

# PUBLIC HOUSING—A SOCIAL EXPERIMENT SEEKS ACCEPTANCE

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## INTRODUCTION

The large and expanding melange of projects and propositions designed to improve the living conditions of the less privileged members of the citizenry has become known to twentieth-century Americans as social welfare. Under this comprehensive, somewhat amorphous rubric are catalogued the manifold services of the federal, state, and local governments, the secular charities and foundations, and the church-related organizations.

Social welfare, particularly that part funded by the public sector, has become a topic of concern today because, despite America's heralded affluence, the problems of the poor are still with us. With nearly eighteen per cent of all American families who live in housing units surviving on an income level of less than \$3,000 per year,<sup>1</sup> with the advances of the technological age relegating the unskilled and uneducated to frustrating unproductivity, with medical science increasing longevity and sustaining the mentally and physically handicapped, and with the traditional reliance on stoic individualism and family responsibility being sacrificed to mobility and interdependence, the task is formidable; and it apparently has just begun.<sup>2</sup>

At least since the mid-1930s the various programs of housing and home finance assistance that involve the public sector have constituted an essential component of the social welfare effort. All of these government programs have not been aimed directly at alleviating poverty—some were temporary war measures to improve the military machine at home, some are designed to assist middle-class families to flee to the suburbs, some attempt to maintain a high level of activity in the field of real estate investment and finance, and others are calculated to improve the livability and beauty of the cities and the countryside. But the nation has come to realize that, if poverty is to be abolished, an integral part of the assault must be the provision of adequate housing. It is also now realized that, given the shortage of adequate housing (especially in the central parts of the cities) and the apparent inability of private enterprise to supply a sufficient amount of housing for low-income families, the public sector must increase its efforts.

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<sup>1</sup> U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1966, at 336, table 472.

<sup>2</sup> See generally on the many facets of social welfare, *NEW PERSPECTIVES ON POVERTY* (A. Shostak & W. Gomberg eds. 1965); G. STEINER, *SOCIAL INSECURITY* (1966); *Symposium: Law for the Poor*, 54 CALIF. L. REV. 319 (1966); *Symposium—Antipoverty Programs*, 31 LAW & CONTEMP. PROB. 1 (1966).

With the increased concern with slum clearance and urban renewal, housing will undoubtedly retain its important position, and may in fact become the fulcrum of the entire crusade against poverty.

The best security for civilization is the dwelling, and upon proper and becoming dwellings depends more than anything else the improvement of mankind. Such dwellings are the nursery of all domestic virtues, and without a becoming home the exercise of those virtues is impossible.<sup>3</sup>

A detailed study of all of the programs of housing and home finance assistance would be too unwieldy.<sup>4</sup> It is the purpose of this article to consider only that segment of housing referred to as "public housing." The word *only* is hardly appropriate, other than to emphasize the relative degree of constriction, because public housing involves several programs under the auspices of the Housing Assistance Agency (formerly the Public Housing Administration) and hundreds of local housing authorities. Some of the programs are remnants of the oldest and most controversial of the government efforts in the field of housing, and are progenitors of many of the more recent endeavors. Others are of more recent vintage, and are attempts to supplement or supplant portions of the older ones.

In analyzing this social experiment which, after twenty-nine years, is still seeking acceptance, this article first describes the origin and history of public housing and then offers a brief summary of how the program works. Next, the most common criticisms are surveyed and evaluated, after which new approaches to public housing are studied in an effort to see whether the program can rise to acceptance from the present nadir of its fortunes.

## I

### ORIGINS AND HISTORY OF PUBLIC HOUSING

The federal government did not enter the field of housing assistance until the First World War, except to provide housing for military personnel and certain government employees, and to appropriate small sums for the study of slum problems (as Congress did in 1892 with an authorization of \$20,000).

In 1917, the government enacted a two-part program which resulted in the construction of 5,000 single-family units plus apartments and other dwelling space during the war.<sup>5</sup> Under the Shipping Act<sup>6</sup> the Shipping Board Emergency Fleet Corporation was organized to lend money to limited-dividend corporations that would build houses

<sup>3</sup> R. FISHER, *TWENTY YEARS OF PUBLIC HOUSING* 62 (1959), quoting Benjamin Disraeli.

<sup>4</sup> See generally U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, *PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT* (1966), for a summary of the programs administered by that Department.

<sup>5</sup> U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, *WHAT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IS AND HOW IT IS ORGANIZED* 8 (1966).

<sup>6</sup> Ch. 19, 40 Stat. 438 (1918).

and other quarters for defense workers. The second part of the war effort was the United States Housing Corporation<sup>7</sup> which built housing facilities itself and realized a \$26 million net loss.<sup>8</sup> Both operations terminated at the end of the war.

The second federal effort began in 1932 when Congress, goaded by the depression, authorized loans by the Reconstruction Finance Corporation (RFC).<sup>9</sup> The RFC issued loans to limited-dividend corporations until 1933.

The National Industrial Recovery Act, one of President Roosevelt's initial attacks on the depression, created the Public Works Administration (PWA), which included a housing division.<sup>10</sup> This agency also made loans to private limited-dividend corporations. Because of the small number of acceptable applications for these funds, and because the limited-dividend corporations could not build cheaply enough to provide low-rent units for the persons whom the program was designed to benefit, PWA began constructing housing projects itself. This move was also designed to assist the President's effort to provide more employment opportunities for the millions of idle workers. In 1935, a federal district court ruled that the federal government could not use eminent domain to acquire property for low-rent housing and slum clearance.<sup>11</sup> But when, in the following year a state court held that a local government could condemn for housing projects,<sup>12</sup> PWA began encouraging local participation in the housing effort by making available loans up to seventy per cent and grants up to thirty per cent for certain public entities.<sup>13</sup>

On March 13, 1935, Senator Wagner of New York introduced a bill in Congress to establish a permanent low-rent public housing administration within the federal bureaucracy. This bill was reported out of the Committee on Education and Labor on August 2, 1937, and debated until August 6, when it was accepted by the Senate.<sup>14</sup> The New York Senator argued that the bill would stimulate business activity, would increase employment,<sup>15</sup> and would assist the local governments to eliminate slums and unsanitary tenements.

In the House of Representatives, the bill reached the floor from the Committee on Banking and Currency and ran into lengthy debates over the merits of the program,

<sup>7</sup> Act of May 16, 1918, ch. 74, 40 Stat. 550.

<sup>8</sup> R. FISHER, *supra* note 3, at 78.

<sup>9</sup> Emergency Relief and Construction Act of 1932, ch. 520, 47 Stat. 709.

<sup>10</sup> Ch. 90, tit. II, 48 Stat. 200 (1933).

<sup>11</sup> *United States v. Certain Lands in the City of Louisville*, 9 F. Supp. 137 (W.D. Ky. 1935), *aff'd*, 78 F.2d 684 (6th Cir. 1935), *petition for cert. dismissed*, 294 U.S. 735 (1936).

<sup>12</sup> *New York City Housing Authority v. Muller*, 270 N.Y. 333, 1 N.E.2d 153 (1936).

<sup>13</sup> R. FISHER, *supra* note 3, at 86-89.

<sup>14</sup> 81 CONG. REC. 7967-92, 8368-73 (1937). Senator Wagner's efforts have been oversimplified for the purposes of brevity. Actually, the Senator's first bill was not the same bill that passed both houses in 1937, because a few changes were made as the proposal wound its way through committees and the Congress in 1935, 1936, and 1937. See generally M. STRAUS & T. WEGG, *HOUSING COMES OF AGE 178-89* (1938), for a more complete history of this era of public housing.

<sup>15</sup> The argument that public housing would increase employment and stimulate business activity was probably specious in view of the fact that the PWA program had proven unsuccessful in providing the quick relief that was anticipated. See R. FISHER, *supra* note 3, at 85-87.

the ultimate costs, and an unsuccessful attempt to place the administration officials within the civil service.<sup>16</sup> Congressman Stegall of Alabama managed the legislation in the House and followed the same arguments used by Mr. Wagner. He idealistically proclaimed that the bill would abolish "the spawning places of crime and immorality"; but opponents said that the bill was "atrocious," "rank collectivism," and "government intrusion on a purely local problem."<sup>17</sup> On August 18, the bill passed the House by 274 to 86.<sup>18</sup>

After a Senate-House conference, the bill was resubmitted, and was passed on the final day of the Seventy-fifth Congress.<sup>19</sup> On September 1, 1937, the United States Housing Act became law,<sup>20</sup> representing the government's first major excursion into the field of public housing. The bill established the United States Housing Authority (USHA) within the Department of Interior, capitalized the agency with \$1 million, and authorized it to issue its bonds not to exceed \$500 million.

The USHA was transferred to the Federal Works Agency in 1939.<sup>21</sup> In 1942 the program was shifted to the National Housing Agency along with the Federal Housing Administration (FHA); and the new organization took jurisdiction over all nonfarm housing programs of the federal government.<sup>22</sup> At that time the public housing segment of the new agency acquired a new name, the Public Housing Administration (PHA). The National Housing Agency was succeeded by the Housing and Home Finance Agency in 1949<sup>23</sup> and PHA became a part of the new and expanded agency.

The final reorganization occurred in 1965 with the passage of the Housing and Urban Development Act of 1965.<sup>24</sup> The act established the Department of Housing and Urban Development. The two key agencies of the new department, PHA and FHA, were brought under direct control of the secretary, Dr. Robert Weaver, in contrast to their semi-autonomous position under the Housing and Home Finance Agency which Weaver had called "an administrative monstrosity."<sup>25</sup>

## II

### THE PROGRAM AND HOW IT WORKS<sup>26</sup>

The federal agency which now administers the public housing program is called the Housing Assistance Administration (HAA). HAA neither constructs nor

<sup>16</sup> 81 CONG. REC. 9234-94 (1937).

<sup>17</sup> N.Y. Times, Aug. 22, 1937, at 1, col. 8.

<sup>18</sup> See N.Y. Times, Aug. 19, 1937, at 1, col. 5.

<sup>19</sup> See N.Y. Times, *supra* note 17.

<sup>20</sup> Ch. 896, 50 Stat. 888 (1937).

<sup>21</sup> Reorganization Plan No. 1, 53 Stat. 1423 (1939).

<sup>22</sup> Exec. Order No. 9070, 7 Fed. Reg. 1529 (1942).

<sup>23</sup> Reorganization Plan No. 3, 61 Stat. 954 (1947).

<sup>24</sup> Pub. L. No. 89-117, 79 Stat. 451 (codified in scattered sections of 12, 15, 20, 38, 40, 42, 49 U.S.C.).

<sup>25</sup> N.Y. Times, Jan. 14, 1966, at 1, col. 1, at 32, col. 5. The other agencies within the Department are the Community Facilities Administration, the Urban Renewal Administration, and the Federal National Mortgage Association (which retains its independent status).

<sup>26</sup> Diagram showing the initial construction and operation processes are contained in appendix A.

operates housing projects itself, but assists the localities in their efforts to provide adequate housing for low-income families.

In order to avail itself of the largesse and advisory assistance of the federal government, the local governing body (*e.g.*, the city council or the board of aldermen) must adopt an ordinance creating a local housing authority. This is done pursuant to state enabling legislation.<sup>27</sup>

Upon establishing a housing authority, the local government appoints a board of commissioners which represents various interest groups in the community. The board formulates plans and policies for the authority, and appoints an executive director to conduct the day-to-day administration of the program.

When the local authority devises a plan for a housing project, it submits the plan to HAA. The federal agency then issues a "program reservation" which is an informal statement that upon completion of certain prerequisites HAA will assist in the development of the requested units.<sup>28</sup> Among the prerequisites are: approval of the project by a resolution of the local governing body, a showing of need for the particular project, a demonstration that there is a feasible plan for the relocation of families to be displaced by the project, and HAA approval of the site and basic structural concept.

The first formal accord between HAA and the local authority is the preliminary loan contract, executed to provide funds with which the local authority hires an architect and finances surveys and appraisals. A development program is produced by the authority, giving a detailed account of the plans and schedule of the project. During this stage, HAA can lend up to ninety per cent of the cost of the project.<sup>29</sup> If the loans are not needed immediately upon receipt, the local authority invests the funds in short-term securities. The development program report is a prerequisite to the annual contributions contract.

The annual contributions contract<sup>30</sup> is the agreement by which HAA promises to pay annual grants, for up to forty years, to cover capital costs of the project. The operational and maintenance expenses of the project are met by the rental income from tenants, and if there is any surplus—which there often is—it must be used to reduce the annual contribution of the next year.

After the contributions contract is executed, and all objections which HAA may have had are satisfied, the project "goes out for bids." Contractors submit bids in sealed envelopes which are opened at a public hearing and the bid prices announced. Selection of a contractor (which requires HAA approval) is announced several weeks after the hearing; the contract is awarded to the lowest responsible bidder. After the

<sup>27</sup> Every state except Utah and Wyoming has an enabling statute.

<sup>28</sup> U.S. PUBLIC HOUSING ADMINISTRATION, DEP'T OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING FACT SHEET 2 (undated) [hereinafter cited as PUBLIC HOUSING FACT SHEET].

<sup>29</sup> § 9, 42 U.S.C. § 1409 (1964).

<sup>30</sup> § 10, 42 U.S.C. § 1410 (1964, Supp. II, 1965-66).

contractor posts a bond with surety, the local authority issues an "order to proceed," and construction is started. The local authority deals only with the prime contractor—the bidder—who in turn purchases his own materials and supplies and hires subcontractors. The contractor is responsible for clearing the site, grading,<sup>31</sup> construction, and installation of facilities.<sup>32</sup> He must submit monthly reports which are transmitted to HAA for inspection, and any changes must await approval by HAA of a "change order."

During the early stages of the construction, the local authority will issue short-term notes to retire all of the federal loans, with interest. The notes are tax-exempt, low-interest securities, guaranteed by the annual contributions contract. Such notes usually mature within three to six months of issuance, and are paid off by reissues, each issue secured by the contributions contract. In effect, the local authority is "[translating] federal aid into going low-rent projects and *Aaa* credit rating."<sup>33</sup>

When the project is about eighty per cent completed, the authority issues its permanent bonds, usually forty-year securities bearing tax-exempt interest at three per cent to 4.5 per cent. Despite the relatively low yields, these bonds are attractive investments, especially to the institutional investors, because they are backed by the federal commitment.

The local authority sets the rental and income limits (with HAA approval), handles tenant selection (pursuant to HAA guidelines), and then enters the project management phase. A manager is employed, who will be compensated from funds derived from the monthly rentals.

### III

#### THE DISILLUSIONMENT

Almost three decades after the public housing program was inaugurated, few people are willing to support the effort as it now stands. Even those who originally championed the program have since defected and now voice strong criticism.

In 1937 those who opposed the program most vigorously could be divided into two groups: (1) the interest groups—builders, suppliers, mortgage lenders, and real estate associations—who feared that government intervention would disrupt the industry;<sup>34</sup> and (2) conservatives, who opposed the cost and contended that government-subsidized housing would be socialistic, unfair competition with private enterprise, and an

<sup>31</sup> However, if the housing authority is working with a local urban development agency, the development agency may have already purchased, cleared, and graded the land.

<sup>32</sup> The contractor is not responsible for supplying cabinets, window shades, appliances, and so forth. These items are purchased through government contracts by the local authority.

<sup>33</sup> R. FISHER, *supra* note 3, at 113.

<sup>34</sup> *Id.* at 21; Mulvihill, *Problems in the Management of Public Housing*, 35 TEMP. L.Q. 163, 165 (1962).

unwarranted subsidy to families who "have no more right to a free new home than to a free new car."<sup>35</sup>

But today, the critics are far greater in number, and represent more than interest groups and conservatives. The new criticism represents the disillusionment of liberals who probably expected too much from the program. As one student of the slums in New York City has said:<sup>36</sup>

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

Mrs. Catherine Bauer, who helped draft the 1937 act, is an example of ardent supporter turned critic. In a 1957 article,<sup>37</sup> Mrs. Bauer explained that public housing is not like most social experiments in a democratic society. Usually, she said, such experiments begin as an abstract idea, frequently in the atmosphere of theoretical debate, and then either die off or are modified and adapted to actual conditions and become an integral part of the ordinary scheme of things. "Public housing, after more than two decades, still drags along in a kind of limbo, continuously controversial, not dead but never more than half alive."<sup>38</sup>

Lawrence Friedman has attempted to explain why the efforts of twenty-nine years have wrought such controversial products.<sup>39</sup> The program began, he contends, as an effort to assist the submerged middle class, those respectable, honest workers who were unfortunately caught in the depression and needed only a stepping stone to regain their rightful income level. Enacted with this attitude, there was little opposition; most of the early projects were low-rise rowhouses, blending fairly well with their surroundings, and often suburban in location and design. But with the end of the Second World War and the need to prime the pumps to sustain the prosperity of the war years, the government focused its attention on assistance for veterans and the middle class (through tax breaks, insurance, and other subsidies). The fabled flight to the suburbs began in earnest. With this dramatic shift in emphasis, public housing languished: the projects were boxed in the central parts of the cities because the suburbs were reserved for the subdivisions, the projects inherited the "certainly, indisputably and irreversibly poor," and thus the program lost its appeal. Urban land was difficult to find and very expensive when available; thus the vast, high-rise edifices were required. And since the occupants were not respectable, submerged, middle-

<sup>35</sup> EDITORS OF FORTUNE MAGAZINE, *THE EXPLODING METROPOLIS* 105-06 (1957) [hereinafter cited as FORTUNE EDITORS].

<sup>36</sup> *Id.* at 106.

<sup>37</sup> Bauer, *The Dreary Deadlock of Public Housing*, ARCHITECTURAL FORUM, May 1957, at 140.

<sup>38</sup> *Id.*

<sup>39</sup> Friedman, *Public Housing and the Poor: An Overview*, 54 CALIF. L. REV. 642 (1966).

class families, the projects could be built without thought of aesthetics or amenities and ineptly run, without much chance of outcry.<sup>40</sup>

Whatever the historical reasons, there is no denying that today the public housing program is subject to many quite plausible criticisms. The most prevalent of these are examined more closely below.

#### IV

##### THE CRITICISMS: ANALYSES AND EVALUATIONS

###### A. Design

The object of most controversy in the program is probably the physical appearance of the public housing structures. Architects and city planners recoil at the sight of the projects, money-conscious politicians refer to them as "barracks" when opposing expansion of the program, the occupants themselves are apparently not pleased with the surroundings, and the liberals who fight for better housing tend to employ the art of evasion to escape reference to design when praising the products of the program.

###### 1. *Role of the Architect*

Project planning and design are responsibilities of the local housing authority. Once an authority decides to construct a project, it retains the architect, cooperates with him, and compensates him for his services. The federal government, however, is not a distant benefactor. Throughout the process, the low-rent housing manual of HAA—a dictionary-thick set of regulations and standards—must be consulted for minimum standards, maximum allowances, cost limitations, room size, required facilities, and so on. And when an issue is unclear or the architect wishes an administrative variance, consultation and negotiation with the HAA regional office are necessary.

An architect who has designed several New England public housing projects describes the process as follows.<sup>41</sup> First, the architect is retained by the local authority for a feasibility study. He is told the number of units that are desired and the site of the proposed project. After the study, any revisions in the authority's original plan are made, and the revised plan is sent to HAA regional headquarters for approval. If approved without further changes, the architect next draws up a very detailed preliminary work (the federal manual requires greater specificity than a designer would ordinarily use for a private project). This drawing, in turn, is screened by the regional office which may reject it, approve it, or approve it with modifications. If the architect has attempted to employ ingenuity and thus has deviated from the traditional patterns, the regional staff of accountants and draftsmen may balk; if, however, the regional

<sup>40</sup> This analysis by Professor Friedman needs further investigation. Several persons with whom I have spoken suggest a similar historical factor in the public housing program, but this theory does not seem to be substantiated in the literature.

<sup>41</sup> Interview with Carl Granbery, architect, Nov. 1, 1966.



office is attuned to the current emphasis on aesthetics, a conference may be called at which the architect and the local authority officials will be expected to support the sketches with a persuasive argument and a good-faith showing of confidence in the plan, after which approval will be given. The architect then produces a "working drawing" to be used by the contractor during construction. During the construction process, the architect acts as the housing authority's "agent" in seeing that the contractor abides by the plans. Any deviation requires approval of the architect, the housing authority, and HAA, and involves complicated "change order" procedures that can take as long as a working day to prepare and transmit.

## 2. *Design Framework*

In designing a public housing project, an architect is confronted with the same problems that face any architect designing a large urban development; but the problems are exacerbated by the miles of red tape and the already-formulated federal standards.

There are three considerations in design of a project:<sup>42</sup>

- (1) Design of the units. This step concerns the arrangement of the rooms within the unit, the shapes and sizes of the rooms, placement of doors and windows, and location of interior facilities. In the jargon of the architect, most of the facts in this consideration are "given" in public housing projects. The architect has little room to maneuver with new formulae and innovation because of the HAA regulations.
- (2) Design of the building. This involves the lay-out of the various units within the structure, the location of stairways, elevators and corridors, and the design of the exterior. Again, this is largely a "given" in public housing, because HAA wants to cut sizes and costs as much as possible on each structure—a result of Congress's annual demands for production of more units per amounts appropriated. This attitude requires a certain size limitation and a certain density within the structures, factors that combine with cost limitation to give the architect little freedom.
- (3) Siting. This aspect of architecture is concerned with the arrangement of the buildings on the project site, the landscaping, and the relationship of the project to "the outside world." The architect here has some degree of latitude and can often apply his imagination to contribute to the appearance of the project. But even so, his freedom is not unbounded. Playgrounds must be provided, parking facilities sufficient to accommodate about one vehicle per unit are necessary, and only the minimum amount of trees, shrubs and ornaments can be financed.

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<sup>42</sup> Interview with Bruce Adams, Associate Professor, School of Architecture, Yale University, Nov. 1, 1966.

### 3. *High Rise and High Density*

Some critics presume that the root of the evil in public housing design is the high density. But as all contemporary city planners and architects would confirm, the principle of high-rise, high-density living is finding acceptance. The concept has swept Europe and England, particularly in those areas where land is scarce; and any Sunday edition of the *New York Times* illustrates the growing attraction which the concept is receiving in large urban areas of this country.<sup>43</sup>

This modern concept cannot, however, be applied to low-cost housing without becoming distorted. It is suitable for middle- and upper-income families for several reasons: (1) the term "high density," as used in this article, refers to number of families per structure, and in the upper income brackets the families can take advantage of their mobility to frequently break the monotony of the acres of concrete; (2) since the rents are higher, the projects can be aesthetically appealing and the facilities can be comparatively luxurious; and (3) there is no stigma attached to the developments.<sup>44</sup>

Thus it is not the concept of high density and high rise that makes the projects "drab, ugly blocks of cement standing like soldiers,"<sup>45</sup> but rather a combination of these factors with the low-cost feature and the stigma attached to living in the projects.

### 4. *Proposed Design Reforms*

Many proposals for change have been offered by designers and planners in recent years; they range from suggestions of minor variances to radical departures from the present program.

Albert Mayer, a New York City architect, lamented, "How can you expect a positive or creative individual or social response to such a grim, unimaginative third-ratedness," and then proposed four alterations in the design concept.<sup>46</sup> He suggested that more open space be provided in the projects to provide sunlight and simple beauty; that more lighting facilities be made available so that the projects can be safer and more suitable for nighttime recreational opportunities; that the acres of asphalt be swept away with a revision in the concepts of parking, even if it requires putting the vehicles away from the immediate vicinity or going underground; and that there be a mingling of high-rise towers with lower structures in the same project to provide diversity and more sunlight but at the same time utilizing the land space. As for the interior of the units, Mr. Mayer concluded that the present condition was

<sup>43</sup> See generally R. KATZ, *INTENSITY OF DEVELOPMENT AND LIVEABILITY OF MULTI-FAMILY HOUSING PROJECTS* (U.S. Federal Housing Administration, Technical Study TS 7.14, 1963); R. JENSEN, *HIGH DENSITY LIVING* (1966).

<sup>44</sup> Interview with Bruce Adams, *supra* note 42.

<sup>45</sup> Friedman, *supra* note 39, at 652.

<sup>46</sup> *Public Housing Design*, 20 *J. HOUSING* 133 (1963), quoting Albert Mayer.

satisfactory but warned that cost limitations should not be so low and inflexible as to prohibit serviceable bathroom and kitchen facilities.

Mrs. Bauer's 1957 attack described the program as the "bare bones of . . . New Deal theory" not yet "covered with the solid flesh of present-day reality."<sup>47</sup> She criticized the interior design as deficient in space and in privacy; she said that the projects were too large, with high densities and few amenities, thus fostering the "island concept" which reinforced a "charity stigma." While most Americans prefer one-story dwellings, she observed, public housing continues to be high-rise. Her proposals for change recognized the need for more public housing, but focused on the possibility of abolishing the public landlord concept and allowing private enterprise to build the projects, with rents subsidized by the government. A group of prominent architects, sociologists, planners and financiers echoed Mrs. Bauer's criticisms and made suggestions of their own in the next issue of *Architectural Forum*.<sup>48</sup>

James Rouse, a mortgage banker, advocated a halt to the high-rise projects and concentration on the small, scattered structures. A New York social worker, Ellen Lurie, proposed an end to the public landlord and approved Mrs. Bauer's suggestion that private sponsors should build apartment houses with the tenant's rents subsidized by the government. She warned that the private projects would be no better, however, unless consideration is given to livability. To make her point, she queried: How can a mother manage five kids from a twelfth-floor window? William Wheaton, professor of city planning at the University of Pennsylvania, suggested that the projects be eliminated and replaced with rowhouses, garden apartments, and scattered units, so as to blend with the community.

Charles Abrams, noted author and student of urban problems, emphasized the need for ownership. The poor look to ownership of property as security and prestige just as do other Americans, he pointed out. He recommended tenant co-operatives, and loans to low-income families so that they could buy modest houses in the suburbs at 0-3 per cent interest. In a more poignant vein, Henry Churchill, architect, proclaimed that the word "project" should be declared unconstitutional and stricken from the dictionary. He favored abolition of all local housing authorities and transferral of their responsibilities to the municipal agencies concerned with physical change in the community. He, too, advocated private construction of apartments with government subsidy.

Some observers have suggested that the best way to improve the design of the cities is to concentrate on construction for middle-class homes, and allow the currently unpopular "filter down" theory to operate for the benefit of the low-income families.<sup>49</sup> Mrs. Bauer, on the other hand, has contended that this theory can-

<sup>47</sup> Bauer, *supra* note 37.

<sup>48</sup> *The Dreary Deadlock of Public Housing—How to Break It*, ARCHITECTURAL FORUM, June 1957, at 139.

<sup>49</sup> Interview with Bruce Adams, *supra* note 42. Adams referred to this theory as an alternative expounded by many persons, but did not propose it himself.

not help "within a thousand years" because of the constant increase in urban growth, the continuing low-income status of many persons, racial discrimination, and the fact that much slum housing is so intolerable that it should be torn down immediately.<sup>50</sup> Secretary Weaver has explained that "by the time high-priced housing has depreciated enough to be within the financial reach of the poor, it is pretty bad housing, either in terms of its physical condition or its overcrowded pattern of occupancy."<sup>51</sup>

## B. Isolation and Segregation

A frequent indictment is that public housing sets low-income families apart from the rest of the community instead of helping these people break through the barriers which the slums have built between them and the middle-class subculture. And since most often the low-income bracket is composed largely of nonwhites, vehement protests from civil rights advocates assert that the traditional large-project approach to public housing segregates the nonwhites from the white community at a time when national policy is quite the contrary.

Although the problems of social isolation of the poor and racial segregation are too often inextricably intertwined, for purposes of this article the two are considered separately.

### I. Isolation

One of the causes of disillusionment with the program is the way in which it tends to herd low-income families into institutionalized settings, separating them from the rest of society. It was once thought that decent housing would automatically transform the slum-dwellers into ideal citizens and social integration would take care of itself. But the vast, high-rise projects with their cold and impersonal appearances "constitute a continuing, humiliating reminder that occupants are wards of the state."<sup>52</sup> The reminder is not only obvious to the occupants—any observant passer-by can recognize the projects for what they are.

An example of this enclave-like project is Pruitt-Igoe of St. Louis. Built in 1954 at a cost of \$36.8 million, this monstrosity houses 10,000 persons in several eleven-story buildings. Even the much-needed \$7 million rejuvenation of the project, now in progress, will further the isolation with eleven picnic areas, thirteen playgrounds, a beer garden, a theatre, and a community center.<sup>53</sup>

This situation is repeated time and again in city after city, especially where land is scarce and the housing shortage is acute. Even in New Haven, a city which has been praised for its redevelopment efforts, the main low-rent project is a drab looking area of town where even the street patterns contribute to the detachment.

<sup>50</sup> Bauer, *supra* note 37.

<sup>51</sup> R. WEAVER, *DILEMMAS OF URBAN AMERICA* 102 (1965).

<sup>52</sup> FORTUNE EDITORS 107.

<sup>53</sup> Wall Street Journal, Sept. 26, 1966, at 18, col. 4.

The recent Logue Report on New York City's urban problems attacked the isolation in the city's projects. It charged that the large-scale projects "have concentrated low-income families in isolated areas and failed to blend with or complement existing neighborhoods."<sup>54</sup>

Largely because of the criticisms of the institutionalized setting which the project presents, HAA no longer favors the large-scale project; one official calls it "a thing of the past."<sup>55</sup> Although this may be wishful thinking, particularly since many cities continue to erect the structures, emphasis seems to be shifting to new approaches, when possible; the most promising of these new approaches are discussed later in this article.

One proposal which is not presently being tested, except in projects for the elderly, is for dispersal of new low-rent housing projects in smaller apartments throughout the community. This would eliminate the detachment and institutionalized atmosphere of the projects, and would also improve design; but there are several very difficult problems.

First, the cost per unit rises appreciably with a diminution of units per project, so that such a plan, if submitted to HAA, would probably be rejected as too expensive. It has been argued in rebuttal that funds already appropriated but not expended by the local authorities could be used in accord with such an approach. Another argument goes further and asserts that Congress should loosen its grip on the public purse strings and allocate as much as ten per cent of the total national income to housing.<sup>56</sup>

Second, myriad small projects cannot house as many families as a couple of well-located large projects. This is a logical criticism, particularly as to those areas which are destroying by slum clearance and urban renewal whatever low-income housing does exist. On the other hand, it could be said that perhaps the emphasis should shift from an effort at wholesale rehousing to concentration on fewer families—providing new housing for a few persons at a time but providing the services and facilities in such a manner that they can have the opportunity to break the social barrier.

A third objection is that land is simply unavailable, except at very high prices, in those neighborhoods into which the proponents of this approach wish to send the low-income families. Where land is available in large parcels sufficient to accommodate three- or four-unit projects, the expense, the zoning and building code regulations, and the vigorous opposition from the residents of the invaded neighborhood would pose grave problems. Although there are those who would overlook the

<sup>54</sup> INSTITUTE OF PUBLIC ADMINISTRATION, REPORT OF STUDY GROUP 12 (E. Logue, Chairman, Sept. 1966).

<sup>55</sup> McGuire, *Rehabilitation for Public Housing*, 22 J. HOUSING 595, 596 (1965).

<sup>56</sup> See Lynd, *Urban Renewal—For Whom?*, in NEW PERSPECTIVES ON POVERTY 104 (A. Shostak & W. Gomberg eds. 1965). This view was reiterated in an interview, Nov. 8, 1966.

cost factor, a different view would be taken by the taxpayer—who would ask why he is supplying suburban living for the poor when he can hardly afford it himself. The opposition forthcoming from the neighbors would be to a great extent justified: land values would go down, there is strong evidence that the project property would not be kept presentable, and the single-family zoning pattern would be cracked. In fact, it is questionable whether such a move would be of social value to the tenants, unless only those well-adjusted, responsible families were chosen, thereby leaving the projects to the “rock-bottom poor.”<sup>57</sup>

## 2. *The Race Problem*

When discussing the race issue in public housing, there are two factors to consider: tenant selection and site selection. The manner in which local authorities select applicants for particular projects obviously has a direct bearing on the racial composition of the projects. The way in which local authorities select sites for projects also has a bearing on racial composition. If the units are built in an all-white neighborhood, the project will probably be all white. If the project is located in a nonwhite area—as most of them are—the project will probably be exclusively or predominantly nonwhite.

When the Housing Act was enacted, little attention was given to racial composition of the projects. The separate-but-equal philosophy prevailed, and enjoyed judicial sanction. As late as 1949, an effort to ban discrimination in housing projects was defeated in the Senate, 49-31.<sup>58</sup> Even after the United States Supreme Court removed official imprimatur from the old separate-but-equal doctrine in 1954,<sup>59</sup> the Public Housing Administration did little to apply the mandate to the field of public housing. Agitation was avoided in an effort to retain the support of southern congressmen whose votes were needed to prevent the program from being swept away by the tide of disenchantment that prevailed in the 1950s.<sup>60</sup>

In 1962, Executive Order No. 11,063<sup>61</sup> ordered an end to racial discrimination in tenant selection; a provision to this effect was to be included in all annual contributions contracts after November 20, 1962.

Title VI of the Civil Rights Act of 1964<sup>62</sup> and the PHA regulations adopted pursuant thereto make it clear that all funds disbursed by PHA must have non-discrimination features attached, regardless of the date of the contract. Some writers say that these provisions were aimed as much at site selection as at tenant selection.<sup>63</sup>

<sup>57</sup> Friedman, *supra* note 39, at 667.

<sup>58</sup> See R. FISHER, *supra* note 3, at 260.

<sup>59</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>60</sup> See generally Comment, *The Public Housing Administration and Discrimination in Federally Assisted Low-Rent Housing*, 64 MICH. L. REV. 871 (1966), for a historical study of discrimination in public housing.

<sup>61</sup> 3 C.F.R. 261 (Supp. 1962), 42 U.S.C. § 1982 (1964).

<sup>62</sup> 42 U.S.C. §§ 2000d to 2000d-4 (1964).

<sup>63</sup> E.g., Comment, *supra* note 60.

At present, the federal agency approves of a local authority's policies if based on "free choice." This policy permits tenants to go to any project they wish so long as there is a vacancy. On paper the plan is free from the onus of discrimination, since nonwhites can go to "white" projects and vice versa. Some local authorities, however, have adopted more positive measures of integration due to local pressures.

The New York City Housing Authority has gone through several gyrations trying to meet the demands of civil rights advocates and at the same time to maintain a realistic approach to the housing problem. Before 1960, the city authority followed the free choice policy, but many leaders in Manhattan complained that this produced racial imbalance in the projects since whites were always selecting all-white projects, leaving the nonwhites in predominantly nonwhite projects. Thus, in August of 1960 the authority adopted a plan whereby all vacancies in the projects which were largely composed of whites would be held for nonwhites, in an effort to produce racial balance. After four years, however, this measure met ironically with disapproval of Harlem leaders, who claimed that the vacancies in Harlem projects were being held for outsiders (whites) when they should be filled as quickly as possible by Harlem slumdweller. With 85,000 applicants per year and only 6,000 available units, the denunciations of the "holding" policy were valid. So, in January of 1964 the authority announced that its "holding" policy had been abandoned and it would fill vacancies on a first-come-first-served basis.<sup>64</sup>

Jersey City, meanwhile, was adopting a plan whereby all vacancies in predominantly Negro projects would be filled two-for-one by white applicants and vice versa, and that anyone who refused to accept an assignment would be pushed to the bottom of the project preference list.<sup>65</sup>

There are those who think that any concentrated effort intentionally to integrate housing projects is an abuse of freedom of association, and that the only fair method of tenant selection is that of free choice. One writer has contended that the primary objective of the program should be slum clearance and decent housing, not racial integration, and that forced integration is "social compulsion manipulated according to plans of self-appointed social engineers."<sup>66</sup>

The site selection issue is even more difficult than the tenant selection problem. Since one purpose of the program is to eliminate slums, most projects are built in or near the blighted areas of the central part of the city, which are usually heavily non-white areas. Obviously such projects will not have a balanced racial composition unless the local authority brings in persons from other neighborhoods under a compulsory placement plan such as that which lost favor with all sides in New York City.

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<sup>64</sup> N.Y. Times, Jan. 27, 1964, at 16, col. 7.

<sup>65</sup> N.Y. Times, June 19, 1964, at 12, col. 1.

<sup>66</sup> Avins, *Anti-Discrimination Legislation as an Infringement on Freedom of Choice*, 6 N.Y.L.F. 13, 37 (1960).

The scattered-site approach could solve many of the racial problems in public housing; but all of the difficulties of that approach would still be present, accentuated by the race issue.

### C. Problems of Management

A public housing project cannot be managed like a private middle-class apartment house. Discipline must be maintained to preserve the reputation of the program and to prevent the tenants from living in terror. The central problem seems to be: How can a project be effectively managed with the regulations, policing techniques, and necessary disciplinary demands, but yet provide an atmosphere of minimum interference, self-improvement, and responsibility.

To abolish the large projects would certainly eliminate some of the managerial problems, but since the existing structures are expected to last for a long time, and new ones are springing up every year despite the disdain for them, there must be some consideration of solutions to the problems of management in the projects.

#### 1. *Income and Rent Limits*

One of the chief complaints, usually categorized as a management problem—although it could be a topic of discussion in itself—is the income limit rule, which sets a limit as to how much a tenant can earn before he must leave the project. To be eligible for admission to a project, an applicant must be within the statutory definition of “low-income family.”<sup>87</sup> Formerly, this was set as one whose income did not exceed five times the annual rental of the unit. Since 1959 this statutory definition has been abolished and the local authorities set their own income limits for admittance, with HAA approval. The local authorities are still following the old statutory standard, with some flexibility. The rentals, on the other hand, are governed by section 14(7) of the Act,<sup>88</sup> which provides that there must be a gap of at least twenty per cent between the upper rental level for admission into a public housing project and the lowest rents at which private enterprise is supplying a substantial amount of adequate housing in the area. Thus, an applicant whose income is \$300 per month would pay a monthly rental of about \$60 (1/5 of 300). If there is at least a twenty per cent gap between this amount (\$60) and the lowest rents at which private enterprise is providing a substantial amount of adequate housing, the applicant is eligible for public housing. Once admitted, his rental will increase with any increase in income. Once the tenant’s income has increased beyond the approved maximum income limits for continued occupancy (*i.e.*, once the tenant’s income is so high that his monthly rentals are more than four-fifths the amount of rent at which private enterprise is providing housing), the tenant must be evicted.

This rule has been roundly criticized. Charles Abrams, for example, says,<sup>89</sup>

<sup>87</sup> § 2(2), 42 U.S.C. § 1402(2) (Supp. II, 1965-66).

<sup>88</sup> 42 U.S.C. § 1414(7) (1964).

<sup>89</sup> C. ABRAMS, *THE CITY IS THE FRONTIER* 37 (1965).



Income limitations in public housing have brought no end of troubles. Some tenants have concealed their incomes, some have refused to work overtime, and some have even turned down better-paying jobs. A child reaching working age may disqualify the family for continued occupancy unless he moves out. Where the American family normally boasts of financial improvement, a public housing tenant may find it the prelude to an eviction notice. The more successful occupants who could give leadership to the community are usually those forced to go. . . . Departure of the better wage earners, white and Negro, also tends to stamp the project as the haven of the poor.

Since there exists a twenty per cent gap between what the tenant will be paying in rent and what he would have to pay for an adequate dwelling on the open market, an evicted tenant is often tossed back into the slums or at least into substandard housing.

As amended in 1961, the Housing Act provides that local authorities must require a tenant whose income has increased beyond the approved maximum income limit to leave the project "*unless* the public housing agency [the local authority] determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so."<sup>70</sup> It would seem that this amendment could be used by the local authorities in a flexible manner to permit a tenant to stay when his income has increased above the prescribed limit but has not risen so high as to elevate him above the twenty per cent gap into an income bracket that would allow him to obtain adequate housing with a reasonable percentage of his earnings.

There are several reasons why these persons should be allowed to remain in the project. Although they may not be the pillars of the community, the very fact that their incomes have risen above limit illustrates that they are to some degree at least conscientiously attempting to improve themselves. Thus, they can provide some measure of socioeconomic integration; and perhaps their ambitions and desires to break the cycle of dependency can influence some of the unmotivated crowd which inevitably will be a part of the project population. Another reason for allowing them to remain is that such a policy would provide a degree of permanency or stabilization for the poor; such an attitude is needed in the projects to give the tenants a desire to improve the appearance of the place and to participate in the social life, such as it is, of the community. A third reason is purely economic. Since the annual rental income carries the operational and maintenance expenses of the project, the local authority should want to retain these families paying higher rents. The higher rent payments help to make up for the very low rents which some families pay and thus aid many marginal projects to remain solvent. Finally, since those persons whose incomes will usually rise above the limit are white, a rigid

<sup>70</sup> § 10(g)(3), 42 U.S.C. § 1410(g)(3) (1964). (Emphasis added.)

income limit policy could tip the delicate scales and thus cause the project to become a subsidized ghetto for the lowest-income nonwhites in the community.<sup>71</sup>

There is some evidence that many, if not most, local housing authorities are now more flexible in their application of the income limit rule. There are several ways of accomplishing this flexibility. The local authority can interpret liberally the new provision in section 10(g)(3) and allow the family to remain in the project unless it can find adequate housing within its financial means in the private market. Or the local authority can juggle the figures in determining the tenant's "income." Since the determinative income is not gross income, the authority can play with several types of deductions and exemptions. Also, the manner in which the local authority considers assets other than income differs from place to place.<sup>72</sup> For example, a southern authority allows "administrative exemptions" for child care in cases of members of the Armed Forces and for a portion of the income of a minor. In that city, a family of four who is admitted to the project with a net income of \$3400 may continue occupancy at least until its net income is \$4200.<sup>73</sup> There is evidence that managers "go along" with high paid tenants in other cities, even for a year or two; a Chicago manager has said that these are "good" tenants whom he does not want to lose.<sup>74</sup>

Many critics have been arguing for some time that one way to cure the harshness of the income limit would be to allow the local authority to sell the unit to a tenant when his rent payment becomes so high as to be sufficient to cover debt service on the unit.<sup>75</sup> Charles Abrams has suggested that HAA consider tenant co-operatives.<sup>76</sup>

The Housing and Urban Development Act of 1965 amended the Housing Act to incorporate some of these proposals to a certain extent. Section 15(9) of the Act now provides that a local authority may permit a tenant to acquire a dwelling unit within a project as long as it is "suitable by reason of its detached or semidetached construction for sale and for occupancy by such purchaser or a member or members of his family."<sup>77</sup> Although the new provision would seem of no value to those families living in the high-rise projects, since by no stretch of the imagination could those units be described as "detached" or "semidetached," the enactment could benefit occupants of triplexes and quadriplexes and those persons in the projects for the elderly.

<sup>71</sup> C. ABRAMS, *supra* note 69; Friedman, *supra* note 39, at 659.

<sup>72</sup> Mulvihill, *supra* note 34, at 182.

<sup>73</sup> Letter from the office of Frederic Fay, Executive Director, Richmond Housing and Redevelopment Authority, Richmond, Virginia, to the author, Oct. 1966.

<sup>74</sup> Friedman, *supra* note 39, at 664.

<sup>75</sup> E.g., *The Dreary Deadlock of Public Housing—How to Break It*, ARCHITECTURAL FORUM, June 1957, at 139.

<sup>76</sup> Discussed at p. 500 *supra*.

<sup>77</sup> 42 U.S.C. 1415(9) (Supp. II, 1965-66). S. 2343, 90th Cong., 1st Sess. § 1 (1967), now pending in the Senate Committee on Banking and Currency, was introduced on August 24, 1967, by Senator Tydings and Senator Mondale to amend section 15(9) of the Act. This bill would permit a tenant to acquire a dwelling unit in *any* project, and to make monthly payments to the agency sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value of the unit at time of purchase, in not more than forty years.

## 2. *Tenant Discipline*

Some observers think that it was the postwar emphasis on government programs for the middle-class that left the housing projects to the permanently poor.<sup>78</sup> Whether or not these programs are the proximate cause, it is evident today that a chief characteristic of too many projects is the number of chronically unemployed, the alcoholics and addicts, the unmarried women with children, and the police cases. This less-than-desirable set of circumstances presents the housing officials with serious management problems. It is reported, further, that the move-out rate for public housing tenants is one out of four per year, with a large number of these families apparently leaving because of the inability of the housing authority to deal with the problem of misfit families.<sup>79</sup>

The family with no male head is particularly troublesome. In the case of a woman with several children by different fathers, officials realize that the welfare and reputation of the project must be given as much, or more, consideration than the indigence of the family in question. One housing official recalled for this writer a recent case in which municipal social workers were attempting to gain admittance to a housing project for such a family. The official felt that, despite the unfortunate financial condition of the family, it would be detrimental to the project to allow this family into the project. New Bern, North Carolina, has adopted a rule calling for eviction of any tenant to whom an illegitimate child is born during occupancy,<sup>80</sup> and officials in Chicago and Cincinnati, among others, have formulated similar policies.<sup>81</sup>

## 3. *Building Maintenance*

Vandalism and filth pose other problems for those in charge of management. It is said that vandalism in New York City costs, in some years, as much as \$40,000 per project.<sup>82</sup> Chicago reports that in some years one fourth of all federal assistance to the local authority is used to cover the costs of vandalism, waste, mismanagement and union featherbedding.<sup>83</sup> In the Pruitt-Igoe project in St. Louis<sup>84</sup> much of the \$7 million now being spent on renovation will be used to improve the lighting in the stairs and corridors to lessen crime, modernize the elevators to decrease the number of muggings and sexual assaults, install break-proof ornaments and fixtures to protect them against vandalism, and enclose light bulbs to prevent the constant intentional breakage. At present, the St. Louis authority spends \$91,000 per year for guard service to supplement local police efforts at the project.<sup>85</sup>

<sup>78</sup> E.g., Friedman, *supra* note 39.

<sup>79</sup> Mulvihill, *supra* note 34, at 174-75.

<sup>80</sup> Friedman, *supra* note 39, at 658.

<sup>81</sup> Wall Street Journal, April 10, 1958, at 1, col. 8, at 19, col. 2.

<sup>82</sup> Mulvihill, *supra* note 34, at 179.

<sup>83</sup> Wall Street Journal, *supra* note 81.

<sup>84</sup> Discussed at p. 501 *supra*.

<sup>85</sup> Wall Street Journal, Sept. 26, 1966, at 18, col. 4.

A costly maintenance problem is featherbedding. In Chicago, for example, it has been reported that union pressures require that electricians install light bulbs, and carpenters replace screws in brackets. The removal of a hot water heater requires a pipefitter to disconnect the hot water pipe and a plumber to disconnect the cold water pipe. In one Chicago project a survey showed that thirteen janitors working eight hours a day were doing work that should require only five janitors working four hours a day.<sup>86</sup>

In a large operation, such as that conducted by the New York City Housing Authority where \$48 million has been spent on painting contracts in the last ten years, corruption can be costly. A recent scandal in Manhattan involved a union official and several housing officials, among others, and led to indictments for rigged bidding and bribery.<sup>87</sup>

#### D. Costs

Public housing is expensive. Outlays have thus far exceeded a billion dollars, most of which has been paid for by the nation's taxpayers.<sup>88</sup>

The loan contracts that obligate the federal government to lend money to local authorities in the process of construction do not impose upon taxpayers. The loans are repaid by the local authorities, with interest, when they issue their first short-term notes.

The annual contributions contracts, however, obligate the federal government, over a period of up to forty years, in a way that does affect the taxpayer's pocketbook. This contract is an agreement by which HAA promises to pay annual grants to the local housing authority to cover the capital costs of the project. The Housing Act provides, "The faith of the United States is solemnly pledged to the payment of all annual contributions contracted for . . . and there is hereby authorized to be appropriated in each fiscal year . . . the amounts necessary to provide for such payments."<sup>89</sup>

Once Congress authorizes HAA to sign annual contributions contracts for a given number of units, it is, in effect, binding future Congresses to appropriate enough money to meet the capital expenses of the units. Instead of each project costing the government one large lump sum upon construction, the authority receives relatively smaller annual grants toward capital costs over a period of years, with no visible increase in the public debt at that point.<sup>90</sup>

These contributions contracts are also used as security for the notes and bonds

<sup>86</sup> Wall Street Journal, *supra* note 81.

<sup>87</sup> N.Y. Times, Oct. 19, 1966, at 1, col. 8.

<sup>88</sup> In 1957, it was estimated that costs had exceeded \$626 million to that point. R. FISHER, *supra* note 3, at 126. The figure in the text is obtained by adding the authorizations from 1957 to 1966 to that amount.

<sup>89</sup> § 10(e), 42 U.S.C. §1410(e) (Supp. II, 1965-66).

<sup>90</sup> R. FISHER, *supra* note 3, at 127.

which the local authorities issue. If a local authority should default, the federal government would meet the principal and interest payments on these obligations, paying the bondholders directly. But this arrangement imposes little additional expense to the federal government; it only pledges to bondholders a sum which has already been pledged to the local authority.

The first authorization under the 1937 act was for annual contributions contracts aggregating \$5 million for the first year and \$7.5 million for each of the next two years.<sup>91</sup> Through the years Congress has repeatedly raised the authorizations.<sup>92</sup> By 1965, in contrast to the 1937 legislation, the authorization was for an increase to \$47 million per year over a four-year period.<sup>93</sup>

Costs to the local government are slight. Although the local governing body must agree to exempt the projects from taxation if federal subsidies are to be forthcoming, the local authority may be required by the local government to make payments in lieu of taxes equal to ten per cent of the annual rental income of the project.<sup>94</sup> This usually provides more income for the local government since the projects are often built on sites where slum tenements formerly stood or on vacant land. On the other hand, there may be a hidden cost involved, since the space occupied by the project could some day have been used by an industrial complex.

Another hidden cost to local government may exist in the competition that local authority bonds provide for municipal bonds. Both are long-term, low-interest, tax-exempt obligations. It would seem, however, that authority bond issues would hardly hinder municipal bond sales since there is, at least for the present time, a sufficient market for both.

Many think that public housing is inordinately expensive. It has been said that the capital costs in big projects, which must be met with the annual contributions from the federal government, run as high as \$13,000 to \$20,000 per unit.<sup>95</sup> For this price the government could buy houses in the suburbs for the poor and turn the family free from the many annoyances of the projects. Charles Abrams has proposed something similar.<sup>96</sup> Whether this approach is advisable is debatable. It would be in direct competition with the private homebuilders and realty companies, a situation which the government has consistently sought to avoid. The many problems associated with scattered-site housing could be reiterated to rebut the argument for suburban houses. And consideration should also be given to the tenants; they may not be able to afford such a program, since they would be left with the expenses of

<sup>91</sup> United States Housing Act of 1937, ch. 896, § 10(e), 50 Stat. 892.

<sup>92</sup> See generally HOUSE COMM. ON BANKING AND CURRENCY, 89TH CONG., 1ST SESS., BASIC LAWS AND AUTHORITIES ON HOUSING AND URBAN DEVELOPMENT 169 n.24 (Comm. Print 1965), for a chronological listing of congressional authorizations.

<sup>93</sup> § 10(e), 42 U.S.C. § 1410(e) (Supp. II, 1965-66).

<sup>94</sup> § 10(h), 42 U.S.C. § 1410(h) (Supp. II, 1965-66).

<sup>95</sup> FORTUNE EDITORS 108.

<sup>96</sup> *The Dreary Deadlock of Public Housing—How to Break It*, ARCHITECTURAL FORUM, May 1957, at 139.

maintenance, insurance, ad valorem taxes, and the other problems that accompany home ownership.

## V

### THE NEW STRATEGIES

An effort has been made to take note of the more common criticisms of public housing and to evaluate the suggestions and counter-arguments associated with these criticisms. In the past few years the federal government has been attempting to answer some of these objections by statutory revisions, and by deviating from the old traditionalism with several new programs.

#### A. "Section 23 Leasing"

Leased-housing programs for low-income families had been tested prior to 1965 in several cities, including Boston, New Haven, Ann Arbor, and Washington. They had been effective and workable. Thus, in 1965, Congress enlarged the leased-housing program by enacting legislation designed to aid the housing authorities in providing quarters for low-income families in private accommodations. This enactment was a part of the Housing and Urban Development Act and it added section 23 to the Housing Act.<sup>97</sup> Of the units authorized by Congress for 1965-69, 40,000 of these units may be obtained through this leasing procedure.<sup>98</sup>

Before initiating a section 23 program, a local authority must obtain local government approval. Then, the authority makes application to HAA, showing, among other things, that the leasing of existing units will not put a strain on the total housing supply in the community.<sup>99</sup> Once approved, the local authority can lease standard housing and sublease to persons eligible for public housing; or the authority can enter into agreements with owners of substandard dwellings whereby the owners will upgrade the units to code standards before the authority will accept them. The latter practice is more common; and it has the value of involving public housing in the total neighborhood improvement effort.

When improvement of the dwelling is required, commitment is made prior to the renovation so that the owner can obtain financing to do the work. Once the work is completed, and if it meets HAA standards, the local authority can either lease the unit from the owner and sublease to a tenant, or it can enter into a working contract with the owner and allow the owner to lease directly to the tenant. The property owner may select the tenants, or he may choose to give the responsibility to the local authority. In either case, the local authority retains the sole right to evict

<sup>97</sup> 42 U.S.C. § 1421b (Supp. II, 1965-66).

<sup>98</sup> PUBLIC HOUSING FACT SHEET 4.

<sup>99</sup> U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, THE LEASING PROGRAM FOR LOW-INCOME FAMILIES 2 (1966) [hereinafter cited as LEASING PROGRAM].

the tenant (but it agrees to consider any complaints which the owner may have during the course of the lease). If the owner is to select the tenants, he must agree to approve them without regard to race, creed, color, or national origin.<sup>100</sup> The lease must be for not less than twelve nor more than sixty months in duration.<sup>101</sup>

The rental provisions of the Housing Act are also applicable under this program. The tenant's rent is approximately one-fifth of his income; and the difference between this figure and the actual cost of the rent and utilities (except water) is paid by the local authority with the annual contributions from the federal government. The federal contribution cannot exceed the amount that would be available for a newly-constructed project to accommodate comparable numbers, sizes, and kinds of families.<sup>102</sup> An additional federal contribution of up to \$120 per annum can be provided to assist the tenants if they are elderly, disabled or, in some instances, displaced.<sup>103</sup>

This program is not intended as an eventual substitute for new construction; HAA states that the section 23 program "can be useful in a community as a short-term supplement to the basic supply of housing owned by the local housing authority."<sup>104</sup> This program is available mainly for two-parent families eligible for public housing but who show a preference for nonproject residence and demonstrate a potential for adjusting to the neighborhood in which they will live.<sup>105</sup> The program also seems to be directed to the large families who can seldom find accommodation in the projects because statutory cost ceilings limit unit size. In Washington, for example, only thirteen five-bedroom units were available for applicants in 1964, although there were 478 families on the waiting list for that size unit.<sup>106</sup>

The new leasing program has three advantages, other than the obvious one of eliminating the management problems found in the big projects:

- (1) There is less restraint on a tenant's increasing his income, because if he should rise above the public housing limit he can renew the lease with the property owner on his own accord and thereby remain in the house.
- (2) The program encourages homeowners to upgrade their deteriorating residential properties to lease; this improves neighborhoods that are about to slip into "slum" status.
- (3) The problems of isolation and racial balance are diminished, although there would still be difficulties in those neighborhoods that would rebel against a nonwhite family.

<sup>100</sup> *Id.* at 7.

<sup>101</sup> § 23(d), 42 U.S.C. § 1421b(d) (Supp. II, 1965-66).

<sup>102</sup> § 23(e), 42 U.S.C. § 1421b(e) (Supp. II, 1965-66).

<sup>103</sup> LEASING PROGRAM 3-4.

<sup>104</sup> *Id.* at 4.

<sup>105</sup> Marindin, *Combined Rent Supplement, Rehab Demonstrations*, 23 J. HOUSING 255, 256 (1966).

<sup>106</sup> *Id.*

In those states that require local referendum before a housing project can be started, there is a possibility that such requirement would not apply to section 23 leasing. Of course the language of the statute or constitutional provision would be important; but the California attorney general has ruled that the leasing program "does not constitute the acquisition or establishment of a low-rent housing project" but rather contemplates "individual units located among various separate and unrelated buildings" and thus no local referendum is necessary.<sup>107</sup> This would be of practical importance in those localities which have rejected public housing projects.

HAA has announced that the Office of Economic Opportunity (OEO) will take part in the effort under the section 23 program. Community Action Agencies are to assist the local housing authorities and the tenants by finding owners willing to lease units, by training and counseling families moving into leased units, by assisting the families in their moving with provision for babysitters, and so forth, by compiling market survey and other data to aid the authority in meeting HAA requirements for the program, and by assisting the tenants who are leaving leased housing to take best advantage of available housing opportunities in the private market.<sup>108</sup>

### B. Rehabilitation

When Congress in 1965 authorized 240,000 additional units of low-rent housing over the next four years, it permitted 60,000 of these units to be obtained through acquisition and rehabilitation of existing housing.<sup>109</sup> In fact, rehabilitation of existing housing may become the principal tool of the urban renewal program.

Rehabilitation represents a shift in emphasis for public housing—it brings public housing more than ever before into the total urban renewal effort. The local authority will be attempting to save neighborhoods, working closely with local and federal government and with private organizations and developers.

Rehabilitation of existing housing has many advantages. It adds to the inventory of standard housing without the need for as many large projects.<sup>110</sup> It is more

<sup>107</sup> Opinion No. 65-246, 47 OP. ATT'Y GEN. CALIF. 17 (1966). The California constitutional provision referred to is article 34. On September 2, 1965, Joseph Burstein, General Counsel of HAA, handed down a similar opinion with reference to California.

<sup>108</sup> U.S. OFFICE OF ECONOMIC OPPORTUNITY, COMMUNITY ACTION MEMORANDUM No. 41 (June 29, 1966); U.S. PUBLIC HOUSING ADMINISTRATION, DEP'T OF HOUSING AND URBAN DEVELOPMENT, CIRCULAR TO LOCAL AUTHORITIES (June 29, 1966).

<sup>109</sup> PUBLIC HOUSING FACT SHEET 4. This program is not to be confused with the new section 221(h) program which provides mortgage insurance to finance purchase and rehabilitation by nonprofit organizations of housing for resale to low-income families. 12 U.S.C. § 17151(h) (Supp. II, 1965-66). This program is administered by the Federal Housing Administration, and is similar to the 221(d)(3) and rent supplement programs discussed briefly at pp. 519-20 *infra*.

<sup>110</sup> This statement refers to additions to standard housing inventory, not to the overall inventory of housing. There is a shortage of housing in this country, but an even more serious shortage of adequate low-cost housing for the lower-income families. See generally W. GRIGSBY, HOUSING MARKETS AND PUBLIC POLICY (1963). This shortage in low-cost housing is thought to be a primary reason for the poor tenant's troubles—namely, he is subject to onerous leasing terms, high rent, minimum facilities, and so on, because it is a "landlord's market." See generally Schoshinski, *Remedies of the Indigent Tenant: Proposals for Change*, 54 GEO. L.J. 519 (1966). Therefore, while rehabilitation adds to the



economical than construction of new units. It can be more quickly acquired and put to use. It provides the social integration which many critics consider essential by supplying less identifiable types of housing. It permits greater choice by the low-income family, thereby providing a degree of independence and responsibility. And it serves to improve the entire fabric of those neighborhoods suffering from blight and high vacancy rates.<sup>111</sup>

Of course, it has its deficiencies: it is no substitute for an increased inventory of new construction for low-income families since the program cannot provide enough housing for those who need it; it does not permit close coordination of social services for the poor such as in the housing projects; and it does not provide as much opportunity for innovation with new and modern designs and materials (although there is little evidence that the projects were ever testing grounds for new designs and materials). And since the program will have to be for the benefit of the more responsible families (since they will be going into already-established neighborhoods often with moderate- and middle-income predominance), this may leave the housing projects to the problem families, the misfits, and the chronic unemployed, which would be an unhealthy and uneconomical situation for the projects.

There are three basic methods which the housing authorities can use in rehabilitating existing units. First, the authority can select and acquire properties on its own initiative and contract the rehabilitation to private builders through competitive bidding. Second, it can buy properties and rehabilitate them itself with its own staff and some additional personnel. If competent supervision and an adequate staff are available, this obviates the many delays and expenses incident to the administration of contracts. On-the-spot decisions can be made more easily without loss of time and money. But in using this method, the local authority must hire more workers and assume the responsibilities of purchasing and storing the materials, insuring the property and the construction process, and the handling of detailed cost control accounting.

A third method enables a local authority to select properties which have already been renovated by private builders. This contemplates a contract for purchase and sale of the property; it eliminates the problems and delays encountered when the local authority contracts the work, and eliminates the responsibilities when the authority does the work itself. Properties offered under this arrangement are, of course, inspected, and must follow HAA rules. A price is negotiated which will include a profit for the builder. Before the rehabilitation is begun, an agreement is executed, enabling the seller to get financing for the rehabilitation. Usually the properties involved are housing units in a designated development area and include several different dwelling units. (This is the turnkey method, which is presently

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amount of standard housing available, it does not necessarily improve the total inventory of housing so that the landlord's market can be modified.

<sup>111</sup> McGuire, *supra* note 55, at 595.

the object of experimentation in the field of rehabilitation as well as in new construction.<sup>112</sup>)

There are several general standards which apply to the program. The house must be decent and safe, and the neighborhood must be residential, properly zoned, without nuisances and land uses, and with an adequate supply of schools, playgrounds, churches, shops, and so on. The room cost limitations of section 15(5) of the Housing Act apply, but exclude the cost of the land and the nondwelling units on the property.<sup>113</sup> The total cost of the acquisition and rehabilitation cannot exceed ninety per cent of the amount that would be allowed for new construction.<sup>114</sup> It has been estimated that rehabilitation can be done for eighty to eighty-five per cent of the cost of new construction.<sup>115</sup>

Philadelphia has been the pacesetter in this new program. Before it exhausted its authorization of 1,380 units, it had already asked Washington for money to acquire another 5,000.<sup>116</sup> The Philadelphia authority has experimented with all three methods of rehabilitation described above, and now prefers the turnkey method, by which it has produced 300 units.<sup>117</sup> It designates certain areas within the city in which to focus its efforts; certain blocks are called "in" blocks in which any house properly rehabilitated will be purchased, and certain blocks are "out" blocks in which the authority will buy enough houses to make an impact on the character of the street.<sup>118</sup>

### C. Housing for the Elderly

The problems of the elderly have gained increasing attention during the 1960s, as the nation begins to realize how large a proportion of American society is comprised of the aged and how unique and demanding their difficulties can be. More than twenty-two million persons in this country are aged; and, more significantly, more than half of the elderly families have incomes of less than \$3000, about one-third have incomes of less than \$2000, and nearly half of the elderly single persons have incomes of less than \$1000. More than 3.5 million of these people live in substandard housing, which poses particular problems for aged persons because of their special needs and difficulties.<sup>119</sup>

<sup>112</sup> The turnkey technique is examined in its larger context at pp. 517-18 *infra*.

<sup>113</sup> 42 U.S.C. § 1415(5) (Supp. II, 1965-66).

<sup>114</sup> The information on rehabilitation is obtained from a PHA circular of November 12, 1965, transmitted to local authorities and regional offices setting forth procedures and standards to implement the program.

<sup>115</sup> Interview with Carl Anderson, Assistant Director, New Haven Housing Authority, Oct. 24, 1966.

<sup>116</sup> *Public Housing Gets a Facelifting*, AM. BUILDER, June 1966, at 70, 71.

<sup>117</sup> Letter from Christy Emerson, Director of Development, Philadelphia Housing Authority, to the author, Oct. 31, 1966.

<sup>118</sup> *Public Housing Gets a Facelifting*, AM. BUILDER, June 1966, at 70, 72-73.

<sup>119</sup> U.S. PUBLIC HOUSING ADMINISTRATION DEPT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING PROGRAM FOR SENIOR CITIZENS I (undated) [hereafter cited as SENIOR CITIZENS HOUSING].

Congress has written special provisions into the Housing Act for the elderly. In 1961, the Act was amended to provide that the government

may, in addition to the payments guaranteed under the [annual contributions] contract, pay not to exceed \$120 per annum per dwelling unit occupied by an elderly family . . . where such amount . . . was necessary to enable the public housing agency [the local authority] to lease the dwelling unit [to an elderly person or family] . . . at a rental it could afford and to operate the project on a solvent basis.<sup>120</sup>

The Act also allows a larger cost allowance for constructing and equipping low-rent projects which are specifically for the elderly. While \$2400 per room is the basis upon which annual contributions are computed in most cases, accommodations designed for the elderly have a \$3500 per-room basis.<sup>121</sup>

These two provisions enable the local authorities to spend more money on projects for the elderly, and they assure the authorities of federal assistance when these families cannot pay rent sufficient to defray expenses. It also seems evident that Congress and HAA are not particularly concerned with high densities and corner-cutting, as in the traditional low-rent projects.

With these federal incentives and the current disapproval of the traditional low-rent projects, the local authorities have enthusiastically embraced the program. In New Haven, the last six construction projects have been for elderly persons.<sup>122</sup> Four of every five units recently constructed in Chicago were reserved for the elderly,<sup>123</sup> and a California county which had defeated public housing by referendum reversed its judgment and accepted housing for the elderly.<sup>124</sup> In all, 250 localities now have projects occupied exclusively by elderly persons, and 1500 have projects with units for the elderly in them. Almost 100,000 units have been completed since the new emphasis began.<sup>125</sup>

There are several factors which encourage the local authorities to build these specially-designed projects and units for the elderly. First, there is much less objection to racial integration in the elderly housing projects, and thus the local authority and the federal government can meet their "obligations" in the race relations field without arousing too much resentment. A second factor is that with the increasingly vociferous objections to the large projects, the local authority can meet the demands for scattered housing by building for the elderly. Neighborhoods which will not tolerate a huge low-rent project packed with Negroes on Aid for Dependent Children may go along with a high-rise for sweet but impoverished old folks. These elderly families are most often "white, orderly, and middle-class in behavior," and more

<sup>120</sup> § 10(a), 42 U.S.C. § 1410(a) (Supp. II, 1965-66).

<sup>121</sup> § 15(5), 42 U.S.C. § 1415(5) (Supp. II, 1965-66).

<sup>122</sup> Interview with Carl Anderson, *supra* note 115.

<sup>123</sup> Friedman, *supra* note 39, at 653.

<sup>124</sup> *Id.*

<sup>125</sup> SENIOR CITIZENS HOUSING 3. See also *Public Housing for the Elderly*, 20 J. HOUSING 77 (1963).

than likely will be "grateful, docile and unseen." They are never vandals, and "they do not whore and carouse."<sup>126</sup>

Finally, although the traditional low-rent projects hamstring the architects and contractors with miles of red tape and the many regulations and standards, the projects for the elderly provide more money and less stringent density requirements. Also, HAA is apparently more willing to allow greater experimentation with design than it is with low-rent projects. The results of this flexibility and relaxation of high-density requirements are apparent in the products of the elderly-housing program to date.<sup>127</sup>

In building these projects for the elderly, special consideration is given to wide doors, ramps for wheel chairs, safety features, and the like.<sup>128</sup>

#### D. A New Approach to Construction—The Turnkey Technique

The Housing Assistance Agency has recently developed a technique for public housing which permits a local housing authority to purchase a "packaged deal" from a builder or developer. Simply stated, under the turnkey method (called Turnkey) the local housing authority invites a landholding private developer to build a project, fixes a price, and buys the finished product. The technique may prove to be less expensive to the authorities (and, consequently, to the taxpayers).

Under Turnkey a developer or builder who has a site, or an option to buy one, approaches the local authority with a proposal to build. If the plan is acceptable, the applicant is invited to submit plans and specifications. After the local government has approved the project, the proposal is submitted to HAA. If approved, a letter of intent is entered into between the local authority and the developer which sets forth the detailed plans and a cost estimate. The price of the project will be (1) the price given in the letter of intent, or (2) the midpoint of two independent appraisals, whichever is less. If the midpoint of the appraisals is less than ninety-five per cent of the price asked by the developer, neither the developer nor the authority is bound to proceed further, and the authority pays the developer for his drawings and, if the developer desires, purchases the site from him. If the parties agree on the price, the developer retains a registered architect to draw up detailed "working" plans and specifications. The developer must agree to refrain from discrimination in hiring, and must submit his wage rates to the Department of Labor. When these documents have been approved by HAA, the federal agency enters into a federal assistance contract (for annual contributions) with the local authority just as it does for the usual project.

The next step is the contract of sale, which contains provisions as to quality, materials to be used, completion date, cost, and a one-year clause for remedying

<sup>126</sup> Friedman, *supra* note 39, at 654.

<sup>127</sup> Interview with Bruce Adams, *supra* note 42; interview with Carl Granbery, *supra* note 41.

<sup>128</sup> SENIOR CITIZENS HOUSING 2.

defects which the developer must guarantee with surety in the amount of 2½ per cent of the purchase price. The federal government backs the promises of the local authority, just as it backs the bond issues in the low-rent projects constructed in the usual manner.

With the contract of sale and an opinion letter from the general counsel of HAA, the developer can get credit from a private lending institution. The lender relies on these documents and the developer's credit standing in making the loan. It can be assured of having the mortgage taken off its hands by an arrangement for "take-out financing," similar to the FHA programs which involve prior commitments by the Federal National Mortgage Association to purchase the mortgage.<sup>129</sup>

*Contractor News*, a trade magazine, has stated that the turnkey method will put the general contractor "back in command of his own team on government jobs."<sup>130</sup> Joseph Muscarelle, a contractor who has done some turnkey jobs in Newfoundland, contends that many reputable contractors who do not bid on public housing projects because of the disadvantages will now be attracted to the projects.<sup>131</sup> Another builder says that elimination of the local authority's "clerk-of-the-works" will save untold delays. "These guys," he said, "block projects for days arguing about silly job changes; it's a rare bird who knows what he's talking about—they have little training."<sup>132</sup> (Only those change orders which increase or decrease the contract price by a substantial amount must be approved by HAA under Turnkey, in contrast to the tedious requirements of ordinary construction process.<sup>133</sup>)

The first new-construction job built with Turnkey is a 343-unit high-rise apartment in Washington, D.C. The method is being used in several rehabilitation projects, notably in Philadelphia. Some local authorities are dragging out old plans and giving them to developers to "cost out," in an effort to see whether turnkey production can be less expensive.<sup>134</sup>

Because of the novelty of the method, there is little information available. There is no way to analyze the advantages as yet, because few authorities have tried it. The obvious values include more freedom for the contractor and less red tape for the local authority and the contractor. Both the federal agency and the building industry are approaching the new procedure with cautious optimism.

<sup>129</sup> The information in the three preceding paragraphs is obtained from U.S. PUBLIC HOUSING ADMINISTRATION, DEP'T OF HOUSING AND URBAN DEVELOPMENT, *BUYING FROM DEVELOPERS* (1966) [hereinafter cited as *BUYING FROM DEVELOPERS*]; *An Enlightened Approach to Construction*, *CONTRACTOR NEWS*, July 1966; and *Public Housing Gets a Facelift*, *AM. BUILDER*, June 1966, at 70, 72-73.

<sup>130</sup> *An Enlightened Approach to Construction*, *CONTRACTOR NEWS*, July 1966.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *BUYING FROM DEVELOPERS* 6.

<sup>134</sup> Letter from Christy Emerson, *supra* note 117. The Philadelphia Authority has a firm proposal for new construction from an Indiana firm, and has given another set of old plans to a developer so that he can "cost them out" for comparative cost analysis.

## VI

## RELATED HOUSING PROGRAMS

To put public housing in proper perspective, it is necessary to refer briefly to several of the more important programs which are related to, or connected with, the public housing program. Thus, it can be made clear that public housing is not alone in this assault on inadequate shelter and that, despite the deficiencies and perplexities of the public housing program, none of these allied efforts was intended as, nor can it become, a substitute for public housing.<sup>135</sup>

## A. Rehabilitation Loans and Grants to Individuals

The Housing Act of 1964 expanded earlier provisions for rehabilitation loan assistance by providing "Section 312 Rehabilitation Loans."<sup>136</sup> This section authorizes government loans to owners or tenants of property in urban renewal or code enforcement areas to enable them to bring the property up to local code requirements or to carry out the objectives of the urban renewal plan for the area. Interest rates are only three per cent, and loans up to \$10,000 can be repaid within twenty years, or within a period equal to three-fourths of the remaining life of the property, whichever is less. These funds are available only to persons who cannot get credit from other sources at comparable terms and conditions.

The Housing and Urban Development Act of 1965 added section 115 to the Slum Clearance and Urban Renewal division of the Housing Act of 1949, making federal grants available to qualified low-income owner-occupants of housing in urban renewal or code enforcement areas for the repair and improvement of property.<sup>137</sup> The maximum grant that can be made is \$1500. An applicant whose income is less than \$3,000 per year can receive more favorable terms than higher-income families.

## B. The "221(d)(3)" Program

Among the several housing programs within FHA, the section 221(d)(3) program<sup>138</sup> is one of the most publicized. By this provision certain types of developers (nonprofit corporations, limited-dividend corporations, cooperatives, and certain public bodies) can obtain mortgage insurance from FHA which allows them to obtain low-interest loans from private lending institutions in order to build multi-unit rental projects.

The purpose of the program is to provide housing for those families, particularly displaced and elderly families, whose incomes make them ineligible for public

<sup>135</sup> See generally for compilations of federal housing laws, HOUSE COMM. ON BANKING AND CURRENCY, *supra* note 92; URBAN AMERICA, INC., SUMMARY OF FEDERAL HOUSING PROGRAMS FOR LOW AND MODERATE INCOME FAMILIES (1967).

<sup>136</sup> 42 U.S.C. § 1425b (1964).

<sup>137</sup> 42 U.S.C. § 1466 (Supp. II, 1965-66).

<sup>138</sup> 12 U.S.C. § 1715l(d)(3) (Supp. II, 1965-66).

housing but who cannot afford adequate housing on the open market with a reasonable amount of their income. These are the families in the "twenty per cent gap" between the highest rentals in public housing projects and the lowest rentals in the open market.

The 221(d)(3) housing program can be combined with public housing. For example, a nonprofit organization or a church group could build a 221(d)(3) project and sell an undivided interest in the property to the local housing authority. The authority could make a prior commitment to purchase such an interest, so as to assure adequate financing from a private institution. This arrangement allows low- and moderate-income families to live together, and the apartment is not identified as a public housing project. When the low-income tenants exceed the income limits, they would not have to move out, but would simply be stricken from the public housing rolls and would pay their rent without subsidy. A variation of this arrangement would be a plan whereby the local authority does not own an interest in the apartment, but agrees to lease a certain number of units under the new section 23 leasing program. In either case, if it became necessary, the local authority could buy the project from the sponsor.<sup>139</sup>

### C. Rent Supplements

One of the more recent items of legislation in the field of housing is the rent supplement provision of the Housing and Urban Development Act of 1965.<sup>140</sup> As originally planned by the Johnson Administration, this program was intended to be a companion to the 221(d)(3) program in providing housing for the moderate-income families. As passed by the Congress, the program is aimed at assisting public housing in providing for the low-income group.

Under this program, FHA will enter into contracts with limited-dividend corporations, nonprofit corporations and cooperative housing corporations, who will obtain financing from approved mortgagees, generally following the pattern of 221(d)(3) arrangements. To be eligible for these projects, a family must, as a general rule, be eligible for public housing, and must also be either elderly, physically handicapped, affected by a natural disaster, living in substandard housing, or displaced by government action. The tenant will pay the owner of the project the amount that he can afford, which will be at least twenty-five per cent of his income, and FHA will pay the difference between this amount and the fair rental value of the unit.<sup>141</sup>

<sup>139</sup> These arrangements, and others, were discussed in an address by Marie McGuire, Acting Deputy Assistant Secretary, Department of Housing and Urban Development, National Conference of Catholic Charities, New Orleans, Louisiana, Oct. 11, 1966.

<sup>140</sup> § 101, 12 U.S.C. § 1701s (Supp. II, 1965-66).

<sup>141</sup> See generally Kates, *Current Legislation*, 7 B.C. IND. & COM. L. REV. 314 (1966); Welfeld, *Rent Supplements and the Subsidy Dilemma*, in this symposium, p. 465; Smith, *The Implementation of the Rent Supplement Program—A Staff View*, *id.*, p. 482. Kates discusses § 103 of the 1965 Act in his article on rent supplements. But § 103 amended the 1937 Act, adding the § 23 leasing program which is *not* considered a part of the rent supplement program.

## VII

## CONCLUSION

Housing problems can be allayed in the higher economic strata by private enterprise, or at least by private enterprise assisted by a few tax incentives and government-sponsored mortgage insurance. But the inadequate supply of decent housing is an acute problem to the lower income segment.<sup>142</sup> It is evident that the building industry cannot cope with the problems of this group without assistance.<sup>143</sup> Building for those who cannot pay is patently imprudent in our capitalist society, and building so cheaply that these persons could afford to pay would only be erecting tomorrow's slums. Therefore, some sort of government-subsidized effort seems necessary to provide decent housing for the low-income group.

As we have seen, there are many difficulties in the program which the government has launched, some of which have been spotted and subjected to valid criticisms. How can we attack these problems and render the program more effective?

A starting point for such a problem-solving attempt should be to define the goals of the program. It is imperative that the primary purpose of the endeavor be recognized and clearly understood. It "is not the relief of unemployment in the building trades, nor the demolition of substandard housing, nor the stabilization of real estate values, nor the reduction of crime—the purpose is simply the provision of housing."<sup>144</sup> This may be an overstatement of the case, but it must be emphasized that the provision of housing for low-income families is the central theme, and side issues should not cause us to deviate unawares from this purpose.

Despite the foibles and the many objections, there is no realistic alternative to "the project" in the large urban areas where there is an immediate necessity to bulldoze the slums and provide decent housing for thousands of low-income families. Land is too scarce and too expensive to talk of scattered projects in the big metropolitan areas where square footage of soil is as valuable as gold.<sup>145</sup> Thus, attention

<sup>142</sup> See appendix B.

<sup>143</sup> The building industry produces about 1.6 million units annually, whereas it is estimated that it should be producing 2 million, or even 2.5 million per year. C. ABRAMS, *THE CITY IS THE FRONTIER* 277 (1965).

<sup>144</sup> M. STRAUS & T. TWEGG, *HOUSING COMES OF AGE* 26 (1938).

<sup>145</sup> A letter from Oscar Kanny, Director of the New York City Housing Authority, Public Information Division, to the author, Nov. 10, 1966, supports this writer's thesis that the large projects cannot be abandoned in the larger metropolitan areas. Mr. Kanny writes:

"Because of the severe budget limitations imposed by the lending agencies, it is almost essential that we provide as high a density as the zoning regulations permit in order to keep to a minimum the unit cost per apartment. This condition almost always dictates highrise buildings. Also, because of the zoning regulations regarding spacing of buildings, generally a number of low buildings would create practical difficulties of design . . . . Furthermore . . . a certain percentage of parking is required in every project, and the less the number of buildings, the greater the amount of ground area available to accommodate parking. In addition, we provide a considerable amount of play and recreation space for each project, thus requiring as much open area as practical."

The supply of housing needed for low-income families in New York City is best understood by citing



must be focused on marked improvement in the design, appearance, management, and composition of the projects.

### A. Design and Appearance

The problems with design and appearance can best be remedied by increasing the cost allowance to a more appropriate figure, and by reducing the density requirements to a respectable limit. Although cost limits have been raised over the years, they have constantly lagged behind the increasing costs of construction. The cost limits set by Congress are in direct conflict with the programs of urban beautification and redevelopment into which so many millions of dollars are being pumped. This is not to propose that low-rent projects be decorated with lavish ornaments and luxuries but only that they be designed and built with the view that they are going to last at least half a century; they should not be allowed to clutter the urban skylines and provide drab warehouses for the poor for so many years. Densities cannot be reduced to such levels that government funds would be wasted on spaciousness, but the family-to-structure and family-to-acre ratios should be such that an architect can design a creditable edifice and families can live in some degree of privacy and comfort.

### B. Management

This problem cannot be resolved by reducing public order to chaos; but the tenants can be given as many privileges as possible to enable them to learn the merits of independence and responsibility. A few suggestions are set out below.

Despite the unfortunate consequences of such a policy, the problem families must be denied admittance into the projects if the projects are to become suitable places in which conscientious families can try to break the barriers which the slums and poverty have placed between them and the rest of society. The alcoholics, the drug addicts, families with proven propensities for trouble and delinquency, and unwed mothers who show no signs of reform, must be barred. Ivory-tower critics seldom mention this as a possible remedy to many of the public housing difficulties because, at first glance, it seems a bit cruel. But there is no alternative if we sincerely want a housing program which can answer the social, as well as economic, needs of these low-income persons. It is clear that a vast majority of the taxpayers, the housing authority officials, and particularly the occupants of the projects, want such a policy.

The occupants of a project should be allowed more voice in the affairs of community life. They should, for example, be allowed to elect an "advisory board" to assist the project supervisors in matters of public concern and to represent tenants in discussions with the "public landlord." Such a body should not be given power

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Mr. Kanny's figures. In the city, there are 149 projects with 142,817 units, and seven co-ops with 6,173 units. At present, more than 12,000 additional units are either under construction or on the drawing boards.

to control administration of the project or to make decisions which would bind taxpayers to the will of the tenants, but the panel could provide the tenants a sense of participation in community affairs, a feeling of responsibility in decision-making.

The uncommendable attitudes of many project managers toward privacy must be reversed. Intrusion upon the privacy of tenants should be unconditionally halted except in clearly justified investigations and examinations of records for the sake of the primary purposes of the program.

Formal leases should take the place of the month-to-month situation which now exists. Such leases would have to be subject to right of expulsion for certain violations of regulations (as even commercial leases are) and would probably have to be subject to the right of the authority to evict when the tenant's income rises above the stated income limit, unless our philosophy on this point were changed. But even with these conditions in the leases, such papers would be symbols of a tenant-landlord relationship such as exists elsewhere in society, brushing aside the attitude that public housing tenants are just temporary wards of an institution.

The right of judicial review of all grievances may be too cumbersome, and not even in the best interest of tenants in many cases, but some sort of administrative procedure should be devised, particularly for rulings which affect the tenant's continued occupancy once he is in the project.

There should be more experimentation with ways to mitigate the harshness of the present income-limit rule. Certainly tenants should be allowed, once in the projects, to continue occupancy when eviction would only return them to the slums. Of course, rent payments should rise, until the payments were equal to the fair rental value of the units. The idea proposed that would allow a tenant to purchase his unit once his rent is sufficient to pay operational expenses and cover debt service should be explored, particularly in those projects that are becoming havens for the lowest income nonwhites of the community. Congress has allowed this approach as to detached or semidetached units, but there are concepts within the relatively new law of condominium which may permit it even in high-rise projects. To permit these families to remain in the project would add a feeling of attachment and permanency which is direly needed. The tenant would acquire an attitude of "home," which in turn would go far toward improving the appearance of the housing projects. Perhaps such a plan would be too attractive, and valuable unit space would become even more unavailable for the poorer families who need it most. If and when such conditions occurred, the plan would have to be scrapped, and those persons with higher incomes encouraged or forced to leave the projects in deference to the slumdweller on the waiting lists.<sup>146</sup>

<sup>146</sup> C. ABRAMS, *supra* note 143, at 37, 266, discusses these problems of the income-limit rule, but he does not suggest what would happen if too many of these higher-income tenants decide to stay on, pay the rent, and thus lengthen the waiting lists. Staughton Lynd, professor of history at Yale University and author of an article on urban renewal (note 56 *supra*), said in an interview Nov. 8, 1966, that his

Authorities should tackle the problems of isolation. Provision for social services and participation in community affairs should be further fostered. More physical amenities are needed, preferably to be shared with those outside the projects. Such things as inexpensive clubhouses and playgrounds would require higher cost allowances; but the costs would not be unjustified since such efforts may hasten the day when these families can be independent citizens.

There is no question but that tenant selection practices should be devoid of racial discrimination. As for the tougher problem of site selection, there is little hope that this situation can be quickly and completely resolved. If the purpose of this program is to provide housing for low-income families, it is logical that the projects will be built in those blighted areas where slums are being torn down under urban renewal programs, and where the lack of adequate housing is lining the landlords' pockets. Since a large number of these areas are predominantly nonwhite, it is inevitable that projects built in these sections of town will be predominantly nonwhite. A policy of compelling whites to enter the nonwhite projects raises several questions. Is compulsory placement socially desirable? Is this influx of whites beneficial to the many nonwhites who wish to enter the project in their own neighborhood but find many of the units occupied by these persons brought in from other areas?

Of course, in integrated neighborhoods, there should be no problems. And if a nonwhite slum and a white slum are located in such a way that a project can be built between them, a proper approach would be to build a single project between them to serve the needs of both areas. Aside from these easier situations, however, the site-selection dilemma remains complex and possibly insoluble.

Outside of the more densely-populated urban areas, where land is available and less expensive and there is not an over-abundance of low-income families needing housing assistance, several smaller projects, scattered throughout the community, would seem more suitable than the massive high-rises required in the big cities. There is evidence that this theory is being accepted; and it should continue, because scattered housing is probably the best solution to the many problems of the large projects.

The several new strategies—section 23 leasing, rehabilitation, housing for the elderly, Turnkey—should continue. The leasing program and the rehabilitation effort offer excellent supplements to the traditional project approach, and will involve the public housing program in the larger effort to save neighborhoods and beautify cities. If the turnkey technique proves effective as a method of saving time, red tape, and money, the experimentation will have been a giant step from the traditionalist attitude of most government administrative agencies. In all of these programs, in fact, this writer finds hope not so much in their content, as worthy as this content may

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experiences with low-income families in Manhattan had disclosed that a primary reason for the reluctance to enter housing projects was the feeling of detachment, "temporariness" and an inability to feel as if the unit were "home." Professor Lynd agreed with the many critics who believe that a relaxation of the income-limit rule would help remedy this attitude.

be, but in the fact that they appear to represent a new trend in public housing: a shrugging off of bureaucratic lassitude and a new effort to find solutions with experimentation and change.

Finally, public housing should be more than a receptacle for displaced families from urban renewal areas. In many communities public housing is being relegated to the role of receiver of the displaced families when the slums are bulldozed and the land is sold for commercial purposes or for construction of more respectable moderate- or middle-income housing. Families forced into public housing under such conditions cannot be expected to fall in love with the project. And public housing cannot get on with the business of eroding the housing shortage for low-income families when all of its efforts are expended in just keeping up with the displacees.<sup>147</sup>

Public housing cannot be replaced by any of the new programs thus far developed.<sup>148</sup> It can be supplemented with many endeavors, private and public, and it can improve with persistent determination to face the problems and solve them. Some questions have been raised, and suggestions offered. Lest anyone think that the many problems of public housing can be resolved swiftly and decisively, a statement by Dr. Weaver seems particularly apropos:<sup>149</sup>

Because of the heterogeneity of the country, its governmental structure, our traditions relative to land and home ownership, and the paradoxes in race and housing, definitive formulations of policy are difficult. . . . [*W*]e must avoid doctrinaire approaches. There are no simple answers. Indeed, there are few single answers or pat solutions which will be effective.

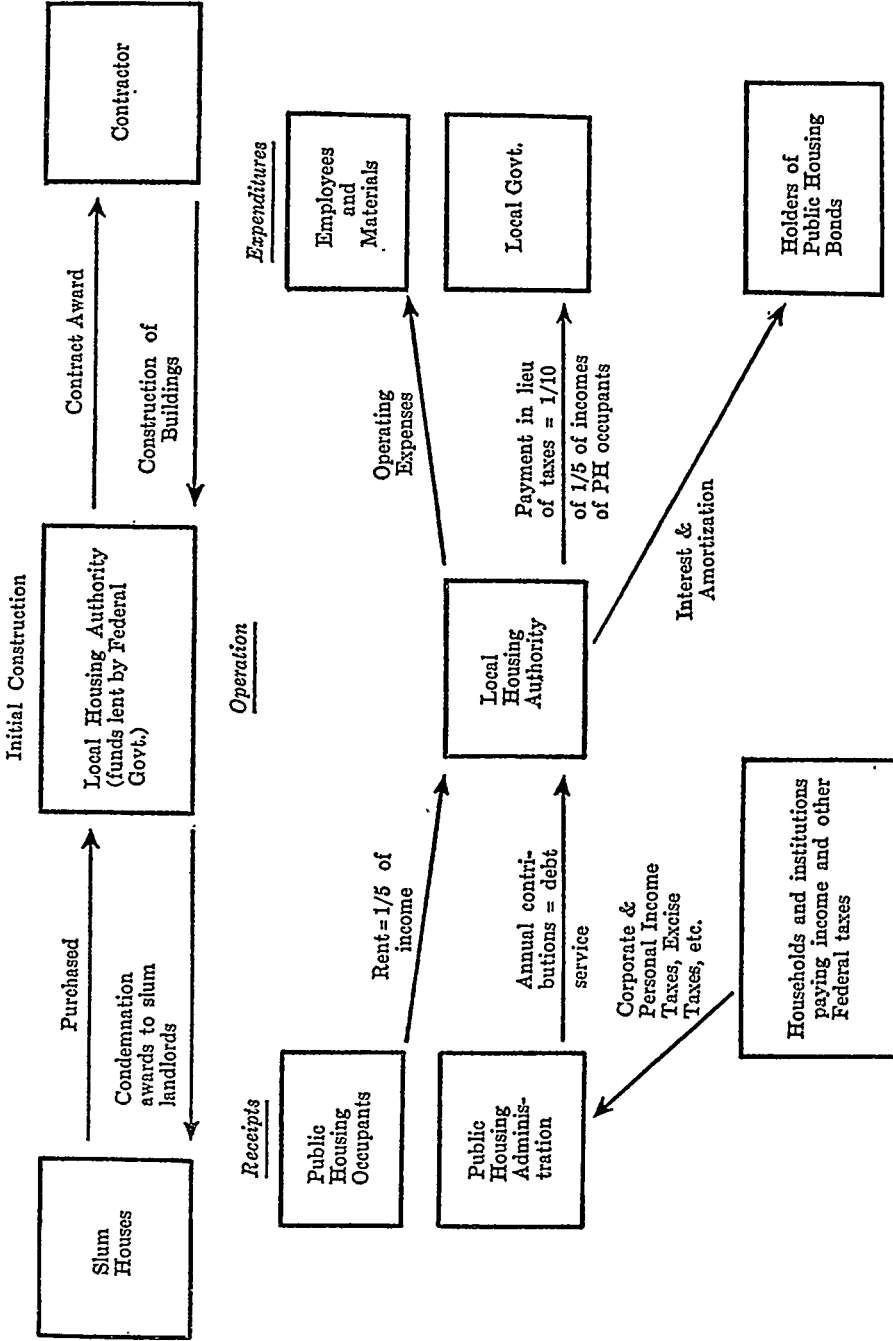
\* \* \*

<sup>147</sup> Because of the involuntary and compulsory aspects of urban renewal displacement, many former slum dwellers refuse to go into public housing projects. In Philadelphia 80% of the dislocated families qualified for public housing but less than 15% moved in; in a large Los Angeles program less than 1% were willing to occupy public housing; in New York's West Side area, only 16% of the 68% eligible for public housing accepted it; and in one Detroit area only 3% wanted to go into public housing projects. Nationwide, it is estimated that only 13-22% of displaced families move into public housing. C. ABRAMS, *supra* note 143, at 35, 267. Professor Lynd, in an interview Nov. 8, 1966, reported that his experience with Manhattan families suggested that these families should be allowed to participate more in urban renewal programs to eliminate some of the compulsion. He also suggested that for those families who did not want public housing, provision should be made for temporary quarters while redevelopment occurs and then allow them to re-enter the neighborhood in new or improved housing units, instead of the mass dislocation approach now being used. His criticisms of urban renewal are further defined in his article, note 56 *supra*.

<sup>148</sup> Some persons who object to the projects in public housing see the solution only in programs such as 221(d)(3) and rent supplement. But given the present state of things, it would be very unwise to shift the emphasis of the low-cost housing effort to programs such as this. The several persons with whom this writer discussed public housing were convinced that 221(d)(3) housing is cheap and poorly constructed, with less quality than the public housing program construction. Since rent supplement housing will follow the pattern of section 221(d)(3), there is no reason to believe that this program will be any different. In New York City, where real estate investment is supposed to be the keenest, 221(d)(3) housing is scarce, and "slum areas which require clearance present a financial obstacle that effectively rules out 221(d)(3) housing." Letter from Oscar Kanny, *supra* note 145. Mr. Kanny concludes, therefore, that the similar program of rent supplements has little potential. This is not to say, of course, that public housing cannot join with 221(d)(3) efforts in many areas.

<sup>149</sup> R. WEAVER, *DILEMMAS OF URBAN AMERICA* 116 (1965).

APPENDIX A  
PUBLIC HOUSING TRANSACTIONS



Source: This diagram was originally published in Nourse, *Redistribution of Income from Public Housing*, 19 *Nat'l Tax J.* 27, 37 (1966), and is reprinted here with permission of the *National Tax Journal*.

APPENDIX B

INCOME GROUPS AND HOUSING

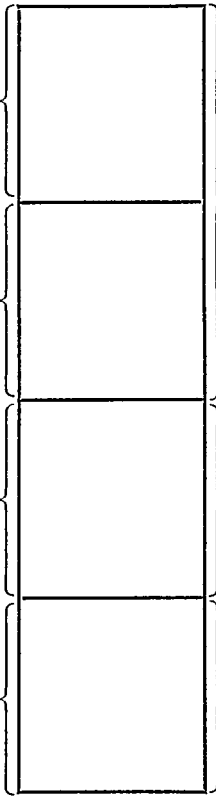
Top Income

Most of the new housing produced by private enterprise for rent and for sale, with or without FHA insurance, is built for this income group.

An insufficient supply of housing is produced by private enterprise for this group, but the supply is augmented by livable second-hand houses.

This is the "20% gap," and very little-housing is produced for this group.

Except for a few shacks in the rural areas and in communities without adequate zoning codes, no new housing is supplied by private enterprise for this group.



Tax breaks (such as deductions for interest on mortgage loans), VA programs, and FHA insurance are available for families within these groups, particularly the top income bracket.

221(d)(3), rehabilitation loans and grants, and a few other programs are aimed at this group.

Subsidized public housing is essential to meet the needs of this income group.

Zero Income

Source: This chart is based on a similar sketch in N. STRAUS, *THE SEVEN MYTHS OF HOUSING* 175 (1944). It is presented only to illustrate the strata of income groups in this country and the availability of adequate housing to members of each group, and not as a demographically or mathematically precise division.