

INSTITUTE FOR¹⁰⁻⁶⁷
RESEARCH ON
POVERTY DISCUSSION
PAPERS

A NEW LEASE ON LIFE: SECTION 23 HOUSING AND THE POOR

Lawrence M. Friedman

James E. Krier

UNIVERSITY OF WISCONSIN - MADISON



A NEW LEASE ON LIFE:
Section 23 Housing and the Poor

Lawrence M. Friedman*
and
James E. Krier**

*Professor of Law and member of the staff of the Institute for Research on Poverty.

**Associate, Arnold & Porter, Washington, D. C., and member of the Wisconsin Bar.

This research was supported by funds granted to the Institute for Research on Poverty pursuant to the provisions of the Economic Opportunity Act of 1964.

Preface

This article explores the background and the structure of the new leased housing program authorized in the Housing Act of 1965. Under this program, public housing authorities can rent space in privately owned buildings and sublease this space to their tenants. In this way, the Government can speed up the process of providing low-rent housing, and at the same time do away with some of the disadvantages of "project" life, foster economic and racial integration, and provide tenants with a wider range of housing choices than previously.

The program has gotten off to a slow start. Preliminary investigation indicates that in some cities it has achieved at least some of its goals. It has been popular--even with such traditional enemies of public housing as real estate brokers. But actual improvements in the housing conditions of the poor have tended to be marginal, if not token. The finances of leased housing do not permit the poor to rise very far in the housing scale. The program does not crack the walls of the middle-class suburbs; nor does it succeed in affecting the most hard-core slums. Some authorities, too, have been quite cautious in the selection of tenants who represent little risk.

A striking aspect of the program is how much it varies from city to city. For example, some cities restrict it to the elderly, while others have no provision for the elderly. Legal and bureaucratic controls have been in many respects quite loose. Hence the operation of the program is what one might call an example of radical decentralization. Decentralization permits the program to be tailored to local needs, but on the other hand, subjects it to whatever local political, economic, and social barriers stand in the way of what are assumed to be the goals of housing laws.

On the credit side, the leasing program has revived public housing from lethargy and stagnation. It will be able to solve many particular, or local problems (e.g., housing certain very large families). The most desperately poor will not be helped by it; nor is it likely to interfere substantially with existing racial and economic patterns. On the whole, however, the program is a salutary one, even if it falls far short of the claims made by its most ardent proponents.

American public housing began in earnest during the 1930's,¹ and in the early years there were high hopes for the program's success. Since at least the end of the Second World War, however, the program has been unpopular with Congress, and has suffered from a bad press, a bad image, and a consistent poverty of funds and imagination. Governmental disillusionment probably mirrors the fact that the politically active public is itself disillusioned with public housing. In the big cities, public housing is commonly equated with high-rise, highly segregated, high-crime projects, ugly in reputation and design.² The Right has always despised public housing on the grounds that it is socialistic; the Left has come to condemn the program, too, on the grounds that it is dreary, despotic, discriminatory, and dysfunctional. Public housing had become, by the 1960's, one of the least loved Federal welfare programs. It had lost any capacity for major growth, and it was subjected to withering attack.

To some extent, public housing has been more a scapegoat than a villain. It has been judged by its very worst examples; good projects are smeared by the same brush that tars the bad. Then, too, public housing is not the cause of some of the evils from which projects admittedly suffer. Thus, public housing did not create the urban ghetto; the program merely reflects the general pattern of segregation in the community,³ in much the same manner as the neighborhood school system does. It would be self-defeating to abandon public aid to housing because of de facto segregation in high-rise projects, just as it would be foolish to eliminate rather than improve public schools. But whatever the justice of the case, there was in recent years a growing sense that public housing in the traditional form was not the way to break the back of the slums. Something new, something different was needed.

Into this context (or vacuum) came the general pressures for economic and social reform associated in the 1960's with the War on Poverty and the revolt of the minority poor. New plans, programs, and ideas began flowing from and to Washington. Government and foundation money was used to explore ways to make housing available to the poor and yet avoid the standard public housing "project." Rehabilitation of existing dwelling units, small and scattered units of public housing, "turnkey" houses (built by private builders, then sold to housing authorities)⁴ --were suggested and tried. And in 1965, as part of a major piece of housing legislation which also included the rent supplement plan, Congress adopted the so-called leasing or leased housing program (sometimes called "Section 23 housing," after the number of the section of the Housing Act in which it is embodied).⁵

The basic plan of Section 23 is quite simple. Local housing authorities, "for the purpose of providing a supplementary form of low-income housing which will aid in assuring a decent place to live for every citizen," are authorized and encouraged to take "full advantage of vacancies or potential vacancies in the private housing market."⁶ Public housing agencies "shall conduct a continuing survey and listing of the available dwelling units within the community . . . which provide decent, safe, and sanitary dwelling accommodations and related facilities and are, or may be made, suitable for use as low-rent housing in private accommodations. . . ." ⁷ An agency may then notify and "invite" owners of suitable dwelling units to enter into contracts with it (the agency, of course, is restricted to the number of authorized units specified in its annual contributions contract with the Federal Government). Normally, an agency will not rent more than 10 per cent of the units "in any single structure," but it may waive this requirement "because of the limited number of units

in the structure or for any other reason."⁸ The agency and the owner will be the parties to these contracts in the ordinary case.⁹ "The selection of tenants" will be "the function of the owner," subject to the provisions of the annual contributions contract.¹⁰ Rent terms will be negotiated between owner and local authority, and paid directly by the authority to the owner.¹¹ The low-income family will usually pay rent solely and directly to the authority.¹² The owner may "make representations to the agency for termination of a tenancy," but only the agency will have the right to evict.¹³ The lease may run no less than 12 months nor more than 5 years "and shall be renewable" by the parties at the expiration of the term.¹⁴

The new law, in short, grants to local housing authorities the power to lease private homes or apartments for the use of low-income tenants¹⁵ --the power to abandon the concept of the "housing project" and scatter subsidized tenants about the city. Some saw the program, therefore, as "so radically different from conventional public housing" that it could hardly "be called by that name."¹⁶ Ideally, leased housing might crack the wall of race and income segregation. The public housing poor might live as neighbors with the middle class in middle-income apartment buildings or in houses located in middle-income areas. Federal cash contributions would help the subsidized tenant meet his rent by making up the difference between what he could afford to pay and the fair-market rent, which the local housing authority would pay to the owner of the dwelling. All parties would gain--the owner through Federal guarantee of the rent roll, the tenant from his subsidy, society and the authority through expansion of housing programs and increased integration.

The object of this article is to attempt a preliminary assessment of Section 23 housing. Can it succeed in attaining its objectives? Because

the program is so new, much of the assessment must be speculative. In most cities, the program has not been in operation long enough for any final judgment. Moreover, like so many other social welfare programs, a realistic assessment depends upon careful empirical study of the program in the field. Fortunately, passage of the law was preceded by demonstration studies in a number of cities.¹⁷ Further light is shed on the program by documentary and interview data selectively gathered in a number of cities where the program is in operation.

I THE LEGISLATIVE BACKGROUND

Passage of the leasing provisions may have been revolutionary, but if so, it was a silent revolution. A not entirely unkind fate has sentenced the leasing program to deep confusion with the rent supplement program.¹⁸ The rent supplement (or rent subsidy) plan was enacted as part of the same legislation as leasing.¹⁹ It was so controversial that it garnered all the newspaper coverage and disproportionate attention at the House and Senate hearings. Yet both programs appeared to offer poor people a chance to get subsidized housing outside of public housing "projects"-- hopefully in middle income areas.²⁰ Actually, the rent supplement plan was originally proposed by the Administration as an aid for families just above the public-housing income bracket,²¹ the "rich poor" as they were called by one member of Congress.²² This aspect of the rent supplement plan evoked much of the initial furor in Congress;²³ it drew a good deal of unwanted attention upon the program. Even after the program had been changed to benefit only those who would be eligible for public housing, the noise and the controversy did not abate.²⁴ Public attention is not necessarily a help in the passage of welfare laws. Often, those normally

ignorant and unaware of welfare legislation are peculiarly likely to be those who might object to the law if aroused--except for the ignorant and unaware poor, who historically have lacked much political power in the United States. In this instance, publicity and debate nearly killed the rent supplement. Only by heroic effort did the Administration succeed in keeping it alive.

The leasing plan, on the other hand, remained quite obscure. Moreover, it had the backing of the public housing bureaucracy, since it gave them control of administration;²⁵ while the rent supplement, on the contrary, was to be handed over to FHA.²⁶ Then, too, leased housing was not an Administration bill in the same flamboyant sense as the rent supplement. The Administration submitted a long and detailed statutory plan to provide rent supplements. Its leasing proposal was a short, rather bland and permissive section;²⁷ and Congress finally adopted the longer, more detailed, more specific Widnall plan which is now the governing statute on leasing.²⁸ In his address on the "Problems and Future of the Central City and its Suburbs," President Johnson devoted a long statement to the rent supplement; leasing warranted only two sentences.²⁹ The President fought bitterly for the rent supplement plan, and ultimately succeeded (after a fashion) in saving a piece of it; the leasing program was not drawn into headline politics, and it was enacted with no fanfare and no controversy. It continues to raise no national political problems. In May of 1967, the House denied an appropriation to the rent supplement, barely two years old and still struggling.³⁰ Thus its survival is once again in question. But its functional twin, the leasing program, is alive, healthy, and increasing in scope every day.

II LEASED HOUSING: OBJECTIVES AND TECHNIQUES

A. Economic and Racial Integration

Only persons of low income, those who cannot "afford to pay enough to cause private enterprise in their locality" to build adequate housing, are eligible for conventional public housing.³¹ Federal law so requires, and state law likewise.³² In general, tenants must vacate public housing once their incomes exceed the ceiling.³³ Despite many objections to this rule,³⁴ it remains in force, with only a narrow and rarely-used escape clause.³⁵ Since much of postwar public housing has been built in the slums of the big cities, the result of these policies is a rigid form of income segregation. Moreover, Federal law specifically provides that the maximum income of those who qualify for public housing must be at least twenty per cent below the income necessary to obtain private housing on the market.³⁶ This twenty per cent gap provision reflects Congressional horror: first, at the possibility that the Government might compete in the market with private builders, and second, that the nonpoor might insinuate themselves into subsidized housing. In practice, income ceilings in conventional public housing are even lower than the twenty per cent gap would require.³⁷ In addition, the very size of the biggest projects would be enough to constitute ghetto cities in themselves--for example, Chicago's Taylor homes, with 4,414 families, all drawn from the ranks of the very poor.³⁸

Race segregation is also a characteristic of big-city public housing. Segregation was once at least tolerated by Federal authorities.³⁹ Today integration is the paper norm for all public housing.⁴⁰ But projects in the South have remained completely segregated⁴¹ and in the North the location of projects ensures virtually the same results. The worst and

most infamous projects in Chicago, Philadelphia, and other big cities are in the Negro slums and the tenants are, with unimportant exceptions, Negroes. As of the end of 1965, no less than twelve projects in Washington, D. C., twelve in Baltimore, and thirteen in Chicago were entirely nonwhite, and many others had only a token sprinkling of whites.⁴² The leasing program has raised hopes of ending income and race segregation, de facto and otherwise. The program, it was said, might make possible "an economic and social mix among subsidized and unsubsidized tenants."⁴³ The twenty per cent gap provision is expressly inapplicable to leased housing.⁴⁴ Over-income tenants need not move; they remain where they are, paying more rent and receiving less subsidy. If they earn more than the maximum for continued occupancy, they simply leave the program without vacating their homes.⁴⁵ Of course, at this point the landlord once more has the power to evict; but he is obviously unlikely to exercise it often. Particularly in a slum or near-slum neighborhood, the over-income tenant who has "graduated" from the leasing program will usually be the most desirable available tenant.

The higher the income group subsidized, the easier it is for the unsubsidized (middle and lower-middle class) to identify with at least the upper fringe of assisted tenants, and the greater the chances for achieving a broad mixture of incomes within the subsidized class. Maximum income limits show a tendency to accommodate something above the rock-bottom poor.⁴⁶ As an example, for non-welfare tenants in San Jose, California the maximum admission income for a family of four is \$4,200; for continued occupancy, \$6,300.⁴⁷ Also in San Jose, tenants may have assets of up to \$7,500 (\$10,000 if they are elderly); by way of contrast, the net asset limitation in Richmond, California for conventional public

housing is \$2,500.⁴⁸ Legislation, regulations, and practice all show a desire to help out the "rich poor"--we might call them the submerged middle class--and to abandon, at least for the time being, the hard-core dependent poor.⁴⁹ The likelihood that a Negro AFDC mother, with small children and no husband, will be placed in leased housing in a solid middle-class white neighborhood is quite small. She will either not be placed at all or placed in a neighborhood where she will not attract attention. The program is most likely to maximize integration for those of the poor for whom the barriers, though real, are least intractable. There are thus two possible paths that the leasing program may take: it may follow its inclinations (if it can) and help the submerged middle class; or it may abandon integration in any meaningful sense and gear itself toward the problem poor. The former path has been taken by the Housing Authority in Washington, D. C. Of the first 139 families admitted into the leasing program, less than ten per cent were members of families headed by women; the Authority rents mostly homes that have been rehabilitated, and it feels that these cannot be managed by families with working mothers. Whatever the reason, broken homes are effectively barred from leased houses--a striking deviation from the situation in conventional public housing.⁵⁰ Various other cities are eager to use the program for the elderly. There are programs exclusively for the elderly--for example, in Bucks County, Pennsylvania, and Corpus Christi, Texas. Virtually all of the leasing in Chicago is for the elderly. Other cities (such as Los Angeles) make a special effort to recruit elderly tenants. In Los Angeles, a Section 23 staff member stated that where "a woman with six children by six different men applies, we don't want her in Section 23, or even public housing for that matter, since it ruins the Los Angeles Housing

Authority's image."⁵¹ Many cities, though they do not have higher maxima for leasing tenants, do exert special care in their selection--either by the screening process or by stressing a trouble-free group such as the elderly.

Economic integration can be achieved in two ways. Poor and middle-class tenants can be mixed in one apartment building, or the poor can be housed in single dwellings in middle-class neighborhoods. The leasing program can and does use both methods. Local authorities as a general rule are instructed to lease no more than ten per cent of the units in an apartment building.⁵⁴ Economic and racial integration is the obvious purpose of this benign quota.⁵⁵ The ten per cent limitation, however, is only a guideline; the local authority may in its discretion permit subsidized occupancy greater than ten per cent--probably all the way up to 100 per cent.⁵⁶ The reasons controlling this choice appear to be unreviewable, except for whatever pressures and inducements regional and national officials of HUD choose to exert. The ten per cent limitation, thus far, can be taken only as a warning not to administer the program in such a way as to create "projects" of used housing, as unintegrated as the old-fashioned projects. In any event, it applies only to very large buildings in very large cities, practically speaking. In none of the cities for which there are data has the limitation made much, if any, difference. Officials of various cities have confessed to a number of instances of exceeding the limit. The ten per cent figure, according to one regional official, is "just a guideline, to avoid concentration. If you took a whole building, it would be identified as public housing, and have the stigma of public housing."⁵⁷ Yet some authorities are willing to take whole buildings, when the need arises. In Holyoke, Massachusetts, the leasing program has acquired all

the units on four floors of a six-floor hotel for the use of the elderly, and the New York regional office regards the limitation as a "dead letter."⁵⁸

The leasing program might also advance economic integration through its power to place tenants in apartments and houses scattered about a city. The Administration hoped that the leasing program would "eliminate economic ghettos and the identification of low-rent dwellings as housing for the poor."⁵⁹ In many cities, the housing authorities have been leasing primarily single-family dwellings, either because this is the dominant form of housing in the community, or as a matter of policy. Leased dwellings must be located in primarily residential neighborhoods, "free of any characteristics seriously detrimental to family life," including a predominance of substandard dwellings.⁶⁰ Within these broad limits, the local authority is free to select sites as it wishes,⁶¹ but it can obtain dwellings only by negotiation; the power of eminent domain is not available.⁶² The local authority generally will announce to the public its need for houses and apartments. It may notify real estate agents and boards, property-owner organizations, and the owners of the properties themselves, of its needs. It can use any form of publicity, including newspaper advertising. In Oakland, California, about a third of prospects came to the attention of the Housing Authority from the owner of the unit himself, who had heard about the program from other owners, from the newspapers, or by word of mouth; about a fifth were known vacancies which the Authority found in its housing survey; about a fifth stemmed from calls from tenants who wished to be brought in under the program in units they presently occupied; and the rest were personal contacts of the Authority's real estate negotiators or their friends in the real estate

business.⁶³ Dwellings offered for use are inspected for suitability to the program and the needs of tenants; when a unit is accepted, the Authority enters into lease arrangements with the owners.⁶⁴ In the case of an owner of a large number of dwellings, this might be a blanket agreement capable of application to any specific one.⁶⁵

Racial integration is guaranteed, at least formally, by the requirement that the agreement between the local authority and the private owner must contain a nondiscrimination clause.⁶⁶ Since the statute speaks of tenant selection by the private landlord,⁶⁷ however, this provision would seem to be difficult to enforce. But it has been ingeniously implemented in the governing PHA Circular. Several tenant selection patterns are available to the owner. The owner can choose tenants himself, subject to authority approval; he can select from a list supplied by the authority; the authority can select, subject to the owner's approval; or, if the owner prefers, the authority can select tenants without owner approval.⁶⁸ But if the owner reserves the right to select or approve tenants for himself, the local authority is relieved of responsibility to pay rent while the unit is vacant; and it may cancel its agreement with the owner in the event he proves too hard to please.⁶⁹ These provisions put teeth into the nondiscrimination clause. If the owner wants the attractive feature of guaranteed rents for empty units during periods between tenants, he must cede control over tenant selection to the local authority. Of course, the prejudiced landlord will simply elect not to bring his building into the program; he will also do so if he fears that his other tenants will raise serious objections. Consequently, most landlords who enter the program are those who expect Negro tenants and do not object to them. Nor will the authorities exceed the limits of political safety. Some cities report

progress in racial integration through leasing--Chicago, for example--but when a St. Louis staff member, discussing the program about to be started in that city, stated that "We're not going to block-bust," he probably voiced a common sentiment and fear.

There is also some danger of covert attempts at discrimination--side agreements between negotiators for the housing authority and private landlords. How this danger will be handled remains to be seen. Some authorities are making a special attempt to place Negroes, or conversely, to bring in some whites to avoid an all-Negro program. In Chicago, a far greater percentage of whites are in the leasing program than live in conventional public housing--thirty five per cent as opposed to about ten per cent. But this type of integration is not everywhere possible. As of June 1, 1967, in Washington, D. C., every single tenant placed, and virtually every applicant, was Negro.

It is also true that the leverage provisions of the guidelines make possible a somewhat greater degree of economic integration than might otherwise be possible. Economic integration is not as simple a concept as it first appears. It is not "economic integration" to find a subsidized house in a middle-class neighborhood for an elderly widow whose income is a small pension, but who was and is culturally a member of the middle class. The leasing program can be (and is) used to subsidize tenants who keep on living where they are. This, indeed, is one of its most attractive features; the program does not necessarily demand that a tenant move from his home (if he has one).⁷⁰ But, by the same token, some of the integration achieved is spurious. In Chicago, about fifty per cent of the initial group of tenants were admitted into the leasing program at their request and in their own houses or apartments.⁷¹ The leasing program, therefore, can tap a group of the poor who for reasons of fear, preference, prejudice, or plain

common sense would not like to move into public housing. Considering the criticisms made of conventional public housing, this reluctance is not necessarily blameworthy or even against policy. Nonetheless, the leasing program cannot claim to have "placed" the poor in middle-class neighborhoods if it has merely subsidized persons of low income who already lived there or who have cultural roots in the neighborhood.

The more radical form of economic integration, like the more radical form of racial integration, has not been achieved by the leasing program, at least so far. Probably no poor, Negro tenants have been placed in wealthy, exclusive white neighborhoods. The rents in these neighborhoods are too high; the leeways permitted by the program's financial formula are not great enough to permit the leasing of luxury apartments. One is speaking, then, at most, of incremental upgrading of neighborhoods for the tenants. Perhaps nothing more is desirable at the present time. What is needed is decent housing in decent areas, not a bold leap across all the visible and invisible lines of class, caste, and status in America. Nor are the tenants themselves likely to wish to leave the neighborhoods where, for better or for worse, they feel culturally comfortable. Integration in many cities means moving the Negro poor away from the core of the city. But the poor work and live in the city's core. Although a recent survey of Harlem suggests that most residents would prefer to escape,⁷² at least some of the poor, if given a choice, would reject the idea of living away from jobs, friends, and culture. On the other hand, some of the poor work in the suburbs--as household help, for example--and would be better off living close to their jobs. And the transportation problems that might follow from a move into the suburbs (and away from jobs) can be solved. In Los Angeles a federally subsidized bus line has been inaugurated for the Watts district. A novel extension of the system is anticipated: "the car-pool idea applied to buses."⁷³ But so far the leasing program does not seem

inclined to seek the most radical solutions. Some cities are trying to strike a happy medium: they avoid the hard-core slum areas that are physically unsafe and irretrievably sub-standard; meanwhile, necessity and finance keep them out of the fashionable neighborhoods. A leased house in Washington, D. C., "must be a place where young children will be safe; it should have a fenced yard, or a playground nearby, where you don't have to cross a major street." Naturally, this criterion eliminates "the worst sections."⁷⁴ New York City will not accept "a single building that's been rehabilitated in a slum block; it can't stand by itself in the neighborhood. Unless there are plans to upgrade a big area, why we won't go in."⁷⁵

Neighborhood objections are perhaps the most serious brake on the prospects of achieving any significant degree of racial or economic integration through leasing. Owners of course may be prejudiced themselves; or they may have prejudiced tenants or neighbors. Upper-class and middle-class neighborhoods, even when they have shed their racism, fear invasion by the poor. America has a long and ignoble history of neighborhood action to discourage such invasions--particularly if the invaders are Negroes.⁷⁶ The house located in the middle-class suburb, the unit of the middle-class apartment building, will not be offered without fear of reprisal or resentment. A plan in San Francisco to place some Section 23 tenants in a cooperative middle-income project⁷⁷ was abandoned when a reporter "leaked" the news; tenants objected violently to the presence of "such trash" in their building. These factors are less likely to operate, of course in areas or apartments already occupied by the poor or by racial minorities. In these areas integration depends upon attracting some low-income whites or the lower middle class into the neighborhood. To the extent that leasing encourages physical rehabilitation, some slight movement of population of this sort may occur.⁷⁸

A primary tool in the fight for integration is secrecy. The white middle class is conscious of status and value, worried about its financial investment in homes, schools, and neighborhoods. The poor are considered a threat. An association of building material dealers objected to the leasing program; it would "interject public housing in practically any area of a city. We have some misgivings about the effect of this program on the value of surrounding homes in the area."⁷⁹ The objection is, of course, not to buildings but to tenants. Leased dwellings would be no different from other neighborhood dwellings. But the people living in them would be perceived as different. If the neighborhood were unaware of the lease, this perception would change. Under the leasing program there is no requirement that dwelling or tenant be identified as participants.⁸⁰ Secrecy is difficult but not impossible to achieve if proper precautions are taken. The housing authorities studied have been quite careful to preserve the anonymity of their tenants.⁸¹ The very fact tenants are placed in middle-income housing or neighborhoods rather than large, easily recognized, and well-known public housing projects contributes to the chance for success. But the search for secrecy can only mean integration at a price. The identity of a tenant can be concealed if the tenant is no different or only marginally different from his neighbors. An unemployed Negro woman with no husband, many children, poor furniture, and threadbare clothing for her family obviously does not "belong" in a middle-class neighborhood. Secrecy implies a search for the submerged middle class. It means integration for those most easily integrated. Perhaps that is all that can be expected. If the cultural gap between tenant and neighbor is too great, what the program would have achieved is placement but not integration in the fullest sense. A Negro tenant can be ignored and scorned by his neighbors,

and driven into a private ghetto of his own. This is worse than the slum or at least far lonelier. Some cities report that Negroes "just won't go" into all-white middle-class neighborhoods. The claim may cover up some covert discrimination; yet it is plausible. Leasing cannot, in the short run, solve the problems raised by major cultural gaps between groups in our society. At best it may make inroads and incremental improvements.

B. Expanding the Prerogative of Choice.

Conventional public housing in the big cities has been condemned for its dismal, dysfunctional uniformity.⁸² Within projects, there is a sameness of facilities; and, of course, the prospective tenant must accept the project or forsake any housing subsidy. Sometimes, to gain housing assistance, tenants must move away from friends, ethnic ties, a job or their children's schools. Large projects are unfriendly and cold in appearance, easily identified as the local poor house, and often poorly designed for some types of family. High-rise living has peculiar hazards for families with small children.⁸³ Financial limitations make it difficult to build large units in conventional public housing; consequently, big families are almost impossible to place.⁸⁴ Some cities have gone into the leasing program in order to solve precisely this problem. At the time Omaha, Nebraska, embarked on its leasing program, it faced the problem of applicants who needed four or five bedroom apartments; there were none in the city "fit to live in," and there were none available in conventional public housing, although vacancies in two bedroom apartments were frequent.⁸⁵ In some places, it was felt that leasing might tap a group of people who objected to project life.

Some hoped it would put an end to the conventional high-rise "project," substituting a program of broader choice for the tenants. The very

structure of the program--its scattered housing feature--would contribute, it was hoped, to the solution of problems of location. There was bound to be wider dispersion of housing, a wider spectrum of neighborhood alternatives, than in the conventional program. Some of these hopes have been at least partially realized. In many cities, tenants are asked where they want to live and every reasonable effort is made to place them there. Tenants may even have the freedom to seek out interested landlords on their own initiative. In the cities studied, there is impressive evidence of beneficial results from the new tenant prerogatives. Certainly this is true of the large families that were shut out of conventional public housing. Demonstration programs had already indicated that leasing would benefit this class of poor tenants. In Washington, D. C., a family of seven, living in a "dark, damp one bedroom apartment that flooded with an inch or more of water when it rained,"⁸⁶ was placed in a six room house in a pleasant neighborhood; it "is now an active member of the neighborhood block improvement club."⁸⁷ A family of eleven, living in a dismal basement apartment where "hanging sheets and blankets served as partitions to provide some degree of privacy,"⁸⁸ was rehoused in an eight room dwelling, and now maintains "the best looking front yard in the block."⁸⁹ In Boston, under the leasing program, a family of thirteen has been placed in a decent home. And freedom of choice is certainly maximized for the Chicago tenants who gain subsidies by staying exactly where they are. Many of these are elderly; some had been skimping on food and other necessities to keep up the rent they could barely afford.

Abandoning the project concept means the use of a varied inventory of dwelling types--large and small apartment buildings, row houses, individual dwellings, and duplexes. Tenants can be given housing suitable

to individual needs. Families with small children can avoid high-rise buildings. The elderly can aspire to a location that assures company in times of loneliness, assistance in case of emergency. Even housing satisfying to individual aesthetic tastes is possible, at least theoretically, under the leasing program. In many cities studied, tenants are shown apartments and homes that are available under the program; they are allowed to accept or reject these and, within limits, given a second choice if the first unit shown to them proves unacceptable. A continued hypercritical attitude would cost a potential tenant his chance in the leasing program; nonetheless, the freedom of choice is vastly greater than in the conventional program. Chicago carries this very far: if a tenant does not wish to stay in his present home, or cannot, the Authority asks him what neighborhood he would like to live in; if it can, the Authority gives the tenant three addresses, and tells him before making his choice to "look at the building, look at the apartment, look at the neighborhood." If none of the three proves suitable, it may give him three more referrals. "Some people are just hard to satisfy; we tell them, 'OK, you can go out on your own and find something, and if it qualifies, why, maybe we can work it into the program.'"⁹⁰ Of course other cities, because of the exigencies of the housing market, or for reasons of policy, do not encourage the finicky. In some, the prospective tenant has, effectively, only one choice.

The new freedom of choice, however, is bound by the same limits as the rest of the program. Freedom of choice is granted to those who qualify for the program, in the technical sense, and who have also been found suitable by the local authorities. The more suitable, the more freedom of choice: the elderly, for example, are not only more finicky than the non-elderly, but their tastes are catered to much more by the local authorities.

It is probably no coincidence that Chicago, so permissive in regard to tenant wishes, is overwhelmingly a program for the aged. Perhaps the psychological needs of old people are greater than those of the young; the shock of a new neighborhood and totally new surroundings would be hard for the elderly to take. Nonetheless, it remains true that the more "middle class" a tenant's culture and background, the more freedom of choice the leasing program affords. At the one extreme is the elderly white pensioner; at the other, the Negro AFDC mother. On the whole, however, it must be conceded that Section 23 housing grants more freedom of choice to more potential tenants than conventional public housing, which, in a sense, grants little freedom or none at all.⁹¹

C. The Leasing Program and the Housing Supply.

Leasing is applied almost exclusively to existing housing.⁹² It is supplemental to the conventional public housing program,⁹³ which concentrates on construction of new projects. Utilization of existing dwellings is made possible by the financing device applicable to leased housing, the "flexible formula,"⁹⁴ which frees the Federal contributions from the rigid formula applied to new construction of public housing.⁹⁵ Under the conventional program, annual Federal contributions amortize capital costs over a long period--generally forty years.⁹⁶ This method would be inappropriate for the leasing program which works on a short-term basis and requires no appreciable initial outlay.⁹⁷ Under the new formula, the annual Federal contribution that would be required to support a unit of newly constructed housing (that is, to pay principal and interest on the bonds that would have to be floated) can be used as the basis for computing the annual subsidy available for a unit in the leasing program.⁹⁸ A circular issued by PHA in October, 1965, illustrates how the formula would work. In a given area of the country, assume that the costs of constructing

public housing units are such that each two bedroom unit would cost \$15,000 to develop. This sum is then multiplied by a figure, 4.58 per cent, which, for the period in question, has been based on "interest rates achieved on 40-year bonds sold by Local Authorities." This gives a fixed annual contribution rate of \$687 per unit.⁹⁹ Dividing this figure by 12, we obtain a figure of \$57.25 per month, available as a subsidy for two bedroom units in the leasing program. Note that the flexible formula does two things: it provides a basis for computing the subsidy, but at the same time it puts an effective ceiling on monthly subsidy payments per unit.¹⁰⁰ The tenant's rent, then, must be sufficient to make up the difference between the Federal contribution and the cost of the dwelling to the local authority (rent paid to the private owner plus administrative expenses). This difference--the tenant's rent--will generally be twenty to twenty-five per cent of the income.¹⁰¹ While the Federal contribution can be no greater than that under the conventional program, leasing is likely to afford tenants better housing. The costs of obtaining existing housing will generally be lower than those for newly constructed dwellings, despite the fact that leased housing pays full real estate taxes rather than the "in lieu" payments of conventional public housing.¹⁰²

Since it uses existing housing, the leasing program can move faster than the conventional program. New construction involves a painfully slow and complex process of finding and obtaining sites, gathering bids for design and construction, and floating bonds, plus the actual matter of putting up the project itself. Sometimes as many as five years elapse between the planning of a project and its completion.¹⁰³ Leasing, on the other hand, can go into operation almost immediately;¹⁰⁴ Representative Widnall, sponsor of the program, saw this as one of its best features.¹⁰⁵

Speed is encouraged also by the fact that the "certified workable program for community improvement," and the "cooperation agreement" between the local government and local authority, are not applicable to leasing.¹⁰⁶ (Both are required under the conventional program.¹⁰⁷) Rather, all that is necessary is a resolution by the local governing body approving the leasing program for its jurisdiction.¹⁰⁸ It is also impressive that some units of local government, utterly without conventional housing (and often politically unlikely to approve such housing) have gone into leasing. This includes some good-sized cities (Wichita, Kansas; San Jose, California), Bucks County, Pennsylvania, and tiny Elsa, Texas, which has applied for twelve units. On the other hand, it takes time to work up an application, conduct the necessary real estate surveys, gather a staff, obtain an appropriation, and get started. Effectively, there has been a year and a half in which local authorities might have gone into the "instant housing" business. The results have not been quite so instantaneous as might have been hoped. As of June 1, 1967, New York--the giant of conventional public housing--had less than 500 units under lease; so did Chicago. Such major cities as Philadelphia, St. Louis, and Detroit had not yet placed a single tenant; and Dallas and Seattle had no intention of applying.¹⁰⁹ The New York region and California have moved the fastest and gone the furthest; but another regional director admitted that the program has not "set the world on fire" in his region. As of May 1, 1967, the entire Chicago region, with over 100,000 units in the conventional program, had 859 units occupied by Section 23 tenants.¹¹⁰ Some housing authorities were leary of the program; others were waiting to see how it would turn out. A flock of applications in the various regional offices attests to the fact that the program is beginning to catch on. But there remains a question of the actual pace of operation. In Boston, the first occupant moved into a leased apartment

in October 1, 1966; at the end of May, 109 tenants had been placed.¹¹¹ Boston's interesting and admirable program has not been unusually slow by any means; it is, for example, almost double the pace of Omaha, Nebraska. The typical leasing staff is small, procedures have not been worked out in full detail in some cities, and the process of matching tenants and landlords is not entirely painless. All in all, though leasing avoids the long delays of construction inherent in the conventional program, it has not yet proved its full capacity for speed.

Leasing's focus on existing housing has been criticized on the ground that the program will not add to or improve the housing supply, that it will "just be using what is available."¹¹² There is some merit to the charge. But it was hoped that the program would place major emphasis on the rehabilitation of substandard dwellings.¹¹³ The legislation allows for rehabilitation¹¹⁴ and the Federal administrators of the program are "particularly interested in encouraging this type of leasing because of its obvious benefits over simply leasing housing which already meets the necessary standards."¹¹⁵ If the result of the program were to bring dwellings up to livable quality, the program would effectively add to the supply of standard housing. Since the program is decentralized in operation, and offers no concrete aids to rehabilitation, whether upgrading will result depends almost entirely on the particular policies and plans of specific local authorities. In many cities, there is good evidence that the program has stimulated investment in the upgrading of property. In many instances landlords have responded to the incentive of a federally-guaranteed lease and made repairs either to bring their properties up to code, or to improve the appearance or facilities of their holdings. In Washington, D. C., demonstration program rehabilitation expenditures averaged \$1,500 per dwelling. All fifty dwellings brought into the program underwent some

rehabilitation.¹¹⁶ The nation's capital has continued to stress rehabilitation. Of 139 units under lease as of June, 1967, eighty are four bedroom, nineteen are five bedroom, and thirteen are six bedroom; virtually all of these are private dwellings, and virtually all of them have been rehabilitated, reconverted, and restored. In Washington, redecoration is the minimum required of the owner. In this and other cities, the Authority gives prospective program-landlords a letter of intent to lease, which helps them in raising money to finance rehabilitation.¹¹⁷ In Boston, too, "there's always something to be done--electricity, a little plumbing, painting and things like that. The minimum is painting."¹¹⁸ In Oakland, twenty-eight per cent of the first units leased were substantially rehabilitated; in another forty per cent minor repairs were made--plumbing, electrical, painting.¹¹⁹ Other cities, however, such as Chicago, do not stress rehabilitation; and most of the units that come into the program are already standard.

The program clearly can and does expand the number of standard units available to at least some of the poor. But the incentives to rehabilitate, though real, are relatively small. One simply cannot imagine that the leasing program, in itself, can make major changes in the hard-core slums. The subsidy is not great enough to induce the owner of a decaying old-law tenement in New York to bring his building up to standard. As we have seen, cities like Washington, D. C. and New York do not even attempt to rent in rock-bottom slum neighborhoods.

The expansion of standard units, of course, is not unlimited. Funds are exhaustible. There has been concern, moreover, that the program can potentially force up rents, at least in the short run, by consuming a great deal of a community's stock of housing.¹²⁰ So far, in the period of the

short-short run, there has been no evidence of this. In some cities, the Authority as lessee has done much better than expected. Far from experiencing a rise in rent costs, negotiators for the housing authority have been able to reduce rents below what they had been before coming into the leasing program. Backed up by the guarantee of long-term leases, Oklahoma City has been renting for \$95 three bedroom apartments that might cost as much as \$125 a month on the open market;¹²¹ other cities report, less dramatically, that they have been able to rent units for approximately ten per cent less than the units' previous rents. These figures are all the more impressive if one takes into account that rent reduction has often been accompanied by an actual increase in the quality of the units leased.

Fear of a general rent rise, however, cannot be allayed by experience drawn from so short a period of time. The Government is extremely sensitive to the danger. The 1965 PHA Circular announced that "A proposed leasing program which would reduce [the]. . . vacancy rate to less than 3 per cent for any unit size will not be approved unless the Local Authority satisfies the PHA that the leasing program will not have a substantial inflationary effect on the private rental market or that the program is justified by the exigencies of a particular situation, such as critical immediate need for relocation housing."¹²² The community that applies for a leasing program must provide supporting data to show that the vacancy rate does not exceed the three per cent limitation, but this is not taken as an ironclad boundary by the cities. It is not easy to measure a vacancy rate; conversely, it is not hard to manipulate the data to prove that there is a vacancy rate greater than three per cent in some classification of units. There are indications that at least one city may have done so. And Chicago's first application for 500 units was approved, even though it showed an overall vacancy rate of only 2.67 per cent, since the vacancy rate was much higher

in certain low-income "pockets" in the city.¹²⁴ There are limits, however, to the flexibility of this guideline and a low vacancy rate may also evoke low enthusiasm for leasing on the part of the Housing Authority and local real estate people. Seattle has a .9 per cent vacancy rate--and no plans to take part in the program.¹²⁵

In theory, the leasing program ought to improve the supply of housing for the poor in the long run. It reduces the risks for the landlord and provides a large, stable market for the product. There is some danger that communities will lose interest in any form of public housing other than leasing; or that Congress will divert all its appropriations to leasing, rather than to new construction. If so, then the amount of new public construction foregone for political and other reasons will have to be subtracted from the amount of new private construction stimulated by the increased demand, in order to arrive at a true net long-term figure.

As we have seen, leasing encourages rehabilitation by subsidizing rent and assuring the private owner an adequate rental income. There may be some danger of over-rehabilitation and displacement of low-income tenants from some neighborhoods. The leasing program hopes to bring about general improvement of neighborhoods.¹²⁶ In the past, neighborhood rehabilitation and urban renewal programs have often driven out low-income tenants.¹²⁷ A renovated area becomes attractive to the middle and upper classes. Rents rise along with the quality and desirability of the neighborhood. Georgetown in Washington, D. C. is a classic example of a neighborhood that became too rich for the poor. Under leasing, rehabilitation is carried out expressly for the low-income tenant.¹²⁸ But as the leasing subsidy begins to uplift the quality of housing in an area, unsubsidized owners might make improvements of their properties--not covered by the program--because of neighborhood pressure or the speculative belief that the neighborhood will eventually

be attractive to higher income tenants. Ultimately, unsubsidized tenants might have to leave. In at least one of the demonstration programs some owners refused to join in the leasing venture, hoping that major neighborhood rejuvenation would increase the value of their holdings.¹²⁹

So far, however, the danger from over-rehabilitation seems remote; and the demonstrable benefits of Section 23 seem to outweigh these largely hypothetical detriments. These benefits include, of course, the amount of money spent on rehabilitation, painting, decorating, and general improvement of property. Much of this money would not otherwise have been spent. General policy toward landlords who own buildings in the slums has been highly punitive; health laws and housing laws impose requirements on the landlord which would cost him money to comply with; and they expect him to meet these costs himself, without subsidy, often on the unexamined assumption that there are huge, hidden profits out of which these costs could be met.¹³⁰ Section 23, in practice, tries a radically different approach; it subsidizes rehabilitation indirectly. The subsidy, of course, is the guaranteed rent, the long-term lease, and public responsibility for the condition of the premises. In many cities, this subsidy seems to be producing results; in some cities, rehabilitation is the heart of the Section 23 programs (e.g., Washington, D. C.), while in others it is a welcome by-product. Moreover, in some cities, leasing has brought another benefit: it has provided a quick and humane solution to the agonizing problems of finding relocation housing for the dispossessed.

Closely related to general neighborhood improvement is the possibility that rehabilitation will "meet the urgent housing needs for families who wish to remain in the neighborhood where they now reside."¹³¹ Some will view this aspect of the program as most appealing to persons with ethnic ties to their neighborhood; accordingly, it will be criticized as a means to

"perpetuate racial ghettos by offering dwellings in neighborhoods that are frequently dominated by one ethnic group."¹³² But the ethnic neighborhood is only an evil when its inhabitants are unwilling prisoners in substandard housing. On the other hand, low-income neighborhoods of decent housing and willing tenants add variety to urban living and are a positive benefit to their residents. People, the poor included, should have the right to live where they like insofar as reasonably possible. If they wish to choose an ethnic neighborhood, they should be able to do so, without surrendering their claim on decent housing.

D. The Dilemma of Decentralization: Leasing and the Allocation of Governmental Power.

The Housing and Urban Development Act of 1965 has been hailed as part of a grand effort to achieve the new and different, "to get at the core of our national ailment by cutting through and shaking up the traditional patterns and practices of providing governmental assistance."¹³³ As far as low-income housing is concerned, the new pattern emphasizes greater cooperation with private enterprise. Cooperation with private enterprise is considered a value in itself by many members of Congress, not to speak of the general public. It is good also in that it is cheap; a dollar of private enterprise stimulated looks like a dollar of tax money saved. In housing history, the search for cheap subsidies has deep roots. Housing codes and tenement house laws, we have suggested, are (among other things) attempts to force landlords to upgrade their property without any greater public input than the cost of policemen and inspectors. The section 221 (d) (3) below-market-interest-rate program,¹³⁴ first enacted in 1961, and primarily of benefit to the lower middle class, was another bid for cut-rate stimulation of the private market. The embattled rent

supplement program also strongly reflects Government's desire to stimulate private investment.¹³⁵

The leasing program, too, has been called part of the new "all-out public-private joint attack on poor housing."¹³⁶ Administration of the leased housing program demands that local authorities work closely with builders and developers, realtors, and dwelling owners. The Federal administrators "want private homebuilding and rehabilitation segments of the industry to become involved on a massive scale."¹³⁹ A new "partnership"¹⁴⁰ between the local authority and private interests in the community must come into being. The public-private relationship may "range from the responsibilities and mechanics of managing properties, and more importantly--the problems and responsibilities of dealing with the disadvantaged in our communities. The latter may be a whole new experience for the private owners--or, at least new in the sense of involvement with the public interest."¹⁴¹ The new relation of the local authority to the community "will establish communication between private housing and public and quasi-public efforts and tend to break down the unrealistic division between the private and public housing market."¹⁴² This increased communication is said to make the public low-income housing sector more efficient. "Public housing has suffered because it has been estranged from the entrepreneurs and mechanisms which have been honed to the sharpest edge by the abrasions of competition in the private market."¹⁴³ Thus, it was hoped that rehabilitation, spurred on by leasing, could provide a "laboratory . . . for private industry to help shape and hone the patterns and techniques, the criteria and procedures, of a new and obviously needed industry."¹⁴⁴ These are the views of the Federal administrators.

If one does not take reliance on private enterprise as an end in itself, then the mix of public and private in a program such as leasing must be

judged on the basis of other criteria. The ultimate goal, presumably, is the creation of an adequate supply of decent housing for the poor. Giving private enterprise an important role can be justified if it tends to increase the housing supply or to remove political or social impediments to an improvement of the supply. Certainly, the political benefits of the partnership are striking. Real estate interests have fought public housing bitterly for decades. In California, they have led the struggles which have killed public housing in many referenda. But real estate interests do not oppose Section 23 housing; indeed, they applaud it. In city after city, officials report the cooperation and outright enthusiasm of real estate boards. Many administrators of the leasing program are real estate men, brokers, and real estate lawyers; they speak the language of their trade, and they communicate easily with their fellows in the business. In some cities, leasing has come to the rescue of foundering real estate ventures; in St. Paul, Minnesota, Section 23 took 101 units in a middle-income project for the elderly which was having trouble finding enough tenants; in Holyoke, Massachusetts, it saved a dying hotel.¹⁴⁵ By co-opting landlords and brokers, the program has achieved a degree of popularity unthinkable for public housing. This popularity has been purchased at a price--the three per cent vacancy-rate limitation is one example--but so far the price seems not excessive.

Another form of co-optation or power-partnership is also inherent in the leasing program. Unlike the rent supplement, leasing is administered through the Housing Assistance Administration (formerly the Public Housing Administration), and is run by local public housing authorities; it is subject to the control of the municipal governments and of these local authorities. There are some clear gains from this arrangement. For one thing, Section 23 is acceptable to NAHRO and the public housing bureaucracy.^{145a} Judging from

the experience thus far, a certain number of enthusiasts sincerely interested in and committed to social reform integration have gravitated into the leasing program. Even in old-line housing authorities, there is considerable zeal for Section 23. The leasing program was intended to present a challenge to local authorities and to give them a chance--perhaps their last chance--to "prove themselves."¹⁴⁶ Local authorities are naturally fond of their autonomy. The rent supplement program (to be administered by FHA, a rival subagency) was a threat to this traditional autonomy. The rent supplement program has perhaps served as a warning to local public housing authorities that autonomy was in danger. Moreover, if the rent supplement had become the low-income housing program for the country, public housing in the conventional sense would wither away, and the staffs of local authorities would wither with it. The leasing program, then, was among other things an answer to the rent supplement--the counterproposal advanced in defense of established local authorities, in operation if not in theory. Moreover, local officials by and large believe in public housing; attacks from Right and Left bewilder, confuse, and anger them; budget cuts and contractions in the program injure morale and make recruitment of good people difficult. The leasing program is new, it is exciting, it is untarnished by scandal or failure, and most important of all, it is theirs.

There is, however, another side to the picture. The leasing program is and will be radically decentralized. By decentralized, we mean that the program vests a great deal of unreviewed discretion in local authorities and local administrators. This means that, in many respects, one cannot speak of the leasing program as a single program, but as many programs, loosely governed from Washington and the regional offices, tightly identified with local interests and local policies. There is nothing inherently evil in this tendency; the jury system is also, in a sense, a radically decentralized

administration of law, and it works quite well--but (as in the deep South) at a certain price. The likelihood is that the leasing program will continue to be decentralized, although it is possible for the program to have greater direction from the center, and in some ways this might become desirable.

The selection and treatment of tenants, the speed and pace of the program--indeed, the decision whether to have a program at all--is firmly in the control of local authority and authorities. As in conventional public housing, financial control from above is stricter than control over management. The regional staff of HAA in San Francisco, for example, has worked with great zeal and imagination to sell the program; it has done a magnificent job of inducing cities in its area to join. Other regional offices have also played a missionary role. But HAA, and its suboffices, can exert only so much pressure, and the Government prudently abstains from interference with operating programs so long as these programs remain within the broad limits of legality and the loose demands of overall policy. As a result, there is no real impediment to the individualization of leasing programs.

Decentralization is also politically inescapable. The power of Washington over welfare programs has been increasing in recent generations; it is vastly greater since the time when President Pierce, ostensibly on constitutional grounds, vetoed a simple land grant to the states for the purpose of aiding the insane. Yet most welfare programs, if they involve any significant degree of discretion in their administration, are still firmly local. This is true whether they are a State-Federal partnership (such as AFDC), or are purely Federal; the Selective Service program, for example, is completely Federal and yet in practical operation has been run so far by independent satrapies on the most local of local levels. When a program does take the path of centralization, it may give up most of its discretionary

features--the old-age pensions under Social Security, for instance, or the proposed nondiscretionary centralized revisions of the draft law. It is not administratively impossible to run a program from Washington. After all, the Army is highly centralized and hierarchical. Rather, the difficulties are political. It is hard for Washington to resist strong pressures from powerful local interests. The Office of Education has recently learned once more how hard it is to overcome strong local pressures, even to enforce the firm national policy of school integration.

From the standpoint of local power-holders, the ideal Federal program is an outright grant of gold with no strings attached. This however, is as impossible as outright Washington rule. The next best program is one that is radically decentralized; the controls are fiscal or nominal, but the initiative is firmly in local hands, whether these are municipalities, or states, or Authorities with a capital A. This has been the experience of conventional public housing. It has also been, to an even greater degree, national experience under the urban renewal program. The renewal program--whatever the elaborate, glittering goals set out in its preambles and in speeches by proponents--is essentially a gift of Federal gold, for urban programs devised locally, for local purposes, and with local initiative. Despite the volumes of rules and regulations, urban renewal does not mean anything specific; it is here a coliseum, there a parking lot, elsewhere a college campus, a hospital, luxury apartments, or a stretch of lawn; it is a Federal transfusion to help out an ailing downtown; or conversely money for suburban shopping centers, to help the central city decay still more; it is everything and nothing, depending upon who is the local prime mover, and what the prime movement is about.¹⁴⁷

Neither public housing nor urban renewal begins by adopting a specific concrete need as a goal and then devising action to reach the goal. If the

underlying need is low-income housing (let us say) for people with incomes under a certain level or suffering from certain social or other disabilities, the rational program would identify the potential beneficiaries and then appropriate enough money to meet the need where the need exists, or at least as much of the need as is financially possible. Similarly, if the need is slum clearance, or replacement of decayed segments of cities, renewal should begin by asking where the worst slums are or which cities had decayed the furthest. But this approach is not possible politically; it might conceivably result in spending billions on New York, Chicago, Philadelphia, and Cleveland, without a cent for Santa Barbara or White Plains. The political facts of life demand decentralization; they demand that every part of the country and indeed every state get its cut, if it wants it, and that the local unit define its own needs and purposes. So, urban renewal becomes a grab bag, not a program. And in the public housing program, the meaning of decentralization is that money flows where it is wanted or at least tolerated, which is not by any means the same as flowing where it is needed and in the proper manner corresponding to that need.

The shortcomings of decentralization are bound to be visited on the leasing program, too. The program must be locally approved before it can go into operation. That means that it will not be, strictly speaking, one definite program but the kind of protean "tool" that other welfare-housing programs have become. Cities differ tremendously in what they make of their leasing programs. Some cities are catering to the members of the submerged middle class; this, for example, was the early situation in San Francisco. Many are stressing the elderly, for example, St. Paul and Chicago. In Chicago, tenants are housed, in almost half of the instances, in the homes in which they were already living. But in Pittsburgh, the authority does not

use this technique at all; in Pittsburgh, the stress is on vacant homes: "This is our policy, to bring homes back on the market, that's what the program is--bring homes back on the market, and shape them up."¹⁴⁸

Washington, D. C. has also elected to use leasing as a weapon to rehabilitate houses. Other cities have used leasing as a way of bailing out failing real estate ventures--we have mentioned Holyoke, Massachusetts, and St. Paul, Minnesota, as examples. Oklahoma City has used its program to solve the problem of finding relocation housing for persons driven from their homes by Government action. In Omaha, the program houses large families who cannot be accommodated in conventional projects. And so it goes. The requirements of the law are few. The ten per cent limitation; the three per cent vacancy rate; the options available to the landlord in selecting tenants; the length of the lease between the authority and the landlord--none of these are limitations that really bind; each city, with the help and encouragement of HUD, has been working out more or less its own destiny in the program.

Diversity, of course, is not an evil. The cities after all differ vastly from each other in demographic, social, and economic characteristics. Why should New York City have the same scale and type of project as Wichita, Kansas, which has no conventional public housing at all, is primarily a city of single-family homes, and has a quite different population mix? Diversity is therefore a necessity. The question is how much and in what directions.

E. The Flight from Paternalism (and some Backsliding).

One of the criticisms leveled at conventional public housing was that it vested too much power in the Government and too little in the tenants. No one has a right to a slot in public housing, for entry criteria are set exclusively by management, within very broad statutory limits. Once admitted, families have no security of tenure. The typical public housing lease is

written on a month-to-month basis; indeed, the Management Handbook recommends such a lease, since it permits "any necessary evictions to be accomplished with a minimum of delay and expense."¹⁴⁹ The tenant, when he signs the lease, agrees to abide by the rules and regulations laid down by the authority. Some of these may be onerous to him; some he may not understand. He may be required to give up his pet dog or cat; he may have to agree to bear the cost of damage to his apartment, even if the damage is caused by vandals or outsiders; he will be required in general to conform to the behavior patterns expected by the housing authority and its resident manager. Many housing authorities refuse entry to women who have had illegitimate children or reserve the right to evict women who have illegitimate children while they are tenants. Some leases reserve to the landlord the right to enter the premises "at any reasonable hour, with or without the permission of the tenant." At least one lease requires the tenant and his family to "comply with all laws and city ordinances regarding licensing, traffic speed, and parking of all motor vehicles on project and boundary streets." Another states that "No articles of any description shall be hung from the windows or doors or placed on the window sills."¹⁵⁰ The tenant may even promise, in signing, to comply with "such Rules and Regulations as may hereafter be established by the Landlord."¹⁵¹ In most public housing projects, the tenant will have no voice in making or unmaking these regulations. If he fails to pay his rent, or if he misbehaves, he is liable to be summarily evicted. If his income rises above the limits laid down for the project, he will have to move, whether he wants to or not; attachment to home, friends, or surroundings will not be permitted to outweigh the Congressional policy of restricting public housing to only the eligible poor.¹⁵²

The formal rules and regulations that govern public housing tell only part of the story, however. More important is the general atmosphere within the project, which may range from a genial permissiveness through bumbling inefficiency all the way to despotism. There are few formal controls over the way projects are governed, although recent litigation may stimulate additional safeguards.¹⁵³ The style of management varies a great deal from project to project and from city to city. Some housing authorities are much more paternalistic than others. All authorities attempt to ensure some minimum level of good housekeeping, and probably all of them draw the line at admitting tenants whom they consider egregiously bad risks. On specific issues, such as whether illegitimate births affect eligibility for entrance or continued occupancy, there is no agreement. "One rotten apple spoils the barrel," is the opinion of the Executive Director of a fairly large city in the central section of the country. Other managers state and feel that illegitimacy is a personal matter and not the business of the authority. Yet applicants have been barred from public housing for this reason, and some tenants have been evicted for giving birth out of wedlock. Nonpayment of rent is almost certain to cause eviction; vandalism and poor housekeeping habits have sometimes done so. A case is on record where a family was evicted because the head of the household was in jail.¹⁵⁴ Probably in no project are actual evictions common; but in some, threats of eviction are freely used, and many tenants move out before they are forced to. Up to now, in virtually all projects the tenants have had no voice in setting policy, or much say in the way their projects are run.

Pressure for change, and actual change, has accelerated in the last few years. Meaningful tenant councils have been formed in a number of cities. In Richmond, California, for example, tenants at the Easter Hill project, with

OEO help, have formed a strong organization, which plays an important and constructive role in making policy. In a number of cities, relationships between tenant groups and management are less harmonious. Lawsuits have been brought against housing authorities to force them to modify their rules or to give to their tenants more procedural or substantive rights. One recent case was taken all the way to the United States Supreme Court.¹⁵⁵ Partly in response to these new pressures, HUD has now demanded that local agencies formalize their eviction procedures and grant more procedural rights to their tenants.¹⁵⁶ Some authorities have adopted new rules, and granted new powers to tenants and tenant organizations, to forestall trouble or because they are aware for the first time that a problem exists. The whole climate of authority within public housing projects is shifting away from the traditional paternalism.

It is impossible to measure how far this shift has gone or how far it will go. By the same token, it is hard to make a meaningful comparison between the climate of administration within the leasing program and that within conventional public housing; the same forces which made the shift away from authoritarianism possible in public housing have made it possible for Section 23 housing to exist. Section 23 housing seems, at any rate, to present fewer opportunities for extreme bureaucracy and paternalism. It is easier to manage tenants' lives if the tenants are all massed together in one project, with clearly defined boundaries separating the project from the outside world. Section 23 tenants are scattered about the city. Consequently, even though the same rules and regulations ostensibly apply to leased housing tenants that apply to tenants in conventional public housing, it is more likely that these will be paper rules. Indeed, conservatism of the rule structure within the leasing program may be

largely a matter of inertia. Leasing staffs are typically small; it is much easier to use handy old forms than to draft wholly new ones. The authority will continue to be strict about rent payments, but it will not in general care about many other regulations as long as the owner does not complain.

One wishes, however, that at least a few formal changes had been made. The Oakland lease still states that "this lease agreement may be cancelled by the AUTHORITY by giving 10 days advance notice in writing to TENANT."¹⁵⁷ Under the program, landlords get security of tenure (leases and guaranteed rent up to five years, potentially up to fifteen); but the Government does not trust its own subtenants enough to formalize their relationship with any kind of security of tenure.¹⁵⁸

In two other areas backsliding toward paternalism is a likely danger. The first is the selection and screening process, the second, housekeeping inspections of tenants' homes.

Public housing management, throughout its history, has persistently sought its tenants among the worthy poor or, as we have called them, the submerged middle class. There have never been nearly enough public housing units to fill the need of all potentially eligible tenants.¹⁵⁹ Distinctions have had to be made among low-income families who apply, and these distinctions could be based in practice on any one of three general standards: need (variously defined); merit (variously defined); and objectified standards (for example, a first-come first-served standard for applicants). In theory, need has always been the basic criterion. The Federal statute requires each local public housing agency to "adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families," and to "urgency of housing need."¹⁶⁰ Many local authorities

have their own tables of preferences and priorities, giving a special place to families displaced by urban renewal, families without housing, and families living in substandard housing. These are, presumably, elements of a definition of need. Degree of poverty, ironically enough, is not one of the elements of this definition. Tenants must be poor to be eligible, and are poor of course; but it is not advantageous to an applicant to be very poor. Indeed, if he cannot pay his rent, he is not eligible at all. If it were not for AFDC, social security, and other independent features of the welfare system, most of the tenants in the country's largest projects would be shut out of public housing by virtue of the same poverty that would have made them eligible to apply. This aspect of public housing law is not surprising or accidental. Public housing was originally intended for the lower working class and those subsisting on honorable pensions. It was, in other words, strongly suffused with considerations of merit.

Merit, in one guise or another, keeps creeping into the public housing program. The Federal statute, for example, requires local authorities to give consideration, not only to the needy categories mentioned, but also to servicemen and veterans.¹⁶¹ It is a standard of merit, fully as much as considerations of need, which explains the great popularity of programs for housing the elderly. The elderly are the largest remaining pool of well-behaved, white, deserving applicants for public housing. For this reason, programs to help the elderly have a great deal of political appeal. Congress has granted extra subsidies to aid construction of housing for the elderly.¹⁶² Many cities that have shown little or no interest in conventional public housing have eagerly embraced public housing for the elderly. In the New York region, as of December 31, 1965, of 11,937 units under construction, 7,488 were for the elderly; in the

Chicago region the count was 6,133 out of 9,003.¹⁶³ Housing law also shows a special solicitude for the handicapped poor,¹⁶⁴ who are blameless if not meritorious. And even though the search for the deserving poor has been more and more a failure in big city housing projects, public housing managers, as we have seen, do their best to keep out trouble makers or even (in some cities) such immoral tenants as unwed mothers.

It is clear from the discussion in this article that the leasing program in many cities shows a definite commitment to seek out and help primarily the deserving poor. Many of those who run the program are convinced that leasing will not succeed unless the right kind of tenant can be placed in the right kind of apartment. Troublemakers and the morally disreputable are even less welcome than in conventional public housing. Worried about acceptance of low-income families, a St. Paul, Minnesota official promises "no back-door integration," no placing of "low-income people in incompatible situations."¹⁶⁵ It is the (informal) policy in San Jose, California, to reject prospective tenants for malicious damages to their prior home, a recent criminal background, and alcoholism.¹⁶⁶ In Washington, D. C., the leasing section reports that, "We call on every applicant, we check family relationships; if we find that an applicant needs some education, why, we give it to them."¹⁶⁷ While it is hard to disagree with a pattern of rejection of extreme social deviants, for those whose deviance is victimless, and who do not damage property--e.g., unwed mothers--any policy of exclusion is less easy to justify.

Leasing administrators lay great stress on the "housekeeping" habits of their tenants. An emphasis on housekeeping was already apparent in the demonstration projects preceding passage of Section 23. In one, "evidence of good housekeeping potential was essential for families selected. Housekeeping ability was considered important, because of the

scattered location of the houses."¹⁶⁸ Of course, mothers with a dozen children easily lack "good housekeeping potential." And the requirement is in a way discriminatory--many middle-class housewives are poor housekeepers; some may be proud of it. Nonetheless, the notion that a place in the leasing program must be merited, and that good housekeeping is a sign of merit, will continue to be strong in many cities, judging by experience thus far. Tenants are visited, as we have seen, and their housekeeping skills formally or informally assessed.

The policing of tenants' homes and lives continues in most cities after they have been placed in leased housing. In San Jose, California, tenants' apartments are visited every other month. The main purpose is to see that the tenant is a good housekeeper. A work sheet prepared for use by the tenant relations department gives these instructions to the inspectors:

Make a room-by-room inspection, call their attention to accumulation of finger marks on walls, dirty floors, garbage in kitchen, garbage in yard, unmade beds, children playing outside barefoot or inadequately clothed for cold weather. A trained observer can tell the difference between an unmade bed and one that is seldom made.

Point out to them that as long as there is a marked improvement upon the next visitation, no action other than documenting each visit will be taken.¹⁶⁹

In Washington, tenants are visited every month or six weeks; in Chicago, where most of the tenants are elderly, "we try to hit them at least once a year." Many authorities would like to inspect more often, but since the

housing is scattered, inspections are quite wasteful of time and manpower. In Chicago the inspections "are a slower thing than in a high-rise, you have to go miles between buildings. And elderly people like company. They'll keep you there two hours talking if you let them, especially in the winter, when they don't go outside."¹⁷⁰ Not all cities screen tenants carefully or police them rigorously after placement. In some cities, applicants are gathered from the general pool of public housing applicants; in others, screening is minimal either because the program caters primarily to the elderly (who are in general a quite troublefree group) or because, as in Oklahoma City, where leasing has been a God-send in solving relocation problems, the overriding purpose of the program makes screening unnecessary or undesirable. In Boston, which runs a most permissive program, there are no regular housekeeping inspections. Boston does not "want tenants to be wards of the state, with people barging in at all hour."¹⁷¹ Landlords, of course, can complain if their tenants are derelict in their behavior. So far almost none have.

How much harm, if any, is done by screening and policing? The programs studied are too new for any major reaction to develop on the part of tenants. Leased housing is scattered housing; this limits paternalism, but it also puts a brake on the ability of tenants to join together and make effective protest. So far, housekeeping inspections have not evoked much complaint. The Authorities are satisfied for their part. A few problems arise here and there, chiefly because of rent defaults, physical damage to property, and drunkenness. But major difficulties are rare.

The policy of supervising tenant housekeeping and morals as a basis for eligibility and for continued occupancy can be criticized on a number of broad general grounds. One is quite simply that such supervision, however well intended, is imposed upon tenants without their consent and as such is

unfair and discriminatory. Another objection is that the staff and financial resources allocated to policing the lives of the poor would be better employed in raising their real standard of living. The costs, in other words, are not warranted by the benefits. Possible benefits would be of two kinds: first, that it would deter tenants from committing socially disapproved acts, and second, that it would bring about an improvement in the way of life of the poor. The first benefit is questionable. Surveillance excludes potential troublemakers from the program; whether it deters anyone from drunkenness, drug addiction, childbearing out of wedlock, or even poor housekeeping is unproven. The second kind of benefit is also exceedingly difficult to measure. Close supervision makes conformity to certain middle-class values the price of a subsidy for the poor. No doubt millions of the poor would gratefully adopt these values if they could afford them; but the line between the voluntary and the involuntary in behavior is an essential one in a democratic society.

Policies of close supervision strongly bias the program toward the deserving poor, and away from a standard based purely on need. But the policy of seeking out the deserving poor must not be summarily condemned. The true villain is the society that refuses to allocate a greater share of its resources to housing the poor, not the Authorities who must make cruel choices among those formally eligible. Since resources are so pinched, a case can be made for helping those who respond most readily to help, or to those whose needs are for housing alone. Concentrated social services cannot be easily provided for the scattered tenants in leased housing. It would be a waste of resources to house persons who, for one reason or another, could not take advantage of the opportunity. Of course, the less one thinks of the value of "concentrated social services," the less important this factor becomes.

However one feels about this issue, an Authority cannot be blamed for attempting to make its Section 23 dollars do the most work with the least strain. It is perhaps too easy a solution to confine one's program to such popular and harmless tenants as the elderly. There is something to be said for those cities that simply select for the leasing programs families in great poverty who, in the judgment of the Authority, would profit from the chance of a decent home in a decent area, and who would "fit." The system is far from ideal; it is discriminatory in at least one sense; it is flawed by remnants of discretionary bureaucratic power beyond the legitimate needs of the program; but it reaches slightly deeper down into the ranks of the poor, and does slightly more for those it helps than many other Government social programs. However odious is the notion of earning the right to a decent home, it seems better to allow privileges to some rather than to none. We have suggested many reasons why the program has limits; why it is capable of making only marginal advances toward solving the housing problem. Clearly, too, the most desperately poor are not likely to be housed by the leasing program. Those that are will be housed without interfering greatly with existing racial and economic patterns.

Yet despite all this, the leasing program has helped the public housing movement in its revival from the lethargy of a decade or more. And the movement is traveling, on the whole, in a salutary direction. If it is not diverted from its course by the babel of local voices, and if it does not backslide too far into paternalism, the program will mark a real advance over conventional public housing and will achieve a real betterment of life for many of the poor.

FOOTNOTES

¹The major piece of federal legislation was the Wagner-Steagall Act, 50 Stat. 888 (1937), as amended, 42 U.S.C. Sec. 1410ff. On the legislative history of the Act, see T. McDonnell, The Wagner Housing Act: A Case Study of the Legislative Process (1957); on the fore-runners of this legislation, see R. Fisher, Twenty Years of Public Housing, 74-96 (1959); Riesenfeld and Eastlund, "Public Aid to Housing and Land Development," 34 Minn. L. Rev., 610 (1950).

²See Bauer, "The Dreary Deadlock of Public Housing," Architectural Forum, May 1957, p. 140; L. Friedman, "Public Housing and the Poor: An Overview," in J. tenBroek, ed., The Law of the Poor, 313-318 (1966).

³On the tragi-comedy of site selection in Chicago, graphically illustrating the problems of trying to locate public housing projects anywhere but in the hard-core slum, see M. Meyerson and E. Banfield, Politics, Planning, and the Public Interest (1955).

⁴See New York Times, Feb. 5, 1967, at 57, col. 3.

⁵Housing and Urban Development Act of 1965, Sec. 23, 42 U.S.C. Sec. 1421b (Supp. I, 1965).

⁶Housing and Urban Development Act of 1965, Sec. 23 (a) (1), 42 U.S.C. Sec. 1421b (a) (1) Supp. I, 1965).

⁷Housing and Urban Development Act of 1965, Sec. 23(b), 42 U.S.C. Sec. 1421(b) (Supp. I, 1965).

⁸Housing and Urban Development Act of 1965, Sec. 23(c), 42 U.S.C. Sec. 1421b (c) (Supp. I, 1965); PHA Circular, October 6, 1965, paragraph 15 [hereinafter cited as Circular].

⁹See Housing and Urban Development Act of 1965, Sec. 23(d), 42 U.S.C. Sec. 1421b (d) (Supp. I, 1965). It is possible under the program to have a direct lease between the assisted tenant and the private owner, with rent payments arranged through a collateral agreement between the local authority and the owner. Most cities which have come under the program so far have not made use of this option. It is, however, employed by the Boston Housing Authority, Telephone Interview, June 2, 1967, Frank Powers, Leasing Officer, Boston Housing Authority.

¹⁰Housing and Urban Development Act of 1965, Sec. 23(d)(1), 42 U.S.C. Sec. 1421b (d)(1) (Supp. I, 1965).

¹¹Housing and Urban Development Act of 1965, Sec. 23(d)(2), 42 U.S.C. Sec. 1421b (d)(2).

¹²This is the general practice, and indeed is stressed by housing authorities as an advantage to property owners, who do not have to worry about rent collections. See, for example, "Section 23 Leased

Housing and the Property Owner," (Housing Authority of the City of Oakland, undated) p. 4:

Question: Who collects the rent from the tenant?

Answer: The Housing Authority is responsible for tenant rent collections.

Question: If the tenant becomes delinquent in his rent, is the owner penalized?

Answer: No.

But see note 9, supra.

¹³Housing and Urban Development Act of 1965, Sec. 23(d)(3), 42 U.S.C. Sec. 1421(d)(3) (Supp. I, 1965).

¹⁴Housing and Urban Development Act of 1965, Sec. 23(d), 42 U.S.C. Sec. 1421b (d), as amended by Pub. L. 89-754, Title X, Sec. 1002, 80 Stat. 1284. Originally the initial term of leases was to be 12 to 36 months, renewable. This was interpreted to allow a 3 year maximum initial lease and a 7 year maximum renewal term, or a total term of 10 years. Interview with Harry E. Zollinger, Department of Housing and Urban Development, Region VI Housing Assistance Office, in San Francisco, Nov. 16, 1966; Circular, paragraphs 1(a), 14, 19(a). The amendment referred to above is interpreted to allow an initial maximum term of 5 years and renewal up to 10 years, for a total of 15 years. Interview, with Harry Zollinger, supra; HAA Supplement to Circular, December 5, 1966, amending paragraphs 1(a) and 14.

¹⁵The "low-income tenant" is the same low-income person generally assisted by the public housing program. Circular, paragraph 8(a).

¹⁶Address by Marie C. McGuire, Commissioner, Public Housing Administration, Houston Apartment Association, Houston, Texas, January 18, 1966.

¹⁷See, for example, Aronov and Smith, "Large Families, Low Incomes, Leasing," 22 J. of Housing (1965).

¹⁸The confusion started with a running dispute over which program deserved the name "rent certificates." Compare Hearings on H.R. 5840 and Related Bills Before the Subcommittee on Housing of the House Committee on Banking and Currency, 89th Cong., 1st Sess., pt. I, 279 (1965) [hereinafter cited as 1965 House Hearings] with id., at 449, 456. See also Hearings on S. 1354 and Other Pending Bills Before a Subcommittee of the Senate Committee on Banking and Currency, 89th Cong., 1st Sess., 337 (1965) [hereinafter cited as 1965 Senate Hearings]. The leasing program seems to have won this particular battle. See, e.g., W. Miller, The Fifteenth Ward and the Great Society, 219 (1966). One newspaper article illustrates the confusion over labels. Obviously describing the leasing program, it refers to "the rent subsidy section of the 1965 Housing Act," the common name for the rent supplement program. Kaplan, "500 City Tenants Will Get New Homes With U.S. Aid," N.Y. Times, Jan. 31, 1966, at 1, col. 6.

¹⁹Housing and Urban Development Act of 1965, Sec. 101, 12 U.S.C. Sec. 1701s (Supp. I, 1965). A study of the rent supplement program is found in Krier, "The Rent Supplement Program of 1965: Out of the Ghetto, Into the . . .?," 19 Stan. L. Rev., 555 (1967).

²⁰The similarities of the programs were recognized during the hearings. See, e.g., 1965 House Hearings, pt. II, at 821. For statements contrasting the programs, to the disadvantage of the rent supplement, see *id.*, pt. I, at 449; 22 J. of Housing, 185, 195 (1965).

²¹See Krier, *supra* note 17 at 556 and accompanying footnotes. The Administration also wished to rid itself of the below-market-interest-rate program, Sec. 221(d)(3) of the National Housing Act, 12 U.S.C. Sec. 17151, and use the rent supplement as the basic instrument for aiding lower middle-income families. President Johnson, in a message to Congress in 1965, advocated the rent supplement as a "crucial new instrument in our effort to improve the American city," and stated that "If it works as well as we expect, it should be possible to phase out most of our existing programs of low-interest loans." President Lyndon B. Johnson, "The Problems and Future of the Central City and Its Suburbs," H.R. Doc. No. 99, 89th Cong., 1st Sess. (1965), reprinted in 1965 House Hearings, pt. I, at 72.

²²Congressman Barrett (Democrat from Pennsylvania), in 1965 House Hearings, pt. I, at 230.

²³See Krier, *supra* note 17, at 556, and accompanying footnotes; Staff of House Committee on Banking and Currency, 89th Cong., 1st Sess., . . . Compilation of Housing and Urban Development Act of 1965 at 284-88 (Comm. Print, 1965), . . .

²⁴See Krier, *supra* note 17, at 556, n. 15, describing the difficulties encountered by the program in achieving funding. These difficulties are by no means over. The House of Representatives refused to appropriate any new funds in May, 1967. New York Times, May 18, 1967, p. 1, col. 1.

²⁵For the position of the National Association of Housing and Redevelopment Officials (NAHRO) in support of leasing, see 22 J. of Housing, 185, 195 (1965); House Hearings, pt. I, at 456. NAHRO regarded local administration as an essential ingredient of the leasing program. Ibid.

²⁶NAHRO opposed rent supplements. See, e.g., 1965 House Hearings, pt. I, at 425-456; 1965 Senate Hearings at 301-338. In the view of Senator Douglas, NAHRO's opposition was based largely on the threat of the rent supplement program to the authority and autonomy of local public housing officials. 1965 Senate Hearings, at 439, 525.

²⁷H.R. 5840, 89th Cong., 1st Sess. Sec. 402 (1965). See 1965 House Hearings, pt. I, at 40-41.

²⁸H.R. 6501, 89th Cong., 1st Sess. Sec. 101(a) (1965). This portion of the Widnall Bill was enacted without substantial change, Housing and Urban Development Act of 1965, Sec. 23, 42 U.S.C. Sec. 1421b (Supp. I, 1965), even though NAHRO objected that its provisions were too detailed. NAHRO felt that specifics should be left to administrative experimentation and determination. See, e.g., 1965 House Hearings, pt. I, at 458.

Actually, the Administration proposal was also enacted into law. Housing and Urban Development Act of 1965, Sec. 502, 42 U.S.C. Sec. 1410(c) (Supp. I, 1965). The Administration proposal now embodied in this section establishes the so-called flexible formula and also serves as the legal basis for another program that differs from conventional public housing, but which diverges from strict section 23 housing "in that it will conform to all the traditional public housing requirements." 22 J. of Housing 347-48 (1965). Under this section, for example, public housing authorities might enter into long-term leases of private dwellings. During the hearings the two proposals were regarded as being only technically different. See 1965 House hearings, pt. I, at 364.

The "flexible formula" is discussed in a later part of the Article.

²⁹President Lyndon B. Johnson, "The Problems and Future of the Central City and Its Suburbs," supra note 19, at 72-73.

³⁰See note 22, supra.

³¹42 U.S.C. Sec. 1402(2) (Supp. I, 1965); PHA Management Manual Sec. 3.2.

³²See, e.g., Pa. Stats. 35 Sec. 1553: "An Authority may rent or lease dwelling accommodations only to persons of low income."

³³42 U.S.C. Sec. 1410(g)(3) (1964).

³⁴See, e.g., C. Abrams, The City is the Frontier, 36-37, 265-66 (1965).

³⁵See Housing Act of 1961, Sec. 205(g)(3), 42 U.S.C. Sec. 1410(g)(3) (1964).

³⁶42 U.S.C. Sec. 1415(7)(b) (1964).

³⁷Interview with Harry Zollinger, note 14, supra.

³⁸Low-Rent Project Directory, Dec. 31, 1965, PHA, p. 99. A series of articles in the Chicago Daily News, in April, 1965, "exposed" the Taylor homes, the "world's biggest and most jam-packed housing development" as a "civic monument to misery, bungling and a hellish way of life," a "death trap," and a "concentration camp." Chicago Daily News, April 10, 1965, p. 1, col. 1.

³⁹In a few instances, "a segregated pattern for...federally managed projects" was actively fostered, e.g., in San Diego during the war, in projects managed by the Federal Public Housing Authority. D. McEntire, Residence and Race (1960), p. 320. See also R. Weaver, "Integration in Public and Private Housing," Annals, CCCIV, p. 86 (1956).

⁴⁰Executive Order No. 11063, Nov. 24, 1962, 27 Fed. Reg. 11527, U.S. Code Cong. Adm. News 1962, Vol. II, p. 4386, sec. 101(a), the famous "stroke of the pen," directed all departments and agencies of the Executive Branch to "take all action necessary and appropriate" to prevent racial discrimination in the renting of residential dwellings financed by federal money. PHA then issued an equal opportunity regulation, 24 Code Fed. Reg. Sec. 1500.6. Title VI of the Civil Rights Act of 1964 (in section 601) now covers public housing; see PHA Management Manual Sec. 3.7.

⁴¹The Miami Housing Authority, for example, had 14 housing projects under management as of December 31, 1965. Eight were all-white; five were all-Negro. PHA, Low-Income Project Directory, December 31, 1965, pp. 50-51.

⁴²Low-Income Project Directory, pp. 21, 22, 98-99.

⁴³Address by Marie C. McGuire, Commissioner, Public Housing Administration, League of Women Voters of Louisville General Meeting, Louisville, Kentucky, Jan. 19, 1966.

⁴⁴Housing and Urban Development Act of 1965, Sec. 23(f), 42 U.S.C. Sec. 1421b(f) (Supp. I, 1965). See Circular, Paragraphs 3(b), 8(a).

⁴⁵Circular, paragraph 8(f), provides: "If the owner is willing, the lease may contain an option giving the tenant the right to take over the lease in the event an increase in income causes him to become ineligible."

The leasing program, in a few cities, has been used to "bail out" a real estate project which has become financially shaky. The general expectation is that Section 23 tenants will be desirable tenants and that landlords will want to keep them as long as possible. Occasionally this expectation may not be correct. This has been the experience where a middle-income project is built in a former slum area, and tenants shy away because the surrounding area has not yet been purified enough for the tastes of the middle-class. Section 23 tenants provide financial salvation, which is expected to meet this temporary need. In at least one instance, the landlord has insisted on a one-year lease with the Authority, although ordinarily landlords have been eager to sign up for three, five, or even longer terms, if possible.

⁴⁶ It is formally easier to raise income limits under the leasing program than under the conventional public housing program, due to the inapplicability of the 20% gap requirement. It should also be easier in fact, since the private landlord has a vested interest in keeping tenants in the program and does not wish to lose the rent guarantee through rising tenant incomes. The possibility and incentive to raise income ceilings for leasing purposes can provide a precedent (that is, an excuse) for making a much needed increase in income limits for the conventional program as well. Thus it is significant that the leasing provisions invite local authorities to establish higher income limits for the leasing program or to raise income limits generally. See Circular, paragraph 5(d). One reason not to be overly enthusiastic about this development is the evidence that at least in one region the 20% gap requirement is still being observed. Interview with Harry Zollinger, note 14, supra.

⁴⁷ San Jose Housing Authority, Statement of Policies, Exhibit 1 (undated). If the family has been displaced by urban renewal or other government action, the maximum income for continued occupancy is treated as a maximum for admission; in other words, a family of four, displaced by urban renewal, is eligible in San Jose even if the family income is \$6,300. Income is, roughly speaking, gross income less certain deductions from wages (social security, pension, retirement funds or death benefits), child support payments, and "predictable medical expenses for a continuing illness...in excess of 3% of the aggregate income of the family...and...not...compensated for...by insurance." *Id.* at 20.

⁴⁸ Statement of Policies Governing Admission to and Continued Occupancy of the PHA-Aided Low-Rent Housing Projects Operated by the Housing Authority of the City of Richmond, California, p. 1, section 1-A-6.

By no means all leasing programs make this distinction. For example, the National Capital Housing Authority, in Washington D.C., sets the same net asset and maximum rent limits in public housing and in the section 23 program. Telephone Interview with Mrs. Anne Heil, Leasing Acquisition Officer, NCHA, June 1, 1967.

⁴⁹ A limited qualification to this observation might lie in the fact that the local housing authority may ask the local government to make a contribution to achieve lower rents. Circular, paragraph 5(c). If the local authority is making payments in lieu of taxes on other conventional projects, see 42 U.S.C. Sec. 1410(h) (Supp. I, 1965), a remission or foregoing of such payments could accomplish the necessary contribution. *Ibid.* Note also that a special \$120 annual subsidy for elderly, handicapped, and displaced tenants permits the housing of lower income families in these three categories than might otherwise be possible. Circular, paragraph 4(a). See 42 U.S.C. Sec.(s) 1402(2), 1410(a) (Supp. I, 1965).

The general tone of the leasing program, however, implies that it will aim at income levels above the rock-bottom group in conventional public housing. See, e.g., Circular, paragraph 5(d): "[Local authorities] may find it necessary to consider establishing higher minimum rents or higher rent-income ratios for the leasing program."

⁵⁰ Interview with Mrs. Anne Heil, note 48 supra.

⁵¹ Information from Los Angeles is drawn from David W. Williams, Jr., Report on the Status of Section 23 Housing in the Cities of San Francisco and Los Angeles, with background Commentary on the Housing and Urban Development Act of 1965 (unpublished seminar paper, May, 1967, Stanford University Law School), p. 51. Information on Bucks County and Corpus Christi was drawn from telephonic interviews with HAA regional officials.

⁵² By "welfare" we refer to income from general assistance and AFDC as distinguished from income from veterans' pensions, social security old age pensions and private employment. The line between the two types of income can be roughly taken as the line between the two cultures: that which we call the submerged middle class, and that which we call the dependent or problem poor.

⁵³ Telephone interview with Talbert Elliott, Executive Director Oklahoma City Housing Authority, June 1, 1967.

⁵⁴ See note 8, supra.

⁵⁵ Both by assuring a "mix initially and by avoiding such domination of an apartment building by the poor that middle-income families would move out. See Kaplan, note 16, supra.

⁵⁶ The statute provides that the local authority shall lease no more than 10% of the units in a structure "except to the extent that the agency, because of the limited number of units in the structure or for any other reason, determines that such limits should not be applied." Housing and Urban Development Act of 1965, Sec. 23(a)(c), 42 U.S.C. Sec. 1421b(c). See also Circular, Sec. 15 (local authority determination to lease more than 10% of the dwellings in a structure does not require federal approval).

⁵⁷ Telephone Interview with Harold Rosenfeld, Chief, Leasing Division, Region II (Philadelphia), June 1, 1966.

⁵⁸ Telephone Interview with Irwin Halpern, Chief, Leasing Division, Region I (New York City), June 2, 1967. In Chicago, the Authority tries not to take more than 1/3 of the units in a building. In very large buildings, they try not to take more than 6 or 8 units. But they make exceptions for elevator buildings to be occupied by elderly people. Telephone Interview with Gene Chmura, Program Coordinator, Leasing Program, Chicago Housing Authority, June 2, 1967.

⁵⁹ Address by Marie C. McGuire, Commissioner, Public Housing Administration, Annual Convention of National Municipal League, St. Louis, Missouri, November 15, 1965.

⁶⁰ Circular, paragraph 11(a)(5).

⁶¹ 1965 House Hearings, pt. I, at 205.

⁶² Circular, paragraph 1(c).

⁶³On Oakland, see M. Melkonian and P. Whitman, unpublished Seminar paper (Stanford University Law School, May 1967). The Oakland Authority plans soon to use newspaper advertising.

⁶⁴Circular, paragraphs 7(a)-(d); Address by Marie C. McGuire, Commissioner, Public Housing Administration, Oklahoma Mobilization Housing Conference, Eufaula, Oklahoma, November 7, 1965.

⁶⁵Circular, paragraph 17.

⁶⁶Circular, paragraph 10.

⁶⁷The Act provides that "the selection of tenants...shall be a function of the owner, subject to the provisions of the contract between the authority and the agency." Housing and Urban Development Act of 1965, Sec. 23(d)(1), 42 U.S.C. Sec. 1421b(d)(1) (Supp. I, 1965).

⁶⁸Circular paragraph 8(b)(1)-(4). In any case, the local authority determines initial and continuing eligibility, Circular, Paragraph 8(c), and reserves the sole right to give notice to vacate, although it will consider "representations from the owner: in this regard. Circular, paragraph 8(d).

⁶⁹Circular, paragraph 8(d). In operation, a general requirement is that if the private owner refuses three tenants sent to him by the authority, the authority may terminate its agreement. Interview with Harry Zollinger, note 14, San Jose, California Housing Authority, Section 23 Lease, Sec. 7. The San Jose Lease further provides that the authority is relieved of its responsibility to pay rent if the owner refuses an applicant sent by it. Ibid.

⁷⁰See Circular, paragraph 16. Compare the unfortunate treatment of an analogous problem in the rent supplement program, Krier, *supra* note 17, at 567 n.83.

⁷¹Telephone Interview with Gene Chmura, note 58, *supra*. The Chicago experience is exceptional. Some cities also "qualify both tenant and unit" in a significant number of cases (20% in Oakland), some occasionally (3% in Boston) and some never (Washington, D.C.).

⁷²New York Times, Jan. 15, 1967, at 53, col. 3.

⁷³Hill, "Jobless in Watts are Finding Work," New York Times, March 5, 1967, at 57, col. 1.

⁷⁴Telephone Interview with Mrs. Anne Heil, note 48, *supra*.

⁷⁵Thoroughly and passionately chronicled in C. Abrams, Forbidden Neighbors (1955). But see Hofmann, "Home Bias Fought in Grosee Point," New York Times, March 12, 1967, at 53, col. 1; Johanesen, "OMI--S.F.'s Model Integrated Community," San Francisco Sunday Examiner & Chronicle, Sec. 1, at 29, col. 1.

⁷⁶Telephone Interview, Harold Sole, Chief, Leasing Division, New York City Housing Authority, June 2, 1967.

⁷⁷To be financed under 12 U.S.C. Sec. 1715 (Supp. I, 1965).

⁷⁸See, e.g., New York Times, April 2, 1967, at 70, Col. 4, indicating that in some metropolitan areas 5% of the suburban population wants to live in the city.

⁷⁹1965 House Hearings, pt. II, at 1111; 1965 Senate hearings at 518.

⁸⁰Address by Marie C. McGuire, Commissioner, Public Housing Administration, League of Women Voters of Louisville General Meeting, Louisville, Kentucky, January 19, 1966.

⁸¹Anonymity is so thorough in some areas that a program tenant can obtain credit at the neighborhood grocery. Interview with Harry Zollinger, note 14, supra.

⁸²See, e.g., C. Abrams, The City is the Frontier, 30-31, 268-69 (1965).

⁸³E.G.: "[Mothers worry] lest a small child might try to emulate Superman and take wing from the tenth floor. Indeed some do so, without success. Sometimes even the most thoroughly toilet-trained youngster cannot make it from playlot to bathroom--which does help the elevator." id. at 30.

⁸⁴Aronov & Smith, "Large Families, Low Incomes, Leasing," 22 J. of Housing, 482 (1965). See also C. Abrams, The City is the Frontier, 46, 269 (1965).

⁸⁵Interview with F.A. Warren, Project Manager, Omaha Housing Authority, August 12, 1966. Omaha applied for a 100 unit pilot program; by the end of May, 1967, they had actually placed 55 families in leased housing.

⁸⁶Aronov & Smith, supra note 75, at 483.

⁸⁷Ibid.

⁸⁸Ibid.

⁸⁹Ibid. See also 1965 House Hearings, pt. II, at 599.

⁹⁰Telephone interview with Gene Chmura, note 58, supra.

⁹¹In theory, conventional public housing could accord potential tenants some freedom of choice, if the local authority had a number of projects of various types and in various locations. Some housing authorities have been trying to maximize racial integration and to expand freedom of choice by this means. See, e.g., New York Times, June 2, 1966, at 24, col. 3.

Leasing also permits options whereby tenants may purchase their dwellings when income permits, thus further enhancing the prerogative of choice. Circular, paragraph 13(a). An option to purchase is significant when we take into account the findings in one demonstration program that the income of leasing tenants showed substantial increase, due "to the better housing, which eliminated emotional uncertainties among the family breadwinners and gave them new incentives." New York Times, January 8, 1967, at 64, col. 1.

⁹² Address by Joseph Burstein, General Counsel, Public Housing Administration, 30th National Conference of the National Association of Housing and Redevelopment Officials, Philadelphia, Pennsylvania, October 26, 1965. The rent supplement program, in contrast, is generally limited to new construction. See Krier, *supra* note 17, at 558 nn. 29 and 30.

⁹³ Housing and Urban Development Act of 1965, Sec. 23(a)(1), 42 U.S.C. Sec. 1421b(a)(1) (Supp. I, 1965). See 1965 House Hearings, pt. I, at 205; 1965 Senate Hearings at 77.

⁹⁴ Housing and Urban Development Act of 1965, Sec. 502, 42 U.S.C. Sec. 1410(c) (Supp. I, 1965). Implementation of the flexible formula is explained in PHA Circulars dated October 12 and December 2, 1965.

⁹⁵ Address by Marie C. McGuire, Commissioner, Public Housing Administration, League of Women Voters of Louisville, Kentucky, January 19, 1966. See also 1965 House Hearings, pt. I, at 203.

⁹⁶ See generally, 1965 House Hearings, pt. I, at 203-05; 1965 Senate Hearings at 25; Committee Print, *supra* note 21, at 118.

⁹⁷ 1965 House Hearings, pt. I, at 204; 1965 Senate Hearings at 75.

⁹⁸ Housing and Urban Development Act of 1965, Sec. 502, 42 U.S.C. Sec. 1410(c) (Supp. I, 1965); Housing and Urban Development Act of 1965, Sec. 23(e), 42 U.S.C. Sec. 1421b(e) (Supp. I, 1965; Circular, paragraph 4(a); 1965 House Hearings, pt. I, at 204-205; see also 1965 Senate Hearings at 76.

⁹⁹ PHA Circular, October 12, 1965 [cited hereinafter as Financial Circular]. The Flexible Formula Fixed Annual Contribution Rate will be fixed twice a year by PHA, in June and December. Financial Circular, paragraph 2(4)c. Local authorities may also submit proposals based on other computation methods if the recommended procedure "does not result in a reasonably accurate estimate of the fixed annual contribution that would be established for the type of newly constructed project that the Authority would be most likely to undertake to house the number, sizes, and kinds of families to be housed in the proposed project utilizing the flexible formula." Financial Circular, paragraph 3.

¹⁰⁰"In the case of leased units, the formula will have the effect of limiting the rental that can be paid for such units..." 1965 House Hearings, pt. I, at 205. See also 1965 Senate Hearings at 77.

¹⁰¹Circular, paragraph 5(a). "Consideration must also be given to the cost to the tenant of heat or other utilities which will not be provided by the owner." Ibid.

¹⁰²Interview with Harry Zollinger, note 14 supra; see 42 U.S.C. Sec. 1410(h). This statutory provision, in essence, exempts public housing projects to be exempt from local personal and real property taxes, but requires instead that the local authority must make "payments in lieu of taxes equal to 10 per centum of the annual shelter rents charged in such project," or less if state or local law so provides. Section 1410(h) is explicitly inapplicable to leased housing. 42 U.S.C. Sec. 1421b(f); Circular, paragraph 3(b)(1).

¹⁰³1965 House Hearings, pt. II, at 796. The result, of course, is long waiting lists for conventional public housing. See 1965 House Hearings, pt. II, at 816. See also 1965 Senate Hearings at 314-15, 318.

¹⁰⁴Inspiring the label "instant housing." See, e.g., Address by Marie C. McGuire, Commissioner, Public Housing Administration, Oklahoma Mobilization Housing Conference, Eufaula, Oklahoma, November 7, 1965.

¹⁰⁵1965 House Hearings, pt. I, at 457. See also id., pt. I, at 203; 1965 Senate Hearings at 75.

¹⁰⁶Housing and Urban Development Act of 1965, 23(f), 42 U.S.C. Sec. 1421b(f) (Supp. I, 1965); Circular, paragraph 3(b).

¹⁰⁷42 U.S.C. Sec. (s) 1410(e) (Supp. I, 1965), 1415(7)(b) (1963), 1451(c) (Supp. I, 1965).

¹⁰⁸Housing and Urban Development Act of 1965, Sec. 23(a)(2) 42 U.S.C. Sec. 1421b(a)(2) (Supp. I, 1965); Circular, paragraph 3(a). The requirement of local approval by resolution originated in the conference substitute bill. Committee Print, supra note 11, at 304. A similar requirement came into the rent supplement program by way of a rider to a supplemental appropriation act. See Krier, supra note 17, at 556 n. 15.

In California, article XXXIV of the Constitution, adopted in 1950, provides that "no low rent housing project shall hereafter be developed, constructed, or acquitted in any manner by any state public body until a majority of the qualified electors...approve such project by voting in favor thereof." Passage of this amendment was a victory for anti-public housing lobbies; since 1950, projects cannot be built without a referendum, which the proponents of public housing frequently lose. The Article, however, has been construed not to apply to the leasing program. 47 op. Att'y Gen. Cal. 17, Opinion No. 65-246, January 18, 1966. This is a

tremendous advantage for the leasing program, if for no other reason than that communities can embark upon a program without a costly and time-consuming referendum.

¹⁰⁹ Information from various regional offices of HAA, and, in some cases, for the local housing authorities.

¹¹⁰ Telephone Interview with William Miller, Chief, Leased Housing Division, Region IV (Chicago) June 2, 1967.

¹¹¹ Interview with Frank Powers, note 9, *Supra*.

¹¹² 1965 House Hearings, pt. I, at 456. See also *id.*, pt. I, at 457; Note: Government Housing Assistance to the Poor, 76 Yale L. J. 508, 543-44 (1967).

¹¹³ See, e.g., Address by Marie C. McGuire, Commissioner, Public Housing Administration, Houston Apartment Association, Houston, Texas, January 18, 1966.

¹¹⁴ See Housing and Urban Development Act of 1965, Sec. 23(c)(1) 42 U.S.C. Sec. 1421b(c)(1) (Supp. I, 1965) (units which "are, or may be made, suitable for use as low-rent housing...").

¹¹⁵ Circular, Paragraph 12(b). To meet the required standards units must be "decent, safe, and sanitary;" the exterior and interior of the building must be in good condition; the unit must have adequate private cooking and sanitary facilities, and adequate heating, lighting, and ventilation; the unit must be large enough for the family occupying it; the unit must be located in a decent neighborhood reasonably accessible to public transportation, schools, churches, and stores. Circular, Paragraph 11(a).

¹¹⁶ Aronov & Smith, *supra* note 75, at 484.

¹¹⁷ Interview with Mrs. Anne Heil, note *supra*.

¹¹⁸ Interview with Frank Powers, note 9, *supra*.

¹¹⁹ Melkonian and Whitman, note 63, *supra*.

¹²⁰ See, e.g., 1965 House Hearings, pt. I, at 205; *id.*, pt. II, at 816; Interview with Harry Zollinger, note 14, *supra*.

¹²¹ Interview with Talbert Elliott, note 52, *supra*. Other cities, however, rent at or near the market, either because they are unable to get more favorable terms, or because they do not try. In Chicago, the Authority has paid on an average \$96 a month for one bedroom units, which, the Authority feels, is about the market rate, though the Authority sometimes can "push and pull a bit" in negotiating with landlords. Interview with Gene Chmura, note 58, *supra*.

¹²² Circular, paragraph 1b; the 3% provision is inapplicable to rehabilitated housing, however, "Since such rehabilitation increases the standard housing supply, it would clearly not have an inflationary effect upon the private market." PHA Circular, December 2, 1965, supplementing Circular, paragraph 1(b).

¹²³ See HUD Form, Application for a Low-Rent Housing Program and Supporting Information, Part II, p. 1.

¹²⁴ Interview with Gene Chmura, note 58, supra. There had been concern that leasing would be of little help to New York City, which has a housing shortage. 1965 Senate Hearings at 800. A program has been approved for that area, however, in spite of the fact that the City's vacancy rate is about 2%. See Note, "Government Housing Assistance to the Poor," 76 Yale L.J., 508, 513 (1967).

¹²⁵ Telephone Interview with Director, Seattle Housing Authority, May 31, 1967.

¹²⁶ Circular, paragraph 12(c).

¹²⁷ See generally C. Abrams, The City is the Frontier, 132-54 (1965). The problem of tenant dislocation, among others, was poignantly treated this year in the excellent CBS Documentary, "The Tenement," CBS Television Network, February 28, 1967, describing tenement life in Chicago: "MRS. BARBER: We will have to move--start looking for a place but they didn't say when, you know. But--and I still don't know, you know, how long we have here. MR. BECKWITH: They told me they was going to find me a place. They axe me what I wanted to live at, in a project or out of project...I say, well, I say I wouldn't mind taking a project, I don't guess. They say, well, we're sending an application to you to a project then... MRS. JOHNSON: In a way, I'm glad to leave, in a way. In another way, I'm sorry. When you've lived in a place a long time--had two kids--born in that place--that place really have a hold over you and the kids--my little boy--eight years old--he just love it. He just loves his little friends. He feels like he's lost now--and that's what really makes me feel really sad to leave the place."

¹²⁸ And under the program, families cannot be permanently displaced in order to provide units. Circular, paragraph 16. In some cities, in fact, leasing has provided a quick and humane solution to the problem of finding relocation housing for families displaced by other governmental programs. Of course, rehabilitation of occupied dwellings will normally involve temporary displacement. Such rehabilitation can occur under the provisions of the leasing program. Ibid. Some attempts at rehabilitation while tenants remained in their dwellings proved to be almost disastrous--for example, no heat for three months during the winter. "Old Building + Low-Income Tenants + Profit Seeking Rehabilitation," 24 J. of Housing, 29, 31 (1967). In the case of mass rehabilitation, which might be possible to a limited extent under the leasing

program, prefabrication techniques make possible total renovation of a large apartment building in 48 hours, with minimum inconvenience to tenants. See Time, April 21, 1967, p. 60. Rehabilitation under the program probably will more often proceed on a small, individual basis; it will not take advantage of the techniques and economies of scale possible in the mass effort. There have been cases, however, of substantial renovation under Sec. 23. In Washington, D.C., 54 2-bedroom units in a private development were converted into 27 4-bedroom units and put under lease.

¹²⁹Aronov & Smith, *supra* note 75 at 484.

¹³⁰This subject is treated in some detail in L. Friedman, Government and Slum Housing (in press, 1967); see also G. Sternlieb, The Tenement Landlord (1966); W. Lehman, Building Codes, Housing Codes and the Conservation of Chicago's Housing Supply, 31 U. Chi. L. Rev. 180 (1963); A. Schorr, Slums and Social Insecurity (1964), 69-74; for a specific example of the unprofitability of a hardcore slum tenement, see W. Klein, Let in the Sun (1964) 141-68, 273-4. Subsidies are available to the poor to rehabilitate their own homes, under certain circumstances. See 79 Stat. 451 (1965), Sec. 106(a).

¹³¹1965 House Hearings, pt. II, at 583.

¹³²Cf. Mulvihill, "Problems in the Management of Public Housing," 35 Temp. L. Q., 163, 192 (1962).

¹³³Burstein, note 85, *supra*.

¹³⁴See generally, Note, "Government Housing Assistance to the Poor," 76 Yale L. J., 508, 515-18 (1967).

¹³⁵See Krier, *supra* note 117, at 559.

¹³⁶Burstein, note 85, *supra*.

¹³⁷1965 House Hearings, pt. I, at 456-58.

¹³⁸See Friedman, "Public Housing and the Poor: An Overview," 54 Calif. L. Rev., 642, 647-48.

¹³⁹Address by Marie C. McGuire, Commissioner, Public Housing Administration, Oklahoma Mobilization Housing Conference, Eufaula, Oklahoma, November 7, 1965.

¹⁴⁰Address by Marie C. McGuire, Commissioner, Public Housing Administration, League of Women Voters of Louisville General Meeting, Louisville, Kentucky, January 19, 1966.

141 Address by Marie C. McGuire, Commissioner, Public Housing Administration, Houston Apartment Association, Houston, Texas, January 18, 1966.

142 Address by Marie C. McGuire, Commissioner, Housing Assistance Administration, Annual Convention of the National Municipal League, St. Louis, Missouri, November 15, 1965.

143 Address by Marie C. McGuire, Commissioner, Public Housing Administration, National Association of Housing and Redevelopment Officials, Philadelphia, Pennsylvania, October 25, 1965.

144 Ibid.

145 Telephone Interview with William Newman, St. Paul Housing Authority, June 5, 1967; interview with Irwin Halpern, note 58, *supra*,

146 Burstein, note 85, *supra*.

147 Telephone Interview, Thomas Gralewski; Leased Housing Section, Pittsburgh, Pennsylvania, June 5, 1967.

148 See L. Friedman, Government and Slum Housing (in press, 1967), chapter IV. There is an enormous literature on urban renewal. The legislative history is given briefly in A. Foard and H. Fefferman, "Federal Urban Renewal Legislation," 25 Law & Contemp. Problems, 635 (1960). This essay, and others dealing with various phases of urban renewal, have been collected and edited by James Q. Wilson in Urban Renewal, the Record and the Controversy (1966). Two studies, S. Greer, Urban Renewal and American Cities, and C. Abrams, The City is the Frontier, both published in 1965, and particularly valuable.

149 Quoted from National Association of Housing and Redevelopment Officials, Public Housing is the Tenants, in Changing Concepts of the Tenant-Management Relationship, Issue III, p. A-60 (1967). See Friedman, "Public Housing and the Poor; An Overview," 54 Calif. L. Rev., 642, 659-662 (1966).

150 These examples are drawn from leases quoted in National Association of Housing and Redevelopment Officials, "Public Housing is the Tenants," in Changing Concepts of the Tenant-Management Relationship, Issue III, at A-53-A-55 (1967).

151 New York City Housing Authority, Tenant Rules and Regulations, paragraph 2(z). From Detroit: "You agree to observe and comply with any and all rules, regulations and statement of policies made, or to be made by the Detroit House Commission, relative to rental terms and conditions of occupancy." City of Detroit Housing Commission, Lease Agreement (emphasis added).

¹⁵²In practice, some public housing managers are quite lenient with over-income tenants. There is a statutory escape clause, Housing Act of 1961, Sec. 205(g)(3), 42 U.S.C. Sec. 1410(g)(3) (1964), but apparently it is little used.

¹⁵³Some of these cases are described in 8 Welfare Law Bulletin (May 1967) 3-5, 6-7; 7 Welfare Law Bulletin, 7 (Feb. 1967).

¹⁵⁴New York City Housing Authority v. Watson, 207 N.Y.S. 2d 920 (1960).

¹⁵⁵Thorpe v. Housing Authority of Durham, 35 U.S.L.W. 4344 (April 17, 1967).

¹⁵⁶HUD Circular: "Terminations of Tenancy in Low-Rent Projects," Feb. 7, 1967, quoted in 8 Welfare Law Bulletin, 4 (May, 1967).

¹⁵⁷Housing Authority of the City of Oakland, California, Resident Lease Agreement, Section 23 Housing, p. 2, paragraph 5. The tenant can cancel "by giving 30 days advance notice in writing to the AUTHORITY." By paragraph 6, the Authority reserves the "right to modify, change, alter or amend the provisions of this lease upon 10 days written notice to the TENANT."

¹⁵⁸In San Francisco, one-year leases have been granted to section 23 tenants. Williams op. cit. supra. But apparently the Local Authority there does so only because it believes that it is obligated by law to grant such terms. The belief, which is quite erroneous, may be due to a misreading of Housing and Urban Development Act of 1965, Sec. 23(d), 42 U.S.C. Sec. 1421b(d) (Supp. I, 1965), which prescribes a one year minimum for leases between the local authority and an owner.

¹⁵⁹See Friedman, "Public Housing and the Poor; An Overview," 54 Calif. L. Review, 649-654 (1966).

¹⁶⁰42 U.S.C. Sec. 1410(g) (1964).

¹⁶¹Ibid.

¹⁶²See, for example, 42 U.S.C. Sec. 1410(a) (additional public housing subsidy of up to \$120 "per annum for dwelling unit occupied by an elderly family").

¹⁶³These figures are drawn from PHA, Low-Income Directory, December 31, 1965. In some of the other regions the figures were not quite so striking, but everywhere the elderly poor were somewhat overrepresented in the construction figures.

¹⁶⁴See 12 U.S.C. Sec. 1701 (q).

¹⁶⁵Telephone Interview, William Newman, Leasing Section, St. Paul, Minnesota Housing Authority, June 5, 1967.

¹⁶⁶ However, a sample of 100 rejections of applicants in San Jose broke down as follows:

Over-income	39
Non-residence	64
Excess net assets	4
Poor housekeeping	4
Inability to pay rent	1

These figures do not reflect summary rejections by telephone. If these were included, the factor of nonresidence must be even more exaggerated. San Jose is a rapidly growing city, with irregular boundaries, and numerous islands and peninsulas of unincorporated county land near the city. The residence requirement is two years. D. Commons, S. Dolberg, F. Katz, and A. Sherry, "Report on the Housing Authority of San Jose" (unpublished seminar paper, May, 1967, Stanford University Law School).

¹⁶⁷ Telephone Interview with Mrs. Anne Heil, n. 48, supra

¹⁶⁸ Aronov & Smith, supra note 75, at 483.

¹⁶⁹ Quoted in Commons et al., note supra.

¹⁷⁰ Telephone Interview, note 58, supra.

¹⁷¹ Telephone Interview, note 9, supra.