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HUD Policies and Section 8 Housing: Strategies for Dealing with Change Collected Readings

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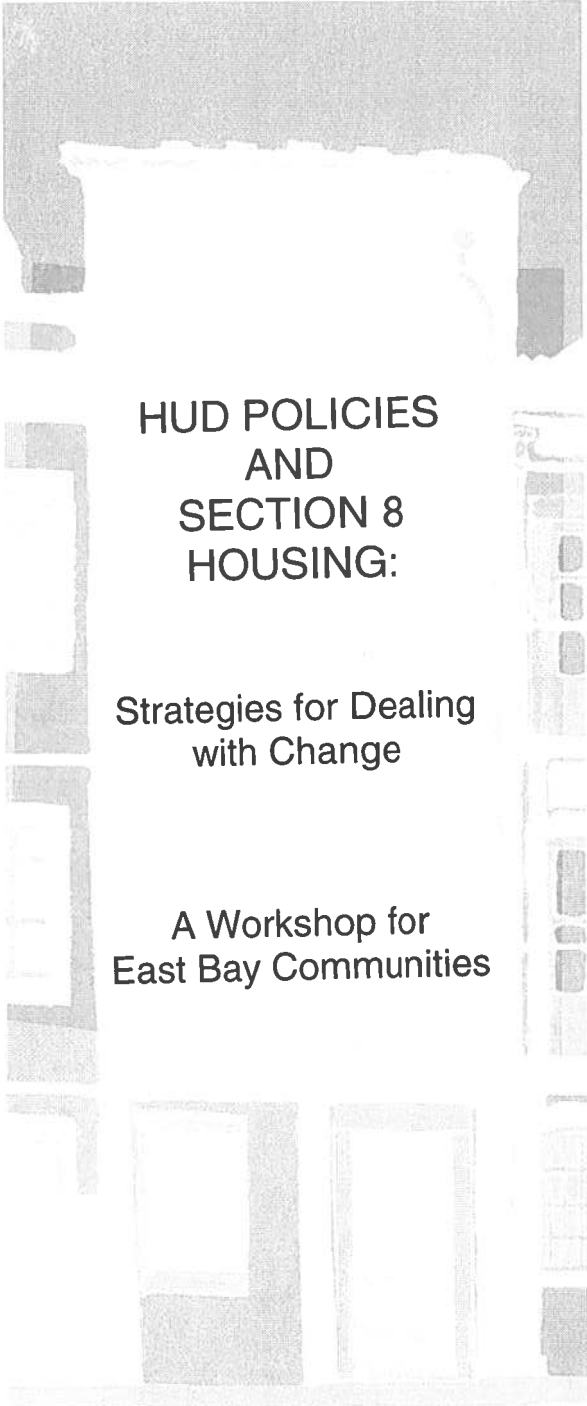
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University of California at Berkeley
Institute of Urban and Regional Development

COLLECTED READINGS



HUD POLICIES AND SECTION 8 HOUSING:

**Strategies for Dealing
with Change**

**A Workshop for
East Bay Communities**

March 6, 1998

Presented by:

**Institute of Urban and Regional
Development, UC Berkeley**

City of Berkeley

**City of Berkeley Rent
Stabilization Board**

Center for Independent Living

**Readings compiled by Francesca Gambetti
Production by Jay Tharp**

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(RENTAL VOUCHERS AND RENTAL CERTIFICATES)

WHAT ARE SECTION 8 RENTAL VOUCHERS AND RENTAL CERTIFICATES?

The Section 8 rental voucher and rental certificate programs are the federal government's major programs for assisting very low-income families, the elderly, and the disabled to rent decent, safe and sanitary housing in the private market. Since the rental assistance is provided on behalf of the family or individual, participants are able to find and lease privately owned housing, including single-family homes, townhouses and apartments. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects.

Section 8 rental vouchers and rental certificates are administered locally by public and Indian housing agencies (HAs). The HAs receive Federal funds from the HUD to administer the Section 8 programs. A family issued a rental voucher or certificate and is responsible for funding and selecting a suitable rental unit of its choice, which may include its present unit. Rental units must meet minimum standards of health and safety, as determined by the HA. A rental subsidy is paid directly by the HA to the landlord on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.

AM I ELIGIBLE?

Eligibility for a rental voucher or certificate is determined by the HA based on the total annual gross income and family size and is limited to U.S. citizens and specified categories of non-citizens who have eligible immigration status. In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. Median income levels are published by HUD and vary by location. The HA serving your community can provide you with the income limits for your area and family size.

During the application process, the HA will collect information on family income, assets and family composition. The HA will verify this information with other local agencies, your employer, and bank and will use the information to determine program eligibility and the amount of the rental assistance payment.

If the HA determines that your family is eligible, it will put your name on a waiting list, unless it is able to assist you immediately. Once your name is reached on the waiting list, the HA will contact you and issue to you a rental voucher or certificate.

HOW DO I APPLY?

If you are interested in applying for a rental voucher or a certificate, contact your local HA. For further assistance, please contact the HUD Office nearest to you.

FEDERAL PREFERENCES AND WAITING LIST -- WHAT ARE THEY AND HOW DO THEY AFFECT ME?

Since the demand for housing assistance often exceeds the limited resources available to HUD and the local housing agencies, long waiting periods are common. In fact, an HA may close its waiting list when it has more families on the list than can be assisted in the near future.

In selecting a family from its waiting list, an HA may give preference to a family who is (1) homeless or living in substandard housing, (2) paying more than 50% of its income for rent, or (3) involuntarily displaced. Families who qualify for these preferences will move ahead of other families on the list who do not qualify for any preference. Each HA has the discretion to establish other additional preferences to reflect other needs of its particular community.

RENTAL VOUCHERS AND RENTAL CERTIFICATES -- WHAT ARE THE DIFFERENCES AND HOW DO THEY FUNCTION?

The Section 8 rental voucher and rental certificate programs each place the choice of housing in the hands of the individual family. A very low-income family who has been selected by the HA to participate is encouraged to consider several housing choices to secure the best rental housing for its needs.

The rental unit must meet an acceptable level of health and safety before the HA can approve payments to landlords under the rental voucher and certificate programs. When the rental voucher or certificate holder finds a unit that it wishes to occupy and reaches an agreement with the landlord over the lease terms, the HA must inspect the dwelling and review the lease for approval. A rental voucher or certificate holder is also advised of the unit size for which it is eligible, based on family size and composition, and the applicable rent levels.

Under the rental certificate program, the rent for the unit usually may not exceed a maximum rent, determined by the HA, based on HUD standards established for each county and metropolitan area. The maximum rents are adjusted on a periodic basis to keep pace with increased costs of rent and utilities. Most rental certificate holders must lease a unit in which the total rent including utilities does not exceed the maximum rent. The rental certificate holder generally pays 30% of its monthly adjusted income towards the rent and utilities.

In the rental voucher program, the HA determines a payment standard which is used to calculate the amount of rental assistance a family will receive, but does not affect the amount of rent a landlord may charge or the family may pay. A family which receives a rental voucher can select a unit which rents below or above the payment standard. The rental voucher family must pay more than 30% of its monthly adjusted gross income for rent and utilities if the unit rent is greater than the payment standard. However, the family would pay less than 30% of its monthly adjusted gross income if the total rent was less than the payment standard.

FAMILY SHARE OF RENT VERSUS THE RENT SUBSIDY:

In the rental certificate program, a family generally pays either 30% of its monthly adjusted gross income, 10% of its monthly gross income, or its welfare rent payment toward rent, whichever is greater. The family's share of the rent is calculated by the HA, but the family pays that amount to the landlord. In turn, the HA pays the remainder of the rent directly to the landlord. The family's rent share changes when its income or family circumstances change, while the HA rental assistance varies according to the actual rent.

Under the rental voucher program, a family may choose a unit that rents for more than the payment standard and may pay more or less than 30% of its monthly adjusted gross income for rent. The HA calculates the maximum amount of rental assistance allowable, which is the difference between the payments standard and 30% of the family's monthly adjusted gross income, and pays rental assistance. The amount of rental assistance paid by the HA changes with the payment standard while the amount the tenant pays varies with the actual rent. For example, if a family locates a unit that rents below the payment standard, the family would pay less than 30% of its monthly adjusted gross income for rent. On the other hand, if a family decides to rent a unit above the payment standard, it would pay over 30% of its monthly adjusted gross income for rent. The family's rent share also changes when its income or family circumstances change.

CAN I MOVE AND CONTINUE TO RECEIVE SECTION 8 RENTAL ASSISTANCE?

A family's housing needs change over time with changes in family size, job locations, and for other reasons. The rental voucher and rental certificate programs are designed to allow families to move without the loss of rental assistance. Moves are permissible as long as the family notifies the HA ahead of time, terminates its existing lease within the appropriate provisions, and finds acceptable alternate housing.

Under both the rental voucher and certificate programs, new rental voucher- and certificate-holders may choose a unit anywhere in the United States if the family lived within the jurisdiction of the HA issuing the rental voucher or certificate when the family applied for assistance. Those new rental voucher- and certificate holders not living within the jurisdiction of the HA at the time the family applies for rental assistance must initially lease a unit within that jurisdiction for the first twelve months of assistance. A family that wishes to move to another HA's jurisdiction must consult with the HA that currently administers its rental assistance to verify the procedures for moving.

ROLES - THE TENANT, THE LANDLORD, THE HOUSING AGENCY AND HUD

Once an HA approves an eligible family's lease and housing unit, the family and the landlord sign a lease and, at the same time, the landlord and the HA sign a housing assistance contract which runs for the same term as the lease. This means that everyone -- tenant, landlord and HA -- has obligations and responsibilities within the rental voucher and certificate programs.

Tenant's Role: When a family selects a housing unit, and the HA approves the unit and lease, the family signs a lease with the landlord for at least one year. The tenant may be required to pay a security deposit to the landlord. After the first year the landlord may initiate a new lease or allow the family to remain in the unit on a month-to-month lease.

When the family is settled in a new home, the family is expected to comply with the lease and the program requirements, pay its share of rent on time, maintain the unit in good condition and notify the HA of any changes in income or family composition.

Landlord's Role: The role of the landlord in the rental voucher and certificate programs is to provide decent, safe, and sanitary housing to a tenant at a reasonable rent. The dwelling unit must pass the programs's housing standards and be maintained up to those standards as long as the owner receives housing assistance payments. In addition, the landlord is expected to provide the services agreed to as part of the lease signed with the tenant and the contract signed with the HA.

Housing Authority's Role: The HA administers the rental voucher and certificate programs locally. The HA provides a family with the rental assistance that enables the family to seek out suitable housing and the HA enters into a contract with the landlord to provide rental assistance payments on behalf of the family. If the landlord fails to meet his/her obligations under the lease, the HA has the right to terminate assistance payments.

HUD's Role: To cover the cost of the program, HUD provides funds to allow HAs to make housing assistance payments on behalf of the families and HUD pays the HA a fee for the costs of administering the program. When additional funds become available to assist new families, HUD invites HAs to submit applications for funds for additional rental vouchers and certificates. Applications are then reviewed and funds awarded to the selected HAs on a competitive basis.

ADDITIONAL INFORMATION AND OTHER SUBSIDY PROGRAMS

For additional information about the rental voucher and certificate programs, contact either the local HA serving your community or the Office of Public Housing within your local HUD office. There may be a long wait for assistance under the rental voucher and certificate programs. If the HA also administers the public housing or Indian housing programs, applicants for the Section 8 program may also ask to be placed on the waiting list for the public or Indian housing program. HUD also administers other subsidized programs and you may obtain a list of projects in your area from the Office of Housing in the HUD office located in your state. Under the HUD administered programs families apply directly to the owner or management agent of the subsidized property.

SECTION 8 POLICY AND IMPLEMENTATION



Mark-to-Market Legislative Summary

369 Pine Street, Suite 300, San Francisco, CA 94104 Ph: 415-433-6804 Fax: 415-433-6805

FAX TRANSMITTAL

TO: Persons Interested in California's Section 8 Inventory

FROM: Bill Rumpf and Richard Mandel

RE: Legislation Adopted on "Mark-to-Market"

DATE: March 3, 1998

In October 1997, Congress passed the Multifamily Affordable Housing Reform and Affordability Act ("MAHRAA") covering the renewal of Section 8 contracts as well as the restructuring of FHA-insured loans on properties with Section 8. The bill makes major changes from the current rules that have governed Section 8 renewals. The provisions of the legislation include:

- Section 8 Renewals: The bill includes budget authority to renew all project-based Section 8 contracts or to provide tenant-based vouchers if owners choose not to renew or if the property is deemed ineligible for renewals. Section 8 Moderate Rehabilitation contracts are included as eligible for project-based renewals.
- One-Year Contracts Continue: The legislation continues the recent practice of providing only one-year Section 8 renewals. The process covering renewals has been made permanent, but future renewals will be subject to yearly appropriations.
- FY 1997 Demonstration Extended: For FY 1998, the current "Portfolio Reengineering Demonstration" will be extended. For 1998, eligible owners can simply accept renewals at the lower of current contract rents or 120% of FMR and avoid the loan restructuring options under the Demonstration.
- New Rules Take Effect in FY 1999: The legislation creates new rules that will affect Section 8 expirations after October 1, 1998. After that date, all projects with rents above 100% of FMR or above comparable market (i.e., street) rents will be subject to "mark-to-market." The basic elements of "mark-to-market" are that Section 8 contract rents could not be renewed at levels in excess of comparable market rents. If the project is unable to service all debt after the rents are reduced, the first mortgage would be bifurcated into a first mortgage that is fully serviced and a second mortgage that is paid on a residual receipts basis.

- Delegated Underwriting and Monitoring: HUD will delegate the responsibility to re-underwrite Section 8 properties, with priority given to state or local government to do this processing. The delegated roles would also include assuring that any required repairs are completed and overseeing management after Section 8 renewal. A new HUD division will be created to oversee this process which will be known as the Office of Multifamily Housing Assistance Restructuring (OMHAR). In California, the California Housing Finance Agency has applied to conduct Section 8 restructuring within the state, and local government agencies may also apply.
- Potential Voucher Conversions: The legislation mandates that HUD offer project-based renewals to properties that are predominately occupied by elderly or disabled residents, as well as properties in tight housing markets (tentatively defined as 6% vacancy or less). HUD's designee will have discretion to provide either project-based renewals or tenant-based vouchers for family projects and in markets with higher vacancy levels. The decision is to be based on specified criteria including vacancy rates, voucher use rates and other factors. Conversion to vouchers may also occur in tight rental markets if owners believe that market rents are more favorable than continuing under the Section 8 program.
- Affordability Restrictions: Owners of properties whose debt is restructured will be required to accept 30-year regulatory agreements that will obligate them to accept future Section 8 renewals, if funding is available, to agree not to discriminate against Section 8 voucher holders, and to accept limited project-based affordability restrictions if Section 8 contracts are not funded in the future.
- Rehabilitation Required: As a condition of obtaining Section 8 renewals on projects over 100% of FMR or comparable market, owners will be required to prepare a capital needs assessment and a plan to complete all necessary repairs. Owners are required to cover at least 25% of the cost of repairs, with the balance to come from project reserves, HUD grants, or other sources.
- Opportunities for Nonprofit/Resident Acquisition: HUD is required to establish procedures to encourage transfer of "troubled" properties to nonprofits, residents or public agencies; however, no specific financing resources are provided. There may also be opportunities to acquire Section 8 properties during the next year from current owners who would rather sell than go through loan restructuring when the new rules take effect.

The California Housing Partnership Corporation maintains a database of projects with Section 8 project-based subsidies in California. If you have further questions about how this legislation might affect your community, please feel free to call us at (415) 433-6804 in Northern California or (213) 892-8775 in Southern California.



Moving Forward on Project-Based Section 8

by James Grow, National Housing Law Project

Now that Congress has enacted new legislation to address expiring Section 8 contracts, 1 the "Multifamily Assisted Housing Reform and Affordability Act of 1997", the challenge has shifted from getting a workable program to making the enacted framework actually deliver good results for tenants, housing developments and communities. This enormous challenge confronts every community with Section 8 developments expiring over the next few years and presents housing advocates with their first encounter with many of the same elements as "welfare reform". Here is a brief initial look at important next steps for making the best of what Congress has done.

For starters, we need the money to run the program, HUD and other responsible public agencies to issue responsive rules, plans and policies, and good decisions from the new administrators. To secure these results, we need to start work now.

1. Money

Objective: convince Congress to provide adequate annual appropriations for growing Section 8 renewal costs.

The new program is just a framework, primarily procedural with some policy choices that fit within that structure. But for the majority of situations where expiring contracts will be renewed with project-based assistance, the Section 8 program remains intact, subject to existing rules or future Congressional amendments. Moreover, the new program could not and did not resolve the perennial key issue of how much money will be provided to renew expiring contracts and run the program. Although last year's Balanced Budget Agreement committed to providing full funding for all expiring Section 8 contracts from FYs 1998 through 2002, there is no assurance that the predicted additional outlays will actually prove sufficient. Nor is there any guarantee that, despite providing a substantial increase in budget authority for FY '98 for this purpose, Congress will actually provide enough budget authority to enable those outlays, as the required budget authority continues to escalate every year throughout this period as the number of expiring contracts continues to mount from the combined effect of scheduled initial expirations and one-year renewals. 2

Most immediately, since the appropriations challenge arises annually, the next step must be to enforce the promise of the budget agreement by securing full funding for FY '99 renewals, approximately \$13 billion in budget authority. Two things must happen here:

- First, the Administration's FY '99 budget request must be adequate for full renewals. HUD

has to request these funds from the Office of Management and Budget, and OMB has to agree to this level through the "passback" and subsequent negotiation process. Democratic legislators can be especially important here, especially if OMB proves reluctant to approve adequate funding in the budget request, usually released in early February.

- Second, Congress' Budget Resolutions and Appropriations bills must follow suit and actually provide the funding. Of course, Republican legislators on the Budget and Appropriations Committees are especially influential here.

2. Program details.

Objective: HUD must adopt responsive and workable implementing regulations to fill in gaps, and provide adequate staffing for the program.

The statute does not resolve all of the major policy and procedural issues raised by an undertaking of this magnitude. On many issues, discretion is left to HUD or possibly even to the participating administrative entity (PAE). HUD's rules may often determine these policies or provide the framework for PAE decisions. In still other cases, policies may be totally left to the PAE's determination. In places where the prospective PAE has no history of adopting the kinds of policies or processes sought by constituencies you work with, or has made no commitment to do so, then focusing efforts on HUD's rulemaking concerning several central issues should be especially important to establish operating ground rules for many PAEs. Those issues where HUD rules could be useful to guide PAEs could include, for example, the following:

1. PAE selection criteria and process,
2. tenant and community participation in PAE selection and overall PAE plans ("portfolio restructuring agreements"), and project-specific restructuring planning,
3. solutions for troubled properties, including transfers to tenant-endorsed nonprofits,
4. "safe harbor" guidelines for project-based renewals,
5. HUD discretion re increases in Section 8 rents to market for renewals of below-market properties, and
6. clarifying that enhanced vouchers are available when owners "opt-out" at expiration.

This discretion may be linked to specific housing policy objectives, such as transfers to tenant-endorsed nonprofits with long-term affordability commitments, preservation of affordable housing in markets where vouchers do not work well, fair housing policies, or protection of certain populations.

Also important will be Secretary Cuomo's appointment of the Director for the new Office of Multifamily Assisted Housing Restructuring ("OMahr") and how HUD staffs OMAHR and, to the extent that duties remain elsewhere, the Office of Housing.

3. Engaging the New Administrators

Objectives: Ensure that qualified state or local public agencies step forward to assume restructuring and oversight responsibilities, to develop responsive plans and policies, and to make sound project-specific decisions.

This group of activities has a local focus. It is potentially an area where well-organized advocates

can have the greatest impact, with much to win and potentially a lot to lose. This work needs to begin now, since many of the preliminary decisions made by state and local actors can be taking place at any time during this period prior to HUD's rulemaking and, once made, they will prove more difficult to reverse.

Here are some places to get started:

- (1) *identify and analyze the affected properties.* HUD's data can be obtained from HUD's Website at <http://www.hud.gov/fha/mfh/mfhsec8.html>.

This data provides some vital basic information about the inventory, such as property and owner name, address, number of units, financing type, expiration dates, comparison of Section 8 contract rents to FMR, etc.

- (2) *analyze this data for risks* (e.g., potential disqualifications, opt-outs, high rehabilitation costs, restructuring candidates, PAE voucher conversion risks, etc.).

Critical for this phase of the analysis will be rough market rent evaluations for each property, since the primary factor influencing the property's future will be the owner's economic motivation, which in turn is usually driven by a comparison of available returns by renewing or restructuring under the federal rules versus declining a renewal and facing the risks of market operation. PHAs, which perform "reasonable rent" determinations for their tenant-based subsidy programs, may have useful information to contribute on this task, as may local government housing or planning departments, or local real estate boards or apartment associations. Graduate students in local university planning programs may supply necessary expertise as well. Also important will be evaluations of project conditions and estimates of rehabilitation costs, as well as HUD asset management information (from the project servicing file).

- (3) *educate, identify and enlist potential allies*

Talking to some important local government officials or community groups may demonstrate that few know of these challenges or have thought about how best to move forward. If you're not going to do this, you need to make sure that someone else that you trust is ready to undertake the work. Education of local government and community organizations concerned with protecting and improving the affordable housing stock will usually be an essential first step that has yet to be taken.

- (4) *identify and engage potential state and local public agency PAEs on their application*

It is far from given that public agencies around the country will tackle this challenge. Which agencies are interested? What are their motivations? What are their reservations? Does administrative capacity exist or can it be developed to ensure statewide coverage? What is the local agency interest? What are the prospective PAEs' decision-making process and timeframe? Over the past few years, very few state agencies ³ have successfully concluded negotiations with HUD to assume the designee's role under the FY '97 Reengineering Demonstration program. Many others (about 20) have prepared management plans but have not yet concluded final agreements, primarily because of contracting issues. These agencies are most likely to be interested in assuming the PAE role, and moving ahead quickly. While these agencies may intend to fill the void, their momentum may prove an obstacle to their enactment of a responsive program if it is absent from their current designee plan.

Advocates need to make sure that a competent state or local public agency steps forward to seek the PAE role. If none applies, then whatever benefits of local control exist will be lost, along with the opportunity for constructing improved public accountability, since the alternative will usually be some partnership between HUD and the private sector, hardly an inspiring combination for responsiveness to tenant and community interests.

(5) influence the PAE's policies and practices on key issues

Of course, it is not just the fact of public agency application for the PAE role that is important. More important is the content of the PAE application, and the commitments that prospective PAEs have made or will make to ensure that their policy and program will be superior to HUD's past performance and adequate for the task ahead.

Every PAE's program should address several important issues: (1) subsidy format after restructuring (the project-based vs. tenant-based decision for the properties that are not in tight-markets or do not serve the elderly or disabled), (2) rehabilitation planning, and (3) the degree of tenant and community involvement in the process. Other important PAE policies will include: disqualification standards for "bad owners and bad properties", appraisal and underwriting issues, management assessments, use restrictions, and future monitoring and oversight of project performance.

Subsequently, as the program becomes operational, the PAE's actual implementation of these policies in both the restructuring process and the future property and contract oversight process will also be critical, since many of HUD's problems can arguably be traced to its bilateral regulatory relationships with owners that have historically excluded tenants and local communities. Tenants especially must have the opportunity for a more central role in the ongoing regulatory process, including involvement in periodic project and management reviews. To resolve problems promptly, they also need access to more responsive regulators, the PAE staff that performs oversight functions.

Obtaining a responsive program presents an enormous challenge. Most PAEs lack such experience with their existing programs that rarely involve close supervision, and Section 8 often serves people with much lower incomes and includes much more regulatory compliance because of the higher level of public investment. Encouraging a better program will be especially important over time: if this transfer of administrative responsibility succeeds, Congress may next devolve more responsibility for the basic rules of the Section 8 program as a whole.

(6) identify or create any state or local resources or legislation for meeting priorities where federal resources or policies insufficient

There may well be areas where federal funds are insufficient for the needs of the properties or the program. State and local resources may be needed to meet these needs. Potential areas where federal funds may run short include: (1) education and capacity building funds for tenants, nonprofits and other community organizations, (2) subsidy or capital funds to preserve developments that currently carry Section 8 subsidies below market value and would otherwise exit the program ("opt-outs"), (3) rehabilitation funds, and (4) funds for other technical assistance or predevelopment needs that are part of the program or important to permit transfers of developments where owners want to sell.

Similarly, there may be situations where state or local legislatures decide to use their programs or policies to supplement gaps in the federal or PAE schemes, or to use their police powers to regulate

the conduct of housing providers to promote continued affordability.

4. Other Needed Federal Actions from Congress, IRS, and HUD

First, in the short run, the restructuring program will not succeed unless HUD and Congress secure from the IRS a clear tax opinion concerning the viability of the new program's debt bifurcation approach for avoiding a taxable event. Without such clarity, owners will delay proactive restructuring and either accept unwise reductions in rent levels or quickly default and await foreclosure.

Second, eventually, much of the privately-owned assisted inventory will suffer from inadequate recapitalization resources if subsidy funds shrink and owners lack motivations to invest. The tax problems of initially shelter-motivated owners grow over time, so properties cannot expect significant investments from that source. The only exception will be those properties with significant real equity value, sufficient to mitigate tax liabilities. To reposition the inventory for longer-term viability, Congress must pass exit tax relief for owners that agree to transfer properties to nonprofit community-based or public organizations for preservation. Since this will be a big leap for any Congresses like the 104th and 105th, this is a long-term project and advocacy work must begin now.

Third, there will be many mistakes, bugs and ambiguities in the renewal and restructuring program that require federal legislative amendment.

Fourth, Congress is poised to take dramatic steps to reduce the "targeting" of Section 8 assistance. Both still-pending "public housing" bills (S. 462 and H.R. 2) would substantially reduce targeting requirements for both public housing and project-based Section 8 assistance, permitting about half of the units currently occupied by families below 30% of area median (both working poor and public assistance recipients) ⁴ to be rented to higher-income families on turnover. Of course, for both programs, these diversions would tend to remove the best housing from occupancy by the lowest income tenants, since the better stock is the most attractive to higher-income tenants. For the project-based Section 8 units, this diversion would likely have little public oversight.

Fifth, also of critical importance will be strategies for maintaining the older-assisted stock without placing the economic burden on tenants. Much of the stock that will be renewed but is ineligible for restructuring -- with slightly below-market rents, but not enough to justify conversion, requires funding and policies for rehabilitation. The renewal and restructuring program just enacted contains none for this large segment.

These tasks are formidable, but essential for moving forward within the framework that has been created. They will require better education of affected constituencies, improved organization, collaboration and coordination. Pick at least one and get started.

You can contact the National Housing Law Project at 2201 Broadway, Suite 815, Oakland, CA 94612; (510)251-9400. Fax: (510)251-0600, email: HN0108@handsnet.org.

1. See "The New Section 8 Renewal and Restructuring Program: An In-Depth Review," 27

HOUS. L. BULL. 175 (Nov. 1997). [Back to text.](#)

2. See "Section 8 Expirations: Housing Resource Up for Grabs," 27 HOUS. L. BULL. 97 (July, 1997). [Back to text.](#)

3. Three (Ohio, Colorado and New Mexico) as of November 1. [Back to text.](#)

4. Currently, HUD's data show that approximately 75% of public housing units are occupied by families with incomes less than 30% of area median, and the pending legislation would reduce this to a minimum of 30-40% of the units. [Back to text.](#)

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Up for Grabs: Congress to Decide on Section 8 Expirations

<http://www.nhi.org/online/issues/94/grow.html>
Shelterforce July/August, 1997

by Jim Grow

Over the past few months, considerable attention of housing advocates, policymakers and, yes, even the media, has been focused on the enormous budget problem facing HUD in Fiscal Year 1998, starting October 1. HUD Secretary Andrew Cuomo has called this problem of securing adequate budget authority for Section 8 renewals the "greatest crisis in HUD's history."

But the sheer magnitude of this crisis has unfortunately obscured a fundamental issue raised by the impending expirations of at least 1.3 million Section 8 units with project-based assistance: who should control this enormous housing stock in the future, for whose benefit, and with what level of additional public investment? Unless housing advocates, policymakers, and the public understand what is at stake and act accordingly to design policies responsive to the needs of tenants and local communities, the federal government could pour billions into a system that fails to guarantee long-term decent and affordable housing for very low-income families.

The Budget Problem

Expiring Section 8 contracts first and foremost present a "budget authority" problem. Many Section 8 contracts, both project- and tenant-based, are approaching the end of their terms, and the numbers of expiring units increase dramatically in FY 1998 to a total of about 1.8 million units. In FYs 1999 and 2000, expiring units again increase to a total of 2.2 million and 2.5 million units, respectively, before beginning to level off. Maintaining funding for existing units and subsidies—not only those contracts reaching the end of their original 5, 10, and 15 year terms, but also recently expired contracts that were renewed for one year—requires new budget authority.

Even under the expedient gimmick of renewing commitments for only one year, the sheer number of expiring units in FY 1998 produces a staggering \$5.6 billion increase over FY 1997's \$3.6 billion in budget authority for renewals, and the budget authority needs continue to climb as the unit numbers grow. Actual annual outlays for Section 8 contracts, however, will barely increase over current levels. Outlays, or actual spending for these subsidized units, change little from the year prior to expiration to the year after renewal, but the "budget authority," or permission to make those outlays, changes dramatically because the contracts are expiring and require renewal to authorize the full outlay.

So far this year, Congress has shown bipartisan recognition of the unique Section 8 budget problem, and a willingness for the budget resolution to provide sufficient increases in spending levels allocated for the HUD Appropriations Subcommittee.

Thus, the Congressional budget resolution (H.Con. Res. 84) and both the House and Senate versions of the FY 1998 appropriations bills (H.R. 2158 and S. 1034) contain sufficient funding for full renewal of Section 8 contracts expiring in FY 1998, both tenant-based and project-based. The final version of S.1034 that passed assumed \$500 million in savings from "restructuring" and provided \$8.66 billion for Section 8 renewals, less than the House's level. Along with HUD's \$1.6 billion in Section 8 tenant-based reserves, this provides roughly the entire amount requested by the Administration for full renewals.

In addition, the recent agreement between the Republican Congressional leadership and the Administration on a framework to balance the budget over the next five years would apparently provide full Section 8 renewal funding. Congress has agreed to allocate sufficient additional budget authority for renewals over the next five years to permit outlays that are \$35 billion more than they would have been had the additional budget authority not been appropriated. In other words, had budget authority remained at FY 1997's extremely low level of \$3.6 billion, federal outlay spending for Section 8 would have declined precipitously, and the agreement provides the added authority to prevent that from happening.

Such solicitude in this time of balanced budget fervor may be due to the fact that the additional budget authority does not result in new additional outlay spending over the next five years. Besides, few members of Congress want to be seen as throwing thousands of poor, disabled, and elderly residents into the streets without protections. If the budget resolutions continue to follow suit over the next five years, the task for housing advocates will be to ensure that the appropriations process actually provides the designated funding, as it will apparently do in FY 98.

Housing Stock Remains Imperiled

Submerged in this big discussion of money is the central question of what happens to the enormous Section 8 housing stock with expiring contracts, which is roughly one-half of the total expiring inventory. Of the housing with expiring project-based Section 8 assistance, properties with HUD-insured mortgages remain the primary subject of federal attention, and immediate effort appears focused on so-called "oversubsidized" properties, those carrying Section 8 subsidies above true market value. The proposals for Section 8 properties would require "oversubsidized" properties to begin receiving reduced market-based subsidies and rents. Those that cannot survive would be forced to "restructure," to reduce debt burdens to lower levels supportable at market rents.

At stake here is the control and future operation of at least 500,000 units, many of which have little or no true equity—value beyond their current debt levels. Because of the impending subsidy expiration, the federal government now effectively controls what happens to many of these "oversubsidized" properties.

As Congress addresses the content of its restructuring program, housing advocates and residents should participate in defining the terms of the program, the mix of benefits provided and burdens imposed, and how this stock will be used to meet the ever-expanding affordable housing needs of very low-income families. Sound public investment strategies, if linked to transfers into the restricted nonprofit or public ownership sector or to long-term use restrictions, could reduce eventual renewal costs to those required for operating and recapitalization expenses by retiring the original capital cost. On the flip side, providing the benefits of restructuring to owners without restrictions that ensure a fair public exchange presents the risk that enormous investments will benefit private, not public, interests.

Preservation Principles

Restructuring and renewal policy is not just a financial exercise. Any comprehensive program should include at least the following elements:

- Owners responsive to tenant and community needs for affordable housing and dedicated to that goal. One essential tool will be real "incentives" for owners to transfer properties to tenant-endorsed nonprofit and public agency purchasers, or to other purchasers that commit to preserve the long-term budget-based affordability of the property for very low-income families. Such inducements may include tax relief, or restrictions imposed for restructuring. Another important tool will be specified opportunities for tenant participation in restructuring and ongoing project operations, with funding for organizing and capacity building.
- Retention of financial benefits for the public interest. Any financial benefits realized as a result of the restructuring process (e.g., unrestricted rents) beyond what is necessary to secure proper asset management are retained for the public benefit to preserve the future affordability and availability of the housing to people currently served by the Section 8 program.
- Project-based assistance except in extraordinary circumstances. Preserving developments that offer guaranteed access for Section 8-eligible families cannot be accomplished through conversions to a tenant-based format.
- Screening out bad owners, and then making operational reforms such as tenant participation in ownership, management, and decision making (e.g., nonprofit board membership, management reviews and physical inspections, enforcement decisions), with mechanisms adequate for proper regulatory oversight and for direct tenant empowerment through individual and joint action (e.g., rent withholding for violations).
- Rehabilitation planning and adequate resources to ensure the long-term viability of these properties as affordable housing.
- Tools for local communities to preserve "undersubsidized" properties worth more than their Section 8 rental values.

The current major Section 8 proposals offered by the Senate and the administration contain pieces of this program, but neither has all of these components adequately detailed. The Senate's current bill, however, provides the strongest foundation for a sound program.

What Is a Fair Exchange?

The two major proposals on the table take dramatically different approaches. While both propose to use the technique of subsidy reduction and mortgage restructuring to reduce discretionary Section 8 spending in favor of mandatory claim payments from the mortgage insurance fund, what happens after that point diverges sharply, with fundamental consequences for the long-term future of the affordable housing system.

The Senate's Bill

The Senate's moderate bill (S.513, Connie Mack, R-FL), developed with significant bipartisan support and endorsed by many owner and tenant groups alike, proposes to restructure mortgages and reduce to "market" levels and then generally renew the Section 8 subsidies as project-based. But the bill fails to adequately provide for renewal of expiring contracts currently paying less than market value.

The bill seeks to avoid adverse tax consequences to owners primarily by bifurcating mortgages into serviceable and "sleeping" or deferred "soft second" portions. It proposes to pay partial claims to existing lenders, and provide FHA insurance or other credit enhancement for the remaining first loan. Certain bad owners would be excluded from renewal, and HUD must adopt procedures to facilitate the transfer of these properties to tenant-endorsed nonprofit and public purchasers with project-based assistance. Most owners, however, would be eligible for renewal as long as Congress provided the funds. HUD or other public agencies, such as state or local housing agencies, would perform the restructuring and oversee future regulation of properties. The bill further provides specific opportunities for tenant participation in both the restructuring process and ongoing project operations, with modest federal resources for technical assistance and capacity building.

To receive these "rollover" benefits, the current bill would obligate owners to accept the offered renewals as long as the second mortgage on the property remains outstanding, together with any other restrictions imposed by the new public administrator. After restructuring to "market," the overseeing agency will regulate rents through operating cost adjustment factors adopted by the agency—which in some markets will yield some level of relative affordability over time, even absent Section 8. The bill would also require owners not to discriminate against holders of tenant-based Section 8 assistance.

Thus, the deferred second mortgage, bearing interest at the applicable federal funds rate, becomes a key mechanism for assuring continued public control over the value of the silenced debt and the long-term use of the housing resource. This second note could effectively safeguard against privatization of much of the project's income potential. During the term of the new reduced first mortgage, the second is payable only from surplus cash. The new regulatory agency may permit a portion of surplus cash (25 percent) to flow to owners who meet certain performance standards, as an incentive for good performance, and the balance may go toward reducing the amount due on the second note. When the new reduced first loan is retired through tenant rents and public subsidy over its remaining term of 10 to 20 years, the "sleeping" deferred second note would be awakened and require servicing, at the level of the debt service on the first. Depending on the terms of the second note and actual market rent levels, some properties may be capable of providing additional financial returns, but those owners will be required to preserve the restructured rent levels and accept Section 8 renewals so long as the second note is outstanding.

Having addressed the major issue of ongoing affordability, the Senate bill still raises the fundamental question: Is this a sufficient system to ensure the provision of decent housing during the restricted-use period? Its proponents hope that an affirmative answer results from a combination of shifting regulatory oversight closer to the property and providing some stronger enforcement tools, screening bad owners, requiring rehabilitation assessment and providing some resources, providing modest performance incentives, and invigorating resident participation.

HUD's Bill

HUD has recently proposed a different approach in H.R. 1433. HUD's bill would also restructure mortgages and reduce subsidies to market levels. It differs from the Senate version by:

- Proposing vouchers rather than renewals of project-based Section 8, with a requirement of project-based renewals for buildings serving almost exclusively elderly and disabled tenants or in tight markets (estimated at around 50 percent of the affected stock);
- Providing tax relief to owners affected by mortgage restructuring in the form of tax deferral, with varying amortization periods for the deferred taxes, intended to encourage owners to transfer properties to tenant and nonprofit purchasers;
- Imposing a use restriction on owners receiving restructuring benefits that includes nondiscrimination against Section 8 tenant-based recipients for some units and weak tax credit, rent, and occupancy restrictions for 40 percent of the units;
- Allowing private entities to perform restructuring functions.

The HUD bill also includes other features absent from the Senate bill, such as "enhanced vouchers" (capable of subsidizing a higher rent) to protect tenants whose project-based contract is not renewed, and changes in bankruptcy law to permit faster HUD foreclosures against defaulting owners.

The Administration's proposal, unveiled jointly with Treasury Secretary Rubin, has so far failed to gain a following on Capitol Hill, as few apparently support such widespread vouchering of the stock and no one seems to believe that tax relief for owners is realistically possible this year or anytime soon enough to be part of a comprehensive legislative program.

Toward A Final Bill

At the Senate Housing Subcommittee's June 17 hearing on S.513, HUD Secretary Cuomo voiced support for moving forward with restructuring legislation, but he stressed three major objections of the Department to S.513: (1) not enough conversion to vouchers; (2) insufficient flexibility to use private organizations, not just public agencies, to conduct the restructuring; and (3) the absence of a comprehensive tax solution for owners, in light of some concern that the IRS will not approve debt bifurcation as a legitimate tool. After the hearing, hoping for expeditious enactment, the Senate folded S. 513 into its budget reconciliation package, but that effort was thwarted by opposition from the House negotiators in the reconciliation conference process, so restructuring policy was dropped from that vehicle. Simultaneously, Senate sponsors have continued to work with HUD in an effort to reach agreement on changes to accommodate its concerns on the issues of vouchers and degree of private participation in the restructuring program, and reportedly they are close to a deal that would permit more vouchers and some private participation.

The Senate has proceeded to include S. 513 in its FY 1998 appropriations bill (S. 1034), now amended into H.R. 2158, which passed the Senate floor in late July. As H.R. 2158, the House version of the appropriations bill, is silent on restructuring policy, the ultimate outcome may be determined in a September conference committee on FY 1998 appropriations, when the Senate/HUD revisions would provide the Senate position.

Failing to reach agreement on a comprehensive policy will result in either an extension of existing temporary demonstration authorities or widespread nonrenewals, defaults and foreclosures, neither of which represents a sound policy approach. Congress should use these contract expirations to improve the housing delivery system by ensuring more accountable and cost-effective operations and permanent investments in our affordable housing supply.

When Congress reconvenes in September, residents of this housing and advocates must also continue to engage policy makers and seize this once-in-a-lifetime chance to construct a new and improved system of performance accountability. It is an opportunity we can't afford to miss.

The Many Faces of Section 8

Project-Based Section 8: Passed in 1974, this program provided subsidies, mostly to for-profit developers, for construction and rehabilitation of units designated for low-income households, as well as long-term rental subsidies. The program created over 1.7 million affordable apartments.

Section 8 Certificates: Public Housing Authorities (PHAs) receive certificates from HUD and distribute them to qualified tenants. Tenants then find housing, and the landlords must sign an agreement with the PHAs. The tenants pay 30 percent of their household income to the landlords, and the PHAs pay the difference between that amount and the HUD determined Fair Market Rent (FMR) for that area.

Section 8 Vouchers: Also portable and tenant-based, vouchers do not require that tenants find a landlord who agrees to rent for FMR. Instead, the tenants are responsible for any amount of rent still due after they have paid the 30 percent of their household income and the PHAs have paid the difference between that and the FMR.

Jim Grow is a staff attorney at the National Housing Law Project, which provides legal support on low-income housing issues; 510-251-9400. A version of this article appeared in the Law Project's July/August Housing Law Bulletin and the Chicago Rehab Network's Network Builder.

City To Issue New Vouchers For Housing

Eric Brazil

OF THE EXAMINER STAFF Feb. 27, 1998

Applications start Monday for 1,500 Section 8 subsidies

For the first time in more than a decade, the San Francisco Housing Authority is poised to issue 1,500 certificates and vouchers under a federal program that lets poor people rent from private landlords.

"We're doing this because we recognize that there's a shortage of housing in San Francisco and we have the certificates and vouchers available and we want them to be used," Housing Authority spokesman Ron Sonenshine said Friday.

About 6,500 families live in San Francisco under the program, which is called Section 8 and is managed by the Housing Authority, which hasn't issued certificates and vouchers since 1986.

The San Francisco Housing Authority's waiting list of qualified applicants for Section 8 housing has been exhausted for several months, Sonenshine said.

The authority received HUD approval to issue new certificates and vouchers to create a new waiting list last fall. But approval was delayed in large part because the authority was in a crisis and had been taken over by a HUD management team throughout the previous year and well into 1997, he said.

When Oakland opened up its Section 8 applications in December, it was besieged with thousands of people, who lined up at the Coliseum to apply.

In San Francisco, the Housing Authority's program will be strictly a telephone operation. Applicants are asked to call 1-888-867-4703 between 7 a.m. and midnight, starting Monday.

The Housing Authority's phone banks, at which basic information such as income level, residence and housing needs will be gathered, will be open seven days a week through March 31, Sonenshine said.

The Section 8 program is subsidized by HUD and managed, for the most part, by local agencies such as the Housing Authority. The program lets poor people rent from private property owners instead of living in public housing projects.

"Preference will be given to (applicants) who live in The City, veterans, homeless and people who have been involuntarily displaced," Sonenshine said.

"We think we're going to get 10,000 to 13,000 applicants, and we have to screen them. For those that qualify, we'll do a lottery system and create a new eligibility list, one through 10,000," he said. Qualified applicants will be notified during April.

Income restrictions

There are several federal guidelines for applicants for Section 8 housing, including income levels. For example, a family of four would qualify if its income is \$34,300 or less. A two-person family could qualify if it earns \$27,450.

Recipients of Section 8 certificates and vouchers need not use them in San Francisco; they can be used anywhere in the United States.

Because San Francisco rents are so high, landlords have not renewed the leases of about 1,000 Section 8 tenants during the past year.

The Housing Authority recognizes that problem and has asked HUD for permission to pay landlords 20 percent over the federal limits. It has not received a reply. And it is exploring whether it can bring Section 8 apartments under The City's rent control ordinance, on the theory that the federal certificates go to the tenant, not the apartment.

A person who holds a Section 8 certificate pays up to 30 percent of income as rent and the government pays the remainder. But there's a ceiling, and in San Francisco that ceiling is \$987 for a two-bedroom dwelling, which is a rare commodity in The City.

Holders of vouchers have more bargaining power. "Say they're looking at a two bedroom for \$1,200. They can negotiate with the voucher and pay the difference between \$987 and \$1,200," Sonenshine said.

Supervisors' hearing

The Board of Supervisors' Housing Committee will hold a hearing Thursday on legislation proposed by Supervisor Tom Ammiano aimed at closing loopholes in the Section 8 law as it applies to The City via waivers.

One such loophole would eliminate an existing restriction that limits holders of vouchers with AIDS from looking for Section 8 housing outside San Francisco.

The legislation, which Ammiano said has been worked out in conjunction with HUD, also addresses the rent control and fair market rate issues.

HUD, the San Francisco Redevelopment Agency and several nonprofits manage housing for about 3,500 families.

SECTION 8 REFORM

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California Legislature
Assembly Committee on
Housing and Community Development
TOM TORLAKSON
CHAIR

CHIEF CONSULTANT
Came Comwell

CONSULTANTS
Julie Snyder
Elizabeth West

COMMITTEE SECRETARY
Yvonne Fong

**The Challenge of Preserving Federally Subsidized
Housing in California**

Interim hearing briefing paper

**December 2, 1997
1:00 – 4:00 p.m.
City Council Chambers
City Hall
65 Civic Drive
Pittsburg, CA**



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Introduction

In the last fifteen years, Congress and the President have made and implemented policy decisions resulting in the slow but steady loss of the nation's inventory of federally-subsidized, multi-family, rental housing. Such housing has been occupied by the nation's poorest families--single parents, the disabled, the elderly, new immigrants, and families receiving public assistance. Since the early 1990's, efforts to balance the federal budget have resulted in unprecedented cutbacks at the U.S. Department of Housing and Urban Development (HUD), the federal agency responsible for administering the nation's federal housing programs.

These cutbacks in the nation's inventory of affordable housing continue concurrently with the implementation of the national and state mandates to transition thousands of families on public assistance from welfare to work. Many of these families are occupants of federally-assisted housing projects that may soon lose their subsidies, while in California, housing costs have increased to their highest levels and the production of new housing has decreased significantly.

Through this hearing, the Assembly Housing and Community Development Committee will examine some of the short- and long-term impacts for California of the latest major policy and program changes that HUD will be making in federal housing programs. The committee will hear from federal, state and local agencies, housing consultants, non-profit and for-profit developers and owners of federally-funded multi-family housing projects, as well as tenants who live in such projects. Additionally, the committee will examine what the Legislature should do to preserve California's inventory of affordable housing most at risk of losing its federal subsidies.

Historical Background

There are three major categories of federal housing programs. The first dates back to the passage of the U.S. Housing Act of 1937; the second was enacted during the 1960's, and the third was begun in the 1970's.

CATEGORIES OF FEDERALLY ASSISTED HOUSING PROGRAMS AND THEIR PRIMARY FEATURES

I. Public Housing Authorities (PHA's)	1940-1949 550,000 units built	1950-1975 850,000 units built	1976-present 100,000 units built	TOTAL 1.4 million
II. Privately Owned Project-based Subsidized Housing	1963-1968 Section 221(d)(3) (Below Market Interest Rate (BMIR))	1968-1974 Section 236 (about 43,000 units built in California)	1974-1983 Section 8 1.1 million units built	TOTAL 1.7 million
III.A. Section 8 Certificates Portable and tenant-based	Enacted in 1974	From HUD to PHA to qualified tenants. Tenant finds housing; landlord signs agreements with PHA; tenant pays 30% of income to landlord; PHA pays difference between that amount and HUD determined Fair Market Rent (FMR) for that area.	TOTAL 1.1 million households	
III.B. Section 8 Vouchers Portable and tenant-based	Enacted in 1983	Does not require tenant to find a landlord who agrees to rent for FMR. Tenant is responsible for any amount of rent due up to 30 % of their household income. PHA pays the difference between that and the FMR	400,000 households	

The Early HUD Housing Programs

Beginning in 1963, Section 221 (d)(3) and Section 236 programs were the first project-based, privately-owned, multi-family housing projects that HUD created and funded. Under these programs, HUD insured 40-year, low-down payment loans made by private lenders to for-profit developers and subsidized the interest rates as low as one percent. Owners were required to pass these savings in operating costs to tenants in the form of below-market rents, and to rent only to income-qualified families. HUD subsidies were based on construction costs, rather than on a percent of tenants' incomes, and over time, proved insufficient to cover maintenance and repairs.

In the mid-1980's when real estate values appreciated, and the "tax shelter" advantages of owning these properties were exhausted, many owners began to pre-pay the HUD loans after only 20 years. Owners then increased rents to market-rate, creating an impending crisis for tenants who could ill afford to pay market-rate rent. In response to this, Congress passed emergency legislation in 1987, restricting prepayments to very narrow circumstances.

It then enacted the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) of 1990, which has provided over a billion dollars in funding to assist with the purchase and refinancing of "at risk" HUD projects. Though LIHPRHA funds have provided a funding mechanism for community-based non-profit organizations to purchase and refinance projects that might have otherwise been converted to market rent units, the program has been eliminated from the federal budget this year.

What can California and other states do to assist prospective owners, including community-based organizations, wishing to purchase and preserve at risk HUD projects?

The Section 8 Program

In 1974, Congress enacted the Section 8 program consisting of two major components:

1. The Certificate Program which provides a housing allowance to income-eligible households of the difference between 25% (changed to 30% in 1981) of their household's income and the fair market rent for an apartment in their area. Under President Reagan, in addition to the Section 8 certificate, the Section 8 Voucher Program was enacted. Unlike the Section 8 certificate, the voucher does not limit tenants to HUD's fair market rent ceiling in finding a rental unit, but requires them to make up the difference between the HUD FMR and what the rent actually is, in addition to the amount equal to 30% of their income paid by HUD (see Table on p. 2.)

In California's high rent areas, what guarantee does a tenant have with a Section 8 certificate or voucher that a decent, affordable rental unit will be available on the private market?

What incentive is there for a private landlord to rent to a tenant with a Section 8 certificate when the FMR ceilings set by HUD are often below the FMR for the area?

2. Contracts that provide for the development and construction of additional privately-owned projects. Most of these contracts were for twenty-year terms. Many of them are being renewed one year or less at a time, subject to HUD budget appropriations, which are decreasing annually. The uncertainty of these short-term contract renewals creates financial instability for project owners, and fear and insecurity for tenants living in the projects. For example, when a contract expiration is imminent, tenants

must be informed in writing of the date. If the renewal of the contract is uncertain or only guaranteed for one year or less, particularly vulnerable tenant populations, e.g., the elderly and disabled, are placed in a position of not knowing what their housing situation will be from one year to the next. Also, projects owners can pre-pay their contracts, taking the housing they own out of the Section 8 program prior to the conclusion of the 20-year contract term.

There are over 110,000 of these units under expiring contracts in California alone. As the clock continues to tick on the terms of these HUD mortgages, the cost of subsidizing them continues to increase, as does the cost of paying for maintenance and modernization. The total in federal Section 8 subsidy payments going to California projects exceeds \$500 million per year—an amount far beyond the means of state or local governments to absorb.

The Challenge of Preserving Units with Expiring Contracts

An unprecedented number of owners of federally-subsidized units are expected to exercise their option to pre-pay or not renew their contracts with HUD over the next five years. In over 60% of federally assisted projects nationwide, the combined federal and tenant share of the rent exceeds the fair market rent determined by HUD in the locale of the project. Rents in about 40% of all project units are more than 120% above the fair market rent.

Roughly 60% of the units in Section 8 projects are insured by HUD's Federal Housing Administration (FHA). If a project insured by FHA defaults because HUD subsidies fall below the cost of operating the project, FHA would have to pay off almost the entire remaining loan balance. HUD would then be forced to assume all costs of running the project until a new buyer is found.

To minimize the risk of default without decreasing the number of subsidized units, HUD implemented a pilot program in 1996-97 called "Portfolio Re-engineering." This program will continue into 1998 when HUD will place half a million project-based units nationwide into portfolio re-engineering which is designed to restructure mortgages for projects that have higher rents and reduced subsidies without further endangering the fiscal integrity of the projects.

In implementing this pilot program, HUD may enter into "designee partnerships" with state, local, or non-profit entities that would perform the restructuring and administer the Section 8 contracts following the restructuring. The California Housing Finance Agency (CHFA) applied to serve as a designee for the 1997 program.

HUD's Diminishing Role

As HUD struggles to continue renewing Section 8 contracts while at the same time creating mortgage restructuring systems to protect those owners that cannot support projects with decreased subsidies, HUD continues to downsize. Part of HUD's "Blueprint for Reinvention," initiated in 1994, will be to eliminate over 2500 permanent positions nationwide over the next two years. These actions indicate that the federal government is transitioning itself out of the business of providing housing to the nation's poor, at least in the manner it has since the early 1960's.

In some circles this direction is known as "vouchering out" (see Table on p. 2). Through a series of mechanisms briefly discussed above that are already in place and evolving each year, project-based assistance would continue to be converted to tenant-based housing vouchers. Funds that now go to continue subsidies to the existing inventory of HUD privately-owned and public housing authority-owned projects, would instead over time go to tenants in the form of vouchers.

Can Section 8 vouchers adequately meet the short and long-term rental housing needs of low-income tenants in California's housing market, especially given the implementation of state "welfare to work" initiatives?

If this trend is inevitable, it will still take years for the infrastructure of HUD's current inventory of housing to be transitioned. Much of the decision-making power of how that transition occurs will be delegated to the states.

The State's Expanded Role in Managing HUD Projects

Federal legislation was passed in October entitled the Multi-Family Assisted Housing Reform and Affordability Act of 1997. It calls for a more formal shift of HUD's role in administering federal housing programs than the incremental program changes that took place in the early 1990's. Beginning in fiscal year 1999, A new HUD division will be created entitled the Office of Multifamily Housing Assistance Restructuring (OMHAR). An outgrowth of the "Portfolio Re-engineering Demonstration" (referenced on page 4), this division will delegate the responsibility to re-underwrite Section 8 properties, with priority given to state or local government to do the processing. These agencies are called participating administrative entities (PAE's). Responsibilities delegated to PAE's include assuring completion of any required repairs and overseeing management after Section 8 renewals.

Most importantly, HUD designees (PAE's) will have discretion to provide either project-based renewals or tenant-based vouchers for family projects with higher vacancy rates or tight rental markets. An additional responsibility for PAE's can be to take the lead in identifying funds to assist project-based tenant organizations and community-based non-

profit development corporations to purchase projects that might otherwise lose their subsidies through pre-payment or default.

Since CHFA has already applied to HUD as a PAE under the Section 8 Portfolio Demonstration Project, how will CHFA's role be affected with the creation of the new HUD division designed to transition major administrative decision-making responsibilities to the states?

If CHFA becomes the state PAE for administering the over 110,000 federal units in California with contracts due to expire in the next five years, how can the Legislature support them in this role?

What role can the Department of Housing and Community Development (HCD) and the Tax Credit Allocation Committee (TCAC) play in this transition?

Since the Low-Income Housing Preservation and Resident Homeownership Act, the primary source of federal funding for preserving federal housing projects, has been eliminated from the federal budget, what resources can California generate or divert to preserve its federal housing inventory?

Attached is a detailed analysis of HUD units in California with contracts due to expire in the next five years.

Sources

Bill Rumpf, Executive Director, California Housing Partnership

Robert Wiener, E.D., CA Coalition for Rural Housing

"Shelterforce: The Journal of Affordable Housing and Community Development Strategies," #94, July/August 1997.

John C. Weicher, "Privatizing Subsidized Housing," 1997.

A Million Families At Risk

National Housing Institute

<http://www.nhi.org/policy/million.html>

The Department of Housing and Urban Development proposes to rewrite the rules effecting the affordability of housing for over one million low-income families. Will HUD's controversial proposal preserve affordable housing or cause significant displacement?

Mark to Market: A Strategy to Recapitalize HUD's Assisted Housing Inventory

by Helen M. Dunlap

Deputy Assistant Secretary for Multifamily Housing Programs, U.S. Department of Housing and Urban Development (HUD)

On May 26, the Department of Housing and Urban Development (HUD) put forward a historic initiative to reform Section 8 project-based assistance. The initiative-known as "Mark to Market"-could directly affect 8,000-9,000 properties. These properties both receive Section 8 project-based assistance and have mortgages insured by the Federal Housing Administration (FHA). The vast majority of the residents of these properties are low income, and a substantial percentage are elderly. How we manage the transition of this portfolio has critical long-term implications for the federal government-and for millions of residents in hundreds of communities.

The goal of Mark to Market is often expressed in financial terms -saving budget dollars. But the scope is really far broader. The growing recognition that we can no longer avoid reforming Section 8 provides a unique opportunity to recapitalize and rehabilitate Section 8 properties. Mark to Market is an approach to improve surrounding neighborhoods, and, most importantly, to give low-income households far more choice over where they live. The idea is to replace a wasteful, rigid and bureaucratic system of housing assistance-where the federal government has become the primary "customer"-with a modern, market-driven system that is motivated primarily to serve the people who live there.

Under our initiative:

- Section 8 assistance contracts between HUD and the project owner will not be renewed as they expire.
- Owners will be free to rent their units for whatever the marketplace will bear. In the case of newer Section 8 projects, this would generally mean a reduction in the rents. For older projects, this would generally mean the same rents or an increase to market levels.
- Residents will receive housing certificates that they could use to remain in their current units or move to other housing. Special protections would ensure that most elderly and disabled residents could remain in their present units if they so chose.
- For properties that would not be financially viable without federal project-based subsidies, HUD will assist in writing down the property's debt to a level that can be supported by market rents. The presence of mortgage insurance on these properties provides us with the vehicle to help in this restructuring.
- Ailing properties will undergo rehabilitation, where economically feasible.
- In some cases, it may be appropriate to sell or transfer the property to a nonprofit or local government organization. These entities, with a stake in the needs of the community, may be able to use HOME or other funds for rehabilitation, as necessary.
- HUD's preferred approach is to restructure properties' financing and provide for rehabilitation before contracts expire and defaults occur. This would make it easier for good owners to remain in place and would protect against property disinvestment as the Section 8 program unwinds.

The initiative has been developed in response to two overriding realities:

- Neither the Administration nor Congress supports continued funding for Section 8 project-based contracts at the current subsidy levels. One clear indicator of this mood is the recent legislation passed by Congress and signed by the President, rescinding \$2 billion in funds already authorized for Section 8. A large wave of Section 8 contracts expires over the next five years, beginning with contracts on 140,000 units in FY 1996. The Department estimates that the cost just to renew the contracts expiring in FY 1996 would be

about \$5 billion, and the pricetag rises sharply to \$14 billion by FY 1998. If we continue with the status quo, we will spend about \$222 billion in present value dollars over the next 25 years on Section 8 renewals alone. Indeed, soon nobody will be talking about closing down HUD. Section 8 renewals will have swallowed the entire Department. •Longstanding operational and structural flaws in the Section 8 project based assistance program have reached critical proportions. Our analysis reveals that HUD is providing subsidies above market levels to as many as 3,000 Section 8 properties. Some apartments rent for twice as much as non-subsidized units down the street. This not only drains scarce federal housing resources, it also seriously undermines public support for assisted housing programs across the board. But over-subsidization is not the only problem. Another large group of Section 8 properties is undersubsidized and in distressed condition. No matter how badly these buildings deteriorate, however, most tenants can't move because they would lose their rental assistance. Structurally, we have build an elaborate housing delivery system that is not sufficiently responsive to tenants.

Importantly, the Administration's proposal is based on going forward only if housing certificates are available to assist affected residents. The certificates will pay the difference between 30 percent of residents' incomes and the payment standard established by the public housing authority (PHA) for the area. Our proposal would allow affected residents not currently receiving Section 8 assistance-but who benefit from below-market rents in their buildings-to receive certificates if the increased rents exceed 30 percent of their adjusted income.

There is widespread belief that HUD would mandate an end to all project based assistance for Section 8 properties. This is not true. Our initiative gives localities flexibility to provide project-based assistance at their option, for however long they choose, where they find it appropriate within the context of the local housing strategy.

HUD is considering several options for ensuring a smooth transition to market for Section 8 properties. Our preferred approach is to help properties transition to a market basis voluntarily before Section 8 contracts expire. We would do so primarily by entering into public-private joint ventures with entities that are experienced in restructuring real estate and also sensitive to public policy goals. The joint ventures would operate under carefully established HUD guidelines and would help properties make the transition to market on a property-by-property basis. HUD currently lacks the capacity to respond to the needs of each property individually. The joint ventures might also include national or regional nonprofit intermediaries and other established housing providers.

Because of the specialized nature of their housing and circumstances, elderly residents and those with disabilities could have particular difficulty locating suitable alternatives if forced to move from their current apartments. This could become a problem if the new market rents in their units are higher than the levels that would normally be supported by housing certificates. Our proposal would protect these residents by ensuring that their certificates cover the new rent, whatever its level, so long as it passes a "rent reasonableness" test for comparable unassisted units in the area.

Some have charged that the transition to market of the Section 8 portfolio would lead to massive displacement. We have seen other people circulating figures on displacement as high as 171,000 households. The Department has looked carefully at the potential for displacement - and we have found that these claims are greatly exaggerated. They don't account for the extra support available to elderly and disabled households. They erroneously assume that any rent increase, even one dollar, above the Fair Market Rent will cause displacement.

•The vast majority of housing that converts to a market basis under the Mark to Market initiative would remain part of the affordable housing stock and would continue to be available to residents currently residing in these same project-based units. •There will be some displacement when obsolete housing leaves the stock. We estimate that approximately 65,000 units will leave the stock - but that the majority of this attrition will occur with or without Mark to Market. In fact, this is happening now as the Department pursues aggressive enforcement against owners who are not meeting their contractual obligations. •About 30,000 households could be displaced because rents in their properties rise above the levels supported by their tenant-based certificates. In arriving at this estimate, we assume that tenants could absorb a rent

burden of up to 40 percent of income, but that rent burdens greater than 40 percent may cause displacement.

Because Mark to Market represents change, there is an understandable tendency to focus on its potential for disruption. But the initiative also offers significant benefits. For the first time residents will have the option of moving and taking their subsidy assistance with them. Older properties in need of repair will finally be able to be upgraded. Residents will have opportunities to purchase their projects as cooperatives where feasible or to apply their new tenant-based housing certificates toward homeownership.

Some are pressuring us to take more time to sort out all the answers before transitioning this complex portfolio to a market-based system. We have been advised to study the Section 8 portfolio for another year or begin with pilot demonstrations. Such advice may seem superficially rational-and even prudent. Unfortunately, in the real world, we do not have the luxury to delay implementing a transition plan-not even for one year. The private markets have already begun to react, as owners, investors, and lenders realize that project- based subsidies will not continue indefinitely. The risk of inaction is that owners will disinvest and that physical deterioration of older projects will accelerate. Against this backdrop, timely implementation of mark to market is essential.

The Department is actively soliciting wide input on how best to implement the transition to market of the Section 8 portfolio. We welcome all comments. Further information can be obtained by contacting the Office of Multifamily Housing at 202/708-4542 and requesting information about Mark to Market.

Suggested Actions for Local Governments for Preservation of Existing Affordable Housing Stock

- Analyze Inventory
 1. Date of Expiration
 2. For-profit vs. nonprofit ownership
 3. Identify projects exempt from mark-to-market (senior/disabled, Section 515, and CHFA-financed)
 4. Compare contract rents to market-rate
- Contact Owners Regarding Section 8 Renewal Plans
- Assist in Tenant Education
- Identify Potential Buyers and Potential Acquisition Funds
- Participate/Comment on Section 8 Restructuring Process
 1. Rent levels after restructuring
 2. Project-based vs. tenant-based assistance
 3. Rehabilitation and property management needs.

Owner Motivations

- Financial Return
- Minimize Risk
- Avoid Administrative Headaches
- Avoid Cancellation of Indebtedness Due to Debt Restructuring
- Cash Flow and/or Management Fee for GP

Owner renewal upon contract expiration is voluntary. For projects that go through debt restructuring, owner must accept Use Agreement that requires acceptance of Section 8 and some affordability levels.

FHA Portfolio Restructuring Example

70-Unit Property

Basic Property Profile

Number of Units:	70
Number of Section 8 Units:	70
Type:	Family
Section 8 Expiration Date:	9/30/97
FHA Insurance Program:	221(d)(4)
Current FHA Loan Balance:	3,450,000
Current Interest Rate:	7.50%
Property Fair Market Value:	3,189,824
Rents as % of FMR:	135%
Rents as % of Actual Market Rent	129%

Hypothetical Debt Restructuring Example: Before and After

Before Restructuring

Unit Type	No of Units	Monthly Section 8 Rent (Current)
1 BR	27	750
2 BR	35	875
3 BR	8	950
Total Monthly Income		58,475
Gross Potential Income		701,700
Vacancy	5.00%	-35,085
Gross Effective Income		666,615
Operating Expenses/Reserves		315,000
Net Operating Income		351,615
Annual Debt Service		304,029
Cash Flow		47,586
Debt Service Coverage:		1.16

After Restructuring

Unit Type	No of Units	Monthly Section 8 Rent (Actual Market)
1 BR	27	550
2 BR	35	675
3 BR	8	850
Total Monthly Income		45,275
Gross Potential Income		543,300
Vacancy	5.00%	-27,165
Gross Effective Income		516,135
Operating Expenses/Reserves		245,000
Net Operating Income		271,135
Annual Debt Service		246,486
Cash Flow		24,649
Debt Service Coverage:		1.10

Effect of Restructuring

Mortgage Supportable by Actual Market Rents	3,121,326
Current Fair Market Value (after Restructuring)	3,189,824
80% Loan-to Value	2,551,859
Current FHA Loan Balance	3,450,000
Restructured First Mortgage Amount	2,551,859
FHA Debt Write-Down or Deferral	898,141

Example: Acquisition of Below-Market Project

60-Unit Property

Basic Property Profile

Number of Units:	60
Number of Section 8 Units:	60
Type:	Elderly
Section 8 Expiration Date:	9/30/99
FHA Insurance Program:	221(d)(4)
Current FHA Loan Balance:	1,350,000
Current Interest Rate:	7.50%
Property Fair Market Value:	5,100,000
Rents as % of FMR:	53%
Rents as % of Actual Market Rent	47%

Hypothetical Property Acquisition Example: Before and After

Current Owner

Unit Type	No of Units	Monthly Section 8 Rent (Current)
1 BR	0	0
2 BR	60	750
3 BR	0	0
Total Monthly Income		45,000
Gross Potential Income		540,000
Vacancy	5.00%	27,000
Gross Effective Income		513,000
Operating Expenses/Reserves		180,000
Net Operating Income		333,000
Annual Debt Service		190,000
Cash Flow		143,000
Debt Service Coverage:		1.75

After Transfer of Ownership

Unit Type	No of Units (40% of median)	Monthly Rent
1 BR	0	0
2 BR	60	565
3 BR	0	0
Total Monthly Income		33,900
Gross Potential Income		396,000
Vacancy	5.00%	19,800
Gross Effective Income		376,200
Operating Expenses/Reserves		178,000
Net Operating Income		198,200
Annual Debt Service		169,000
Cash Flow		29,200
Debt Service Coverage:		1.17

Sources and Uses

Sources

FHA 223(f) loan 35 yr. @ 8.5%	1,853,000
City Deferred Loan	2,510,000
Tax Credit Equity (9% tax credits)	1,430,000
General Partner	40,000
Total	5,833,000

Uses

Acquisition	5,100,000
Rehabilitation and Soft Costs	733,000
Total Uses	5,833,000

Section 8: Points of View

What Happened to Our Commitment to Affordable Housing?

<http://www.nhi.org/online/issues/94/kennedy.html>
Shelterforce July/August, 1997

by Rep. Joseph P. Kennedy II (D-MA)

The purpose of government is to perform critical functions that the private sector is not performing. When minimum wage workers—much less the millions of elderly, disabled, and families without jobs—can't afford a private sector apartment in most urban areas, the private sector is clearly not fulfilling this function. Nonprofits are doing their best, but have limited resources. Federal resources are required.

Unfortunately, housing prospects for very low-income families, seniors, and the disabled are reaching crisis levels. Normally, the number of people in homeless centers declines with warmer summer weather. This summer, however, homeless shelters are full.

Local housing authorities and nonprofits struggle to find funds to build affordable housing units, but can't keep up with growing demand. And, expiring Section 8 contracts over the next five years raise the prospect that we will actually see a net loss of affordable housing units, as many landlords convert apartments to market rents.

In the face of these developments, Congress continues to retreat from a commitment to meet affordable housing needs. Of course, this retreat is not a new phenomenon. Housing production programs of the 1960s and 1970s (with FHA guarantees and project-based rental assistance) gave way to a 1980's budget philosophy of minimalism. Even as the 1986 Tax Act created the Low-Income Housing Tax Credit, it reduced tax-exempt bond financing and depreciation benefits for construction of affordable multi-family units.

This retreat has accelerated in recent years. In early 1995 without a single hearing, Congress cut HUD's budget by 25 percent. Last year, Congress passed welfare legislation, making deep cuts in welfare and food stamp payments, which further exacerbates housing affordability.

The track record of this Congress is no better. Earlier this year the house passed Housing "reform" legislation, the main "reform" of which was to cut in half the number of very poor families receiving housing assistance. Just recently, the House passed a spending bill that continues to underfund housing programs and eliminates preservation funding—the only program we have to prevent the loss of affordable housing units under expiring Section 8 contracts. When I tried to offer an amendment to restore funds for the homeless and community development programs (within budget limits), I was defeated on a party line vote.

My amendment demonstrates a simple fact: a balanced budget is no excuse for underfunding housing programs. Earlier this year I offered my own balanced budget plan—a plan that restores funding for homeless programs to pre-recession levels, gives public housing authorities full funding for operating subsidies, and provides funds for 50,000 new vouchers a year.

There are other ways we can reestablish our commitment to affordable housing. Tax policy is one example. The budget bill that passed the House provides \$8 billion in tax breaks for existing homeowners—but not a penny for construction of affordable housing. We should also explore new ways to leverage existing resources to maximize their effectiveness. And we need to design and fund a program to preserve housing that would otherwise be lost under Section 8 expiring contracts.

We are now reaping the harvest of decades of neglect in meeting our affordable housing needs. Let's change course; let's reassert our commitment to this most basic of human needs.

Half-Right on Public Housing

By Christopher Jencks

The House passed a bill last week sponsored by Representative Rick Lazio, a New York Republican, that is supposed to transform public housing, turning crime-ridden welfare warehouses into respectable havens for the working poor. This is a good idea. But the Lazio bill also has serious problems. In its present form, it could end up doing more harm than good.

The Government has two housing programs for low-income tenants: public housing and Section 8 vouchers, which provide rent subsidies for low-income families in private housing. The House Republicans' proposals would change both these programs in precisely the same way, cutting the number of slots for very poor families and raising the number for moderate-income families. While this change is a good idea for public housing, it is a terrible idea for Section 8. The two programs are completely different, and a "one size fits all" solution to their problems makes no sense.

Public housing dates back to 1937. The idea was for Washington to give local housing authorities money with which to build low-income housing. Tenants would then pay enough rent to cover maintenance costs. Later, however, Congress ignored the requirement that low-income tenants' rents had to cover a project's maintenance bills and passed rules requiring local authorities to fill the projects with the poorest applicants. Rent receipts fell, and maintenance deteriorated. Local housing authorities kept asking for Federal help, but most didn't receive enough.

Worse yet, when cities concentrated their poorest and most troubled

families in a handful of projects, the rule of law often collapsed. In the late 1960's, when crime rates soared everywhere, many big-city projects were taken over by gangs.

In an unforgettable moment, St. Louis decided in 1974 that its big Pruitt-Igoe project was beyond redemption, moved everyone out and dynamited the buildings. The picture ran on front pages around the country, and political support for public housing vanished.

Congress has not authorized any new public housing, except for the elderly, since the early 1970's. But it has not given up on most of the old projects. To do that, Congress would either have to give current residents new Section 8 certificates so they could move elsewhere, or it would have to put a lot of very poor families out on the streets.

So public housing has staggered along. Today about 1.3 million families live in public housing. About half are on welfare. Most of the rest live in projects for the elderly, which work pretty well. The projects that mainly house welfare recipients vary in quality. Some are surprisingly good, while others are unimaginably awful.

Since 1974, the Federal Government has focused on making private housing more affordable for the poor. It now provides 1.5 million poor families with Section 8 vouchers, which make up the difference between the market rent of a family's housing and what Congress thinks the family can afford (currently 30 percent of a family's cash income).

Instead of concentrating very poor, troubled families in a few projects, Section 8 spreads them around. This is supposed to encourage poor tenants

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and their children to behave more like everyone else — though there is not much hard evidence to prove or disprove that belief.

Recent debate about Federal housing policy has focused almost exclusively on public housing. House Republicans want to tackle public housing's problems by letting local housing authorities cut the number of units they rent to very poor families on public assistance and increase the number they rent to the working poor.

Despite the Clinton Administration's objections on behalf of poor families, this proposal makes a lot of sense. Raising the proportion of tenants with jobs would improve the social environment in most projects. If tenants could pay more rent, local housing authorities could also better maintain the buildings.

Many of the workers who would benefit from the Republican plan are likely to be single mothers whom the new welfare law will soon push into low-wage jobs. Most of these mothers will be earning between \$10,000 and \$15,000 a year. That is more cash than they would get on welfare. But unlike welfare recipients, most of these working mothers will have to pay for their own groceries, medical bills and child care expenses.

A recent book, "Making Ends Meet," by Kathryn Edin, a sociologist at Rutgers University, and Laura Lein, a researcher at the School of Social Work at the University of Texas, shows the result: Low-wage mothers are currently as likely as welfare mothers to suffer serious material hardship. That will be even more true in the years ahead; so giving the working mothers top priority for public housing makes sense.

But what will become of the mothers who still get public assistance, either because they have just had babies and have not yet hit their time limit to start working, or because they have such serious problems that they are exempt from work requirements?

The obvious solution would be to set aside more Section 8 vouchers for such mothers. But that is not what the

House Republicans have proposed. Instead, the House bill allows local housing authorities to redistribute Section 8 certificates from the unemployable poor to the more affluent. This part of the Republican proposal is a terrible idea.

Some Republicans claim that redistributing these vouchers to working families would give the jobless poor more incentive to find work. That is a plausible argument when the head of the family is really employable and the family lives in a community where jobs are available.

But no amount of tinkering with incentives will insure that every last single mother can find a steady job. There really are people whom no private employer will hire. There are also communities where not enough jobs are available.

Reluctant as the Republicans are to admit it, these families need our help. If we want them to work, we will have to give them "community service" jobs. But that is expensive, especially when we also have to provide child care for a worker's children. Neither

Republicans nor Democrats are sufficiently committed to the work ethic to pay for this solution. Even if they were, such families would still need housing subsidies.

Affordable housing for the poorest of the poor has long been in desperately short supply. That is why so many families are doubled up with relatives, and why some families keep showing up in shelters.

If Congress wants to reduce the number of very poor families in public housing, it should make it easier for such families to get Section 8 certificates.

Even if all future vouchers were reserved for families in which no adult is currently employable, there would not be enough to go around. A housing law that simply denies the existence of such families could easily turn out to be worse than what we have now. □

Public Housing Unchained?

<http://www.nhi.org/online/issues/95/unchain.html>
Shelterforce September/October, 1997

by Deborah Austin and Nancy Bernstine

In the three-year legislative odyssey called public housing reform, there is near universal agreement that overhaul of public housing is needed. It would be a mistake, however, to conclude that the bill passed by the House last spring, and its counterpart, finally reported out of the Senate last month, reflect a consensus about how that change should take place.

Residents and low-income advocates remain deeply concerned about changes that proponents are counting as major victories of the reform effort so far. Examples of such measures include the end of the one-for-one replacement requirement, the repeal of national preferences for admission, and the creation of new admission guidelines giving public housing authorities (PHAs) unprecedented access to applicants' confidential health and criminal records.

Many see national guidelines regarding the replacement of obsolete units, for example, as the epitome of well intentioned yet failed policies of the past that have to be dispensed with in order to save the program. Others see these provisions (or some renegotiated vestige of them) as critical guide-posts for a national government whose commitment to housing the poor has waned to such a degree that we now have over 5 million households with worst-case housing needs and \$0 in HUD's budget for new housing vouchers.

As the final conference on a public housing bill ensues, it seems that external budget pressure is the tail wagging the dog on this reform effort. Public housing has taken a 25 percent cut in funding over the last two years, and the outlook is for more cuts. (These efforts affect Section 8 tenant-based and multifamily housing assistance as well.) The Center on Budget and Policy Priorities' (CBPP) analysis of this year's balanced budget agreement projects that domestic discretionary spending will be cut by \$95.6 billion in the agreement's first five years and could mushroom to \$294 billion in the next five-year period.

"It is basically a battle of attrition" notes one administration official, describing the current competition for domestic discretionary appropriations.

If past is prologue, it is inevitable that public housing and other low-income housing programs will be hard-hit by these reductions. Robert Greenstein, head of CBPP, notes that during the 104th Congress, 34 percent of cuts to domestic discretionary programs were targeted to those serving low-income people, although those programs comprised only 21 percent of the spending in that category. In addition to spending cuts, HUD's staff has dropped from 17,000 in the late 80s to 9,000 today. Secretary Andrew Cuomo has promised to reduce personnel to 7,500 during his tenure. This downsizing could severely hinder HUD's capacity to manage its mission, and sets the stage for more program cuts, attrition, and "reform."

Finally, public housing reform will be much affected by other reforms and shifts external to HUD, such as the progress of welfare reform, the growth and strength of resident-driven community building initiatives, and the success of emerging public/private partnerships. The public housing bills about to enter conference both diverge from and intersect with current law—sometimes not to the best effect.

Who Gets Assisted?

The House and Senate bills follow existing law in restricting occupancy for both public housing and tenant-based Section 8 to low-income families with incomes at 80 percent of median and below. However, both bills would drastically alter who gets served by establishing targets directing more of an ever-shrinking resource to relatively higher income people.

Each bill contains a provision prohibiting concentration of low-income families in particular buildings or developments and affords HUD power to review income and occupancy characteristics. The House

measure, H.R. 2, would require PHAs to reserve at least 35 percent of public housing units which become available during a given year for extremely low income families—those with incomes at 30 percent of median and below. For tenant-based Section 8, 40 percent of available vouchers must serve such families. H.R. 2 includes a "fungibility" feature which would permit a PHA which exceeds its Section 8 target by some percentage of units to offset an equivalent percentage from public housing. In this way, by offering more certificates than the mandatory 40 percent to the poorest applicants, PHAs would free up units in public housing for higher income households. This is deemed as one mechanism designed to move PHAs toward the economic integration many observers believe key to the public housing program's survival.

The Senate bill, S. 462, establishes a tier of targets. For public housing units that become available each year, 40 percent must serve extremely low income families. Seventy percent of the units shall house families with incomes at 60 percent of media and below, and the remaining 30 percent can serve families between 60 percent and 80 percent of median. The Senate bill establishes these same numerical targets for project-based Section 8. For tenant-based Section 8, S. 462 reserves 65 percent of vouchers for extremely low-income families. Ninety percent of all vouchers that become available must serve families at or below 60 percent of median. In both public housing and the tenant-based program, a PHA, acting with HUD approval, can, for good cause, establish different eligibility standards.

Federal occupancy preferences, assuring that families with the most urgent housing needs received assistance first, are permanently repealed in each bill. In their place, PHAs are authorized to establish preferences based on local housing needs. Both bills carve out exceptions. Each includes a provision encouraging a preference for victims of domestic violence. The Senate report also urges PHAs to consider the needs of the growing elderly population in developing preferences. On the other hand, both bills eliminate PHA discretion to provide assistance to non-citizens, who are often among the poorest households, before their resident status is established.

Both bills pay lip service to aiding working families and those seeking to make the transition from welfare to work. However, H.R. 2's exceedingly weak income targeting and S. 462's only moderately better targeting, compounded by other changes in the current system, will shut-out many families moving off of welfare. In many metropolitan areas, 30 percent of area median income is well above minimum wage levels. Therefore, both bills income targets will permit PHAs to meet their quotas for servicing people earning 30 percent of median and below without renting to any minimum wage workers or low-wage, part-time workers, much less welfare recipients.

Public Housing Rents

Although H.R. 2 retains the Brooke Amendment, which caps rents at 30 percent of income [See Shelterforce #85 and 87], it also establishes an alternative "family choice" rent scheme. Residents can opt to either pay income-based rents as in existing law or a flat rent set annually by their PHA, based on the rental unit's value and capped at actual monthly operating costs. The flat rent must not serve as a disincentive for working families to live in public housing. A family that chooses the flat rent but then experiences changed circumstances, such as the loss of a job, a death in the family, or loss of assistance, is entitled to switch to an income-based rent. The Senate bill preserves the Brooke Amendment rent structure and mandates that PHA rental policies reward work and economic self-sufficiency.

Each bill permanently authorizes minimum rents, established in recent appropriations measures. Current law allows a minimum rent of up to \$50. H.R. 2 calls for a charge of from \$25 to \$50 with PHA authority to provide an exemption in the event of hardship. The Senate bill, on the other hand, requires minimum rents of up to \$25 with no hardship waiver. If, upon request for a hardship exemption, a PHA determines that the hardship is temporary in nature, it is still barred from granting the exemption for 90 days. However, the applicant is protected from eviction for non-payment during the 90-day period. If a subsequent determination is made that the request for exemption is valid, the exemption is to be retroactively applied.

Current law makes certain standard deductions in order to establish rent. Both bills expand this system to encourage work and assist the elderly. H.R. 2 continues some mandatory exclusions, such as a standard deduction for elderly or disabled households; certain unreimbursed medical expenses for elderly families

(deductions for non-elderly families would be subject to appropriations); certain child care expenses, child support, and the earned income of minor household members. S. 462 would provide the same exclusions except for non-elderly or disabled medical expenses, child support, and alimony. The bill gives PHAs broad discretion whether to establish exclusions from annual income such as excessive work- or school-related travel expenses and earned income—exclusions which, if mandatory, would clearly benefit people making the shift from welfare to work.

In one clear attempt to encourage work, both bills cap the amount of rent working families must pay. S. 462 authorizes PHAs to establish ceiling rents that reflect the reasonable market value of the housing but do not exceed 75 percent of monthly operating costs plus—at their discretion—a replacement reserve. The House bill contains a similar provision.

For families moving from welfare to work, both bills encourage PHAs to exercise "best efforts" to enter into cooperative agreements with local social services agencies responsible for providing assistance. The rules related to income changes resulting from welfare requirements must be incorporated into each family's lease. Neither bill entitles families whose welfare benefits are reduced due to fraud or failure to comply with welfare reform requirements to a rent decrease, as does current law. But the bills make clear that termination of benefits due to expiration of welfare time limits alone won't bar households from receiving a rent reduction.

Tenants' Rights

Both bills generally extend current public housing and Section 8 lease provisions that affect tenants' rights. However, both eliminate "endless lease" protections (which formerly prohibited lease non-renewals except for good cause) and the 90-day notice of an owner's decision not to renew a Section 8 contract for business reasons.

The House bill requires the use of standard leases as in non-assisted housing. In states with strong pro-tenant laws, this may not have as great an impact. However, if these provisions are permanently enacted, those in landlord-oriented jurisdictions will increasingly confront arbitrary lease non-renewals and income discrimination.

Despite the general principal that tenants receiving housing assistance be governed by the same rules as private-market tenants, the bills impose community service requirements, and the House bill adopts graduation date requirements, as conditions of tenancy. Both bills require adult members of households to perform eight hours of community service. The Banking Committee report on H.R. 2 notes that "Among the beliefs inherent in this legislation are that federal housing assistance should be temporary assistance allowing the family to advance economically toward self sufficiency, and that each recipient bears a responsibility to contribute something toward the improvement of their community as a means of giving something back for this assistance." The bill notes that target dates are not meant to allow PHAs to evict or terminate assistance to those who fail to meet the graduation date.

Both bills retain the good cause requirement for eviction actions during lease terms in public housing and Section 8 housing. For evictions based on non-payment of rent, the bills provide a 14-day notice period. A 14-day notice (or that required by state law, whichever is less) is required for evictions where health or safety threats are involved.

The bills prescribe tough eviction standards for criminal activity. Tenants can be evicted from public housing for criminal activities committed by household members either within or outside the public housing development. Those evicted because of criminal activity can be denied re-admission for three years under the house bill, and can be kept out for a "reasonable period" under the Senate language.

The grievance procedure remains substantially intact in the House bill. Both measures also provide a grievance procedure for tenants affected by sanctions due to an alleged violation of welfare rules. Essentially, the grievance procedure remains available in all public housing eviction cases other than those involving drug-related criminal activity, or activities that threaten other tenants or PHA employees.

Grams Amendment

Both bills enhance PHAs' arsenal of tools to screen out people with histories of substance or alcohol abuse or involvement in criminal activity. Besides H.R. 2's three-year bar on those previously evicted from federally assisted housing for such reasons, the bill would allow PHAs (and Section 8 owners) to set a period of ineligibility for those evicted for less serious lease violations. Those convicted of intent to sell drugs after H.R. 2's enactment would be barred from admission. S. 462 also imposes a three-year bar for drug-related crime, in the absence of completion of a PHA-approved rehabilitation program.

One of the Senate bill's most contentious issues has been the Grams amendment, which requires that applicants for public and assisted housing sign an authorization for drug treatment centers to release information related to whether they currently use illegal drugs. Named for its sponsor, Senator Rod Grams (R-MN), the legislation grew out of a Minneapolis case in which an applicant was denied housing assistance after admitting he received treatment for substance abuse. The controversy centered around how to protect medical records' privacy and prevent discriminatory application of the provision.

Despite unanimous opposition by the nation's leading associations of health care providers, the Grams amendment was passed by unanimous consent with the rest of the bill. Now housing subsidies can be added to the list of government benefits, along with welfare and food stamps, denied to those convicted of felonies involving illegal drugs.

Resident Opportunity

The House bill authorizes a Resident Opportunity Program, mainly to encourage resident management of public housing developments. Funding would only be available to resident councils that approve formation of a resident management corporation (RMC). This program would funnel dollars for technical assistance to increase management capacity, and also to identify and address residents' social support needs, and carry out economic empowerment activities like job training.

The Committee Report notes that this program is authorized despite the waste and fraud associated with its predecessor, the Tenant Opportunity Program (TOP). This program, however, would be an inadequate substitute for TOP, which focuses more generally on supportive services, general organizing and education programs, and economic empowerment. The program would be funded at \$15 million for one year and thereafter treated as an eligible activity for Operating Funds.

The Senate bill provides \$25 million in direct funding to resident councils, organizations, and management corporations, and even nonprofit entities supported by residents, for "programs of supportive services and resident empowerment activities to assist public housing residents in becoming economically self-sufficient." Along with resident management activities, eligible activities include physical improvements to provide space for supportive services; provision of service coordinators; job training and supportive services for those moving into jobs; economic development initiatives such as new resident microenterprises, community credit unions, and revolving loan funds; and other activities designed to improve residents' economic self-sufficiency.

Participation in PHA plans

Both bills contain limited provisions for resident participation in developing plans to spell out all aspects of operations. These PHA plans are to be filed with HUD, but HUD's review of the plans is generally limited to determining whether they contain the required information consistent with information available to HUD. The House bill identifies the local Consolidated Plan as an appropriate source of information in identifying local needs and priorities. The Senate measure provides a somewhat more general directive requiring that PHA plans be consistent with the Consolidated Plan. It vests virtually every aspect of PHA policy in the PHA plan, including how a PHA will create an income mix within each project and its scattered site developments.

Both bills require a public hearing to obtain comments on PHA plans. The Senate bill requires that residents' comments be considered in preparing final plans, and that a summary of those comments be attached. It also requires PHAs to establish advisory boards of public housing and Section 8 residents to comment on their plans. The resident advisory board recommendations would be attached to submitted plans, along with an explanation of how the plan addresses those comments. However, a limited number of tenants can serve on resident advisory boards, and only for a short period of time.

Public/Private Partnerships

The House and Senate legislation encourage PHAs to form partnerships and launch new initiatives. The House bill's Home Rule Block Grants provide the maximum amount of local flexibility. These grants would authorize localities to receive all public housing and rental assistance in a single grant. Local governments would design programs and select administering entities. PHAs would be required to comment on the plan, but local government could designate another entity to administer the block grant. HUD would review and approve the programs, and localities would have to provide housing to the same number of households and implement "reasonable" rent policies. Many federal statutes and regulations would be waived, and in their place would be general directives in such areas as citizen participation. Although the bill requires jurisdictions to hold public hearings before submitting an application, it contains scant reference to ongoing resident participation in the programs designed by each jurisdiction. Once approved to receive this grant, localities would receive as much money as they obtained through categorical programs. The HUD Secretary is to monitor participating jurisdictions' performance.

The House Committee Report is very enthusiastic about localities' ability to design housing programs that more effectively use federal assistance and are better coordinated with other priorities like welfare reform. However, many remain concerned that such plans would be designed and implemented with very little consideration to the unmet needs of extremely low-income families, the homeless, and the disabled.

The Senate bill also grants a great deal of flexibility to form partnerships with other entities, but keeps PHAs in the loop as the recipient agency for federal housing dollars. PHAs could form consortia or even merge with other PHAs to carry out administrative/management functions. The bill also allows joint ventures with other units of local government or private entities to carry out a broad range of activities. The bill eliminates the current law reducing PHAs' operating subsidies in cases of increased earnings, and allows them to keep these resources to invest in more low-income housing or other programs to benefit residents. The House bill also includes a provision for development of mixed-finance housing, which can be carried out in accordance with a HUD-approved mixed-finance plan.

While encouraging entrepreneurial activities is certainly desirable, some fear that, again, pressure to meet federal budget shortfalls through partnerships could result in fewer units and services going to the lowest-income residents, and could permanently change the occupancy and focus of the public housing program.

Despite the many contentious issues that remain, a successful conference on public housing reform looks more likely in this Congress than the last. Though no action is expected in 1997, Congress will still have 1998 to hammer out a consensus bill and get the measure passed. Both sides have already signaled a willingness to move toward each other. For example, the house provision on rents retains the Brooke Amendment, and the Senate has a small demonstration program which resembles the Flexible Home Rule Block Grants. Moreover, resolution of the mark-to-market issue in the appropriations bill eliminates the debate over another contentious housing issue.

While PHAs and communities prepare to use the added authority and flexibility devolved to them under these measures, it will take longer to tell if this flexibility truly creates a better program and better opportunities and communities for those with the greatest needs.

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email: nhlp@ix.netcom.com. Parts of this article are excerpted from "What Is the 105 Congress Doing on Housing? A Legislative Update," from Housing Law Bulletin, vol. 27, August 97.

See the November/December issue of Shelterforce for more on preservation/voucherization of the public housing stock in the final bill.

Housing Chief Insists Rent Subsidy Boost Vital

Dan Freedman

SF EXAMINER WASHINGTON BUREAU Feb. 28, 1997

If Congress doesn't act, San Francisco could feel the pinch

WASHINGTON - Housing Secretary Andrew Cuomo has warned Congress that a failure to boost spending for federal rent subsidies for the nation's poor would increase the homeless population.

The Clinton administration is asking the Republican-led Congress for an extra \$5.6 billion in the \$24.8 billion Department of Housing and Urban Development budget to cover 1.8 million expiring contracts between the government and private landlords to house 4.4 million people - 90 percent of whom are families with children or elderly or disabled people.

"What would happen to the people who are displaced if we allow ourselves to lose these units?" Cuomo asked members of the House Government Reform and Oversight Subcommittee on Human Resources. "I don't think it's overly dramatic to say you'd have massive homelessness in the nation."

Cuomo's staff released a city-by-city breakdown of units up for renewal in the coming fiscal year and the number of people affected. If the program is not funded, according to HUD calculations, San Francisco would lose 7,179 units housing 15,912 people; New York City would lose subsidies for 55,453 units housing 133,785 people; and Los Angeles would lose 32,768 units sheltering 75,200.

Cuomo said losses among other cities include: Albany, N.Y., with 941 units sheltering 2,027 people; Beaumont, Texas, with 844 units housing 2,004 people; Houston with 10,438 units sheltering 24,741 people; Laredo, Texas, with 487 units affecting 1,207 people; San Antonio with 8,788 units affecting 22,413 people; and Seattle with 4,016 units affecting 9,228 people.

Those units are covered by lease agreements that expire during the coming fiscal year starting Oct. 1.

Because contracts covering 6 million poor tenants are up for renewal between now and 2002, the issue of rent subsidies is assured of being a perennial issue through the beginning of the next century.

The subsidy program is the sole reason for the 30 percent increase in the Department of Housing and Urban Development's \$24.8 billion budget for the coming fiscal year, Cuomo told panel members.

Without the rise, Cuomo said, the subsidy would have to be paid out of the existing HUD budget. Such a move would cause a 35 percent across-the-board cut in other programs, including community development block grants that provide an economic spur to cities, aid for the homeless and money to help poor people become homeowners.

ON THE GATE

We Must Preserve the Nation's Supply of Affordable Housing

National Housing Institute
<http://www.nhi.org/policy/affhsg.html>

by Michael Bodaken
President, National Housing Trust

For 60 years, Congress has recognized that meeting America's housing needs requires federal partnership with the private housing industry and state and local governments. This has come through a combination of mortgage insurance, direct investment of capital, tax incentives, a write-down of mortgage interest, or other assistance. Today we are engaged in a debate over the future of that partnership, the people it serves, and the millions of units of housing it has produced.

The Department of Housing and Urban Development (HUD) is proposing a profound shift in policy on housing built and owned by the private sector, both for-profit and nonprofit. Built over two decades with federal mortgage insurance and receiving project-based Section 8 rental assistance, this housing has served millions of low-income people and has had broad bipartisan support during both Republican and Democratic Administrations. HUD's new policy is spurred by the expiration of Section 8 contracts on a total of over one million assisted housing units over the next 10 years.

HUD's proposal for Federal Housing

Administration (FHA) insured and Section 8 assisted housing is to eliminate project-based assistance as contracts expire; eliminate regulatory requirements governing the housing; pay mortgage claims triggered by the elimination of subsidy; provide some rehabilitation to a portion of the stock; and provide residents with Section 8 certificates administered by local public housing authorities. (HUD would cap the value of the voucher at a rate below the present level, i.e., the buying power of the voucher would erode.) The idea is to mainstream this housing into the conventional real estate market, without subsidies or use restrictions. The plan reverses a long-standing policy on maintaining a supply of well-located and maintained housing for current and future low-income renters. The new policy, called "Mark to Market," is the antithesis of preservation of existing affordable housing, an explicit goal adopted by the Congress over a decade ago.

All parties in this debate agree that reform of HUD programs is necessary, that maintaining the status quo is unacceptable from a fiscal and housing quality perspective. But is an approach that could eliminate the affordable housing supply the best solution? Is it the best solution from a cost perspective as well as from the perspective of renters, owners, neighborhoods, local governments and the national interest in having an affordable housing supply and delivery system? Also, are there policy distinctions to be made based on the characteristics of the federally-insured housing stock, including age, condition, type of financing, and other subsidies? We believe there are and that HUD's goals for reducing costs and providing more flexible housing opportunities can be achieved without "throwing the baby out with the bath water."

How Did We Get Here?

The federal housing story begins in 1937 with the National Housing Act. The Act committed the United States "to remedy the unsafe and unsanitary conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income in rural or urban communities, that are injurious to the health, safety and morals of the citizens of the nation."

In 1949, Congress established as a cornerstone of national policy "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."

Congress reaffirmed this policy in 1968, declaring that "the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality."

Between 1965 and 1974, private builders were offered below-market interest rate insured loans for affordable units reserved for low-income families and seniors. The program was highly successful, generating the development of over 600,000 homes during this decade. Later, due in part to the oil crisis, utility price hikes and other operating expense increases led to the need for additional federal property-based subsidies to keep the units affordable. Section 8 contract rents for these units are generally below market and "budget-based," i.e. rent is based on budgeted expenses and the owner's limited dividend. These properties are typically referred to as "older assisted housing."

Apartments created under the Section 8 New Construction/Substantial Rehabilitation (NC/SR) program, made part of the Housing and Community Development Act of 1974 during the Nixon/Ford Administrations, are typically referred to as "newer assisted housing." Designed for private operation, this program provided federal insurance as an option. All these units received project-based subsidies. This program produced almost one million apartments between 1974 and 1983. Unlike the older assisted stock, the newer assisted stock has fewer financial and physical problems. Another contrast is that incomes of tenants in newer assisted stock are generally lower than incomes of tenants in older assisted stock. Unlike the older assisted stock, most contracts on newer stock do not begin to expire until 1998. Finally, for a variety of reasons, contract rents for newer assisted stock are often above market, whereas contract rents for older assisted stock are typically below market.

What Would Happen Under Mark to Market?

HUD proposes to eliminate all use restrictions, except income eligibility, for any FHA insured property partially or fully assisted by project-based Section 8. This applies to both the newer and older assisted housing stock. The drive to market is nowhere better expressed than in HUD's proposed legislation, which allows the HUD Secretary to "remove at the owner's request, or at the Secretary's determination, any [emphasis added] mortgage restriction, regulatory agreement restriction, project based contract or use agreement restriction from projects undergoing restructuring (Mark to Market) if such restriction would prevent the project from operating as a market rate rental project."

If the housing defaults, HUD proposes to sell the mortgages. Whether the mortgage sales will be driven purely by economic or by a public interest/market mix remains unclear. Mark to Market assumes a market in which this real estate will find its "natural" level. Federal rent formulas will be abandoned, the owner will be entitled to an unlimited distribution, and affordability restrictions are eliminated. While owners may be required to rent to those earning below certain incomes, residents may have to pay rents in excess of 30 percent of their income to stay in place.

The Difference Between the "Old" and the "New" and Budget Realities

The Mark to Market proposal tends to blur three essential points:

(1) HUD asserts that "Mark to Market" will reduce ongoing Section 8 subsidy costs by cutting rents down to market and writing down FHA mortgages to a property's true economic value. This is only half true.

Despite their essential differences, HUD proposes to "mark to market" both older and newer assisted housing stock. Approximately one-half of the 900,000 units are in the older assisted category, projects built in the 1960s and 1970s with below market interest rates.

There is no budgetary or policy rationale for "marking up to market" older assisted housing. Raising rents would negate the benefits of the financing structure of these projects; eliminating property based Section 8 and substituting vouchers would be a waste of precious budget resources in an increasingly stingy budget climate.

HUD acknowledges that 70-80 percent of contract rents in the older assisted housing stock are below local fair-market rents. In its latest report on "Mark to Market," HUD declares that nine out of 10 residents will choose to stay in the units they presently occupy. Assuming this to be true, the federal government will pay more than the current rent for a voucher to a family currently residing in older assisted housing. Additional

costs of marking to market the older assisted stock have been noted by the General Accounting Office, which observes that "excluding the older assisted properties from [Mark to Market] would cost \$4 billion less over 25 years (on a net present value basis) than including them."

2) HUD assumes that tenant-based subsidies are "the future." But HUD has already carved out property-based "exceptions" for the elderly and the disabled, block granting them to local governments. Ironically, as a rule, state and local governments use place-based assistance, i.e., through the allocation of low-income housing tax credits, HOME, CDBG and other resources that essentially provide up-front capital subsidies for housing with long-term rent restrictions.

Vouchers are a valuable tool in any affordable housing delivery system. But they are not a substitute for maintaining a supply of affordable housing, especially when choices must be made about how to invest limited resources. If we are not going to supplement incomes enough to permit the private housing market to meet the housing needs of low-income Americans, national housing policy must include well-designed and implemented programs to preserve the existing supply of affordable housing.

3) HUD's Mark to Market displacement literature assumes that residents would "accept" a rent burden of 40 percent of income before they would relocate. There is no basis to assume that low-income residents have incomes sufficient to pay higher rents.

Higher rents are a certainty for tens of thousands of apartments. In a case example document released June 21, 1995, HUD estimates that rents for older assisted housing would increase between 8 and 34 percent, depending upon the location and condition of the property. To mitigate these impacts, HUD proposed that, as contracts expire, residents of Section 8 units and others who are or become rent burdened would receive two-year vouchers. Further, HUD posits that vouchers work best with adequate counseling and where discriminatory barriers are reduced. Thus, HUD requested from Congress tens of thousands of additional vouchers to make Mark to Market work with older assisted housing. In July, the House Appropriations Committee rejected HUD's request and voted for no additional Section 8 certificates, thus denying certificates for households that become rent burdened due to Mark to Market rent hikes. Instead, the Committee gave the Secretary "discretion" to voucher out assisted housing at HUD's proposed lower voucher levels. Due to budget politics, this type of Mark to Market "Lite" (less housing, reduced voucher assistance) may well be the legislative outcome.

The National Housing Trust estimates displacement to be well over 175,000 households, based on more realistic ratios of rents to income, the fact that there will be no additional Section 8 certificates provided by Congress, and factoring in stock lost due to deterioration. Without any testing of the Mark to Market concept, there is no telling how much displacement will occur.

Timing and Alternatives:

Different subsidy contracts expire at different times. HUD estimates that 75 percent of newer assisted projects have rents in excess of FMR. Most of those contracts do not expire until later in the decade. According to the Congressional Budget Office, only 957 newer assisted apartments in the country have contracts that expire in FY 1996, and the peak years are FY 1998-2000 for contracts renewals for newer assisted housing. Nevertheless, HUD asserts that decisions must be made this summer to avoid negative capital market consequences. The Trust believes that a hastily-set policy will lead to numerous mid-course corrections, which would be more harmful than taking time to develop a well-conceived policy.

Unfortunately, older assisted housing, for which rents will be increased, would be the first candidates tested by Mark to Market. According to the CBO, fully 220,000 units of older assisted housing expire during the next two years. The possibility that HUD will abandon the preservation of this mixed-income, federally-assisted, multifamily housing that serves primarily the working poor-and incur a greater expense to the taxpayer in doing so-leaves affordable housing preservationists shaking their heads.

Now is the time to bring other approaches to the table.

- The National Housing Trust has advanced a capital grant proposal that would provide for rehabilitation of the older assisted housing stock, demand permanent affordability in return, maintain the current below market rents in place, and cost approximately 15 percent less than Mark to Market.

- A variant of this approach would be to segment the older assisted stock into three tiers. The top tier, excellent properties in strong markets, are candidates for a capital grant. The second tier could have debt written off, prior to default, in return for substantial repairs, keeping below-market rents in place. The third are those properties that might not be able to sustain operating expenses, even if debt is written down to zero, but that serve as anchors in weak markets. These properties may need continued property based assistance, albeit at lower levels.

- A third proposal would permit owners of the older assisted stock to mark rents up a little, not all the way to market, with continued property based assistance to attract private financing for rehabilitation.

- Another proposal would permit property owners to provide "turnover certificates" to poorer residents to avoid low-income concentration. When very low-income people moved out with their certificates, the property owner could move in a slightly higher income resident who could afford the budget-based rent without federal subsidy.

- A draft concept, currently in circulation on Capital Hill, permits owners of high-value properties to opt out, but provides rehabilitation and operating funds for "good owners" of lower-value developments, which are the best properties in distressed neighborhoods. •Finally, the National Housing Trust, local governments, and nonprofits have asked that restrictions be lifted to permit the mix and match of HOME funds and tax credits to preserve federally assisted housing.

The Trust compliments the Administration's efforts in beginning to wrestle with the policy and financial challenges of HUD assisted housing. But HUD's Mark to Market proposal should be unbundled and each element should be evaluated for cost-effectiveness, administrative feasibility, and its impact on the future of this housing stock. As presently framed, Mark to Market is not the most cost-effective approach, and it would not necessarily serve the interests of current residents, the neighborhoods in which the housing is located, or the local governments that may realize increased burdens without adequate resources.

Michael Bodaken is the President of the National Housing Trust. The National Housing Trust is a national nonprofit organization dedicated to the preservation of existing affordable housing. The Trust provides technical assistance to nonprofits, residents, and state and local housing entities throughout the U.S.

For more information about Mark to Market, call the National Housing Trust at 202/333-8931 or check out the Assisted Housing Folder on HandsNet.

EXPIRING LEASES

OVERVIEW/INTRODUCTION OF EXPIRING SECTION 8 CONTRACTS

Department of Housing and Urban Development

<http://www.hud.gov/fha/mfh/mfhoverv.html>

Over 800,000 FHA-insured housing units in 8,500 projects were financed with 20-year Section 8 project-based rental assistance contracts that set rents at levels that today exceed the rents received by comparable units in the market place.

Beginning in FY 1996, those project-based Section 8 contracts began to expire. Without Section 8 rental assistance, a percentage of HUD-assisted and insured projects may likely default, jeopardizing tenants, owners, and affordable housing stock and creating substantial losses in the FHA insurance fund.

Every year more project-based Section 8 contracts expire, compounding the cost of annual extensions. If no action were taken, the cost of renewing contracts expiring in FY 1998 would exceed \$11 Billion, or over one-third of HUD's current budget.

To forestall this crisis, Congress and the Administration have offered one-year extensions of these expiring Section 8 contracts. The Section 8 renewal authority is the first step to easing out of this affordable housing dilemma. Congress has approved new contract renewal language for project-based subsidies expiring in fiscal year 1997 in the fiscal 1997 appropriations act, HUD is moving ahead under current law to ensure timely funding of the one-year extension of Section 8 contracts for the fiscal year that began October 1, 1996.

At the request of an owner, HUD shall renew the Expiring Section 8 Contracts as project-based assistance for a period of not more than one year, at rent levels that are equal to the rent levels under the expiring contract as of the date on which the contract expires. However, the rents in the renewal contract may not exceed 120 percent of the Fair Market Rent ("FMR") for the market area in which the project is located. Thus, where requested by an owner, a Section 8 Contract expiring in Fiscal Year 1997 will be renewed for a period of not more than one year at rent levels in the expiring contract, subject to the 120 percent of FMR limitation. There will be no rent adjustments made during the one year term of the contract.

For projects whose rents are above 120 percent of the FMR for a geographic area, the expiring Section 8 contract will be reduced to 120 percent of FMR upon renewal. However, FHA insured projects whose financing cannot sustain a reduction of Section 8 rents to 120% of FMR may participate in a Demonstration Program that in most cases stabilizes financing and saves the government money. The Demonstration is established to explore approaches to restructuring Section 8 assisted projects in the FHA portfolio with the least disruption to tenants, owners and the FHA insurance fund.

However, Congress provided exemptions from the 120 percent of the FMR limitations for certain projects. Those exemptions are for projects that are publicly financed or insured, for section 202 projects, and for section 515 projects. At the request of the owners of such projects, HUD shall renew a Section 8 Contract expiring in Fiscal Year 1997 for a period of not more than one year at rent levels that are equal to those under the expiring contract. There will be no rent adjustment made during the one year term of the contract.

CORRIE M. ANDERS INVESTING



Bay Area landlords bailing out of Section 8

BY HER OWN account, Nancy Rickenbacker has a "magnificent" \$600 studio apartment in San Francisco.

It has hardwood floors, a closet large enough that she's converted it into a loft, "fabulous" storage, and "a panoramic view of this city."

It won't be hers much longer.

Rickenbacker — and several thousand other Bay Area renters like her — has gotten trapped between a hot apartment market and federal limits on how much private landlords can charge.

Rickenbacker's rent is subsidized by the Department of Housing and Urban Development through its "Section 8 program." The program allows low-income residents to rent from private property owners rather than live in public housing projects.

But in today's go-go economy, which has created thousands of new, well-paying jobs, Bay Area rents have jumped 20 to 25 percent higher than the maximum rents

HUD will allow.

And the annual increase permitted by HUD — which does not truly recognize the Bay Area as an ultra-expensive region — ranges from one-half of 1 percent in San Francisco to 1 percent in Santa Clara County.

The not-insignificant price difference has prompted large numbers of landlords to opt out of the Section 8 rental program.

"It's a growing trend that we recognize. It's very worrisome and bothersome," said Ron Sonenshine, spokesman for the San Francisco Housing Authority, which operates the Section 8 program in The City.

"Landlords are saying there's not enough money in it for us . . . and they have a point," said Sonenshine. "If we can only provide \$975 for two-bedroom and the going rate is \$1,500, \$1,600 or \$1,700, that's obviously a pretty wide gap. (But) how do you keep them interested and not drive both renters and owners from what has been a pretty good program?"

Property owners opted not to renew the leases of approximately 1,000 Section 8 certificate holders in San Francisco last year. Landlords took about 600 apartments out of the federal program in Santa Clara County, which has one of the most expensive rental markets in the country.

The dropout mood is what hit Rickenbacker, who had lived for more than three years in her 63-unit apartment building in a gentrifying neighborhood between the Tenderloin and lower Nob Hill. The owner sent her a letter in May saying he would not renew her lease "due to a desire to rent the unit at a higher rent."

"I'm at the end of my rope trying to find a place," said Rickenbacker, who lost an eviction court appeal and must be out of her

apartment by the end of February.

"I've looked all over San Francisco, Daly City, Oakland, Berkeley, San Jose and up north in Sacramento." But she said "no landlords are taking Section 8."

Tom Garber, Rickenbacker's landlord, said he has terminated about five of his eight Section 8 tenants.

"I thought long and hard about it. I felt badly about these people," said Garber, adding that he offered to keep the Section 8 tenants if HUD would permit rents of \$750 or \$800.

Garber said he was getting an average \$550 for studios that could rent for \$875 on the open market. The "lost income" totals more than \$30,000 a year.

"I'd have been willing to sacrifice some of that," he said, "but you've got to draw the line somewhere."

The landlord dropout rate has left HUD and local governments scrambling to find ways to keep property owners happy.

"We're dancing just as fast as we can to try and hold on to the ones we have and to try to bring in new ones," said Candace Capogrossi, deputy executive director of the Santa Clara County Housing Authority.

Her agency has gotten creative. For example, instead of renewing a lease and giving a landlord "a miserable 1 percent increase . . . we would look at it as a new contract so we could use the existing fair market rent" allowed by HUD.

And in a number of cases last year, the agency saved contracts by giving rental owners a straight 10 percent hike over the HUD rate. Money for that premium has been depleted, however.

The San Francisco Housing Authority recently asked HUD for

permission to pay landlords 20 percent over the federal limits. The request is pending.

HUD also is looking at changing the method by which it determines maximum rents for the Bay Area. It also plans to set new rent levels "as soon as possible" instead of October.

The last HUD rent survey was conducted in 1995 and based on rents in Oakland, San Francisco and San Jose — three high-cost cities. Since then, however, the survey was updated using the Consumer Price Index for the broader and less expensive seven-county Bay Area.

That method resulted in a situation where maximum rents allowed by HUD actually dropped last year at a time when the price of apartments was rising rapidly.

San Francisco also is exploring whether it can bring Section 8 apartments under The City's tough rent-control ordinance.

Federally subsidized housing is exempt from the rent arbitration ordinance. But Supervisor Tom Ammiano has been given a private legal opinion that apartments with Section 8 renters can be included under rent control because the federal certificate goes to the tenant and not to the apartment.

Bringing those units under rent control would prevent property owners from evicting Section 8 tenants solely to get higher rents.

Corrie M. Anders, Examiner Real Estate Editor, covers real estate and housing. For a copy of his brochure, "Where and how to purchase delinquent property tax lien certificates that pay up to 24 percent," send \$4 with a stamped, self-addressed envelope to 484 Lake Park Ave., Dept. 20, Oakland, CA 94610. Visit his Internet home page at www.sfgate.com/columnists/anders

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FIGHTING SECTION 8 DISCRIMINATION: THE FAIR HOUSING ACT'S NEW FRONTIER

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After showing a six-bedroom house in a middle-class, primarily white Somerville, Massachusetts neighborhood to a Section 8 subsidized family of eight, a landlord expresses concern that the house is not large enough. He proceeds to show them a house that he thinks will be more acceptable. This house, however, is in a primarily African American neighborhood and has only four bedrooms. The landlord cannot explain why this second, smaller house is more appropriate for the large family. He tells the Moving To Opportunity ("MTO")¹ counselor assisting the Section 8 tenants that he hates the Section 8 program and that her clients "should go to where people accept Section 8."²

Introduction

Discrimination against rental subsidy holders seems to be as open and blatant today as was racial discrimination in the years preceding the enactment of the Fair Housing Act of 1968 ("FHA").³ Indeed, many housing advocates believe that the acceptability and legality of Section 8 discrimination enables landlords to use it as a proxy for other legally prohibited kinds of discrimination, such as that based on race, ethnicity, national origin, gender, family status, or disability.⁴

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¹ Moving to Opportunity for Fair Housing, Pub. L. 103-120, § 3, 107 Stat. 1148 (1993) (codified at 12 U.S.C. §§ 1701z-11, 1721, 1735f-9; 42 U.S.C. §§ 1437f, 1490o, 9816, 11301, 12724). MTO, which is modeled after Chicago's successful Gautreaux Program, see *infra* note 20, is intended to assist a small number of very low-income families move from public housing or project-based Section 8 housing located in high-poverty areas to private housing in low-poverty areas. A demonstration group of MTO participants will be provided with housing allowances and extensive support and counseling services and will be compared to a control group of traditional Section 8 recipients. Boston is an MTO city, along with Baltimore, Chicago, Los Angeles, and New York City. The future of the MTO program is uncertain, as Congress has proposed to cut its funding or even repeal the program. See S. Res. 2160, 104th Cong., 1st Sess., 141 CONG. REC. S13,842-03, S13,855 (1995).

² Interview with Sheri Williams, Manager, Moving to Opportunity Demonstration Program, Metropolitan Boston Housing Partnership, in Boston, Mass. (Apr. 18, 1995).

³ 43 U.S.C. §§ 3601-3619, 3631 (1988).

⁴ Telephone Interview with Philip Tegeler, Staff Attorney, Connecticut Civil Liberties Union (Apr. 25, 1995); see also Elizabeth A. Mulroy, *The Search for Affordable Housing, in WOMEN AS SINGLE PARENTS: CONFRONTING INSTITUTIONAL BARRIERS IN THE COURTS, THE WORKPLACE, AND THE HOUSING MARKET* 123, 134 (Elizabeth A. Mulroy ed., 1988).

The Somerville landlord's deliberate concentration of Section 8 tenants into poorer, minority neighborhoods runs against every tenet of the Section 8 housing subsidy program.⁵ From the program's inception in 1974, Congress has touted Section 8 as a way to create economically integrated neighborhoods throughout the United States.⁶ Because poor African Americans are much more likely than poor whites to live in areas of high poverty concentration,⁷ policy debates surrounding the issue of poverty have necessarily implicated geographic desegregation strategies.⁸

⁵ See 42 U.S.C. § 1437f(a) (stating that Section 8's purpose is to "aid[] low-income families in obtaining a decent place to live and . . . promoting economically mixed housing"). Somerville is not the only city experiencing increasing concentrations of poor people within its boundaries. In Chicago's south suburbs, local officials and long-time residents complain that the Cook County Housing Authority has "dumped or steered the poor, predominantly black subsidy holders to their area," creating a so-called "Section 8 corridor." Bill Clements, *Subsidized Housing, Destabilized Suburbs: Officials Confront the Shortcomings of Section 8*, CENT. PA. BUS. J., Sept. 1992, at 18. Almost 90% of Cook County subsidy holders who received subsidies in the 1980s settled in or near this corridor. *Id.*

Similarly, residents in eastern Baltimore County fear that their communities are about to become home to a large Section 8 population. The MTO program is expected to move 285 poor families from inner city Baltimore to more economically mixed neighborhoods. Larry Carson & Pat Gilbert, *Plan to Relocate Families from Inner City Fuels Fears*, BALT. SUN, July 31, 1994, at 1B. Although MTO was designed to disperse its Section 8 recipients throughout the metropolitan area, the white, working-class residents of some of these suburbs believe that the program is the first step in a plan to empty the contents of Baltimore's public housing projects into their communities en masse. *Id.* The residents' misguided outcry over MTO will only make the task of finding housing more difficult for the more than 3000 Baltimore County families currently benefiting from Section 8 funding.

⁶ See 42 U.S.C. § 1437f(a) (1988); cf. Mulroy, *supra* note 4, at 126 (arguing that the reason for increasing recipient's mobility through the program was to promote economic and racial integration).

⁷ See WILLIAM J. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 58 (1987). According to William Julius Wilson and Alexander Polikoff, the dense concentration of very poor inner-city residents produces negative effects on their income levels, educational achievement, and employment rates. See, e.g., *id.* at 46-62 (arguing that social isolation, rather than cultural traits, causes negative effects in those areas); James E. Rosenbaum & Susan J. Popkin, *Employment and Earnings of Low-Income Blacks Who Move to Middle-Class Suburbs*, in *THE URBAN UNDERCLASS* (Christopher Jencks & Paul E. Peterson eds., 1991); Alexander Polikoff, *Housing Policy and Urban Poverty* 2-8 (Apr. 1994) (paper prepared for the Center for Housing Policy, Washington, D.C.) (summarizing Wilson and others' arguments about the effects of socioeconomic and racial isolation).

⁸ See, e.g., DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); HOUSING DESEGREGATION AND FEDERAL POLICY (John M. Goering ed., 1986); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843, 1844 (1994) ("[S]egregation continues to play the same role it always has in American race relations: to isolate, disempower, and oppress."); David Blair-Loy, *Comment, A Time to Pull Down, and a Time to Build Up: The Constitutionality of Rebuilding Illegally Segregated Public Housing*, 88 NW. L. REV. 1537, 1567-73 (1994) (arguing for desegregation strategies to provide viable housing choices to low-income tenants). But see John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487 (1993) (arguing that residential integration is merely a token gesture that ignores and devalues voluntary black community and that spatial equality is a more appropriate goal

Thus, Section 8's goals were subsequently expanded to include racial integration as well.⁹ Indeed, mobility programs, which usually employ Section 8 vouchers to provide inner city public housing residents with an opportunity to secure housing in the community of their choice, represent an important piece of the integrationist project.¹⁰ Presently, under the Clinton Administration, the Department of Housing and Urban Development ("HUD") is vigorously employing rental subsidies as part of its broader antipoverty strategy.¹¹

Created by the Housing and Community Development Act of 1974, the Section 8 Housing Assistance Payments Program enables low-income certificate holders to pay thirty percent of their income for a privately owned apartment that rents at or below a locally established Fair Market Rent ("FMR").¹² HUD, through local public housing authorities ("PHAs"), subsidizes participating landlords by paying them the difference between the tenants' contribution and the rental price. In return, landlords must keep units rented by Section 8 recipients in compliance with HUD's Housing Quality Standards ("HQS").¹³ The newer Housing Voucher Program¹⁴ allows tenants more flexibility in finding apartments. The vouchers are valued at the difference between the FMR for the tenant's geographical area and thirty percent of the recipient's income.¹⁵ Tenants may rent an apartment for more than the FMR and pay more than thirty percent of their income; they may also find a unit for less than the FMR and pocket their savings.¹⁶ In order to receive payments from HUD, landlords must

for public policy). For a summary of the debate within the civil rights community between "in place" and dispersion remedies to ease the plight of poor minorities in the inner cities, see Chester Hartman, *A Universal Solution to the Minority Housing Problem*, 71 N.C. L. REV. 1557, 1562-63 (1993).

⁹ See Mulroy, *supra* note 4, at 126.

¹⁰ See Blair-Loy, *supra* note 8, at 1577.

¹¹ See *HUD Helps Move to the Suburbs*, ST. LOUIS POST-DISPATCH, Sept. 9, 1994, at 6C (stating that the Clinton Administration considers the Section 8 "programs to have substantial potential in addressing the dangerous level of racial and class segregation in the United States"); see also U.S. DEP'T OF HOUSING & URB. DEV., *THE REINVENTION BLUEPRINT* 5 (Dec. 19, 1994) [hereinafter *REINVENTION BLUEPRINT*].

¹² 42 U.S.C. § 1437f (1988 & Supp. 1993); 24 C.F.R. § 882.101-124 (1995). The tenant-based, or demand-side, Section 8 subsidies are distinct from project-based, or supply-side, subsidies, which subsidize particular units instead of individual residents. 42 U.S.C. § 1437c (1988 & Supp. 1993); 24 C.F.R. § 882.701-716 (1995).

¹³ 24 C.F.R. § 882.109 (1995).

¹⁴ 42 U.S.C. § 1437f(o) (1988 & Supp. V 1994). HUD has issued approximately the same number of vouchers as certificates. This Article treats Section 8 certificates and vouchers interchangeably unless otherwise indicated. The more generic term "subsidy" is used to refer to both. The differences may soon become moot, as the two programs are being consolidated. See 60 Fed. Reg. 34,660 (to be codified at 24 C.F.R. §§ 882, 887, 982, 983).

¹⁵ 42 U.S.C. § 1437f(o)(2) (1988).

¹⁶ 24 C.F.R. § 887.353(a) (1995).

make their units conform to the HQS before they can rent to voucher recipients.¹⁷

Despite its stated goals, the Section 8 program has not had its intended effect on segregation or concentration of poverty. A substantial minority of those applicants who are issued tenant-based subsidies are unable to find apartments in which to use them.¹⁸ Many recipients who do manage to participate in the program use their subsidies to pay for their current units or move within their own neighborhoods.¹⁹ The only programs that have produced any significant mobility are those that provide intensive counseling and assistance to subsidy recipients, such as Chicago's Gautreaux program.²⁰ Those programs, which have been lauded

¹⁷ 24 C.F.R. §§ 887.207(b)(2), 887.251 (1995).

¹⁸ See U.S. DEP'T OF HOUSING & URB. DEV., HUD REINVENTION: FROM BLUEPRINT TO ACTION 28 (Mar. 1995) [hereinafter BLUEPRINT TO ACTION] (citing a 1994 study that found that 80% of Section 8 subsidy holders were successful in finding housing); John C. Weicher, *The Voucher/Production Debate*, in BUILDING FOUNDATIONS: HOUSING AND FEDERAL POLICY 263, 275 (1990) (reporting that in 1987, 60% of certificate holders and 65% of voucher holders were able to use their subsidies, with even lower percentages for minorities and large families). A 1970s demonstration project, the Experimental Housing Allowance Program ("EHAP"), produced even more disappointing results. The program, which involved giving housing allowances to 30,000 households in order to test rental housing supply and demand effects, generated little geographic mobility for residents and enabled fewer than half of all eligible households to use their subsidies. See Hartman, *supra* note 8, at 1565. For a description and analysis of EHAP, see EXPERIMENTING WITH HOUSING ALLOWANCES: THE FINAL REPORT OF THE HOUSING ASSISTANCE SUPPLY EXPERIMENT 2-7 (Ira S. Lowry ed., 1983) [hereinafter EXPERIMENTING WITH HOUSING ALLOWANCES]. See generally HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL EXPERIMENT (Raymond J. Struyk & Marc Bendick, Jr. eds., 1981).

¹⁹ Michael H. Schill, *Distressed Public Housing: Where Do We Go from Here?*, 60 U. CHI. L. REV. 497, 530-34 (1993); Laurie Abraham, *Foes Kill Housing Plan Funds; Low-Income Renters Call Move Racist*, CHI. TRIB., Dec. 15, 1994, at 33.

²⁰ The Gautreaux program grew out of a 1976 Supreme Court decision that determined that the Chicago Housing Authority had deliberately located its public housing in areas with high concentrations of poor African Americans. See *Hills v. Gautreaux*, 42 U.S. 284 (1976). As a remedy, the housing authority developed a program to assist public housing residents and those on waiting lists through the use of Section 8 subsidies in moving to private apartments in low-poverty neighborhoods within the city or to mostly white suburbs. See James E. Rosenbaum et al., *Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low-Income Blacks?*, 71 N.C. L. REV. 1517, 1522 (1993) [hereinafter Rosenbaum, *Kerner Commission*]. An administering nonprofit agency "finds landlords willing to participate in the program, notifies families as apartments become available, and counsels them about the . . . move; counselors accompany them to visit the units and communities." *Id.* Since 1976, over 4500 families have participated and over half of them have moved to predominantly white, middle-class suburbs. See *id.*; Janet Koven Levit, *Rewriting Beginnings: The Lessons of Gautreaux*, 28 J. MARSHALL L. REV. 57, 93 (1994). Gautreaux mothers are able to find employment more easily than their counterparts who remained in Chicago, and their children do better in school and are more likely to go to college or be employed after high school graduation. See James E. Rosenbaum & Susan J. Popkin, *supra* note 7, at 342; Rosenbaum, *Kerner Commission*, *supra*; James E. Rosenbaum et al., *Social Integration of Low-Income Black Adults in Middle-Class White Suburbs*, 38 SOC. PROBS. 448 (1991); James E. Rosenbaum et al., *White Suburban Schools' Responsibilities to Low-Income Black Children: Sources*

for their small size, make the movement of poor and minority tenants into middle-class neighborhoods barely perceptible to current residents.²¹ However, moving only small numbers of families does little to effect large-scale desegregation and poverty deconcentration.

The Section 8 program's minimal success in promoting integration is attributable to the wide-spread discrimination against prospective Section 8 tenants by private landlords, especially in largely white, middle-class communities.²² Such discrimination can create large concentrations of Section 8 recipients, often resulting in slum conditions and community resentment.²³ Housing experts assert that the Section 8 program itself exacerbates the problem and that "[l]andlords have too much control over how things work because the federal law does not require landlords to rent to subsidy holders."²⁴ The program's goal of dispersing poor tenants throughout a metropolitan area cannot be achieved if recipients can only find housing in neighborhoods that already contain large numbers of low-income residents. Nevertheless, some landlords maintain that their discrimination against Section 8 recipients is justified, arguing that poor families with subsidies often overcrowd apartments, damage property, and make too much noise.²⁵ Many landlords also refuse to accept Section 8 tenants because they do not want to deal with the attendant government requirements, which include signing a one-year lease, removing lead-based paint from apartments, and meeting specified housing quality standards.²⁶ Some landlords reportedly allow their apartments to fail inspections to avoid accepting a Section 8 tenant.²⁷ Blatant, and legal, discrimination by the very landlords who are central to the success of the Section 8 program's mobility strategy ensures its ultimate failure.

The pressing need to examine Section 8 discrimination has become even more urgent. HUD, in an effort to stave off complete dismemberment by both the newly configured Congress or the Clinton administration, has

of Success and Problems, URB. REV., Spring 1988, at 28. For an in-depth analysis of *Gautreaux* and subsequent remedies and policies, see Levit, *supra*.

²¹ See Abraham, *supra* note 19, at 33.

²² See Mulroy, *supra* note 4, at 134-39; Levit, *supra* note 20, at 95-96 (noting that demand for Gautreaux program certificates far outweighs supply); Abraham, *supra* note 19, at 33; Schill, *supra* note 19, at 531. Other explanations for the Section 8 program's failure include subsidy recipients who wish to remain in their own neighborhoods, an administrative fee structure that discourages PHAs from promoting moves to other jurisdictions, bureaucratic difficulties, lack of support services for tenants, rents in affluent communities that exceed the FMR, and units that fail to meet the HQS. See Mulroy, *supra* note 4, at 145-54; Abraham, *supra* note 19; Schill, *supra* note 19, at 547-51.

²³ See *supra* note 5.

²⁴ See Clements, *supra* note 5.

²⁵ *Id.*

²⁶ See Alexander Reid, *Rental Subsidies Draw Fire in Cities*, BOSTON GLOBE, Nov. 3, 1991, at North Weekly 1; see also Terry Wilson, *Woes Mar Rent-Subsidy Plan*, CHI. TRIB., Mar. 13, 1995, at Chicagoland 1.

²⁷ Wilson, *supra* note 26.

proposed to "reinvent" itself as a smaller, more streamlined, efficient agency. As part of its proposals, collectively entitled the *Reinvention Blueprint*, HUD seeks to convert operating subsidies for public housing authorities into tenant-based subsidies for all residents of public and assisted housing, who could either continue to reside in their current apartments or move to units in the private rental market.²⁸ PHAs would be forced to compete for both subsidized and unsubsidized low-income residents.²⁹ HUD hopes to break up the worst of the large troubled PHAs by demolishing thousands of severely deteriorated public housing units and relocating their residents with Section 8 certificates.³⁰

HUD's proposal will create a massive influx of Section 8 subsidy holders into the private rental market. Even in localities with well-run PHAs, a certain number of tenants will choose to move to privately owned apartments. A sizable percentage of residents of the hundred or so severely troubled PHAs will certainly move, and in the ten to fifteen large cities whose PHAs cannot be restored and whose buildings will be demolished, most if not all tenants will be forced to turn to the private market for their housing.³¹

The purpose of the foregoing discussion is not to criticize HUD's proposal. This Article leaves that task to others.³² Rather, it is to set the stage for the argument that protection from discrimination based on Section 8 status is crucial if even a small portion of this country's low-income housing needs are to be met in the face of massive privatization of federal housing. If landlords can arbitrarily turn away low-income tenants who leave public housing with Section 8 vouchers, effectuation of HUD's *Reinvention Blueprint* will create not hope and empowerment, but homelessness and despair.

This Article proposes an amendment to the Fair Housing Act that would prohibit private landlords from discriminating against prospective tenants because of their status as rental subsidy holders. There is precedent for including recipients of government assistance as a protected category in federal legislation. For instance, in 1949, Congress amended the Housing Act of 1937 to prohibit discrimination, based on the receipt of public assistance, against prospective public housing tenants.³³ Al-

²⁸ REINVENTION BLUEPRINT, *supra* note 11, at 10.

²⁹ *Id.* at 8-11.

³⁰ *Id.* at 13.

³¹ HUD estimates that at least 100,000 units of public housing will be lost; critics believe that number will be far higher. See NATIONAL HOUS. LAW PROJECT, THE CHANGES FOR PUBLIC HOUSING RECOMMENDED IN HUD'S REINVENTION: FROM BLUEPRINT TO ACTION 7-8 (1995).

³² E.g., *id.*; National Hous. Law Project, *A Critique of HUD's Reinvention Blueprint*, 25 HOUSING L. BULL. 29 (1995).

³³ Housing Act of 1949, ch. 338, § 301(8)(c), Pub. L. No. 81-171, § 301, 63 Stat. 413,

though the measure was later superseded,³⁴ it indicates that in the past Congress has been willing to protect recipients of public assistance against willful discrimination. More recently, Congress passed the Equal Credit Opportunity Act of 1974, which prohibits discrimination against credit applicants on the basis of, among other things, receipt of public assistance.³⁵

Part I of this Article demonstrates the acute need for such an amendment and critiques reasons commonly given by landlords for refusing to rent to housing subsidy holders. Part II presents federal and state statutory and judge-made protections that currently exist and evaluates their effectiveness. Operating under the assumption that the HUD proposal is implemented, Part III analyzes the implications of the proposed amendment and considers its economic effects on the housing market, landlords, subsidized tenants, and unsubsidized tenants, in a variety of hypothetical scenarios. Part III also shows that the poor currently bear the costs of discrimination and concludes that cost-spreading is a fairer and more equitable way to provide low-income housing.

I. The Need for Protections

A. The Prevalence of Discrimination

*Landlords blatantly discriminate against Section 8. They told me plain and simple they don't take Section 8; that's their policy.*³⁶

Although a large number of Section 8 recipients are able to use their certificates and vouchers to find housing,³⁷ landlords—particularly those in wealthier communities—continue to discriminate freely against subsidy holders.³⁸ Regardless of their eventual success or failure in finding hous-

423 (1949) (superseded in the 1974 general revision of the Housing Act of 1937 by Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 653 (1974)).

³⁴ 42 U.S.C. § 1437 (West 1994 & Supp. 1995).

³⁵ 15 U.S.C. § 1691(a)(2) (1995) ("It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . because all or part of the applicant's income derives from any public assistance program . . .").

³⁶ Mulroy, *supra* note 4, at 136 (quoting a Section 8 recipient).

³⁷ See Weicher, *supra* note 18, at 275; BLUEPRINT TO ACTION, *supra* note 18, at 28. Out of a total of 1.5 million subsidies issued, at least 300,000 Section 8 households were unable to use their subsidies in 1994. Telephone Interview with Gerald Benoit, Director of Rental Operations, Department of Public & Indian Housing, U.S. Department of Housing & Urban Development (Apr. 24, 1995) (providing the 1.5 million figure).

³⁸ See Mulroy, *supra* note 4, at 139 (finding that suburbs are often closed to Section 8 tenants and that many Section 8 recipients have given up on the idea that Section 8 subsidies can be used to find housing in an area of one's choice); Interview with Nadine Cohen, Staff Attorney, Lawyers' Committee for Civil Rights Under Law, in Boston, Mass.

ing, most recipients experience discrimination from at least one landlord because of their Section 8 status.³⁹

Possession of a Section 8 subsidy marks its holder as a low-income person, a status that carries with it a multitude of negative stereotypes.⁴⁰ Landlords ascribe undesirable characteristics to Section 8 tenants: they are irresponsible; they are bad parents; they damage property; and they will host loud parties.⁴¹ Yet, discrimination against Section 8 recipients seems to go beyond simple aversion to poor tenants. MTO counselors who help Section 8 tenants locate housing in Boston find that landlords discriminate against Section 8 tenants more often than against other low-income tenants, perhaps because of the stigma attached to accepting public assistance.⁴²

Although there are no data comparing Section 8 success rates in states that have protective statutes with those in states that do not, anecdotal accounts from the MTO program suggest that provisions prohibiting discrimination against Section 8 tenants have a positive effect on Section 8 recipients' ability to locate housing outside of high-poverty neighborhoods. MTO participants in Boston, Massachusetts are protected by such a statute⁴³ while participants in New York City enjoy no such protection. As of April 1995, thirty of 106 participants in Boston had successfully located housing, whereas in New York, only one in twenty participants had been successful.⁴⁴ In addition to providing MTO clients with an avenue for legal redress, the Massachusetts antidiscrimination statute allows MTO counselors to leverage the possibility of legal sanctions to convince landlords to participate in the program.⁴⁵

(Apr. 11, 1995); Interview with Philip Tegeler, *supra* note 4; Interview with Sheri Williams, *supra* note 2.

³⁹ See Mulroy, *supra* note 4, at 134 (citing a 1985 Boston study finding that 79% of participants were turned away by landlords who refused to participate in the Section 8 programs, despite the existence of a Massachusetts statute that prohibits discrimination against housing subsidy holders).

⁴⁰ See *id.* at 136-37.

⁴¹ See, e.g., *id.*; Clements, *supra* note 5, at 7.

⁴² Interview with Sheri Williams, *supra* note 2. According to Sheri Williams, manager of the Boston MTO program, the negative stereotypes are accurate only in a very small number of cases. Williams believes that Section 8 tenants who attempt to move out of their high-poverty neighborhoods into unfamiliar surroundings are usually the most motivated to succeed and are unlikely to become problem tenants. *Id.*

⁴³ See MASS. GEN. LAWS ANN. ch. 151B, § 4(10) (West 1992).

⁴⁴ Interview with Sheri Williams, *supra* note 2.

⁴⁵ *Id.*

B. Proffered Reasons for Discrimination Against Housing Subsidy Holders

A rational landlord's primary concern in selecting a tenant is verifying the tenant's ability to pay rent for the term of the lease.⁴⁶ She may also look for tenants of good character, so as to preserve the value of her property; however, because the exchange of money is the essence of the landlord-tenant relationship, a refusal to accept a paying tenant should signal a discriminatory motivation.⁴⁷ Landlords cite a variety of reasons for refusing to rent to Section 8 tenants. The landlord protections provided in the Section 8 statute can overcome some of these justifications; other considerations simply are not serious enough to outweigh Section 8 tenants' dire need for affordable housing. Still others present legitimate economic concerns.

The Section 8 statute provides landlords with considerable protections. Landlords often express concern that if they sign the required year-long lease with a Section 8 tenant, they will not be able to evict the tenant, even if the tenant damages the apartment.⁴⁸ However, the Section 8 regulations permit landlords to terminate tenancies for serious violations of the lease terms and conditions, for violations of federal, state or local law, or for other good cause.⁴⁹ Landlords can also recover up to two months' rent, net of the tenant's security deposit, from the PHA to pay for any damages caused by the tenant.⁵⁰

Landlords may also base misguided leasing decisions on the fear that they will be unable to secure first and last months' rent and a month's security deposit from tenants under a Section 8 lease.⁵¹ While Section 8

⁴⁶ Christopher P. McCormack, Note, *Business Necessity in Title VIII: Importing an Employment Discrimination Doctrine into the Fair Housing Act*, 54 FORDHAM L. REV. 563, 583-84 (1986).

⁴⁷ *Id.* at 584. In the context of the FHA, landlords may employ income, credit history, and other objective, nonracial criteria in tenant selection only if the connection to business necessity is strong. *Id.* Landlords' decisions may also depend on personal preferences that are not related to race or any other protected category. For example, one landlord successfully cited a tenant's attitude and aggressiveness as reasons to refuse to rent to him. *Id.* at 585 & n.158 (citing *Hamilton v. Miller*, 477 F.2d 908, 910 (10th Cir. 1973)). Regardless of their reasons, landlords must be prepared to demonstrate that the criteria employed are rationally related to the legitimate end of securing rental payment. *Id.* at 584.

⁴⁸ See, e.g., Linda Whitford, 13 Mass. Discr. L. Rep. 1001, 1027-28 (1991); Valerie Mercer, 10 Mass. Discr. L. Rep. 1370, 1389 (1988). Most of the cases cited in this Section are cases heard before the Massachusetts Commission Against Discrimination. Because there are only a few cases dealing with this type of discrimination in the regional reporters, this Article relies heavily upon local agency actions for case law.

⁴⁹ 42 U.S.C. § 1437f(d)(1)(B)(ii) (1988 & Supp. V 1993); 24 C.F.R. §§ 882.215(c)(1), 887.213(a) (1995).

⁵⁰ See Mulroy, *supra* note 4, at 162 n.11. After the PHA pays the landlord, it draws up a repayment agreement with the tenant for repayment directly to the agency.

⁵¹ See, e.g., *Attorney General v. Brown*, 511 N.E.2d 1103, 1108 (Mass. 1987) (landlord

regulations prohibit tenants from leaving security deposits equal to or higher than one month's rent, tenants can be required to put down thirty percent of their income or fifty dollars, whichever is greater.⁵² Tenants and the PHA must pay the first month's rent as soon as the unit passes inspection and the lease is signed, while the lease guarantees landlords the last month's rent.⁵³ In addition, if a tenant vacates the unit in violation of the lease, the PHA will pay the landlord rent for the portion of the month the unit remains vacant after the tenant leaves plus eighty percent of the total rent payment for an additional month if the apartment remains vacant.⁵⁴

Another frequently voiced landlord concern is that the FMRs are not high enough to cover the costs of financing and maintaining units.⁵⁵ Again, the Section 8 statute and regulations contain provisions that address this concern. FMRs are adjusted at least annually to take into consideration increased costs in a given locality.⁵⁶ A PHA may also approve a contract rent up to twenty percent higher than the FMR if the tenant can afford it and if the landlord can show that an increase is essential to meet higher operating expenses.⁵⁷ If a landlord still cannot afford to continue a Section 8 tenancy despite these measures, she may terminate the tenancy for "good cause."⁵⁸ Courts have not forced landlords to lower their rents so as to make them accessible to Section 8 recipients.⁵⁹

Indeed, if a landlord is concerned about nonpaying tenants, she would be better served, not harmed, by participating in the Section 8 program. In lower-income neighborhoods, non-Section 8 tenants often cannot meet their monthly rental payments as they struggle with rent burdens up to fifty percent or more of their incomes. Some landlords in low-income neighborhoods, to the detriment of the program's goals, deliberately fill their buildings with Section 8 tenants to guarantee rent payments.⁶⁰

claimed that he lost money when he could not collect the last month's rent in advance because he could not earn interest on that money); Jocelyn French, 12 Mass. Discr. L. Rep. 1041 (1990); Valerie Mercer, 10 Mass. Discr. L. Rep. 1370, 1389 (1988). In many states this argument would be moot, since landlords are often required to pay the interest on security deposits back to their tenants.

⁵² 24 C.F.R. §§ 882.112(a), 887.211(a) (1995).

⁵³ See Mulroy, *supra* note 4, at 162 n.10.

⁵⁴ 24 C.F.R. § 882.105(b) (1995).

⁵⁵ Mulroy, *supra* note 4, at 134-36.

⁵⁶ See 42 U.S.C. § 1437f(c)(1) (1988 & Supp. V 1993).

⁵⁷ See 42 U.S.C. §§ 1437f(c)(1), (c)(2)(B) (1988 & Supp. V 1993); 42 U.S.C. §§ 1437f(c)(3)(B)(i) (Supp. V 1993); 24 C.F.R. § 882.108(a)(2) (1995).

⁵⁸ 24 C.F.R. § 882.215 (1995). Under HUD regulations, "good cause" includes a desire to rent the unit for a higher price. Other examples include a tenant history of disturbing neighbors or destroying property, criminal activity by a tenant involving physical violence, and the landlord's desire to reclaim the unit for personal use. *Id.*

⁵⁹ See *Attorney General v. Brown*, 511 N.E.2d 1103, 1107 n.7 (Mass. 1987).

⁶⁰ See Peter S. Canellos, *Against Aim, Rent Subsidies Cluster Poor in New Places*, BOSTON GLOBE, Mar. 15, 1992, at Metro 1. Admittedly, when landlords can lease their

Landlords also offer reasons for discriminating that are not directly addressed by the statute. Yet, these concerns do not supersede Section 8 recipients' urgent need for housing. For example, landlords object to government involvement in the running of their properties.⁶¹ They claim that the bureaucratic requirements of Section 8 are inconvenient,⁶² or that they do not want to commit themselves to a lease.⁶³ However, under at least one state's antidiscrimination statute, all of these reasons have been held to be insufficient justifications for discriminating against Section 8 recipients. As the Massachusetts Commission Against Discrimination ("MCAD") held in *Whitford v. Ford*, "[a] general aversion to government involvement cannot constitute a legitimate non-discriminatory reason for refusing to rent to a Section 8 tenant."⁶⁴ MCAD, following the Massachusetts Supreme Judicial Court's decision in *Attorney General v. Brown*,⁶⁵ has asserted that landlords are not "obligated to accept a Section 8 certificate if to do so would cause [them] substantial economic losses,"⁶⁶ but landlords rarely offer any evidence that the Section 8 requirements have caused them more than de minimis harm.⁶⁷ Instead, landlords defend themselves against charges of Section 8 discrimination by reiterating the same negative stereotypes often applied to Section 8 recipients. One landlord said that he did not want to enter into a Section 8 lease because rental subsidy recipients lie, are alcoholics, keep pets, and are gay.⁶⁸ These unfounded assertions are simply negative stereotypes; they cannot justify discrimination.

Landlords, at times, do raise substantial economic concerns when rejecting Section 8 tenants. As noted above, units must meet HUD's HQS before the PHA will approve a Section 8 lease.⁶⁹ Landlords have com-

units to middle-income tenants who have no problem paying their rent, Section 8's economic benefits to landlords are somewhat diminished.

⁶¹ See, e.g., Mulroy, *supra* note 4, at 136; Linda Whitford, 13 Mass. Discr. L. Rep. 1001, 1008 (1991) (describing a landlord who "did not want the government coming in and telling him what he can and cannot do with his apartment").

⁶² See, e.g., Jocelyn French, 12 Mass. Discr. L. Rep. 1041, 1047 (1990).

⁶³ See, e.g., Diane Thompson, 14 Mass. Discr. L. Rep. 1127, 1129 (1992); Jocelyn French, 12 Mass. Discr. L. Rep. 1041, 1049 (1990); William D. Hoyt, 11 Mass. Discr. L. Rep. 1095, 1105 (1989).

⁶⁴ Linda Whitford, 13 Mass. Discr. L. Rep. 1001, 1026 (1991); see also Christy Parker, 15 Mass. Discr. L. Rep. 1337, 1354 (1993) (holding that landlord offered no evidence showing that the administrative burdens of renting to Section 8 tenants were any more time consuming than administering to tenants who had fallen behind in their rents); Jocelyn French, 12 Mass. Discr. L. Rep. 1041, 1060 (1990) (holding that the mere assertion of inconvenience caused by Section 8 requirements is not a sufficient justification).

⁶⁵ 511 N.E.2d 1103 (Mass. 1987).

⁶⁶ Mai Richards, 12 Mass. Discr. L. Rep. 1345, 1354 (1990).

⁶⁷ See, e.g., Christy Parker, 15 Mass. Discr. L. Rep. 1337, 1353 (1993) (holding that the landlord provided no proof that the Section 8 program was burdensome).

⁶⁸ See William D. Hoyt, 11 Mass. Discr. L. Rep. 1095 (1989).

⁶⁹ See *supra* note 26 and accompanying text.

plained that, based on the rents the market will support, they cannot afford to make the repairs necessary to bring a unit into compliance with those standards.⁷⁰ Yet, most states require that apartments comply with state sanitary codes, and failure to meet the code subjects the landlord to criminal sanctions. Landlords should not be allowed to refuse to rent to Section 8 recipients because they would rather rent illegally to non-Section 8 tenants.⁷¹

Landlords and residents are also concerned about the negative neighborhood effects associated with the arrival of Section 8 tenants. Some landlords fear that undesirable tenant behavior, such as damaging property or creating noise, will decrease the value of their property over time, sending the neighborhoods and property values into a downward spiral. In fact, the introduction of Section 8 tenants into a neighborhood may have the opposite effect. As part of the Experimental Housing Allowance Program ("EHAP"),⁷² modest repairs were made to a large number of units in some of the study's worst neighborhoods. Although the actual revitalization effects of the repairs were largely invisible, many households *perceived* neighborhood improvement, especially in neighborhoods with high EHAP participation.⁷³ These findings, although tentative and based on relatively small infusions of Section 8 subsidies into the studied communities, contradict the often-stated fear that an increase of Section 8 tenants into a neighborhood will produce a downward spiral and negative neighborhood effects. Clearly, more empirical investigation is necessary to determine the effects of an influx of subsidized tenants on more affluent neighborhoods.

In purely economic terms, discrimination against Section 8 tenants is not necessarily rational. The Section 8 statute assures landlords a steady stream of income and provides them with a multitude of financial protections. However, because of the pervasiveness of negative stereotyping and market failures such as informational asymmetry, emphasizing the protections and financial benefits of the Section 8 program will not necessarily change the mind of a landlord determined to discriminate.

⁷⁰ See, e.g., *Peyton v. Reynolds Assocs.*, 955 F.2d 247, 249 (4th Cir. 1992).

⁷¹ See Linda Whitford, 13 Mass. Discr. L. Rep. 1001, 1027-29 (1991); cf. Valerie Mercer, 10 Mass. Discr. L. Rep. 1370, 1389-90 (1988) (holding that a landlord could not refuse to rent to a Section 8 recipient because he wanted to rent to a non-Section 8 tenant whose lease would not provide for garbage pick-up when such garbage pick-up was required by state law). Whether housing codes are too strict to allow low-income landlords to remain solvent or whether the codes should be rigidly or selectively enforced is not addressed in this Article.

⁷² See Weicher, *supra* note 18, at 283.

⁷³ See *id.* at 283-84.

II. Existing Protections

In the face of such discrimination based on the source of a rental housing applicant's income, protections provided by existing federal law are sorely inadequate.⁷⁴ Only one recently enacted statute provides housing subsidy holders with any sort of protection against discriminatory treatment.⁷⁵ Section 1437f(t) of the Housing and Community Development Act of 1987⁷⁶ prohibits private landlords who have previously accepted Section 8 tenants from discriminating against new tenant applicants because of their status as rental subsidy holders.⁷⁷ Under that provision, landlords who have never leased to Section 8 tenants remain free to reject individuals on the basis of their subsidy status. Thus, Section 1437f(t) effectively creates a disincentive for landlords to rent to any Section 8 tenant because it burdens every subsequent rental with an antidiscrimination provision.

Although it suffers from this disincentive, judicial treatment of Section 1437f(t) in the few reported cases applying the new statute has been favorable to Section 8 holders. Despite defenses that the Section 8 contract terms were burdensome, and claims that the statute provided no private right of action, most courts have found that landlords who refused tenancy to Section 8 holders were in violation of Section 1437f(t).⁷⁸ In one case, however, the Fourth Circuit accepted the landlord corporation's assertion that it had refused to rent a unit to the plaintiff because of

⁷⁴ Cushing N. Dolbear & Anne J. Stone, *Women and Affordable Housing*, in AMERICAN WOMAN 1990-91: A STATUS REPORT 94, 105 (Sara E. Rix ed., 1990); Clements, *supra* note 5, at 18 ("[F]ederal law does not require landlords to rent to subsidy holders.").

⁷⁵ 42 U.S.C. § 1437f(t) (1988).

⁷⁶ Pub. L. No. 100-242, § 147 (1988).

⁷⁷ The statute provides that no landlord

who has entered into a contract for housing assistance payments under this section on behalf of any tenant in a multifamily housing project shall refuse to lease any available dwelling unit . . . to a holder of a voucher . . . and to enter into a voucher contract respecting such unit, a proximate cause of which is the status of such prospective tenant as holder of such voucher.

42 U.S.C. § 1437f(t)(1)(A)(B) (1988).

⁷⁸ See *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272, 1277, 1283 (7th Cir. 1995) (stating that § 1437f(t) creates an implied cause of action for prospective tenants who are denied housing because of their status as Section 8 recipients and finding that defendant landlord violated the statute); *Riddick v. Summit House, Inc.*, 835 F. Supp. 137, 143-45 (S.D.N.Y. 1993) (stating that plaintiff had an implied right of action and that landlord's disagreement with HUD over contract terms should not deprive plaintiff of housing); *Glover v. Crestwood Lake Section 1 Holding Corps.*, 746 F. Supp. 301, 308-09 (S.D.N.Y. 1990) (holding that § 1437f(t) creates a private right of action for Section 8 tenants against private landlords and that defendant landlord's refusal to enter into a Section 8 contract with plaintiffs must be construed as a refusal to rent to a qualified Section 8 applicant, in violation of § 1437f(t)).

objectionable features of the Section 8 lease, and not because the plaintiff was a Section 8 recipient.⁷⁹ That court rejected the argument that a landlord's refusal to enter into a Section 8 lease is necessarily discrimination based on subsidy-holder status.⁸⁰

Supplementing the minimal protection provided by Section 1437f(t), a number of states have enacted statutes that prevent private landlords from discriminating against housing subsidy holders. The provisions prohibit discrimination in the sale or rental of housing and protect prospective tenants from discrimination based on race, gender, religion, national origin, and marital status.⁸¹ Many of the statutes also include "source of income," "lawful source of income," or "status as a recipient of public assistance" as protected categories. Most statutes of this type specifically define "source of income" to include federal, state, or local housing subsidies.⁸² Those statutes that do not specifically define "source of income"⁸³ have been targets for litigation over the phrase's meaning.⁸⁴

Other statutes specifically target discrimination based on housing subsidy status.⁸⁵ Massachusetts provides the broadest protections for subsidized tenants, prohibiting discrimination based not only on status as a rental subsidy holder, but also on any requirements of the applicable

⁷⁹ See *Peyton v. Reynolds Assocs.*, 955 F.2d 247, 252 (4th Cir. 1992) (finding that landlord's objection to one-year lease requirement imposed by local PHA was reasonable and not a pretext for discriminating against Section 8 recipients).

⁸⁰ See *id.* at 253 (distinguishing *Glover v. Crestwood Lake Section 1 Holding Corps.*, 746 F. Supp. 301 (S.D.N.Y. 1990)). However, the court pointed out that the shorter lease term requested by the landlord was allowed under the Section 8 provision, so the landlord's refusal to rent to the tenant was not justified. *Id.* at 250-51.

⁸¹ See CONN. GEN. STAT. ANN. § 46a-64 (West Supp. 1995); D.C. CODE ANN. § 1-2515 (Supp. 1995); MINN. STAT. ANN. § 363.03, subd. 2(1) (West 1995); N.D. CENT. CODE § 14-02.4-12 (1991); UTAH CODE ANN. § 57-21-5 (Supp. 1993); VT. STAT. ANN. tit. 9, § 4503 (1993); WIS. STAT. ANN. § 101.22 (West Supp. 1994).

⁸² See CONN. GEN. STAT. ANN. § 46a-63(3) (West Supp. 1995); D.C. CODE ANN. § 1-2502 (Supp. 1981) (defining source of income as including any form of federal payment); MINN. STAT. ANN. § 363.01, subd. 42 (West 1991); N.D. CENT. CODE § 14-02.4-02 (1991).

⁸³ See UTAH CODE ANN. § 57-21-5 (Supp. 1993); VT. STAT. ANN. tit. 9, § 4503 (1993); WIS. STAT. ANN. § 101.22 (West Supp. 1994).

⁸⁴ See, e.g., *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272, 1282-83 (7th Cir. 1995) (finding that "lawful source of income" under the Wisconsin housing discrimination statute did not include housing subsidies because the subsidies have no monetary value independent of the voucher holder and the apartment sought).

⁸⁵ See ME. REV. STAT. ANN. tit. 5, § 4582 (West Supp. 1994) ("It is unlawful housing discrimination . . . [f]or any person furnishing rental premises . . . to refuse to rent . . . to any individual who is a recipient of federal, state or local public assistance, including . . . housing subsidies primarily because of the individual's status as recipient . . ."); MASS. GEN. L. ch. 151B, § 4(10) (1994) ("It shall be an unlawful practice . . . for any person furnishing . . . rental accommodations to discriminate against any individual . . . who is a tenant receiving federal, state, or local housing subsidies . . . because the individual is such a recipient . . ."); N.J. STAT. ANN. § 2A:42-100 (West 1987) ("No person . . . shall refuse to rent or lease any house or apartment to another person because of . . . the source of any lawful rent payment to be paid for the house or apartment.").

public assistance, rental assistance, or housing subsidy program.⁸⁶ California also provides extensive protections for subsidy holders through a very broad civil rights statute guaranteeing equal treatment for all people in almost all contexts.⁸⁷ Although the statute does not specifically mention source of income as a protected category, the California Attorney General has determined that the statute would prohibit a refusal to rent housing based solely on the tenant's receipt of public assistance.⁸⁸

Opponents of state antidiscrimination statutes argue that because the federal Section 8 program is voluntary, any state statute that prohibits discrimination against housing subsidy holders effectively mandates participation in the state subsidy program and is therefore preempted by the federal statute and is void under the Supremacy Clause of the United States Constitution.⁸⁹ Courts that have considered this issue have held unanimously that the state statutes are not preempted by the Section 8 program.⁹⁰ The federal scheme merely established the framework and funding for the Section 8 program; it did not preclude states from requiring participation.⁹¹

It remains to be seen how well these statutes work to protect housing subsidy holders and how they will be applied by state and federal courts. Only three reported cases consider any of the statutes: *Attorney General v. Brown* in Massachusetts,⁹² *M.T. v. Kentwood Construction Co.* in New Jersey,⁹³ and *Knapp v. Eagle Property Management Corp.* in Wisconsin.⁹⁴ In *Brown*, the Supreme Judicial Court of Massachusetts decided that the defendant landlord should have the chance to prove that his reasons for refusing to rent to section 8 recipients were legitimate business reasons and that he was not discriminating solely based on the applicant's status. In *M.T. v. Kentwood*, a landlord's refusal to rent to a Section 8 recipient was held to violate both the federal statute, section 1437f(t), and the New Jersey antidiscrimination statute. The court in *Knapp* declined to apply Wisconsin's protective statute to Section 8 recipients, despite the inclusion of "lawful source of income" as a protected category under the

⁸⁶ MASS. GEN. L. ch. 151B, § 4(10) (1994).

⁸⁷ CAL. CIV. CODE § 51 (West Supp. 1995).

⁸⁸ See 59 Op. Att'y Gen. 223 (1976).

⁸⁹ See *Cruz Management Co. v. Wideman*, 633 N.E.2d 384, 389 (Mass. 1994); *Attorney General v. Brown*, 511 N.E.2d 1103, 1105 (Mass. 1987).

⁹⁰ See, e.g., *Stevenson v. San Francisco Hous. Auth.*, 29 Cal. Rptr. 2d 398, 405 (Cal. Ct. App. 1994); *Cruz Management*, 633 N.E.2d at 389; *Brown*, 511 N.E.2d at 1106; *Soliman v. Cepeda*, 634 A.2d 1057, 1060 (N.J. Super. Ct. Law Div. 1993).

⁹¹ See *Brown*, 511 N.E.2d at 1106; *Soliman*, 634 A.2d at 1060.

⁹² 511 N.E.2d 1103 (Mass. 1987). *Brown* has lost some of its precedential value because it involved the interpretation of an earlier version of the current Massachusetts statute that required the landlord's refusal to rent to be based solely on the applicant's status as a recipient of a housing subsidy.

⁹³ 651 A.2d 101 (N.J. Super. Ct. App. Div. 1994).

⁹⁴ 54 F.3d 1272 (7th Cir. 1995).

statute. This handful of cases has produced widely disparate results, suggesting that state legislation may not be the most effective tool for remedying housing subsidy discrimination.

Another line of attack on discrimination against Section 8 recipients finds its source in the Fair Housing Act. Several groups of Section 8 recipients have brought suits alleging that, because a majority of subsidy holders are people of color, landlords' refusals to accept Section 8 subsidies have had a discriminatory effect on minorities. These claims have met with limited success. Nevertheless, at least one federal district court has found that a landlord's refusal to accept Section 8 tenants had a disproportionate adverse impact on African American and Hispanic applicants as compared to white applicants.⁹⁵ Relying on cases allowing recovery under a disparate impact theory and applying the burden-shifting paradigm of the Title VII employment discrimination line of cases, the court found that the plaintiffs made a prima facie showing of the discriminatory effect of the landlord's policy of rejecting Section 8 applicants.⁹⁶ The court further held that the defendant's objections to renting to Section 8 tenants failed to meet the burden of proof under a disparate impact analysis and did not constitute a legitimate business defense.⁹⁷

Yet, six years later, in *Knapp v. Eagle Property Management Corp.*,⁹⁸ the Seventh Circuit refused to apply disparate impact analysis to a claim against a landlord for discrimination based on housing subsidy status.⁹⁹ The plaintiff alleged that the Section 8 discrimination was a proxy for racial discrimination.¹⁰⁰ The court determined that because landlord participation in the Section 8 program is voluntary, nonparticipation itself is a legitimate reason for refusing to accept Section 8 tenants.¹⁰¹ Moreover, the court reasoned that holding only those landlords participating in the Section 8 program liable for discrimination, and not punishing those who refused to participate, would only discourage participation in the Section 8 program.¹⁰² The court held neither participating nor nonparticipating landlords liable for racial discrimination under a disparate impact theory.¹⁰³

⁹⁵ *Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148, 154-55 (S.D.N.Y. 1989).

⁹⁶ *Id.* at 153-55. The *Bronson* court relied on *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934 (2d Cir. 1988), and *United States v. Starrett City Assocs.*, 840 F.2d 1096, 1100 (2d Cir. 1988), to apply the employment discrimination paradigm developed in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-36 (1971) to housing cases.

⁹⁷ *Bronson*, 724 F. Supp. at 155-56.

⁹⁸ 54 F.3d 1272 (7th Cir. 1995).

⁹⁹ *Id.* at 1280-81.

¹⁰⁰ *Id.* at 1280.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272, 1280 (7th Cir. 1995).

As evidenced by these cases, a race-based disparate impact approach to Section 8 discrimination cases has fallen into disfavor with the courts. An amendment to the Fair Housing Act that included housing subsidy status as a protected category would eliminate the need to use a race or gender discrimination disparate impact analysis to remedy discrimination against housing subsidy holders.

III. Analysis of the Proposed Amendment

In the amendment to the FHA proposed by this Article, the phrase "status with regard to rental assistance" would be added in every instance where the categories protected by the FHA are enumerated.¹⁰⁴ Thus, the amended FHA would thus prohibit discrimination in housing based on "race, color, religion, sex, familial status, national origin, or status with regard to rental assistance." The new phrase would be defined as: "The condition of being a tenant receiving federal, state, or local rental subsidies."¹⁰⁵

A. Who Bears the Costs of Antidiscrimination?: Effects on Individuals in a Static System¹⁰⁶

As set forth in Part II of this Article, because of the extensive landlord protections provided by the Section 8 program, Section 8 tenants cost landlords no more money than unsubsidized tenants. Therefore, landlords have no rational economic reason for refusing to rent to subsidy holders.¹⁰⁷ If, however, it is assumed for the sake of argument that Section 8 recipients are higher-cost tenants—whether it be because of administrative fees, property damage, or elevated repair costs—then an antidiscrimination provision will shift the burden of who bears the costs of providing housing for subsidy recipients in the current private housing market. Specifically, rather than Section 8 subsidy holders bearing the entire burden of additional costs, any tangible expenses will be shared by both landlords and tenants. This section analyzes this cost-shifting through scenarios in which subsidy-based discrimination is permitted and those in which it is prohibited.

¹⁰⁴ The amended phrase would be added to 42 U.S.C. § 3604(a), (b), (c), (d), and (e).

¹⁰⁵ The definition would be added at 42 U.S.C. § 3602.

¹⁰⁶ The following analysis considers only the immediate financial costs and benefits of adopting a nondiscrimination provision. The added monetary and nonmonetary benefits that can be gained from residing in an economically and racially integrated community are not included in the analysis.

¹⁰⁷ See *supra* part I.B.

1. One-Neighborhood Model

Several initial assumptions must be made to construct a simple and stylized model that examines the impact of discrimination against Section 8 recipients. First, assume a single neighborhood with residents of two general income categories: middle-income and low-income. The two groups of residents are of about equal size. These residents are evenly distributed over a small geographic area, so that the decision to move between housing units is not affected by extraneous factors such as a change in commuting time or access to public education. A significant percentage of the low-income renters are recipients of Section 8 vouchers.¹⁰⁸ Next, assume certain characteristics of the housing market. There are two categories of rental units within this neighborhood: those with lower rents have a lower level of amenities ("Level 1") and those with higher rents have a commensurately higher level of amenities ("Level 2"). All units rent at or below the FMR and meet the HQS.¹⁰⁹ With the help of their Section 8 vouchers, subsidized low-income tenants can afford to pay approximately the same rent as middle-income tenants. Finally, it must be assumed that there is no "black market" in which costs are passed off to consumers by covert and often illegal methods such as charging fifty dollars a month for keys.

In a scenario where there is a barely sufficient supply or even a shortage of Level 2 apartments to accommodate the demand of middle-income tenants, if Section 8 tenants do not present any additional costs to landlords and discrimination against them is permitted, then landlords can avoid renting to lower-income tenants without penalty. Yet, from an economic standpoint, if discrimination truly has no cost and rents are inelastic, the landlord should be indifferent to whom she rents the apartment as long as the rent is received. Mainstream economic analysis of the situation does not discount for discrimination unless it can be quantified. If the rents are flexible, then, assuming that Level 2 rents are already at the FMR, the addition of Section 8 subsidy holders will cause the equilibrium price for an apartment to rise above the FMR. In this case the Section 8 tenants will have to pay more than thirty percent of their incomes to rent Level 2 units.

The scenario is slightly different but equally detrimental to Section 8 tenants when they are posited as imposing higher costs on landlords—either in real terms, such as administrative costs of the Section 8 program,

¹⁰⁸ For the purpose of this analysis, assume that the housing subsidies are in the form of vouchers, not certificates. If the present analysis would result in alternate outcomes for certificate holders, that difference will be noted in the footnotes.

¹⁰⁹ In this analysis, the HQS will be held constant. The effect of HQS and the implied warranty of habitability on the analysis will be discussed below. See *infra* part III.A.2.

or perceived terms, such as the stigma of poverty. Because of the posited higher cost of Section 8 tenancies and other landlord biases, landlords would prefer to rent to middle-income tenants rather than Section 8 tenants, given the same market rent. If discrimination against subsidy holders is permitted, most landlords will discriminate because renting to middle-income tenants creates a greater net benefit to landlords than renting to Section 8 tenants. Assuming that Section 8 tenants would prefer to rent the higher-amenity Level 2 apartments, in order to induce landlords to rent to them, they would have to pay more than the middle-income tenants in an amount greater than the cost differential between their tenancies and those of middle-income tenants. Unless Section 8 voucher holders are willing to pay more than thirty percent of their income for rent,¹¹⁰ landlords will fill their units with nonsubsidy holders.

If voucher holders choose not to pay more than thirty percent of their income for the Level 2 apartments, they must compete with unsubsidized low-income tenants for lower amenity Level 1 apartments.¹¹¹ Assuming that there are transaction costs attached to renting to Section 8 tenants and that the current low-income tenants are typically paying their rent in full each month, the Section 8 tenants will again have to outbid the unsubsidized tenants to compensate landlords for the higher costs of renting to them. As before, when there are higher costs associated with subsidy holders in an economic model where rents are inflexible, landlords will always prefer nonsubsidized tenants. If prices are flexible and the new demand raises the equilibrium rent, the Section 8 tenants will be able to outbid the unsubsidized residents because their housing subsidies give them greater disposable incomes. In a static or inelastic market, the increased rents will not support new Level 1 construction because, despite the higher equilibrium price, the rents will not provide landlords with a large enough profit margin.¹¹² Any increase in supply will be attributed to existing units that are currently empty and not on the market; the rise in equilibrium price will induce a small number of landlords to reintroduce units that were taken off the market in previous times because their marginal costs had exceeded the respective marginal benefits. However, the increased demand for Level 1 units will not be offset by an adequate increase in supply.

¹¹⁰ Certificate holders, because their amount of contribution is fixed at 30% of their income, do not have the option of paying more for rent. They will thus not be able to rent Level 2 apartments at all if the rents are pushed over the FMR.

¹¹¹ Subsidy recipients might decide not to pay more for the Level 2 apartments because the marginal utility of Level 2 amenities is less than the marginal utility of other personal expenditures.

¹¹² See CHARLES L. LEVEN ET AL., *NEIGHBORHOOD CHANGE: LESSONS IN THE DYNAMICS OF URBAN DECAY* 37-47 (1976), *excerpted in HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES* 192-200 (Roger Montgomery & Daniel R. Mandelker eds., 2d ed. 1979).

Discrimination against subsidized renters in Level 2 housing negatively impacts unsubsidized low-income tenants as well. Faced with inflated rents resulting from competition with Section 8 recipients, unsubsidized low-income tenants will either be forced to pay a higher percentage of their income for rent and forgo other necessities, double up with family and friends to reduce rent costs, or become homeless. Middle-income tenants will not be affected because most Section 8 tenants will choose not to compete with them for Level 2 units. Landlords who avoid the higher costs by patently refusing Section 8 recipients or who rent to Section 8 tenants who will pay the higher costs will be unaffected as well. The increase in equilibrium rent of Level 1 units will in fact be beneficial to those landlords who perceive and impute a higher cost to subsidy holders when no such cost exists or is overestimated.

On the other hand, if discrimination against Section 8 recipients is prohibited and no black market develops to charge subsidy holders for their additional associated costs, landlords will not automatically be able to fill their units with middle-income tenants. The general increase in the number of individuals seeking Level 2 housing will lead to a rise in the equilibrium rent of Level 2 units. However, landlords will not be able to charge Section 8 tenants higher rents than they charge middle-income tenants to cover the increased costs.¹¹³ Theoretically, there should be little difference between middle-income tenants and Section 8 tenants in terms of access to housing, since both groups will be able to pay similar amounts in rent. Most Section 8 recipients will choose to live in Level 2 apartments to gain the higher amenity level, especially if HUD adjusts the FMR to reflect the overall change in equilibrium rents. The pressure on unsubsidized, low-income tenants will also be relieved because there will be less increase in demand for Level 1 units and more parity in the disposable incomes of those remaining individuals seeking Level 1 apartments.

Since Section 8 tenants will not have to outbid middle-income tenants in order to live in Level 2 units, they will receive more marginal return for their money than under a discriminatory regime. Instead of bearing the entire burden of the additional costs associated with Section 8 tenants, either real or perceived, or being barred from the Level 2 market entirely, Section 8 tenants will share those costs with all tenants and all landlords. Landlords may raise rents to cover the costs only slightly if at all, for a significant increase to maintain a higher profit margin will cause tenants, Section 8 or otherwise, to seek Level 2 units in other neighborhoods with more elastic supplies. In a one-neighborhood scenario, introducing an

¹¹³ Besides prohibiting discrimination by landlords in tenant selection, the FHA also prevents landlords from discriminating against members of protected categories "in the terms, conditions, or privileges of sale or rental of a dwelling." 42 U.S.C. § 3604(b) (1995).

antidiscrimination provision will shift the higher cost of providing housing for Section 8 recipients from unsubsidized low-income tenants and Section 8 tenants to owners of Level 2 units and middle-income tenants.

2. Housing Quality Standards

Even assuming Section 8 tenants do not themselves impose higher costs on landlords, the requirement that the units they occupy comply with HUD's HQS¹¹⁴ may increase the real cost of their tenancies. In contrast to other costs which might not materialize at all or may be minimized by the tenants' actions, landlords whose units are not currently in compliance with the HQS will face tangible costs of upgrading those units. Although the HQS are less stringent than the sanitary codes in many localities,¹¹⁵ the Section 8 statute requires landlords to maintain the units under the threat of inspections and possible sanctions for violations. The administering PHA must inspect the unit to be leased before the Section 8 tenant can occupy the premises.¹¹⁶ Once a lease has been granted, the PHA must inspect the unit annually; if a violation is found, the unit will be evaluated as often as is necessary to ensure that the owner is complying with the HQS.¹¹⁷ The PHA cannot make any housing assistance payments for a unit that fails to meet the HQS unless the owner promptly makes the repairs and the PHA verifies the improvements.¹¹⁸ If the unit does not meet the HQS through repairs, the PHA may terminate the contract with the landlord or terminate the housing assistance payments to the landlord even if the tenant continues to occupy the unit, resulting in a loss of revenue for the landlord and imminent eviction for the tenant.¹¹⁹ Despite the potential for lax enforcement of the HQS,¹²⁰ violations are more likely to be discovered by the PHA through the Section 8 program than through state-level sanitary code inspections, which are primarily initiated by tenants.¹²¹

¹¹⁴ See 24 C.F.R. §§ 882.109, 887.251 (1995).

¹¹⁵ See Robin Powers Kinning, *Selective Housing Code Enforcement and Low-Income Housing Policy: Minneapolis Case Study*, 21 *FORDHAM URB. L.J.* 159, 195 (1993) (arguing that a local movement of code enforcement in these localities will necessarily increase the supply of apartments available for Section 8 tenants).

¹¹⁶ See 24 C.F.R. §§ 882.209(h)(1), 887.207(b)(2) (1995).

¹¹⁷ *Id.* at §§ 882.211(b), 887.257(a).

¹¹⁸ *Id.* at § 887.261(a).

¹¹⁹ *Id.* at §§ 882.209(h)(1), 882.211(c), 887.261(a). If the PHA terminates the housing assistance payments, in most circumstances it must issue a new Section 8 certificate or voucher to the tenant to use elsewhere. *Id.* at §§ 882.211(c), 887.261(b).

¹²⁰ See Schill, *supra* note 19, at 528.

¹²¹ An argument can be made that the HQS themselves are overly strict. HUD's Section 8 standards are "higher than any other developed by HUD, the Congressional Budget Office, or the Office of Management and Budget." Michael R. Tein, Comment,

Assume that the FMR for a given apartment does not provide a profit margin large enough to fund the repairs necessary to bring the unit into compliance with the HQS.¹²² It must also be assumed that the marginal cost of repairs will exceed any return for the higher quality apartment, eliminating any incentive for the landlord to voluntarily upgrade the unit. If landlords are permitted to discriminate against Section 8 recipients, only those whose apartments can be brought into compliance with minor repairs will rent to subsidy holders willingly. In a market with an excess supply of renters, landlords with units that need substantial repair to meet the HQS either will lease to tenants who can pay the rent necessary to cover the cost of the repairs or to unsubsidized low-income tenants who are unlikely to report housing code violations. In this discriminatory regime, Section 8 tenants will be turned away without sanction because the landlords will have no economic or statutory catalyst for bringing their units into compliance with the HQS. Section 8 tenants will find fewer apartments that can pass the HQS and thus will have a more difficult time using their rental subsidies.¹²³

For landlords who rent apartments at or below the FMR, the effect of an antidiscrimination provision is complex. Presumably, because they will not be able to reject arbitrarily subsidy holders or charge them additional rent to cover the repairs, the landlords will be required to bring every housing unit into compliance with the HQS. The fact that the unit does not currently meet the HQS will not exempt the landlord from complying.¹²⁴ The cost of the repairs will either be borne completely by landlords, if an increase of rent would cause enough tenants to leave, or be spread across all renters through pro-rata rent increases. In theory, resources will be redistributed to Section 8 tenants, who will then be able to find apartments in good repair.

In practice, however, it may take so long for a landlord to make the mandated repairs that the tenant loses her Section 8 subsidy because she can find no other place to live.¹²⁵ Furthermore, numerous commentators have argued that because low-income housing has a very narrow profit margin, any additional costs borne by the landlord through aggressive

The Devaluation of Nonwhite Community in Remedies for Subsidized Housing Discrimination, 140 U. PENN. L. REV. 1463, 1497 n.152 (1992) (citations omitted).

¹²²See Craig A. Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL'Y REV. 191, 196-97 (1990) (arguing that in the 1970s EHAP study, housing allowances did not prompt housing rehabilitation because the FMRs were not large enough to pay for the repairs required to meet the HQS). For a description and analysis of EHAP, see *supra* note 18.

¹²³Currently, many subsidy holders have difficulty finding apartments that meet the HQS and frequently lose their subsidies before they can use them. See Tein, *supra* note 121, at 1497 n.152.

¹²⁴See, e.g., Theresa Clark, 14 Mass. Discr. L. Rep. 1185, 1189 (1992).

¹²⁵See Mulroy, *supra* note 4, at 142-43.

code enforcement may drive many affordable units off the market, thereby reducing the total amount of housing stock available to low-income renters.¹²⁶ A competing school of thought asserts that consistent and vigorous code enforcement may in fact keep declining low-income housing viable longer than without the enforcement, thereby increasing the number of available rental units.¹²⁷ Unsubsidized renters will perhaps benefit indirectly from improved housing conditions as well. As in the first analysis, Section 8 tenants, with the protection of the antidiscrimination provision, will share the cost of improved housing with both the landlords and the other renters in the market.

B. Will Prohibiting Discrimination Really Increase the Housing Available to the Poor?: Effects on the Market After the Reinvention

The above analysis examined the effects of the proposed antidiscrimination provision in a single neighborhood in the current private housing market, with a separate public housing sector. The landscape will change significantly if HUD's *Reinvention Blueprint* is implemented because a significant number of public and assisted housing tenants will be shifted into the private market armed with certificates and vouchers. Rather than jumping to the immediate conclusion that permitting discrimination will leave former public housing residents homeless,¹²⁸ this Section explores the redistributive effects of the proposed antidiscrimination provision under the *Reinvention Blueprint* regime.¹²⁹

¹²⁶See, e.g., Neil K. Komesar, *Return to Slumville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 YALE L.J. 1175, 1175-91 (1973); Charles J. Meyers, *The Covenant of Habitability and the American Law Institute*, 27 STAN. L. REV. 879, 889-92 (1975). But see Bruce Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy*, 80 YALE L.J. 1093 (1971) (positing that under circumstances in which landlords are unable to pass on the costs of housing code maintenance to tenants through rent increases, income could be redistributed from landlords to tenants without jeopardizing the housing supply); Richard S. Markovitz, *The Distributive Impact, Allocative Efficiency, and Overall Desirability of Ideal Housing Codes: Some Theoretical Clarifications*, 89 HARV. L. REV. 1815, 1828-30 (1976) (asserting that the benefits of housing code enforcement to poor tenants outweigh harms to landlords, taxpayers, and the poorest tenants). See generally Kinning, *supra* note 115, at 160-70 (reviewing the academic literature on the long-standing code enforcement debate).

¹²⁷See, e.g., Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U. L. REV. 485 (1987).

¹²⁸This is the conclusion reached by at least one critic of HUD's *Reinvention Blueprint*. See National Hous. Law Project, *A Critique of HUD's Reinvention Blueprint*, 25 HOUSING L. BULL. 29, 33 (1995) (asserting that in several big cities, many former public housing residents will become homeless after their buildings are demolished).

¹²⁹This analysis assumes that the federal government is merely transferring existing public housing funds to the Section 8 program, not infusing additional money into the system.

Assume a three-neighborhood market marked by perfect class segregation. The quality and cost of rental units in these neighborhoods rise as the incomes of the neighborhood's residents increase. The residents of Neighborhood 1 (N_1) are low-income; the residents of Neighborhood 2 (N_2) are middle-income; and the residents of Neighborhood 3 (N_3) are upper-income. In this market, housing is provided through the classic filtering model: as upper-income residents build new luxury housing in N_3 , unit prices for the formerly upper-income housing in N_3 fall and thus become affordable to middle-income residents. Those residents move in, changing the physical boundaries of their neighborhood in the process.¹³⁰ In turn, the newly vacated middle-income housing filters down and becomes available at lower cost in N_2 , also changing the physical boundaries of this neighborhood. Despite the income differences of the neighborhoods, apartments renting for less than the FMR and meeting the HQS are available at least in N_1 and N_2 .¹³¹ Again, assume that with their subsidies Section 8 recipients can afford to pay about the same amount of rent as middle-income renters.

As in the first analysis, given the same market rent, landlords would prefer to rent to middle-income tenants rather than to Section 8 tenants because of the alleged higher costs associated with Section 8 recipients. The Section 8 tenants, all other things being equal, would prefer to rent in N_2 , which they can afford with their subsidies. If discrimination is permitted, pure economics dictates that most landlords will discriminate against subsidy holders if there is a scarcity of supply. Section 8 tenants will have to outbid the middle-class tenants for N_2 apartments to compensate the landlords for their higher costs if they want to live in that neighborhood. This competition will require the voucher holders to pay more than thirty percent of their income to rent those units.¹³²

Section 8 recipients probably will not be willing to pay the elevated rents required to live in N_2 and will instead choose to reside in the lower quality housing of N_1 . The quality of housing in N_1 will generally improve because Section 8 tenants will have more purchasing power than unsubsidized low-income tenants; landlords will be willing to upgrade the N_1 units in order to command a slightly higher profit. Section 8 recipients, however, are still not receiving the N_2 level amenity they would receive

¹³⁰ See Kennedy, *supra* note 127, at 486-88.

¹³¹ Because HUD determines FMRs based on local housing markets, the FMRs for N_2 could be higher than for N_1 , making it plausible that affordable apartments would be available in both neighborhoods. In the Chicago area, for example, the FMRs in the northern suburbs are higher than those in the southern and western suburbs. Clements, *supra* note 5.

¹³² Certificate holders, because their amount of contribution is fixed at 30% of their income, do not have the option of paying more for rent. They will not be able to rent N_2 apartments at all if the rents are pushed over the FMR.

for their money, absent discrimination. In addition, unsubsidized lower-income tenants are being priced out of the market. Residents of N_2 and N_3 , on the other hand, remain essentially unaffected by this bidding war.

Against this background, assume that the *Reinvention Blueprint* is instituted and a large number of new Section 8 recipients move into the housing market, significantly increasing demand. If landlords are allowed to discriminate, the new subsidy holders will be forced to seek housing in N_1 . As long as N_1 landlords do not perceive subsidy holders as creating additional costs, those landlords will willingly accept the new Section 8 recipients as tenants. The Section 8 tenants are in the same class as their usual tenants and bring with them a guaranteed income stream in the form of housing assistance payments. In fact, Section 8 tenants are preferable to many of these landlords' usual tenants, who often have difficulty paying their rents in full every month. This sudden and substantial increase in demand for housing in N_1 will drive up rents even further.¹³³ At the same time, there will be no increase in housing supply because market rents will still be too low to support new private sector construction of N_1 units,¹³⁴ and new public construction will have been eliminated by the *Reinvention*. Many of the unsubsidized low-income tenants will be outbid by Section 8 tenants who can afford to pay the higher rents. Consequently, at least some unsubsidized low-income tenants will be forced to double up with friends or relatives, move to other low-income neighborhoods, or become homeless. Section 8 tenants will find adequate housing, but they will pay more for less amenity than they would receive absent discrimination, and they will not be able to choose freely where they will live.

¹³³ A large number of Section 8 subsidies introduced into a housing market will cause rent inflation and, consequently, an increase in the FMR for that market. See Hartman, *supra* note 8, at 1568 n.31; Levit, *supra* note 20, at 91 n.174 ("When demand is stimulated, as it may be through the use of some type of market-oriented housing allowance, the nature of the housing market does not allow for quick supplier response. Therefore, a housing subsidy program that increased demand without effecting great increases in supply would merely lead to an increase in the cost of housing and, in reality, negate the effect of the housing allowance."). But see EXPERIMENTING WITH HOUSING ALLOWANCES, *supra* note 18, at 26, 179-85 (observing that housing subsidies did not inflate marketwide housing costs in Green Bay, Wisconsin, or South Bend, Indiana); Larry J. Ozanne & James P. Zais, *Communitywide Effects of Housing Allowances*, in HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL EXPERIMENT, *supra* note 18, at 207, 208-10 (finding that EHAP did not significantly increase housing demand, resulting in little, if any, rent inflation); Weicher, *supra* note 18, at 278 ("The findings are clear-cut. Existing housing subsidies have not resulted in rent inflation."). Weicher did concede, however, that markets with a great deal of poor quality housing may experience a small amount of inflation due to the increased demand for housing meeting the HQS. *Id.* at 279. He also acknowledged that on a short-term basis, before the government or the private market had a chance to respond to the increased demand by increasing supply, rents would be driven up or down by the presence of Section 8 subsidy holders in a housing market. *Id.* at 280. Ozanne and Zais agreed that if housing subsidies are infused into a market in sufficient amounts to increase demand, rents are likely to increase. See Ozanne & Zais, *supra*, at 213-20.

¹³⁴ See LEVEN ET AL., *supra* note 112, at 192-93.

Because N_2 and N_3 landlords will be allowed to discriminate against the new Section 8 recipients with impunity, N_1 will bear the entire burden of HUD's public housing dispersal, to the advantage of N_1 landlords who will capture the full value of the public subsidy.

If discrimination against Section 8 tenants is prohibited when the Reinvention takes effect, N_1 and N_2 will essentially become one neighborhood. Section 8 recipients and middle-income renters will have similar amounts of money to spend on housing. Since landlords will not be able to discriminate against Section 8 tenants through pricing or by refusing to rent to them, N_2 will become open to subsidized tenants. Their increased costs, real and perceived, will be spread across both neighborhoods. Most Section 8 recipients will try to move into N_2 because of its higher amenity level, but some will choose to remain in N_1 because they do not want to pay higher rent or are satisfied with their current amenity level. Landlords will experience an increase in costs, which they will either absorb or spread across their holdings through rent increases.

If the *Reinvention Blueprint* is instituted, landlords will again benefit from the increase in demand and subsequent increase in rents. Unlike under a discriminatory regime, however, this increase in demand will be spread over two neighborhoods instead of one, resulting in smaller rent increases for individual units in N_1 . Those subsidized tenants who decide to live in N_2 will also have to pay some rent increase, but not as much as they would have paid had they attempted to outbid middle-class renters to offset the costs of their tenancies in a discriminatory regime. Although unsubsidized lower-income tenants still face some risk of displacement because of rent increases, that risk is lower than if discrimination were allowed because the overall rent increases are less burdensome. Middle-income tenants, who were not affected when discrimination was allowed, now face rent increases as well because of additional demand for N_2 units.¹³⁵ Because prohibiting discrimination effectively eliminates the distinction between N_1 and N_2 , it will produce mobility and economic integration across those two neighborhoods, as the Section 8 program originally intended.

If the possibility of new construction is introduced, prohibiting discrimination benefits Section 8 recipients even more. In a market that allows discrimination, an increase in demand in N_1 alone will not affect new construction; the rents are not high enough to support private sector investment. When discrimination is prohibited, however, the increased

¹³⁵ N_2 landlords, now required to accept higher cost tenants, will either absorb their added costs in the form of foregone profits or spread those costs across all apartments. As a consequence, residents of N_2 may pay more for their apartments than if a bidding war had not occurred. However, this slight increase will probably not significantly alter unsubsidized N_2 residents' housing preferences.

return on renting for landlords produced by the influx of Section 8 tenants into the housing market will affect both Neighborhoods 1 and 2. The potential for profit may produce an economic incentive for new construction of private housing as well as the upgrading of current apartments. Some middle-income tenants will choose to move to new construction in N_3 to avoid the changing character of N_2 ; others will choose not to or will only be able to afford new construction in N_2 .¹³⁶ Even if some "white flight" occurs, the result of the new construction is an increase in supply that eases the scarcity of housing in the market after the infusion of new residents. The increased supply counteracts some of the rent increases, making antidiscrimination less economically burdensome for all involved.

Clearly, this model is both highly stylized and unrealistic. People in the real world do not behave with such absolute conformity, and neighborhoods do not exist in isolation. But the model serves to illustrate which segment of the population bears the burden of discrimination. If discrimination on the basis of Section 8 status is permitted in the face of the impending public housing dispersal, most former public housing residents will be concentrated in low-income neighborhoods, displacing many of the unsubsidized, low-income tenants already residing there. Section 8 tenants will be denied the freedom of choice in housing that the Reinvention was intended to secure. This Article's proposed antidiscrimination provision, by opening up middle-class neighborhoods, spreads the cost of housing the poor to those who can better afford it: middle-class renters and landlords.

C. Who Should Bear the Burden?

As the above analysis shows, on the assumption that Section 8 tenants are higher cost tenants, prohibiting discrimination against housing subsidy holders places a larger financial burden on landlords and wealthier renters than on the subsidy holders themselves. Even if it can be agreed that our society owes a duty of some kind to its poor, who should pay to fulfill that duty is and has always been hotly contested.

Some argue that forcing a redistribution of wealth from a small segment of the population, in this case landlords and middle-class tenants, is unfair because it requires these smaller groups to shoulder a burden

¹³⁶ This shift in the housing market in Neighborhood 2 is an example of the arbitrage process. See LEVEN ET AL., *supra* note 112, at 192. Arbitrage is a process by which housing supply in a given market shifts from one submarket to another. The shift occurs either by households moving from one neighborhood to another, as with the new Section 8 tenants, or by a change in a particular "housing bundle" so that the neighborhood serves a different group of tenants. See *id.* In the hypothetical, the character of the housing available to middle-income residents in N_2 changed, prompting them to support new construction.

that should be borne by all taxpayers through welfare payments and housing subsidies.¹³⁷ Arguing against a provision in a San Jose rent control ordinance that allowed hearing officers to consider the hardship of a tenant when evaluating rent increases, Justice Antonin Scalia explained that:

[t]he traditional manner in which American government has met the problem of those who cannot pay reasonable prices for privately sold necessities—a problem caused by the society at large—has been the distribution to such persons of funds raised from the public at large through taxes, either in cash (welfare payments) or in goods (public housing, publicly subsidized housing, and food stamps) . . . [This method of redistribution has been used because] “public burdens . . . should be borne by the public as a whole.”¹³⁸

Justice Scalia went on to assert that what is really a welfare transfer should not be treated like mere economic regulation because doing so disproportionately burdens certain groups instead of properly spreading the burden across society at large.¹³⁹

Redistribution of wealth financed by certain segments of society is, however, a common element of American public policy. Minimum wage laws and laws limiting the formation of monopolies are both mechanisms of redistribution that transfer wealth from one sector to another instead of spreading the burden of redistribution across all of society.¹⁴⁰ Similarly, laws requiring safe products and safe workplaces protect consumers and employees from harm at the expense of manufacturers and employers. Finally, rent control ordinances artificially limit the rents that landlords can charge low-income tenants.¹⁴¹

In recent years, many doctrines of American property law have increased the duties of land owners, resulting at least theoretically in a corresponding decrease in the rights more traditionally associated with property ownership.¹⁴² Doctrines governing property use increasingly re-

¹³⁷ See, e.g., *Pennell v. City of San Jose*, 485 U.S. 1, 19–23 (1988) (Scalia, J., concurring in part and dissenting in part).

¹³⁸ *Id.*

¹³⁹ *Id.* at 22.

¹⁴⁰ See Gia L. Cincone, Note, *Land Reform and Corporate Redistribution: The Republican Legacy*, 39 STAN. L. REV. 1229, 1229–30 (1987) (giving examples of redistribution and stating that despite this country's concern with the security of private property, “some degree of redistribution is . . . widely accepted as a necessary adjunct to our market-based economy”).

¹⁴¹ See, e.g., *Pennell*, 485 U.S. at 12–13.

¹⁴² See Joseph W. Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 659 (1988).

quire owners to consider the possible effects on others of certain uses of their property.¹⁴³ For example, the implied warranty of habitability creates a duty on the part of landlords to provide tenants with decent, sanitary living conditions and a corresponding right in tenants to such living conditions. The warranty requires landlords to expend their own resources to repair conditions that violate the local housing code, despite the fact that poor tenants cannot afford rent increases sufficient to pay for these repairs.¹⁴⁴ In this way, income is redistributed from landlords to poor tenants.¹⁴⁵ Relying on the special, on-going relationship between landlords and tenants, Professor Bruce Ackerman posits that slum landlords have a moral obligation to provide their tenants with decent housing, in spite of the fact that such a duty requires landlords to bear a heavier financial burden than the rest of society.¹⁴⁶ Even Justice Scalia, who was adamant that landlords not be required to shoulder a burden that should be carried by society at large, was willing to require landlords to remedy tenants' problems to the extent that they cause those problems.¹⁴⁷

D. Will the Statute Work in Practice?

This analysis has discussed the distributional consequences of a perfectly enforced antidiscrimination law. As experience with the FHA demonstrates, the reality of enforcement is often far from ideal. The source of the well-documented ineffectiveness of the FHA in alleviating housing discrimination lies in its enforcement provisions and the lack of vigilance with which those provisions have been employed, not in the classes it protects or the types of discrimination it prohibits.¹⁴⁸ Until it was amended in 1988, the FHA relied solely on individual complaints filed either in federal court or with the Secretary of HUD.¹⁴⁹ Very few of the complaints filed with the Secretary led to any sort of adjudication.¹⁵⁰ In those rare cases where claims were actually adjudicated, HUD has made little effort

¹⁴³ See *id.*

¹⁴⁴ See, e.g., Ackerman, *supra* note 126, at 1169–74.

¹⁴⁵ See Singer, *supra* note 142, at 681.

¹⁴⁶ See Ackerman, *supra* note 126, at 1170–72.

¹⁴⁷ *Pennell v. City of San Jose*, 485 U.S. 1, 22 (Scalia, J., concurring in part and dissenting in part) (arguing that landlords' responsibility for high rents may justify rent regulation).

¹⁴⁸ See MASSEY & DENTON, *supra* note 8, at 195–97; Richard H. Sander, Comment, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 NW. U. L. REV. 874, 903 (1988).

¹⁴⁹ MASSEY & DENTON, *supra* note 8, at 196, 198–99.

¹⁵⁰ See *id.* at 196–97 (stating that 1970s investigations found that “only 20% to 30% of complaints filed with the Secretary ever reached formal mediation, and nearly half of the complaints that did so remained in noncompliance . . . HUD made virtually no effort to follow up or monitor compliance in the conciliation agreements it reached”).

to monitor landlord compliance.¹⁵¹ As the risk of prosecution was low and the damages to be paid were small, the FHA had little deterrent effect.¹⁵²

In 1988, Congress amended the FHA to make it easier and more affordable for plaintiffs to bring cases. The amendments also increased the costs of discrimination, empowered HUD Secretaries to initiate investigations on their own and to file complaints with the Attorney General, required HUD to try cases before an administrative law judge if it found reasonable cause, and expanded the role of the Justice Department in enforcing the FHA's antidiscrimination provisions.¹⁵³ Despite these improvements, the prohibitively high costs of filing a private lawsuit still dissuades most victims of discrimination from pursuing their claims.¹⁵⁴ As a result, even though an estimated two million incidents of housing discrimination occur each year, only about 400 fair housing cases were decided between 1986 and 1993.¹⁵⁵ It is too soon to know if the 1988 amendments will have a significant effect on fair housing enforcement.¹⁵⁶

An amendment to the FHA that protects housing subsidy holders will undoubtedly encounter enforcement difficulties similar to those already experienced under the current FHA. To date, the "take one, take all" provision¹⁵⁷ in the Section 8 statute, which provides similar, though more limited protection, has had little impact.¹⁵⁸ As in the racial discrimination context, full enforcement of a strong statute cannot overcome deeply entrenched discriminatory tendencies because "[e]ach time that one discriminatory process has been suppressed . . . , a new mechanism has arisen to take its place."¹⁵⁹ Just as the FHA, even with the aid of stronger enforcement mechanisms, cannot prevent the racial hostility that perpetuates segregation,¹⁶⁰ the proposed FHA amendment cannot totally eliminate discrimination against recipients of government housing subsidies. A statute that affects only selected actors cannot accomplish the "shaping [of] collected behavior"¹⁶¹ essential to eliminating discrimination.

¹⁵¹ *Id.*

¹⁵² *Id.* at 199-200.

¹⁵³ Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988) (codified as amended at 28 U.S.C. §§ 2341-2342, 42 U.S.C. §§ 3601-3619, 3631); see also MASSEY & DENTON, *supra* note 8, at 210-11.

¹⁵⁴ See MASSEY & DENTON, *supra* note 8, at 200.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.* at 211.

¹⁵⁷ See 42 U.S.C. § 1437f(t) (1988 & Supp. V 1993) (prohibiting landlords who have accepted one Section 8 tenant from discriminating against subsequent tenants because of their status as rental subsidy holders).

¹⁵⁸ See *supra* notes 76-80 and accompanying text.

¹⁵⁹ MASSEY & DENTON, *supra* note 8, at 211.

¹⁶⁰ Cf. Sander, *supra* note 148, at 903 (stating that integration may actually increase racial hostility).

¹⁶¹ *Id.*

Problems of proof will also impede attempts to invoke the new law. Difficulties in proving Section 8 discrimination currently hinder legal services attorneys in Boston who are trying to use the Massachusetts provision.¹⁶² Landlords sometimes assert that they "don't take Section 8," but without such a straightforward indication, discriminatory intentions are difficult to detect. As with the FHA, if the proposed amendment passes, most discrimination will likely become much more subtle and difficult for their victims to pinpoint or even notice.¹⁶³

Without HUD oversight, a federal or state statute dictating landlord behavior cannot eliminate discrimination against Section 8 recipients. FMR levels must be reevaluated regularly by HUD to ensure that Section 8 recipients have realistic access to a broad range of neighborhoods.¹⁶⁴ To increase the supply of apartments that qualify for Section 8 tenancies, HUD should consider lowering its HQS to the level required by other HUD programs.¹⁶⁵ In addition, as Chicago's Gautreaux project has demonstrated, support services are crucial if Section 8 participants are to locate housing and cooperative landlords.¹⁶⁶ Finally, Congress and state legislatures must increase funding for the Section 8 program and the services that support it.

All of this is not to say that an FHA amendment will have no effect. As the economic analysis above has shown, the amendment has the potential to ease the housing burden placed on the poor, especially in light of HUD's *Reinvention Blueprint*. Advocates must realize, however, that neither this amendment, nor any other single measure is a panacea. A broad combination of laws, policies, beliefs, and behaviors must be marshaled to achieve the goal of ensuring that subsidized tenants have the freedom to choose where they will live.

¹⁶² Interview with Nadine Cohen, *supra* note 38.

¹⁶³ See MASSEY & DENTON, *supra* note 8, at 198.

¹⁶⁴ Insufficient FMRs have been cited as one reason that Section 8 recipients have difficulty using their subsidies. In a 1985 Boston study, 77% of Section 8 respondents experienced landlords who refused to rent to them because of the low FMR levels set by the administering PHA. See Mulroy, *supra* note 4, at 134.

¹⁶⁵ See Hartman, *supra* note 8, at 1565 (reporting that participation rates in EHAP soared when units rented to Section 8 tenants did not have to meet housing quality standards). This Article does not argue for elimination of the HQS but that HUD should explore the possibility of easing them somewhat.

¹⁶⁶ See Mulroy, *supra* note 4, at 143, 144, 156; Rosenbaum, *Kerner Commission*, *supra* note 20, at 1522; Clements, *supra* note 5 ("[B]y not counseling its family clients on housing opportunities in other [less segregated] parts of the county and by not helping them find landlords in those areas willing to take the [Section 8] families, [the administering PHA] is helping maintain a racially segregated, dual housing market.").

Conclusion

Urban life is increasingly characterized by competition among different racial and socioeconomic groups, for community definition and for scarce resources, power, and opportunities.¹⁶⁷ The allocation and provision of low-income housing is but one site of competition. Low-income tenants who are given rental subsidies to pay for housing should be able to use those subsidies in the neighborhoods of their choice; this was the goal of the Section 8 program's creators. Frequently, the interests of Section 8 recipients in finding housing conflict with private landlords' interests in freely choosing who will rent their property. In whose favor should the balance of rights tip? Who should bear the burden?

This Article has traced the economic effects of an amendment to the FHA that would prohibit discrimination against housing subsidy holders. When discrimination is permitted, Section 8 tenants bear the cost, usually in economic terms and always in a loss of choice in housing. When discrimination is prohibited, however, Section 8 tenants face lower rents and have more freedom of choice in where they live. The minimal costs of an antidiscrimination regime are borne primarily by landlords and middle-class renters. This type of redistribution may not be popular with politicians, but it does place the burden for meeting at least a portion of this country's housing needs and integrationist goals on the shoulders of those who can better afford it.

¹⁶⁷ See Calmore, *supra* note 8, at 1489.

LANDLORD WHO REFUSES TO RENT TO DISABLED SECTION 8 CERTIFICATE HOLDERS MAY NOT

Be Sued for Violating Federal Fair Housing Act, Second Circuit Rules

LONG ISLAND, N.Y., Feb. 11 /PRNewswire/ -- The owner and manager of an apartment complex did not violate the federal Fair Housing Act when they refused to rent apartments to disabled people eligible for low income housing assistance under the federal Section 8 housing program, the United States Court of Appeals for the Second Circuit has ruled.

Emphasizing the voluntary nature of a property owner's participation in the Section 8 program, the appellate court concluded that the claim that the landlord had violated the Fair Housing Act's "reasonable accommodations" provisions should be dismissed, finding that the complex was under no obligation to accept Section 8 payments. The court also stated that it was proper to dismiss the claim that the landlord's practice of denying apartments to Section 8 certificate holders had a discriminatory impact on disabled individuals.

According to Kenneth A. Novikoff, a partner at the Long Island-based law firm of Rivkin, Radler & Kremer and the attorney for the apartment complex, the decision is quite significant as a practical matter because "the Second Circuit has said, for the first time, that a property owner's decision to forgo participation in Section 8 is sufficient -- in and of itself -- to act as a defense to a discrimination suit under the Fair Housing Act."

Moreover, Novikoff emphasized, the Second Circuit rejected the plaintiffs' claims even though the landlord had accepted Section 8 subsidies on behalf of several tenants already residing at the complex, rather than evicting them. "This aspect of the decision was quite proper," according to Novikoff, because if the court had ruled otherwise, it "would have created a powerful incentive for landlords who have chosen not to participate in the Section 8 program to evict tenants who became indigent and eligible for the program during their tenancy."

Rivkin, Radler & Kremer is a national law firm that regularly represents property owners in a broad range of litigation matters, including claims of housing discrimination. The firm has offices on Long Island and in New York City; Newark, New Jersey; Chicago, Illinois; and Pasadena and Santa Rosa, California.

SOURCE Rivkin Radler & Kremer

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Alameda housing at issue

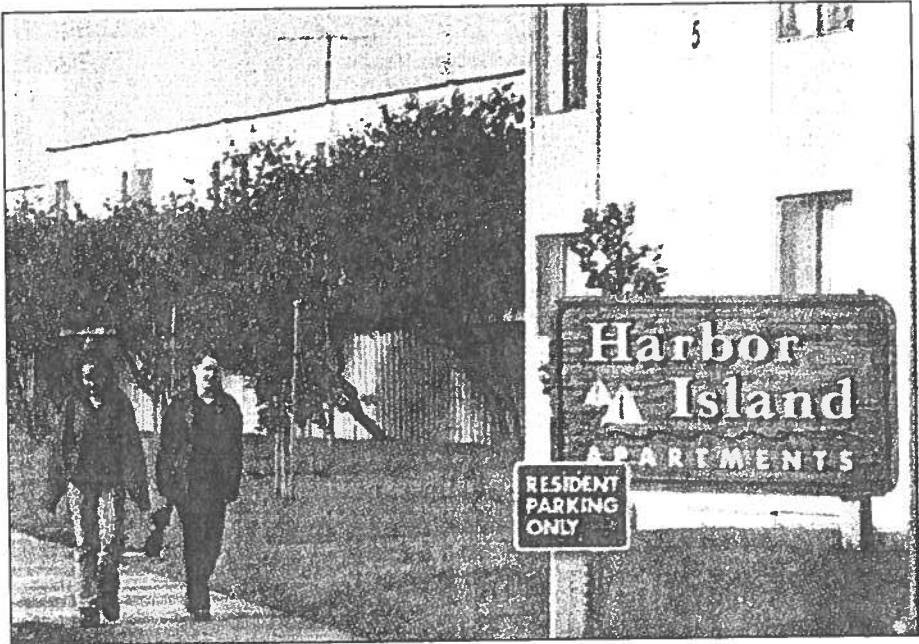
By Sarah Hughes
SPECIAL TO THE TRIBUNE

The City of Alameda has long been under fire for its alleged failure to provide affordable housing and for discriminating against its low-income, mostly black tenants.

The city was slapped with two housing discrimination lawsuits in the 1980s. In both cases, courts found the City Council, a former mayor and the Alameda Housing Authority had violated federal fair housing laws and contributed to a pattern of housing discrimination.

In 1980, the Legal Aid Society of Alameda County, representing three low-income residents, filed suit against Alameda, accusing the city of failing to provide affordable housing for poor people and thus perpetrating "the segregated non-black character of Alameda."

The court agreed that Alameda violated the law by failing to apply for some federal affordable housing development funds, passing a city ordinance prohibiting the construction of low-income multiresidence housing units and not developing a proposed low-income housing project. The court ordered the



Harbor Island Apartments in Alameda is the center of a federal rental dispute with former residents.

city to apply for HUD's affordable housing funds and to map out a plan for low-income housing.

Eight years later, the legal aid society, on behalf of two low-income tenants, again accused the city of failing to provide affordable housing.

Michael Rawson, the Oakland attorney who represented the tenants in the 1988 suit, blames Alameda for the plight of low-income families recently evicted from the Harbor Island Apartments.

"Those families couldn't find re-

placement affordable housing in Alameda because there is no affordable housing — the city refuses to build it," said Rawson. "Only when pressed with lawsuits has Alameda responded to this need."

In the 1988 suit Rawson cited a 1983 Housing Needs Study produced by the Association of Bay Area Governments that found Alameda needed to build 930 low-income units to provide its "fair share of the city's unmet

Please see **Alameda**, C-6



LAURA A. ODA — Staff

Crystal Moore is one of 16 tenants alleging their eviction.

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housing needs."

But from 1980 to 1987 the city had a net loss of 99 multiresidence low-income units, according to Alameda's Community Goals and Combined Land Use Plan.

A superior court judge ruled in favor of the low-income tenants, and Rawson negotiated a settlement with the city. Since then, Alameda has built 34 units of low-income housing.

"That's a sorry number considering it's been 10 years," said Rawson.

Alameda Community Development Director Dona Hoard defended the city's record.

Hoard said the city recently approved an assistance program for low-income people, in which the city provides 5 percent, or up to \$10,000, on down payments for low-income home buyers. The city also is working with local nonprofit groups on creative ways to spend the city's affordable housing development funds, she said.

Alameda Housing Manager Steve Belcher said the city presently has 1,900 subsidized rental units below market rate.

"We have more affordable housing than Livermore, Fremont, San Leandro and several other smaller cities," he said.

Tenants fight Harbor evictions

**'Slice of heaven'
now a living hell**

By Sarah Hughes
SPECIAL TO THE TRIBUNE

For Crystal Moore and her four children, the Harbor Island Apartments in Alameda were like "a little slice of heaven" for three years.

"I didn't have to worry about my kids being safe, everywhere I needed to go I could walk to, the kids were in good schools and had a lot of friends at Harbor, and our apartment had a balcony with a beautiful view of the trees," the 33-year-old working mother said.

But last April, Con-Am, the property management company hired by the site's new owners, told the Moore family they had 30 days to vacate the complex, which is being renovated.

Moore said management representatives told her she'd done nothing to provoke the action, they were just exercising their legal right to terminate her lease.

In all, 28 of the tenants at the complex on Buena Vista Avenue were asked to leave — 24 of them African-American, low-income, single mothers like Moore.

Complaints filed

Sixteen of the women are now fighting the evictions, and the federal government is investigating the women's allegations of civil rights and housing violations.

In September, the tenants filed complaints with the U.S. Department of Housing and Urban Development's regional office in San Francisco. They claim Con-Am and Thurston Bridgeport LLC, a Texas-based company that bought the 615-unit apartment complex in December 1996, implemented a discriminatory eviction policy in violation of federal fair housing laws.

Harbor Island is the largest apartment complex in Alameda and has traditionally housed many of the city's low-income residents.

Con-Am and Bridgeport deny the allegations.

Champagne Allison, a Con-Am administrator at Harbor, defended her firm's actions.

"We house many low-income black women so the evictions will affect many low-income black women," she said. "That's not discrimination. It's like picking oranges from an orange basket and being blamed for picking only oranges."

Other Bridgeport and Con-Am officials either declined to discuss details of the case or did not respond to requests for interviews.

Eviction freeze

The tenants' complaints triggered a 90-day freeze on all pending Harbor evictions. Five women who had not yet been evicted were allowed to stay after a settlement that HUD, Con-Am, and Bridgeport arranged in December.

But others had to find other places to live, including Moore, who moved her family into a cramped apartment in a high-crime neighborhood in West Oakland.

Those relocations prompted the Sentinel Fair Housing Agency in Oakland, an organization that mediates tenant-landlord disputes and first alerted HUD to the Harbor evictions, to file its own complaint with HUD against the Alameda Housing Authority.

Sentinel says the city's housing authority failed to help the evicted tenants find replacement housing in town, resulting in the move of half the evicted families outside of Alameda.

Alameda Housing Authority Executive Director Mike Pucci called Sentinel's charges "far-fetched" and said the AHA has done all it can to help low-income black tenants secure affordable housing in Alameda.

HUD has embarked on two separate but parallel reviews of the allegations. HUD spokesman Larry Bush said

HUD's findings won't be made public until the completion of the investigations, which are ongoing.

If HUD concludes that Harbor and the AHA violated the nation's fair housing laws, Sentinel and the tenants will have three choices: negotiate a settlement with Con-Am, Bridgeport and the AHA, take their complaint to a HUD administrative law judge, or file suit in U.S. district court.

The HUD investigations of Harbor and the AHA were launched in early October, just days after President Clinton and HUD Secretary Andrew Cuomo targeted housing discrimination as one of the nation's most pressing racial issues. In Clinton's first term, HUD reached out-of-court settlements on 6,517 housing discrimination cases.

Disparate effects

In the Harbor case, Sentinel Executive Director Mona Breed alleges that eviction statistics clearly show a disparate impact on low-income black tenants. According to Sentinel's case histories of Harbor tenants, six times as many low-income black tenants as low-income white tenants were asked to leave Harbor between February 1997 and August 1997.

Veronica Ware, one of the 16 mothers who filed the HUD complaint, called the evictions a three-strikes policy. "If you're single, poor and any color but white, you're out," she said.

Breed also claims Harbor's eviction policy specifically targets black tenants receiving assistance through the federal government's Section 8 certificate program, which helps pay the rent of low-income people. Sentinel documents show that 17 of the 28 tenants that were evicted or threatened with eviction have the federally subsidized certificate.

Sentinel also claims Harbor's recent rent hike disproportionately affects Section 8 tenants. The increase pushed two-bedroom apartments from \$675, the highest price a Section 8 tenant can afford with a certificate, to \$725.

Harbor on-site administrator Champagne Allison said the property owner and manager have worked hard in the past year to upgrade the site.

"Since we came aboard, we've really cleaned house," Allison said. "We've swept out the old and brought in the new."

She noted the new coat of glossy peach paint on the exterior of Harbor's six residential units, newly carpeted hallways in several buildings, a newly in-

stalled computer lab, night adult classes and an after-school study program for resident children.

"You can see by the services we provide that we are a family-oriented company," she said.

Allison added that Con-Am also is a business, not a social service agency.

"My heart goes out to the women (who) had to leave," she said. "But we have to make decisions based on business needs, not the welfare of those who can no longer afford to live here. And we have the right to do that."

No room

Many of the evicted Harbor tenants also allege the Alameda Housing Authority did little to help them find other homes in Alameda.

Moore said she called more than 15 Alameda landlords, several of whom were on an AHA list of people that accept Section 8 tenants, and was rejected by every one. Ultimately, Moore said, the AHA sent her to Sentinel.

Pucci said he referred tenants to Sentinel because the group has the resources and expertise to address housing discrimination issues.

"We are not a watchdog agency," said Pucci. "We refer tenants to housing opportunities, we don't create them. It has been difficult to make those referrals because, at present, few housing opportunities exist in Alameda. The city is seeing one of the tightest housing crunches in years. . . . We don't have the power to change that."

Sentinel says the AHA failed to do enough.

"They could have alerted the city to the crisis, tried to negotiate emergency housing for the Harbor families, or called a meeting with Alameda landlords and worked with them to discuss possible solutions," said Breed. "Instead, they sat back and passed the tenants on to us."

Housing market's low-income sector narrows

By Sarah Hughes
SPECIAL TO THE TRIBUNE

The displacement of tenants at Alameda's Harbor Island Apartments illustrates the increasing difficulty many low-income people have finding housing in the private market.

While the federal government has recently expanded the number of poor people enrolled in a special rent-subsidy certificate program to place them in private housing, it comes at a time when landlords are reluctant to accept such renters.

The problem has its roots in a 1960s federal program that gave landlords federal assistance on property mortgages in exchange for housing low-income tenants at a government-determined rental rate.

Now many of those landlords are

*The problem has its roots
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prepaying their mortgages and thus are free to raise rents, potentially driving out low-income residents.

In California, landlords owning more than 9,000 units have prepaid or are in

the process of prepaying their mortgages, according to a recent report by Art Agnos, the HUD secretary's representative in San Francisco. And approximately 15,000 additional units are eligible for conversion to market rate rents, according to the California Housing Partnership Corp.

HUD has responded by allocating "Section 8" rent-subsidy certificates to low-income tenants in these properties.

The certificates can be used if the owners agree to rent units at a government-determined cap. People pay 30 percent of their income towards the rent, and the Section 8 certificate covers the rest.

"The residents may stay in their current units if the owner agrees to partici

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pate in the Section 8 program, or they may use the Section 8 certificates to find a new unit," Agnos said in a statement announcing the expanded program.

But that doesn't deal with the reluctance of many landlords to accept Section 8 renters, said Seattle attorney David Zupolsky, who represented such a tenant in a recent housing discrimination lawsuit in the state of Washington.

"Both Harbor and our Washington case show that landlords don't want Section 8 tenants at their properties," said Zupolsky. "You can't just send thousands of poor tenants out into the market with certificates and expect the landlords to take them in on good faith. They won't. The market doesn't run on good faith. It runs on profit."

Zupolsky said the government needs to provide an incentive to landlords who agree to house Section 8 tenants.

Bill Moore, director of Berkeley's Landlord Services Inc., an eviction service for property owners, said most landlords are wary of housing Section 8 tenants because they usually contest evictions. Moore said 98 percent of the contested eviction cases BLS sees involve Section 8 recipients.

"When you deal with Section 8 tenants you're dealing with a class of people backed by the federal system. When they get evicted they run to legal aid or the nearest federal fair housing agency," said Moore.

National Housing Law Project attorney Jim Growe predicts more fair housing discrimination lawsuits by Section 8 tenants in the future.

"With an increase in Section 8 certificate holders you have greater competition in the market. And you have landlords who won't take them. Many of the tenants will turn to the Fair Housing Act as a means to open up the market where their certificate fails," said Growe.

NEGLECT & FRAUD

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FAULTY OVERSIGHT PROFITED OWNERS OF PUBLIC HOUSING

U.S. ADMITS TO NEGLECT

Clinton Administration Vows to Oust Landlords Who Let Their Properties Decay

By MICHAEL JANOFFSKY

NASHVILLE — James H. Johnson has lived in the same small apartment here at Edgehill Village for 19 years. The ceilings are cracked. Water from the leaky roof has warped the walls. Heaters barely function, and the unit has not been painted since he moved in.

"Stuff falls off into my food," Mr. Johnson said recently, pointing to peeling paint and wallboard in his kitchen. "I've complained, but I get no response."

Like millions of other low-income Americans, Mr. Johnson lives in a subsidized housing unit built nearly 30 years ago as part of an effort to solve one of the nation's most intractable problems: how to provide decent and secure housing for people who can least afford it.

But now Federal housing officials are making a remarkable admission: the landlords of some of these properties, including Edgehill Village, grew wealthy at the expense of the people they had promised to serve. The officials say the landlords collected subsidies and profited from the tax deductions by syndicating them but let the properties languish.

They also admit that, through mismanagement and neglect, the Government let the landlords get away with it.

The housing program is the outgrowth of a grand experiment by the Federal Government that started in the 1960's. Edgehill Village and hundreds of other properties sprang up under new Federal programs that offered low-interest mortgage rates and, later, tax deductions to spur private investment in dwellings for low-income residents. In some cases, the Government held or guaranteed mortgages through the Federal Housing Administration.

By 1972, many properties became part of a program known as project-based Section 8 housing, in which low-income residents pay a fraction of the fair-market rent, and the Government pays the rest.

Now, 25 years after the Section 8 program began, the Clinton Administration says it intends to reverse decades of lax oversight by driving out landlords of the troubled properties, a group that includes Allan S. Bird, the owner of Edgehill Village, who runs a \$500 million real estate company, the Real Property Services Corporation in Carlsbad, Calif.

Mr. Bird and other landlords say they are not to blame for the deterioration, and they dispute the extent of the problems. They say their properties have eroded because the Depart-

Continued From Page A1

ment of Housing and Urban Development has refused to approve periodic increases in the rent subsidies, increases they say would enable them to make the needed repairs. Some owners also complain that they have trouble finding contractors to repair their properties, which are often in high-crime areas.

No matter who is at fault, thousands of substandard housing units around the country have locked people like Mr. Johnson into an unrelenting cycle of hopelessness.

Nationwide, nearly one million people — almost half the number of residents in project-based Section 8 units — live in apartments like the ones here that have fallen into disrepair. For those people, peeling paint, broken windows, cracked walls and insect infestations are constant reminders that the program's stewards — HUD and the landlords — have not maintained "decent, safe and sanitary" conditions, as required by Government contracts.

Richard J. Wagner, litigation director for Brooklyn Legal Services in New York City, represents the Gates Avenue Housing Tenants' Association in the Bedford-Stuyvesant section of Brooklyn. Gates Avenue is another of Mr. Bird's properties, and the association is suing HUD and Mr. Bird over the same type of problems that Mr. Johnson faces in Nashville. The lawsuit, which is pending, says Mr. Bird and the department failed to maintain the apartments properly, which HUD and Mr. Bird strongly deny.

Mr. Wagner estimated that neglect and ineffective oversight of Section 8 had cost taxpayers as much as \$60 billion in 20 years.

Many housing experts say his esti-

mate is overstated. Nonetheless, a report for HUD last year by the accounting firm Ernst & Young found that the stock of 851,035 project-based Section 8 units needed almost \$4 billion in immediate repairs.

"That's not \$60 billion worth, but it's a huge taxpayer liability," said Helen Dunlap, president of the National Low-Income Housing Coalition, an advocacy group.

President Clinton's new Housing Secretary, Andrew M. Cuomo, apparently agrees that something needs to be done. Mr. Cuomo has made it a goal to weed out problem landlords, and so far this year, his department has begun proceedings against 38 landlords, including Mr. Bird, to remove them from the program. In all of last year, the department took the same action against 30.

Landlords have the right to appeal a disbarment to the agency and, later, to a Federal court. But if the department prevails, the landlord cannot hold any Government contracts for a specified period.

Mr. Bird, 61, said in an interview that he had been "dismayed, shocked and hurt" to receive the notification of HUD's disbarment proceeding against him. He has had more than 20 years of fruitful relations with the Government as a Section 8 housing owner, he said.

"We feel we have been responsible," Mr. Bird said, "and we are responsible. This is very alarming."

Asked why he thought Mr. Cuomo was taking aim at him, Mr. Bird said the Secretary was reacting to pressure generated by the suit in Brooklyn and wanted to fashion himself as a reformer in the eyes of Congress.

In addition to the disbarment actions, Mr. Cuomo said in an interview that he was also setting up an assessment and enforcement division to reverse years of lax management. The division will monitor all proper-

ties and their finances, making sure that landlords comply with their contracts, he said.

The division will also bring the oversight of all programs into one office; now, each program monitors itself. Officials say they will share information with the Internal Revenue Service as a way to track the financial status of all landlords.

"The way it works now is haphazard," said Gary Eisenman, a deputy counsel at HUD. "Problems could go on for years, and landlords would assure us they would take care of the problem. Then nothing would happen, and we wouldn't take any action."

A walking tour of Edgehill Village, a 290-unit project in the shadows of downtown Nashville, makes it clear that there are many problems. The apartments were built in the late 1960's, and Mr. Bird bought them in 1981 for \$1.9 million.

For more than 12 years, they passed Federal inspections, but by last September, the conditions had eroded so much that housing officials in Nashville recommended that the Government withhold the monthly \$85,000 Section 8 payments until repairs had been made.

Mr. Bird recently put \$1.5 million into an escrow account for renovations and agreed to a plan to have them completed by June 30. But residents have been caught in a vise of inactivity.

In the interview, Mr. Bird said it was the responsibility of the company that oversees the daily operation of the project, the Hardaway Management Company, which he does not own, to hire contractors for the work and supervise the repairs.

Mr. Bird employs a consultant to assist Hardaway in Nashville, Elizabeth Brewer Lay, who said efforts to repair the property had been ham-

Mr. Cuomo declined to criticize his predecessors, but he conceded that a succession of Presidential Administrations had found that for the Section 8 program, "the cheapest and easiest thing to do was nothing" because any Federal takeover would come at huge expense to taxpayers. The Government has to make the necessary repairs, take over mortgage payments or assume mort-

But senior housing officials said that had been more than enough to keep his properties in good condition. Department records indicate that 43 of Mr. Bird's low-income properties, more than 40 percent of his portfolio, have failed physical inspections or have not met Federal financial or

"I told the management what was going on," he said. "They said they would send someone down. But no one has ever come down here. No one."

HUD's Get Tough Initiative

Department of Housing and Urban Development

<http://www.hud.gov/gettough.html>

February 10, 1998

OVERVIEW

"For HUD to fulfill its mission, it must have credibility--with Congress, with local government, and with the customer. They must all believe that HUD has the competence and capacity to perform its functions. It's time HUD put its own house in order."--Secretary Andrew Cuomo, March 1997, announcing the Get Tough Initiative.

In January 1997, Secretary Cuomo took office with the understanding that while the mission of HUD was more vital than ever, the Department itself faced a competence gap that compromised its ability to fulfill its mission. Decades of neglect left HUD with the dubious distinction of being the only federal agency designated as "high risk" by the General Accounting Office.

First, and foremost, HUD had to regain the public's trust.

"We must remain committed to our worthwhile goals, but not to failed means. We must be willing to admit that some programs don't work. We must recognize the roles of government and the private sector and the partnerships that can be forged," Cuomo said at his confirmation hearing. He vowed that scarce Federal resources would no longer be wasted--that every dollar available for housing and economic development would be spent on the people it was meant to serve.

HUD employees have worked hard to fulfill this commitment and also to carry out President Clinton and Vice President Gore's "reinventing government" plan, designed to make federal agencies work smarter and be more accountable to our clients and the taxpayers.

During the first year of HUD's historic Management Reform effort, the Secretary has worked closely with the U.S. Department of Justice, the Federal Bureau of Investigation, and HUD's Office of Inspector General to improve accountability in HUD's housing programs. These efforts include new enforcement measures to prevent those who use HUD programs--as a property owner or a tenant, a contractor or a housing authority--from abusing the public trust or defrauding the government or the public. Secretary Cuomo worked particularly closely with Attorney General Janet Reno. Last March, HUD and DOJ launched a "Get Tough Initiative" to crack down on landlords who abuse federal housing programs.

•Debarments Up 307%

So far, the number of landlords debarred from doing new business with the federal government has quadrupled, from just 30 in 1996 to 122 in 1997. See Attachment I for list of 122 owners and operators of multi-family developments debarred by HUD between March and December 1997.

•Cases Up 92%

In cooperation with DOJ and OIG's Operation Safe Home program, HUD increased the number of civil cases and landlord settlements from 24 in 1996 to 46 in 1997.

•Recoveries Increase

As a result, about \$25 million have been recovered in 1997 alone--up from \$18 million the previous year.

•New Enforcement Center Headed by FBI

With the assistance of Attorney General Reno, HUD is establishing a new Enforcement Center that will take aggressive action against troubled housing and public housing portfolios that fail physical and

financial inspections, and carry out actions for FHEO and CPD grantees. FBI Special Agent Ed Kraus, on detail from the FBI, is heading up the Enforcement Center. Attorney General Reno also has detailed 4 Assistant U.S. Attorneys to work at the Enforcement Center with Kraus.

Approximately \$25.8 million will go to the Enforcement Center, including funding for almost 200 staff.

In just the first year, HUD's reform and enforcement measures are improving living conditions for thousands of families and individuals whose housing had deteriorating from years of neglect. Enhanced administration and programmatic changes are protecting the hard-earned wages of the working poor and the retirement income of the elderly.

At the same time, reforms in HUD's multifamily housing programs have averted a national housing crisis and preserved critical affordable housing resources, while HUD's vigilant enforcement of the Fair Housing Act assured that equal housing opportunities are the right of all Americans. Secretary Cuomo also took action to stop scams against the elderly in HUD's Reverse Mortgage Program and against homeowners in the Title 1 program.

Improving HUD's performance while eliminating waste, fraud, and abuse of federal tax dollars will enable us to focus on our mission of empowering people and communities.

Crackdown on Waste, Fraud, and Abuse

I. Cracking Down on Housing Rip-Offs

HUD's crackdown on landlords is one of the most dramatic enforcement measures now underway. It targets landlords who take advantage of tenants, and rip off taxpayers while hiding behind HUD's outdated financial systems, poor monitoring, and weak financial controls. The Get Tough initiative helps more poor people than any other single effort.

While the vast majority of the assisted housing stock is in good condition, too much of it is troubled. Approximately 15 percent of the total assisted stock is classified as "high risk" because of physical and/or financial problems.

The slow deterioration of this housing began in the 1980s, when the Department began to devote fewer and fewer resources to program monitoring. Physical inspections, which once were conducted annually, were postponed. Fewer staff were devoted to asset management activities, and those who remained had enormous caseloads.

Meanwhile, HUD's weak financial systems made the collection and review of information on the projects' financial status extremely difficult. Different financial systems contained key pieces of data--but the systems could not be linked.

Some owners and managers began to disinvest in the properties-- pocketing rents from the tenants instead of paying for the upkeep and rehabilitation for which they were obligated. And without annual physical inspections from HUD, such disinvestment went unnoticed.

Paying the Price: Tenants, Communities & Taxpayers

The Department's greatest motivation in strengthening enforcement efforts and cracking down on unscrupulous landlords is the well-being of tenants living in housing subsidized by HUD. Some of the most vulnerable members of society reside in assisted housing--families and individuals who must depend on government assistance to survive.

If families and individuals receive taxpayer-funded housing support, yet live in deteriorating buildings, with broken plumbing or heating systems, or properties with uncontrolled vermin, the owners and

managers who benefit from that housing assistance do a grave disservice to everyone--the tenants, the community, and the taxpayers.

Physically deteriorated housing destabilizes neighborhoods. It threatens the health and safety of community residents because it is a breeding ground for crime and drugs. It undermines the value of surrounding properties. And, it serves as a deterrent to social and economic investment.

Subsidies for poorly managed housing rips off the taxpayers, who are paying to help provide shelter for those in need. Owners and managers who divert federal assistance from their properties and into their own pockets are not only failing to meet their legal obligations, but also are stealing from the U.S. Treasury. All citizens bear the burden of this type of theft, and HUD has spent much of 1997 working to end this problem--for good.

Attacking the Problem

By the time HUD's leadership recognized the problem and began efforts to improve oversight of the properties, staff were trapped in a dual role of "facilitator" as well as "enforcer." On the one hand, HUD employees were responsible for encouraging housing developers and owners to participate in HUD's programs; on the other hand, they were responsible for enforcing and monitoring compliance with program regulations. These divergent responsibilities were often inconsistent and contradictory, and the agency failed to focus on them effectively. Instead, the 1980s became a time of making deals and the 1990s a time of cleaning up scandals.

To protect this important affordable housing resource, as well as the taxpayer's investment, the Secretary is separating monitoring and enforcement into two job categories. In the new HUD, each function will be carried out separately but simultaneously--by different individuals.

As part of his HUD 2020 reform efforts, Secretary Cuomo also is increasing the number of HUD employees working on troubled properties by moving them from program areas that are being downsized as a result of technology improvements. While HUD's failure in the past to oversee these properties permitted owners and managers to disinvest for years, the real responsibility for failing to maintain the properties in safe and decent condition lies squarely on the shoulders of those owners and managers. Their decision to disregard HUD's basic safety and health standards will not be tolerated, and HUD is cracking down on these landlords.

To attack the problems of waste, fraud and abuse in HUD-subsidized, privately-owned housing, HUD and the U.S. Department of Justice have formed a partnership to crack down on abuses by landlords with FHA-insured or Section 8-assisted properties. The two agencies have begun work in the 50 communities with the largest concentrations of HUD-assisted housing to identify illegal actions by landlords, undertake standard enforcement actions, and file civil and criminal charges where warranted.

About 1 million low- and moderate-income people--many of them elderly and disabled--live in about 446,000 HUD-assisted apartment units owned by private landlords in the 50 targeted cities. This figure is one-quarter of the national total; nationwide, about 4.3 million people live in about 2.5 million privately owned HUD-assisted apartment units. Over the past year, investigators across the country have intensified their efforts to pursue landlords who abuse the tenants or the public trust. U.S. attorneys have been accepting a greater number of referrals.

Once identified, landlords who abuse HUD's programs face enforcement actions from HUD and the Department of Justice, including prison sentences, civil fraud judgments, mortgage foreclosures, bans on doing business with the federal government, return of misused housing assistance funds to HUD, substantial fines, and loss of employment.

One of the most prevalent abuses is equity skimming-- pocketing money that should be used for mortgage payments and ongoing maintenance and upkeep of apartments. This disinvestment causes properties to deteriorate, and vacancies and crime to increase. It often leads landlords to default on their mortgages. Because many of the mortgages on HUD-assisted housing are insured by HUD, such defaults leave HUD

with the bill for the unpaid mortgages and for repairs. If no enforcement action is taken, these landlords can walk away with big profits, abandoning responsibility for the project.
Examples of How HUD Programs Are Abused

Allan Bird Properties

Allan Bird's expansive housing portfolio involves communities in more than 20 cities nationwide. While Bird collects nearly \$25 million in federal housing assistance each year for some 104 properties, 43 of those properties--41% --failed either physical or financial inspections. More than 11,000 people are living in Mr. Bird's troubled properties.

Mr. Bird bought most of his lower-income apartment buildings in the 1980s, when favorable tax laws provided deductions for people who invested in subsidized housing. Not long after his purchase, tenant complaints surged.

Lack of repairs and maintenance often left the residents without heat or running water. Mr. Bird's properties had been cited repeatedly for multiple safety violations, including unsafe elevators, defective smoke detectors, and locked fire doors. In 1989, two children in one of Bird's Boston properties were burned by a fire that started from a toaster oven their mother was using to heat her apartment.

James Johnson, a tenant in one of Mr. Bird's properties, has lived in the same small apartment for 19 years. His ceilings are cracked, water leaking from the roof has warped his walls, the heaters barely function, and the unit has not been painted since he moved in--peeling paint and pieces of wallboard fall into his food when he sits in his kitchen.

On April 24, 1997, Bird was suspended --and proposed for an indefinite debarment--from doing any new business with the Federal government.

Briarwood Hill Apartments, North Haven, CT

Briarwood Hill Apartments, North Haven, Connecticut, is a 176-unit multifamily rental housing development whose mortgage is insured by HUD. Project owner Jon Kerr and Briarwood Associates were investigated by OIG for equity skimming violations.

An onsite review confirmed equity skimming, including owner distributions while the project was in non-surplus cash position, and even an unauthorized mortgage on the property. Briarwood Associates, acting by and through Jon Kerr, disbursed \$255,519 to Kerr from project assets, and he made additional withdrawals, distributions, and expenditures of project funds totaling at least \$38,250. These distributions were not made from surplus cash and were made without the approval of HUD.

On many occasions, HUD advised Kerr and Briarwood Associates that all improperly used project funds must be returned to the project accounts. They refused and continued to make unauthorized withdrawals, distributions and expenditures of project assets. And, without consulting HUD, Kerr mortgaged the project as security for a personal debt of \$75,000; used \$6,500 in project funds to pay for legal and consultant fees; and \$16,135 for consultant services that were not reasonable operating expenses of the project. Other unauthorized expenditures include purchase of a personal car for Jon Kerr, donations to the North Haven Police, and personal airline tickets.

HUD's OIG referred the case to the US Attorney, District of Connecticut, who filed a civil complaint in U.S. District Court. Kerr, along with Briarwood and other parties, agreed to a judgment of \$400,000. In addition, Kerr and Briarwood Associates agreed to be debarred for 3 years to settle HUD allegations that the parties were involved in diversions of project funds.

Scotts Brooke Apartments, Durham, NC

Scott James Kovens was a corporate officer of Florida Ridge, Inc., a Florida corporation, and was the managing agent and representative of its owner, Florida Ridge, Ltd., a Florida Limited Partnership. Florida Ridge, Inc. was the owner and mortgagor of Scotts Brooke Apartments, a HUD-insured apartment complex in Durham, North Carolina. Kovens defaulted on his loan, and the note and mortgage were assigned to HUD.

Kovens was notified of the default; that the debt had been accelerated; and that the project was scheduled for foreclosure sale. But even with that knowledge, Kovens withdrew, authorized, or ratified the withdrawal of encumbered HUD project funds and paid its agent and law firm a retainer in the sum of \$100,000 for legal representation regarding the pending foreclosure and bankruptcy proceeding. Florida Ridge, Inc., did not seek the approval of the Greensboro HUD Office before disbursing HUD project funds that were under the control of the Greensboro HUD Office.

Three members of the Kovens family--Scott, Keith and Roz--accepted a voluntary exclusion for a five year period and, along with Florida Ridge, Ltd., agreed to pay \$100,882 in settlement of HUD's allegation of improper payments to the law firm using funds from two projects -- Scotts Brooke Apartments, in North Carolina and Horizons Apartments in Florida -- and unauthorized airfare expenditures. Neither of the expenditures could be considered "reasonable expenses necessary to the operation and maintenance of the property." Further, a project in default is in a non-surplus state, which means the owner cannot distribute project funds.

An audit of the Colonial Park Apartments in Park City, Illinois disclosed project funds were improperly used to make payments on loans from an identity-of-interest entity, a firm with the same owners or common owners; to make distributions to the owner; and other costs that were not necessary to the operation of the project. An agreement was reached with the owner, Colonial Park Association, LTD., which agreed to pay HUD \$159,717 to satisfy the equity skimming charges.

Dearborn Place Apartments, Chicago, IL

Dearborn Place Apartments is a 185-unit multifamily project in Chicago, Illinois. The project defaulted on its HUD-insured mortgage on July 1, 1990 and the mortgage was assigned to HUD on October 6, 1992. The project, owned by Dearborn Delaware Associates, an Illinois Limited Partnership, is managed by an identity-of-interest having the same or common owners management firm, Near North Properties, Inc. James R. Loewenberg is the President and 95 percent owner of Near North Properties Inc., and owns or controls approximately 30 percent of Dearborn Delaware Associates. The former management firm also shared an identity-of-interest with the owners.

Dearborn Delaware Associates and its management agents improperly used \$840,333 in project operating funds to make payments on bank loans. The payments were made while the project was in default--a non-surplus cash position. The loans were paid because the former identity-of-interest management agent believed these were eligible project expenses. As a result of rent concessions and write-offs of rent due, the former identity-of-interest management agent paid the project \$189,204 less than the market rate rent between November 1988 and December 1995.

In addition, \$220,000 relating to HUD's partial payment of claim were improperly used. Specifically, funds held in escrow for building improvements were used for legal expenses, architectural expenses, loan repayments, and other miscellaneous partnership expenses. The management agent claimed all of these expenses to be eligible project expenses.

Project operating funds of \$109,316 were also used to pay ineligible and unsupported expenditures. Specifically, \$66,685 was used to pay ineligible or unsupported legal fees; \$26,365 was used to pay for ineligible consulting; and \$16,266 was used to pay other miscellaneous ineligible expenditures. A total of \$27,230 was not remitted as required to make payment on its second mortgage.

The case was referred to the Assistant U.S. Attorney for the Northern District of Illinois for pursuit of civil action. After additional discussions, the project owner agreed to remit \$1,386,083 for the audit findings and

\$34,500 for the costs of the audit. On November 12, 1997, the owner gave HUD three cashiers checks totaling \$1,420,583, payment in full to HUD for the audit findings.

Highland Management, Southfield, MI

Highland Management operates 15 HUD-insured projects, and a review of the books and records by HUD's OIG of four of those projects in Southfield, Michigan, indicated the management agent may have paid unreasonable overhead costs to an identity-of-interest construction company (that is a company with the same or common owners as the management agent). The four projects were Garfield Court with 496 units, Pickwick Park with 500 units, Canton Commons with 452 units, and LeForge Villa with 161 units. In addition, three of the four projects were not in good physical condition. A HUD contractor inspected the projects' exteriors and estimated Canton Commons, LeForge Villa and Pickwick Park each needed over \$1 million in repairs.

All projects were owned by limited partnerships and managed by Highland Management Company. Jack Friedman is the general partner of the Partnerships and Highland Management Company.

The management agent did not correctly calculate the overhead rate paid to the construction company and did not maintain the buildings in acceptable condition. The [m]anagement agent's accountant calculated overhead rates, but had no documentation to support the calculations. The accountant included overhead costs for supervision and bookkeeping, vacation and holidays, and unreasonable vehicle usage. The overhead rate--108 percent--exceeded the standard industry rate of 30 percent. As a result, the management agent used \$163,327 in project funds to pay unsupported overhead costs.

HUD and the management agent entered into an agreement and the issues finally were resolved. The project owners paid off the HUD-insured mortgages on Garfield Court on January 23, 1997, and on Pickwick Park on September 5, 1997. Additionally, the Management Agent completed an escrow agreement for Canton Common and LeForge Villa where \$49,750 and \$35,223 respectively was put into an escrow account for project repairs. The escrow accounts contain restrictive provisions for disbursement that require HUD's written approval.

II. Protecting Tenants, Homeowners, and the Elderly

In addition to cracking down on abuse of rental housing programs, the Secretary has attacked the problem caused by poorly designed programs and implemented strong new policies in programs susceptible to waste, fraud, and abuse. Because HUD programs target the poor, the elderly and the most needy in the country, program abuse often hits hardest those who are least able to protect themselves. Ultimately, taxpayers pay the price for this type of program abuse as program funds are diverted away from those in need.

Ending "Out of Whack" Rents: Section 8 Rental Assistance Reform

When Secretary Cuomo assumed office, millions of Americans were at risk of losing their homes and apartments because government rental assistance contracts with private landlords--many of them signed 20 years earlier--were set to expire. Millions of poor and elderly Americans were at risk of losing their homes.

The Secretary made ending the Section 8 crisis his first priority, and worked with Congress to find the appropriations needed to renew all 1.8 million expiring contracts. Congress and HUD set up a system to stop paying excessive subsidies on properties where rents exceeded local market rents. Of the 1.8 million assisted housing units with contracts that expired within one year, 850,000 were in FHA-insured apartment buildings, and a majority of the units were subsidized by HUD at rent levels that far exceeded market rate rents.

HUD's goal in dealing with the Section 8 renewal crisis was to preserve this critical affordable housing resource while saving the government and taxpayers money. The agreement with Congress effectively put

an end to the Section 8 crisis by providing \$4.6 billion in new funds to allow HUD to renew all expiring Section 8 contracts.

This agreement also enabled HUD to meet a second important goal: reduce "out of whack" rents to private landlords under the project-based Section 8 program by reducing payments to the local market rates. Twenty years ago, high rental subsidies were established to encourage construction of affordable housing. But over two decades, the subsidies escalated with inflation, and in most communities far exceeded rents for comparable apartments on the private market.

By cutting subsidies to market rates, taxpayers will save \$562 million this year, about \$1.6 billion over five years, and billions of additional dollars in the years ahead. To offset the cuts in subsidies, landlords can refinance part of their mortgage balance at lower interest rates, with deferred payments. Participating landlords also agree to maintain their developments as affordable housing, preserving this important housing resource.

Protecting Senior Citizens from Reverse Mortgage Scams

HUD's Reverse Mortgage Program, the Home Equity Conversion Mortgage program (HECM), enables "cash-poor, but house-rich" seniors to tap the equity in their homes, making cash available for retirement, travel, or emergency expenses. Reverse mortgages allow homeowners 62 years and older to borrow thousands of dollars through private lenders against the value of their homes, with repayment guaranteed by HUD and delayed until the borrower dies or moves out of his or her home. To date, HUD has insured about 20,000 reverse mortgages, and expects to insure tens of thousands more as the population ages.

Last year, HUD learned that scam artists have been charging elderly homeowners large fees for the reverse mortgage services that HUD provides without charge. Under the guise of acting as brokers or financial consultants, unscrupulous people exploited senior citizens. Older homeowners were told they had to sign a contract--and pay exorbitant fees, up to 10 percent of the total amount borrowed--to receive a reverse mortgage.

Before HUD took action, the number of victimized seniors continued to grow. HUD received reports of seniors literally throwing away \$5,000 or \$10,000 to get a reverse mortgage. In March 1997, Secretary Cuomo alerted seniors that information on HUD's Reverse Mortgage Program was available for free from HUD, and he directed 8,000 FHA-approved lenders around the nation to stop doing business with companies that charge large fees for providing this free information.

In addition, HUD established a 1-800 hot-line number for reverse mortgage information and to report complaints about firms charging exorbitant reverse mortgage fees. HUD has received more than 8,000 calls on its toll-free line since the announcement and has referred 76 serious complaints for investigation. As a result of HUD's quick actions and the extensive news media coverage it produced, reverse mortgage lenders and the American people were alerted to this problem - and the rip-offs have been ended.

Protecting Homeowners from Title I Scams

HUD's Title I Home Improvement program is one of the nation's leading sources for home improvement loans. Loans obtained through an FHA-approved Title I lender, can range up to \$25,000 for a single family home, and more than half of the homeowners who use the program are low-income families. The program has insured almost 35 million home repair loans since it began in 1934: in 1995, almost 98,000 property improvement loans worth \$1.33 billion were originated --a 36 percent increase in loan volume over 1994. But HUD found that many of the people it was intended to serve were being defrauded, victimizing thousands of American families and costing taxpayers millions of dollars.

Unscrupulous contractors--who often solicited door to door or through deceptive advertising--performed shoddy work, falsified documents, and overcharged homeowners who needed HUD's Title I program to renovate and repair their homes. For some low-income homeowners, the fraud left the properties unlivable

and caused them to default on FHA-insured home improvement loans. Dissatisfied homeowners who paid too much for the shoddy home improvements received no assistance from the "contractor," and depleted

In May 1997, Secretary Cuomo announced a new homeowner protection initiative designed to end fraud and abuse in the Title I program. HUD moved to change the Title I Home Improvement Program to prevent the scam artists from preying on innocent homeowners. Under this proposal, contractors will no longer be permitted to handle loan arrangements and also perform repairs; instead, homeowners will work through certified lenders only. These lenders are responsible for reporting to HUD any improper contracting activities, including failure to comply with contractual obligations, false certification of completed improvements, and failure to permit on-site inspections.

HUD's initiative also cracks down on scam artists by forbidding a number of advertising practices, including: implying that a dealer or contractor is approved by FHA or HUD; stating that borrowers or properties are pre-approved; stating that home improvement funding is limited or available for a limited time; stating or implying that loan funds may be used for debt consolidation; or stating that poor credit or no credit is acceptable.

In addition, strict enforcement actions were taken against unscrupulous contractors for defrauding citizens and stealing from the government. Since HUD's crackdown began, 20 contractor companies have been sanctioned. HUD debarred 6 individuals from doing any further business with HUD, and the majority of the companies sanctioned were denied participation in the Title I program for a period of one to five years, based on the severity of their illicit activities. Three companies admitted their errors and agreed to pay for their mistakes, and were allowed to continue their Title I business.

In one case of Title I abuse, a California contractor published an ad in a local newspaper that implied that the Federal government was notifying the public of financial assistance available for home improvement. The ad was headlined, "WANTED: Important Notice to Homeowners" and listed the organization to contact as "FHI." Calls to the toll-free number were answered with voice-mail for the "Federal Home Improvement Office."

See Attachment II for a chart listing 20 contractors in 8 states who were banned from participating in HUD programs (debarred), or were suspended (limited denial of participation).

Protecting Borrowers--Honest Lending Contracts & FHA Refunds

Every family who buys a home is confronted with stacks of paperwork filled with important--but often unread--details. Some mortgage brokers take advantage of the "fine print" and the confusion by raising fees and interest rates at the last minute, costing homeowners thousands of dollars. Even slight changes in interest rates can have dramatic effects on the total mortgage amount: a one-half percent increase in the mortgage interest rate would add \$12,440 to a \$100,000 mortgage over the life of the loan.

Mortgage brokers, unlike direct lenders, are not obligated to represent the interests of the borrower or to disclose information regarding rates and terms of various loan products to the consumer. Their business accounts for approximately half of all mortgage transactions in the nation--about \$333 billion in transactions last year.

Secretary Cuomo has proposed an "Honest Lending Contract" to prevent uninformed borrowers from being exploited by mortgage brokers. The simple, one-page contract informs homebuyers upfront of the key details of the mortgage --interest rate, fees, and who the mortgage broker is representing. The upfront contract is a first for the \$720 billion industry and will protect 3 million homebuyers each year.

HUD also joined with two other federal agencies in November, 1997, both to identify families who were owed money by the Federal Housing Administration, and stop the scam artists who were ripping off homeowners. The refunds are usually due to homeowners who pay off their FHA-insured mortgage in fewer than seven years. The scam involves individuals and businesses, called tracers, who pose as government agents and charge fees of as much as 30 percent of the refund due to an FHA home seller.

HUD's joint action with the Federal Trade Commission (FTC) cracks down on the individuals and businesses who pose as federal representatives and charge hundreds of dollars in fees for a service HUD provides for free.

Working with the Internal Revenue Service, (IRS), Cuomo also took action to notify 100,000 homebuyers that they were owed some \$70 million. The IRS has mailed more than 100,000 letters notifying FHA home sellers that HUD owes them a refund. Also in conjunction with the Internal Revenue Service (IRS), HUD will search IRS lists of current taxpayer addresses to find more people who are owed HUD refunds.

While HUD finds and pays about 91 percent of all homebuyers who are owed refunds in any given year, this new outreach effort will find the remaining 9 percent of homeowners due a refund from the FHA.

III. Improving Enforcement of the Fair Housing Act to End Discrimination

Make 'Em Pay

Illegal housing discrimination continues to be a troubling problem in America today. Whether it is as flagrant as gun shots fired into the home of an African-American family new to the neighborhood or as subtle as steering minority homebuyers away from white neighborhoods, illegal housing discrimination is an ever-present problem. From 1993 to 1996, HUD received over 34,000 complaints of housing discrimination. HUD investigated over 16,000, with state and local agencies investigating the rest.

The Fair Housing Act prohibits housing discrimination on account of race, color, religion, sex, disability, family status, and national origin. The law covers the sale, rental, financing, and advertising of almost all housing in the nation-- public and private. This year HUD is celebrating the 30th anniversary of the Fair Housing Act, and HUD has beefed up its Fair Housing Enforcement, in support of the President's One America initiative. HUD's 1999 budget proposes an increase of 73 percent in its fair housing programs to enable us to more aggressively attack the problem.

While discrimination still exists, Secretary Cuomo has stated that discrimination will not be tolerated and has directed HUD to prosecute with a "Zero Tolerance Policy." Cuomo initiated a change in HUD regulations last year that makes each act of illegal discrimination count as a separate violation--creating the potential for higher civil penalties in cases of widespread housing discrimination.

The Secretary launched a "Make 'Em Pay" initiative that uses civil action and increased penalties against people who commit housing-related hate crimes. Make 'Em Pay also includes a closer partnership between HUD and DOJ, civil rights advocacy groups and fair housing organizations to identify and fight these crimes; better training for those fighting discrimination; and creative uses of interactive technologies to fight discrimination. A new HUD internal task force is monitoring progress of Make 'Em Pay outreach efforts, investigations, and resulting civil prosecutions.

HUD awarded \$11.5 million to state and local government agencies in 32 states last year as part of its continuing crackdown on housing discrimination. These local agencies work in partnership with HUD to investigate discrimination complaints. In addition, 67 private - non-profit groups have received \$15 million in grants to investigate allegations of housing discrimination, provide housing counseling, and work to promote fair housing. At the President's direction, HUD will use its increased vigilance to double the number of fair housing enforcement actions it takes during the President's second term.

Examples of HUD Enforcement of Federal Fair Housing Laws

In Belle, W.Va., William and Gloria Smith--an African American couple-- were harassed by members of the neighboring Hobbs family for more than a year after they moved into a nearby home. Members of the Hobbs family barricaded the path leading to the Smith's land, barraged them with racial epithets, threatened them with a knife and gun--even threatened to deposit poisonous snakes on the Smith's property to injure

their young children. Several times, they tried to run Mrs. Smith off the road while she was driving. A white cross was planted on the lawn with black toy ducks hanging from the crossbar. In March 1997, the Smiths filed a fair housing complaint with the West Virginia Human Rights Commission. HUD addressed the racial intimidation by investigating the case and filing civil charges on the Smith's behalf to recover damages and civil fines from the Hobbs family.

On November 25, 1997, HUD announced charges against the owners and managers of Wedgewood Village, an apartment complex in Richmond, VA, who refused to rent to African-Americans. A HUD investigation found several white tenants who said the on-site apartment manager, Rita Lewis, boasted to white tenants that she was "keeping the niggers out" of the apartment complex. One white tenant said Lewis ordered her son to stop bringing black friends to visit him at Wedgewood. Another white tenant who provided childcare in her apartment said Lewis told her to refuse to care for black children. HUD's investigation also uncovered black apartment-seekers who were provided false information to discourage them from applying to Wedgewood Village.

HUD filed charges against Lewis, the apartment manager, and the owners of the apartments, alleging violations of the Fair Housing Act for discriminating against prospective black tenants. In addition, HUD issued an order barring Lewis from employment by any company that receives HUD assistance for one year.

In January, 1998, Secretary Cuomo initiated an investigation into allegations of widespread housing discrimination in Orange County against owners of nine Orange County apartment complexes and a Southern California property management company. The case of "discrimination with a smile" alleges that rental agents told blacks, Hispanics and families with children politely--and falsely --that no apartments were available or none would be available for several weeks.

The investigation involves over 1,300 units in nine apartment complexes managed by Yoder Shrader Management Company of Orange County, and was sparked by complaints filed by a local fair housing group. In its complaint to HUD, the Fair Housing Council of Orange County said that it documented its charges of discrimination by conducting more than 20 tests at the apartment complexes using black, white and Hispanic testers posing as prospective tenants. The Council said white testers were shown the most apartments and were told about specific upcoming vacancies. Black and Hispanic testers were often shown fewer apartments, were not told about upcoming vacancies, or were sometimes told falsely that no apartments were available. Tests took place within minutes of each other, and testers said they had similar incomes and credit histories. Two former employees of Yoder Shrader said they witnessed their supervisors discriminating and are cooperating in the investigation. The former employees said they were told to discourage blacks, Hispanics, people from India and Middle Easterners as tenants.

A finding by an administrative law judge that the Fair Housing Act has been violated carries a top penalty of \$11,000 in civil penalties for the first offense and \$55,000 for later offenses; monetary compensation to victims for actual damages, humiliation, mental distress, and loss of their housing opportunities; and attorney fees and court costs. A finding by a federal court of a Fair Housing Act violation may include an assessment of punitive damages, as well as compensation for victims.

James Ziebold of Buffalo, NY pleaded guilty to misdemeanor criminal charges of making threatening phone calls. The civil charges, which parallel the criminal charges to which he pleaded guilty, accuse Ziebold of making two threatening phone calls in October 1995 to Antonina Ippolito of Buffalo, who owns 12 apartments. The calls were made after Ippolito showed an apartment she owns near Ziebold's home to a prospective black tenant. The calls, recorded on Ippolito's answering machine, contain obscenities and

racial slurs and threats to blow up the apartment and Ippolito's home if she rented to blacks or Puerto Ricans.

Ippolito said she was so frightened by the calls that she arranged for one of her adult children to stay with her while her husband was out. She said she couldn't sleep because she was afraid she would be "burned out" of her house. Zeibold was placed on two years probation and ordered to perform 100 hours of community service and receive mental health counseling.

Civil charges were filed against Karen Soucie and her Worcester, MA firm, Choice Property Consultants, Inc. After an investigation of this apartment referral service by the Housing Discrimination Project--a non-profit group funded by HUD--found that in 1995 and 1996, Soucie and her company engaged in discriminatory housing practices based on national origin and family status.

Some listings maintained by Choice had the name "Archie" written on them and circled--a code allegedly referring to Archie Bunker, a fabled television character known for his intolerance--to indicate a landlord would not rent to minorities. Other listings and vacancy reports demonstrated Soucie's willingness to discriminate on the basis of familial status. The listings had the comments "prefers no children," "married couples," "no more than 2," "wants older people," "no kids under 10," "single only," and "wants working single." An employee of Soucie who was outraged by the housing discrimination quit her job and came forward to reveal the practice and cooperate in the investigation.

Next Steps

HUD's actions throughout 1997 to crack down on waste, fraud and abuse and actively enforce the law are the first steps in restoring HUD's credibility and reestablishing its role in the creation of affordable housing and expanded community and economic development activities across the country. It is the right step so that the agency can once again work to provide all Americans with "a decent home and suitable living environment."

Each crackdown on program abuse helps bring the agency closer to its goal of serving the most vulnerable members of our society--families with children, the working poor, the elderly, and persons with disabilities. Each fraud uncovered is another step toward maximizing the use of taxpayers' money. And, each wasteful activity eliminated means that more families and individuals can be helped by HUD.

All of the Secretary's enforcement measures in 1997 are getting the Department back on track and returning the agency to its real mission of empowering people and communities.

HUD AND JUSTICE DEPARTMENT LAUNCH "GET TOUGH" PARTNERSHIP AGAINST BAD LANDLORDS WHO ABUSE FEDERAL HOUSING ASSISTANCE IN 50 CITIES

Department of Housing and Urban Development
<http://www.hud.gov/pressrel/pr97-36.html>

HUD No. 97-36
HUD: David Egner (202) 708-0685
JUSTICE: Myron Marlin (202) 616-2777

FOR RELEASE:
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WASHINGTON -- Housing Secretary Andrew Cuomo and Attorney General Janet Reno today launched "Get Tough," a partnership to crack down on landlords in 50 cities who abuse federal housing programs to enrich themselves while failing to provide safe and decent housing for the poor.

Cuomo and Reno said the Department of Housing and Urban Development and the Department of Justice will focus their joint efforts to file civil and criminal charges where warranted against bad landlords in the 50 communities with the largest concentrations of HUD-assisted housing.

"HUD is not in the businesses of subsidizing rich landlords so they can live in luxury while they let their tenants live in slums," Cuomo said. "Landlords who get assistance from HUD have a legal obligation to provide safe, decent and affordable housing to some of the poorest and most vulnerable Americans. If they refuse, we will take severe action against them."

Reno said that U.S. Attorneys across the country are ready to pursue cases against bad landlords that HUD refers for possible prosecution.

"Landlords who receive federal funds must realize that if they don't play by the rules they will lose out in the end," Reno said. "We have successfully pursued unscrupulous landlords in the past and will work closely with HUD to continue our pursuit."

Reno said the "Get Tough" initiative will allow HUD and the Department of Justice to build on the success they have achieved by working together to settle 58 cases resulting in more than \$33.5 million in settlements against bad landlords since 1994.

The HUD-Justice Department crackdown on bad landlords was endorsed today by the National Alliance of HUD Tenants and the National Affordable Housing Management Association.

"We support the efforts of the Clinton Administration to have stricter enforcement," said John Bohm, Executive Director of the National Affordable Housing Management Association. "We have been in the forefront calling for tough enforcement policies."

About 1 million low- and moderate-income people -- many of them elderly and disabled -- live in about 446,000 HUD-assisted apartment units owned by private landlords in the 50 targeted cities. Nationwide, about 3.2 million people live in about 1.4 million privately owned HUD-assisted apartment units.

"We know that most landlords of HUD-assisted housing are responsible and provide affordable housing as required under law," Cuomo said. "Our job is to identify and stop the minority who are abusing the program."

Cuomo highlighted enforcement actions against abusive landlords in: Kansas City, MO (Valley View, Hillcrest Manor and Good Shepherd Manor apartments); Chicago (Ellis Lakeview and Stone Terrace apartments); the New Orleans area (Hillcrest Homes in LaFource Parish); Dallas (Crest A, Coston Arms and Prince Hall apartments); New York City (Mott Haven VI apartments in the Bronx) and Indianapolis (Blacherne, Savoy and Hoosier apartments).

Bad landlords often pocket money that should be used for their mortgage payments and to keep their apartments properly maintained. This practice -- called equity skimming -- causes properties to deteriorate, and vacancies and crime to increase. It often leads landlords to default on their mortgages.

Since the mortgages of the HUD-assisted housing are insured by HUD, the Department gets stuck with the bill for the unpaid mortgages and for building repairs when the landlord defaults. If no enforcement action is taken, the bad landlord can walk away with big profits, abandoning responsibility for the project.

Enforcement actions that HUD and the Department of Justice will pursue against bad landlords include: prison sentences, civil fraud judgments, mortgage foreclosures, bans on doing business with the federal government, return of misused housing assistance funds to HUD, substantial fines, and appointment of new apartment managers.

Cuomo also announced that HUD will propose legislation to strengthen the Department's enforcement authority against bad landlords.

The proposed legislation would: prevent landlords from using bankruptcy laws to delay or avoid foreclosure and other enforcement actions; make people convicted of equity skimming liable for all losses suffered by HUD as a result of the crime; make criminal equity skimming a money laundering offense; and impose criminal penalties on anyone who obstructs a Federal audit dealing with HUD funding.

The HUD-assisted units are subsidized as part of the project-based Section 8 program, which was created 23 years ago to increase the supply of safe and well-maintained apartments for people who can't afford to rent apartments at market rates.

HUD will inspect all project-based Section 8 developments over the next 12 months to determine whether enforcement action should be considered, focusing most heavily on the 50 cities, Cuomo said.

The 50 communities targeted for an intensified crackdown against bad landlords under the "Get Tough" campaign, in alphabetical order by state, are: AL - Birmingham, Mobile. AZ - Phoenix, Tucson. CA - Los Angeles, Sacramento, San Francisco, San Jose. FL - Jacksonville, Miami, Tampa. IL - Chicago. CO - Denver. DC - Washington. GA - Atlanta. IN - Indianapolis. KY - Lexington, Louisville. LA - New Orleans. MA - Boston. MD - Baltimore. MS - Jackson. MI - Detroit. MO - Kansas City, City of St. Louis, St. Louis County. NC - Charlotte. NE - Omaha. NJ - Newark. NV - Las Vegas. NY - New York City. OH - Cincinnati, Cleveland, Columbus, Dayton, Toledo. OR - Portland. PA - Philadelphia, Pittsburgh. PR - San Juan. RI - Providence. TN - Knoxville, Memphis, Nashville. TX - Dallas, Houston, San Antonio. WA - Seattle, Spokane. WI - Milwaukee.

Last revised: January 28, 1998

CRITIQUES OF HUD POLICIES AND PROGRAMS

Slamming the Door

The low-wage jobs of the new economy cannot pay the rent.
If stable housing keeps families together and productive, why has Washington let the number of new subsidized housing units drop — to zero?

By Jason DeParle

Photographs by Andrea Modica

THERE PROBABLY AREN'T MORE THAN A DOZEN people who have read this year's housing appropriations bill, but its eye-straining type breaks new ground in the revision of the social contract. With one obscure sentence, the Federal Government has essentially conceded defeat in its decades-long drive to make housing affordable to low-income Americans. Even in an era of Government retreats this one stands out, both for its importance and its odd election-year invisibility. No one seems to have noticed, least of all the candidates. But two decades of rising rents and falling wages have created record numbers of people, *including working people*, who can't afford to pay the rent.

The Government's response is noted on page 29 of the housing bill's accompanying report. There, Congress specifies the number of "incremental certificates and vouchers" — in English, the number of additional families that can expect rent subsidies from the Government this year. Housing analysts monitor this number the way pitchers study batting averages; it is the best single summary of what they need to know. Protesters hit the streets during the early years of Ronald Reagan's Presidency when the Government "slashed" the number of new families getting help to 40,000 a year, from previous highs of about 400,000. Oh, for the good old Reagan days: the bill that President Clinton signed last month drops the number to zero. And there is no reason to hope that it will rise again.

Stable, affordable housing keeps kids in school and adults on the job. It helps the upwardly mobile save to buy homes, and it keeps the downwardly mobile out of foster care and shelters. While the housing cuts are alarming for any number of immediate concrete reasons, they also present a troubling symbolism. The zero marks the demise not just of a budgetary line but also of a hope that has transfixed reformers for a century: that all Americans can find safe, decent and affordable housing.

These days that hope sounds quaint at best, if not impossibly naïve.

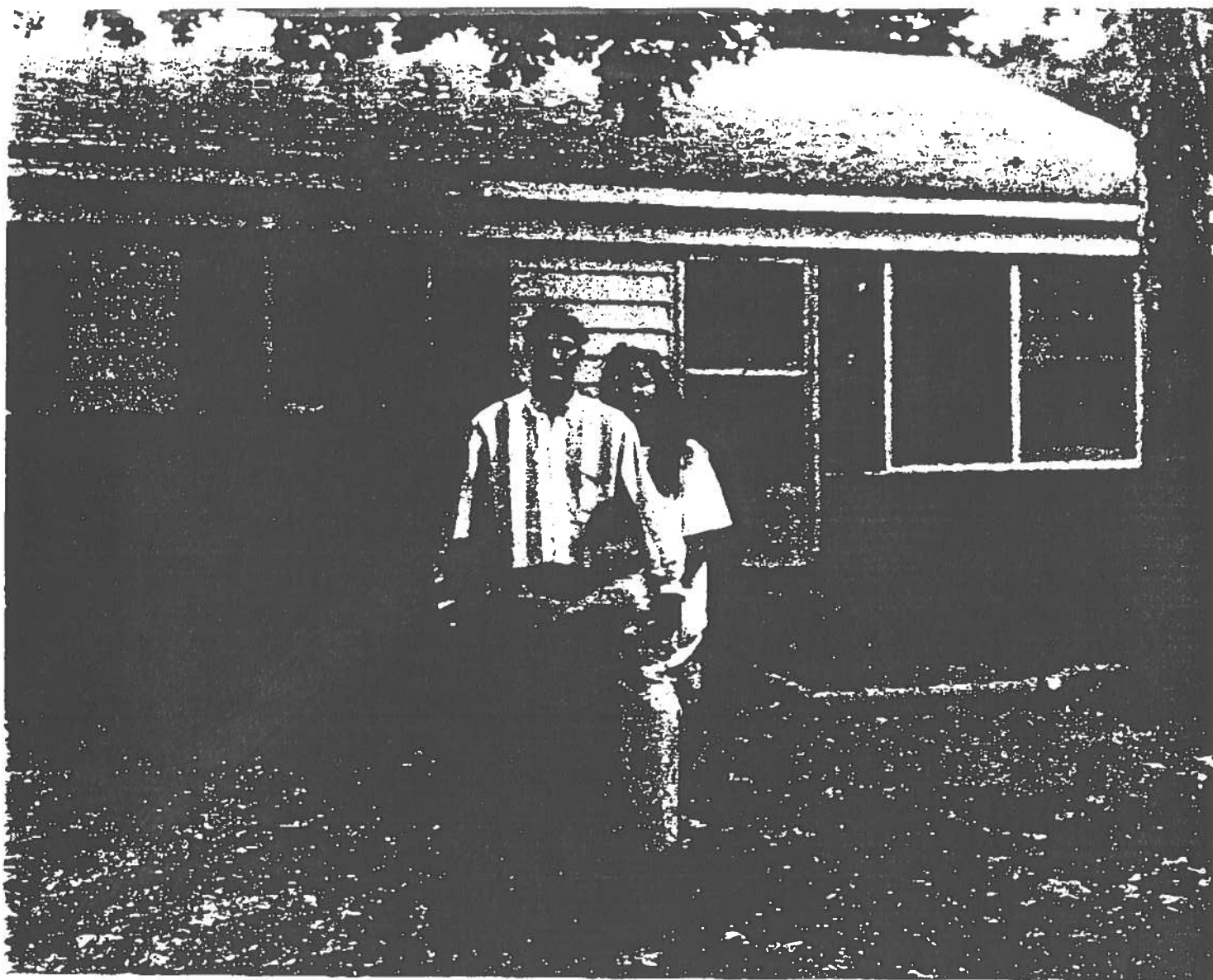
Jason DeParle is a staff writer for the Magazine based in Washington.

Housing has simply evaporated as a political issue. But housing problems are far more central to the lives of the poor than a number of the issues — immunizations, school lunches — that have made recent headlines. The cost of shelter breaks the budgets of low-income Americans or crowds them into violent ghettos, far from good jobs and schools — or both. Indeed, it's hard to imagine a poverty solution that doesn't take account of the relentless struggles most poor people face just finding a place to live.

About the time that Congress was eradicating the signature line of housing policy, another report was rolling off the Government printing presses, again in utter obscurity. It notes that five million needy households now pay more than half their pretax income for shelter, a punishing percentage that can crowd out other purchases, like food. (The Government says shelter is "affordable" if rent and utilities consume no more than 30 percent of a household's income.) These five million households constitute a record number and one that is growing at a near-record rate, through recessions and recoveries alike.

Their circumstance is not, as it might seem, the perennial condition for low-income Americans. It is something ominous and new. A generation ago, there were more cheap apartments than poor families. But demolition and gentrification have reduced the supply at a time when stagnating incomes virtually doubled the demand. As a result, there is a housing shortage that has altered the way low-income Americans live. Throughout the provinces of the new low-wage economy, people are making beds and guarding buildings, vacuuming offices and washing dishes, and they can't afford the rent.

To put things in perspective, consider that 15 million households qualify for Federal housing assistance, but only 4.5 million actually get it. (Out of these, about a third live in Government-run projects, and two-thirds rent from private landlords with Government help.) Of the 10.5 million that don't get help, the 5 million that spend at least half their income on shelter are simply the most desperate. Indeed, the scarcity of housing assistance offers a preview of how



Market forces keep people like Harold Coleman in a state of permanent crisis. Nearly half of his \$7-an-hour wage goes toward shelter.

other programs may fare in a post-entitlement, balanced-budget world. Only one eligible family in three receives aid, and the demand is so great in many cities that even the waiting lists are closed.

While those paying 50, 60 or even 70 percent of their income for shelter include the disabled, the elderly and welfare recipients, there are also surprising numbers of working families in the same fix. Two million of the five million household heads with severe rent burdens are employed, and 1.2 million are working full time. Among other things, their situation offers a dark commentary on the stringent new welfare bill. Say it proves its doubters wrong, and those pushed from the rolls find jobs. Where are they supposed to live?

THE DEATH OF AFFORDABLE HOUSING — WHAT A STRANGE notion in a nation as spectacularly housed as this one. Overall, the United States shelters more people in better-quality homes than any country in the world. (Ask the Japanese.) And it does so by offering the middle and upper classes exactly what it tells the poor it can no longer afford: generous Government subsidies. The \$66 billion a year the Federal Government now spends on mortgage-interest and property tax deductions is about

four times as much as it spends on low-income housing. More than two-thirds of it goes to families with incomes above \$75,000.

If the candidates detect any inquiry in this arrangement, they haven't yet said so. For most of the campaign, they simply ignored the subject of housing costs. Then after months of silence, Bob Dole and Bill Clinton faced off this summer in a sudden competition to give prosperous homeowners even bigger breaks, by all but eliminating capital gains taxes on the sale of expensive homes. On a practical level, their proposals scarcely matter. Most homeowners already qualify for the exemptions (at a cost to the Government of another \$20 billion a year). But as a matter of symbolism, the further courtship of the lavishly housed captures all too well Washington's reverse Robin Hood ways.

Perhaps it seems there is no other choice: the very words "subsidized housing" conjure a landscape of failure and waste. But the Government is curtailing its efforts just as the low-income-housing world has produced a variety of success stories the nation could build on, if not to serve the most desperately poor then at least for those a step or two above. As counterintuitive as it seems, the past two decades have arguably produced more successes in low-income

The very words 'subsidized housing' conjure a landscape of failure and waste. But as counterintuitive as it seems, it's possible to argue that the past two decades have produced more successes in low-income housing than in any other anti-poverty field.

housing than in any other realm of anti-poverty policy. The quiet resuscitation of parts of the South Bronx is just one example.

Most of the progress has been led by nonprofit groups that, with Government and foundation support, have grown into adept landlords and developers. They screen tenants and keep projects small; they monitor maintenance and strive, when possible, to mix the poor with the working class. Henry G. Cisneros, the Secretary of Housing and Urban Development, is now trying to apply some of those lessons to an ambitious redesign of the worst public housing. So far he has presided over the destruction of 22,000 scarcely inhabitable apartments and is replacing them with smaller, mixed-income developments. But the effort comes with a cost. Since the new complexes will also be smaller, the overall housing shortage may grow.

I got my first sense of the problem's scale five years ago on a reporting trip to Charlotte, N.C., which as a midsize Southern city is no one's idea of an unaffordable place to live. But a few days in town and my notebooks were filled with the woes of low-wage workers stooped by their rents. One was a character of such earnest energy, and unlikely misfortune, that he's never quite left my mind; if the housing crisis hit the big screen, Harold Coleman could be its Jimmy Stewart.

A kitchen aide at a downtown hotel, he spent almost 60 percent of his income to keep his wife and two young sons in a decent apartment. He furnished his living room with a reclining chair salvaged from a Dumpster, and all was well, relatively speaking, until the police knocked one night at 3 A.M. and carted him off to jail. The incriminating evidence was the extension cord connecting his alarm clock to a neighbor's patio outlet. With no money for a utility deposit, Harold Coleman had turned into an electricity pirate.

I returned to Charlotte recently to check on its housing situation and found an impressive blend of economic growth and civic concern. The city is booming, with two major sports teams, the headquarters of two growing bank empires, a row of new skyscrapers and virtually no unemployment. The good times have kept the public purse full, and the city is spending a good sum on housing, more than \$3 million a year. The banks have been similarly generous, the housing groups are sharp and Habitat for Humanity, the nonprofit home builder, has constructed more homes in Charlotte than almost anyplace else. Citing such promise a few years ago, Jimmy Carter came to town, hammer in hand, to predict that Charlotte would become "the first American community in the whole United States that's going to succeed in eliminating poverty housing."

Guess how the story turns out.

AT 7:30 A.M. THE DOORS OF THE CRISIS ASSISTANCE MINISTRY HAVE yet to open, but the line outside is already 60 deep. Each year about 12,000 people trek to the social services center, just north of



Charlotte's downtown, for help with rent and utilities, and Crisis responds with a mix of funds from churches, businesses, the Government and individuals. Today, the first woman staked her place by arriving under moonlight at 4:20 A.M. The door flings open and the crowd rushes in, clutching the numbered cards that determine the order in which they'll be seen.

No. 4 is seeking a weekly room because a friend kicked her out. "I am working," she snaps at the social worker across the counter. No. 12, a groundskeeper, carries his eviction papers with him, and so does No. 17, a clerk at a temporary agency who was laid off after breaking her toe. (Hers come with a cheerful reminder from the landlady: "Only good things can come from paying your rent on time.") In an effort to keep someone's lights turned on, a Crisis worker calls Duke Power to say the ministry will send a check. Though social work is typically shrouded in euphe-

mism, this exchange comes with an exquisite clarifying slang. In local parlance, this is "Crisis calling the Duke."

Though Charlotte is booming, so is its housing crisis. The ministry got 1,000 more requests for help last year than it did the year before; despite the city's overall prosperity, those seeking help reported incomes that were 4 percent lower and shelter costs that were 7 percent higher. Two years ago, the average person walking through the ministry's doors paid \$417 for rent and utilities out of a monthly income of \$622, a shelter burden of 67 percent. By last year, the average was \$448 out of \$596 — an astonishing 75 percent.

It's fair to question the precision of the numbers. (Poor people tend to underreport their income.) But it's hard to find anyone in Charlotte who doubts the general story the numbers tell. Charlotte's city officials are as given to boosterism as those anywhere else, but when they discuss their low-income-housing market, they start quoting Dickens. "Even with such a bright future, Charlotte is becoming a 'tale of two cities,'" says the city's official housing plan. "There is a growing economic division of the 'haves' and 'have-nots.'"

There are 160,000 households in Charlotte, and about 20 percent meet the Federal definition of "very low income"; that is, they live on less than half the area's median income, or less than \$21,000 a year. The city plan notes that these households "cannot afford adequate housing" and that they "often must make hard choices on whether to spend their limited income on shelter, food or heat." About 10 percent — 16,000 households — live on less than \$12,000 a year. About their prospects, the city is even more pessimistic. Without rental assistance, the plan says, they "are likely to be living in highly unstable situations, or doubled up with other families, behind on their rent and prone to eviction."

Each year the Federal Government publishes a list of "fair market rents," locally adjusted cost estimates of decent but modest



Mary Patton, opposite, has worked since her teens, but the \$500 rent on her house, above, takes a 61 percent bite out of what she earns in a year.

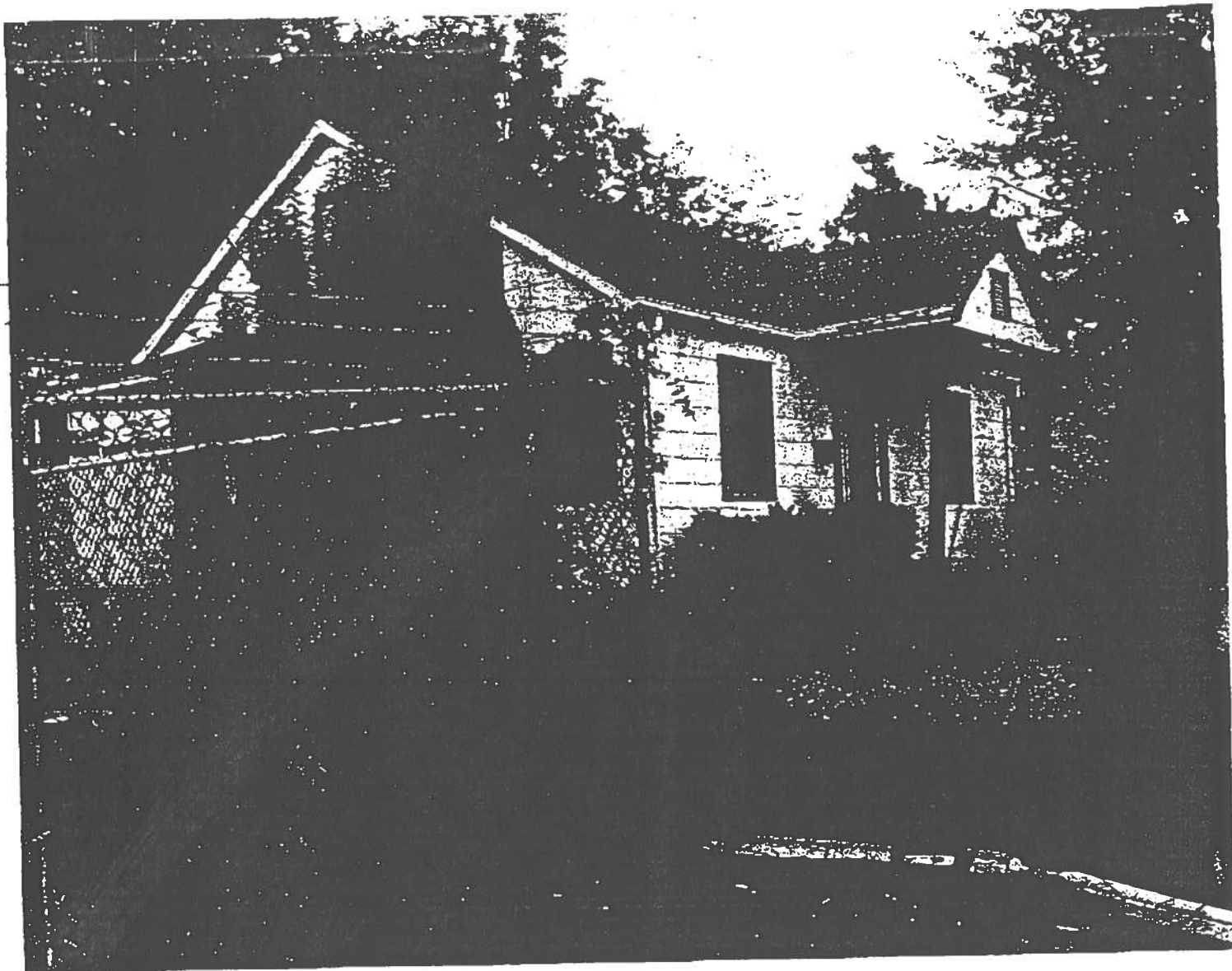
shelter. And each year the National Low Income Housing Coalition then calculates the wage needed to afford the rent. To afford a one-bedroom apartment in Charlotte (at \$454 a month), a worker needs an hourly wage of \$8.73. To afford a two-bedroom apartment (at \$511 a month), a worker needs \$9.83. That is more than twice the minimum wage of \$4.75 an hour.

Notice here that we are talking about *workers*. Wherever one chooses to think about welfare mothers and their children, the nation makes no pretense to house them: only about one in four nationwide gets rental assistance, and in North Carolina the rest live on cash stipends that average about \$270 a month. In other words, a mother on welfare could spend 100 percent of her cash income for rent and still have only half of what the Government says it costs to rent an apartment. Indeed, a welfare check won't pay the fair market rent in 48 states, which is why most recipients rely on boyfriends or unreported jobs, and why many families live doubled up. And so be it: from President Clinton on down, the nation has just said, "Get a job!" But the lesson of Charlotte's economy is that even when poor people do, at hourly wages of \$5.50, \$6 or even \$7, many will still find themselves unable to afford a place to live.

As a result, the Crisis Assistance Ministry is flooded with welfare and working families alike. At age 54, Mary Patton is a repeat client though she has been working since her teens — on farms, in textile mills and now as a night security guard at a commercial bakery. She started the job four years ago, at \$4.75 an hour. By this summer she was up to, well, \$4.75 an hour. "They don't give raises that often," she says.

Where does one live on a wage like that? Patton left one apartment when drug dealers shot through the door. She moved from a second when a police helicopter landed in the backyard while raiding her drug-dealing neighbors. Then she found a small brick cottage at the edge of a wooded cul-de-sac, which makes her yard a popular place for teen-agers to strip stolen cars. Patton stores her lawn mower in the kitchen to keep it from being stolen and has decorated her bathroom walls with red pot holders, just for the cheer. Rent and utilities for the two-bedroom house, which she shares with a granddaughter, run \$500 a month, or \$6,000 a year. That's 61 percent of the annual earnings (\$9,896) recorded on her most recent 1040 form.

Oddly enough, Charlotte's housing problems represent progress of a sort. More accurately, they represent the price of progress —



To "heat or eat" is all too often the question. The Crisis Assistance Ministry helps with rent and utilities when it can, but couldn't prevent Richard Ussery's eviction from the house above. The agency has been able to keep the lights on at the Colemans' home, opposite.

progress in this case being the eradication of the seriously substandard housing that was prevalent in the United States a generation ago. Mary Patton grew up in a house in the Carolina countryside with no running water and a wood stove for heat. It was brutish but cheap: the rent was just \$4 a month. Even Charlotte was awash in shotgun shanties at the time. Now, for the most part, the outhouses, tin roofs and slumlords are gone; they've been replaced by housing inspectors, due process — and rents that are out of reach.

Perhaps no one in Charlotte knows more about the trade-offs than Ted Fillette, a Legal Services lawyer who pushed for much of the change. He arrived in Charlotte 23 years ago, fresh from a legal clinic in Boston, then the hotbed of the tenants' rights movement. Charlotte, he says, "was literally like a third world country — tenants were like serfs." The city had an entire submarket of caveat emptor homes: take 'em as you find 'em structures with weekly rents and no heat. Tenants could be evicted on two days' notice if they dared to call a housing inspector. "I just decided this would be my focus," he says. "Tenants had to have some rights."

Now they do: rights to repairs; rights against evictions without a court order; rights to trial by judge and jury, rather than landlord-friendly

magistrates. What they don't have is money to pay for the improved housing stock. Fillette himself is ambivalent about the trade-off. "Were people better off when they were cold and paying \$150 for their own place?" he asks. "Or are they better off with heat and plumbing, but living doubled up or paying every last cent for rent? I don't know."

In the old days, one of Fillette's most frequent adversaries was Robert Pressley, a rural migrant in overalls who was among the most infamous of the city's low-income landlords. These days, the Pressley empire is run by Robert's son, Tony, who is no one's idea of a slumlord. Low-income property is a small part of his sprawling commercial and residential business. He talks of renting inexpensive housing as a "duty," and he has served on the board of Charlotte's leading nonprofit housing agency. But he owns less low-income housing than his father did for a simple reason: there's no money in it.

The market can adapt to the poor person's purse by selling cheaper toys or shoes, but there are only so many corners that can be cut in building cheaper housing. To be sure, codes should be simplified and red tape should be cut. But interest, utilities, taxes — these costs are fixed, regardless of the occupants' income. It costs between \$40,000 and \$55,000 to build an 800-square-foot two-

The market can adapt to the poor person's purse by selling cheaper shoes; but there are only so many corners that can be cut to produce cheaper housing. The only way to push the rents lower is through a subsidy — to the tenant, to the landlord or through the tax code.

bedroom apartment in Charlotte, depending on the land and the interest rate. To service the debt, maintain the building and earn a modest return, landlords need to charge rents of \$600 to \$750.

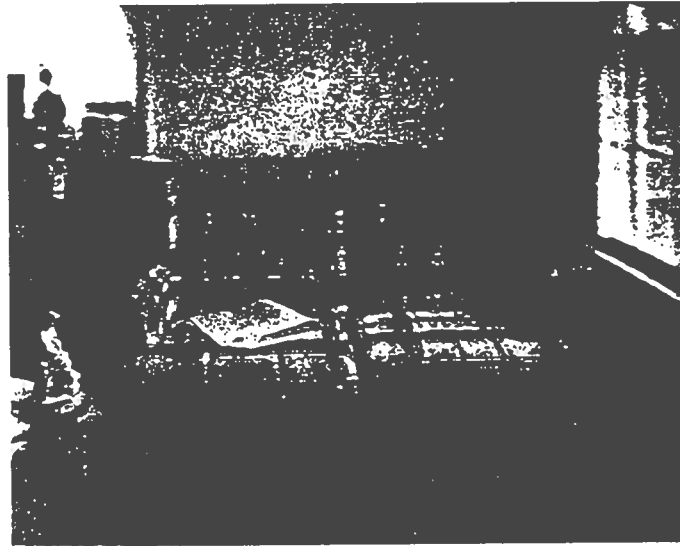
The only way to push the rents substantially lower is through a subsidy, either to the tenant or the landlord or through the tax code. "I can't walk on water — and you don't see any new \$400-a-month apartments coming on the market," Tony Pressley says. The handful he still rents are mostly old ones, already paid off. Though Fillette has spent his life suing landlords, he speaks sympathetically of the younger Pressley. "It's virtually impossible to make a profit and comply with the law because of the inadequate income of the customers," he says.

When a middle-income family spends half its budget on shelter (in fact, few do), it is making a life-style choice. When a low-income family does so, it is courting a crisis. The remaining money is rarely enough to pay for the bare necessities. Forget for a moment that these families may find themselves living in a virtual war zone. They may also be facing evictions, utility cutoffs or even shortages of food.

Poor families tend to get displaced so often it's not hard to find children in Charlotte who have attended six elementary schools in a single year. Social workers at A Child's Place, a Charlotte program for homeless children, recently saw a third grader who had been to 13 different schools in a year. In the District of Columbia, the head of foster care has estimated that as many as half the city's foster children could be reunited with their parents if the families had stable housing.

While there is surprisingly little research on the impact of rent burdens, some disturbing hints come from Dr. Alan Meyers, a pediatrician at the Boston Medical Center. In three different studies (two with a colleague, Dr. Deborah A. Frank) he found a connection between high rents and inadequate nutrition. In a 1993 study of 580 poor children, he found iron deficiencies in 19 percent of those whose families had subsidized rents. But of those in families without housing subsidies, 30 percent were iron deficient. In 1995 he published a more sophisticated study of 200 poor children, and this time the differences were even more dramatic. Only 3 percent of the children whose families got housing assistance were underweight for their age. But of the children whose families were on the housing waiting list, 22 percent were underweight. Earlier this year, Meyers published a third study. After examining the records of 11,000 children, he found that they were most likely to be underweight in the 90 days after the coldest month of the year. This bolstered his theory that families choose whether to "heat or eat."

Enough wild claims get made on the topics of homelessness and hunger that one hesitates to make too much of the findings. As Meyers is quick to note, two are based on small samples, and all come from a single hospital. As a scientist, he calls them "suggestive." But as a citizen



he speaks with less equivocation: "It's not rocket science. Without housing subsidies, the likelihood is that there will be more hungry and undernourished children."

And more parents like Richard Ussery, a veteran of the Crisis Ministry lines. His file there shows a trail 15 years long of utility cutoffs and eviction notices and doubling up with relatives, though it also shows steady employment. He's 43, separated from his wife and raising an 11-year-old son on his own. These days he's unloading trucks at piecemeal rates. He's been with the same company for about four years. His wages average less than \$6 an hour.

I found him in August in a weather-beaten two-bedroom home stuck between two car lots. He was spending about 50 percent of his income on shelter, which doesn't count the \$240 repair when Richard Jr. dropped a tennis ball down the toilet. He had curtains on the windows and napkin rings on the table. He also had a stack of eviction threats, with court dates for February, May, June and July. Each had been averted at the last minute by family loans or Crisis Ministry donations or forgone luxuries like fixing his broken false teeth. "Don't none of them go to trial," he declared. "I always pay 'em."

In a three-hour conversation, Ussery did not utter a word of malice toward his landlord, "who's doing what he got to do." And there wasn't a trace of sarcasm in his voice when he said, "I love this place."

When I called back a few weeks later, Ussery had been evicted.

THE BULLDOZER LOOKS LIKE A HORROR-FILM INSECT AS IT roars across a desolate lot in Detroit. It slams its steel claw through a second-story window and lunches on bricks and glass. The action has drawn a crowd straight out of "The Bonfire of the Vanities" — kids chomping hot dogs, guys in dashikis, television crews and a man in purple sunglasses who flashes peace signs. When the demolition dust settles and the cheers fade, another 1,064 units of public housing will lie in ruins.

The scene cries out as a metaphor, but a metaphor for what? Presiding in a ceremonial hard hat, Henry Cisneros, the Housing Secretary, hopes the rubble will stand for renewal, of public housing and of urban life more generally. At a time when most housing funds are being trimmed, Cisneros will spend \$80 million to transform the site into a smaller, mixed-income development. He is trying to bring down a total of 100,000 of the nation's most blighted units over the next few years. "This is about a *renaissance*," he tells the crowd, "a *rebuilding*."

But his efforts coincide with a second, less-happy demolition, that of the overall housing budget. Across the country, the Government is being forced to spend many new billions repairing, preserving or replacing apartments it built years ago; this leaves almost no money for new ones. Housing secretaries like

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to measure their progress by the extent to which the subsidized inventory grows. But Cisneros may be the first to see it actually shrink.

"It's like bailing water out of the boat while at the other end someone's got a hose and they're filling it from the ocean," he says, leaving the demolition site. "No matter how fast you bail, you can't beat the water coming in. I hope against hope — I hope against reason — that the other things we're doing will keep us even."

Keep us even: it says something when the nation's Housing Secretary "hopes against reason" to preserve a status quo that is at a record level of distress. But Cisneros is right to consider this an exercise in optimism, since he operates in a political climate hostile to low-income housing in every way. He runs a discredited bureaucracy with an unpopular cause at a time when even popular programs have trouble getting financed.

President Clinton came to office with a crowded agenda, and housing was nowhere on it. Moreover, housing programs always face a competitive disadvantage in Congress. They don't just serve a smattering of poor people with no political pull; they also compete in the same appropriations bill with formidable rival interests — like veterans' benefits, the space program, environmental programs and Americorps (the President's national service initiative). And Cisneros' personal clout certainly didn't grow when Federal agents began investigating his payments to a former girlfriend.

Still, he has worked Washington with the same skills he used in San Antonio to become the nation's first big-city Hispanic Mayor at the age of 33; otherwise, housing funds would be eroding even faster. After losing a fight for money for the homeless, Cisneros won an Oval Office appeal by

reminding Clinton that the inner-city vote in Cleveland and Detroit had clinched two crucial state victories.

When Vice President Al Gore thought about abolishing the Housing Department, Cisneros got out front with a "reinvention plan." He stalked around the White House after hours, slipping his plan under the doors of officials three ranks beneath him. It was demeaning, but effective. "Henry did more with less than anyone I can think of," says Christopher Edley, a former White House budget official. "Under a lesser politician, the department might be dead."

But Cisneros has little control over the broader market forces that leave those like Harold Coleman in a state of permanent crisis: rising rents and falling incomes. As recently as 1970 there were almost a million more cheap apartments nationwide than there were poor households. (The Center on Budget and Policy Priorities defines a "cheap" apartment as one that rented for the equivalent of \$325 today.) But bulldozers knocked some of those units down. Gentrification fixed others up. And rent hikes in general outstripped inflation. Meanwhile, as housing disappeared, the number of needy families exploded during two decades of wage erosion. There are now 12 percent fewer cheap apartments than there were in 1970 but 72 percent more needy households: instead of a housing surplus, there is a gap — of nearly five million apartments.

In thinking about why this matters, it's important to remember that the housing market doesn't just reflect the nation's income inequality. It also increases it. While renters are paying more and more for shelter, homeowners are now paying less — even while accumulating the ultimate prize: equity. In 1980 the average homeowner had a mortgage that consumed 30 percent of his after-tax income. Now it con-

sumes 23 percent. (The difference is due to lower interest rates and fewer overheated markets.) In fact, the average homeowner now spends a slightly smaller percentage of income on shelter than does the average renter, even while accumulating considerable wealth. In other words, the housing market offers an increasingly welcome deal to the two-thirds of Americans who can afford to buy. And it increasingly punishes the third left behind.

WITH RENTS UP and wages down, there's basically one way to fill the gap: Government help. But housing is a uniquely expensive social program. It costs more than \$6,000 a year to house each additional poor family. (By contrast, it costs \$5,000 a year to provide Medicare to an elderly person.) As budgets have tightened, it's no wonder that the number of new units has fallen.

In the heyday of housing programs, the mid-1970's, the Government was financing about 400,000 new apartments a year. In the early 1990's the average had dropped to 36,000. That meant Charlotte was housing fewer than 25 additional families a year; its waiting list is 2,900 families long.

And that was *before* the housing budget started to implode. Throughout the Housing Department, a series of old bills are wreaking havoc on the \$20 billion budget. The technical details could fill a library, but the point is easy to grasp: the cost of preserving the stock has crowded out money for expanding it.

The department now spends almost \$2.5 billion a year just to upgrade old public housing projects, replacing boilers and roofs. It spends \$550 million to bulldoze and rebuild sites like the one in Detroit. It spends another \$400 million to plug a loophole in a program from the 1960's and 70's that gave low-interest loans to private landlords willing

to house the needy: the program gave landlords the right, after two decades, to evict the poor and raise the rent, and without the new subsidies, most would.

The department even has its own miniature version of the savings-and-loan crisis looming on the horizon, which has largely gone unnoticed. The department insures the mortgages on about 700,000 financially troubled private apartments. If all the owners default, the bailout costs over the next few years could reach \$18 billion. Even a fraction of such losses, which now seem all but inevitable, promise to plunge the department into deeper political and financial turmoil.

At the moment, the old-bill problem is most severe in what's known as the Section 8 program, which has long been the flagship of the nation's affordable-housing strategy. Though conventional public housing is better known, Section 8 houses about twice as many families through payments to *private* landlords. The 2.9 million families enrolled in the program spend 30 percent of their income on rent and utilities, and the Government covers the rest. (About half the program is "project based," meaning tenants have to live in specific apartments; the other half is "tenant based," meaning families can take their subsidies and move.) Like other housing programs, this one has had its scandals, but on the whole the tenant-based certificates offer the fastest, easiest way to house the poor. And they are particularly appealing to market-oriented reformers because they "empower" tenants with choices that conventional projects don't allow: those who don't like where they live can leave.

When the certificates were first issued in the 1970's, they were financed through long-term contracts. But those contracts are now expiring in record numbers, and they cost bil-

lions to renew. Unless the department finds the money, the subsidies will expire and the families will face eviction. This year alone the department has to renew the subsidies on 800,000 apartments, at a cost of about \$3.6 billion. In the year 2000 the department will have to refinance 2.5 million apartments, at a staggering cost of \$17 billion. That is, the cost of Section 8 renewals alone could soon devour the department's entire budget.

Scrambling for ways to save money, Congress has settled on an obvious one: stop the program's expansion. In truth, the housing expansion hasn't just ended; an absolute reduction has already begun. With some technical tinkering, Congress has managed to slightly reduce the number of certificates in use at a given time. And given the imminent financial pressures, most analysts think that's just a taste of things to come; some predict the overall inventory will shrink by as much as 20 percent. "We'll be very lucky if we don't lose a million of the 4.5 million subsidized units that are already occupied by very low income people," says Cushing Dolbeare, the dean of housing advocates.

The cuts make perfect sense for the Government's budget. But they offer slim hopes for those at the bottom of a new housing economy in which wages don't pay the rent. And the budget cutters know it. They don't predict that the market will fill in the gap. They're not really counting on the poor to bootstrap themselves out of trouble. (Though they sometimes express that hope.) In moments of greatest candor, they simply say that some needs are so great that the Government can't meet them and that housing is a textbook case. "It's a really nasty problem," says a Republican aide who helped

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draft the housing budget. "There's no way to put a happy face on that."

It's true that other Government programs still build housing, including a housing tax credit and two housing block grants. (But without a subsidy like Section 8, poor families can't afford the units these programs produce.) And it is true that the Government has other programs for the working poor, most notably an earned-income tax credit that provides cash payments up to \$3,500 a year. (Indeed, that's a smarter solution than many housing programs offer, since it spreads subsidies further and bypasses bureaucracies.) And it's also true that the Government can't just spend and spend. Higher deficits mean higher interest rates, and that hurts the poor, too.

The point isn't that the Government has done nothing. The point is that it hasn't done enough to give most poor families a chance at decent housing, and that it doesn't do nearly as much for the needy as it does for those with means. Government housing subsidies now do the most for those who need them least. And the politics of the country are construed in a way that pays the issue no mind.

Last month when President Clinton signed the bill that reverses decades of housing history, he actually did so in the middle of a Rose Garden celebration. A celebration, that is, of an unrelated provision in the same bill — which guarantees new mothers longer hospital stays. Surrounded by dignitaries of both parties, Clinton said it was an "honor to sign this legislation," letting the day's real news — the death of affordable housing — pass without comment.

ON THE NORTH SIDE OF Charlotte, a middle-aged woman in a shiny new van pulls over to snoop. She is

surrounded by eight square blocks of resurrected blight with an appropriately biblical name, Genesis Park. But here in their midst is a last ramshackle house, with a bare-chested man on a milk crate in the front yard. "This is Skinny's Liquor House here," she says, pointing to the neighborhood speak-easy. "Skinny has about two weeks left before he's locked out and evicted — we bought the house."

Pat Garrett is what a housing solution might look like if the country had more money and will. She's just the sort of streetwise character that a housing organization needs — part social worker, part bottom-line banker. Her precepts are those of other successful managers: screen tenants, tend to maintenance and evict troublemakers. "If you don't have a good property manager, you're going to be in a world of hurt," she says.

If Garretts are what most cities need, the good news is that many have them, at least in limited supply. There are now about 2,000 nonprofit housing groups like hers, and they've built or renovated more than 450,000 units, most of them in the past decade. They operate with Government subsidies from those programs that have survived the cuts as well as with corporate and private contributions. They also get help from two important foundations (the Enterprise Foundation and the Local Initiatives Support Corporation) in picking their way through the technical thickets of development. Their impressive track records address the fear that more subsidized housing would mean more Government-financed slums.

But the first problem is that there isn't nearly enough money to go around. With the groups now building about 50,000 units a year, it would take a century to house the five million families with severe rent burdens. The second problem is that the surviving programs aren't suffi-

ciently targeted to the poor. Nonprofit developers like Garrett rely on three main Government programs: the low-income-housing tax credit, the community development block grant and the Home block grant. Those programs generally serve less needy people — those with incomes that are 60 percent of the median, or about \$25,000 in Charlotte.

There's a reason: the less needy are easier to serve. No one really knows how to house large numbers of the poorest people, especially those on welfare. Group them together and neighborhoods collapse; spread them out in the suburbs, and their new neighbors rebel. But with more Government support, Garrett is convinced that she could build safe, affordable housing for those a half-step up — people with incomes in the \$10,000-to-\$12,000 range, like Mary Paron and Richard Ussery. "The big question is the funny money — the subsidy money," she says.

Charlotte's willingness to provide its own funny money is unusual; most cities simply spend Federal dollars. After years of dealing with Ted Filleme's suits, the city's corporate and government elite decided it wanted to do more to house the needy. In 1986 they convened a two-day symposium and brought in James Rouse, the fabled developer and the founder of the Enterprise Foundation. Within a year, Charlotte made the decision to set aside \$4.5 million of its growing annual revenues just for low-income housing.

The main beneficiary is Garrett's group, the Charlotte-Mecklenburg Housing Partnership. It's a public-private venture set up by the city and the town's major banks. In seven years it has built or renovated more than 400 apartments, with rents starting at \$245. And it has also produced about 281 single-family homes, with mortgages in the \$400-to-\$550

range. Each deal comes with its own endlessly complex financing strategy. Garrett has grabbed loans and grants from the city, state and Feds. But her main support is a \$2 million annual contribution from the city. And the banks have established a pool of modestly subsidized loans for those who buy the partnership's homes.

No neighborhood shows the payoff more than Genesis Park. The neighborhood was a drug market of such renown that even the adjacent housing project put up a wall to protect itself. In the past four years the partnership has bought more than half of the area's 169 homes, which it has renovated and sold at below-market rates; homes start in the low \$50,000's, with monthly mortgages of about \$450. Other housing groups also

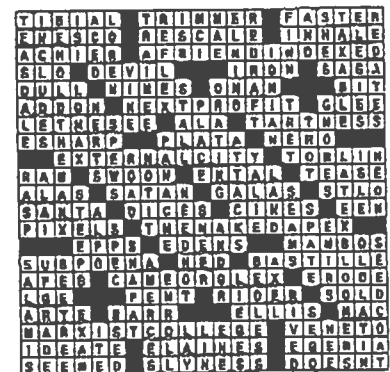
got involved, and the city brought in two "community policemen" to bicycle down its four main streets. In 1993, Genesis Park ranked first among the city's 73 neighborhoods in violent crime. A year later it ranked 41st and violent crime had dropped 74 percent.

The encouraging thing about Charlotte is that other groups, in other neighborhoods, can boast of similar successes. There are plenty of models for the Government to build upon and expand; what's missing is the money. Even Charlotte's housing authority, which deals with the poorest tenants, has a few bright spots. Its president, Harrison Shannon, is an up-from-nothing Vietnam veteran who dresses in French cuffs and preaches a gospel of self-help. Not long ago we

Continued on page 105

ANSWERS TO PUZZLES

OF OCTOBER 13, 1996



IAN WHITCOMB: THE BEST OF (VINTAGE) DANCE — In the beginning was the Dance . . . The pre-historics threw themselves around in movements of pure self-expression, . . . without direction by any authority: a jump for joy, a hop of pain, some . . . stomping to keep out the cold.

- | | |
|--------------|---------------|
| A. Inanity | N. Enjoined |
| B. Aphrodite | O. Battle |
| C. New Hope | P. Euphoria |
| D. Wherewith | Q. Sixteen |
| E. Hollyhock | R. Teas |
| F. Immensity | S. Outfit |
| G. Tucson | T. Frevent |
| H. Choosy | U. Dos |
| I. Offing | V. Approved |
| J. Moe | W. Nightjar |
| K. Bumptious | X. Compresses |
| L. Trump | Y. Enters |
| M. Hogan | |

HOUSING

Continued from page 94

climbed into his car for a tour of his 5,000-unit empire. Most of the old, large complexes look like public housing everywhere: run-down acres of Government tenements with too many idle people and a general feel of menace. But as the tour went on, we started rolling through some of Charlotte's nicer neighborhoods, on the way to more public housing.

Beyond the downtown core, there are 20 "scattered site" developments of no more than 50 units each. Most had prompted tooth-and-claw fights from the neighbors, who had understandable fears about property values. Understandable but, as it turns out, unnecessary. According to a study by the University of North Carolina at Charlotte, home values in those neighborhoods rose between 84 percent and 127 percent in the decade after the public hous-

ing was built. And property values grew just as fast in those neighborhoods as in other, comparable parts of the city.

But the numbers are less impressive than the apartments themselves, which blend in with the surrounding racquet clubs and bistros. The most intriguing sight can be found off Fairview Road in Charlotte's booming southeast corridor. On one side of the road there's Morrocroft, a subdivision of million-dollar homes whose wrought-iron gates are as self-conscious as its name. Just down the road is Live Oak, 32 units of public housing on nine wooded acres. And in between, there's a fine little reminder that housing programs can work. It's a sign in a muddy field that says, "Future site of Dean & Deluca."

DURING MY VISIT TO Charlotte, I kept wondering what had become of poor Harold Coleman and his il-

legally illumined alarm clock. What picaresque strategies had he seized upon now to keep pace with the rent? He wasn't in the phone book, he wasn't on the old job and transience of the poor suggested he probably wasn't in Charlotte at all. But I found a phone number in an old notebook and dialed in on a whim.

He answered on the first ring. "We kept the same phone number," he explained. "I'm bad at remembering phone numbers."

A few hours later, I arrive at a modest brick home on a quiet, wooded street and find an old Honda with a license plate that says, "Christian Radio: A New Way of Life." Harold and his wife, Vicky, have become devout Baptists. "It's really sparked a light in our life," he says. Now 28, Harold has stepped up from his \$5 wage as a hotel fry cook to a \$7-an-hour job as a maintenance man at the church. Though he's had expensive eye sur-

gery as a result of his diabetes, a foundation helped with the bills, and his two boys, Tony and Joshua, look healthy and happy.

The Colemans have given up the food stamps for which they otherwise qualify, partly because of the hassle involved, but also because they do not want to be seen as charity cases by their affluent congregation. They have two nice bikes hanging from pegs on the dining-room wall, and they laugh when reminded of the old electricity caper. "Me being as naïve as I am, I didn't realize it was illegal," Vicky says.

In other words, things have fallen into place for the Colemans — everything, that is, but the rent. Assuming he works full time all year at \$7 an hour, Harold can pull in \$14,500. If he gets lucky and lands \$1,000 in overtime, that's \$15,500. Throw in the \$2,700 he gets through the earned-income tax credit, and his total income rises to \$18,200. But

his rent and utilities run \$600 a month. Or \$7,200 a year. Or about 40 percent of the Colemans' annual income. That is, after five years of striving and 10,000 hours on the job, Harold is still barely making it.

His family still has a file at the Crisis Ministry, and it's replete with utility cutoff notices — two from this year alone. He and his wife stand in line at the center together so neither suffers the indignity alone. "It's degrading in a way," Harold says. "We're like, 'Jeez, I can't believe this is happening.'"

But Harold is nothing if not an optimist. He notes that Job had it worse. With the kids in school, Vicky is about to start a job. And if the economy keeps growing, and the car doesn't quit, and Harold stays healthy — who knows? Maybe they'll keep the lights and heat on next year.

Among today's low-wage renters, this is what passes for success. ■

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The hard work of those who have moved up through their own efforts is devalued by the Section 8 program

HUD's do-goodism harms cities' evolutionary renewal

By Howard Husock

LIKE THE perennial cherry blossoms in our nation's capital, yet another wave of reform and reinvention has emerged at the troubled Department of Housing and Urban Development. New HUD Secretary Andrew M. Cuomo has arrived with a burst of energy, promising to continue to prune HUD's work force and to eliminate the scandals triggered by well-connected builders taking advantage of housing subsidy programs.

The public may be forgiven for its skepticism. Cuomo is the third "reform" secretary in the past 10 years, after Jack Kemp and Henry G. Cisneros. But HUD retains its reputation as a mess that needs cleaning up. That reputation remains largely because concern about HUD is not so much about its current performance as about its core purpose. That is, do we need HUD at all? There is good reason to think not. The assumptions that prompted its establishment in 1965 have largely been discredited, and it has undertaken new missions of questionable value.

HUD was created in an era when Americans were concerned about the decline of older neighborhoods in the newly designated "inner city." Its founders believed that without massive public spending to renovate older housing, those neighborhoods would forever remain slums and their residents "disadvantaged." But HUD's designers discounted the possibility that the new poor in the cities, particularly blacks, could follow the path of upward mobility that previous waves of immigrants had taken. In the ensuing three decades, however (as Abigail and Stephan Thernstrom have made clear in their new book, "America in Black and White"), black Americans have made their own march to better neighborhoods and the suburbs. And HUD's expensive interventions in older, increasingly depopulated neighborhoods – from the Model Cities program of the 1960s to today's Empowerment Zones – have done little good. In fact, there is reason to believe they have done harm.

A natural cycle of decline and renewal is produced by urban economies. As Jane Jacobs, this century's foremost observer of cities, has written, "New ideas need old buildings"; the cheap rent and land of "declining" neighborhoods help lay the foundation of their rebirth.

When government tries to prop up neighborhoods by fixing old apartments at great expense, it crowds out the sort of new ideas that produce lasting improvement. It drives small, private landlords out of business by competing with them. It traps the residents of public housing – ostensibly lucky to get cheap, subsidized apartments – in a long-term dependence on buildings that often become the new slums. Witness our public housing projects. Continued dilapidation of parts of our inner cities is cited as proof of the continuing need for HUD. In fact, it better demonstrates how ill-advised have been the interventions of the last 30 years.

More recent HUD missions have fared no better. Housing vouchers, on which the department spends about \$8 billion annually, attempt to "deconcentrate" the poor and move them to better neighborhoods. In doing so, they send the wrong message: that need, rather than achievement, is the way to move up the ladder in America. The hard work of those people, both black and white, who have moved up through their own effort and helped to create better neighborhoods is devalued by this program. No wonder talk radio shows are filled with homeowners complaining about Section 8 tenants (voucher holders) being introduced into their neighborhoods – and often bringing social problems. Such inherent flaws in HUD's mission explain its continuing unpopularity.

Closing HUD would be complex. There are powerful reasons to try, however. Not the least is a potential crisis driven by financial commitments that might be larger than the department can afford – and that could result in a savings-and-loan-style debacle. Failed programs such as Empowerment Zones and housing vouchers – which have negative effects on the cycles of renewal that arise spontaneously in cities – suggest that HUD's future should be one not of reinvention but of deinstitution. A bold Congress would start to chart the way.

Howard Husock is the director of case studies in public policy, Kennedy School of Government, Harvard University. He wrote this piece for the Baltimore Sun.

My Neighborhood Ruined, Thanks to HUD

By MARIANNE M. JENNINGS

MESA, Ariz.—The changes to my neighborhood were subtle at first. More people wore scuffs and tank tops at the supermarket, and the lines were longer owing to the complexities of determining what is a permissible food stamp purchase. Three dozen cupcakes from the bakery qualify, but a barbecued chicken from the deli does not. Those of us who bake our own cupcakes and broil our own chicken waited as cashiers tried to make sense of federal welfare policy.

The landscape, once impeccably maintained, began taking on a littered look. The neighborhood ATM once had only the mess of discarded receipts; imagine stepping on a used condom as you retrieve cash to take your children to see "Buddy."

Local commerce changed. A beauty-supply store closed, replaced by a boutique quaintly named Cigarettes Cheaper! A pawn shop nearby does a brisk business, as does the Checks Cashed store. Another new shop is called Guns.

It was when I noticed the gang graffiti spray-painted on the decorative boulders outside the bank that I paused. As I stood staring, a private security guard approached. We both mourned the boulder's lost innocence. When I asked why the bank now needed a security guard, he responded with what he was clearly told to say: "Just a precaution."

I then asked the question I couldn't answer: "What has happened to this neighborhood?" He hesitated. Then, pointing at a large complex of pink apartments across the street, he said, "If you ask me, it's that right over there." Those pink apartments, I discovered, are Section 8 housing. Federally subsidized tenants had come to our quiet, well-kept suburban neighborhood, where the only excitement had been the Chicago Cubs' spring training.

Section 8 was called a brainstorm alternative

to traditional public housing projects. Section 8 makes all rental properties open to beneficiaries through vouchers any landlord can choose to accept. In practice, most landlords don't take Section 8 vouchers, so tenants end up concentrated in the comparatively few complexes that do.

Section 8 tenants, half of whom also receive other welfare benefits, pay between zero and 30% of their adjusted gross income in rent, and the federal Department of Housing and Urban Development pays



the difference between this sum and the "fair market rent." Nationwide there are 4.3 million Section 8 beneficiaries. The program cost \$7 billion in 1996, and HUD Secretary Andrew Cuomo would like \$5.6 billion more for Section 8 housing for 1998.

Mr. Cuomo's predecessor, Henry Cisneros, theorized in 1993 that if poor people were relocated to middle-class neighborhoods, the result would be an osmotic uplift of the deprived. "Income integration," he said, would fix a society "divided spatially." In my neighborhood, Section 8 beneficiaries can live in \$600-per-month apartments for the bargain price of nothing. They also enjoy HUD-mandated \$50 security deposit maximums.

Give people something for nothing, and you instill a culture of irresponsibility, regardless of their physical surroundings. In the Chicago area, 70% of Section 8 certificate holders relocated to the south suburbs. Miniblinds, wall-to-wall carpeting and Jacuzzis failed to bring about a moral transformation. Instead, the new tenants created ghetto strips within middle-class suburbs. The story is the same anywhere else Section 8 vouchers are used, from Boston to St. Louis to Plano, Texas. Crime rates doubtless go up: HUD doesn't keep statistics on criminal behavior by Section 8 tenants, but does report that the crime rate in public housing is 10 to 13 times higher than the national average. Section 8 sends property values down and owners fleeing.

The beneficiaries of Section 8 vouchers have no more stake in their affluent suburbs than they had in the projects. It's the rental-car syndrome: The car isn't yours, so why not drive it into the ground? Thus "economic integration" means neighborhood disintegration. For me it means that I don't go to the store at night unless I drive several miles to a neighborhood that resembles ours, pre-Section 8. It's hard to find a child whose bike hasn't been stolen at least once. Our park is littered with beer bottles; its trash cans stink of urine. Even my early-morning run is a Section 8 casualty. Recently I had to outrun a scarf-headed fellow who jumped the wall from the little pink houses.

The local Osco drugstore has locked up its public rest rooms. The sign on the door reads: "Closed for abuses of these facilities." I wish HUD would let me post that sign just outside my neighborhood.

Ms. Jennings is a professor of legal and ethical studies in the College of Business at Arizona State University, where she directs Lincoln Center for Applied Ethics.

DATA ON SECTION 8 HOUSING

**Project-Based Section 8 Expirations
Alameda County
Sorted by City and Expiration Date**

Project Name	Project Address	Project City	Zip Code	County	Cong. Dist.	FHA Insurance Program	Section 8 Number	Owner Type	Rent % FMR	Section 8 Expiration Date	Sec. 8 Units	Sec. 8 Units in Project	Total Units
Parrot Village	1800 1916 1800-10 Wood St	Alameda	94501	Alameda	9	221(d)(3)	CA390029009	PB	100.5	7/10/00	50	50	50
Eagle Village	715 1916 715 A-c Buena	Alameda	94501	Alameda	9	221(d)(4)	CA390062001	PM	133.4	2/16/03	42	42	42
Playa Del Alameda	148 Crolls Garden Ct	Alameda	94501	Alameda	9	221(d)(4)	CA390094001	PM	119.4	10/30/03	40	40	40
Amistad House	2050 2038 Delaware St	Berkeley	94709	Alameda	9	202	CA392183201	NP	120.8	6/11/01	60	60	60
Bonita House	1910 1910-1 Hearst St	Berkeley	94709	Alameda	9	202	CA39T791018	NP	189.9	10/21/02	12	12	12
Melrose Apartments	1615 Russell St # A	Berkeley	94703	Alameda			CA39E000010	UNK	81.8	9/30/09	35	35	35
University Avenue Co	1471 Addison St	Berkeley	94702	Alameda	9		CA39H113095	UNK	162.5	3/2/12	47	47	47
Oceanview Gardens	813 Delaware St	Berkeley	94710	Alameda	9		CA39H113098	UNK	129.2	10/20/13	62	62	62
Harriet Tubman Terrace	2870 Adeline St	Berkeley	94703	Alameda	9	236(j)(1)	CA39L000022	NP	86.2	8/31/96	54	90	91
						236(j)(1)	CA39M000250	NP	86.5	5/31/99	36		
Lawrence F Moore Manor	1909 Cedar St	Berkeley	94709	Alameda	9	236(j)(1)	CA39L000046	NP	116.6	8/31/96	45	45	45
Strawberry Creek Lodge	1320 A Addison, A101-a412	Berkeley	94702	Alameda	9	202	CA39M000331	NP	72.3	9/30/96	54	54	54
Savo Island Coop Home	2017 Stuart St	Berkeley	94703	Alameda	9	213	CA390022001	MAN	98.4	8/23/99	57	57	57
Dwight Derby Elderly Hsg	2951 Derby St	Berkley	94705	Alameda	9	202	CA39T832001	NP	127	11/17/06	169	169	169
The Springs	7100 San Ramon Rd	Dublin	94568	Alameda	10	221(d)(4)	CA390052004	PM	117.9	2/17/01	36	36	176
San Pablo Avenue Senior Hsg	4320 4300 San Pablo Ave	Emeryville	94608	Alameda	9	202	CA39T891002	NP	134.9	6/25/12	49	49	49
Rancho Luna	3939 Monroe Ave	Fremont	94536	Alameda	13	221(d)(4)	CA390042004	PM	113.4	3/5/00	26	26	128
Rancho Sol	3599 Pennsylvania Ave	Fremont	94536	Alameda	13	221(d)(4)	CA390042008	PM	113	5/22/00	12	12	60
Victoria Gardens II	39548 Fremont Blvd	Fremont	94538	Alameda	13	221(d)(4)	CA390042003	PM	111.7	9/22/01	59	59	94
Good Shepherd Residence	1335 Mowry Ave	Fremont	94538	Alameda	13	202	CA39T791002	NP	171.2	12/21/02	32	32	32

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Redwood Lodge	40767 Fremont Blvd	Fremont	94538	Alameda	13	202	CA39T861010	NP	124.6	5/23/09	24	24	24
Sequoia Manor	40789 Fremont Blvd	Fremont	94538	Alameda	13	202	CA39T861011	NP	118.2	9/25/09	80	80	80
Hayward Villa	27424 27414 Tampa Ave	Hayward	94544	Alameda	13	221(d)(4)	CA390023012	PM	122	6/22/00	78	78	78
Sunset Village	260 Sunset Blvd	Hayward	94541	Alameda	13		CA390052003	PM	92.2	1/14/01	9	9	9
Summerwood Apartments	21701 1190 Foothill Blvd	Hayward	94541	Alameda	13	221(d)(4)	CA390079016	PM	101.1	8/30/02	32	32	162
Sycamore Square	22650 Alice St	Hayward	94541	Alameda	13	221(d)(4)	CA390079004	PM	116.6	9/22/03	26	26	26
Eden Issei Terrace	200 Fagundes St	Hayward	94544	Alameda	13	202	CA39T821009	NP	144.5	11/20/04	100	100	100
Olive Tree Plaza	671 West A St	Hayward	94541	Alameda	13	202	CA39T831002	NP	129.7	5/14/06	26	26	26
Ec Magnolia Court	22880 22844- Watkins St	Hayward	94541	Alameda	13	202	CA39T881003	NP	134.7	7/30/12	21	21	21
Wittenberg Manor II	713 713-72 Bartlett Ave	Hayward	94541	Alameda	13	202	CA39S901002	NP	42.5	9/23/13	64	64	64
West Tennyson Rd Apts	981 West Tennyson Rd	Hayward	94544	Alameda	13	221(d)(3)	CA39M000323	LD	97.5	6/24/96	44	44	96
Josephine Lum Lodge	2747 Oliver Dr	Hayward	94545	Alameda	13	236(j)(1)	CA39L000007	NP	60.1	7/31/96	40	106	150
						236(j)(1)	CA39M000194	NP	60.2	5/31/98	30		
						236(j)(1)	CA39M000353	NP	60.3	9/30/97	36		
Montgomery Plaza	21659 Montgomery St	Hayward	94541	Alameda	13	221(d)(4)	CA398023001	PM	119.6	8/17/98	50	50	50
Wittenburg Manor	657 Bartlett Ave	Hayward	94541	Alameda	13	231	CA390009001	PM	106.8	8/17/98	95	95	95
Meadowbrook Apartments	156 N Murietta Blvd	Livermore	94550	Alameda	10	221(d)(4)	CA390052008	PM	112.3	5/7/01	47	47	125
Vineyard Village	3700 Pacific Ave	Livermore	94550	Alameda	10	202	CA39T801017	NP	109.4	3/24/02	75	75	75
Hillcrest Gardens	550 Hillcrest Ave	Livermore	94550	Alameda	10	236(j)(1)	CA39L000010	NP	83.9	7/31/96	20	43	55
						236(j)(1)	CA39M000156	NP	84.7	7/31/97	11		
						236(j)(1)	CA39M000381	NP	84.4	9/30/98	12		

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Livermore Gardens	5720 East Ave	Livermore	94550	Alameda	10	236(j)(1)	CA39L000029	LD	60.1	8/31/96	40	59	96
						236(j)(1)	CA39M000234	LD	57	6/30/98	19		
Rosemont	35300 Cedar Blvd	Newark	94560	Alameda	13	202	CA39T811001	NP	115.8	10/31/03	150	150	150
Hotel Oakland	260 Thirteenth St	Oakland	94612	Alameda	9	221(d)(4)	CA390034001	PM	160.3	8/24/00	315	315	315
Valdez Plaza	280 28th St	Oakland	94611	Alameda	9	202	CA39T781004	NP	137.8	8/25/01	150	150	150
Homes Now In The Community	1800 A Linden, #1-6 St	Oakland	94607	Alameda	9	202	CA39T791019	NP	191.7	3/2/03	10	10	10
East Bay Transit Homes	2787 1-6 79th St	Oakland	94605	Alameda	9	202	CA39T821006	NP	182.8	7/18/05	12	12	12
Victoria Plaza	394 12th 12th St	Oakland	94607	Alameda	9	221(d)(4)	CA390034002	PM	170.1	3/16/06	100	100	100
Allen Temple Arms No. 2	1388 81st Ave	Oakland	94621	Alameda	9	202	CA39T841004	NP	151.5	4/19/07	51	51	51
Evergreen Terrace	250 225 East 12th St	Oakland	94606	Alameda	9	202	CA39T831018	NP	192.4	8/31/08	80	80	80
Oak Center Homes, Inc	850 18th St	Oakland	94607	Alameda	9		CA39H113044	UNK	120.9	9/27/09	89	89	89
St. Mary's Gardens	801 10th St	Oakland	94607	Alameda	9		CA39H113046	UNK	134.6	10/23/09	100	100	100
St Columba Senior Hsg	6400 San Pablo Ave	Oakland	94608	Alameda	9	202	CA39T871011	NP	149.2	9/17/10	55	55	55
Hope Elderly Manor	2611 Alvingroom Ct	Oakland	94605	Alameda	9	202	CA39T861015	NP	157.1	10/24/10	53	53	53
Baywood Apartments	225 41st St	Oakland	94611	Alameda	9		CA39H113055	UNK	166	7/23/11	77	77	77
Providence House	540 544 23rd St	Oakland	94612	Alameda	9	202	CA39T851022	NP	164.8	7/30/11	40	40	40
Allen Temple	8135 E 14th St	Oakland	94621	Alameda	9		CA39H113051	UNK	157.3	8/5/11	75	75	75
Eldridge Donnaway Co	275 E 12th St	Oakland	94606	Alameda	9		CA39H113089	UNK	127.2	10/31/12	39	39	39
Noble Tower	1515 Lakeside Dr	Oakland	94612	Alameda	9		CA39H113049	UNK	205.2	1/12/22	195	195	195
Beth Eden	1100 Market St	Oakland	94607	Alameda	9	236(j)(1)	CA39L000017	NP	83.7	7/31/96	34	54	54
						236(j)(1)	CA39M000195	NP	83.7	6/30/98	20		

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Oak Center Towers	1515 Market St	Oakland	94607	Alameda	9	236(j)(1)	CA39L000005	NP	94.7	8/31/96	62	195	196
						236(j)(1)	CA39M000223	NP	93.7	6/30/98	78		
						236(j)(1)	CA39M000311	NP	96.8	8/31/03	55		
Sojourner Truth Manor	5815 -49 Martin Luther	Oakland	94609	Alameda	9	236(j)(1)	CA39L000025	NP	121.6	8/31/96	37	87	88
						236(j)(1)	CA39L000281	NP	115	9/30/96	15		
						236(j)(1)	CA39M000263	NP	122.3	5/31/99	35		
Linda Glen	32 Linda Ave	Oakland	94612	Alameda	9	236(j)(1)	CA39L000048	NP	96.6	8/31/96	40	40	42
Otterbein Manor	5375 Marula Ave	Oakland	94618	Alameda	9	236(j)(1)	CA39L000047	NP	113.9	8/31/96	25	38	39
						236(j)(1)	CA39M000149	NP	111.7	7/31/97	8		
						236(j)(1)	CA39M000327	NP	121.4	9/30/96	5		
St Andrew's Manor	3250 San Pablo Ave	Oakland	94608	Alameda	9	236(j)(1)	CA39L000052	NP	120.7	8/31/96	37	59	60
						236(j)(1)	CA39M000209	NP	117.9	5/31/98	22		
Keller Plaza	5321 Telegraph Ave	Oakland	94609	Alameda	9	236(j)(1)	CA39L000054	LD	67	8/31/96	90	168	200
						236(j)(1)	CA39M000173	LD	67	8/31/97	78		
Park Villa	1221 E 20th St	Oakland	94606	Alameda			CA39L000050	UNK	0	8/31/96	54	54	54
Beth Asher	3649 Diamond Ave	Oakland	94602	Alameda	9	236(j)(1)	CA39L000051	NP	103.8	9/30/96	30	49	50
						236(j)(1)	CA39M000193	NP	101.3	5/31/98	10		
						236(j)(1)	CA39M000325	NP	100	9/30/96	9		
Satellite Snr Home 5 Sit	540 21st St	Oakland	94612	Alameda	9	236(j)(1)	CA39L000067	NP	91.2	9/30/96	200	344	352
						236(j)(1)	CA39L000290	NP	90.3	7/31/97	30		
						236(j)(1)	CA39M000154	NP	92.1	7/31/97	70		
						236(j)(1)	CA39M000326	NP	93.2	9/30/96	44		
St Patrick's Terrace	1212 Center St	Oakland	94612	Alameda	9	236(j)(1)	CA39L000060	NP	113.4	9/30/96	40	65	66
						236(j)(1)	CA39M000199	NP	113.6	6/30/98	25		
Northgate Terrace	550 24th St	Oakland	94612	Alameda	9	202	CA39M000332	NP	73.5	9/30/96	96	155	155
						202	CA39M000377	NP	72.9	9/30/98	59		
Lake Merritt Apts	1417 First Ave	Oakland	94606	Alameda	9	221(d)(4)	CA390009004	PM	115	6/15/97	54	54	55

**Project-Based Section 8 Expirations
Alameda County
Sorted by City and Expiration Date**

Project Name	Project Address	Project City	Zip Code	County	Cong. Dist.	FHA Insurance Program	Section 8 Number	Owner Type	Rent % FMR	Section 8 Expiration Date	Sec. 8 Units	Sec. 8 Units in Project	Total Units
Rose Of Sharon	1600 Lakeshore Ave	Oakland	94606	Alameda	9	236(j)(1)	CA39L000287	NP	74	7/31/97	42	88	141
						236(j)(1)	CA39M000264	NP	73.1	5/31/99	28		
						236(j)(1)	CA39M000368	NP	71.9	9/30/98	18		
Oak Center #1	1601 A Market, #101-#307	Oakland	94607	Alameda	9	236(j)(1)	CA39L000090	LD	69.1	10/31/97	78	78	79
Mor Housing I	720 Union St	Oakland	94607	Alameda	9	236(j)(1)	CA39L000088	LD	76.3	10/31/97	125	125	126
Lottie Johnson Apts	970 14th St	Oakland	94607	Alameda	9	236(j)(1)	CA39L000087	NP	76.3	10/31/97	25	25	27
Park Village	3761 Park Boulevard Way	Oakland	94610	Alameda	9		CA390009006	PM	128.4	5/23/98	84	84	84
Lakeside Apts	136 130-14 East Twelveth	Oakland	94606	Alameda	9	221(d)(3)	CA39M000207	LD	96.7	6/30/98	66	66	66
S & S Apartments	2235 Inyo Ave	Oakland	94601	Alameda	9		CA39E000008	UNK	81.9	9/4/98	5	5	5
Casa De Las Flores	3430 Foothill Blvd	Oakland	94601	Alameda	9	236(j)(1)	CA39L000131	LD	113.8	12/31/98	20	20	20
Garden Manor Square	1275 1/2 99th Ave	Oakland	94603	Alameda	9		CA39E000011	UNK	71.4	1/9/99	71	71	71
Posada De Colores	2221 Fruitvale Ave	Oakland	94601	Alameda	9	202	CA390218201	NP	121	5/24/99	100	100	100
Westlake Christian Terra	275 Twenty Eight St	Oakland	94611	Alameda	9	236(j)(1)	CA39M000257	NP	69.4	5/31/99	40	40	200
Westlake Christian Terra	251 Twenty Eight St	Oakland	94611	Alameda	9	202	CA39M000256	NP	59.1	5/31/99	23	91	91
						202	CA39M000376	NP	57.8	9/30/98	68		
Apollo Housing	1065 8th St	Oakland	94607	Alameda	9	236(j)(1)	CA39E000015	LD	114.8	8/31/99	231	231	231
Southlake Tower	1501 Alice St	Oakland	94612	Alameda	9	221(d)(4)	CA390023002	PM	137.4	11/5/99	130	130	130
Pleasanton Greens	3819 Vineyard Ave	Pleasanton	94566	Alameda	10	236(j)(1)	CA39M000157	LD	64	7/31/97	26	26	131
Pleasanton Gardens	251 Kottinger Dr	Pleasanton	94566	Alameda	10	236(j)(1)	CA39L000302	NP	56.9	9/30/97	14	31	40
						236(j)(1)	CA39M000150	NP	56.4	8/31/97	8		
						236(j)(1)	CA39M000358	NP	56.9	9/30/97	9		
Eden Lodge	400 Springlake Dr	San Leandro	94578	Alameda	13	202	CA392976201	NP	89.7	10/9/00	143	143	143

**Project-Based Section 8 Expirations
Alameda County
Sorted by City and Expiration Date**

Project Name	Project Address	Project City	Zip Code	County	Cong. Dist.	FHA Insurance Program	Section 8 Number	Owner Type	Rent % FMR	Section 8 Expiration Date	Sec. 8 Units	Sec. 8 Units in Project	Total Units
Ashland Village Apts	1300 Kentwood Ln	San Leandro	94578	Alameda	10	221(d)(4)	CA390084001	PM	115.7	1/15/04	142	142	142
Fuller Lodge	2141 2142 Bancroft Ave	San Leandro	94577	Alameda	13	202	CA39T871002	NP	137.3	9/25/11	25	25	25
Luella Fuller Group Home	342 West Joaquin Ave	San Leandro	94577	Alameda	13	202/811	CA39Q911003	NP	76.3	2/28/14	6	6	6
Fargo Senior Center	868 Fargo Ave	San Leandro	94579	Alameda	13	236(j)(1)	CA39L000304	NP	55.8	9/30/97	14	29	75
						236(j)(1)	CA39M000145	NP	54.2	7/31/97	15		
Walnut Grove Apartments	450 Stoney Point Rd	Santa Rosa	94502	Alameda	6	221(d)(4)	CA390059007	PM	99.8	7/15/01	104	104	104
Adrienne Village	31755 Alvarado St	Union City	94587	Alameda	13	221(d)(4)	CA390079008	PM	113.8	8/2/03	15	15	75
Los Robles Apts	32300 Almaden Blvd	Union City	94587	Alameda	13	236(j)(1)	CA39M000176	LD	55.8	7/31/97	42	42	140

**Project-Based Section 8 Expirations
Alameda County
Sorted by City and Expiration Date**

Project Name	Project Address	Project City	Zip Code	County	Cong. Dist.	FHA Insurance Program	Section 8 Number	Owner Type	Rent % FMR	Section 8 Expiration Date	Sec. 8 Units	Sec. 8 Units in Project	Total Units
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(* Note that the Total Unit value originally provided by HUD for this record was incorrect. We have substituted Total Assisted Units as a best guess at the true value, but this may render the following totals incorrect.)

Summary:	Projects	Total Units	Section 8 Units
	91	7889	6626

Section 8 Expiration by (Fiscal) Year

<u>Year</u>	<u>Units</u>
1996	1115
1997	457
1998	889
1999	641
2000	611
2001	608
2002-2006	869
2007-2011	953
2012-later	483
total	6626

Type of Owner:

For Profit:

LD Limited Dividend

PM Profit Motivated

Nonprofit:

NP Nonprofit

MAN Management-Type Cooperative

PB Public Body

UNK Unknown

Expiring Project-Based Section 8 Contracts State of California

County	Number of Projects	Total Section 8 Units
Alameda	91	6626
Amador	2	112
Butte	14	679
Calaveras	2	27
Colusa	3	102
Contra Costa	42	3437
El Dorado	5	313
Fresno	38	3027
Glenn	2	114
Humboldt	7	488
Imperial	15	413
Inyo	1	6
Kern	32	1261
Kings	6	286
Lake	5	208
Lassen	2	61
Los Angeles	723	39374
Madera	2	121
Marin	21	742
Mendocino	11	447
Merced	8	364
Modoc	2	111
Monterey	11	557
Napa	8	391
Orange	56	4406
Placer	9	456
Plumas	1	47
Riverside	48	3078
Sacramento	105	5897
San Benito	1	48
San Bernardino	41	3299
San Diego	94	9818
San Francisco	89	8042
San Joaquin	19	1399
San Luis Obispo	8	305
San Mateo	20	1465
Santa Barbara	10	570
Santa Clara	80	7014
Santa Cruz	18	1477
Shasta	7	336
Siskiyou	12	365
Solano	23	1471
Sonoma	22	1297
Stanislaus	14	1108
Sutter	4	165
Tehama	6	295
Tulare	10	658
Tuolumne	3	106
Ventura	10	616
Yolo	21	880
Yuba	5	439

PROFILE OF SECTION 8 PROJECT-BASED HOUSING STATE OF CALIFORNIA

Overall Inventory

Total Assisted Units	111,797
Total Residents	234,118
Total Projects	2,441
Percentage of Units FHA-Insured	60%
Percentage of Senior Residents	44%
Median Household Income	\$9,300

Expirations by Year	Total Units	Percentage	Resident
Fiscal Year		Of Units	Population
1996/1997	31,178	28%	61,172
1998	14,123	13%	27,995
1999	13,698	12%	26,844
2000	10,337	9%	20,431
Post-2000	42,548	38%	80,875
TOTAL	111,884	100%	217,317

Contract Rent Levels	Total Units	Percentage of Units
Below Fair Market Rent	58,691	52%
100-120% FMR	25,827	23%
Over 120% FMR	27,276	24%
TOTAL	111,794	99%

Unit Distribution by Bedroom Size	Total Units	Percentage of Units
0 Bedroom	15,794	14%
1 Bedroom	55,221	49%
2 Bedrooms	26,945	24%
3+ Bedrooms	13,696	12%
TOTAL	111,656	100%

Section 8 Householders by Race	Section 8 Units	All Calif. Households
African-American	19%	7%
Hispanic	21%	17%
Asian American	15%	7%
Other	45%	69%
TOTAL	100%	100%

Prepared by California Housing Partnership Corporation, June 1997.

Data Source: U.S. Dept. of Housing and Urban Development, "National Inventory of Project-Based Section 8 Contracts," and "A Picture of Subsidized Housing, 1997."

APPENDIX

APPENDIX: HOUSING WEB SITES

Housing & Urban Development (HUD)

HUD's national web site begins at <http://www.hud.gov>. The web site is searchable, includes a site map, and is cross-referenced for easy navigation by different groups of visitors, such as Students/Researchers, Non-Profits, State/Local Government. See: <http://www.hud.gov/interest.html>.

Some useful pages at the HUD site:

HUD's Major Programs <http://www.hud.gov/hudprog.html>.

Section 8 program Fact Sheet <http://www.hud.gov/section8.html>.

"HUD on Your Side" Consumer Info <http://www.hud.gov/consum.html>.

"Housing Bookshelf" of HUD's On-Line Library <http://www.hud.gov/bshelf2.html>.

HUD San Francisco Office Home Page <http://www.hud.gov/local/sfc/sfchome.html>

Office of the Secretary's Representative http://www.hud.gov/local/sfc/sfc_art.html

San Francisco Office Partnerships with other Northern California Cities

<http://www.hud.gov/local/sfc/sfcartoc.html>

HUD's California State Office has detailed info about HUD operations in the Bay Area and northern California as well as info on HUD national programs:
<http://www.hud.gov/local/sfc/sfchome.html>

HUD's Office of Policy Development and Research (PD&R) operates an information clearinghouse called HUD USER. A statement about PD&R's responsibilities is currently posted at: http://www.hud.gov/func_pdr.html. A searchable database of info and publications available from HUD USER is at: <http://www.huduser.org/> (<http://www.huduser.org/publications/pubs.html> for non-frames web browsers).

Office of University Partnerships (OUP), which is also run by PD&R, oversees several university-based programs. Info on OUP is at: <http://www.oup.org/>.

The Institute of Urban and Regional Development (IURD) <http://www.ced.berkeley.edu/iurd/>

IURD is an Organized Research Unit at the University of California at Berkeley, whose purpose is to assist campus faculty and students in finding and administering research grants on topics related to cities and regions. They hold interdisciplinary seminars and workshops, and associates meet with public officials on issues of public policy. They have received funding under the following OUP programs: Community Development Work Study Fellowship Program, Community Outreach Partnership Center (COPC) Program, and Joint Community Development (JCD) Program. See IURD's Community Partnerships page, at <http://www.ced.berkeley.edu/forum/>.

American Association of Homes and Services for the Aging <http://www.aahsa.org> AAHSA represents not-for-profit organizations dedicated to providing high-quality health care, housing and services to the nation's elderly. Its membership consists of over 5,000 not-for-profit nursing homes, continuing care retirement communities, senior housing facilities, assisted living and community services.

California Association of Homes and Services for the Aging <http://www.aging.org> CAHSA is one of largest state associations in the nation representing not-for-profit services and for the elderly. CAHSA members are non-profit organizations, providing high quality health care, services and housing for over 60,000 seniors in California.

California/Nevada Community Action Association <http://www.cal-neva.org> Cal-Neva) represents the concerns of over four million impoverished Californians and Nevada residents - children, the elderly, the unemployed, and the homeless.

Citizens' Housing and Planning Association (CHAPA) <http://www.chapa.org> CHAPA is the non-profit umbrella organization for affordable housing and community development activities throughout Massachusetts.

FedLaw <http://www.legal.gsa.gov> Fedlaw is a great references tool for legal information.

Habitat for Humanity International <http://www.habitat.org> This action-based organization is gathering volunteers for the construction of housing in low income areas nationally and internationally. Former President Jimmy Carter is identified widely with this organization.

Housing Assistance Council <http://www.ruralhome.org> HAC provides seed money loans, technical assistance, program and policy analysis, research and demonstration projects, training, and information services to public, nonprofit, and organizations nationwide who are concerned about affordable housing for low-income rural Americans.

Housing Authority of the City of Los Angeles (HACLA) Home Page <http://www.hacla.org>

Housing Link – The McAuley Institute <http://www.housinglink.com/mcauley.htm> HousingLink provides information on housing and community development issues, such as databases, current news, bibliographic resources, publications, forums, and referrals to other sources. McAuley Institute, Secretariat of the Women and Housing Task Force, is a national housing resource organization committed to the creation of housing, the empowerment of local residents and the revitalization of communities throughout the United States.

National Association of Community Action Agencies (NACAA): <http://www.nacaa.org>

National Coalition for the Homeless <http://www2.ari.net/home/nch/> NCH provided leadership in the successful effort to pass the Stewart B. McKinney Homelessness Assistance Act in 1987. Since then, NCH has continued to monitor the reauthorization and appropriations process for McKinney Act programs and other programs affecting poor and homeless people. For current legislative and policy issues: <http://www2.ari.net/home/nch/legislat.html>. NCH's Directory of Local Homeless Service Organizations can be found at: <http://www2.ari.net/home/nch/local/local.html>

National Cooperative Bank <http://www.ncb.com> This bank with its subsidiaries finance housing and development capital.

National Housing Institute <http://www.nhi.org> This is a progressive housing organization that has been in existence for 20 years supporting affordable housing. Includes current and back issues of their *Shelterforce* publication.

National Low Income Housing Coalition <http://www.nlihc.org> The NLIHC is committed to educating, organizing, and advocating to ensure decent, affordable housing within healthy neighborhoods for everyone. NLIHC provides up-to-date information, formulates policy, and educates the public on housing needs and the strategies for solutions.

NeighborWorks® and the Neighborhood Reinvestment Corporation <http://www.nw.org/> This network promotes the creation of healthy communities through affordable housing, home ownership and investments in neighborhood revitalization through local partnerships of residents, nonprofits, lenders, business community and local government.

Public Housing Authorities Directors Association (PHADA) Home Page <http://www.phada.org> is a professional trade association representing public housing authorities from across America. Their online publication of the *Advocate* can be found at: <http://www.phada.org/house/advocate.html>

San Francisco Housing Authority (SFHA) Home Page <http://www.ci.sf.ca.us/sfha>

Texas Low Income Housing Information Service <http://uts.cc.utexas.edu/~txlihis>

U.S. Congress on the Internet <http://thomas.loc.gov>

The United States Senate <http://www.senate.gov>

The White House <http://www.whitehouse.gov/WH/Welcome.html>