

Americans for Democratic Action



Low Income Housing

WHAT'S WRONG AND WHAT WE CAN DO ABOUT IT.

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An Organization for Liberal Activists



Households with incomes less than 80% of the median for the area in which they live qualify for the federal government's deep subsidy rental housing assistance. There are over 19 million qualifying households. Fewer than 5 million receive assistance.

This assistance is not an entitlement. Those who seek it must apply and often must wait years before it is provided, if at all. What the successful ones receive is a subsidy equivalent to the difference between 30% of the household's adjusted income and the fair market rent for the unit provided. The rental unit may be in a public housing facility, a privately owned structure operated under a contract with the government, or one found on the open rental market where government vouchers are acceptable.

In public housing and that operated under contract, rent is charged based on the tenant's responsibility to contribute 30% of income, adjusted for factors such as the number of minor dependents. This is generally referred to as "project-based" assistance. In other facilities, tenants are provided with vouchers representing the government's subsidy of the difference between 30% of income and the fair market rent for the unit to be occupied. This is termed "tenant-based" assistance.

The United States has supported home ownership through most of its history. From the Ordinance of 1785, providing land for veterans' homes, and the Homestead Act of 1862, opening opportunities for all citizens to settle on their own property, there have been government incentives for families to build or buy their homes.

GETTING STARTED

The federal government's first real venture into providing low-income rental housing was a result of the National Industrial Recovery Act (1933). Aimed primarily at clearing slums and providing jobs, the Act authorized the Public Works Administration to construct housing that would be provided at a low cost to tenants. About forty thousand units were produced before a United States Court of Appeals held that the federal government's use of Eminent Domain power for this purpose was unconstitutional. The court found that "individual states have power to enter into low-cost housing and slum-clearance projects within their borders....[but]

the police power is reserved to the states under the Tenth Amendment." (United States vs. Certain Land in the City of Louisville, Jefferson County, Kentucky, 9 F Supp.. 137 (W.D. Kentucky), aff'd 78 F. 2d 681 (6th Cir.), dismissed, 294 U.S. 735 (1935). 297 U.S. 726 (1936).

The first public housing bill was introduced in Congress by Senator Robert Wagner in 1935 "to further industrial recovery through the employment of labor and materials." The bill died in committee, but in 1936, Senator Wagner tried again.

The legislation did not have much support in the Democratic Administration of Franklin Roosevelt. The party's housing plank in 1936 made no mention of public or low-income housing, only ownership. But when the Wagner bill passed the Senate, Roosevelt saw it as an opportunity to get something out of a Congress that had enacted none of his proposals after he had made an effort to "pack the court." So the Wagner-Steagall Housing Act was "steamrolled" to the president's desk. (Welford)

To avoid the Eminent Domain problems faced under the National Industrial Recovery Act, the legislation left land acquisition to the local housing authorities and costs were covered by Annual Contribution Contracts, federal subsidies equal to the principal and interest on local bonds. The use of yearly payments reduced the initial fiscal impact on the budget, except for the tax exempt status of the bonds (which was well hidden).

The low-income families served under the Act were defined by earnings as a multiple of rent. The costs of construction were limited to \$4000 per unit and \$1000 per room, except in large cities where the costs could be \$5000 and \$1500, respectively. Only those families that had enough financial resources to be a reasonable risk were accepted, those who "needed a break to tide them over." A move to disqualify families receiving welfare failed, but many housing authorities discriminated against them

The legislation linked all new low-rent housing to slum clearance on a one for one basis. The requirement was intended to assure the realty lobby that the housing stock would be replaced and not augmented.

Public housing is still owned and operated by local public housing authorities (PHAs), which are not structured consistently throughout the country. Most have executive directors who report to a Board, others to mayors. Some are part of the local housing department. In large urban areas there are usually several PHAs serving the population. And in some cases a state PHA oversees public housing for all areas within the state where there is no local authority. However, federal rules govern their operations and each PHA must submit an annual plan to the Department of Housing and Urban Development (HUD) addressing nineteen statutory provisions. Some claim that little is done to monitor compliance with the plan.

WHAT HAPPENED NEXT

The Housing Act of 1949 is often cited as the federal government's first commitment to a National housing program. The Act promised "a decent home and a suitable living environment for every American." But once again the primary focus was on slum clearance and economic opportunity.

However, it was estimated that there would be a need for more than 20 million housing units in 1950 and there would have to be some provision for the dwellings be razed by urban renewal efforts. So, the Act authorized 810,000 new units of low-income housing. It also prohibited discrimination against families receiving welfare and gave priority to those displaced by public construction and urban renewal. It also removed the per unit cost basis, leaving the restriction on per room costs, thereby allowing units to be constructed to accommodate large families.

In another nod to the building industry, the Act required that there be a 20% gap between the top public housing rent permitted in an area and the lowest rent for unaided private rental units.

The realty lobby had been out in force to defeat new public housing authorizations. According to Lawrence J. Vale (Vale,2000), the National Association of Home Builders urged

their affiliate members to "accuse your housing authority of squandering funds." And other pro-realty organizations urged that photographs of television sets playing in public housing be taken so that "ordinary citizens without them" would be enraged.

Also, due to the influence of the building industry, the Lanham Act had provided that all temporary housing constructed for war workers be demolished or sold privately at the end of World War II. Most of the 700,000 units were in such bad condition that tearing them down was the only real option.

According to Irving Welford, during the entire decade of the 1950's, fewer than 250,000 units of public housing were constructed.

In 1956, the definition of "family" was amended to include a single person over the age of 62. About 10% of public housing units were occupied by an elderly citizen in 1952. By the mid-1960's, half of the public housing starts were units designed for the elderly. At the end of 1968, 38% of units were occupied by the elderly and the average income for these occupants was \$1800.

The role of the building industry changed in the 1960's. The National Association of Home Builders no longer saw public housing as a threat and had no interest in being involved.

"The Housing Act of 1949 is often cited as the government's first commitment to a National housing program"

Federal attention was being given to those above the public housing income level - small subsidies per unit could help more in the moderate income group and increase construction.

The 1965 Housing and Urban Development Act authorized PHAs to lease privately owned property for federally subsidized housing. The leased units were then sublet to low-income tenants. The new authority was first interpreted as excluding new construction for this purpose. Someone opined that "existing" structures should be read as opposed to "nonexisting" and that the program could support new construction. The leasing program became a low-income construction program, taking the name of its place in the Act, Section 8.

The newly constructed low-income housing engendered resentment on the part of some who viewed the housing as

too good for the undeserving. There were complaints that a working couple could not obtain housing of comparable quality on the open market.

President Nixon proposed a moratorium on the production of subsidized housing pending an evaluation. What followed was the enactment, in 1974, of the Community Development Block Grant program. Under the terms of the Act, grants were allocated by formula to state and local jurisdictions to be used for parks, recreational facilities and other features that serve areas providing affordable housing.

Very significantly, the 1974 Act authorized rental subsidies for units not owned or leased by PHAs. For the first time, households receiving rental assistance could choose the units they would live in rather than being tied to a identified structures.

The Act also redefined households eligible for public housing as those with incomes under 80% of an area's median adjusted family income. It should be noted that this followed the Brooke Amendment of 1961, which had capped rent in public housing to 25% of income (later raised to 30%). Consequently, only 25% of extremely low incomes could be collected in rent.

CHANGES AHEAD

Under the Reagan administration, almost all rental assistance was directed to only the “very low” income households. These are households with incomes under 50% of the area median. Costs soared.

Now attention was given to the question as to whether the federal rent subsidy program should be based on commitments to builders and developers or on tenant-based vouchers. The President's 1982 Commission on Housing responded by stating that biggest problem was not the quality of housing, but its affordability. The purpose of federal assistance, it said, “should be to help people, not to build projects.” (The President's Commission on Housing, Final Report (GPO 1982).)

The 1980s also brought a number of tax changes that favored private construction of housing aimed at low-income occupants. Shorter depreciation life and more accelerated depreciation for low-income housing helped to encourage rental construction. And the Tax Reform Act of 1986

provided tax credits for investors in such housing.

Generally, the 1986 Tax Act discouraged real estate investment except in home ownership. To offset the adverse effect these changes would have on low-income housing development, the Low Income Housing Tax Credit (LIHTC) program was added to the legislation. The program was made permanent in 1993.

Under this very complicated program, tax credits are allocated to the States based on population. In 2002, the amount was set at \$1.75 per person and indexed for inflation. The credits are used to decrease developers' costs in financing low-income housing. The developers may take the credits themselves or, as is more often the case, pass them on to investors based on their commitments to a project. Those using the credits must have a stake in the properties, so investors often form a limited partnership which holds a large interest in a housing facility. The developer retains a small financial interest and manages the property.

In 1995, over 400,000 projects benefitted from this program. By 2005, that number had grown to 1.53 million. By 2006 over 30% of all new multifamily construction received tax credit assistance.

In 1992, the National Commission on Severely Distressed Public Housing released its report. It found, among other things, that public housing structures were deteriorating, their occupants were in need of services and that upkeep on structures was taking a disproportionate amount of PHAs operating budgets. More than 80% of occupants were found to be below the poverty threshold.

The Congressional response to the commission's report was the authorization of what has been called “the most ambitious comprehensive redevelopment program yet undertaken” (Vale, 2000). It was called HOPE VI. (HOPE is an acronym for Homeownership and Opportunity for People Everywhere, which demonstrates the lengths to which some will go to have a catchy title.)

Under the provisions of the legislation and its implementing regulations, PHAs could get grants of up to \$50 million for the redevelopment of up to 500 housing units. They could use 20% of the grants for social services and economic development initiatives.

In 1994, HUD encouraged PHAs to use HOPE VI as a catalyst for getting support from other sources, using LIHTC and block grant funds and other funding sources, to form mixed income communities. New neighborhoods would be made up of homeowners living alongside those in assisted housing and tenants paying market rents.

In 1995, the requirement of one for one replacement of demolished housing was eliminated.

IF AT FIRST YOU DON'T SUCCEED

HOPE VI did not spring from nowhere. The notion of pushing the poor to better themselves while dispersing them across urban and suburban areas had been in the trials for some time.

Throughout the years, numerous demonstration and short-term projects have been undertaken, some by congressional mandate and others by court order, to find what services or circumstances are most advantageous to low-income families and individuals who qualify for public housing. What is advantageous, of course, is defined by those who design the program.

Project Self-Sufficiency, begun in 1984, was aimed at single-parent households who were on waiting lists for housing assistance. Over 150 communities participating in the project were given 10,000 Section 8 housing certificates to be used in the program and the communities provided services such as job training and counseling, child care, education and transportation. A 1988 evaluation showed that 42% of participants got full-time jobs or went to college. The average wage of earners was \$5 an hour.

Operation Bootstrap expanded Project Self-Sufficiency to include two-parent families, but participation was predominantly single mothers. Employment among participants increased from 40 to 49%, but fewer than half the workers earned \$4.25 an hour or more. The number of unemployed looking for work increased. One evaluation of the program suggested that “the promise of quick housing assistance was the predominant motive for application.”

The Family Self-Sufficiency program was limited to current Section 8 residents. The program featured escrow accounts for tenants. When family incomes went up, the amount

that would otherwise have been paid as additional rent was deposited into accounts. The tenants could use the money for program-approved expenses, such as education, but otherwise it was held until the tenant completed the program and got off welfare. Unsuccessful participants could be put out of Section 8 housing, but not project-based public housing.

In 1966, six African-American Chicago public housing residents and applicants brought class-action lawsuits against the Chicago Housing Authority (CHA) and the Department of Housing and Urban Development (HUD) claiming racial discrimination. The claims were that between 1950 and 1965, CHA, with the approval of HUD, deliberately placed public housing “within areas known as the Negro Ghetto” to “avoid the placement of Negro families in white neighborhoods” in violation of federal statutes and the Fourteenth Amendment.

The District Court stayed the action against HUD pending resolution of the CHA matter and entered a judgment against CHA. It ordered CHA to build family units in predominantly white neighborhoods. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736.

Subsequently, the District Court dismissed the action against HUD, but the action was overturned by the United States

Court of Appeals which ordered the District Court to enter summary judgment for the original plaintiffs because HUD had sanctioned a racially discriminatory housing program.



The matter reached the Supreme Court in 1976, not on the basis of the finding of discrimination, but on the geographical scope of the remedy to be provided. *Gautreaux v. Hills*, 425 U.S. 284. The Court of Appeals decision to remand the case to the District Court for the formulation of a remedy was affirmed. As part of that remedy, the Gautreaux Program was launched, named for tenant activist Dorothy Gautreaux.

Under the program, families were provided with tenant-based vouchers and housing counseling services to relocate in either predominantly white or racially mixed neighborhoods.

By the late 1980's, studies showed that the families' living conditions had improved. They held better jobs and, after an initial decline in school performance, children were dropping out of school less often and were more likely to take college-track classes. Young people were also more likely to attend four-year colleges or to find full-time employment.

The causal link between the results reported and the families' moves to new neighborhoods was not clear. A major question was whether or not the families' decisions to join the program was an indicator that influenced the results. Was their participation based on their concerns about education and opportunities for family members and did this play an important role in the results?

TAKING ACTION

Moving to Opportunity (MTO) was an ambitious program enacted by the Congress and designed to find the answers to the questions raised about the Gautreaux results. MTO was begun in 1994 and continued over ten years in five cities (Baltimore, Boston, Chicago, Los Angeles and New York City).

Families with minor children were recruited from assisted low-income housing programs in the poorest parts of the cities. The families were divided into three groups. The families in one group (the experimental group) were given tenant-based vouchers to be used only in low-poverty neighborhoods and they were provided with assistance from local counseling services. A second group of families was given tenant-based vouchers to be used without restrictions. This group had access to the counseling services for the general assisted housing population, but no enhanced services were provided. Those in the third group stayed where they were.

A mid-point report on the program was conducted in 1999. The findings are based on limited data because some of the families that moved did not do so until 1998 or 1999.

Under half of the families in the experimental group moved to low-poverty neighborhoods. Over 60% of the group with unrestricted vouchers moved.

Counseling was found to be a very important factor in the

families' experiences in the program. It played a significant role in all aspects of the families' lives, starting with finding housing. Locating rental units in low-poverty area was very difficult and many landlords had no experience with very low-income tenants. Managers of most large rental properties were unwilling to rent to MTO families, making contacts with owners and managers of smaller properties vital. In some locations, a history of late payments for vouchers and the inspections of property inhabited by those with vouchers caused problems for potential landlords.

The HUD report, though said by HUD to be based largely on anecdotal evidence, stated that families that moved to low-poverty areas had fewer teen arrests, better jobs and pay. Some families had better health benefits.

A prime motivation for heads of families to join MTO was fear of crime in their old neighborhoods. HUD reported less fear among the relocated families.

Some families reported pressures from children for clothes and other things that the young people had in their new, low-poverty communities and schools.

While MTO was designed, in part, to determine whether or not self-selection played a significant part in the outcomes of the Gautreaux experience, families in MTO also elected to participate.

HOPE VI was a contemporary of MTO and both were based on the notion that very low-income families benefit from being integrated into low-poverty neighborhoods.

According to Vale (2000 at 315), there are six common goals in HOPE VI projects across the country: (1) deconcentration of very low-income families; (2) mixed income communities;

(3) demolition or major renovation to remove the public housing "look"; (4) urban design strategies; (5) "family self-sufficiency" programs; and (6) residents' involvement in management. And, he states, "[These trends]

suggest that public housing development under HOPE VI has become not only a process for redeveloping housing, but a way to redevelop tenants as well."

“Unfortunately, progress in recent history has been hindered by the attitude held by so many that we just need a better class of low income citizens.”

In its first fifteen years, the HOPE VI program funded 235 projects at a cost of \$6.1 billion. 96,000 units of low-income housing were demolished and 107,800 new housing units were constructed, 56,800 for lowest income households. The elimination of the requirement that a demolished unit be replaced had already caused a loss of nearly 40,000 low-income homes. Some cities have made a commitment to continue one-for-one replacement, but not many.

If this government effort continues to be the centerpiece of its housing plan for low-income families, is it worth the price?

Mark Joseph (Joseph) reviewed the perceived benefits of mixed income neighborhoods to low-income families by dividing them into four categories.

- **Social Networks.** Some suggest and cite evidence for the proposition that exposure, that is living in proximity, to people of a higher income level is advantageous. The advantages are claimed to be greater when there are opportunities for community interchanges in common spaces, such as parks and recreational areas. Others disagree, holding that there must be some real or perceived commonality before spacial interaction has any bearing on values or behavior. The demonstration programs have not shed much light on this.
- **Social Control.** Professional writings on the subject and some evidence from the demonstration programs indicate that middle and higher income families will lead their poorer neighbors to be more accountable and have a more positive response to rules and regulations.
- **Culture and Behavior.** This subset arises from the “hotly debated notion of a ‘culture of poverty’” (Joseph). Will other income groups influence the low-income residents to seek employment, respect property and attend school more regularly? Experience indicates that living in mixed income neighborhoods (or low-poverty areas) does have a positive effect on children and adolescents in the areas of education, health and some aspects of social interaction. The benefits are greater when the contact is direct and not simply observing neighbors going to work or school.
- **Political Economy of Place.** To what extent do higher income families bring better schools, services and commercial development to a neighborhood? Widespread experience has shown that parental efforts improve schools, through personal participation and pressure on authorities. And the demonstration programs have shown some evidence that moving children to low-poverty areas resulted in a lower school dropout rate and better employment. But couldn't these achievements be reached through the political process? Better stores go to wealthier neighborhoods.

A fact that must not be neglected in evaluating any program is that the poor have different needs. A personal support network with relatives or friends in a high-poverty area may be preserved when a mixed-income project replaces a large public housing complex. A move to a low-poverty area may result in families' losing this network, or retaining some part of it only through personal efforts and costs.

provide decent housing for low-income Americans.

Bad management doesn't. Delinquency in making payments for vouchers and the failure of HUD to enter into contracts with PHAs in a proper and timely manner has hurt the effort. Budget manipulation by paying rent late became so common that it has become a practice.

For some, especially the elderly and disabled, project-based assistance may be the best. Many public housing complexes have rental units that are designed to accommodate their needs for special access and equipment to promote independence. Sixty years after the Housing Act of 1949, we have a lot of opinions about what works and what does not in the effort to

And there have been serious allegations of outright chicanery in the pricing of housing units. There have been claims that private property managers have contrived to escalate the fair market value of their rental units to increase the amount of the Section 8 payments. This could have serious implications for the fiscal condition of the housing program since the

payments cover the difference in the fair market value and 30% of the tenants' incomes.

Throughout the federal government's long relationship with Public Housing Authorities, the basic operation of assisted low-income housing has been left in the hands of State and local organizations. Furthermore, the federal government has relied upon the exercise of the States' power of Eminent Domain to obtain much of the land that has been devoted to assisted housing. While it has not become evident in the literature, States' actions in response to the Supreme Court decision in *Kelo v. City of New London*, 545 U.S. 463 (2005), could have an impact on this reliance.

The issue in the *Kelo* litigation was whether or not the taking of the homes of the plaintiffs so that the land could be incorporated in a development plan was for "public use." It was determined that it was because the development was to serve a "public purpose."

Whether or not the *Kelo* decision made a significant change in the law of Eminent Domain, it received a lot of news coverage and governmental attention at the State and National levels. Much of it focused on Justice O'Connor's dissenting statement, in which she suggested that the holding would allow the taking of an inexpensive motel for the construction of a more tax-lucrative expensive hotel. The majority of state legislatures viewed the decision as a threat to private landowners and responded by enacting statutes designed to limit the taking of land for economic development.

Thus far, most of the legislation does not appear to have a direct impact on takings for assisted housing, but it has not been tested and some of the many variations of actions could handicap PHAs in their efforts to obtain land, especially for HOPE VI community based efforts. Certainly, any like the Indiana statute which requires payment of 150% of fair market value for the taking of a private home could have a chilling effect on some land acquisition efforts.

There should be a review of the State legislation and HUD or some other appropriate Executive Branch agency should work with the states where problems may occur to remedy any problems.

We know that counseling can improve families' chances of finding rental units that will accept vouchers, especially in low-poverty area. Section 8 is very confusing and orientation sessions should provide more information and assistance, especially for those who do not speak English as a first language.

Experience indicates that heads of households often don't understand the mobility factor in using vouchers and do not have information about many neighborhoods where the vouchers can be used. Since they are generally given only 60 days to find a rental unit, many lose their opportunities for better housing because they don't know how to find it. Better orientation sessions and greater outreach to landlords could bring better results.



There are also expenses involved in using vouchers. One must travel to find housing, incurring costs. Some must pay for credit checks. Most must pay application fees and then make security deposits once housing is found. Federal or local assistance should help with these costs. Some PHAs have loan programs for some expenses, especially security deposits.

What we do not know is how to design the voucher program so that greater mobility can be attained. Families should be able to move from one PHA area to another without losing their places on waiting lists for vouchers. There should be a study on ways to allow families to use vouchers across borders that define PHAs jurisdictions.

Unfortunately, progress in recent history has been hindered

by the attitude held by so many that we just need a better class of low income citizens.

In 1949, there seems to have been a general consensus that very low income citizens had been held back by discrimination or lack of opportunity, or both. It was recognized that there were deserving people in poverty, veterans and victims of the Great Depression among them.

Over the years, too many have viewed the economically depressed as victims of their own “bad choices,” a term often used by critics of public housing. Some of the names given to demonstration programs reflect this as they incorporated

terms such as self-sufficiency, Moving To Work and Operation Bootstrap.

Denigrating acts by legislatures sometimes fueled negative conceptions. Requiring those with public housing assistance to perform eight hours of community service each week is one example. Fortunately that has been repealed. Placing increased rents in escrow for legislatively stipulated purposes is another.

Absent proof that the worth of individuals can be measured by their financial status, all deserve to be afforded their dignity.

Here are some other things that could be done.

- Assure that HUD makes payments for housing vouchers on time by making a permanent appropriation for that purpose or by providing automatic transfers to contract holders.
- Allocate vouchers statewide to facilitate moves from one PHA’s jurisdiction to another.
- If one for one replacement of housing units is not provided in a HOPE VI project, require the location of alternative housing with vouchers and counseling prior to final approval of the project.
- Encourage local inclusionary zoning laws through enhanced Community Grants.
- Review and revise the method of determining fair market rents to curtail escalated payments to property owners.
- Establish a commission to review all Federal housing laws with the aim of consolidating overlapping provisions and reducing administrative costs.

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