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HOUSING OUT THE POOR

JOHN J. AMMANN*

I. INTRODUCTION

Whatever the current national housing policy is in America, it is not a policy that makes housing the poorest of the poor a priority. Housing policymakers at all levels of government have pursued, or at least acquiesced in, a scheme that has directed our nation's limited housing resources toward families with incomes above the incomes of families who are on the public housing waiting lists across this country. Many of the families on these lists are not eligible for, or can't make use of, other housing subsidies such as the mortgage interest deduction. At the same time, we are closing many doors previously open to the poor just as they are led to the threshold of "self-sufficiency." The supply of affordable housing is decreasing while we make it harder for the poor to access the limited supply that remains.

While there are many roles for the lawyer as advocate for the poor and homeless, the current climate requires attorneys in this arena to speak publicly against the recent broad shift of limited resources to higher income households. Attorneys must also muster an effort to represent those at the lowest end of the economic scale to ensure they hold onto or become eligible for the limited assistance which is available to them. Ultimately, advocates will also need to use all the tools available to them, from lobbying to litigation, to convince government at all levels that the only sure way to address the housing needs of very low-income families is through construction of new units of housing, and in particular, public housing.

This article will begin by exploring the many ways in which federal and local housing policies have limited the availability of affordable housing for the poor. First, it explores the decreasing supply of housing stock for the poorest of the poor. Next, it looks at the ways in which Congress, the Department of Housing and Urban Development, and local housing authorities have made it harder for the poor to be admitted to the supply of public housing and other assisted housing that does remain. The discussion then moves to

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changes in eviction policies which make it easier to evict the poor even if they manage to obtain a unit.

The analysis then turns to a review of the HOPE VI program, which is currently the primary HUD program for constructing new public housing units. HOPE VI projects are springing up around the country, but there is a debate over the extent to which these projects benefit those most in need of housing, since these projects usually result in a net loss of public housing units. A major component of these projects is the use of Section 8 vouchers to disperse current residents of public housing, so this essay scrutinizes the efficacy of the use of vouchers as a tool for housing those who formerly resided in public housing. Fair housing concerns are also discussed in this context.

Finally, this article argues that any policy other than a massive program of construction of new public housing units will not serve the interests of the lowest income families who should be the primary intended beneficiaries of any housing policy.

II. DEMOLISHING OUT THE POOR: THE DWINDLING SUPPLY OF AFFORDABLE HOUSING

HUD recently surveyed 40 public housing authorities and found almost one million families on their waiting lists for public housing and Section 8 assistance.¹ This figure fails to give a complete picture of demand, since in many cities the waiting lists for assisted housing are closed. Instead of building units to meet this need for decent and affordable housing, public housing authorities across the country, with HUD's blessing, have demolished tens of thousands of public housing units over the last several years. A lack of commitment at the federal level has meant that the number of HUD assisted households, which includes public housing and Section 8, has dropped by 65,000 from 1994 to 1998.² Missouri alone lost almost fourteen hundred public housing units to demolition in the last five years.³ The number of occupied public housing units in this country now stands at 1.3 million units,⁴ with 1.5 million families holding Section 8 vouchers and another 1.5 families in project-based properties.⁵

1. Department of Housing and Urban Development, *Waiting in Vain: An Update on America's Rent Housing Crisis*, at iv (March 1999) (Public housing is owned and operated by local housing authorities, as opposed to Section 8 units which are owned by private companies or individuals.) [hereinafter HUD, *Waiting in Vain*].

2. *Id.* at v.

3. Housing Comes First, *Still Vouchered Up and Nowhere to Go Part II: Problems and Promise in Missouri's Subsidized Housing Programs* (Nov. 9, 1999) [hereinafter Housing Comes First].

4. HUD, *Waiting in Vain*, *supra* note 1, at 3.

5. *Id.*

While public housing is dwindling, other affordable units are also decreasing in supply. Overall, the number of housing units affordable to households with extremely low incomes, defined as below 30 percent of median income, has decreased by more than 370,000 units since 1991.⁶ HUD has found that there are 5.4 million families who have worst case housing needs. This is defined as renters receiving no rent assistance who have incomes below 50 percent of the area median and pay more than half of their income for rent or live in severely substandard housing. More than three-fourths of those with worst case housing needs had incomes below 30 percent of area median income.⁷

Perhaps the most significant finding in recent HUD studies is that “a large number of ‘affordable’ units are not in fact available for rent by families who most need them, but are instead occupied by higher-income households.”⁸ So while there were 76 units with rents that were possibly affordable to every 100 extremely low-income renters, only 36 of those units were actually available for rent to such families. Meanwhile, HUD found 8.87 million families with incomes below 30 percent of median income.⁹

The need is clearly greatest in urban areas such as St. Louis, where the retiring director of the St. Louis regional HUD office recently stated the area needs an additional 50,000 units of affordable housing to meet the needs of low-income families.¹⁰

It is no surprise then that the waiting lists for both public housing and Section 8 are growing dramatically in not just size but in the length of time a family stays on the list. The average waiting time for a family to get public housing across the country rose from ten months to eleven months from 1996 to 1998.¹¹ In our largest cities, the average wait for public housing went from 22 to 33 months in the same period, a 50 percent jump.¹² In New York, it's hardly worth the wait for public housing – eight years is the average time a poor family waits to get to the top of the list there. Families wait six years in Oakland and five years in Washington, D.C.¹³ For Section 8 vouchers, the average wait in the large cities is 28 months, up from 26 months in 1996. The

6. Department of Housing and Urban Development, *Rental Housing Assistance-The Worsening Crisis* 22 (March 2000) [hereinafter HUD, *Rental Housing-Assistance*].

7. *Id.*

8. *Id.* at 25.

9. *Id.* at 22.

10. Norm Parish, *Co-workers, Tenant Groups are Sorry to See Veteran Area HUD Chief Retire*, ST. LOUIS POST DISPATCH, Feb. 6, 2000, at C-1.

11. HUD, *Waiting in Vain*, *supra* note 1, at 8.

12. *Id.*

13. *Id.*

wait for a Section 8 voucher in Los Angeles and Newark is ten years.¹⁴ In many cities, waiting lists are closed frequently, masking true demand.

The surging economy has done nothing to alleviate the housing crisis for the poor. With units harder to find as demand increases and supplies dwindle, rents are rising at twice the level of inflation.¹⁵ In a candid admission, HUD has stated that “rather than benefiting from the surging economy, low-income renters are left to compete for the dwindling supply of affordable rental housing available on the private market. Many of the most vulnerable low-income renters spend years waiting in vain to obtain needed rental housing assistance in the form of housing vouchers or public housing units.”¹⁶ The National Low Income Housing Coalition has studied the ability of low-income working families to afford housing, and found that the average wage required to afford housing at fair market rent, without paying more than 30 percent of a family’s income for housing, would be \$12.47 an hour, which is more than twice the current federal minimum wage.¹⁷ A family in New York would have to work 123 hours a week at the current minimum wage to be able to afford market rate housing in that state. These figures nationally are up from the previous year, indicating a need for a long-awaited increase in the federal minimum wage.

Despite numerous reports about the decreasing supply of affordable housing, HUD to date has not addressed this loss of housing stock for the poor in a positive manner. Instead, HUD has adopted programs allowing for large-scale demolition of public housing. This has come under two separate programs: a straight demolition program, and under the HOPE VI program, discussed later, where public housing units are demolished in the name of creating mixed-income neighborhoods.

No one argues that the high rise public housing projects built in the middle of the 20th century should be preserved. Pruitt-Igoe in St. Louis was the poster child of the failed high-rise public housing strategy of the 1950s. At its peak, Pruitt-Igoe was home to 26,000 people in 33 high-rise buildings with little support in the way of timely maintenance or social services. The buildings were demolished by the early 1970s, and the land where they stood remains idle still today.¹⁸

Housing advocates are not opposed to demolition of unsightly public housing. Instead, they are opposed to the loss of these units with no plans to

14. *Id.*

15. Department of Housing and Urban Development, *The Widening Gap: New Findings on Housing Affordability in America* (Sept. 23, 1999) [hereinafter HUD: *The Widening Gap*].

16. HUD, *Waiting in Vain*, *supra* note 1, at ii.

17. National Low Income Housing Coalition, *Out of Reach* (Sept. 20, 2000), at <http://www.nlihc.org.html>.

18. Peter Salsich, Jr., *Solutions to the Affordable Housing Crisis: Perspectives on Privatization*, 28 J. MARSHALL L. REV. 263, 294-296 (1995).

replace them. The poor residents of these projects didn't ask for the neglected maintenance and the segregation that policymakers condoned. But those policies have led to the inevitable demolition of derelict units in our urban areas. The so-called "one-for-one replacement rule," which required HUD and local housing authorities to replace each unit of public housing taken out of service with another public housing unit, was a safeguard which ensured that the total stock of public housing would not be diminished. The replacement unit had to be hard stock, public housing, and not a Section certificate or voucher. This rule has been eliminated by Congress, and since then, demolitions have increased dramatically.¹⁹ HUD has now embarked on a misguided policy of tearing down existing public housing even when it is in good condition. In St. Louis, the local housing authority recently spent \$35 million to renovate the Clinton Peabody public housing complex. That didn't stop the St. Louis Housing Authority from proposing to HUD that it be allowed to tear down as many as half of the units as part of a HOPE VI project.²⁰

Moreover, the St. Louis Housing Authority demolished buildings containing 93 units of public housing at Clinton Peabody without prior HUD permission. The assumption was that the units were in such bad condition that no one would oppose their demolition. In this and similar cases, the local housing authorities bear the primary blame for allowing units to fall into such disrepair that they appear ready for a date with the wrecking ball. A lawsuit by tenants now seeks to replace those units and stop further demolition.²¹

HUD's participation in the diminution of affordable housing is not limited to overseeing a loss of public housing units. HUD is struggling to address the imminent threat to hundreds of thousands of families residing in project-based assisted housing by the expiration of long-term contracts with private owners. Over the next few years, contracts covering thousands of projects will be expiring, and unless there is some incentive for owners to stay in the program, they will notify HUD that they are taking their buildings out of the program. During 1998 alone, 13,000 units were lost due to expiring contracts.²² While HUD pledges to provide vouchers to these tenants who will be displaced, vouchers do not directly increase the supply of affordable housing.

There are other forces at work to diminish the supply of affordable housing as well. A discussion of the problems of lead paint contamination in older housing, as well as other environmental problems such as asbestos, is beyond

19. Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Pub. L. No. 105-276, 10 Stat. 531 (codified as 42 U.S.C. § 437).

20. See *Darst-Webbe Tenant Ass'n v. St. Louis Housing Auth. & U.S. Dep't of Housing & Urban Dev.*, No. 4:99CV354-SNL (E.D. Mo.). Copy of complaint available from author.

21. *Id.*

22. HUD, *Writing in Vain*, *supra* note 1, at v.

the scope of this article. However, they are mentioned here only to indicate that in our older urban areas, we can expect more and more units of affordable housing to be taken off line as government attempts to eliminate these hazards. Often the effort to eliminate the hazard means eliminating the housing.

HUD's inability to protect the current stock of public housing and project based assisted housing from further deterioration can be attributed in some degree to a lack of Congressional budget support. However, HUD has come under fire for mismanaging the resources it does receive from Congress. The nation's housing agency was the target of criticism, for example, for awarding grants of over \$4 million dollars to Indian tribes to build smoke shops.²³

HUD's claim of success during the Clinton Administration focused on the nation's increasing homeownership rate. It might be argued that the current increased homeownership rates show a declining need for rental units, including public housing. But even though the effort to increase homeownership is laudable, and minority homeownership rates are especially benefiting from this policy, the effort to increase homeownership can only be successful for families who have incomes sufficient to become homeowners,²⁴ who can afford the down payment, and have good enough credit to qualify for a loan with a reasonable rate of interest. Many loans to families with barely enough income to afford to purchase a home come with subprime mortgages, which carry higher than normal interest rates and excessive points due to the poor credit history of the borrower. This problem, along with easy availability and abuse of home equity loans, inflated appraisals, as well as outright fraud, should temper some of the enthusiasm in Washington over the higher homeownership figures.²⁵

While there is an utter lack of policy directly supporting new construction of public housing units apart from some limited programs like HOPE VI, there is a policy in the tax code that is the primary source for funding privately owned units available to low and moderate income families. The Low Income Housing Tax Credit program supplies tax credits to investors who provide equity to build affordable housing.²⁶ Congress has taken urgently needed action recently to increase the limit on these credits which will spur additional construction.²⁷ However, this program in some jurisdictions has been invaded

23. Deidre Shesgreen, *HUD's Budget Battle is as Much About Politics as Money*, ST. LOUIS POST DISPATCH, Feb. 13, 2000, at A10.

24. Department of Housing and Urban Development, *U.S. Housing Market Conditions* (Feb. 2000), available at <http://www.huduser.org/periodicals/ushmc/winter99/index.html>.

25. Harold Levine, *Looking for Shelter*, ABA JOURNAL 61 (Feb. 2000).

26. I.R.C. § 42 (2000).

27. Associated Press, *Tax Breaks Are On Way To Aid Development*, ST. LOUIS POST DISPATCH, Dec. 17, 2000, at A7. This approval came as part of an omnibus spending package adopted in the final days of the Congressional session. At the time of publication of this article, the Public Law number was not available.

by public housing authorities who are using tax credits as part of their HOPE VI projects. This has the effect of limiting tax credits available to other developers who could construct units outside the control of the housing authority and its hand-picked developers.²⁸

For attorneys representing the poor and homeless, these challenges will need advocacy on several fronts. Many lawyers have undertaken representation of public housing tenant associations fighting demolition. Attorneys are also assisting tenants of buildings with expiring Section 8 contracts to ensure that tenants' rights are observed. They are also assisting these tenants with plans to organize in efforts to buy their buildings or to partner with nonprofit agencies willing to purchase the Section 8 projects. Attorneys can also help developers access the increasing supply of tax credits available for affordable housing.

III. REGULATING OUT THE POOR: NO WAY IN, MANY WAYS OUT

Even if a poor family gets to the top of a waiting list for housing through a local housing authority, the struggle is not over. Clearing the admissions process has become more difficult for poor families. Then, once admitted, tenants are not secure in their housing because the eviction process has become easier for public housing authorities.

A. Admissions

New income-targeting guidelines adopted by Congress will affect the ability of the poor to obtain housing assistance. New federal housing policy attempts to eliminate concentrations of very low- and extremely low-income families by changing the income targets for public housing. Previously, at least 75 percent of public housing was to go to families earning 30 percent of median income or less. Under recent federal housing reforms, housing authorities are only required to rent 40 percent of their units to those whose incomes are below 30 percent of median.²⁹

While the justification for the change is to prevent concentrations of the poor which were the hallmark of the old high rise public housing projects like Pruitt-Igoe, there is nothing in the legislation which makes up for the units lost to those below 30 percent of median income who won't be housed because more families above that level will be allowed to become tenants of public housing.

Under the new income targeting rules, working families receive a strong preference for the dwindling supply of public housing. This preference works to allow new applicants with jobs to jump over families who have been on

28. This is the case in St. Louis where the Housing Authority has used a significant portion of the tax credits allocated to the St. Louis region for the next few years.

29. 42 U.S.C. § 1437(n) (2000).

waiting lists for many years. Federal preferences which once gave priority to the homeless or to those paying a disproportionate share of their income for rent are gone. In St. Louis, a tenant association protested the new admissions policies of the St. Louis Housing Authority. The tenants called for preserving a preference for the homeless and the preference for families paying more than 50% of their income for rent and utilities. They were unsuccessful.

It is difficult to argue with a policy that clearly helps the working poor or students. However, that same policy favors them at the expense of those with even more need. Under the policy adopted by many housing authorities, a full time law student using student loans to finance an education would have a higher priority for public housing than a single unemployed mother with two children. That the family is homeless, or a member has a mental illness, is irrelevant under the new policy. This situation has created a cruel dilemma for housing advocates. While the thriving economy of the start of the 21st century has helped place many people in the workforce for the first time and housing would assist them in staying employed, the unemployed and the unemployable are told they will not be helped.

It is not just new income targeting that can keep needy families out of assisted housing. Tighter screening methods are being used by housing authorities to look at other factors as well. Private landlords have always carefully screened families applying to live in their units. Criminal background checks and credit checks are common. Many landlords even conduct visits to the applicant's current address to determine how well the family cares for its current rental home.

In recent years, HUD has given housing authorities greater ability to use screening tools like criminal background checks to keep some families out of assisted housing. However, it seems policymakers forget that to be poor often means to have a myriad of problems including bad credit, a criminal history, mental illness, drug and alcohol addiction, domestic abuse, and other problems. Instead of accepting these difficulties as issues which make life harder for the poor, federal housing policy has used these difficulties to tighten the rules on who is eligible for assisted housing.

Federal regulations on admission to public housing direct housing authorities to look at a family's "history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants."³⁰ Similar regulations in the Section 8 program state that a housing authority may deny assistance to an applicant if any member of the family commits drug-related criminal activity or violent criminal activity.³¹ In addition, federal law now

30. 24 C.F.R. § 960.205 (2000).

31. 24 C.F.R. § 982.553(a) (2000).

requires that anyone evicted from public housing because of drug-related criminal activity be ineligible for admission to public housing for three years.

There is no doubt that housing authorities should be able to screen out serious criminals from assisted housing. It is true that many of the homeless have had brushes with the law, but that should not exclude them from assisted housing. In fact, a recent study found that 54 percent of the homeless clients studied had some history of incarceration.³² This figure might give some policymakers reason to say less affordable housing is needed because we shouldn't be housing those with a criminal history. But just 18 percent of those surveyed had spent time in a state or federal prison. Most of those with a history of incarceration had been arrested for minor violations. While 49 percent had spent five or more days in a local jail in their lifetime, one has to understand how easy it is for someone to end up in a local jail.³³

The Law Clinic at Saint Louis University has been assisting homeless persons at various "homeless fairs" the last several years. At a homeless fair in October of 2000, law students and faculty interviewed 75 homeless persons about their legal needs. More than two-thirds of those seeking assistance at this particular fair wanted help with a minor criminal problem. All of those needing assistance had outstanding warrants or upcoming court dates in municipal courts in the St. Louis area. The charges included such things as riding the mass transit system without paying the fare, disorderly conduct, petty larceny, and traffic violations.

There are many examples of minor infractions turning into huge hurdles for the poor in obtaining housing or employment. A homeless veteran rode the MetroLink light rail system in St. Louis one day and paid the reduced fare designed for the disabled, since he had a disability and was receiving Social Security. Because he couldn't prove to an officer on the train that he had a disability, he was given a summons to appear in court on a charge of failing to pay the proper fare. The man didn't have transportation to the courthouse for his court date, and a warrant was issued for his arrest. In another case, a homeless woman was charged with eating on the MetroLink train for having a sucker in her mouth. She missed her court date and had a warrant issued which delayed her transition into permanent housing. Then there's the case of the homeless man who asked a police officer on a cold morning for some spare change to buy a donut. Instead of handing him a quarter, the officer handed the man a summons for panhandling.³⁴

32. Interagency Council on the Homeless, *Homelessness: Programs and the People They Serve* (1999), at <http://www.huduser.org/publications/homeless/homelessness.pdf>.

33. *Id.*

34. This event is called Homeward Bound and was attended by more than 400 homeless and formerly homeless families at the University of Missouri in St. Louis.

The most significant concern for housing advocates representing these clients is that overzealous officials will use the HUD regulations to keep out families with minor criminal histories. Under these rules, there is no requirement that there be a conviction or even an arrest. In many cases, housing authorities get a copy of a police report of an incident involving a tenant, and automatically deny admission. All the housing officials must do is show by a preponderance of evidence that a family member has engaged in such activity, and they accept the police report as the only version of what happened.

Housing authorities could take a cue from some enlightened nonprofit housing providers which have eliminated standard screening tools. One nonprofit in St. Louis no longer requires credit checks, because it knows all of its clients have bad credit. Habitat for Humanity St. Louis has sold homes to several families who recently completed or are still in the middle of a bankruptcy proceeding.³⁵ These agencies acknowledge that the normal screening standards will leave the neediest of the needy out of the program.

Housing advocates will need to expand their educational efforts to sensitize local housing providers to the fact that an outstanding warrant or a record of spending a few days in a municipal jail should not make a family ineligible for assisted housing. Lawyers assisting the homeless can also undertake to educate police that some violations by the homeless are out of necessity and that a more compassionate approach to law enforcement might involve offering assistance instead of offering a summons. Attorneys can also assist the homeless with clearing up outstanding warrants or minor criminal charges. Prosecutors are often willing to reduce or dismiss charges once they hear the plight of the homeless defendant.

B. Evictions

While new admissions policies make it harder for low-income families to get into public housing or obtain Section 8 vouchers, new federal and local policies are making it easier for housing authorities to evict tenants or terminate them from assisted housing.

Housing authorities have at their disposal rules against criminal conduct to use to evict tenants just as they use them to deny admission. As discussed above, a newspaper story about a drug raid or a police report about a peace disturbance often forms the sole foundation for housing authorities to send an eviction notice to a family. Zero tolerance for drugs and violence often translates into broad sweeps by police which result in numerous eviction notices for tenants in public housing complexes. Some rulings have upheld broad authority of housing authorities to evict families for drug use or possession by family members or even guests, even if the tenant had no

35. The author is a member of the Law Committee of Habitat for Humanity St. Louis.

knowledge of the presence of the drugs,³⁶ although one federal court recently held that in certain circumstances innocent tenants cannot be evicted.³⁷

Meanwhile, Congress continues to add reasons housing authorities can use to evict public housing tenants. Recent changes to federal law requires each adult resident of public housing to “contribute” eight hours per month of community service.³⁸ Residents who are employed, attend school, or who are enrolled in welfare-to-work programs are exempt from the requirement. Failure to comply with the new rule can be the basis of an eviction.

The hard-core unemployed, who are more likely than the regularly employed to live in public housing, will be most affected by the rule. Housing authorities will have difficulty finding community service opportunities for those who need to meet the requirement. The administrative burden the new law imposes on housing authorities almost ensures that some residents will be found not to have complied with the rule, and perhaps through no fault of their own. The community service rule will provide a tool for housing authorities to evict tenants who need housing the most and are least likely to become self-sufficient.

It can be argued that violation of the community-service requirement should not be the basis of an eviction. Leases should generally be limited to terms which affect the tenancy and the property. The community service requirement has no relationship to whether the tenant is keeping his end of the bargain of the lease in the usual sense—using the unit in a manner so as not to damage the property of the housing authority and in a manner that does not affect the quiet enjoyment of other tenants. Creative attorneys surely will challenge evictions based on allegations the tenant has failed to complete the required community service.

IV. HOPE VI: PROMISE OR PAIN

HOPE VI has been HUD’s flagship public housing initiative since 1992, but it has done little to replenish the diminishing supply of public housing even though the program has several laudable goals. The federally funded grants are designed to change the physical shape of public housing by constructing low-rise apartments and townhouses that become part of the surrounding community. It also aims to reduce concentrations of poverty by encouraging a greater income mix among new developments. HOPE VI also has a service component intended to help residents find and keep jobs.

36. *Willock v. Schenectady Municipal Housing Authority*, 706 N.Y.S.2d 503, 271 A.D.2d 818 (N.Y. App. Div. 2000); *Ann Arbor Housing Comm’n v. Wells*, 240 Mich. App. 610, 618 N.W.2d 43 (2000).

37. *Rucker v. Davis*, 2001 U.S. App. Lexis 904 (9th Cir. 2001).

38. 42 U.S.C. § 1437(j) (2000).

But the program is controversial, and doesn't help every city in need of more housing because housing authorities must apply competitively for the funds. In the cities where grants have been awarded, the result has been an overall decrease in the stock of public housing. A study of HOPE VI projects has found that 30,000 public housing units have been demolished so far, with 50,000 more slated to be bulldozed. Meanwhile, HOPE VI projects replace only about 45 percent of the units they demolish.³⁹ For fiscal year 1998, 22 cities received a total of \$507 million, and used it to demolish more than 10,000 units of public housing while replacing them with fewer than 7,000 new or rehabbed units.⁴⁰

A major concern, in addition to the loss of units, is the resulting fact that many of the original residents of the area are not returning to the new housing. A HUD Inspector General report states that in six of ten HOPE VI projects, less than half of the original residents moved back into the new community. The National Low Income Housing Coalition has found that "HOPE VI is still displacing more families than there are new units being built."⁴¹ The group analyzed the 1998 HOPE VI grant recipients and found that they would relocate almost 8,300 families, with less than half of those moving back into new public housing units.

Advocates for these tenants are concerned that once HOPE VI projects are finished and on line, that tenants from the original neighborhood who want to move into a new unit will be kept out by strenuous screening methods. Housing authorities have indicated residents can "apply" for units in the new development and will be given a priority, but stress that they must be found eligible. More than a few housing advocates worry that because by definition many public housing tenants have poor credit or minor criminal histories, that they will be denied admission to the new developments.⁴²

HOPE VI authorizing legislation requires tenant participation in the planning of any new development using program funds. But often the tenant participation is window dressing. Several lawsuits have been filed by public housing tenant associations challenging HOPE VI projects, often citing lack of resident involvement as a major aspect of the suit.⁴³ Even HUD admits it could be doing a better job of including residents in HOPE VI planning.⁴⁴

In addition to resident displacement, HOPE VI projects have been plagued with numerous delays and have caused questionable impacts on surrounding

39. *Id.*

40. See generally Neal Pollack, *Knocking Down the Past to Build the Future*, ENTERPRISE QUARTERLY (1999).

41. *Id.*

42. *Cabrini-Green Local Advisory Council v. Chicago Housing Authority*, 1997 WL 31002 (N.D. Ill. 1997).

43. Winton Pitcoff, *New Hope for Public Housing?*, SHELTERFORCE, Mar.-Apr. 1999, at 19.

44. *Id.*

neighborhoods. Those who move away due to demolition of their public housing often end up in areas of high concentrations of poor and minority families, something the program seeks to eliminate. A recent study in Chicago found that 80 percent of families who were relocated under HOPE VI projects settled in neighborhoods that are 90 percent minority-occupied or higher.⁴⁵

Public housing officials agree HOPE VI “is not a panacea.” While new construction is helpful, they argue they need more capital funds to adequately maintain the stock they have, complaining that current funding levels from Congress fall far short.⁴⁶ This, housing authorities can argue, leaves them no alternative but to sell, demolish, or abandon existing units. Yet, HUD has seemed to pin all its hopes for public housing on the HOPE VI program. Attorneys working with the homeless and low-income must be familiar with how their local housing authorities plan to participate in the program. Advocates must be vigilante to ensure resident participation in the development of plans to ensure adequate replacement housing for public housing units which will be taken off line.

In several cities, tenant organizations have filed federal lawsuits against HUD and the local housing authority over HOPE VI projects.⁴⁷ These suits claim violations of the Fair Housing Act due to the disparate impact of the projects on minorities, women, and families with children. Little case law has developed as of this time from this litigation, but tenants have made it clear they will use every tool at their disposal to ensure that millions in public dollars—millions which would not be coming to their community had it not been for the many years they suffered in dilapidated public housing—are used to meet the needs of those at the lowest end of the economic spectrum.

V. THE PROBLEM WITH VOUCHERS

Instead of backing any large-scale program of new construction of public housing or subsidized housing, HUD’s policy has been to allow Section 8 vouchers attempt to meet the need for more affordable housing. This approach appeals to those who support a market-based approach to housing resources. They theorize that private developers and landlords will produce the housing demanded by the market, and a growing quantity of families with Section 8 vouchers will be part of that demand. This theory ignores the realities of the market and of very real discrimination in many cities.

Many families who have waited years on housing authority waiting lists to obtain a Section 8 voucher are not able to use the voucher once they get to the

45. *Id.*

46. Robert Solomon, *Notes from the Inside: Thoughts about the Future of Public Housing*, 10 J. AFFORDABLE HOUS. & COMM. DEV. LAW 43 (2000).

47. See Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, *supra* notes 19, as examples (short form public law).

top of the list. While the voucher is attractive to landlords in that it allows them to collect market rate rent, many families face severe obstacles to use of the voucher.

Housing Comes First, a St. Louis based housing advocacy organization, recently studied the voucher system in the St. Louis area. In St. Louis County, which has approximately one million people, half of the Section 8 vouchers issued to families were returned unused. In the City of St. Louis, 40 percent of the Section vouchers were returned because the family could not locate a landlord who would rent to them.⁴⁸ Usually, applicant families have just 60 days to find a landlord who will rent to them, although extensions totaling 120 days can be granted. If that time expires before the family can find a willing owner, the family gives up its voucher and goes to the end of the waiting list.

Complicating the search by Section 8 families is the fact there is no requirement that a landlord accept a Section 8 tenant. The “take one-take all rule,” which stated that a landlord who rented to one Section 8 family could not refuse to rent to others, has been repealed. Since Section 8 voucher holders are not a protected class under the discrimination laws of most jurisdictions, it is perfectly legal for landlords to turn away families for the very fact they have the Section 8 voucher.⁴⁹

In addition, since in most urban areas a high percentage of families applying for Section 8 housing are minorities, they face very real discrimination by owners and managers. In highly segregated cities like St. Louis, Section 8 projects and tenants have faced strong opposition in many areas, even to the point that low and moderate income neighborhoods fight to block subsidized families whose incomes may actually be higher than that of the current residents.

Even if tenant finds a landlord who will rent to her under the Section 8 program, other hurdles remain. The very poor often cannot afford the security deposit required to move into the unit. Moreover, while the voucher is not time limited in its assistance, landlords who rent to Section 8 families are not required to keep the tenants longer than one year. This means a Section 8 voucher holder who has followed all of the rules of the housing authority and the landlord could be forced to look for a new home every year even though she retains her voucher.⁵⁰

HUD has attempted to alleviate the Section 8 crisis by adopting higher payment standards in many cities. Under the new rules, Fair Market Rents will be raised from the 40th to the 50th percentile of the local rent distribution in areas that have an excessive concentrations of families with Section 8

48. Housing Comes First, *supra* note 3.

49. The Federal Fair Housing Act does not include source of income or recipients of housing assistance as a protected class. 42 U.S.C. § 3604 et seq. (2000).

50. 42 C.F.R. § 982.309 (2000).

assistance or where families have difficulty finding landlords who will rent to them.⁵¹ It remains to be seen whether these efforts can overcome the poor image Section 8 housing has in many communities.

VI. CONSTRUCTION, CONSTRUCTION, CONSTRUCTION

There is no doubt a need for a broad continuum of housing assistance to attack the nation's housing crisis. Homeless shelters will not disappear from our major cities in the foreseeable future. Transitional housing programs continue to grow. Decent market rate rental units will also be needed, and homeownership will continue to be the major choice for wealthier Americans.

The new decade will also see growth in innovative new housing configurations for low-income families. Congregate housing, such as co-housing, will increase. Nonprofit social service agencies will operate multi-unit buildings for four or five families, with 24-hour supervision, shared kitchen and social facilities where families will share day care duties and cooking chores. For those with problems related to poverty such as addiction or illness, group homes will become more numerous and more widely accepted. Nonprofit housing providers are taking the lead with many of these innovative alternatives for the poor. Attorneys have unique opportunities to assist these organizations with transactional legal assistance.

Yet HUD's own studies confirm that the real housing need in this country is traditional decent, safe and affordable housing for those making less than 30 percent of median income. These families are left out of many of the programs designed to help people find affordable housing because their income is so low. The answer is simply to build more public housing.

This new construction of public housing would have to be accomplished in a climate where income targeting did not exist. New units should not be reserved for the highest income working families. With regarding to the design of this new housing, HUD is out of the business of building public housing high rises, and everyone is grateful for that. In addition, HUD tells us that it now knows how to build viable public housing. Today's public housing is low-rise and is mixed in with homes and apartments being sold and rented at market rates. Again, no one appears to be arguing with the benefits of this new approach. It is the amount of public housing units being built that is the sole source of argument at this time. To build more, more communities must be willing to accept scattered site public housing.

HOPE VI projects are funneling millions of dollars in support for market rate housing, while replacing only a fraction of public housing units demolished to make way for that market rate housing. HUD and local housing authorities must take a hard look at their plans to determine whose needs are

51. 65 Fed. Reg. 58,870 (Oct. 2, 2000).

the priority in the development. While the first step is for these agencies to reconfigure HOPE VI developments to provide greater numbers of public housing units, some are even suggesting that housing authorities may need to take an aggressive role in developing new affordable housing in their communities.⁵² Regional approaches clearly have the best chance of succeeding, as they allow for public housing units to be in scattered-site developments that avoid large concentrations of the very poor.

VII. CONCLUSION: A ROAD MAP FOR ATTORNEYS

Despite a thriving economy and the ability of federal policymakers to make strong inroads into eliminating housing poverty if they were so inclined, the poor are threatened on many fronts by current policy.

Demolition of obsolete public housing units seems attractive to our urban leaders, but these units are not being replaced. For the units which remain, the poor are being screened more carefully by housing authorities so that anyone with a minor criminal history or other problem associated with homelessness and poverty is often denied admission. The unemployed face losing their place on waiting lists to those who have jobs. Those who are lucky enough to be admitted face tougher standards of conduct, including community service requirements which carry eviction as a punishment if they are not followed.

HOPE VI, HUD's answer to public housing problems, brings with it numerous problems for the poorest of the poor who are displaced and must search for housing in other depressed areas. They often find their Section 8 vouchers unusable.

Attorneys have numerous opportunities to assist the homeless and the very poor who seek assisted housing. They can work with public housing residents to block further demolition until plans are in place for replacement housing. They can assist tenants of Section 8 projects with plans to purchase buildings from owners who want to escape the program.

Attorneys can educate police, housing officials, and the public about the criminal justice system and explain how a homeless person can end up in jail over a speeding ticket. They can represent individuals in municipal courts in an effort to get minor charges dismissed and help make their clients eligible for housing.

But the affordable housing bar must make its top priority the support of policies which call for constructing new public housing. Attorneys can take an active role in representing tenants and ensuring they have a role in determining the shape of HOPE VI developments to ensure sufficient construction of public housing. At the same time, advocates can lobby federal elected officials, HUD

52. Lynn Cunningham, *Large PHAs and Their Regional Housing Markets: Time for More Robust Advocacy for Affordable Housing*, 10 J. AFFORDABLE HOUS. & COMM. DEV. LAW 48 (2000).

and local housing authorities to garner more resources for new construction. And it will require, in some circumstances, that fair-minded lawyers litigate fair housing claims against these agencies to ensure that the poorest of the poor are given the opportunity to meet their most basic housing needs.

