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Ernest M. Fisher

School of Business Administration, University of Michigan

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FEDERAL HOUSING AND HOME LOAN LEGISLATION
AND ITS CONSEQUENCES*Ernest M. Fisher**

I

THE EMERGENCY RELIEF AND CONSTRUCTION ACT OF 1932

THE laissez-faire policy characteristic of both federal and state policy prior to 1932 in connection with housing was first departed from in a provision in the "Emergency Relief and Construction Act of 1932," passed by the 72nd Congress just before adjournment in July.¹ This provision authorized the Reconstruction Finance Corporation to "make loans to corporations, formed wholly for the purpose of providing housing for families of low incomes, or for reconstruction of slum areas, which are regulated by state or municipal law as to rents, charges, capital structure, rate of return, and areas and methods of operation, to aid in financing projects undertaken by such corporations which are self-liquidating in character." Thus for the first time in the history of the country the credit of the federal government was made available for financing private housing enterprises.

The provisions of the Act could be met, at the time it was passed, only by corporations in the State of New York which were supervised by the State Board of Housing. In fact, there is reason to believe that the form of this provision was in some measure influenced by representatives of that State in Congress.² Some public control, however, may

* Professor of Real Estate Management, School of Business Administration, University of Michigan. A.B., Coe College (Iowa); A.M., Wisconsin; Ph.D., Northwestern. Member, President's Conference on Home Building and Home Ownership; National Housing Association; International Federation for Housing and Town Planning; International Housing Association; Economic Advisor to Bureau of Foreign and Domestic Commerce on Real Property Inventory; Administration Member of the Code Authority for the Real Estate Brokerage Industry. Author, *ADVANCED PRINCIPLES OF REAL ESTATE PRACTICE*, etc., and articles in various periodicals. See 31 MICH. L. REV. 320 (1933) for an article by Professor Fisher on "Housing Legislation and Housing Policy in the United States."—*Ed.*

¹ 47 Stat. 711, tit. II, sec. 201, subsection (a), par. 2 (1932); U. S. C. tit. 15, sec. 605b(2) (Supp. VII 1933).

² The Report of the State Board of Housing of New York for 1933 (Leg. Doc. No. 112) contains the statement (p. 11) that the board "was instrumental in having included a provision for housing loans."

have been necessary, and New York afforded the only case ready made in which some form of public regulation was in effect.

The immediate effect of this Act was to stimulate the preparation and introduction of legislation into state legislatures designed to enable corporations to qualify for loans from the Reconstruction Finance Corporation. The extent and content of this legislation will be examined later.

Subsequent State Housing Legislation

The passage of the Act was a signal for the enactment of a number of state laws providing for the creation and regulation of limited-dividend housing companies of a type which at the time existed only in the State of New York. The process began late in 1932, and by the end of 1933 statutes had been enacted in fourteen States.³ These statutes are very similar, many clauses are identical, and all bear a considerable resemblance to the New York statute of 1926, with subsequent amendments.⁴

The principal features of these statutes are as follows: a statement is almost uniformly included regarding the necessity for some such special legislation to authorize the provision of housing facilities for "families of low income." Quite uniformly, the solution provided is the establishment of a "state housing board" to supervise and control the operations of limited-dividend corporations, organized or to be organized for the sole or principal purpose of providing such housing. The powers of the board in supervising or controlling companies operating under the Act extend to the details of practically all their transactions; permission from the board is a prerequisite to the purchase and sale of property, to the issuing of securities, the mortgaging of property or income, the fixing of rents, the assignment of leases or subleasing, the payment of dividends (which are limited in most instances to six per cent per annum), the installation and operation of

³ These States and the statutes are as follows: *Arkansas*: Acts of 1933, Act No. 89; *California*: Stat. of 1933, c's. 538 and 560; *Delaware*: Laws of 1933, c. 61; *Florida*: Laws of 1933, c. 16028; *Illinois*: Laws of 1933, p. 396; *Kansas*: Laws of 1933, c. 225; *Kentucky*: Laws of 1933, Ex. Sess., c. 2; *Massachusetts*: Acts and Resolves of 1933, c. 364; *New Jersey*: Laws of 1933, c. 78; amended c's. 426, 444; *North Carolina*: Laws of 1933, c. 384; *Ohio*: Ohio Cum. Code Service (Page 1933), c. 14-1; *South Carolina*: Acts of 1933, act 143; *Texas*: Laws of 1933, c. 223; *Virginia*: Acts of 1933, Ex. Sess., c. 55.

⁴ Laws of 1926, c. 823, amended by Laws of 1927, c. 35; Laws of 1928, c. 722; Laws of 1930, c. 872; Laws of 1931, c's. 557 and 558; and Laws of 1932, c. 507.

a system of accounts, and the merging or dissolution of the corporation.

The board is also empowered to "(a) study housing conditions and needs throughout the State to determine in what areas congested and insanitary housing conditions constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the State, (b) prepare programs for correcting such conditions, (c) collect and distribute information relating to housing, (d) investigate all matters affecting the cost of construction or production of dwellings, (e) study means of securing economy in the construction and arrangement of buildings, (f) recommend and approve the areas within which or adjacent to which the construction of housing projects by limited-dividend housing companies may be undertaken, and (g) co-operate with local housing officials and planning commissions or similar bodies in cities and other localities in development of projects they at any time may have under consideration."⁵

For the performance of these compendious duties, the board is given in most cases no appropriation, and some of the acts specifically provide that "in no event shall any part of the expenses of the board ever be paid out of the State treasury." The board is permitted, however, to charge fees for any services specifically rendered to any corporation. How the multifarious and exacting duties enumerated, not pertaining to any particular company, are to be performed without any expenditure by the board is not quite clear.⁶

The personnel of the board varies. In several States⁷ it is composed of state officials who receive salaries in other capacities and are given the duties of members of the board of housing in addition to their reg-

⁵ North Carolina Laws, 1933, c. 384, sec. 7. Essentially the same provision is contained in all the acts cited above.

⁶ The Kansas statute specifically prohibits the board from employing any secretarial or other employees. Kansas Laws, 1933, c. 225, sec. 4.

⁷ In Kansas, for example, the board consists of three members: the state architect, the secretary of the state board of health, and the secretary of the state board of agriculture. Kansas Laws, 1933, c. 225, sec. 3. Florida insured prestige to the board by stipulating that it should consist of five officials: the governor of the State, the comptroller, the state treasurer, the attorney general, and the commissioner of agriculture. 1 Laws of Florida, 1933, c. 16028, sec. 4. Texas added to the Texas Rehabilitation and Relief Commission the name "State Board of Housing," Texas Gen. Laws, 1933, c. 223, sec. 3, and California simply made the Department of Industrial Relations "acting through the Commission of Immigration and Housing" responsible for administration of the Act. Cal. Stats., 1933, c. 538, sec. 2.

ular duties and without extra remuneration. In some States the housing board is appointive, and must serve without compensation but may be paid necessary expenses.⁸

It is clear from even a cursory examination of the statutes that they must have had the same origin and a very similar purpose. The spontaneous declaration of "legislative determination" of the public necessity for the creation of these boards loses some of the force of originality when it is found repeated verbatim in statutes enacted in States as far apart as geography permits. It becomes only too obvious that the "public necessity" consists of the necessity for obtaining a portion of the federal funds allotted to the Reconstruction Finance Corporation for lending to supervised limited-dividend corporations.⁹

In some of the States where statutes were enacted, doubtless public sentiment was aroused to the point where the law could be made effective and where substantial groups in the population who saw clearly the problems were determined to try to find a way out.¹⁰ In many cases, however, the statutes represented a mere attempt to seize federal funds while they were available.

The importance of this Act is not to be judged by the results it produced by way of actual construction. As a matter of fact, only one ten-

⁸ North Carolina (Laws of 1933, c. 384, sec. 3), and Arkansas (Acts of 1933, Act No. 89, sec. 3), for example. In South Carolina the board consists of the secretary of the State Sinking Fund Commission, the State Sanitary Engineer, and three other members appointed by the governor. Acts of 1933, Act No. 143, sec. 3.

⁹ In some instances, this nature of the public necessity is frankly admitted (1 Laws of Florida, 1933, c. 16028, sec. 3), and in the case of California, the measure was heralded by legislative pronouncement as "necessary for the immediate preservation of the public peace, health and safety. . . ." The "statement of the facts constituting such necessity" contains the following naive admission: (Cal. Stats., 1933, c. 560, sec. 21) "The United States of America, through the Reconstruction Finance Corporation, has made funds available to corporations of the type to be formed under the provisions herein specified and provided. Since the building trades in the State of California are now dormant, it is of vital interest to the people of this State that corporations may be formed as provided in this act to take advantage of such proffered assistance to the end that such building trades be again revived [!] and many thousands of people now unemployed be put to work. The funds now held by the Reconstruction Finance Corporation will be available, for a limited time only, to assist such corporations in the construction of their projects, and it is therefore necessary that this act take effect immediately." The act was approved by the governor May 25, 1933, and within six weeks thereafter the funds "held by the Reconstruction Finance Corporation" were no longer available from that source; during the entire ensuing year no federal funds were received by such corporations in California, and still the sovereign State survived the necessity, notwithstanding the fact that the building trades presumably continued in "a dormant condition."

¹⁰ As in Delaware, Ohio, and Illinois, for example.

tative commitment for a loan was made by the Reconstruction Finance Corporation,¹¹ and that was never disbursed. Its importance is that it served as a prototype for subsequent federal legislation. A number of policies established by the Act have been perpetuated by this subsequent legislation. In the first place, the restrictions imposed by the Act operated practically to confine loans to limited-dividend companies. Thus the weight of the influence of the federal government was placed behind this type of organization. With all its limitations, this type of organization has advantages, and by this Act and subsequent legislation it has been given a prominent role to play in future housing development.

Second, the Act laid down the principle of the responsibility of local governmental authorities for supervision and control of low-cost housing enterprises. In the face of this responsibility, local units can no longer be wholly oblivious of the situation. It is almost universally held that this placing of responsibility upon local authorities is wise. For many decades this has been one of the fundamentals of the housing policy in England. Conditions vary so greatly from section to section of a country as large as the United States, customs differ so widely that a central government would find it difficult to pursue policies that would be sufficiently flexible to meet local conditions and yet definitely enough regulated and sufficiently supervised to avoid charges of favoritism or discrimination. The local authorities, it is believed, can best be held responsible for the details of administration of local plans within the framework of general policies adopted by the central authority. This plan has worked satisfactorily in England and will probably prevail in the long run in any country where needs and conditions are diverse and constantly changing.

Another important feature of this Act was that it singled out for government assistance those enterprises which were designed for "families of low income" or for "reconstruction of slum areas." The Act is the first instance in which the government recognized special responsibility or granted special privileges in connection with housing. And this concern and this special responsibility were confined to the groups upon which housing problems press most heavily. The fact that the benefits of the Act were limited to these two types of operation has not

¹¹ This commitment was made to the Fred E. French Co. of New York to be used in connection with the development known as Knickerbocker Village. The project was taken over by the housing authority established under subsequent legislation.

been stressed, but it is in line with the development of housing policies in other countries, particularly in England, where the whole effort of the government has been in behalf of members of "the laboring classes." Whether such a restriction of the benefits of this legislation constitutes "class legislation" is a nice but largely academic question. It does mark an acceptance by government of a special responsibility for the housing of lower income groups and a willingness to assume and discharge that responsibility.

Finally, while this Act contemplated only a temporary commitment of federal funds to housing enterprises "self-liquidating in character," the Act did, by virtue of the restrictions placed upon the type of corporation that could qualify for loans, encourage the adoption of policies on the part of local governmental units that were of a permanent nature. It would be difficult for local units to set up the necessary controlling bodies on a temporary basis. The Act led, therefore, to the adoption of policies that have assumed all the marks of permanence. Local or state housing boards designed at the moment to provide the regulation necessary for corporations to qualify for loans have become permanent parts of the governmental machinery. They represent acceptance by local governmental units of their part of the responsibility of government as a whole for housing conditions, particularly among the lower income groups.

II

HOUSING PROVISIONS IN NATIONAL INDUSTRIAL RECOVERY ACT

Closely related to the legislation just considered (though not next in order of time) are certain provisions of the National Industrial Recovery Act.¹² This Act provided for the setting up of a comprehensive program of public works, under the direction of the President or his designated representative, the Administrator. This program "shall include among other things the following: . . . (d) construction, reconstruction, alteration, or repair, under public regulation or control, of low-cost housing and slum-clearance projects." The President is also authorized under Section 203 of the Act "(1) to construct, finance, or aid in the construction or financing of any public works project included in the program"¹³ and "(2) to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any

¹² 48 Stat. 200 (1933), U. S. C. tit. 40, c. 8 (Supp. VII 1933).

¹³ 48 Stat. 201 (1933), U. S. C. tit. 40, sec. 402 (Supp. VII 1933).

such project, but no such grant shall be in excess of 30 per centum of the cost of labor and materials employed upon such project.”¹⁴

Under these provisions the Public Works Administration was established, and in it a director of housing was appointed in July 1933. Subsequently, in addition, the Public Works Emergency Housing Corporation was established as a public corporation through which the powers conferred by the Act might be exercised.

The Act obviously follows the lines of the legislation previously described. The power to “finance or aid in the . . . financing of any . . . project included in the program,” which might include “construction, reconstruction, alteration, or repair, under public regulation or control of low-cost housing and slum clearance projects” consists fundamentally of the same powers as those already possessed by the Reconstruction Finance Corporation; and the limitations upon the powers are essentially the same. Again, the limited-dividend company is made the vehicle of governmental policy through the use of the phrase “under public regulation or control.” This is the only form of organization that is under such control.

But the Act went further in providing that the President or the Administrator could also “construct” any such project. What the intentions were of those who proposed and passed this legislation, it is difficult to surmise. It is probable, however, that the intent was to invest the federal administration with power to proceed on its own initiative. Without this expression, the housing program would have depended upon the initiative of public authorities other than the federal administration, of limited-dividend companies, and other “outside” sources. Under such conditions, the program might have lagged, and the federal government would have been powerless to speed it up.

As a matter of fact, this is precisely what happened during the first six or eight months after the establishment of the Housing Division. A number of projects were submitted to the Division for assistance in financing, and tentative commitments were made with respect to a number of them.¹⁵ But unforeseen difficulties arose in connection with many of the projects, contracts were not signed, commitments were eventually cancelled, and action was slow.

¹⁴ 48 Stat. 202 (1933), U. S. C. tit. 40, sec. 403 (Supp. VII 1933).

¹⁵ The total fund allotted to the Housing Division was \$300,000,000. Commitments made absorbed a considerable portion of this amount. But a number of the commitments were cancelled and the funds thus released were transferred to the Public Works Emergency Housing Corporation.

These events led to the organization of the Public Works Emergency Housing Corporation, as an administrative agency under the National Industrial Recovery Act. The Director of Housing of the Public Works Administration was made the executive officer of the Corporation, with other governmental officers as members of the board of directors. It would appear, therefore, that the purpose of incorporating this agency was to overcome the obstacles met with in the early stages and to expedite action. The primary objectives of the whole National Industrial Recovery Act were to re-establish employment and to expedite recovery. These objectives were not being served by the procedure at first adopted. Private initiative and even local governmental administrative units were too slow and cumbersome, apparently, to serve the purposes of the federal authorities, and direct action appeared to be dictated. With resources of over \$100,000,000, with the power of eminent domain, and with all the other advantages which the Corporation possesses, it ought to be possible for it to proceed rapidly and to bring to actual execution a number of projects scattered throughout the country.

One other significant provision of the Act is that which authorizes the President to make a grant of "not to exceed thirty per centum of the cost of labor and materials" to "States, municipalities, or other public bodies" in connection with a project. This proffer of a grant to local governmental units has served as a special inducement to local authorities to launch public housing programs.

It has been repeatedly emphasized by those in charge of this federal program that it is not the intention of the federal government to retain and operate the properties which result from the program. It is hoped that the government can sell out or at least enter into some operating contract with local groups or local governmental agencies and retire from the active conduct of projects. This is undoubtedly a wise policy to pursue; it would appear much too difficult and expensive for the federal government to operate detached housing projects in widely scattered parts of the country, the management of which requires the most minute and constant supervision of an infinitude of details.

State Legislation and The National Industrial Recovery Act

As has already been seen, no funds were disbursed for housing developments by the Reconstruction Finance Corporation. By the time the state legislation described above had reached the statute books, the passage of the National Industrial Recovery Act and the subsequent

establishment of the Federal Emergency Public Works Administration placed housing programs under the supervision of another federal agency.

The provisions of this Act caused a shift in the emphasis in state housing legislation. The special provision previously referred to authorizing a governmental grant of thirty per cent of the cost of labor and materials on projects of local governmental or public authorities represented a special inducement for this type of operation. Progress under the private limited-dividend company form of organization proved very slow; it was difficult to raise local funds in sufficient amount to meet the governmental requirements for the equity of the limited-dividend company; occasionally promoters appeared who suspected an opportunity for profit through the use of government funds, and these applications required time to pass on. Altogether, notwithstanding the prolific legislation passed to promote limited-dividend operations, results failed to appear. Gradually, then, attention began to turn to the special provision in the National Industrial Recovery Act which authorized the thirty per cent *grant* to public housing enterprises.

As a result of this shift in emphasis statutes were passed, in four States in 1933 and one State early in 1934, establishing some form of public housing authority.¹⁶ The contents of these laws vary somewhat, but all are designed to accomplish the same purpose.

The Ohio Act. The Ohio statute was the first to be approved. It provides for the appointment of "housing authorities" upon the finding by the state board of housing "that there is need for a housing authority in any portion of a county which comprises two or more political subdivisions but less than all the territory within the county. . . ." ¹⁷ The authority consists of five members, one of whom is appointed by the probate court, one by the common pleas court, one by the board of county commissioners, and two by the "mayor of the most populous city in said district." The term of office for members is five years. Not

¹⁶ The statutes enacted were: *Maryland*: Laws of 1933, Spec. Sess., c. 32, approved Dec. 15; *Michigan*: Public Acts of 1933, Acts Nos. 18 and 94, Public Acts of 1934; *New Jersey*: Laws of 1933, c. 444, approved December 7; *Ohio*: Laws of 1933, First Spec. Sess., H. B. 19X, approved September 5; and *New York*: Nos. 253, 412, amending c. 823, Laws of 1926, as amended. A news item in the *New York Times* reports that similar legislation also has been passed in Wisconsin, Kentucky, West Virginia, Illinois, and California. See issue of April 29, 1934, p. 1, secs. 11-12.

¹⁷ Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 2.

more than two officials holding other public office can be members of the authority.

In addition to the usual powers delegated to corporate or public bodies, the housing authority is specifically granted powers to perform the duties of inquiring into the housing situation, of preparing and executing plans "for the purposes of clearing, planning and rebuilding areas within the county district wherein the authority is created,"¹⁸ and of performing all the functions incidental to such operations. Presumably these powers can be exercised *only* "in order to make necessary provision for the preservation of the public health, and in order to facilitate proper sanitary housing conditions for families of low incomes, and to provide for the elimination of congested and unsanitary housing conditions now existing in certain areas of the state . . .,"¹⁹ since the statute grants only these powers.

County commissioners are authorized to lend not to exceed \$20,000 to a housing authority whose district lies in the county, and the authority may issue its own mortgages, bonds, or other evidences of indebtedness, but it may not pledge the credit of any other governmental unit.²⁰ Nothing is said in the statute about the troublesome question of tax exemption. But this probably is to be inferred from the clause, "All property, both real and personal, acquired, owned, leased, rented, or operated by the housing authority shall be deemed public property for public use. . . ." ²¹

The authority is made partially responsible to the state board of housing, to which it must render "an accurate account of all its activities and of all receipts and expenditures . . ." once a year.²² Subject to the approval of this board, each housing authority is also given the right of eminent domain. Permission to dissolve must also be obtained from the state board; and if granted, its properties are taken over and liquidated by the state board.²³

The New Jersey Act. The second act to be approved was that in New Jersey.²⁴ This Act establishes a state housing authority as an independent instrumentality of the State for the purpose of studying housing conditions and itself building and operating housing develop-

¹⁸ Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 6.

¹⁹ Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 2.

²⁰ Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 11.

²¹ Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 8.

²² Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 10.

²³ Laws of Ohio, First Spec. Sess. of 1933, H. B. 19X, sec. 12.

²⁴ New Jersey Laws, 1933, c. 444.

ments. The supervision of limited-dividend companies in the State is also transferred to this authority from the board of public utility commissioners where it had been placed by previous legislation.

The board consists of five members appointed by the governor by and with the advice and consent of the senate for a term of office of five years. An appropriation of \$25,000 was made for expenses of the board for the fiscal year ending June 30, 1934, and the board was authorized to employ the necessary staff. Members of the board receive no salary but payment of their necessary expenses is authorized.

The activities of the board are specifically limited to exclude the building or operation of "any project other than one that is designed to eradicate congested and insanitary housing conditions and/or to give relief to families of low income who must otherwise occupy congested and insanitary housing facilities or [sic!] who are of like economic circumstances."²⁵

Properties built, owned, or operated by the board are made liable for assessment for local taxes "in the same manner as other real property owned by individuals."²⁶

Rents are definitely restricted to "the maximum average rental per room in cities of the first class" of \$10, "and in other municipalities eight dollars (\$8.00)."²⁷ Presumably this means eight and ten dollars per room per month.

The New York Act. The New York Act, passed January 22, 1934, provides for the establishment of municipal housing authorities as the instrumentality of local city or municipal governments. The adoption of a resolution by the legislative body with jurisdiction in the municipality, appointment of five members of the authority by the mayor, and the filing of the proper papers constitute the steps necessary to the establishment of such an authority.

The authority, when established, has the power to employ technical and clerical assistants and to fix their compensation. No member of the authority may receive compensation for his services, and not more than one member can be a city official. The term of office is five years.

Funds may be advanced to an authority by the city or municipality in a sum not to exceed \$500,000. Such advances may be made from ordinary revenues or from special bonds created and sold for the pur-

²⁵ New Jersey Laws, 1933, c. 444, sec. 11.

²⁶ New Jersey Laws, 1933, c. 444, sec. 9A.

²⁷ New Jersey Laws, 1933, c. 444, sec. 9.

pose. All advances must be repaid from the operating revenues that subsequently accrue to the authority.

Authorities are given the power to acquire property by option, purchase, or condemnation, and they have the right of entry on the property after suit to condemn has been filed and security deposited. The power of condemnation extends to "a section or sections of the city" where "unsanitary or substandard housing conditions exist . . . or elsewhere."

All properties, bonds and mortgages of an authority are tax exempt. The Act contains the provision, however, that "an authority shall pay to the city a sum fixed annually by the city. Such sum shall not exceed in any year the sum last levied as an annual tax upon the property of the authority prior to the time of its acquisition by the authority." This is probably the most debatable feature of the Act.

The relationship between an authority and the State Board of Housing is clearly defined. The Board is given jurisdiction over the authority to the extent that it may prescribe methods of accounting and require reports from an authority on operations. These reports may be required not more frequently than every three months.

Authorities are given the right to lease or sell properties to limited-dividend companies and to enter into management and developmental contracts with the city and with the federal government.

The Act thus provides for the creation of an agency with considerable powers, implemented with funds, and capable of accomplishment.

III

HOME LOAN BANK ACT OF 1932

The Emergency Relief and Construction Act was accompanied by the Federal Home Loan Bank Act.²⁸ This Act was the result of a direct appeal of President Hoover; his appeal was first made in the press in November 1931, and was reiterated in subsequent addresses, particularly in connection with the President's Conference on Home Building and Home Ownership, called to meet in December 1931.²⁹ The general purpose of the Act was to facilitate the financing of owner-occupied homes, and to bring relief to home-owners who were facing foreclosure proceedings due to default on outstanding mortgage indebtedness.

²⁸ 47 Stat. 725 (1932), U. S. C. tit. 12, c. 11 (Supp. VII 1933).

²⁹ This Conference undoubtedly did much to focus and crystallize public and congressional opinion on housing problems. The proceedings were published by the Conference in eleven volumes.

The Act established the Federal Home Loan System, controlled by a board of five members, appointed by the President by and with the advice of the Senate. This board divided the country into twelve districts in each of which a federal home loan bank is established.³⁰

The stock in each bank may be purchased by building and loan associations (or their equivalent, such as homestead associations), by savings banks, and by insurance companies. Pending such purchase, the federal government subscribed to the stock through the Treasury. Each institution that purchases stock of the bank in its district must take an amount of stock equivalent to at least one per cent of its outstanding loans on mortgages. When all the stock of all the banks has been purchased by institutions in the district, the government is to retire from active financial participation in the system and to retain control only through the Federal Home Loan Board. And subject to this supervision and control of the Board, the regional bank will then be managed by its stockholders.

Each member of a regional bank is entitled to borrow from the

³⁰ The States included in each district, together with the name of the city in which each bank is located, its capital, and the estimates of the Board as to total amount of home mortgages in the district, were announced by the Board late in 1932 as follows:

District 1, New England; mortgages, \$3,600,000,000; bank, Cambridge, Massachusetts; capital, \$12,500,000.

District 2, New York, New Jersey, Puerto Rico, Virgin Islands; mortgages, \$9,500,000,000; bank, Newark, New Jersey; capital, \$20,000,000.

District 3, Delaware, Pennsylvania, West Virginia; mortgages, \$1,600,000,000; bank, Topeka, Kansas; capital, \$7,500,000.

District 4, Maryland, Virginia, North and South Carolina, District of Columbia, Georgia, Alabama, Florida; mortgages, \$520,000,000; bank, Winston-Salem, North Carolina; capital, \$10,000,000.

District 5, Ohio, Kentucky, Tennessee; mortgages, \$1,250,000,000; bank, Cincinnati; capital, \$15,000,000.

District 6, Michigan, Indiana; mortgages, \$575,000,000; bank, Indianapolis; capital, \$8,000,000.

District 7, Wisconsin, Illinois; mortgages, \$825,000,000; bank, Evanston, Illinois; capital, \$15,000,000.

District 8, North and South Dakota, Minnesota, Iowa, Missouri; mortgages, \$350,000,000; bank, Des Moines, Iowa; capital \$7,500,000.

District 9, Arkansas, Mississippi, Louisiana, Texas, New Mexico; mortgages, \$340,000,000; bank, Little Rock, Arkansas; capital, \$10,000,000.

District 10, Nebraska, Kansas, Oklahoma, Colorado; mortgages, \$400,000,000; bank, Topeka, Kansas; capital, \$7,500,000.

District 11, Montana, Washington, Oregon, Idaho, Utah, Wyoming, Alaska; mortgages, \$200,000,000; bank, Portland, Oregon; capital, \$6,000,000.

District 12, California, Nevada, Arizona; mortgages, \$650,000,000; bank, Los Angeles, California; capital, \$10,000,000.

bank, upon collateral mortgage security, an amount not to exceed twelve times the par value of its stock in the bank. The amount lent upon the security of pledged mortgages is governed by the original term of the mortgage and the proportion between the value of the property and the amount of outstanding indebtedness. On mortgages that have an original term of eight years sixty per cent of the unpaid balance but not more than forty per cent of the current value of the mortgaged property may be advanced; on mortgages that have an original term of less than eight years not more than fifty per cent of the unpaid balance nor more than thirty per cent of the value of the mortgaged property can be advanced. Upon the security of mortgages pledged by members for loans, regional banks may, with the consent of the Board, issue bonds for sale to the public. These bonds are exempt from all taxes except surtaxes, estate, inheritance, and gift taxes. As security for all bonds issued, mortgages must be held on which there are unpaid balances as nearly as possible equal to 190 per cent of the bonds; that is, the bonds may be issued for approximately fifty-two per cent of the unpaid balance on mortgages pledged.

Mortgages acceptable as collateral must be first liens on estates in fee simple or on 99-year leases renewable, or their equivalent, and must be liens on properties that provide accommodations for not more than three families and whose appraised value is not greater than \$20,000 at the time of the loan.

The real purposes of the Act are to provide a wider market for securities based upon homes, to create greater uniformity in such securities, to provide additional funds for investment in such securities, and to effect a greater uniformity in costs to the borrower. The Act was passed partly as an emergency measure but also partly to establish a permanent institution in home financing. It is difficult to determine which objective was most prominent.³¹ Undoubtedly the actual mortgage situation throughout the country furnished at least the occasion which lent force to the arguments for a permanent system.

The arguments made in urging the creation of the system were that it would improve the quality of home financing credit by making it (1) more mobile, (2) more elastic, and (3) more liquid. The paral-

³¹ There is reason to believe that the provisions designed to give temporary relief in the emergency situation were inserted as a compromise and that the permanent features were most sought by those who framed and urged adoption of the Act. Subsequent events proved the system wholly unable to cope with the emergency situation and led to that function's being transferred to the Home Owners' Loan Corporation.

lel between the proposed system and the Federal Reserve System was frequently drawn, and the conclusion presented that results would be obtained in the field of home financing similar to those effected in commercial banking by the establishment of the Federal Reserve System and its subsequent operation. The argument for mobility is based upon the provisions of the Act which enable (and in some conditions give the Board the power to compel) member banks to borrow from each other and to purchase each other's obligations, and which make all obligations of any bank the joint liability of all other banks. Under these provisions it is assumed that when a credit shortage occurs in one district, the banks of other districts will be willing to supply the necessary funds by purchasing bonds of the bank where the shortage exists or by rediscounting some of its pledged mortgages. Thus credit will flow freely from one district to another, and both the supply and the cost of credit will be equalized between districts. It would not be surprising to find this purpose fulfilled in the operation of the system. The provision of the Act making all banks jointly and severally liable for all the obligations of each would appear to be sufficiently stringent to guarantee free interchange of funds and facilities. It remains to be seen whether the resources of the institutions which will become affiliated with the system will be large enough to accomplish a sufficient degree of mobility to secure uniformity of credit supply and costs.⁸²

The argument that the system will lend elasticity to home financing credit is based upon the fact that each member of a bank may borrow up to twelve times the amount of its stock subscription. The mortgages which it hypothecates in order to secure these advances are in turn used by the bank to support bonds issued to be sold to the public. Thus the lending capacity of the members of the system will be increased. The amount of this increase depends principally upon the ability of the banks to market their bonds. Assuming this ability, each member would be able to increase its loans by approximately 120 per cent. Thus, for example, assume that a member desires to borrow from the bank in its region. It subscribes to, say, \$10,000 of stock. The member is then eligible to borrow up to \$120,000, provided it can furnish eligible mortgages for collateral. These would have to represent, however, unpaid balances of between \$200,000 and \$300,000, depending upon whether they were classified as long-term or short-term

⁸² The elimination of trust companies and investment bankers from membership in the system has greatly weakened its potential resources.

mortgages. Upon deposit of these mortgages as collateral, the member would presumably secure his \$120,000 advance. In order to maintain its supply of cash, however, the bank will have to offer bonds to the public, using the pledged mortgages as collateral. Assuming an equal amount of long- and short-term mortgages, the bank can issue approximately \$130,000 in bonds, and from the sale of these bonds continue to make advances to its member. With the proceeds of advances, new mortgages can be purchased by the member, and these can again be pledged for a new loan, so long as they are eligible, and so on. But if the bank at any time finds it impossible to sell bonds, the whole scheme fails of its end and no elasticity exists. It is impossible to predict the market for these bonds. Their tax-exempt feature, the joint-and-several liability of all banks for the obligations of each, the conservative ratio between the principal amount of the bonds and the total mortgage indebtedness pledged as collateral, and the fact that the bonds must be accepted at par in payment of obligations to the bank — all these characteristics would appear to make the bonds attractive investments. The greatest strain will come upon the system, however, during times of general depression, such as that which called the system into being. Whether a market can be found for the bonds in such a situation, time only will tell.

In connection with the argument that the Federal Home Loan System will increase the liquidity of home mortgage credit, there is some confusion. Careful distinction must be drawn between two aspects of credit and securities which are very frequently confused. Liquidity is commonly used to signify the ability to convert a security into cash regardless of the process by which that conversion takes place. Strictly speaking, the term "liquid" signifies the conversion of indebtedness into cash by paying it off, that is "liquidating" it. A credit instrument, then, becomes liquid only as the debt it secures is paid off. Thus all securities except those representing floating permanent indebtedness become liquid eventually. The only distinction that can be drawn, therefore, is in the *length of time* necessary to liquidate the indebtedness. The term "liquid" has come to be used particularly in connection with commercial banking to refer to those instruments of credit which in the ordinary processes of trade become converted into cash through the sale to the ultimate consumer of the commodities upon which they are based. Typical of these instrumentalities are warehouse receipts and trade acceptances based upon merchandise in the process of being distributed from manufacturers through the courses of trade to consumers.

The term "liquid" is erroneously used to apply to those instruments of credit which are long-term obligations but which because of ready marketability can be passed from person to person for cash. The outstanding example of this type of instrument is long-term government bonds. Because of the ready market which they ordinarily find, they are usually referred to as liquid. As a matter of fact, however, the original obligation stands and must be carried by someone to its long maturity. It is not liquidated until the long term expires. This type of security must be differentiated from those types which have been described. The principal characteristic of this type of security is not its liquidity but its shiftability. Such a security by its very nature is non-liquid. It does not become liquidated except over a long period of time, and whether or not it can be converted into cash by a particular owner depends entirely upon the market for such securities.

Home mortgage credit is of a distinctly long-term non-liquid nature. It cannot be made liquid by the process of converting the original mortgage into a bond issue. By this process, however, the obligation which forms the basis of the credit may become acceptable over a wider market. The shiftability of the credit, therefore, has been improved; but it has not been made liquid. Cash cannot be obtained from the maker of the obligation any more quickly than before, and someone must carry the mortgage through to its maturity. If during that term a ready market can be maintained for the securities representing the obligation, the quality of the credit will have been improved. In short, the argument that the system will make home financing more elastic and the argument, as it is made, that it will make home-financing securities more liquid, come to one and the same thing — both arguments mean that an improved market for the securities is expected to be available. It is doubtful whether in the severest crises this market can be maintained. Undoubtedly, however, during any but the severest depressions, this form of mortgage credit will be much more shiftable over a wider market.

From the point of view of the housing problem there are two significant criticisms of the Home Loan System. The first is that its benefits are extended only to owners of properties that house not more than three families. This limitation was undoubtedly dictated by the desire to promote home ownership and the small dwelling unit. As a matter of fact, however, a very large and an increasing portion of our population live in houses that accommodate more than three families. And it is among the families occupying the larger units that the housing prob-

lem is most acute. This aspect of the problem, however, is completely ignored by the system.

It may be remarked also that the field of conservative first-mortgage financing which the system is obviously designed to cover is the one where the financing has been simplest and the costs, except in restricted communities, have been most reasonable. Building and loan associations, banks, and insurance companies have fairly well met the needs. The problems that are most acute are those connected with financing above the first mortgage. Here costs have been unconscionable and the supply of credit exceedingly capricious. These problems are left quite untouched by the Home Loan System.

It may be questioned also whether the exclusion of all but building and loan associations, savings banks, and insurance companies was wise. Trust companies and mortgage bankers would appear to have some claim to become members of regional banks. They constitute important sources of home finance, and there appears to be slight justification for their exclusion.³³

During the first year after the passage of the Act, the system was being rapidly organized, but few transactions were completed. The attention of the officers of the system appears to have been almost exclusively upon building up the system on a permanent basis. The long-term functions of the system were, therefore, most strongly emphasized. In fact, although the Act contained a provision enabling the banks to lend directly to individuals, this provision was never utilized. The system was touted as bringing relief to distressed home owners, but as a matter of fact it never did so to any great extent. The policy early adopted by the Board and urged upon each home loan bank was that "other things being equal," funds should be made available for the following purposes in the following order and preferences:³⁴

1. To member institutions and non-member borrowers who will make mortgage loans for the purpose of repairs, remodeling and other activities leading directly to the employment of labor.
2. To member institutions and non-member borrowers who will make mortgage loans to assist borrowers in paying taxes, or to facilitate the payment of real estate taxes on behalf of borrowers.

³³ As a matter of fact, trust companies were to be admitted to membership in regional banks under the bill as it was originally drawn; they remained in the bill until it went to a conference committee. No information is available as to the reasons why they were stricken from sec. 4a of the Act in this committee.

³⁴ In a resolution sent to all member banks and published in the press.

3. To member institutions or non-member borrowers who will make mortgage loans, with the particular responsibility of accepting such loans as qualify under Section 4(d) of the Act.

4. To member institutions and non-member borrowers to make mortgage loans in cases where the mortgagors are being pressed for payment by present holders with the following exception: Care should be used (as long as the present emergency exists) to avoid advancing funds for the purpose of refinancing mortgages now held by any institution eligible for membership in the Federal Home Loan Bank System, or which has other federal instrumentalities, either temporary or permanent, from which it can obtain funds.

5. Finally, loans to member institutions or non-member borrowers for the purpose of paying withdrawals, maturities, existing debts and like purposes, where in the judgment of the Bank such loans are essential to the sound operation of the borrower or will promote the ability of the borrower to make loans.

The emphasis in this statement of policy is upon the recovery aspect rather than the relief aspect of the legislation which established the system. This policy may have been wise under the circumstances; but, coupled with unfortunate publicity in which officials of the system were quoted as promising relief, it led to great disappointment. Otherwise the system has performed largely what it was designed for. It has become accepted as a part of the financial machinery available for promoting home ownership, and will probably play an important permanent role.

IV

THE HOME OWNERS' LOAN ACT OF 1933

Disappointment over the failure of the Home Loan Bank System to bring relief to distressed home owners and the necessity for bringing some sort of "new deal" to this group probably were the prime reasons for the passage of the Home Owners' Loan Act of 1933.³⁵

The Act establishes a Home Owners' Loan Corporation of which the officers are the members of the Federal Home Loan Bank Board. But with the exception of the controlling Board, the Home Owners' Loan Act is to be administered by an organization entirely separate from the Home Loan Bank organization.

The capital stock of the Home Owners' Loan Corporation is \$200,-

³⁵ 48 Stat. 128 (1933), U. S. C. tit. 12, c. 12 (Supp. VII 1933).

000,000 and the corporation is authorized to issue bonds in an amount not to exceed \$2,000,000,000 for the purpose of refinancing mortgages on homes. A property to qualify for a loan must have an appraised value not greater than \$20,000; it must provide dwellings for not more than four families, and must be "used by the owner as a home or held by him as his homestead."

Interest on bonds is not to exceed 4 per cent which is guaranteed by the government.³⁶ Interest rates to borrowers whose loans are refinanced with bonds is 5 per cent. The corporation is permitted also to pay cash to mortgagees, and on the funds thus advanced the borrower is charged 6 per cent. The primary function of the Corporation is to negotiate with mortgagors and mortgagees for the substitution of its bonds for mortgages. In such a substitution the Corporation may pay in bonds to the mortgagee not to exceed 80 per cent of the appraised value of the home or \$14,000, whichever is the smaller. The cash price paid for a mortgage cannot exceed 50 per cent of appraised value. The indebtedness of the mortgagor is reduced by the amount representing the difference between the face value of his indebtedness and the amount exchanged in bonds or cash by the Corporation for the mortgage. The Corporation may at any time grant an extension to the home owner for payment of interest or principal for three years. The indebtedness is to be amortized within not to exceed fifteen years plus any extensions. It is estimated that this period of amortization will enable the extinguishment of the debt with interest by the payment of \$8 per month per \$1,000 of indebtedness.

Immediately after the passage of this Act steps were taken to set up an organization to administer its provisions and to relieve home owners who were in distress. Rapid progress was achieved, and by March 28, 1934, nearly \$400,000,000 in bonds had been exchanged for mortgages.³⁷

Considering the difficulties of building up an organization technically trained and competent to handle all the details incidental to negotiation and closing of transactions involving titles, mortgages, defaults, and so on, this achievement must be recognized as remarkable. It has undoubtedly brought genuine relief to many families whose circumstances were such as to force them to face the probability of loss of their homes which they were genuinely happy to retain under the lib-

³⁶ Subsequent legislation has been passed and approved guaranteeing also the principal.

³⁷ N. Y. Times, March 29, 1934, p. 33.

eral terms of the government's contract. However, there are undoubtedly also many who have seen in the offer an opportunity to secure a postponement of eviction and who will default upon the new obligation they have assumed toward the government. The Home Owners' Loan Corporation may, therefore, become the owner of a great many properties. It may suffer heavy losses. Even so, the plan need not be condemned. Some sort of intervention appeared necessary in urban communities; the officials in charge of administering the Act have for the most part proved able and conscientious; relief has been brought to a great many deserving families which were sorely pressed, and the eventual cost may be infinitesimal compared with the cost in human suffering and disappointment that would have followed failure of the government to act.

By these acts, the federal government assumed a large portion of the burden of financing home ownership. The Home Owners' Loan Act is temporary, it is true, but the Federal Home Loan Bank Act represents a permanent feature of national policy, and the temporary legislation is an instance of a now established policy of providing credit on fairly easy terms to home owners. The government would find it exceedingly difficult to abandon this policy and revert to the former position of aloofness. The building and loan association has been chosen as the form of organization through which governmental participation in the problem will be made effective. But the agency for governmental policy can be readily changed; the policy has probably come to stay.³⁸

³⁸ Active governmental participation through ownership of stock in home loan banks is, on the face of things, temporary.

However, it was reported in the press that the private subscriptions to stock in Federal Home Loan Banks totalled approximately \$9,000,000, leaving \$125,000,000, the maximum authorized under the Act, to be subscribed by the government. The Act provides that one-half of the amount received by banks from subsequent subscriptions must be used to repurchase government-owned stock. If only one-half is used for this purpose, the total capital stock which must be sold in the future to retire the government investment will be about \$250,000,000. If subscribing institutions utilize the privilege of borrowing in the authorized ratio to their stock, the loans made will equal \$3,000,000,000, and the collateral deposited to secure these loans will amount to \$5,000,000,000 before the government stock will all be repurchased. It is doubtful whether the system will attain the size such operations indicate within less than a considerable number of years. It would seem, therefore, that the stock owned by the government will probably not be repurchased for a long period of years.

V

RESULTS OF THESE FEDERAL POLICIES

Four important results are likely to flow from this program of the federal government. *First*, some admirable housing demonstrations will probably be made in widely scattered areas. The influence of such demonstrations in making communities "housing minded" and in creating higher housing standards will undoubtedly be very great. While the effect of such projects cannot be very significant from a quantitative point of view, their influence will undoubtedly be out of all proportion to their scope, and number.

Second, the activity of local governmental units and their intervention in the housing situation will be greatly accelerated. This intervention gives every promise of being a permanent one, and it represents a public policy that is both new and probably irrevocable. As in England prior to 1919, the local authorities in the United States were at first slow in responding to the attempt of the central government to place upon them the responsibility for direct intervention in the situation; but since 1932 events have moved rapidly in the direction of temporary commitment of the federal government and permanent responsibility of the local authorities.

Third, some harmful effects on private investments in competing housing facilities will doubtless ensue. In planning a program of public works, government should not, without due forethought of consequences, enter into competition with private enterprise. So long as the program comprehends only those types of construction which are publicly owned, such as roads, bridges, and public buildings, there is no danger of such competition. But housing facilities have been entirely privately owned. It has been argued, however, that private enterprise has never built for the lower income groups; all private building of residential structures has been for the better paid half or one-third of the population. Therefore, the way is left open, according to this argument, for government to step in and build for those in the lower income groups without injuring private enterprise.

The fallacy of this reasoning is perfectly evident. While it may be accepted as true that the lower income groups are not provided with *new* housing facilities by private initiative, still they are provided with such facilities as they have; and any program designed directly to improve the situation must to a greater or less extent interfere with private property and with whatever private initiative exists in connection

with the housing of lower income groups. But such interference is not new or unusual in principle. Whenever new public or social policies are adopted, they must be adopted in the face of entrenched vested interests whose rights are interfered with. Such public policies are justified only if the social interest involved is sufficiently great; and when this is the case, private interests may not be allowed to stand in the way of social progress. But in every such case, opposition to the new policy is certain to arise from the private interests which anticipate that they will or may be injured. The opposition that arose to this policy of the federal government was natural and might have been expected. It was no answer to it that the government was going to build for lower income groups; this was a mere evasion of the issue. The government proposed to furnish housing to some members of lower income groups who were poorly or indecently housed; if such a governmental policy conflicted with private property rights, private property rights would have to become adjusted to the new situation. If this meant losses, the losses would have to be accepted and written off by private property owners. The social interest was paramount.

Finally, the program will undoubtedly have some effect in relieving the unemployment situation. The building industry was one of those most seriously affected by the forces of depression. The decline in residential construction began, however, after 1925, and continued into 1934. But the industry as a whole did not suffer its rapid decline until 1932; from then on, the force of depression was overwhelming, leaving unemployment and idle equipment in its wake. The federal housing program was undoubtedly prompted as a means of fighting this unemployment. Housing and the construction of public works were the only points at which the federal government could attack unemployment and depression in this fundamental industry. Housing represents long-term capital goods, whose contribution to the standard of living is direct and continuous. Hence, it represents a point at which the funds of government can be employed to combat the forces of depression and at the same time create permanent capital goods for the benefit of both present and future occupants of the properties created.

Probably the effect of the program upon unemployment in the building trades will not be great. It is impossible to estimate the total number of workmen employed in the construction of residential property, but the number must be significant. From 1920 to 1930 it has been estimated that over \$2,000,000,000 a year was spent in residential

construction. For the year 1929 the Census of Construction gives \$903,000,000 as the amount of contracts let for residential construction.³⁹ Obviously the \$300,000,000 designated for housing under the National Industrial Recovery Act could make but little impression upon an industry in which the annual expenditure for the same purpose alone was from three to ten times this figure. The only source from which a supply of funds anything like adequate could be drawn is from private investment. It would appear, therefore, to have been desirable to enlist private investment in the program. This could have been done by the adoption of some sort of outright subsidy program such as that adopted in England after the war. If the government had offered a substantial direct subsidy, it might have secured three, four, or five additional dollars for investment in the industry for every dollar it invested itself. The offer of a direct subsidy to public authorities of thirty per cent of the cost of labor and materials has not yet proved effective because of the lack of organization of local authorities to act in the situation.

As regards inducing private capital to enter the field of housing, the problem of costs is also very important. If costs appear too high, in relation to probable rents to be received, private capital will be wary. The result is that as costs rise, the amount of the subsidy has to be increased if private capital is to continue to flow into the industry. Prior to the passage of the National Industrial Recovery Act the costs of building had declined until they had reached what most observers considered to be a point favorable for the investment of private capital. But after that Act was passed, costs rose considerably, and the possibility of private capital's being invested in larger quantities became more remote. The influence of direct expenditures for housing upon the unemployment situation will probably be largely nullified by the effects of rising costs of building.

The federal legislation passed in 1932 and 1933 brought far-reaching changes in governmental policies regarding housing. It practically transferred to the federal government the burden of financing home building, through the medium of building and loan associations and the Federal Home Loan Banks; the burden of financing home ownership, through the Home Owners' Loan Corporation, especially in those cases in which owners were in distress; the burden of aiding in the financing

³⁹ FIFTEENTH CENSUS OF THE UNITED STATES, CONSTRUCTION INDUSTRY, p. 39 (1933).

of low-cost housing first through the Reconstruction Finance Corporation and later through the Public Works Administration; and, finally, that of actually constructing and operating low-cost housing projects through the Public Works Emergency Housing Corporation. The policies embodied in this legislation represent a temporary commitment of the federal government in the housing situation but imply permanent intervention on the part of local authorities. The sum available to the Public Works Emergency Housing Corporation is insufficient to make any impression upon the whole housing or unemployment situation, but should make possible the construction of demonstration projects that will awaken widespread interest and produce a noticeable effect in raising housing standards.