

EMERGENCY RENT CONTROL

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I. ECONOMIC AND SOCIAL CONSIDERATIONS LEADING TO RENT CONTROL LEGISLATION

The Executive Order of April 11, 1941,¹ establishing the Office of Price Administration and Civilian Supply, recognized the need for the development of programs directed towards the stabilization of rents. With the cooperation and assistance of the Rent Section of the Office of Price Administration, mayors and local defense councils appointed Fair Rent Committees in more than two hundred defense communities throughout the country between June 1941 and January 1942. These committees, through appeals to the community spirit of fairness, undertook to inhibit exorbitant rent increases. Their efforts were effective in thousands of individual cases, but they were wholly unable to reverse an upward rent movement for which there were basic social and economic causes deriving from the expansion of the defense program. The widespread activities of these committees did, however, assist materially in focusing local and national attention upon the need for statutory rent control.

Beginning early in the summer of 1940 the defense program created an unprecedented need for rental housing in areas within commuting distance of military establishments, shipyards, aircraft factories, ordnance plants, machine shops, steel mills, and other focal points of industrial production. For purposes of analysis, defense centers may be grouped by three types: (1) key industrial centers of pre-defense days whose activities were expanded by the practice of awarding defense contracts to areas where production facilities were readily available; (2) new centers of production located in non-industrial areas for reasons of military necessity or because of the availability of specific facilities; (3) communities near military establishments which previously did not exist or whose personnel has been vastly expanded.

Centers in the first category were not in a position to absorb the extraordinary

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¹ Executive Order, No. 8734, April 11, 1941, 6 FED. REG. 1917 (1941).

demand for housing, and beginning in the summer of 1940 they reported a steadily declining vacancy ratio. By the end of 1941, for example, in a number of large cities such as Detroit, Cleveland, Baltimore, Pittsburgh, Washington, and Louisville, less than one percent of all dwelling units were vacant, for rent and in a habitable condition²—a manifestly critical housing condition for large urban concentrations. As a consequence of the paralysis of the residential construction industry during the depression of the thirties, many industrial cities were not provided with a sufficient number of new dwelling units to replace normal demolition and obsolescence, let alone a sharp population increase. Even the marked upswing in residential construction which occurred from 1939 through 1941³ failed to compensate adequately for the previous lag. The effects of the defense program thus began to be felt in many major industrial centers at a time when they were already suffering from an absolute deficiency of housing accommodations. Comparatively substantial vacancy ratios reported for many of these centers in the April 1940 Census were often deceptive indications of housing need, because they were the reflection of industrial conditions which were still depressed. As soon as employment expanded, families which because of unemployment or a low income status had previously "doubled up," were in an economic position to seek separate accommodations. In addition, the improvement in economic conditions during 1940 and 1941 caused a marked rise in the marriage rate, which further increased the demand for individual dwelling units.⁴ And finally, a vast migration of workers to defense centers accentuated the pressure on existing housing facilities. Though no accurate estimates are available, a total movement of approximately three million persons to defense centers from the early summer of 1940 to the end of 1941 would not be an exaggerated figure.⁵ A number of large cities have reported total population increases of at least 10%.⁶ It was to be expected

² Vacancy surveys have been conducted in these cities from time to time by the Work Projects Administration, which released a summary of their surveys on January 26, 1942 (mimeo., No. A3909).

³ NEW NON-FARM RESIDENTIAL CONSTRUCTION IN THE UNITED STATES*

(estimated volume)

Year	Number of new dwelling units constructed	Year	Number of new dwelling units constructed
1932.....	73,000	1937.....	300,000
1933.....	54,000	1938.....	347,000
1934.....	55,000	1939.....	465,000
1935.....	144,000	1940.....	540,000
1936.....	280,000	1941.....	615,000 (prelim.)
22-year average (1920-1941).....			473,000

* Source: 1920-1935: David L. Wickens and Ray R. Foster, *Non-Farm Residential Construction, 1920-36*, NAT. BUREAU OF ECON. RESEARCH, BULL. 65, Table I, p. 2 (as cited in *Toward More Housing*, TNEC, Monograph No. 8 (1940) Table VI, p. 23); 1936-1941: Bureau of Labor Statistics.

⁴ A consistently high correlation of marriage rates and economic activity has been shown by Virginia L. Galbraith and Dorothy S. Thomas in *Birthrates and the Interwar Business Cycles* (1941) 36 J. AM. STATIST. ASS'N 465.

⁵ The total number of persons moving to cities of over 25,000 was estimated at 2,250,000 persons and 1,000,000 workers between October 1940 and October 1941, according to *Defense Migration*, W. P. A., mimeo., No. A3898, p. 7.

⁶ Examples of such cities are: San Diego and Long Beach, Calif., Wichita, Kan., the Norfolk Area, Va.; and Seattle, Wash., as reported in *Defense Migration*, *supra* note 5, Table I, "Number of Migrant Persons and Migrant Rates."

that as the vacancy ratio in these industrial cities fell below 2% and stayed there, rents would increase, and continue to increase, unless controls were imposed.

When, for strategic purposes, ordnance plants, new shipbuilding centers, and army posts were established in non-industrial and rural areas (the second and third types of defense areas listed above), the impact of in-migrant labor and families of officers and enlisted men upon the available housing facilities was so sudden that the provision of the most elementary requirements for shelter involved the building of whole new communities. The number of in-migrants was sometimes as much as 1000% greater than available vacancies in the area, resulting in a complete, overnight change in the whole rent structure of such small communities.

The Inadequacy of Supply

The demand of new defense workers coming into an area is primarily for rental housing. A migrant defense worker has no desire to burden himself with home ownership. Various factors, which have been analyzed in great detail in the studies of the Temporary National Economic Committee, have not made profitable for private investors the erection of rental housing for the income level of most defense workers.⁷ Furthermore, in many defense centers grave uncertainties as to the post-war industrial conditions of the locality have made new rental construction too great a risk. True, housing for sale, built with or without Federal Housing Administration insurance under the National Housing Act,⁸ becomes a net addition to the housing facilities of an area; but this is rarely an immediate solution or even a significant palliative to the rental housing problem. The amount of such construction for sale is small, relative to the need. Rental dwelling units left vacant by the transfer of some tenants to ownership tenure do not necessarily fit the needs of in-migrant defense workers either in monthly rent, character of structure, or in location with respect to defense industries. In any event, considerable time must elapse before the full impact of these net additions to the housing market is felt in all rent ranges.

As priorities are imposed upon new residential construction, the net number of units which may be built even in defense areas is limited.⁹ The allotment of priorities to a given defense area can rarely be as great as the community's absolute needs. To date only two cities, Washington and Los Angeles, are reported as having done any significant building for rent under the priorities regulations.¹⁰

Furthermore, when gross vacancy declines sharply in an area, there is a tendency for the banks, insurance companies, and government housing agencies to unload

⁷ See *Toward More Housing*, TNEC, Monograph No. 8 (1940), pp. xvi, 41-102, 173-177, especially Chart XI at p. 48.

⁸ Act of June 27, 1934, 48 STAT. 1246, as amended.

⁹ See OPM, Div. of Priorities, Release No. PM 1192, Sept. 19, 1941. Priority rating is available in "defense housing critical areas" for housing built to rent for not more than \$50 (shelter only) or to sell for not more than \$6,000. See also Div. of Defense Housing Coordination, Release No. 12095.

¹⁰ According to the Division of Defense Housing Coordination, defense housing priorities certifications had been made for 16,000 rental dwelling units between Sept. 22, 1941 and Dec. 1, 1941. Of these, 6,040 were in Washington and 2,209 in Los Angeles.

their foreclosed properties—temporarily rental housing—onto the sales market. Some cities within the past two years have reported the transfer of as much as 20% of their residential rental dwellings to home ownership.¹¹

Government defense housing under the Lanham Act¹² has ameliorated conditions at crucial points, but in scores of defense areas building with these appropriations cannot be expected to provide sufficient units to supply the needs created by the national emergency.¹³ At best, enough defense housing units can be constructed to provide minimum shelter for the necessary workers engaged in essential war production. The Government cannot undertake to construct a sufficient number of units to provide a competitive market in which the tenant will enjoy some choice. And without this power of selection, which requires a substantial percentage of vacant units, there is nothing to prevent an upward rental movement.

Attempts are being made to increase housing facilities through voluntary forms of rationing. The Homes Registration Service is sponsoring a program under which home owners and tenants with ample space are urged to rent single rooms to in-migrants. A general program of conversion and rehabilitation is also being developed by governmental housing agencies to yield more dwelling units. These plans, along with increased appropriations for defense housing, will help to alleviate the shortage but they cannot be expected to restore a competitive market which will insure rent stability.

Restrictions on automobile manufacture and the sale of tires will further aggravate the housing problem in and about key defense plants. Because of widespread use of the automobile, the normal housing market around a defense center, prior to the restriction, included communities situated 50 miles and more from the production center. In the future this radius will probably be cut drastically. Workers will have to live nearer their plants in order to use common vehicles. Many may have to find dwellings within walking distance. Pressure on the core of a housing market nearest the war industry will thus increase.

As the war program expands, the demand for rental housing in defense areas grows ever greater, and the supply remains relatively stable.

The Effect of Inflationary Rent Movements

The result of this increased demand for rental housing has been charted in about 177 localities where sample rent surveys have been undertaken at the request of the Office of Price Administration. Such surveys have been conducted by the Bureau of Labor Statistics and the research division of the Work Projects Administration. The

¹¹ The Bureau of Labor Statistics estimates that sales of rental property during periods ranging from 7 to 15 months have been 20% or more of the total sample in such cities as Baltimore, Md., Pontiac, Mich., and South Bend, Ind. Source: letter from A. F. Hinrichs, Acting Commissioner of the Bureau of Labor Statistics, dated Dec. 9, 1941.

¹² Pub. L. No. 849, 76th Cong., 3d Sess. (Oct. 14, 1940).

¹³ As of Dec. 27, 1941, 184,429 dwelling units for defense housing were allocated from public funds. Of these, 73,012 were reported completed. Source: *Defense Housing Financed by Public Funds: Summary as of December 27, 1941*, Div. of Defense Housing Coordination, multilithed, Jan. 2, 1942.

following table¹⁴ presents a frequency distribution of percentage increases in the total rent bill of selected defense communities on which reports are now complete. It should be noted that this percentage increase in the total rent bill is derived from units for which rents increased, remained stable, or were decreased.

RENT INCREASES IN CITIES OVER 50,000 IN POPULATION FOR PERIODS BETWEEN SEPTEMBER 1939 AND JANUARY 1942

<i>Percentage Increase in Total Rent Bill</i>	<i>Number of Cities Showing Such Increases</i>
3.0- 4.9	16
5.0- 6.9	17
7.0- 8.9	11
9.0-10.9	4
11.0-12.9	5
13.0-14.9	1
15.0-16.9	1
17.0 and over	1*
Total	56

*The total rent bill in this city increased 25.5%.

RENT INCREASES IN CITIES UNDER 50,000 IN POPULATION FOR PERIODS BETWEEN OCTOBER 1939 AND DECEMBER 1941

<i>Percentage Increase in Total Rent Bill</i>	<i>Number of Cities Showing Such Increases</i>
3.0- 6.9	50
7.0-10.9	26
11.0-14.9	10
15.0-18.9	5
19.0-22.9	10
23.0-26.9	6
27.0-30.9	5
31.0-34.9	1
35.0-38.9	1
39.0 and over	7*
Total	121

*Percentage increases in total rent bill in these cities were 94.9, 90.2, 57.7, 57.6, 45.9, 45.8 and 41.0.

The effects of rent increases of the magnitude indicated are clearly inconsistent with the general purposes of the Emergency Price Control Act:¹⁵

(a) Rent increases impede the effective prosecution of the war. Where exorbitant increases in the rental of housing accommodations take place, there results a high labor turnover detrimental to war production. Workers hesitate to accept employment in areas where they cannot obtain rental housing at fair and equitable rates.

(b) Rent increases give rise to demands for wage readjustments, which in turn contribute to the inflationary spiral. Rents normally consume about 20 percent of the

¹⁴ Sources: Surveys by the Bureau of Labor Statistics and by the Work Projects Administration.

¹⁵ Pub. L. No. 421, 77th Cong., 2d Sess. (1942) §1.

average wage-earner's income.¹⁶ When, as a consequence of an acute housing shortage, there is an upward movement in rents, an abnormal proportion of the wage-earner's income is absorbed by the cost of shelter. Since this leads to a decrease in real wages and a lowering of the wage-earner's standard of living, it causes demands for increased wages.

(c) Rent increases may cause peculiar hardships to persons with relatively fixed and limited incomes—white-collar workers engaged in normal civilian activities and persons dependent on life insurance, annuities, and pensions—with the result that their standard of living is unduly impaired.

II. RENT REGULATION UNDER THE PRICE CONTROL ACT

Governmental regulation of rents charged for housing is not novel. A respectable body of legislative precedent may be found in this country as well as in foreign jurisdictions. Techniques vary, and the techniques permitted under the Emergency Price Control Act are unique in many respects. Rent regulation on the national scale provided for under the Act has never been experienced or attempted in the United States, but the Office of Price Administration has the tools to accomplish the task and has already begun to use these tools.

The discussion that follows will attempt to present a survey of rent control under legislation, omitting, so far as possible, treatment of related subjects covered elsewhere in this volume in connection with commodity price control, judicial review of administrative action, and enforcement matters.

Legislative Precedent

The first true legislative programs for rent control were originated upon the outbreak of World War I, in order to meet the emergency created by an acute shortage of low-rent housing. Every major European nation enacted some form of rent and eviction regulation, ranging from the authority given municipalities in 1919 to confiscate available dwellings in Czechoslovakia to the more elaborate controls imposed by Great Britain in 1915.^{16a} In the United States regulation was not effectively introduced until after the war, although various limited measures had been attempted by some of the states as early as 1917.¹⁷

In general, four major types of rent control legislation have been employed in the United States and the British Empire. One of these, control through the operation of a rent commission, was first attempted in the District of Columbia under the

¹⁶ *Family Expenditures in the United States*, NAT. RESOURCES PLANNING BD. (Junc 1941) Tables 3, 6, 7 and 8, pp. 2 and 3.

^{16a} For descriptions of measures for the protection of tenants in 17 European nations, see *European Housing Problems since the War, 1914-1923*, INTERNATIONAL LABOUR OFFICE, STUDIES AND REPORTS, SERIES G, No. 1 (1924).

¹⁷ These generally took the form of civil relief acts. In effect, the acts barred suits by landlords for possession. See Me. Laws 1917, c. 273; Mass. Acts 1917, c. 2. Congress also enacted a Soldiers' and Sailors' Civil Relief Act, which allowed a discretionary stay up to three months to the dependents of service men against whom dispossession proceedings had been brought for premises renting at \$50 a month or less. Act of March 8, 1918, c. 20, 40 STAT. 440. This measure has been reenacted for dwellings renting at less than \$80 a month. Act of Oct. 17, 1940, c. 888, 54 STAT. 1178.

Ball Rent Law,¹⁸ enacted in 1919. This law created a commission of three members empowered to determine, upon their own initiative, or upon complaint, whether housing rents, charges, or services were fair and reasonable.¹⁹ Enforcement of the eviction controls provided for in the statute resulted in the leading American case in the field, *Block v. Hirsh*.²⁰ This was a suit by a landlord to recover possession from a tenant who refused to vacate in reliance on the right given in the Act to continue in possession. The landlord argued that the Act was unconstitutional in that it deprived him of his property without due process of law, took his property for a private use and gave it to another without compensation. In finding for the tenant, the Court overruled the District of Columbia Court of Appeals which had found the law unconstitutional.²¹ In a 5-to-4 decision the Supreme Court, through Justice Holmes, recognized the finding by Congress of an emergency and concluded that the business of renting had become affected with a public interest warranting police-power regulation.²² The dissenting opinion was to the effect that the war emergency did not create any power to regulate, and it was unconstitutional to forbid the landlord his free choice of tenant and rental.

Three important jurisdictions, Massachusetts,²³ New Jersey,²⁴ and New York,²⁵ enacted generally similar statutes soon after the last war, which together make up the second major type of rent control legislation, *viz.*, providing to a tenant in an action for rent the defense that the rent charged is unreasonable and oppressive. The

¹⁸ Act of Oct. 22, 1919, c. 80, tit. II, 41 STAT. 298 (1919).

¹⁹ If the commission found that the rents, charges, or services were not fair and reasonable, it had the power to fix them to conform with these standards. In addition, tenants were permitted to continue their possession so long as they paid rent and otherwise complied with the terms of the tenancy; and they could not otherwise be evicted except in a few limited instances set out in the statute.

Two other laws were enacted in the United States delegating to commissions the authority to control rents. One was the ill-fated Wisconsin statute which gave to the Railroad Commission of Wisconsin the power to fix reasonable rents in any city in a county of 250,000 population or more, Wis. Laws, Spec. Sess., 1920, c. 16. Because of the population restriction, the law could apply only to Milwaukee, and on this ground it was ruled discriminatory in State *ex rel.* Milwaukee Sales and Investment Co. v. Railroad Commission, 174 Wis. 458, 183 N. W. 687 (1921).

The other commission was that created in 1921 by ordinance in Denver, Colorado. Apparently, this ordinance did not prompt any significant judicial opinion.

²⁰ 256 U. S. 135 (1921).

²¹ 50 App. D. C. 56, 267 Fed. 614 (1920).

²² The emergency character of the Ball Rent Law was highlighted in *Chastleton Corporation v. Sinclair*, 264 U. S. 543 (1924). The Supreme Court reversed a judgment in favor of a tenant and remanded the case to the District Court for a trial on the facts as to whether the emergency had ceased. Later the same year, in *Peck v. Fink*, 55 App. D. C. 110, 2 F. (2d) 912 (1924), *cert. denied*, 266 U. S. 631 (1925), on the authority of the *Chastleton* case, the statute was held unconstitutional on the ground that the emergency had, in fact, passed.

²³ A Massachusetts act of 1920, Acts 1920, c. 578, covering dwellings other than hotel rooms, lodging houses, or rooming houses, created a presumption of unreasonableness in cases where the rent had been increased more than 25% over the rent as it existed a year prior to the time of the agreement under which the rent was being sought. Because it found that the housing emergency was continuing, the legislature did not permit this statute to expire until July 1, 1923.

²⁴ New Jersey legislation, Laws 1924, c. 69, §2, gave the tenant the right to use the defense of unreasonableness where the landlord sued to recover possession for nonpayment of rent, or where the landlord sought to recover for rent where there has been an increase within the year prior to the institution of the action. If it was shown that the rent had been increased 35% or more within the three years next preceding the beginning of the suit, the rent was to be considered by the court as *prima facie* unreasonable and oppressive.

²⁵ N. Y. Laws 1920, cc. 130-139, as amended by *id.* cc. 942-947.

Massachusetts and New Jersey legislation followed the pattern of Chapter 136 of the New York Laws of 1920.²⁶

The constitutionality of this chapter was tested and upheld by the United States Supreme Court in *Edgar A. Levy Leasing Co. v. Siegel and 810 West End Avenue, Inc. v. Stern*.²⁷ With three Justices dissenting, it was held that the standard of reasonableness is sufficiently definite to meet due process limitations of the Constitution.²⁸

The third method of rent control, adopted by New South Wales in 1915,²⁹ was unique in that it set up "Fair Rent" courts to administer the law. In actual operation the Act was only applied in Sydney. Any lessor or lessee, not in default, could apply to the court to have the fair rent determined by it. All premises leased wholly or partially for residence, where the lease did not exceed three years or the rent £3 a week, were within the limits of the Act. A definite scheme was provided for determining the "fair rent," planned to take into account the unimproved value of the land, the cost of erecting a similar dwelling at the time of the application, and the interest to be allowed the landlord on the capital value, which was the total of the first two items. To this were added taxes, the amount annually required for repairs, maintenance and renewal, insurance, etc. An important proviso directed that, except where the court was convinced the circumstances rendered an increase just, the fair rent could not be higher than the prevailing rate at which the dwelling was let on January 1, 1915, exactly a year previous to the operative date of the Act.

In the present war, the expansion of war industries has resulted in a shortage of housing facilities in urban centers throughout Australia. While the control of rents was originally put in the hands of the individual state governments, the National Security (Fair Rents) Regulations for the Commonwealth were subsequently issued in order to empower those states lacking the requisite authority to control rents.³⁰ The Regulations applied not only to dwellings, but also to shops and factories, and whatever goods were leased in connection therewith. In line with the practice under the New South Wales Act of 1915, Fair Rent Boards were organized consisting of a Police Stipendiary or Special Magistrate, and two other members.

The fourth principal technique employed in rent regulation has been rent pegging by reference to a particular date, sometimes designated the normal rent date, or maximum rent date. That is, rentals higher than those received for the particular accommodations on a certain date in the past are prohibited. The rent on that date

²⁶ In September, 1920, Chapter 136 was amended in several respects by N. Y. Laws 1920, c. 944.

²⁷ 258 U. S. 242 (1922).

²⁸ The method for determining a reasonable rent under this Chapter is outlined in *Hall Realty Co. v. Moos*, 200 App. Div. 66, 192 N. Y. Supp. 530 (1922). In *Hirsch v. Weiner*, 116 Misc. 312, 190 N. Y. Supp. 111 (1921), the court ruled that a landlord is entitled to a 10% net return on the value of his property; but in *Jash-Lap Realty Co., Inc. v. Fishman*, 115 Misc. 485, 190 N. Y. Supp. 117 (1921), the court held the issue one of fact for the jury on the ground that there can be no definite rule as to what is a reasonable rent, since conditions necessarily vary.

²⁹ New South Wales Acts 1915, No. 66. In 1920 South Africa adopted legislation like that of New South Wales. For a discussion of the latter, see Evatt, *A "Fair Rent" Experiment in New South Wales* (1920) 2 J. OF COMP. LEGIS. & INT. L. (3d. ser.) 10.

³⁰ Stat. Rules 1941, No. 62, March 25, 1941, as amended by Stat. Rules 1941, No. 71, April 2, 1941.

is established as the maximum lawful rent. Ample precedent for legislation of this character is provided by the relatively long experience of Great Britain with rent restriction. Dating from the Act of 1915,³¹ the legislation was continued without interruption. In general, increases above the "standard rent" were made irrecoverable; that is, the rent payable on August 3, 1914, was set as a maximum; or if the property was then vacant, the last previous rent, or if rented for the first time after that date, the rent first agreed on by the landlord and tenant was to be the maximum.

Although this English Act had been drafted as a wartime measure, post-war economic conditions necessitated the continuance of rent control. In 1920 a Rent Act³² was passed consolidating several laws enacted since 1915 and this has come to be known as the "Principal Act" of a series of subsequent enactments designed to give the occupants of certain residential properties security of tenure. By virtue of the latest statute,³³ September 1, 1939 is now the "standard rent" date and the restrictions are extended to cover dwellings rented by those with substantial incomes. These Acts have provided regulations, schedules and standard forms of notice with which the landlord must comply in the determination of rent on controlled property.

In Canada, rent control during the present war dates from September 11, 1940.³⁴ On that day, the War Time Prices and Trade Board was given the same control over rents it had been exercising over prices since September 3, 1939. In the earlier cases brought under control in Canada, the rentals paid January 2, 1940 were established as the maxima.³⁵ Later, the date was fixed at January 2, 1941,³⁶ for areas not previously controlled, and now in all other areas, no oral or written lease for any commercial or housing accommodation, furnished or unfurnished, may legally be made at a rental higher than that payable under the lease in effect on October 11, 1941, unless an application is made and approved by the local committee.³⁷ Such an application may only be made on the basis of new circumstances arising since October 11, 1941, which are confined to limited types of cases.³⁸

The District of Columbia Emergency Rent Act,³⁹ passed on December 2, 1941, was also predicated on the theory of the rent date. This law, effective January 1, 1942, prescribes in general that the maximum rent for housing accommodations is to be that to which the landlord was entitled on January 1, 1941. If the accommodations were not rented on this date but had been rented at some time during the year immediately prior, the rent is to be that of the most recent letting, but if there has been no letting either on the maximum rent date or within the year previous

³¹ 5 & 6 GEO. V, c. 97.

³² 2 & 3 GEO. VI, c. 71.

³³ Order-in-Council, P. C. 5003, Sept. 24, 1940.

³⁴ Order No. 33, Wartime Prices and Trade Board, Feb. 14, 1941.

³⁵ Order-in-Council, P. C. 8965, Nov. 21, 1941.

³⁶ Examples are: substantial increases in taxation, or operating costs, or a substantial expenditure for structural alterations or additions, or a substantial increase in the wear and tear caused by the tenant, or a substantial divergence between the fixed rent and that charged for similar housing accommodations in the same area. The Canadian legislation specifically rejects the principle of fixing rentals at levels designed to give property owners a fair return on their investment.

³⁷ Pub. L. No. 327, 77th Cong., 1st Sess. (Dec. 2, 1941).

³⁸ 10 & 11 GEO. V, c. 17.

³⁹ Order-in-Council, P. C. 4616, Sept. 11, 1940.

thereto, the rent is to be that generally prevailing for comparable housing accommodations as determined by the Administrator of Rent Control, an office created in the Act. Provision is made for a general adjustment of the maximum rent ceiling by the Administrator to compensate for a general increase or decrease since the maximum rent date, in taxes or other maintenance or operating costs relating to all accommodations or to any particular class of accommodations. In addition, the individual landlord or tenant may petition the Administrator to adjust the rent ceiling applicable to his accommodations so that peculiar conditions affecting him may be taken into account and proper allowance made. The landlord may seek an adjustment to compensate for a substantial rise in taxes or maintenance or operating costs, or for a substantial capital improvement or alteration; or, the tenant may petition for a reduction on the ground that the maximum rent ceiling permits an unduly high rent.⁴⁰

Rent Provisions of the Act

Authority to control rents stems from the language of subsection (b) of Section 2, the section devoted to prices, rents, and market and renting practices. The Administrator's rent control authority may be exercised within "defense-rental areas," defined to include the District of Columbia and "any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act."⁴¹ In the earliest version of the Price Control Bill⁴² placed before the House Committee on Banking and Currency, accent was laid on whether defense activities had resulted or threatened to result in a rental housing shortage. Members of the Committee disclosed by their interrogation⁴³ of witnesses that they might consider a defense-rental area co-terminous with so-called defense-housing areas proclaimed by the President under the National Housing Act.⁴⁴ While such proclamations are indicative of a deficiency of accommodations, and incidentally indicate a tight rental market, the considerations entering into the selection of localities for defense-housing need not be binding on the Administrator in his selection of areas requiring rent regulation.⁴⁵ Mr. Henderson testified before the House Committee that, in his opinion, the test is whether or not rents have been affected by the defense effort.⁴⁶

⁴⁰ *Id.*, §§3, 4.

⁴¹ Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942), §302(d).

⁴² H. R. 5479, S. 1810, 77th Cong., 1st Sess. (Aug. 1, 1941).

⁴³ *Hearings before the House Committee on Banking and Currency on H. R. 5479, superseded by H. R. 5990, 77th Cong., 1st Sess. (1941)* (hereinafter referred to as "*House Hearings*") 413, 612-13.

⁴⁴ 48 STAT. 1246, c. 874, as amended, 12 U. S. C. A. §1738 (Supp. 1941).

⁴⁵ A separate finding is necessary. *House Hearings* 413.

⁴⁶ *Id.* 962. Representative Dirksen proposed, in the course of debate on the floor of the House that "defense-rental area" be defined as: ". . . any area designated by the Administrator as an area where defense activities have resulted in a substantial general increase in the rents for housing accommodations inconsistent with the purposes of this Act and where a housing shortage has been evidenced by the area being designated for the grant of priorities or allocation for building materials which are upon the critical list of such materials." 87 Cong. Rec., Nov. 28, 1941, at 9482. By rejecting the amendment the House specifically put aside any test dependent exclusively on the proclamation of defense-housing areas issued under the authority of the National Housing Act.

The advisability of confining rent control to "defense-rental areas" occasioned considerable controversy among the legislators.⁴⁷ Industrial activity was still on a defense basis when the House and Senate Committees came to consider the language of the Act. The proponents of the Gore Bills⁴⁸ and the Baruch plan generally, favored abolishing any restrictions on the scope of the rent control program.

Section 2(b) directs that the Administrator may establish maximum rents within a defense-rental area if, within sixty days after the issuance of his recommendations, rents have not been stabilized or reduced by local action in accordance with these recommendations. The first opportunity to handle the situation is given to the locality involved.⁴⁹ Whether or not the Administrator will act after an attempt at local regulation through state legislation or otherwise, may be made dependent on some objective test of the actual results of such a program with respect to the realization of the Administrator's recommendations.

The broad and simple language of Section 2(b) affords a blueprint for the course of administrative action. Since the Administrator may exercise his authority to control rents within defense-rental areas, the first step toward control is the designation of the area. This may be coincident with, or antecedent to, the "declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents." The subsection does not indicate that recommendations are to be addressed to any specific authority. Nor does the legislative history of the bill indicate any intention on the part of Congress that the recommendations need be specific.

A statement of considerations is required⁵⁰ when the maximum price of a commodity is established, but is not required in the regulation of rentals. The Administrator's declaration stating the necessity for stabilization or reduction of rents in a given area is somewhat analogous to a statement of considerations, but is not to be confused with the latter.⁵¹ With respect to rents, it seems sufficient under the statute simply to state the need for regulation.

The actual establishment of maximum rents by regulation as provided in the Act, is contingent on the effectiveness of local action, if any local efforts have been made. Where local action is not instituted, or fails to effectuate his recommendations, the Administrator may establish maximum rents by regulation or order.

A definite standard to guide administrative action in establishing maximum rents is found in Section 2(b).⁵² That standard is expressed in terms of a date and, as

⁴⁷ 88 Cong. Rec., Jan. 7, 1942, at 83; *id.*, Jan. 27, 1942, at 719.

⁴⁸ H. R. 5760, H. R. 5997, H. R. 6086, 77th Cong., 1st Sess. (1941).

⁴⁹ *House Hearings* 613, 614.

⁵⁰ §2(a): "Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order."

⁵¹ See Ginsburg, *The Emergency Price Control Act of 1942: Basic Authority and Sanctions*, *supra* at 31.

⁵² *Cf.* §2(a): "So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judg-

has already been pointed out, is not novel.⁵³ The bill first introduced⁵⁴ did not employ this standard, but merely required that rents should be fixed so as to effectuate the purposes of the Act. As reported out of the House Committee, Section 2(b) imposed on the Administrator the condition that he consider "rents prevailing for the accommodations, or comparable accommodations, on or about April 1, 1940." One of the factors leading to the choice of the April 1, 1940 date was that considerable rent data had been gathered by the Census Bureau as of that time.

The Administrator was also directed to consider increases or decreases of general applicability in property taxes and other costs occurring during and subsequent to the year ending on April 1, 1940 with respect to housing accommodations within the defense-rental area involved.

It was pointed out on the floor of the House⁵⁵ that the April 1, 1940 date could serve as a bench mark from which to consider the current rent level.⁵⁶ However, the Senate added an amendment making the base period for rents April 1, 1941 except where defense activities had already resulted in increases inconsistent with the purposes of the Act. In such a case the base period was to be the period on or about the most recent date which did not reflect such increases. In any event, this was not to be earlier than April 1, 1940. The Act effects a compromise between the House and Senate versions in that it provides that if rents for housing accommodations in a defense-rental area had not increased or threatened to increase in a manner inconsistent with the purposes of the Act as of April 1, 1941, the Administrator has the power to fix rents on a date later than April 1, 1941. It appears, therefore, that while the suggested statutory base date is April 1, 1941, the base period may be any time between April 1, 1940, and the date on which the Administrator takes action.⁵⁷

In establishing upper limits on rent charges the Administrator is to set maximum rents which will be "generally fair and equitable and will effectuate the purposes of this Act." The Administrator is also directed to make adjustments for relevant factors of general applicability, "including increases or decreases in property taxes and other costs."

The date standard has been adopted as an integral part of the price and rent control machinery because it affords a ready administrative method of accomplishing a proper legislative purpose in a generally fair and equitable manner. Adjustments are in order where the over-all rent picture demands them. Were the Administrator compelled to treat every rental transaction separately and conduct inquiries into "fair return" on "investment value," and were he required to evolve a complex formula patterned after public utility rate fixing procedures,⁵⁸ the rent control program could

ment of the Administrator, the prices for such commodity are generally representative, for the commodity or commodities included under such regulation or order. . . .)"

⁵³ See pp. 114-115, *supra*.

⁵⁴ H. R. 5479, S. 1810, 77th Cong., 1st Sess. (Aug. 1, 1941).

⁵⁵ 87 Cong. Rec., Nov. 24, 1941, at 9309.

⁵⁶ See note 52, *supra*.

⁵⁷ 88 Cong. Rec., Jan. 27, 1942, at 719.

⁵⁸ Representative Dirksen did submit an amendment which was calculated to comprehend all the data of the public utility rate procedure: "When rents have been established as is herein provided, the same

not keep pace with the emergency and would probably bog down in much the same way as did the New York and District of Columbia rent control programs after the last war. The dangerous inflationary tendencies of a war economy will not wait on cumbersome, time-consuming preventives. This is not to say that a direct, frontal attack on inflationary rents must perforce compel landlords to operate at a loss. The use of the date principle is demonstrably reasonable. It recognizes, and continues in effect, the conditions of a freer market, created in the recent past through the normal processes of economic bargaining of landlords and tenants. Present rental market conditions in a great many localities can no longer be considered normal.

Because the threat of dispossession is the most powerful compulsion which a landlord may exert to influence and coerce his tenant, any effective rent control program must comprehend a plan for the regulation of evictions. Section 2(d) of the Price Control Act authorizes the Administrator, whenever such action is necessary or proper in order to effectuate the purposes of the Act, to regulate or prohibit renting or leasing practices, including evictions, in connection with any defense-area housing accommodations. Such practices are to be controlled when, in his judgment, they are equivalent to, or are likely to, result in rent increases inconsistent with the purposes of the Act. It might be pointed out that this subsection is couched in unprecedentedly general language in comparison with the eviction controls of previous statutes.⁶⁰ On the basis of the authority granted the Administrator by these sections, it was contemplated that he would promulgate regulations consistent with the purposes of the Act and calculated to effectuate those purposes. Although Congress itself, by passing the Ball Rent Law⁶⁰ and the Saulsbury Resolution,⁶¹ furnished precedents for stringent controls, the first draft of the bill considered in the Congress lacked any reference to eviction controls. It was recognized early in the course of the hearings before the House Committee,⁶² based on the experience under earlier

shall be adjusted upward or downward upon the application of the owner or the tenant so as to produce a gross rental which after payment of taxes and other costs of ownership, management, and operation, including depreciation and an allowance for vacancy, will provide a net return which is reasonable upon the value of the property." 87 Cong. Rec., Nov. 28, 1941, at 9447. As Representative Dirksen himself proceeded to explain, this amendment was designed to remedy whatever inequities a rent ceiling might conceivably engender. However, he withdrew his amendment in favor of another proposed by Representative Patman, which, though accepted by the House, was dropped by the Senate Committee on Banking and Currency.

⁶⁰ A characteristic of the emergency landlord-tenant laws passed for the District of Columbia, and the post-war laws enacted in New York has been the over-all restraint on evictions. Indeed, the first legislative attempt to curb rent profiteering in the District of Columbia during the last war was embodied in the Saulsbury Resolution, Act of May 31, 1918, 40 STAT. 593 (1918), drafted solely for the purpose of continuing tenants in possession for the duration of the war with certain limited exceptions.

Stated broadly, these local laws have prohibited eviction or dispossession generally, regardless of the terms of any lease or contract, except where there has been a default in the payment of rent, or the tenant has committed a nuisance, or has used the premises for illegal or immoral purposes, or where the landlord seeks the premises for immediate occupation by himself or a member of his family, or where he plans to make substantial alterations to the dwelling, or plans to raze the property and replace it with new construction.

⁶⁰ Act of Oct. 22, 1919, c. 80, Title II, 41 STAT. 298 (1919).

⁶¹ Act of May 31, 1918, c. 90, 40 STAT. 593 (1918).

⁶² *House Hearings* 960.

statutes, that resort to dispossess proceedings by persons seeking to evade the legislative purposes would compel the inclusion of powers to enforce appropriate sanctions against such disruptive practices.

Administrative experience under the Executive Order setting up the Office of Price Administration, as well as the history of other rent control programs led to the inclusion in the Act of subsection (b) of Section 4, which deals with prohibitions generally. When tenants sought protection from Fair Rent Committees cooperating with OPA, some landlords had been quick to thwart committee action by instituting eviction proceedings. To deny the availability of the eviction weapon for this purpose, it was specifically made unlawful to evict a tenant or to refuse to renew his lease on account of action taken by the tenant, or which he proposed to take, under the authority of the Act.

Effective rent regulation is also threatened from another quarter. It is obvious that the fixing of a maximum rent will be little more than an empty gesture if landlords are free to cut down, or eliminate services bargained for in the leasing agreement, or furnished as of the date establishing the rent. Because "housing accommodations" are defined in the Act to include "privileges, services, furnishings, furniture, and facilities" connected with the use or occupancy of rental property, these adjuncts of the property may be brought within the regulatory ambit. In the normal case a reduction in services without a compensating reduction in rent is tantamount to a rent increase.

When it is recognized that services comprise a part of the consideration in most rental agreements, it is not surprising that the Supreme Court rejected a contention made in a leading case⁶³ which arose under the New York Housing Laws of September 1920 that to compel the continuance of services would be to violate the 13th Amendment. Justice Holmes ruled that services are a necessary accompaniment of the modern dwelling, and that certain services are inherent in ownership. It would seem to make no difference whether the Administrator compels new services or requires a continuation of the old. It may be pointed out that in practice questions of involuntary servitude are likely to be academic, inasmuch as the Act specifically provides in Section 4(d) that a lessor cannot be compelled to offer housing accommodations for rent.

Along with the other sanctions⁶⁴ available to the Administrator for the enforce-

⁶³ *Marcus Brown Holding Co. v. Feldman*, 256 U. S. 170 (1921).

⁶⁴ Section 205(a) provides that the Administrator may apply for an order enjoining practices which constitute or will constitute a violation of the Act. Subsection (b) specifies the criminal penalties to which violators of the Act are liable. Subsection (e) reads: "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for \$50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action

ment of rent control, Section 205(f), granting the power to issue or require a license as a condition to the selling of commodities, is also applicable to renting. Section 205(e) provides that "for the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity." It follows, therefore, that, wherever the latter phrase appears in Section 205, rental transactions are subject to the same controls as commodities. The authority to license rental transactions will insure effective control in those cases where the use of this administrative expedient proves advisable.

Initial Action by the Administrator

The first official action taken by the Office of Price Administration under the rent control provisions of the Price Control Act is already history. On March 2, 1942, the Administrator, acting under Section 2(b) of the Act, designated twenty "defense-rental areas" as areas where "defense activities have resulted in an increase in the rents for housing accommodations inconsistent with the purposes of" the Emergency Price Control Act of 1942.⁶⁵ The localities embraced in these designations included twenty groups of communities in thirteen states.⁶⁶ Each designation was accompanied by a "declaration" stating generally the necessity for the stabilization and reduction of rents in the areas affected, and containing the Administrator's recommendations as to the type and degree of stabilization and rent reduction necessary to establish rent levels consistent with the purposes of the Act. In all but six of the twenty areas it was recommended that the rents for housing accommodations be stabilized or reduced to the level prevailing on April 1, 1941.⁶⁷

The rent declarations also recited that if the recommendations were not effectuated within sixty days after their issuance, the Administrator could by regulation or order establish maximum rents under the provisions of the Price Control Act.

The issuance of these rent declarations was accompanied by press releases summarizing their provisions and containing statements of the Administrator stressing the urgent need for rent regulation.⁶⁸

Shortly after the issuance of the first twenty rent declarations, the Office of Price Administration made available to the public through the press an explanation, in question-and-answer form,⁶⁹ of the basic rent control provisions of the Price Control Act. This action may be the forerunner of considerable effort on the part of the Office of Price Administration to educate the public with respect to the rent control program and its operation and effect in various situations. It is generally recognized that complete understanding of the purposes of the program and full cooperation on the part of those affected by it are vital to its success.

under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

⁶⁵ 7 FED. REG. 1675-1695 (1942).

⁶⁶ On April 2, 1942, the Administrator designated the City of Baltimore and its environs a defense-rental area and accompanied the designation with a rent declaration, 7 FED. REG. 2598 (1942).

⁶⁷ In four areas the date selected was Jan. 1, 1941; in two others, the date was July 1, 1941.

⁶⁸ Press Releases Nos. PM 2606, March 3, 1942, and PM 2852, April 3, 1942.

⁶⁹ Press Release No. PM 2628, March 6, 1942.