2) (Supp. 1975).

<sup>70</sup> 42 U.S.C.A. § 1437f.(e)(1) (Supp. 1975).

<sup>71</sup> *Id.*

<sup>72</sup> 42 U.S.C.A. § 1437f.(e)(3) (Supp. 1975).

<sup>73</sup> 42 U.S.C.A. § 1437f.(e)(4) (Supp. 1975).

<sup>74</sup> See notes 38, 39, and accompanying text *supra*.

<sup>75</sup> See generally Catz, *supra* note 4, at 26-33.

<sup>76</sup> See Ledbetter, *Public Housing—A Social Experiment Seeks Acceptance*, 32 LAW & CONTEMPORARY PROBLEMS 490 (1967), for a thorough examination of several aspects of public housing.

qualify under the definition of "families of low income."<sup>77</sup> Since the waiting list of qualified applicants is normally considerably larger than the supply of public housing units, public housing has been criticized for lacking horizontal equity by failing to provide equal subsidies to those equally in need. However, it is not clear that the housing supply under any leased housing program will better accommodate the demand for housing of low-income families than public housing.<sup>78</sup>

2. *Overincome Disqualification as a Disincentive to Upward Mobility*—Under current regulations, a tenant is forced to move out of public housing if his income rises above the maximum limit<sup>79</sup> in order to reserve the buildings for those who most need them. Such dislocations have several deleterious consequences. Psychological strain and the breakdown of the family social unit have frequently resulted from such evictions.<sup>80</sup> Moreover, the tenant with a marginally higher income may be forced to spend a proportionately greater amount of his income for private accommodations. Thus, the disqualification provision operates as a disincentive for the tenant to earn more income. This problem is eliminated under both leased housing programs since they contain no such eviction provision. Section 8 provides that the tenant-family need have low income status only "at the time it initially occupied" the unit.<sup>81</sup> The tenant continues to contribute the same percentage as his income rises. However, the subsidy diminishes proportionately as the tenant's total contribution increases.<sup>82</sup> Only when the tenant's income exceeds 80 percent of the median area income will the subsidy be discontinued.<sup>83</sup> At the point the subsidy ends, the tenant has the option to remain in the unit, a choice unavailable in the public housing program. This aspect of leased housing, therefore, may lead to a more stable housing pattern and elimination of a disincentive to upward mobility.

3. *Project Concentrations*—Normally built as unitary structures to cut costs, large projects and the poor who occupy them are aggregated in a single area, usually in the deteriorating central city which, unlike the outlying districts, has insufficient political clout either to "zone-out" such projects<sup>84</sup> or to force the local governing body to withhold

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<sup>77</sup> 42 U.S.C. § 1402(2) (1971). This definition has varied from act to act.

<sup>78</sup> See Palmer, *infra* note 110, at 265-68; Friedman, *supra* note 5, at 621.

<sup>79</sup> 42 U.S.C. § 1410(g)(3) (1971).

<sup>80</sup> A. TOFFLER, *FUTURE SHOCK*, 77-94 (1970).

<sup>81</sup> 42 U.S.C.A. § 1437f.(c)(4) (Supp. 1975).

<sup>82</sup> 42 U.S.C.A. § 1437f.(c)(3) (Supp. 1975).

<sup>83</sup> 42 U.S.C.A. § 1437f.(f)(1) (Supp. 1975).

<sup>84</sup> See Rubinowitz, *Exclusionary Zoning: A Wrong in Search of a Remedy*, 6 U. MICH. J.L. REFORM 625 (1973).

consent to build them.<sup>85</sup> One result is that public housing residency now carries a stigma,<sup>86</sup> based in part upon the strong correlation among fear of crime, social alienation, and residence in public housing projects.<sup>87</sup>

The dreary appearance of housing projects has also drawn severe criticism.<sup>88</sup> These designs result not only from cost limitations but also from HUD restraints upon the architects retained by the local agency. Federal standards specify details down to the arrangement, size, and shape of rooms within the unit, location of elevators and stairways, and general location of interior facilities within each room, leaving little room for flexibility or originality in the design.<sup>89</sup> A proposed design must pass a series of reviews intended to minimize costs, resulting in a finished product with little aesthetic merit.<sup>90</sup> The finished product is often drab and uninspired. Little community pride is developed, and all too often the deterioration process is drastically accelerated.<sup>91</sup>

Leased housing does have the potential for creating dispersion, economic integration, and diversity of styles. One anticipated advantage of leased housing in private accommodations is that the Section 8 families may be scattered throughout the community. Ideally, the tenant's low-income status will not be known by the other tenants and thus the tenant will be less likely to be rejected by his neighbors on the basis of his subsidy status. Furthermore, since there may be greater potential for variety in the locations of subsidized units, the tenant may be more able to find housing near his workplace.

Although new construction of leased housing remains subject to exclusionary zoning, such restrictions are not an impairment to the utilization of existing dwellings. An additional advantage is that there is no "consent requirement" attached to the construction or rehabilitation of assisted leased housing.

Finally it is the hope of the drafters of leased housing programs that the market process will generate a better variety of innovative and

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<sup>85</sup> 42 U.S.C.A. § 1437c.(e)(1) (Supp. 1975).

<sup>86</sup> See generally Glazer, *The Effects of Poor Housing*, in HOUSING URBAN AMERICA 158-65 (J. Pynoos, ed. 1973); NATIONAL COMMISSION ON URBAN PROBLEMS REPORT: MORE THAN SHELTER 57 (1968) (P. Douglas, Chairman); M. SCHOOR, SLUMS AND SOCIAL INSECURITY 16-33 (1963).

<sup>87</sup> Rainwater, *Fear and the House-as-Haven in the Lower Class*, in HOUSING URBAN AMERICA 181, 186-89 (J. Pynoos, ed. 1973).

<sup>88</sup> Catz, *supra* note 4, at 29-32; Friedman, *supra* note 5, at 626-28; Ledbetter, *supra* note 76, at 497-501.

<sup>89</sup> Catz, *supra* note 4, at 31.

<sup>90</sup> *Id.*

<sup>91</sup> Cf. Rainwater, *The Lessons of Pruitt-Igoe*, in HOUSING URBAN AMERICA, 548-55 (J. Pynoos, ed. 1973).

aesthetically pleasing housing designs and styles,<sup>92</sup> since such leased housing will be occupied in substantial part by unassisted tenants.

4. *Fiscal Considerations*—Leased housing also offers monetary advantages to the local government and to HUD which are not available with housing projects. In order to receive federal subsidies, the authorizing statute requires the local government to exempt housing projects from property taxes.<sup>93</sup> In contrast, federally subsidized leased housing properties remain on local tax rolls.<sup>94</sup> Participation in leased housing programs is therefore more attractive for local governments who opposed public housing because of the lost tax base.

5. *Necessity of Long-Term Commitment*—Public housing is financed by HUD over the period of its mortgage; this may be for a period of up to forty years.<sup>95</sup> The contracts for leased housing assistance may run for up to forty years, but are not required to do so.<sup>96</sup> If the local agency doubts the feasibility of a particular plan, the contract may be made for as short a period as one month.<sup>97</sup> Thus, HUD will not have to be bound to a long-term and expensive commitment for a dubious project.

Leased housing appears to have many advantages, but it has never been developed into a program of major proportions.<sup>98</sup> The acid test for Section 8 is whether it will be implemented to a greater degree than its forerunner, Section 23. The next subpart of this note attempts to compare the two provisions in this respect.

### B. Section 8 Compared with Section 23

Numerous explanations have been offered for the lack of success of Section 23. This article will not resolve whether any or all of the

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<sup>92</sup> Leased housing will ameliorate these problems in several ways. First, there should be a variety of designs and styles available to the tenants, as a consequence of involving a plethora of owners. Second, the large-income family should have less difficulty finding housing. Due to the mass production character of projects, there tend to be few large units. This is primarily because it is more economical to build uniformly sized units which are gauged for the "average" family. Ledbetter, *supra* note 76, at 498, 512.

One example is in Washington, D.C., in 1964, where only thirteen five-bedroom units were available for 478 families on a waiting list for units of that size. Ledbetter, *supra* note 76, at 512.

In contrast, the private owner is not necessarily limited by these constraints, repeated reviews, and design standards. That the private owner is more likely than the government to build some larger units is evidenced by the fact that these larger units exist in greater quantity in the private sector and had been incorporated into the Section 23 leased housing program. Friedman, *supra* note 5, at 626-28.

<sup>93</sup> 42 U.S.C. § 1410(h) (1971).

<sup>94</sup> SENATE COMM. ON BANKING AND CURRENCY, PROGRESS REPORT OF FEDERAL HOUSING AND URBAN DEVELOPMENT PROGRAMS, 91st Cong., 2d Sess. 131 (1970).

<sup>95</sup> 42 U.S.C. § 1410(c) (1971).

<sup>96</sup> 42 U.S.C.A. § 1437f.(e)(1) (Supp. 1975).

<sup>97</sup> 42 U.S.C.A. §§ 1437f.(d)(2), (e)(1) (Supp. 1975).

<sup>98</sup> See note 34 *supra*.

reasons are in fact legitimate. Rather, it will assess the applicability of these criticisms to Section 8.

1. *Implementation by Federal and Local Government*—Community and owner participation in the leased housing program is voluntary. Therefore, incentives and requirements must be devised to encourage participation. This has been cited as a defect of Section 23.<sup>99</sup> In this area, Section 8 provides several improvements over Section 23.

The prior act relied upon the local housing authority for implementation. As of 1975, there were approximately 113 local housing authorities in Michigan.<sup>100</sup> The exact number is unavailable, but it is clear that there are a considerable number of cities not served by a local agency.<sup>101</sup>

Section 8 facilitates government initiation by providing that HUD may enter directly into contracts with owners in such cases, or “where the Secretary determines that a public housing agency is unable to implement the provisions of this section 8.”<sup>102</sup> Furthermore, the proposed HUD Regulations provide that a State Housing Agency may act in place of the local housing agency once it is so authorized.<sup>103</sup> Thus, the geographic area eligible under Section 8 is considerably expanded over that of the prior leasing program, Section 23.<sup>104</sup>

2. *Owner Incentives to Implement*—Another alleged defect of Section 23 which may be cured by Section 8 is the lack of incentives for owner participation. The elaborate provisions for rent determination<sup>105</sup> might provide this motivation. Despite the limitation in Section 8 that rents for assisted and unassisted units should not materially differ,<sup>106</sup> the possibility of additional adjustments up to 20 percent over the “fair market rentals” should be attractive to prospective Section 8 owners. If the “fair market rentals” as determined by HUD are accurate estimates of prevailing rental rates in the area and if “materially” is liberally interpreted, then there is the chance for extra profit for the owner. There was no comparable provision in Section 23.

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<sup>99</sup> The need for incentives finds support in the recommendations of THE REPORT OF THE PRESIDENT'S TASK FORCE ON LOW INCOME HOUSING: TOWARD BETTER HOUSING FOR LOW INCOME FAMILIES 11 (1970).

<sup>100</sup> Telephone interview with HUD central office in Detroit, Mich., Feb. 7, 1975.

<sup>101</sup> The State of Michigan lists 475 cities and towns on an official map; it is comprised of 58,216 square miles.

<sup>102</sup> 42 U.S.C.A. § 1437f.(b)(1) (Supp. 1975).

<sup>103</sup> Proposed HUD Reg. § 1278.101 *et seq.*, 39 Fed. Reg. 42,753 (1974).

<sup>104</sup> One Detroit HUD representative assigned to § 8 said that this is one of the most significant changes from § 23. He explained that HUD had hesitated to approve funding for § 23 since it had no control over the units. If this is true, then this provision may encourage implementation of the program. Telephone interview, HUD Central Office in Detroit, Michigan, Nov. 15, 1974.

<sup>105</sup> See part II A *supra*.

<sup>106</sup> 42 U.S.C.A. § 1437f.(c)(2)(C) (Supp. 1975).

These Section 8 provisions, on the other hand, may provide a loophole through which developers could continue the excessive profit-taking prevalent under the Sections 235 and 236 programs.<sup>107</sup> These inducements to Section 8 participation may be ineffective, however, in a "tight" housing market such as that which currently exists. As the demand for unit increases, the profits earned on nonsubsidized units tend to rise and the motivation to participate in the subsidy program, with its attendant restrictions, inconvenience, and paperwork, decreases. Unfortunately, periods of few housing starts with resulting increases in rentals for all grades of housing are precisely the times when low-income families need assistance the most.

Another aspect of the problem is that owners of substandard units should be encouraged to rehabilitate them in order to join the program. Commentators have suggested the incentives were insufficient under Section 23 to induce major repairs.<sup>108</sup> The statute did not contemplate the necessity for a major overhaul of a unit or building; Section 23 merely provided that units may be selected for rehabilitation if the agency "finds that such units are, or may be made, suitable. . . ."<sup>109</sup> Section 23 was limited to what Section 8 has classified as "existing" housing, often involving older and deteriorated units.<sup>110</sup> The possibility of leasing with the local agency before a unit was built or rehabilitated was not a viable option because, the local agency and the developer were exposed to the risk that the federal government would not subsidize the project upon completion.<sup>111</sup> For this reason, the President's Committee on Housing recommended that the existing structure limitation be removed to permit new units to be utilized more easily.<sup>112</sup> Section 8 authorizes contracts for "newly constructed" and "substantially rehabilitated" units as well as "existing" units.<sup>113</sup> The fact that

<sup>107</sup> See notes 12-14 and accompanying text *supra*.

<sup>108</sup> Friedman, *supra* note 5, at 632.

<sup>109</sup> 42 U.S.C. § 1421b.(c)(1) (1971).

<sup>110</sup> Palmer, § 23 *Housing: Low-Rent Housing in Private Accommodations*, 48 J. URBAN L. 255, 278 (1970).

<sup>111</sup> *Id.* at 257.

<sup>112</sup> DECENT HOME, *supra* note 63, at 16.

<sup>113</sup> "Newly constructed" has not been defined as of this writing. Presumably it refers to units constructed after or within a certain period before the entrance of the building into the program.

"Substantial rehabilitation" is defined as

a condition requiring more than routine or minor repairs or improvements of such extent as to necessitate execution of an agreement prior to the performance of the work. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to cosmetic improvements coupled with cure of substantial accumulations of deferred maintenance.

Proposed HUD Reg. § 1277.102(bb), 39 Fed. Reg. 45,134 (1974).

Existing housing is defined as "housing that is in decent safe, and sanitary condition." Proposed HUD Reg. § 1275.101(b), 39 Fed. Reg. 43,180 (1974). "Decent," "safe," and

Section 8 grants greater eviction rights to the owner of substantially rehabilitated units than to the owner of an existing unit<sup>114</sup> arguably evidences a congressional desire to stimulate the entrance of substantially rehabilitated housing into the program. Other provisions in Section 8 facilitate this: not only does the owner of substantially rehabilitated units possess additional rights, but Section 8 also qualifies such owners for insured financing for substantial rehabilitation;<sup>115</sup> Section 8 also extends the maximum lease period to forty years for substantially rehabilitated as well as newly constructed units if the loans for the buildings have been guaranteed by a state or local agency loan program.<sup>116</sup> Fifteen years is the maximum contract term for structures classified as existing.<sup>117</sup> This minimizes the developer's risk for substantial rehabilitation or new construction.<sup>118</sup> Even for non-guaranteed loan projects the maximum lease period extends to twenty years for new or substantially rehabilitated units.<sup>119</sup>

3. *Selection of Units*—Constraints on the selection of units are another reason suggested for the failure to implement Section 23. Authorizations were limited to instances where the cost of Section 23 leasing was less than that of construction of a comparable public housing unit.<sup>120</sup> Such comparative cost figures are conflicting,<sup>121</sup> possibly because the estimated cost of leased housing must include a long-range projection of the rise in rentals due to inflation. Thus, it is unclear how far this restriction actually impeded implementation of Section 23. This provision has been eliminated in Section 8.

A further restriction on Section 23 was that no more than 10 percent of the units in any one building were to be subsidized under Section 23.<sup>122</sup> Of necessity, this was merely a guideline in structures containing

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“sanitary” are further defined in Proposed HUD Reg. § 1277.102(e), 39 Fed. Reg. 45,133 (1974).

<sup>114</sup> See notes 64, 65, and accompanying text *supra*.

<sup>115</sup> 42 U.S.C.A. § 1437f.(e)(3) (Supp. 1975). The unit would first have to qualify as needing substantial rehabilitation and not just cosmetic repair. See note 113 *supra*.

<sup>116</sup> 42 U.S.C.A. § 1437f.(e)(1) (Supp. 1975).

<sup>117</sup> 42 U.S.C.A. § 1437f.(d)(2) (Supp. 1975).

<sup>118</sup> That this was a purpose of extending the lease is reported by the House Banking and Currency Committee which

... considers a 20-year term for new units to be sufficiently long to enable the owner to obtain 30 to 40 year mortgage financing. However, the committee has authorized a 40-year term where the project is to be owned by a State or local agency. The committee understands that a longer term is needed in these situations to assure the marketability by these agencies of their own 40-year bonds.

H.R. 1114, 93d Cong, 2d Sess. 19 (1974).

<sup>119</sup> 42 U.S.C.A. § 1437f.(e)(1) (Supp. 1975).

<sup>120</sup> 42 U.S.C. §§ 1421b.(e), (a)(1) (1971).

<sup>121</sup> See Friedman, *supra* note 5, at 629; R. MUTH, PUBLIC HOUSING: AN ECONOMIC EVALUATION 45 (1973). *Contra*, Catz, *supra* note 4, at 35.

<sup>122</sup> 42 U.S.C. § 1421b.(c) (1971).

fewer than ten units. This restriction was an attempt to disperse the subsidized tenants to avoid a "project" atmosphere. Section 8 may be read as diluting this policy in order to facilitate implementation and to introduce flexibility into the leasing program, by providing that up to 100 percent of the units in any structure may be subsidized.<sup>123</sup> It might appear that the goal of economically integrating the tenants has been abandoned, but a more likely explanation for this provision is that the drafters of Section 8 chose to achieve integration among buildings in an area rather than within buildings. One vestige of the Section 23 emphasis on avoiding a concentration of subsidized tenants within one building remains: Section 8 provides that if the project contains (1) more than fifty units, and (2) is designed for use primarily by nonelderly and nonhandicapped persons, then the Secretary "may" give "preference" to applications of owners involving not more than 20 percent of the units in a project.<sup>124</sup> However, this provision does not evidence a strong commitment to economic integration. "Preference" assumes an abundance of applications over those authorized or needed.<sup>125</sup> If few owners are willing to contract for less than 20 percent, the "preference" concept appears to be specious. Even if the assumption that there will be many applicants is valid, the discretion granted by the word "may" could be read as undermining the policy of promoting economic integration. Giving this objective low priority may result in more widespread use of the leased housing assistance program, but only at the risk of incurring some of the same effects that the leasing program was originally designed to avoid.<sup>126</sup>

Another possible reason for the failure to implement Section 23 is the HUD moratorium on leasing based on local vacancy rates. HUD urged that Section 23 should not be used if it would reduce the vacancy rate of other units of comparable size to below 3 percent. Reportedly this would prevent the government from competing with the private sector in the housing business<sup>127</sup> and may be justifiable since a consequence of such competition would be increased rental rates for the nonpoor.<sup>128</sup> Section 8 may provide a solution to this problem if new construction under Section 8 can keep pace with the dwindling supply of existing units.

4. *Selection of Tenants*—In contrast to the increased flexibility of

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<sup>123</sup> 42 U.S.C.A. § 1437f.(c)(5) (Supp. 1975).

<sup>124</sup> 42 U.S.C.A. § 1437f.(c)(5) (Supp. 1975).

<sup>125</sup> See part IV *infra* on the questionability of that assumption.

<sup>126</sup> See part III A *supra*.

<sup>127</sup> Catz, *supra* note 4, at 35.

<sup>128</sup> Friedman, *supra* note 5, at 634.



Section 8 with respect to units, it imposes additional restrictions on the selection of tenants. The language of Section 23 contained no guidelines as to tenant selection. To maintain their image, the public housing agencies tended to choose only the most "placeable"<sup>129</sup> tenants. This generally excluded the extremely poor, large families and unmarried mothers.<sup>130</sup> The "rich-poor" or "submerged middle class"<sup>131</sup> was often the group assisted by Section 23.

Section 8, in contrast, requires that at least 30 percent of the units in the program must be occupied by "very low income" families,<sup>132</sup> defined as families whose income does not exceed 50 percent of the median income of the area.<sup>133</sup> It should be noted, however, that "area" is undefined for the purpose of determining average income. The 30 percent figure has been reported to apply to nationwide allocations rather than local ones.<sup>134</sup> This requirement apparently is an attempt to include tenants who previously were relegated to public housing projects.<sup>135</sup> This shift in emphasis may discourage owners from participating at all. In such a circumstance, any prospects for placement under Section 8 lie with the local agency. Section 8 allows the local housing agency to act as an owner in the program,<sup>136</sup> and presumably the agency will be less deterred from participation by a personal reluctance to deal with very low income families. Thus, a possible interpretation is that the 30 percent requirement may be met almost exclusively by agency-owned units. This poses a difficult choice between providing expanded leased housing opportunities for the very poor or promoting private owner participation in the program with the resulting lesser degree of economic and racial integration. The former appears to call either for government ownership or for incentives for the private owner which are adequate to induce entrance into the program. Incentives which are sufficient to overcome the owner's prejudices may be too expensive; to obtain nonproject housing for the "undesirable" tenant, government ownership may be the only feasible alternative.

Section 23 generally struck a balance in favor of private accommodations and a scattering of the subsidized tenants at the cost of a

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<sup>129</sup> See Palmer, *supra* note 110, at 265-68 (for what "placeable" meant in St. Louis, Missouri, in 1970); Friedman, *supra* note 5, at 621-22 (for an idea of the "desirable tenant" in California in 1967).

<sup>130</sup> *Id.*

<sup>131</sup> Friedman, *supra* note 5, at 621.

<sup>132</sup> 42 U.S.C.A. § 1437f.(c)(7) (Supp. 1975).

<sup>133</sup> 42 U.S.C.A. § 1437f.(f)(2) (Supp. 1975).

<sup>134</sup> See 31 J. HOUSING 355 (1974).

<sup>135</sup> Friedman, *supra* note 5, at 622.

<sup>136</sup> 42 U.S.C.A. §§ 1437c, 1437f.(e)(1) (Supp. 1975).

minimum of economic and racial integration.<sup>137</sup> Section 8 has shifted the emphasis somewhat by providing for agency ownership and by allowing 100 percent of a structure to house subsidized tenants.<sup>138</sup> The positive aspect of this may be that tenants are incorporated into the program where they otherwise might not be. On the other hand, if 100 percent of the occupants are subsidized very low-income tenants, or if the structure is owned by the local agency, then the building differs little from a public housing project. Thus, these tenants may not be receiving the benefits which leased housing assistance was originally intended to grant. The same project stigma and economic and racial concentration may result.<sup>139</sup> These very low-income tenants may not be worse off, but this may also consume funds which could be used to achieve leased housing goals which are different from the public housing goals. It could also taint the program with a public housing reputation with a consequent loss of political support.<sup>140</sup>

#### IV. THE POLICY CHOICES

The future of Section 8 depends on whether there are sufficient economic incentives to encourage owners to participate. Because the program depends on private owner volunteers, Section 8's potential must be assessed in light of these inducements. The analysis is further complicated by the fact that the motivations to participate in the program will vary with the general condition of the economy.

When the demand for leased housing is high or a building is a desirable place to live, the owner can rapidly replace any nonsubsidized tenants who leave or are delinquent in paying. In such cases, the economic incentives of a guaranteed fair market value rental are probably insufficient. Section 8 is vulnerable to conditions in the housing market in two respects. First, because implementation of leased housing assistance is dependent upon an abundant housing supply, it is at the mercy of other government programs<sup>141</sup> which at-

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<sup>137</sup> Friedman, *supra* note 5, at 622.

<sup>138</sup> See notes 123, 136 and accompanying text *supra*. A choice was consciously made in favor of providing leased housing for the less desirable tenants instead of placing a priority on dispersion of the tenants by the House Banking and Currency Committee, H. Rep., *supra* note 118, at 20.

<sup>139</sup> See part III A *supra*.

<sup>140</sup> A strong indication of the political unpopularity of the public housing program is that appropriations often went begging. Furthermore, voters have often completely rejected public housing or have rejected bond issues to finance the program. See Friedman, *Public Housing and the Poor*, in HOUSING URBAN AMERICA 448-49 (J. Pynoos, ed. 1973).

<sup>141</sup> Current or proposed measures include measures to lower the interest rate on lending, tax relief, liberalizing the requirements for FHA loans, and any other programs which promote a healthy housing industry.

tempt to strengthen the housing industry as a whole.<sup>142</sup> Secondly, unless the local housing agencies are the only "owners" participating, the success of Section 8 is contingent upon the general economic picture. Section 8 may be unresponsive to the needs of the low-income tenant during such times of housing crisis, which may be its most crucial shortcoming. The national housing policy needs to address itself primarily to the problem of encouraging the expansion of the housing supply. Several prominent legislators believed that Section 236 of the 1968 Act had a good record in this area,<sup>143</sup> and that the 1974 Act's de-emphasis of Sections 235 and 236 and promotion of Section 8<sup>144</sup> was not a wise choice.<sup>145</sup>

Giving primary priority to providing housing, albeit conglomerate government housing, has the advantage of a higher probability of success in ameliorating at least one of society's problems, *i.e.*, housing for those who can not afford it. However, since the traditional public housing programs have often been considered failures,<sup>146</sup> housing alone may not be enough. Advocates of leased housing assistance urge that federal housing programs not merely provide housing but also be designed to reduce the stigma of a subsidy, minimize concentration of assisted tenants, and reduce the presence of the government as far as possible by involving the private sector. Unfortunately, though, it may be unrealistic to expect a housing program to solve sociological as well as economic difficulties. The problem is exacerbated by the program's vulnerability to the ups and downs of the housing industry as a whole. To resolve the problem, the very elusive line between additional improvements and infeasibility must be identified.

A related problem is the balance that might have to be struck between providing housing and achieving economic integration. Underlying the economic integration issue is the question whether economic and racial integration can be accomplished through a housing subsidy program.<sup>147</sup> Even assuming units are vacant and suitable, Section 8 must overcome the reluctance of the individual owner to racially and economically integrate the tenants.<sup>148</sup> The public

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<sup>142</sup> See Silk, *Homebuilders' Prognosis*, N.Y. Times, Oct. 23, 1974, at 63, col. 7, for some statistics on the reduction in housing starts.

<sup>143</sup> See note 31 and accompanying text *supra*.

<sup>144</sup> See note 34 *supra*.

<sup>145</sup> See generally *What Form Should Housing Subsidies Take?*, 31 J. HOUSING 160 (1974).

<sup>146</sup> See Friedman, *supra* note 140, on the perceived failures of public housing. See notes 12-19 and accompanying text *supra* on the demise of §§ 235 and 236.

<sup>147</sup> The issues are intertwined since income levels often parallel racial lines. See Friedman, *Social Class and Reform*, in HOUSING URBAN AMERICA 25, 27 (J. Pynoos, ed. 1973).

<sup>148</sup> It is not clear that the goal of integration hindered implementation of Section 23. At least a diverse socio-economic mix was not a deterrent to people seeking housing according to one survey by the National Association of Housing and Redevelopment Officials. The

housing agency and the owner are motivated by a desire to maintain a certain appearance.<sup>149</sup> If integration is perceived as defeating that image<sup>150</sup> and if integration is inextricably tied to leased housing assistance, then the program may not achieve its expected potential.

Government housing programs inevitably face conflicting values: a choice between providing housing for as many people as possible or achieving social goals such as integration and minimization of the role of the government along with providing housing for some. While the placements that were made under Section 23 tended to favor the latter alternative, Section 8 appears to have shifted priorities toward the former.

—*Nancy S. Cohen*

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study concluded that what is crucial to the tenants is good design and maintenance. Assuming this to be true, though, it does not completely answer the question of whether prejudice played a part in the failure of Section 23. Even if the tenants do not mind integration, the owner might be ignorant of this fact and may have other disincentives related to the image of the building. Bryan, *Can "Economic Mix" in Housing Work?*, 31 J. HOUSING 367 (1974).

<sup>149</sup> Friedman, *supra* note 5, at 622.

<sup>150</sup> It seemed to be so perceived in California, for example. Friedman, *supra* note 5, at 621.