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# Nonprofit Housing Providers: Can They Survive the Devolution Revolution?

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# NONPROFIT HOUSING PROVIDERS: CAN THEY SURVIVE THE "DEVOLUTION REVOLUTION"?†

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† The term "devolution revolution" is taken from G. Thomas Kingsley, *Perspectives on Devolution*, 62 J. AM. PLAN. ASS'N. 419 (1996) (quoting RICHARD P. NATHAN, THE DEVO- LUTION REVOLUTION: AN OVERVIEW (1996)).

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## I. INTRODUCTION

The executive director of a nonprofit housing development and management corporation recently was asked, during a discussion in an interdisciplinary graduate level class, about the methods used by the organization to screen prospective tenants. He was asked how thoroughly the corporation checked the credit history of an applicant. His response: the corporation no longer conducted credit checks on applicants because everyone who applied had bad credit.

Across town a religiously affiliated nonprofit, operating a Section 8 complex with numerous supportive services, grows frustrated with resident families who don't cooperate with management in improving their self-sufficiency. The nonprofit landlord wonders whether it can or should attempt to evict a family because the parents have not attended parenting classes or job training sessions.

At the courthouse, a family of four faces eviction from assisted housing. Based on the family's income, their rent is only four dollars a month. But, partially because the father has an alcohol problem, the family has not paid rent for ten months. A law student who represented the family through a law school clinical program gets no answer to his question, "Where will they go?"

An energetic new nonprofit tenant management organization has begun management of thousands of units of public housing. But one of the tenant managers' first missions is to attempt to evict many of their neighbors believed to be involved in drug offenses or other misconduct.

These brief stories, drawn from experiences of students and faculty in the Saint Louis University Housing Law Clinic working with nonprofit organizations and individual clients, illustrate facets of the dilemma that housing advocates, policymakers and providers face as the nation debates a revamping of its housing policy. The collapse of a compromise effort to enact a new housing law just prior to the re-election of President Clinton and the retention of the Republican majority in Congress sets the stage for a renewed housing policy debate in the 105th Congress.<sup>1</sup> In that debate the nonprofit sector is being touted as a major force in housing and community development,<sup>2</sup> although it

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1. See, e.g., *Election Isn't Expected to Have Major Impact on Housing Policy*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 417 (Nov. 18, 1996); *Republicans, Democrats Trade Charges Over Death of Housing Bill*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 323 (Oct. 7, 1996). As this essay went to press, H.R. 2 had been adopted in the House on May 14, 1997, and S. 462 was nearing final passage in the Senate. See also *Congressional Staff Members Optimistic on Housing Reform*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 740 (April 7, 1997).

2. U.S. DEP'T OF HOUSING & URB. DEV., EMPOWERMENT, A NEW COVENANT WITH AMERICA'S COMMUNITIES: PRESIDENT CLINTON'S NATIONAL URBAN POLICY REPORT 33 (1995) (organizations that provide "bridges to suburban employment opportunities must be firmly grounded in the inner-city that they serve,") (citing BENNETT HARRISON, BUILDING BRIDGES:

likely will have to contend with a continuation of sharp drops in direct federal expenditures for housing.<sup>3</sup> Nonprofits are expected to be featured in any new housing policy initiatives because they have demonstrated an ability to successfully produce and manage affordable housing for low-income families.

The potential devolution of major housing responsibilities, along with the coming devolution of public assistance,<sup>4</sup> gives nonprofits a significant opportunity to play a major role in affordable housing partnerships. But the opportunity also contains great risks. The combined effect of reductions in both housing and welfare assistance threatens to trigger a new wave of homelessness which could overwhelm fledgling nonprofit housing and community development organizations.<sup>5</sup> In addition, the regulatory structure within which nonprofit housing organizations must operate poses additional problems for nonprofits which venture into housing. Uncertainty about federal and state tax status of nonprofit housing activities,<sup>6</sup> as well as their role as (traditionally caring) landlords can contribute to a schizoid personality among nonprofit

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COMMUNITY DEVELOPMENT CORPORATIONS AND THE WORLD OF EMPLOYMENT TRAINING (1993)). See, e.g., U.S. DEP'T. OF HOUSING & URB. DEV., BEYOND SHELTER: BUILDING COMMUNITIES OF OPPORTUNITY (THE UNITED STATES REPORT FOR HABITAT II) 18-22 (1996) (describing President Clinton's Community Empowerment Agenda, including the Empowerment Zone and Enterprise Community (EZ/EC) and National Community Development Initiative (NCDI) programs, and urging state and local governments to "expand their use of community-based organizations to implement programs and deliver services to inner-city communities").

3. The fiscal 1997 HUD appropriation law (H.R. 3666, Pub. L. 104-204) continued the trend of major reductions in funding, e.g., \$350 million instead of \$624 million (1996) for Low-Income Housing Preservation and Resident Homeownership Act (LIHPRA) and Emergency Low-Income Housing Preservation Act (ELIHPA) projects, and no new money for rental subsidies for qualified families not already receiving housing subsidies. Jason De Parle, *Slamming the Door*, N.Y. TIMES MAG., Oct. 20, 1996, § 6 at 1; Joseph P. Poduska, *President Signs HUD Bill With Preservation Funding, Section 8 Restructuring*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 322 (Oct. 7, 1996).

4. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, §§ 101-103 (codified at 42 U.S.C. §§ 601-609) (substituting block grants to states for federal entitlement programs providing public assistance to needy families).

5. See Victoria C. Spitter, *As Government Assistance Decreases, Homelessness Increases: A Closer Look at Welfare, Housing and Homelessness*, 3 U. PA. J. L. & SOC. CHANGE 111 (1996); Mary Bryna Sanger, *Welfare Reform Within a Changing Context: Redefining the Terms of the Debate*, 23 FORDHAM URB. L.J. 273 (1996).

6. See, e.g., *Housing Partnership v. Town of Rollinsford*, 683 A.2d 189 (N.H. 1996) (exemption from state property tax denied a section 501(c)(3) nonprofit New Hampshire corporation that charged rents based on the operating costs of the building rather than tenants' ability to pay) (discussed in *Nonprofit Housing with Rents Based on Operating Costs Not Tax-Exempt*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 282 (Sept. 9, 1996)); *IRS Rejects Tax-Exempt Status of Affordable Housing Developer*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 456 (Dec. 2, 1996) (nonprofit incorporated as sole general partner in a limited partnership denied tax-exempt status because agreements by nonprofit general partner to repurchase interest of and/or indemnify limited partner's investment expectations held to be substantial non-exempt activities).

housing providers.

This article examines the potential of nonprofit housing providers to participate effectively in new housing programs likely to be linked to the welfare reform self-sufficiency movement. It explores how nonprofits have employed self-sufficiency programs, and suggests modifications to such programs to improve upward mobility for participants. The analysis includes an acknowledgment that self-sufficiency plans are not for everyone, and suggests alternative schemes for serving those segments of the population which are not likely to benefit from these programs. With actual experiences of nonprofits as a framework, the article discusses the potential of nonprofit housing providers, and the implications of the devolution movement for such providers.

Part II reviews proposals for housing reforms, including proposed expanded roles for nonprofit housing providers. Part III discusses the organizational patterns of nonprofits and examines current tax and related organizational issues. Part IV explores the supportive services and incentive programs commonly included in self-sufficiency programs. Part V reviews the housing continuum from shelter through transitional housing to permanent housing, with special emphasis on traditional roles nonprofits have played. Part VI proposes a three-part housing strategy: 1) support for persons seeking to become self-sufficient homeowners by allowing a portion of housing assistance payments to be credited to a down payment and/or maintenance account administered by a neighborhood nonprofit housing provider, 2) long-term rental assistance commitments to persons not likely to be able to become self-sufficient but who are making good faith efforts to take care of their housing, abide by the rules of their community, and raise their children to become responsible members of society, and 3) support by all levels of government of congregate living arrangements for those needing a supportive living environment. For families with children, the goal should be self-sufficiency for the children when they grow to adulthood. Responsibility rather than self-sufficiency should be the standard for continuing housing assistance to persons with child care responsibilities, as well as persons who are elderly or disabled. Nonprofits have important roles to play in these strategies, but need greater regulatory flexibility to enable them to reach their potential in a "devolved" assisted housing environment.

## II THE CHANGING FEDERAL HOUSING POLICY

Politicians from both sides of the aisle consistently extol the virtues of nonprofit organizations. President Clinton and Speaker of the House Newt Gingrich have been in the camera's eye while swinging a hammer at Habitat for Humanity building sites.<sup>7</sup> The President has specifically called for greater

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7. See, e.g., *Republicans Take Aim at Gender Gap*, ATLANTA J. CONSTITUTION, Aug. 13, 1996, at 1A.

roles for nonprofits, particularly in easing the pain of welfare reform.<sup>8</sup>

The United States Report for the Habitat II Conference in 1996 stated that community based organizations "are particularly effective at delivering services because of their relationships and standing in the community" and "ability to coordinate multiple programs into a single, comprehensive package."<sup>9</sup> This section reviews some of the specific roles nonprofits have played and will play in the future.

#### A. *Increasing Role for Nonprofits*

In recent years, a significant portion of federal housing dollars has been directed toward nonprofit housing providers. Many of the McKinney Act homeless programs operated by HUD provide money, either through local government or directly, to homeless shelters operated by nonprofit organizations like the Salvation Army.<sup>10</sup> Under the HOME program, there is significant emphasis on nonprofits and a designated percentage of funds is reserved for Community Housing Development Corporations (CHDOs), which must be nonprofit corporations.<sup>11</sup> In the Community Development Block Grant program (CDBG), communities can support nonprofits in the development of rental and for-sale housing.<sup>12</sup> HUD recently made it easier for nonprofits to obtain FHA mortgages for multi-family buildings.<sup>13</sup> Many of the agencies providing services to AIDS victims are nonprofits receiving funds through Housing for Persons With AIDS (HOPWA) grants.<sup>14</sup> HUD also grants significant funds to nonprofit organizations which serve as HUD approved housing counseling and fair housing agencies.<sup>15</sup> In the Low Income Housing Tax Credit program, ten percent of all credits are set aside for use in projects spearheaded by nonprofits.<sup>16</sup> Indeed, most HUD programs provide for nonprofit participation, if not outright priority for nonprofits.

In what hopefully is an aberration, HUD has temporarily put on hold a program which benefits nonprofits. Under its single family property disposition program for the homeless,<sup>17</sup> HUD has, on a limited basis, been giving nonprofits priority for residential buildings in the HUD inventory which are

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8. Mike Feinsilber, *Churches put Little Faith in Clinton's Welfare Idea*, ST. LOUIS POST-DISPATCH, Mar. 9, 1997, at 12A.

9. HUD, BEYOND SHELTER, *supra* note 2, at 22.

10. 42 U.S.C. § 11301 (1994).

11. 42 U.S.C. § 12771 (1994).

12. 42 U.S.C. § 5303 (1994).

13. *FHA Multifamily Procedures For Nonprofit Mortgagors Revised*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 273 (Sept. 9, 1996).

14. 42 U.S.C. § 12901 (1994).

15. 42 U.S.C. § 3616a (1994).

16. I.R.C. § 42 (1994).

17. 12 U.S.C. §§ 1709, 1715b(1994); 42 U.S.C. § 1441 (1994).

acquired through foreclosures. Nonprofits can lease these buildings at virtually no cost, then purchase the buildings for thirty percent less than others would pay. HUD has suspended the program for one year after discovering participation by unqualified providers, ineligible tenants, and evidence of deteriorating property.<sup>18</sup>

In some HUD programs, nonprofits are simply allowed to compete with housing authorities, local government, or other entities for funds. But often, HUD has looked to nonprofits as a possible savior from crisis. One of the most pressing crises faced by housing policymakers is the imminent expiration of thousands of contracts under the Low Income Housing Preservation and Resident Homeownership Act<sup>19</sup> and in HUD's Section 8 portfolio. Over the next few years, contracts covering millions of units will expire, allowing owners and developers to convert buildings to market rate complexes. HUD has funding for some renewals, but the agency has given nonprofits, which often are but need not be tenant management groups, a high priority to take over these projects where feasible in the LIHPRA program, and to form joint ventures with for-profit owners in the Section 8 context.<sup>20</sup> Streamlining the regulations allowing for such transfers would be a significant step in this process.

One reason Congress turns to nonprofits in drafting housing policy is that nonprofits are more willing to accept subsidized tenants than private landlords. A HUD survey found only one-half of the owners of privately owned housing units in the country would accept Section 8 tenants, with the main reason given for refusing subsidized tenants being the maze of regulations.<sup>21</sup> Nonprofits are more willing than private owners to accept subsidized tenants, but nonprofits also seek relief from complex regulatory schemes in hopes of enhancing their social mission.

Meanwhile, the current emphasis of the federal government on homeownership will also be a major opportunity for nonprofits. The 104th Congress approved legislation mentioning Habitat for Humanity by name, specifically targeting funds to that organization and others which foster homeownership through the use of sweat equity requirements.<sup>22</sup> The new statute allows funds to go to these nonprofit groups under the Self-Help Homeownership Opportu-

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18. *HUD Suspends Leasing Under Property Distribution Program*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 452 (Dec. 2, 1996).

19. Low-Income Housing Preservation and Resident Homeownership Act of 1990, 12 U.S.C. §§ 4101-24, 4141-47 (1994).

20. 24 C.F.R. § 248.157 (1996); *HUD Will Use Third Parties To Speed Up Reengineering Activity*, 25 [Current Developments] Housing & Dev. Rep. (BNA) 37 (June 2, 1997).

21. *Section B Tenants Would Be Accepted in Only About Half of Rental Units in HUD Survey*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 528 (Dec. 30, 1996).

22. 42 U.S.C. § 12805 (Supp. 1996). The St. Louis Habitat Chapter currently requires homebuyers to contribute 450 sweat equity hours by working on building their own home or a neighbor's. Habitat buyers purchase homes through no-interest loans.

nity Program to be used for land acquisition and site development. This legislation strengthens the federal government's recent emphasis on homeownership, which will continue into the next century.<sup>23</sup> Nonprofits will take on an increasing role in homeownership initiatives in the next few years.

In this era of devolution, we should not expect to see much repetition of this type of specially targeted legislation.<sup>24</sup> Yet, HUD and Congress generally have no qualms about turning to nonprofits as a major player in the effort to alleviate housing problems.

But not every initiative which affects housing pays as much deference to nonprofit housing developers as it might. The Bridges to Work program, being run as a pilot project in St. Louis and five other cities, links inner city welfare recipients to child care, career counseling, and transportation to suburban locations where most entry level job opportunities now are located.<sup>25</sup> The program acknowledges a shift by employers to locating in suburban areas. While several nonprofit agencies in St. Louis are involved in the program, none has a specific focus on housing issues. Greater participation by nonprofit housing providers would serve the interest of the government and the families participating in the program.<sup>26</sup> Because most areas of the country, including St. Louis, do not have regional or statewide housing planning, communities continue to be unwilling to accommodate affordable housing even if it will be located near jobs.<sup>27</sup> Reputable nonprofit organizations, if part of the project, could provide supportive services for participants and encourage development of affordable housing where jobs are located.

The tax code changes of the 1980s solidified the trend away from for-profit development of affordable housing.<sup>28</sup> And now, nonprofits are capable of an expanding role in affordable housing. With the devolution of housing programs from the federal to the state and local level, nonprofits will have an opportunity to enhance their stature and capacity. Many state and local housing agencies already recognize nonprofits as major partners in affordable housing development. In the coming years, with the federal government relinquishing much of its regulatory control over housing programs, nonprofits have a

23. See, e.g., *Partnership Promotes Women's Homeownership*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 105 (July 1, 1996).

24. Habitat's headquarters is located in House Speaker Newt Gingrich's home state of Georgia.

25. Notice of Implementation of the Omnibus Consolidated Rescissions and Appropriations Act, 61 Fed. Reg. 41,641, 41,642 (1996).

26. *Cisneros Launches Program to Link Cities to Suburban Jobs*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 326 (Oct. 7, 1996).

27. Robert Cervero, *Jobs-Housing Balance Revisited, Trends and Impacts in the San Francisco Bay Area*, J. AM. PLAN. ASS'N, 492 (1996).

28. See BENNETT L. HECHT, *DEVELOPING AFFORDABLE HOUSING: A PRACTICAL GUIDE FOR NONPROFIT ORGANIZATIONS* 5 (1994) (citing Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986)).



unique opportunity to influence housing policy.

### *B. HUD Reform After Welfare Reform*

Many proposals to revamp or eliminate HUD have been presented in the last few years.<sup>29</sup> While no major restructuring has yet occurred, significant reductions in the amount of federal housing assistance have taken place.<sup>30</sup> A new effort to restructure federal housing programs is underway in the 105th Congress, but enactment of welfare reform legislation in 1996 should motivate Congress to exercise restraint before dismantling HUD programs, since for those losing welfare benefits, housing assistance is their last plank on a rickety bridge to self-sufficiency. Nonprofit housing providers are often experts on local social welfare issues,<sup>31</sup> so they will be needed to help ease the implementation of welfare reform.

Fortunately the major housing reform proposals being considered in Congress retain a major role for nonprofits.<sup>32</sup> While the proposal to revamp the system of homelessness assistance does restrict the use of funds for supportive services,<sup>33</sup> it and the other bills being considered recognize the strong role of nonprofits.

However, to date, social policy has been marked by a lack of collaboration between the welfare delivery system and the housing assistance delivery system.<sup>34</sup> The welfare reform debate was targeted at cutting AFDC, Food Stamps, and Supplemental Security Income benefits. Housing assistance rarely was discussed. Now that the welfare system is being restructured, policymakers must consider how the new welfare system will impact housing programs.

The effects of welfare reform are a concern to a wide range of nonprofit organizations. A nonprofit domestic violence shelter has concluded that "second stage housing and supported living may be a necessary next developmental step for the Oasis Women's Center under the Welfare Reform provisions."<sup>35</sup> This group is aware that welfare reform will decrease the availability of public assistance for victims of domestic violence and their children, and

29. *Elimination of HUD Could Have "Far-Reaching Effects," GAO Says*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 681 (Mar. 10, 1997); *Blueprint II Encourages local Partnerships, Would Consolidate Funds*, 23 [Current Developments] Housing & Dev. Rep. (BNA) 547 (Jan. 15, 1996).

30. *Supra* note 3.

31. *Supra* note 9 and accompanying text.

32. H.R. 2 and S. 462 (public housing and Section 8 reform); H.R. 1433 (Section 8 restructuring); H.R. 217 (homelessness assistance reform).

33. H.R. 217.

34. *Coalition Calls for Full Funding of HUD to Support Welfare Reform*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 558 (Jan. 13, 1997).

35. Minutes of Oasis Women's Center (Alton, Ill.) Board Strategic Planning Meeting, Nov. 1, 1996 (copy on file with the *Saint Louis University Public Law Review*).

concluded that this will increase "the real threat of hunger and homelessness."<sup>36</sup>

Welfare to work is the theme of the recent reform movement, and there are many nonprofit organizations which will be linking welfare recipients to the workforce as they lose their benefits. These organizations know that having a suitable place to live is essential to finding a job and keeping it,<sup>37</sup> and they have the ability to provide the necessary coordination. HUD recently asked Congress for funds for 30,000 additional Section 8 certificates to be used directly to support state and local programs implementing welfare reform, and has awarded grants to forty-five housing authorities to fund job training children and transportation for public housing residents, but these are a token effort at coordination.<sup>38</sup> Congress thus far has not taken action to hold HUD's budget harmless from declines in tenant income due to welfare reform, or to acknowledge that the savings in welfare costs will be offset by increases in funds needed for housing aid. Since tenants living in assisted housing generally have their rent based on thirty percent of their income,<sup>39</sup> a loss or reduction of cash assistance or other welfare benefits would mean these families would pay less in rent, requiring the government to make up a greater difference between the tenant's share of rent and operating costs or market rents.

HUD's Office of Policy Development and Research has estimated that welfare reform will increase assisted housing costs by \$2.3 billion through fiscal year 2002.<sup>40</sup> HUD estimates that a housing authority with 1,000 public housing units and 1,000 assisted units would need an additional subsidy of \$123,000 in fiscal year 2000, and increased spending for certificates and other assistance of \$159,000.<sup>41</sup> Cuts in cash assistance and food stamps will also lead to more rent defaults and evictions, as families reallocate meager incomes. More than a third of families receiving AFDC, now called TANF or Temporary Assistance to Needy Families, also receive some form of housing subsidy, and HUD has estimated that three of five families in public housing will be affected by welfare reform,<sup>42</sup> as will many families receiving Section 8 and other assistance.

Proposals to link housing and welfare reform will have to focus on flexi-

36. *Id.*

37. *Supra* note 34.

38. *HUD Seeking Big Budget Hike in 1998 to Handle Section 8 Renewals*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 385 (Nov. 4, 1996); *HUD Has Selected 45 Public Housing Authorities That Will Receive \$31 million in grants*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 820 (May 5, 1997).

39. 42 U.S.C. § 1437a(a)(1) (1994).

40. *Welfare Reform May Boost Need for Housing Subsidies*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 424 (Nov. 18, 1996).

41. *Id.*

42. *HUD Seeking Big Budget Hike in 1998 to Handle Section 8 Renewals*, *supra* note 38, at 385.

bility and on working with state and local officials. Graduated housing assistance is one viable option. Under such a system, housing subsidies would be on a sliding scale, with assistance decreasing gradually as employment and income conditions improved.<sup>43</sup> Targeting housing assistance to welfare recipients moving into the workforce requires significant resources to identify families who would benefit most from assistance, and such a system would be open to criticism from housing advocates whose clients are not the ones chosen.

While coordination of housing and welfare policy is crucial, the assumptions and remedies from the welfare reform debate cannot be blindly applied to housing reform. With the welfare reform debate focusing on personal responsibility, most criticism of the AFDC program centered around recipients who allegedly spent their welfare check on drugs or alcohol, while failing to spend money on food or clothing for their children. And food stamps are susceptible to the black market wherein recipients exchange the stamps for cash.

At the same time, housing assistance, because of its in-kind nature, is not subject to the same abuse by recipients. While legal aid offices and law school clinics see numerous cases of clients accused of allowing persons not on a lease to reside with them, or failing to disclose all of their income, thereby violating the terms of their public housing or Section 8 leases, there does not appear to be a black market of persons obtaining public housing or Section 8 certificates and then selling interests in leases or the certificates to others for cash.<sup>44</sup> With regard to tenant abuses, while it is fraudulent for families to fail to report income, many families fail to report minor fluctuations such as income from sporadic babysitting jobs or similar part-time employment. But the in-kind nature of housing assistance renders it insulated from abuses seen in the AFDC and food stamp programs.

Although HUD has suspended its single family property disposition program due to allegations of abuse, these allegations do not focus on misuse of properties by low-income persons, but instead on the improper use of these low cost properties by providers and persons who don't need assistance.<sup>45</sup> Concerns about fraud and abuse in housing programs have been and should continue to be focused on unscrupulous providers and others receiving large government contracts to provide housing.<sup>46</sup> The saga of former federal officials,

43. Peter Salsich, Jr., *Welfare Reform: Is Self-Sufficiency Feasible Without Affordable Housing?*, 2 MICH. L. & POL'Y REV. 43, 62 (1997); *Housing Proposal as Means to Help Welfare Recipients Improve Their Economic Condition*. 24 [Current Developments] Housing & Dev. Rep. (BNA) 264 (Sept. 9, 1996).

44. *But see* United States v. Gatling, 96 F.3d 1511 (D.C. Cir. 1996) (affirming the convictions of D.C. employees who accepted bribes to distribute Section 8 vouchers to persons who were not appropriate recipients).

45. *Supra* note 17.

46. *See, e.g., HUD, Justice Plain "Get Tough" Effort Against Landlords Who Misuse Federal Assistance*, 24 [Current Developments] Housing & Dev. Rep. (BNA) 739 (April 7, 1997)

convicted of steering HUD funds to friends and supporters, has epitomized housing fraud. Tenant abuse has not. Therefore, the tide of welfare reform, founded in part on a desire to eliminate fraud, should not be allowed to flood the housing policy debate. Policymakers should feel reasonably confident that housing assistance is getting to the target population.

Coordination between the welfare and housing delivery systems will be complex and difficult.<sup>47</sup> In the past, state and local housing providers have looked to Washington for cues on welfare policy, since in the past there were detailed national standards for welfare programs. Now, these providers should be turning to their state officials, since federal welfare policy has turned most of the decisionmaking regarding the structure of welfare programs over to the states. And because welfare policy will vary from state to state, the true impact of welfare reform on housing policy will be extremely difficult to determine.

### C. *Devolution Begins*

The uncertainty of federal funding for tenant assistance programs such as Section 8 has put a greater premium on the willingness of state and local governments to make up some of the slack.<sup>48</sup> State housing finance agencies are increasingly being called upon to provide tenant based rental assistance and assistance for social services.

For example, the Missouri Housing Development Commission approved a grant to the Ecumenical Housing Production Corporation (EHPC) of \$68,000 from the Missouri Housing Trust Fund to be used to help EHPC develop a transitional housing program with ancillary social services for families residing in homeless shelters.<sup>49</sup> Under this program, ten three-bedroom housing units scattered throughout St. Louis County will be constructed and rented to Section 8 eligible families. Acquisition and construction of the units is financed in part through a partnership with the St. Louis Equity Fund which allows low income housing tax credits to be realized by participating corporations who invest in housing developments. Long-term financing for the project is provided through tax-exempt municipal bonds by the Missouri Housing Development Commission.

The grant from the Housing Trust Fund is being used to provide rental assistance so that participating tenants will not have to pay more than thirty per-

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(announcing a fifty city effort to end financial skimming and failure to properly maintain units by private landlords securing Section 8 payments).

47. *Housing Proposed Means to Help Welfare Recipients Improve Their Economic Condition*, *supra* note 43.

48. In the fiscal 1997 HUD appropriation law, H.R. 3666, Pub. L. 104-204, no new money for new Section 8, certificates or vouchers was included. DeParle, *supra*, note 3, at 1.

49. Letter from Christopher Krehmeyer, Executive Director, Ecumenical Housing Production Corporation, to Richard G. Grose, Executive Director, Missouri Housing Development Commission (July 10, 1996) (on file with the *Saint Louis University Public Law Review*).

cent of their income for rent, which is fixed at \$450 a month for each of the three-bedroom units. This fixed rent is below the fair market rental rate maximum for units established by HUD guidelines for the St. Louis area. The lower rent was achieved because of the favorable equity commitment from the St. Louis Equity Fund and the ability to reduce interest costs on long-term financing through the use of tax-exempt municipal bonds. An interesting aspect of this program is that rental assistance funds will include money for a security deposit equal to the cost of the first month's rent. If the tenant fulfills the terms of the agreement of the security deposit, the deposit will be refunded as a voucher to be used for permanent housing.<sup>50</sup>

The other major use of these funds **will** be for ancillary social service support. The social service support program is designed to facilitate family and individual self-sufficiency and to enable families to make the transition from subsidized living to permanent housing. The three main categories of social service support included in the Missouri Housing Trust Fund grant to EHPC are case management and counseling, emergency food vouchers, and supportive services.<sup>51</sup>

In addition to these basic services, EHPC will also use funds to establish an emergency utility assistance program for people who need to make deposits to get a utility connection in their name, nutrition assistance counseling on how to prepare and purchase foods on a limited income, counseling to help families develop a sense for money management, home maintenance, and ultimately referral and placement into permanent housing.<sup>52</sup>

Tenants will be expected to set up a home ledger that describes their income and expenses and will be taught how to prepare a household budget. A manual on homecare will be given to each family, along with an orientation on

50. *Id.*

51. *Id.*

1) **Case Management.** A caseworker will be assigned to locate, coordinate and facilitate access to available community services and to provide individual and group counseling, including crisis counseling to enable families to avoid the kind of situations which may cause them to revert to homelessness.

2) **Emergency food vouchers.** These **will** also be made available.

3) **Supportive Services.** The supportive services component is designed to enable individuals to overcome barriers to self-sufficiency by providing child care, transportation, and job training, including employability skill building, occupational skills training, and job development.

The job training component is designed to assist previously homeless tenants to acquire and maintain permanent employment. It has four key features: tenant commitment to training and obtaining a job, removing barriers that limit a tenant's ability to obtain a job, improving employability skills, such as getting to a job regularly and on time, linking job training with the local labor market.

*Id.*

52. *Id.*

the use of the home. Families in the transitional housing programs will have opportunities to be placed in EHPC pennanent homes based on availability and satisfaction of the requirements of the rental application, lease, and security deposit agreements.<sup>53</sup>

Innovative and complex partnerships like this one between a state agency and nonprofit housing provider will of necessity become more frequent in the next few years. By participating in and indeed creating these programs as devolution begins, nonprofits will shape the terrain of housing assistance policy as we enter the new century.

### III. NONPROFIT HOUSING CORPORATIONS: THE PLAYING FIELD

Not every nonprofit corporation involved in housing has the same level of ability, the same focus, the same philosophy. Nonprofit corporations have varying structures and sizes. Thousands of small neighborhood organizations exist which have as their goal revitalization of a few blocks or a neighborhood. Many of these seek to qualify as community development corporations (CDCs)<sup>54</sup> and community housing development organizations (CHDOs).<sup>55</sup> There are national nonprofit organizations with local chapters, such as Habitat for Humanity, which are actively engaged in housing development.<sup>56</sup> Some nonprofits have affordable housing as their sole mission. Others, like the Salvation Army, have broader missions, but devote substantial resources to housing. Numerous nonprofit organizations, such as the Leadership Council for Metropolitan Open Communities in Chicago and the Metropolitan St. Louis Equal Housing Opportunity Council, work to end discrimination in housing and to achieve integrated neighborhoods.<sup>57</sup>

Perhaps the most significantly expanding sector in the nonprofit housing arena is the tenant management and tenant ownership movement, growth of which is being driven in part by federal efforts to privatize public housing.<sup>58</sup> Nonprofit tenant management corporations are being created in many urban areas as tenants seek to manage, and even own, their complexes. Tenant organizations are taking over public housing, Section 8 and other federally assisted projects. In St. Louis, the Carr Square public housing complex is now

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53. *Id.*

54. CDCs are mentioned in almost every federal housing program.

55. 42 U.S.C. § 12771 (1994).

56. The Housing Law Clinic at Saint Louis University School of Law provides legal assistance to Habitat for Humanity St. Louis, a chapter of the national Habitat for Humanity organization.

57. The Fair Housing Act includes provisions for grants to nonprofit organizations which work to prevent and eliminate housing discrimination through enforcement and education. 42 U.S.C. § 3616a (1994).

58. Paul Poston, *Resident Ownership and Control*, 13 COST CUTS, A TECHNICAL PUBLICATION OF THE ENTERPRISE FOUNDATION, June 1996, at 8.

owned and operated by a tenant cooperative after many years of tenant management.<sup>59</sup> Recently the Blumeyer Village Tenant Association took over management of one of the largest public housing complexes in the nation.<sup>60</sup>

Nonprofit corporations are first a creature of state government, but state laws generally have very broad parameters and do not pose any significant barrier to nonprofits engaging in activities to provide affordable housing. Organizations incorporate under these state laws, and their internal procedures are governed by articles of incorporation and bylaws which must be consistent with state mandates.<sup>61</sup> After incorporating, many nonprofits seek to become tax exempt organizations under section 501(c)(3) of the Internal Revenue Code.<sup>62</sup> By obtaining this status, they pay no income taxes, and donations to these groups are tax deductible by the donor. Applying for tax exempt status has proven to be one of the most difficult tasks for nonprofits, as the process often requires professional help from attorneys, accountants and others.

The IRS has been sending mixed signals to nonprofit housing developers about how friendly it will be to their mission. One regulatory development can make the process of obtaining tax exempt status easier for affordable housing developers. The IRS has implemented a revised safe harbor provision for nonprofit housing developers seeking 501(c)(3) status which will take some of the uncertainty and anxiety out of the process for those organizations which choose this procedure.<sup>63</sup> While the provisions of the safe harbor contain restrictions, such as requiring that seventy-five percent of units developed be rented or sold to persons at or below eighty percent of the median income level for the area, it is a positive step which will make it easier for nonprofits willing to accept the restrictions to achieve tax exempt status.

Meanwhile, on a less encouraging note, the IRS has signaled it will scrutinize more closely than before applications for tax exempt status by nonprofits which intend to partner with profit-motivated developers in Low Income Housing Tax Credit deals.<sup>64</sup> But it is such partnerships, where the nonprofit serves as general partner and the for-profit serves as limited partner and the capital provider, that Congress intended be formed to use tax credits, particularly the ten percent set aside for nonprofits. As nonprofits, they are unable to use the credits on their own and the set aside assumes they will partner with for-profit entities. Since nonprofits are involved in almost a quarter of all tax

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59. Tim Poor, *Jack Kemp is Still a Hero to Many*, ST. LOUIS POST DISPATCH, Aug. 19, 1996, at SB.

60. The Housing Law Clinic at Saint Louis University assisted the Association with its management contract.

61. See e.g., MO. REV. STAT. ch. 355 (Supp. 1996).

62. I.R.C. § 501(c)(3)(1994).

63. Rev. Proc. 96-32, 1996-1 R.B. 14.

64. J. William Callison, *IRS Follows Housing Pioneers Down a Bumpy Road*, 6 J. AFF. HOUSING, Winter 1997, at 108.

credit housing developments,<sup>65</sup> Congress should take action to ensure that the intent of the tax credit program is preserved from this erosion by the IRS.

The Tax Credit program should also be expanded to include for sale development. Currently, tax credits are only available for projects which will have rental units. Habitat for Humanity and other nonprofit developer focusing on homeownership could greatly increase production if tax credits were available to raise equity for their projects.

Regardless of each nonprofit's mission, these groups are looking for two things from the federal government: funding and regulatory flexibility. Political pressure can increase the first demand. This article continues with further suggestions for meeting the second demand in the context of a devolving federal housing policy.

#### IV. THE SELF-SUFFICIENCY MOVEMENT: STRONG POTENTIAL BUT SIGNIFICANT LIMITATIONS

Groups such as EHPC are at the lead of changing housing and welfare policies because of their commitment to supportive services. The popular theme of welfare reformers is self-sufficiency, which places heavy emphasis on the use of supportive services. Nonprofits are playing a major role in the self-sufficiency movement, but they seek clarification of that role.

##### *A Are All Residents of Assisted Housing Capable of Becoming Self Sufficient?*

EHPC describes its program as a "holistic" approach to helping people become self-sufficient. During a three year period, sixty-percent of participants in the EHPC self-sufficiency program have gone from welfare to work. EHPC owns and operates 183 single-family homes in scattered sites among suburban communities in the greater St. Louis area. The average family income is \$5,000 plus. The average family is a single-parent with three children. The parent has a grade school plus education, and little or no employment experience or skills. Through the social services that EHPC provides, the corporation expects that between five and ten families per year will reach a level where they can afford homeownership. However the rest of the families will remain renters, although they may be able to double, and possibly triple their income during a three-five year period.<sup>66</sup>

Support services cost money and this money must be raised outside the traditional housing income stream because the provision of social services generally is not thought to be within the responsibility of housing managers.

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65. GENERAL ACCT. OFF., REPORT TO HOUSE COMMITTEE ON WAYS AND MEANS B-274542 (March 28, 1997).

66. Ecumenical Housing Production Corporation 1996 Annual Report (on file with the *Saint Louis University Public Law Review*).



Social services are often referred to as "soft" management costs. Rental income and traditional housing subsidies have focused on the "hard" management costs associated with collecting rent, keeping units in good operating condition, and making necessary repairs. EHPC has estimated that its supportive service program cost \$2,000 per family, per year, in addition to its traditional property management expenses. This translates into approximately \$165 a month per unit.<sup>67</sup>

Because these expenses are not covered by rental income and traditional housing subsidies, EHPC must raise over \$350,000 per year to provide support services for its 183 families. This is in addition to the funds it must raise to sustain its basic management staff. Most of this money comes from churches, other religious organizations, corporations and foundations, local government, and wealthy individuals.<sup>68</sup> EHPC's fundraisers report that raising money to acquire and/or build new housing units is far easier than raising money to provide the support services for existing tenants. In fact, EHPC's portfolio might be two or three times its current size of 183 were it not for the fact that it has been committed from the very beginning to the holistic management concept.<sup>69</sup>

As public officials debate the shape of future self-sufficiency programs and how to best invest in them, they must understand the limits of such programs. Self-sufficiency programs may not be practical for up to half of the households receiving housing assistance. The General Accounting Office (GAO) reports that thirty-five percent of households receiving assistance with housing have a head of household who is elderly, and thirteen percent have a head of household who is disabled.<sup>70</sup> There are no discussions in Congress, and rightly so, of self-sufficiency programs for the elderly. And while it is practical for some disabled persons receiving assistance to join the work force, a significant portion of the disabled population receiving housing assistance will not be candidates for self-sufficiency programs.<sup>71</sup> Therefore, self-sufficiency programs should not be required for a large segment of the housing-assisted population.

In addition to these populations, the GAO has found that approximately fifty-five percent of assisted households with children are headed by a single parent, and forty-five percent of assisted households are headed by parents with less than a high school education.<sup>72</sup> Thus, even while Congress has re-

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67. *Id.*

68. *Id.*

69. From the beginning, EHPC has emphasized soft management programs. In its early years, this was called pastoral management, a term coined by its first property manager, Sister Jean Christensen, a Roman Catholic nun who followed religious traditions of community and care for the whole person in developing the particular management style that EHPC has followed since its inception in 1980.

70. GENERAL ACCT. OFF., REPORT B-261186 (May 18, 1995).

71. *Id.*

72. *Id.*

cently tightened the definition of disability for Social Security Disability and Supplemental Security Income to restrict benefits due to alcohol and drug addiction,<sup>73</sup> and to restrict SSI benefits for children,<sup>74</sup> in some respects policy-makers must accept a broader definition of disability when it comes to defining who can become self-sufficient. Critics of current policy have called for an acknowledgment that "many of the hard-core segment of the welfare population are just plain unemployable," due to low IQ, domestic violence,<sup>75</sup> lack of public transportation, and other problems affecting employability.<sup>76</sup>

A major dilemma facing housing providers in the self-sufficiency climate is what to do with the large group of people who are not likely to become self-sufficient for these reasons. This problem has plagued public officials almost from the inception of the public housing program in the 1930s. During the 1940s and 1950s, the great migrations of rural people to the cities, along with the rise of single parent families, caused a transformation of public housing from a temporary home for persons between jobs to permanent housing for several generations of the same families.<sup>77</sup> Many of the public housing rent strikes leading to enactment of rent-limitation legislation in 1969<sup>78</sup> were caused by concerns that persons on fixed incomes could not afford rent increases public housing authorities claimed they had to impose to cope with escalating operating expenses.<sup>79</sup> The Section 8 program enacted in 1974 contained long-term residency expectations, with annual contributions contracts authorized to provide housing assistance payments for twenty years, and in some cases forty years.<sup>80</sup> A major factor in the current self-sufficiency movement is the looming expiration of thousands of these contracts in the next few years and the multiplied effect renewal of these contracts would have on the federal

73. Contract With America Advancement Act of 1996, Pub. L. No. 104-121, § 105 (codified at 42 U.S.C. § 423).

74. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 211-215 (codified at 42 U.S.C. § 1382c et seq.).

75. St. Louis County has instituted a new program entitled *Redevelopment Opportunities for Women* to address the needs of domestic violence victims. Memo from Pat Terrell, Homeless Services Supervisor, Office of Community Dev., St. Louis County Dept. of Human Services (Jan. 23, 1997) (on file with the Saint Louis University Public Law Review).

76. *Welfare, Time and Money*, ST. LOUIS POST DISPATCH, Jan. 23, 1995, at 6B (editorial). See also *Welfare: The Myth of Reform*, U.S. NEWS & WORLD REPORT, Jan. 16, 1995, at 30.

77. Peter Salsich, Jr., *A Decent Home for Every American: Can the 1949 Goal Be Met?* 71 N.C. L. REV. 1619, 1621 (1993).

78. Called the Brooke Amendment After its Chief Sponsor, former Senator Edward Brooke, R-Mass., the legislation established a limit on the percentage of income a resident of public or assisted housing could be charged as rent. Pub. L. No. 91-152, § 213(a), 83 Stat. 389 (1970).

79. See, e.g., Richard D. Baron, *Community Organizations: Antidote for Neighborhood Succession and Focus for Neighborhood Improvement*, 21 ST. LOUIS U. L.J. 634 (1978).

80. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101, 88 Stat. 633 (1974) (codified at 42 U.S.C. § 1437).

budget.<sup>81</sup>

The special services that organizations such as EHPC offer are designed to assist people who have strong potential to become self-sufficient. These programs can become particularly attractive to harried officials attempting to diffuse local controversies over locations of assisted housing because people participating in those programs, almost by definition, are *deserving* of public support. But they do not respond to the housing needs of persons who do not have potential for becoming self-sufficient, at least not in the short term.

### ***B. Are Durational Limits for Housing Assistance Realistic?***

Time limits on housing assistance are included in some of the proposals which will be considered by Congress. During the debate over various segments of the Republican Contract with America, GOP leaders called for limiting housing assistance to a fixed period, just as they called for, and have implemented, time limits on AFDC benefits.<sup>82</sup> But they were not alone. The Democratic Leadership Council in the fall of 1994 proposed limiting occupancy in public housing to two years.<sup>83</sup> A leading Democrat in 1994 called for limiting certain housing assistance to five years as a "middle ground."<sup>84</sup> The Congressional Budget Office studied the issue, and noted that while limiting the duration of housing assistance would allow funds to be used by a larger number of families, it would have a harsh impact on those who could not better their situation within the limit.<sup>85</sup>

Congress is now considering approaches to self-sufficiency which do not include specific one-size-fits all deadlines for termination of assistance.

The current House approved measure requires able-bodied tenants to enter into a self-sufficiency plan which provides a target date by which the family intends to leave assisted housing, or in the terms of the proposal, "graduate from" assisted housing.<sup>86</sup> The self-sufficiency plan would become part of the lease, but failure to meet the goals set cannot be a basis of eviction under the bill. This plan is clearly more desirable than strict time limits. The Senate version has even less restrictive language on self-sufficiency plans.

Perhaps it is the limited opportunity for a recipient to abuse housing assistance that has led to an absence of time limits on housing assistance to this

81. *Supra* notes 18 and 19 and accompanying text.

82. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

83. Roundup, Low Income Housing Information Service 3 (Dec. 1994) (on file with the Saint Louis University Public Law Review).

84. *Project Based Assistance Facing Era of Limits*, Rep. Moran Says, 22 [Current Developments] Housing & Dev. Rep. (BNA) 391 (Nov. 7, 1994).

85. CONGRESSIONAL BUDGET OFFICE, THE CHALLENGES FACING FEDERAL RENTAL ASSISTANCE PROGRAMS, B-275-718 (Dec. 1994).

86. H.R. 2, § 105.

point.<sup>87</sup> Also, as discussed earlier, for about half of those receiving assistance, the need for assistance will be permanent.<sup>88</sup> No one has suggested that the elderly or disabled be allowed to reside in assisted housing only for limited periods of time.

Durational residency limits may be attractive as a sort of quick fix for public and assisted housing programs. But they would do little to solve the serious housing problems faced by low-income persons in this country.<sup>89</sup> Realistic self-sufficiency programs containing effective supportive services can encourage low-income tenants with reasonable employment potential to become productive members of their communities. But those who do not have employment potential because of age, disability or responsibility for infant children should not be denied receipt of housing assistance so long as they are willing to abide by reasonable standards of care for their apartment and their neighbors. The proper definition of those standards remains elusive to housing providers as they search for an appropriate balance between legitimate landlord and tenant interests described above.

For the reasons stated here, policymakers should abandon any arbitrary deadlines for assistance and instead turn to other positive, gradual methods of encouraging people to become self-sufficient. As one Catholic bishop has aptly stated: "Time limits and lectures are no substitute for jobs and wages that can support a family."<sup>90</sup>

### C Potentially Conflicting Roles for Nonprofits

When should a nonprofit housing provider refuse to accept an applicant? What happens if the target dates for self-sufficiency are not met but the tenant has faithfully paid agreed rental charges and utility bills and has complied with all the rules and regulations of the housing development? In short, the tenant is a traditional "good" tenant. Is that tenant to be evicted because he or she has not achieved self-sufficiency? If so, where is that tenant likely to find decent housing? Because the tenant has failed at self-sufficiency, is it not likely that the tenant would find far more difficulty in acquiring housing that is at least as good? What about the children? Should the children be evicted from decent housing because the parents were unsuccessful in achieving self-sufficiency, even though their parents were paying the rent and maintaining the unit?

Potential conflicts for nonprofits begin when a family applies for a unit.

87. See discussion in part 11.B.

88. *Supra* note 70 and accompanying text

89. See, e.g., U.S. DEPT OF HOUSING & URB. DEV., RENTAL HOUSING ASSISTANCE AT A CROSSROADS 9 (1996) (reporting that "more than 5.35 million very low-income renter households-almost 12.8 million individuals-paid more than half of their income for housing or lived in poor-quality housing)."

90. *Bishop Voices Concerns on Welfare Reforms*, ST. LOUIS REVIEW, Dec. 6, 1996, at 2 (comments of Bishop Edward O'Donnell of Louisiana).

Many of the recent discussions about improving the availability of affordable housing have included a call for improved tenant selection procedures. HUD's "One Strike and You're Out" policy, for example, includes tighter screening of applicants for public housing.<sup>91</sup> Of course, "improved" tenant selection means selecting residents who don't have criminal records, who will watch their children, take care of their property, get a job, and abide by the law. The tenants of beleaguered public housing complexes—long considered the housing of last resort—want drug dealers and ex-convicts out of their buildings, just like anyone else would.<sup>92</sup> But stricter tenant selection is a double-edged sword.

The dilemma faced by nonprofits is the reality that many of the families they are trying to assist have a history of social problems, ranging from bad credit to criminal records. Nonprofits by their nature have a social justice mission, and desire to serve the less fortunate. Thus, these organizations will be more forgiving even though their screening is more thorough than private owners. For years, many nonprofit housing organizations have employed such tools as home visits to determine a family's suitability for housing assistance, but at the same time will assist a troubled family instead of using the information it collects to reject them.<sup>93</sup>

Regarding creditworthiness, nonprofits often look the other way. EHPC in St. Louis no longer conducts credit checks on its applicants.<sup>94</sup> The reason, as indicated in the opening story, is that virtually all the applicants have bad credit. That is why they need housing assistance.<sup>95</sup> The local chapter of Habitat for Humanity has even sold a home to a family who had just recently gone through bankruptcy proceedings,<sup>96</sup> and groups like Habitat are slow to evict or foreclose on a family as long as there is a willingness on the family's part to improve. These examples show a willingness by nonprofits to loosen the economic criteria for participation in their programs.

But while nonprofits may bend greatly when it comes to standards of creditworthiness, they have taken a stricter approach when it comes to criminal activity. Nonprofits, just the same as private landlords and housing authorities, tend to screen out applicants with criminal histories. But even this scrutiny can be criticized. Recently, a disabled veteran applied for an apartment with the

91. Memorandum from the President to the Secretary of Housing and Urban Development (March 28, 1996) (on file with the *Saint Louis University Public Law Review*).

92. However, the authors have observed that when occupancy rates are low in public housing, housing authorities will be less strict with screening standards in order to meet HUD occupancy requirements.

93. Most of the Clinic's nonprofit clients conduct home visits before accepting a family to the program.

94. Interview with Christopher Krehmeyer, Executive Director of EHPC (Oct. 10, 1996).

95. This also explains why nonprofits provide classes on consumer education and other living skills.

96. The Housing Law Clinic students handled the closing for this transaction.

local housing authority. He was denied on the basis of a three-year-old conviction for theft.<sup>97</sup> Assuming this was his only criminal problem, it can be debated whether he should be deprived of housing assistance.

Some communities are attempting to remove the stigma of nonviolent criminal offenses as barriers to affordable housing. For example, St. Louis County will offer a Legal Fair for Women to exonerate them from misdemeanor records which are barriers to housing and jobs.<sup>98</sup> And veterans groups in a number of cities offer a Standdown for Homeless Veterans once a year which includes judges on site to resolve minor criminal matters for veterans.<sup>99</sup>

One proposal almost certain to be approved would give all landlords, for-profit and nonprofit, more leeway in who they accept as tenants. Congress likely will permanently terminate the take-one-take all rule for Section 8 housing, which required a landlord who accepted one family with a Section 8 certificate to accept anyone else who applied and received Section 8 assistance.<sup>100</sup> While the intent of the rule was to ensure an adequate supply of affordable housing for certificate holders, the elimination of the rule will give landlords, including nonprofits, the freedom to accept a Section 8 family without committing to serving others in that program. No doubt nonprofits will not rely on this new policy as frequently as for-profit landlords.

Nonprofits who take risks by serving those with a history of social problems should be given regulatory flexibility and incentives for dealing with this population. Alternatively, if accommodations are not made for nonprofits who take risks when others will not, these groups should not be expected to carry the burden of serving "non-copers." While these organizations desire to serve the disadvantaged, they do not have the resources to serve everyone who applies for assistance. If self-sufficiency is the trend for the coming years, and intense services are needed to help participants achieve self-sufficiency, nonprofits will not have the capacity to serve those with little promise of cycling through a transitional program.

Troubling as these questions may be to a traditional profit motivated business-oriented landlord, they may be especially difficult for nonprofit neighborhood-based or religious-oriented landlords, who mushroomed in urban America in the last twenty years and which are now being written into housing policy reform efforts. What becomes of the mission of the organization? Is it a housing provider? Or has it become a self-sufficiency motivator? Or both? How can a nonprofit landlord resolve the potential conflict of these two roles?

97. The Housing Law Clinic represented this person at administrative hearing before the St. Louis Housing Authority on Oct. 30, 1996. He was again denied housing after this hearing.

98. Memorandum from Patricia & Ferrell, Homeless Services Supervisor, Office of Comm. Dev., St. Louis County Dep't of Human Services (Jan. 23, 1997) (on file with the author).

99. Adrienne Thomas, *Homeless Veterans Get Assistance, Annual Standdown Offers Variety of Aid*, ST. LOUIS POST-DISPATCH, Sept. 24, 1995, at 11D.

100. H.R. 2 and S. 462, § 204 (which would repeal 42 U.S.C. § 1437ftt) (1994)).

The answer may lie in an analysis of the "hard" and "soft" components of housing management.

#### *D. Balancing "Hard" and "Soft" Management Concerns*

Housing providers and tenant advocates, as well as government officials, are searching for an appropriate balance between the traditional prerogatives of residential landlords and the expectations of tenants who receive governmental assistance. The concept of a statutory tenancy from which a tenant cannot be evicted except for good cause<sup>101</sup> threatens landlords with the spectre of being saddled with a host of bad tenants, who cannot be evicted.<sup>102</sup> The concept of case management in which a willingness to participate in a self-sufficiency driven social services program becomes a condition to selection as a tenant threatens tenants with the spectre of being tossed out of their housing because somebody decides that they have *not* made sufficient progress towards becoming self-sufficient.<sup>103</sup>

A major shift in the balance between landlords and tenants in the assisted housing context has received far less attention than it deserves. For many years, residents of Section 8 and other assisted housing could only be evicted for good cause, which was defined as a serious or repeated violation of a lease term.<sup>104</sup> This amounted to what some have called an "endless lease". The term was accurate in the sense that even if a Section 8 tenant signed a twelve-month lease, the landlord could not evict the person at the end of the lease term because a government subsidy was involved. Under that system, there in effect was no term to the lease. Tenants could stay as long as they wanted unless

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101. See, e.g., *Russ Street Associates Limited v. Martinez*, 1996 WL 453 107 (Conn. Super. 1996) (failure to pay \$46, tenant's portion of monthly rent for Section 8 apartment was insufficient basis for eviction). See generally C. MOYNIHAN, *INTRODUCTION TO THE LAW OF REAL PROPERTY*, 2D 71 (1988).

102. At a recent conference, managers of low-income housing tax credit projects were advised to include provisions in their leases identifying a variety of occurrences as breaches of the lease:

- 1) misrepresentation on the low-income housing document,
- 2) failure to maintain income eligibility,
- 3) prohibit tenants from subleasing or changing the make-up of the household without notifying the manager.

*Strong Leases Advised to Protect Managers From Tenant Abuse*, 24 [Current Developments] Haus. & Dev. Rep. (BNA) 106 (July 1, 1996).

103. At another conference, advocates for homeless persons argued that participation in holistic services programs should be completely voluntary rather than a prerequisite to getting a bed in a shelter or a housing unit. They agreed on the importance of making the services available but disagreed on whether the acceptance of the services should be a condition precedent to acceptance within a housing program. American Bar Ass'n Commission on Homelessness and Poverty, Spring Meeting, Phoenix, Ariz., April 13-14, 1996 (chaired by one of the authors).

104. 42 U.S.C. § 1437f(d)(1)(B)(ii) (1994).

they were guilty of serious or repeated violations of the lease.

Congress, by way of an appropriations bill, has temporarily eliminated the endless lease system.<sup>105</sup> Currently a tenant must be given at least a twelve-month initial lease, but after that lease has expired, the tenancy can become month-to-month, although longer terms are allowed and encouraged. But after the initial term, there is no obligation of a landlord to renew a lease. Therefore, a tenant with a Section 8 certificate or voucher retains the security of the assistance in that he or she can use the voucher or certificate with another willing landlord, but the security of staying in the same residence for a long period has disappeared. The major housing reform legislation now being considered in Congress would permanently end the endless lease principle.<sup>106</sup>

Where does the self-sufficiency component fit into the traditional residential landlord-tenant relationship that has evolved over the last twenty-five years? Judge J. Skelly Wright's famous characterization of a modern urban residential tenancy as an agreement for a "package" of shelter,<sup>107</sup> transformed the urban residential rental agreement from a legal relationship based on possession of land to one based on a clean, healthy and safe housing environment.<sup>108</sup> For the most part, this transformation viewed the relationship from the tenant's perspective. What would a tenant who is in a relatively good bargaining position expect from a landlord in return for a payment of rent? The traditional answer was possession of land and the right to exclude people from that land. The modern answer is a "package of shelter" that includes far more than mere possession and allocates responsibility for the quality of the shelter package to the landlord.

If a tenant can expect more than mere possession, how much more than rent payments can a landlord expect. In St. Louis, McCormack Baron & Associates development company is building a mixed-income development which includes public housing units alongside market rate units. Richard Baron, president of McCormack Baron, has proposed that the leases for all the new units require parents of students who attend the local public school attend parent-teacher meetings and visit the school when required by the school.<sup>109</sup> A St. Louis area religiously-affiliated nonprofit organization requires families in its

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105. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134 (1996).

106. H. R. 2, § 324.

107. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1074 (D.C. Cir.) *cert. denied*, 400 U.S. 925 (1970) ("When American city dwellers, both rich and poor, seek 'shelter' today, they seek a well known package of goods and services—a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.")

108. *Id.* at 1077.

109. Samuel Autman, *City School Board Ok's Developer's Plan*, ST. LOUIS POST DISPATCH, April 9, 1997, at 13A.



transitional housing program to work with a case manager, allow home visits, attend programs, save thirty percent of family income, and perform ten hours of community service.<sup>110</sup> Many nonprofit social service organizations require participation in programs leading to self-sufficiency.

Virtually no legal authority has developed on the issue of whether a tenant could be evicted from subsidized housing for failing to meet an obligation unrelated to traditional leasehold obligations. One can argue that until federal regulations, which provide a list of reasons for termination of assistance, are amended to allow for termination or eviction for failure to meet a non-tenancy related obligation, that landlords are prevented from doing so, even if allowed to do so in the lease.

The primary proposals for housing reform in Congress both would require adult members of assisted housing units to contribute at least 8 hours of volunteer **work** per month.<sup>111</sup> The proposals are silent on a penalty for noncompliance with this work requirement. It is presumed the penalty for failing to complete this monthly requirement would be loss of assistance and eviction. Loss of assistance and eviction would be a drastic step that could lead to efforts to add similar social requirements in leases even though they are unrelated to traditional notions of a good tenancy.

What then are we to make of the support services that may be provided by a landlord in order to encourage someone to become self-sufficient? Is this part of the "package of shelter"? If it is, what is the obligation of the tenant? Presumably, the tenant is required to participate in the services package that landlords are providing. So, for example, the tenant would be required to attend job training classes; to sign up for appropriate schooling, to get up in the morning and get to a job interview on time, things of this sort. Suppose the tenant does that but does not get a job, a degree, or simply does not make it? If the support services are part of the shelter package, can the landlord withdraw that part of the shelter package without breaching the landlord's warranty? Can the landlord evict the tenant for failure to get a job?

Evictions or withdrawal of services can put a conscientious tenant in an intolerable situation, particularly if jobs paying living wages are not available. The standard should be participation, not success. If tenants meet traditional "hard" management standards of good tenancy (paying rent and caring for their units), and also participate in "soft" management educational and training programs, they should not face the loss of their housing because their progress toward self-sufficiency is slow.

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110. Parish Partnership Project Resettlement Agreement, Lutheran Family & Children Services (on file with the *Saint Louis University Public Law Review*).

111. H.R. 2, § 105; S. 462, § 110.

## V. THE HOUSING CONTINUUM: CHANGING RELATIONSHIPS OF HOUSING PROVIDER AND RECIPIENT

Housing providers acknowledge that housing assistance is provided along a continuum, spanning from homeless shelters at one end to homeownership at the other. The housing continuum of care model may be illustrated by the homeless services networks in existence in St. Louis City and St. Louis County.

### A. *Shelter and Eviction Prevention Service Providers*

The City of St. Louis has received national recognition for its comprehensive and coordinated approach to providing services to homeless individuals.<sup>112</sup> While shelters continue to play a major role in the city's network, the importance of traditional and permanent housing opportunities, often provided by nonprofit housing corporations, has been recognized from the early days of the network in the mid-1980s.<sup>113</sup>

St. Louis County has developed a continuum of care model that draws heavily on the experiences of the City of St. Louis. As Appendix A indicates, the continuum of care begins with a 24-hour homeless hotline, from which St. Louis County receives 20,000 calls per year. Upon receipt of a call, an intake operator determines the purpose of the call. The operator has the option to place homeless persons in emergency shelters, or to process the person to allow for the provision of temporary rent and mortgage assistance, as well as other prevention or relocation counseling services to help people avoid becoming homeless.<sup>114</sup>

It is generally well-accepted that homeless shelters should be able to condition their services on a person's participation in various activities. For exam-

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112. Tim O'Neil, *Conference Honors St. Louis for Its Service to Homeless* ST. LOUIS POST-DISPATCH, Jan. 16, 1997, at 9A.

113. Letter from David M. Rothenberg, President, and Susan G. Murray, Executive Director, Housing Solutions, Inc. (Dec. 17, 1996) (on file with the *Saint Louis University Public Law Review*). For example, Housing Solutions, Inc., a nonprofit housing provider in St. Louis, recently sold its first home to a woman who had rented an apartment from the organization for eight years while her children were in school.

114. Interview with Patricia A. Ferrell, Homeless Services Supervisor, Office of Community Dev., St. Louis County Department of Human Services (November, 1996). In St. Louis City and County, approximately seventy-two percent of homeless people are women and children, which is a much higher percentage of women and children than other urban areas have experienced. Shelter providers theorize that one of the reasons for this may be the location of St. Louis. Geography, plus the greater mobility of men may lead men to leave the area and seek jobs or better opportunities on the two coasts, while women and small children must stay behind in the Midwest.

ple, participation by employable persons in job training, job searching, or actual work, are conditions for receiving service at many shelters.<sup>m</sup> Other conditions for service at shelters include mandatory sharing of chores, attendance at parenting classes or credit counseling classes, and mandatory escrow accounts. At many shelters, a resident's welfare check is placed into an escrow account so that at the time the resident leaves, he or she has funds for leasing a home or apartment.<sup>116</sup> Generally, if a person in a shelter does not comply with these mandates he or she can be removed from the shelter with no formal evictions process.

### *B. Self-Sufficiency Programs in Transitional and Permanent Housing*

The tougher questions come when conditions are imposed on housing assistance once a person leaves a shelter. There has been little debate regarding what conditions can be placed on transitional and/or permanent housing provided by the government, or by nonprofit organizations.

When families or individuals leave emergency shelters in St. Louis County, they must appear before the centralized Case Referral Council for an interview. The Case Referral Council consists of a professional from each of seven social service disciplines: substance abuse, mental health, transitional housing, permanent housing, a Department of Health representative, a school coordinator, and a Department of Human Services representative. A formerly homeless person is also part of the Council.<sup>117</sup>

The Case Referral Council refers clients to transitional housing, with an independent living plan developed for the family. Transitional housing offers apartment-style residency for one to two years and a heavy dose of social services designed to move families forward in their bid for self-sufficiency. These services include living skills, educational and employment counseling, health screening, strengthening family ties, among other offerings. These services are initially offered in the emergency shelters and continue in transitional housing. Experience in both St. Louis City and St. Louis County indicates that government entities and service providers, many of them nonprofit organizations, are capable of organizing an effective emergency shelter program and are capable of developing good and effective transitional housing options, although there are very few actual beds in relationship to the demand for transitional housing. The stumbling block, according to the housing and

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115. Dennis D. Hersch, *Making Shelter Work: Placing Conditions on an Employable Persons Right to Shelter*, 100 YALE L.J. 491, 492 (1990).

116. The Housing Law Clinic visits various homeless shelters, including those run by the Salvation Army, where these policies are in place.

117. See Appendix A for a chart of this system. In the St. Louis County shelters, eighty-five percent of the women have either been involved in or are currently in abusive situations and about eighty to eighty-five percent of the people in the shelters have some form of mental illness or disability, with a "phenomenal" level of clinical depression observed in the group.

shelter providers, is the final step—the move to permanent housing. Patricia A. Farrell, Homeless Services Supervisor in St. Louis County, stated that "our ultimate dream is to be able to place people in transitional housing that could turn into permanent housing so that they would not have to move again."<sup>118</sup>

The proposed legislation in Congress clearly would make self-sufficiency programs part of the lease for assisted housing, both transitional and permanent.<sup>119</sup> Tenant advocates view the incorporation of self-sufficiency requirements into leases as a step backwards because it could give landlords a pretext for alleging that they have good cause for terminating a lease for assisted housing when no serious breach of traditional lease terms has occurred.<sup>120</sup> Commentators have suggested that low-income persons need greater rather than lesser protection from lease terminations.<sup>121</sup>

Yet the incorporation of self-sufficiency requirements into assisted housing leases will give housing providers a longer list of reasons to evict. To the typical docket of evictions for criminal conduct, disruptive behavior and unauthorized live-ins, will be cases of tenants being evicted for failing to attend parenting classes or job training. Nonprofit housing providers who will most likely be the type of landlord to offer supportive services will continue to struggle with.

## VI. A REALISTIC YET OPTIMISTIC APPROACH

How might Patricia Farrell's dream of transitional housing becoming transformed into permanent housing be realized? <sup>122</sup> Three possibilities suggest themselves and all possibilities should be included in a comprehensive housing policy.

### A. Escrow Accounts and Self-Sufficiency

To encourage work and self-sufficiency, HUD has adopted regulations to allow, but not require, local public housing authorities to disregard all or part of earned income for public housing residents.<sup>123</sup> The major Congressional housing reform bill adopts this approach for public housing and Section 8 tenants.<sup>124</sup>

Asset building should be part of any overall welfare strategy. Fortunately, the major welfare reform bill approved by Congress does include Individual

118. *Id.*

119. H.R. 2; S. 462.

120. This is the view shared by all of the Legal Services attorneys contacted in the St. Louis area who handle housing matters.

121. Shelly Green, *The Public Housing Tenancy: Variations on the Common Law that Give Security a/Tenure and Control*, 43 CATH. U. L. REV. 681, 743 (1994).

122. Ferrell, *supra* n.98, at I.

123. 24 C.F.R. § 950.102 (1996).

124. H.R. 2, § 104.

Development Accounts which allow for families to save funds for the day they become self-sufficient, and the money in such an account can be used for the purchase of a home.<sup>125</sup> Tying Individual Development Accounts to a plan for permanent housing is a positive development.<sup>126</sup> Yet an escrow account will be of limited benefit if it depends solely on the family's contributions. While the welfare reform bill provides for the possibility of matching contributions from nonprofits or states,<sup>127</sup> it may take federal support in the near term to make these accounts a truly successful tool.

For example, a low-income family whose income would require it to pay \$100 a month as its share of the rent under Section 8, would instead pay \$50 in rent and \$50 into an escrow account. The federal budget would pick up the additional \$50 a month rent for five years, and in exchange for this federal outlay, the family would accumulate \$3,000 plus interest to apply to a down payment or to prepay rent on a market rate unit. It may then be feasible to terminate housing assistance for families in this situation, although flexibility would be necessary for families who are working but still cannot be viewed as self-sufficient.

The escrow account, coupled with the economic and psychological value of gradual acceptance of responsibilities for maintenance of the unit, can create an environment in which homeownership becomes a realistic possibility. This will work particularly well if the housing that is included in the transitional phase is relatively easy to convert to single-family ownership. Such housing should include free standing single-family units, duplexes, garden apartments, and a variety of related designs that are not tied to a large multi-family building.<sup>128</sup>

### *B. Good Faith Efforts Should be Sufficient*

For public/assisted housing eligible tenants who are not likely to achieve self-sufficiency within a relatively short time frame, transitional housing can still become permanent housing if the organization that owns the transitional housing is willing to make a commitment to long-term housing at the same time.<sup>129</sup> Families in transitional housing would be able to stay and the housing could be converted to permanent housing by a showing that the family is participating in good faith in the social services programs being offered. It would not be necessary for the family to "succeed" in becoming self-sufficient. If the family is doing a good job of caring for the unit, is paying its portion of the

125. 42 U.S.C. § 604 (Supp. 1997).

126. *Supra* note 122.

127. *Id.*

128. EHPC & Housing Solutions both have been able to help long-term landlords accumulate funds to purchase the units they had been renting.

129. EHPC has been in operation almost twenty years and has increased its portfolio of single family rental units from one to over 180.

rent and utilities on time, is keeping the rules, and is making sure that children are attending school, it should be able to stay at least until all the children finish secondary school. For this family, the goal does not have to be self-sufficiency for the adults. Instead, the goal should be self-sufficiency for the children when they reach adulthood.

The self sufficiency reform movement is driven by two related arguments: 1) public assistance should be temporary rather than permanent, and 2) people are more responsible if they have to work for their living rather than having it handed to them. Put another way: the world does not owe me a living. Able-bodied adults without sole child or adult care responsibilities should be able to function in a self-sufficiency environment. Small children, persons with severe disabilities, and frail elderly should not be expected to be self-sufficient. There appears to be general agreement with those two propositions. There is sharp disagreement, though, regarding able-bodied adults who have child or adult care responsibilities, and adults with mild disabilities or substance abuse problems.

Should, for example, a simple parent caring for two or three small children be required to sign up for employment training and a job as a condition to continued receipt of housing assistance? If so, child care will have to be provided day long until the children are in school, then latch-key until they are old enough to be by themselves. If the single parent is otherwise eligible for housing assistance, she probably will not be able to afford the cost of day care. Publicly financed day care could cost \$5000 per family.<sup>130</sup> The Section 8 housing assistance program, which has been under severe criticism in from its inception provides, an average annual subsidy of \$1,333 per family per year.<sup>131</sup> These average costs, unscientific and oversimplified as they may be, illustrate the significant additional costs involved in conditioning housing assistance for low-income families on employment opportunities by adult care givers responsible for small children.

Would not a better approach be to drop employment and training conditions, encourage single parents to stay home with pre-school children, and use a portion of the resulting savings to assist nonprofit housing providers pay for the support services they offer to strengthens families and stabilize their environments? As previously noted, these "soft" management services can average

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130. In an admittedly unscientific survey, one of the author's married daughters living in the Cincinnati, Ohio and one living in the St. Louis, Missouri metropolitan areas reported that each would expect to pay \$120-150/week for decent, state-licensed but not top-of-the-line day care. Assuming a discount for nonprofit status, the care might still cost \$100/week.

131. For fiscal 1997, Congress appropriated \$3.6 billion to make Section 8 annual contributions contract payments for 2.7 million rental units in which 6.4 million adults and children reside. Michael Janofsky, *Cuomo Says HUD Needs an Extra \$5.6 Billion*, N.Y. TIMES, Feb. 28, 1997, at A13.

\$150-200 per family per month or \$1,800-2,400 per year.<sup>132</sup> When children reach school age, their parents can begin serious employment training. Viewed from this perspective, self-sufficiency can be seen as responsible parents, keeping a clean apartment and encouraging their children to develop into responsible adults. As EHPC and other nonprofit housing providers have discovered, the combination of decent housing in stable neighborhoods with supportive family services, can transform the lives of very low-income, single parent families.<sup>133</sup>

A housing program that offers the comfort, security and stability of decent, safe housing while the children are growing up may be more important than a program that insists on the adult members of the family achieving some level of self-sufficiency in an unrealistically short period of time.

### C. *Congregate Living Arrangements to Serve Dependent Adults*

Small congregate living arrangements are widely accepted as an excellent option for many types of individuals needing limited assistance with daily living or simply a structured environment. Group homes serve the elderly, people with Alzheimer's, AIDS victims, the developmentally disabled and others. But group homes, or other small congregate living arrangements, also have the potential for serving "non-capers" and others who have no immediate prospects of achieving self-sufficiency but who are not disabled in the traditional meaning of that term.

For example, Legal Services offices and law school clinics see many clients who are struggling in life. They are not disabled, at least not in the eyes of the government, but their limited abilities, intellectually and socially, prevent them from even reaching the bottom rung of the upward mobility ladder. But as able-bodied adults, current public policy insists they find work. When they cannot, because of the limited job offerings for which they are qualified, or because of lack of transportation or other limitations, society labels them as failures and deadbeats. But for many of these dependent adults, a structured environment, not necessarily with intense services, is all that is required.

Consider group homes for the developmentally disabled. They thrive not just because a nondisabled care provider is present, but because the residents contribute to the life of the home by doing chores and perhaps working at sheltered workshops or other facilities. Why can not this model work for adults who are not developmentally disabled, but whose limited education and life circumstances have led them to be incapable of living independently?

For purposes of providing housing assistance, society must develop a broader definition of what is considered a disability. Those who are socially disabled, and who would benefit from congregate living arrangements, should

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132. *Supra* note 67 and accompanying text.

133. See *supra* note 110.

be a part of the group home industry. It may take state and local governments to operate such homes, as most group homes for the disabled are operated by providers with a specific focus on certain disabilities. However, nonprofits may be interested in operating such homes with adequate resources from local government.

Opposition from residents of areas around any such homes would be a major hurdle. Litigation has surrounded many of the efforts to establish group homes in Missouri & Illinois.<sup>134</sup> Neighborhood opposition to group homes is widespread and disturbing. There is a need for a strong federal policy supporting groups homes. The Fair Housing Act has provided statutory support in some respects,<sup>135</sup> but some federal legislative proposals, instead of encouraging group homes, would severely hinder the ability of developers, including nonprofits such as Oxford House, Inc., to operate these small group houses, particularly homes for recovering drug addicts and alcoholics.<sup>136</sup> Instead of restricting these efforts, Congress should affirmatively act to clarify the Fair Housing Act to guarantee that small group homes for disabled persons, and perhaps non-disabled persons needing congregate living arrangements for economic or other reasons, be given a status equal to that of single family residences.<sup>137</sup>

Single room occupancy facilities or SROs, may also be a solution for "non-copers" or others who do not qualify for self-sufficiency programs and who are not disabled. These facilities, which provide inexpensive but very modest accommodations, may work well to serve single adults in certain circumstances. For example, the sixty-year-old widower with no family, ineligible for any government assistance, but unable to find employment, does not need extensive supportive services. He would be satisfied with a single room, as long as it was affordable. Such SRO facilities are increasing, but not at a rate which matches increasing demand.

#### D. Technical Assistance

All of the proposals outlined here would require significant resources of several types, including technical assistance from lawyers, accountants, architects, social workers, developers and others. Allowing more federal dollars to be used for technical assistance is one avenue of flexibility which would help expand the capacity of these organizations. The Local Initiatives Support Corporation (LISC) and the Enterprise Foundation are two of the major national

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134. See, e.g., *Oxford House-C v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 65 (1996); *Martin v. Constance*, 843 F.Supp. 1321 (E.D. Mo. 1994); *Baxter v. City of Belleville*, 720 F.Supp. 720 (S.D. Ill. 1989).

135. 42 U.S.C. § 3604 (1994).

136. H.R. 589, 105th Cong., 1st Sess. (1997).

137. See MO. REV. STAT§ 89.020 (1994) (treating group homes disabled up to eight persons as single family residences).



organizations designed to help nonprofit housing developers with technical assistance. The Enterprise Foundation has provided assistance to more than 500 organizations and has provided \$1.7 billion in loans, grants, and investments.<sup>138</sup>

Meanwhile, volunteer professionals at the local level also can fill this technical assistance gap. In St. Louis, Professional Housing Resources, Inc. responds to hundreds of requests each year from nonprofit housing organizations. Volunteer attorneys, accountants, architects, social workers and others contribute their services for such issues as incorporation, tax matters, development issues, and management problems<sup>139</sup> with these free professional services provided in a coordinated manner.

## VII. CONCLUSION

The "devolution revolution," as exemplified by the 1996 welfare reform legislation, has created major uncertainties for housing and homeless services providers. How the states will respond to new responsibilities that are accompanied by fewer resources is a matter of conjecture at the moment. As welfare reform begins to be implemented, it is increasingly clear that it will have major impact on housing policy. Low-income families may be able to accept "a new social contract that expects and rewards work and responsible behavior" in return for help in finding jobs, protecting children and escaping poverty.<sup>140</sup> Nonprofits would benefit from greater coordination between welfare and housing reform. They would benefit from regulatory flexibility, including a more favorable environment for tax credit transactions with for-profit entities and the ability to use tax credits for homeownership projects. Housing policy should recognize that nonprofits will need resources to provide supportive services for families working toward self-sufficiency, but should also recognize that not all persons or families will be able to attain self-sufficiency. Nonprofits will need resources to serve the noncopers whom no one else will serve. Good faith efforts should be recognized, and there should be no strict time limits on housing assistance. Escrow accounts should be encouraged for permanent housing needs for those who can become self-sufficient, and congregate living should be fostered as an alternative to serve those who cannot.

Nonprofit housing providers have a key role to play in the successful implementation of a decentralized social contract. But their success depends in large part on recognition of two realities: 1) a stable, long-term, affordable housing environment is an essential element for achieving self-sufficiency, and

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138. Enterprise Foundation 1995 Annual Report (on file with the Saint Louis University Public Law Review).

139. Information about the organization can be obtained from the authors, who are on the Board of Directors of Professional Housing Resources, Inc.

140. See Bishop *Voices Concerns Over Welfare Reforms*, *supra* note 90.

