

# A WAY TO GO HOME: SUPPORTIVE HOUSING AND HOUSING ASSISTANCE PREFERENCES FOR THE HOMELESS

Stanley S. Herr\*

Stephen M. B. Pincus\*\*

## I. INTRODUCTION

On May 19, 1993, President Clinton signed an Executive Order calling for the development of a federal plan to break the cycle of homelessness and to prevent future homelessness.<sup>1</sup> The plan will recommend ways to redirect federal programs to link housing, social support, and education services.<sup>2</sup> In addition, the Executive Order encouraged “creative approaches and cost-effective, local efforts . . . including tying current homeless assistance programs to permanent housing assistance, . . . or employment opportunities.”<sup>3</sup>

The President correctly recognized that in order “to break the cycle of homelessness” the private and public sector must develop a continuum of services that addresses housing, as well as the psychological, social, and economic causes of homelessness. This intensive service model is in sharp contrast to the prevailing trend in most communities of focusing limited resources and planning energies on the emergency aspects of homelessness. Those policies re-

---

\* Associate Professor of Law, University of Maryland School of Law; B.A., Yale University, 1967; J.D., Yale Law School, 1970; D.Phil., Oxford University, 1979.

\*\* Robert M. Cover Fellow in Public Interest Law, Yale Law School; A.B., University of Michigan, 1989; J.D., University of Maryland School of Law, 1993.

The authors are grateful to Samuel I. Rosenberg, Dean Donald G. Gifford, and the Law and Homelessness Program of the University of Maryland School of Law for nurturing this research. Thanks are also due to Maria Foscarinis, Jonathan Grossman, Marsha A. Martin, Robert A. Solomon, and Stephen Wizner for commenting on the Article in draft form.

*In memory of Professor Everett F. Goldberg (1939-1994), a just man and a compassionate teacher.*

1. Exec. Order No. 12,848, 58 Fed. Reg. 96,29517 (1993).
2. *Id.* This plan is expected to be released in March 1994, after this Article went to press; and thus, its contents will not be analyzed here.
3. *Id.*

flect, in part, the political and editorial pressure to do *something* about the "street homeless," those who panhandle or encamp in public spaces and are usually the most visible subgroup of the diverse homeless population. The new approaches envision a sophisticated continuum of care, including outreach and assessment of service needs, transitional housing with supportive services, and relocation to permanent housing.<sup>4</sup> They are supported by new allocations of federal monies and an anticipated budgetary increase for homeless assistance in the coming year.<sup>5</sup>

Although the "street homeless" attract the attention of the public and the media, the majority of homeless people are not the "street" or "chronic" homeless.<sup>6</sup> Homelessness is often cyclical, with people moving from their own dwellings to those of friends and relatives, to shelters, and occasionally to the street. But many homeless people remain stuck in this cycle of despair, in large part because of their inability to acquire and retain stable and affordable housing.

To reduce homelessness, Congress established a preference system in the allocation of federal rental assistance programs. The beneficiaries of this system include applicants who are homeless or otherwise have "worst-case" housing needs.<sup>7</sup> Applicants who qualify for such a preference can bypass long waiting lists maintained by a Public Housing Authority (PHA) and receive a Section 8 subsidy or public housing apartment in a relatively short period of time.<sup>8</sup> The

---

4. U.S. DEP'T OF HOUS. & URB. DEV. & DISTRICT OF COLUMBIA GOV'T, THE D.C. INITIATIVE: WORKING TOGETHER TO SOLVE HOMELESSNESS 8 (1993) [hereinafter HUD-D.C. INITIATIVE].

5. President Clinton has proposed \$2.1 billion in fiscal year 1995 for programs specifically targeted for homeless persons. This is an increase of 60% over 1994 appropriations and about 100% over 1993 levels. OFFICE OF THE PRESIDENT OF THE UNITED STATES, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 1995, at 115 (1994). See text accompanying *infra* note 193.

6. See FLORIDA DEP'T OF HEALTH & REHABILITATIVE SERVS., HOMELESS CONDITIONS IN FLORIDA — THIRD ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE 3 (1991) (estimating that 65% of Florida's homeless population are the non-chronic homeless). The "chronic" homeless are defined as individuals who have been living on the streets or in emergency shelters for more than a year. John R. Belcher et al., *Three Stages of Homelessness: A Conceptual Model for Social Workers in Health Care*, 16 HEALTH & SOC. WORK 87, 90 (1991).

7. "Worst-case" housing needs refer to families who pay over half of their incomes for rent and utilities or live in "substandard conditions." U.S. DEP'T OF HOUS. & URB. DEV., PRIORITY HOUSING PROBLEMS AND "WORST CASE" NEEDS IN 1989, at i (June 1991) [hereinafter HUD, PRIORITY HOUSING PROBLEMS].

8. For a discussion of the Section 8 and public housing programs, see *infra* notes

emphasis here is on the term *relatively*; in some cities the preference system can cut the wait for some applicants from over twenty years to several months.<sup>9</sup>

Federally-mandated housing preferences, however, have their critics. Some PHAs believe that such preferences, especially the homeless preference, destabilize government-assisted housing complexes. Critics charge, albeit with more rhetoric than research, that the federal preference system fosters a hyper-concentration or “ghettoization” of poor tenants in government-assisted housing.<sup>10</sup> Others speculate that the homeless preference provides a perverse incentive for people to leave marginal housing situations and to gamble on a better housing outcome.<sup>11</sup>

Responding to pressure by the PHAs, Congress softened the federal preference system and gave PHAs greater authority in selecting tenants to fill their vacant units.<sup>12</sup> PHAs may find it attractive to use their new powers to assist higher-income tenants whom they perceive as less “difficult” to serve and better endowed with the resources to solve their own problems. However, PHAs can find alternative ways to stabilize their housing projects and still serve those most in need of housing assistance — homeless families and individuals. As recent studies document, the magnitude of that need is larger than previously estimated.<sup>13</sup>

This Article suggests some responses to meet a portion of that urgent need. These proposals aim not at the extremes of the homeless spectrum — the handful of badly deranged individuals or the multitude of the able, temporarily displaced — but at a sizable and vulnerable group that lies in the middle.<sup>14</sup> PHAs can help break the

---

28-37 and accompanying text.

9. *Housing Waiting List Sets Record in New York*, BALTIMORE SUN, Dec. 28, 1992, at 7A [hereinafter *Housing Waiting List*].

10. See, e.g., William E. Schmidt, *Public Housing: For Workers or the Needy?*, N.Y. TIMES, Apr. 17, 1990, at A1.

11. E.g., Robert C. Ellickson, *The Homelessness Muddle*, 99 PUB. INTEREST 45, 49 (Spring 1990).

12. For a discussion on the interaction between the federal and local preference systems, see *infra* notes 50-80 and accompanying text.

13. Celia W. Dugger, *Study Finds Vast Undercount of New York City Homeless*, N.Y. TIMES, Nov. 16, 1993, at A1 (noting that Dennis P. Culhane of the University of Pennsylvania concluded that 3.3% of New York City's population, a total of 239,425 people, had used shelters over the last five years, while 3% of Philadelphia's population had similar experiences of homelessness).

14. The Maryland Department of Human Resources, for example, describes this

cycle of homelessness for many people by combining housing with a range of supportive services.<sup>15</sup> If these supportive housing initiatives are carefully designed and implemented, housing authorities can preserve, if not strengthen, the viability of their Section 8 and public housing stock. Such reforms in the housing system or the newly created "homeless services" system are not substitutes but only precludes to the more far-reaching changes that poor people's advocates must seek.<sup>16</sup>

This introduction stressed the national interest in ending homelessness and the cycle of travail its victims face. As Part II recounts, despite the calls for permanent housing to break the cycle of homelessness, emergency responses predominate. Part III explores how federal and local preference systems have moved away from giving priority to groups with "worst-case" needs for housing. Part IV analyzes the tensions PHAs have sometimes experienced in reconciling the needs of homeless applicants for government-assisted housing with other important housing goals. Part V recognizes

---

concept as a need for "service-linked housing" defined as "unique permanent rental housing that provides on-going support services for low-income families and individuals." Such housing is not only for the homeless, but can also be designed for others "at risk" due to HIV-positive illness, disability, or multiple diagnoses. MARYLAND DEP'T OF HUMAN RESOURCES, SERVICE-LINKED HOUSING (Nov. 1993).

Outside the scope of this Article are the social policy responses to the social services-resistant or treatment-resistant individuals such as New York City's notorious Larry Hogue. See, e.g., *The "Wild Man" and the Law*, (Editorial), N.Y. TIMES, Aug. 29, 1992, § 1 at 18 (urging civil commitment as the appropriate response to a brain-injured homeless veteran whose drug abuse may be linked to repeated episodes of dangerous behavior on Manhattan's Upper West Side). See generally JOHN W. LAFOND & MARY L. DURHAM, BACK TO THE ASYLUM: THE FUTURE OF MENTAL HEALTH LAW AND POLICY IN THE UNITED STATES 103-05 (1992).

15. The term "supportive services," as used in this Article, refers primarily to social or rehabilitative services to help address an individual's disabilities or limitations. In the housing context, supportive services sometimes refers to more limited "resident services" such as youth recreation events, or to activities "designed to establish and/or maintain lease compliance." OCCUPANCY TASK FORCE, U.S. DEP'T OF HOUS. & URB. DEV., PRELIMINARY REPORT 6-1 (1993) [hereinafter HUD OCCUPANCY REPORT].

16. See KIM HOPPER & JILL HAMBERG, THE MAKING OF AMERICA'S HOMELESS: FROM SKID ROW TO NEW POOR 71 (1984); Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1740-42 (1993) (urging massive public subsidies to increase the supply of affordable housing); Lucie White, *Representing "The Real Deal,"* 45 U. MIAMI L. REV. 271 (1990-91); James J. Hartnett, Note, *Affordable Housing, Exclusionary Zoning, and American Apartheid: Using Title VIII to Foster Statewide Racial Integration*, 68 N.Y.U. L. REV. 89 (1993) (proposing litigation strategies against state housing agencies to promote economic and racial integration in affordable housing).

that many homeless individuals and families will require housing combined with an array of supportive services to break the cycle of homelessness. Part VI offers examples of programs throughout the country that avoid patterns of failure by linking selective admission to housing *and* rehabilitative services. Finally, this Article urges local government officials to act now to better assess and respond to the needs of their homeless citizens, and identifies some resources to offer an integrated program of housing and supportive services.<sup>17</sup>

## II. STUCK IN A CYCLE: PROVIDING EMERGENCY RESPONSES TO HOMELESSNESS

The complexity of homelessness stems from the failure of many systems. These systems range from social welfare to schools, from health care to families under stress. One analyst emphasizes that homelessness is also the “extreme manifestation of structural defects in the country's housing system.”<sup>18</sup> This crisis in the United States is exhibited by substandard and slum housing, burdensome utility costs and local property taxes, overcrowded housing conditions, and the lack of available, affordable rental units.<sup>19</sup> The lack of affordable rental units causes a large majority of low-income households to spend more than thirty percent of their adjusted monthly incomes for rent, the level at which the Department of Housing and Urban Development (HUD) considers housing to be affordable.<sup>20</sup> As

---

17. This political will is critical if localities are to take advantage of the federal government's heightened interest in resolving homelessness. As HUD Secretary Cisneros recently observed:

In the face of unrelenting pressure to cut the federal budget, I have asked President Clinton to double federal support for homeless assistance to \$1.55 billion next fiscal year to finance expansion of this new approach to homelessness nationwide. But before we can ask Congress for money to expand this program, we must demonstrate there is a will to carry it out. We must show that the federal government, local government and community groups can work together.

Henry G. Cisneros, *The Lonely Death on My Doorstep: Yetta Adams' Story and the New War on Homelessness*, WASH. POST, Dec. 5, 1993, at C1 [hereinafter Cisneros, *Lonely Death*].

18. Chester Hartman, *The Housing Part of the Homeless Problem*, in HOMELESSNESS: CULTURAL ISSUES FOR POLICY AND PRACTICE 12, 19 (1987).

19. *Id.* at 15. See also Peter Marcuse, *Homelessness and Housing Policy*, in HOMELESS IN AMERICA 138, 139 (Carol L.M. Canton ed., 1990).

20. HUD, PRIORITY HOUSING PROBLEMS, *supra* note 7, at 6-7. Nationwide in 1989, 70% of “very-low-income renters” (less than 50% of local median income) paid more than 30% of their income in rent. *Id.* Over two-fifths of “very-low-income renters” paid more

a result, the low-income affordable housing crisis also pushes many Americans into episodes of homelessness.<sup>21</sup>

To assist those people who become homeless, local governments generally have targeted their limited funds on short-term responses rather than on long-term solutions. The proliferation of emergency shelters with few support services exemplifies these short-term approaches.<sup>22</sup> Some critics charge local government officials with providing only minimal accommodations in large barracks-style shelters or welfare motels to deter people from becoming or remaining homeless.<sup>23</sup> Such approaches do not “work in humane terms”<sup>24</sup> nor have they prevented homelessness.<sup>25</sup> Short-sighted mental health policies also fuel demand for emergency services. While mental institutions have closed and community mental health programs face overwhelming demands, states have seldom earmarked funding for the homeless mentally ill or ensured that deinstitutionalization

---

than half their incomes in rent. *Id.*

21. Langley C. Keyes, *Housing and the Homeless*, in BUILDING FOUNDATIONS: HOUSING AND FEDERAL POLICY 403, 406 (Denise DiPasquale & Langley C. Keyes eds., 1990). This subgroup of the homeless population is sometimes referred to as the “economic” or “new” homeless because their homelessness is due to an inability to find an affordable place to live. *Id.* at 406.

22. Shelter beds dramatically increased in the nation's five largest cities from 1984 through 1989. In Philadelphia, the number of shelter beds increased nearly 600%. U.S. DEP'T OF HOUS. & URB. DEV., A REPORT ON HOMELESS ASSISTANCE POLICY AND PRACTICE IN THE NATION'S FIVE LARGEST CITIES 38 (Aug. 1989). Following a public referendum that guaranteed the “right to adequate overnight shelter,” the District of Columbia began sheltering 11,018 adults and 2,400 families at an annual cost of \$40 million. “Despite this considerable public investment, there was no visible impact on the growing presence of homeless people on the District's streets.” HUD-D.C. INITIATIVE, *supra* note 4, at 16-17.

23. See JONATHAN KOZOL, RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA 196 (1988). Some commentators contend that minimal accommodations avoid creating perverse incentives that may encourage people to leave their substandard or overcrowded housing in the hope of a more attractive shelter. *E.g.*, Ellickson, *supra* note 11, at 48-49. For contrary views, see *infra* note 148.

24. KOZOL, *supra* note 23, at 196.

25. *Id.* (citing a New York City Council study that found programs “with the best social services had the best placement record,” while the worst programs had “the longest average length of stay”).

savings accrue to the benefit of community-based alternatives.<sup>26</sup>

The focus on emergency services simply perpetuates the homeless problem by providing little hope of future self-sufficiency while wasting precious resources.<sup>27</sup> While local governments tend to concentrate their resources on emergency and transitional shelters, the federal government has not provided sufficient funds to satisfy the vast unmet need for the two federal housing programs that could reduce the low-income housing crisis. These programs are conventional public housing<sup>28</sup> and Section 8 housing.<sup>29</sup> They are very popu-

---

26. Kevin Sack, *Why Politics, as Usual, is not Helping the Mentally Ill*, N.Y. TIMES, July 25, 1993, § 4, at 5 (during the latest five-year period, annual New York State spending for its psychiatric hospitals dropped by \$184 million while its spending for community psychiatric programs rose by only \$86 million). For New York State's recent plan to increase funding of community mental health programs through redirecting the funds saved by closing five psychiatric hospitals, see *infra* note 252.

27. NEW YORK CITY COMM'N ON THE HOMELESS, THE WAY HOME: A NEW DIRECTION IN SOCIAL POLICY 13 (1992) ("The current emergency shelter system is wasteful, ineffective and inefficient. The shelters only exacerbate the problems of the persistently poor and dependent.").

28. The Housing Act of 1937 established the conventional public housing program that is still the cornerstone of rental assistance. See 42 U.S.C. § 1437 (1988 & Supp. III 1991). Under this program, a local PHA owns the housing and administers the local program. Each public housing project is built with tax-exempt bonds issued by a local PHA. HUD pays the annual debt service on the bonds and after 40 years, the bonds are retired and the local PHA becomes the owner of the project. See 42 U.S.C. § 1437b(a) (1988). Initially, PHAs covered operating costs through income from rents, but they now need subsidies from HUD because rental income is insufficient. Joseph Shuldiner, *Stop Isolating the Poor: The Need for Economic Integration in Public Housing*, A.B.A. J. AFFORDABLE HOUS. & COMMUNITY DEV. L., Fall 1992, at 17. See 24 C.F.R. § 990 (1993) (outlining HUD standards and policies of distributing annual operating subsidies). For a useful overview of the public housing program, see Fred Fuchs, *Introduction to HUD Conventional Public Housing, Section 8 Housing, Voucher, and Subsidized Mortgage Programs: Part I: Conventional Public Housing*, 25 CLEARINGHOUSE REV. 782, 782-88 (1991) [hereinafter *HUD Part I*].

29. Congress established the Section 8 Housing Program under the Housing and Community Development Act of 1974. See 42 U.S.C. § 1437f (1988). There are a number of different Section 8 programs. This Article will focus on the Section 8 Existing Housing Program, more commonly known as the "Certificate" program, and the Section 8 Voucher Program. See 24 C.F.R. § 882 (1993) (Certificate program regulations) and 24 C.F.R. § 887 (1993) (Voucher program regulations). These two Section 8 programs are referred to as "tenant-based" or "walk-around" subsidies because the PHA issues the subsidy to the holder who must then find a landlord willing to enter into the program with the PHA. Barbara Sard, *Housing the Homeless through Expanding Access to Existing Subsidized Housing Programs*, 36 VILL. L. REV. 1113, 1121 (1991) [hereinafter Sard, *Housing the Homeless*]. For these tenant-based Section 8 programs, the PHA maintains the waiting lists and administers the selection procedures for these programs. See 24 C.F.R. §§ 877.105(b)(2), 888.116(c) (1993). In "project-based" programs, the subsidy is tied to the apartment, not to the individual, and the private landlord maintains the waiting list and

lar with prospective tenants since the government generally limits rents to thirty percent of the household's monthly adjusted income.<sup>30</sup> Eligible renters include families, persons with disabilities, displaced persons, the elderly,<sup>31</sup> and most recently, single persons who are not disabled.<sup>32</sup>

Unfortunately, during the 1980s budget cuts to conventional public housing and Section 8 housing programs have exacerbated the problem of homelessness.<sup>33</sup> Today, these programs meet only a

performs other selection responsibilities. See Fred Fuchs, *Introduction to HUD Conventional Public Housing, Section 8 Existing Housing, Voucher, and Subsidized Housing Programs: Part II: Section 8 Existing Housing, Voucher, and Subsidized Housing*, 25 CLEARINGHOUSE REV. 990, 996-98 (1991) [hereinafter *HUD Part II*]. The Clinton Administration, as part of Vice President Gore's National Performance Review, plans to merge the Section 8 certificate and voucher programs by fiscal year 1995. See H.R. 3400, 103d Cong., 1st Sess. (1993).

30. See 42 U.S.C. § 1437a(a)(1)(A) (1988). To be more precise, rents in the Section 8 Certificate program are generally limited to the highest of the following amounts: 30% of adjusted income, 10% of the family's monthly income, or for a family receiving welfare assistance, the portion of the welfare payment designed to meet the family's cost for housing. *Id.* § 1437a(a)(1)(A)-(C). The local PHA pays the owner of the unit the balance between the tenant's contribution and the contract rent which cannot exceed the maximum fair market rent as determined by HUD. See 42 U.S.C. § 1437f(b)-(c) (1988 & Supp. III 1991). Under the Section 8 Voucher Program, however, landlords may charge more than the HUD fair market rent and tenants are allowed to pay in excess of 30% of their adjusted income towards rent. 24 C.F.R. § 887.351-.353 (1993). For a more detailed explanation of the program and how rents are computed, see *HUD Part I, supra* note 28, at 787-98. See 42 U.S.C. § 1437a(b)(5) (1988 & Supp. III 1991) (definition of "adjusted income"); 24 C.F.R. § 913.106 (1993) (regulations on rent computation).

31. 42 U.S.C. § 1437a(b)(3) (1988 & Supp. III 1991). See 24 C.F.R. § 912.2 (1993) (definitions of eligible groups including families and displaced persons).

32. 58 Fed. Reg. 141,39658, 141,39660 (1993) (to be codified at 24 C.F.R. § 912.1(a)(2)) (definition of "families" extended to "any other single person' who is not 62 years or older, . . . handicapped, displaced, or the remaining member of a tenant family").

33. If the number of additional families assisted by HUD remained at pre-Reagan Administration levels, some 2.3 million additional low-income households would be receiving assistance today. SCOTT BARANCIK & MARK SHEFT, *A PLACE TO CALL HOME: THE CRISIS IN HOUSING FOR THE POOR (BALTIMORE, MARYLAND)* 17 (1991). From fiscal years 1977 through 1980, HUD provided rental assistance to 316,000 additional low-income households each year. Between fiscal years 1981 and 1990, only 82,000 additional low-income households were served each year, a 75% reduction. *Id.* The U.S. Conference of Mayors, Task Force on Hunger and Homelessness recommends that "Congress should fund, at a minimum, HUD Secretary Cisneros' request for 100,000 new Section 8 rental assistance slots" for the upcoming year. U.S. CONFERENCE OF MAYORS, *ENDING HOMELESSNESS IN AMERICA'S CITIES: IMPLEMENTING A NATIONAL PLAN OF ACTION* 58 (1993) (quoting Marc Weiss, Special Assistant to HUD Secretary Henry Cisneros) "Section 8 rental . . . subsidies can be even more effective for homeless people when combined with housing counseling and supportive services. Increasing the number of



fraction of the need for rental assistance.<sup>34</sup> More specifically, the conventional public housing and the Section 8 programs currently serve 4.5 million families. However, another 13 million families meet the income guidelines for such assistance.<sup>35</sup> Because very few apartments become vacant each year, waiting lists of up to twenty years have developed,<sup>36</sup> forcing some PHAs not to take new applications.<sup>37</sup>

### III. TARGETING RENTAL HOUSING ASSISTANCE BASED ON NEED: THE ARTICULATION OF PREFERENCES

#### A. Historical Background

Since its inception in 1937, the federal public housing program has catered to a range of income groups. Public housing was never

---

vouchers and certificates is one of the most practical ways to expand our ability to house homeless persons." *Id.*

34. Currently, "fewer than one out of every three poverty-level renters actually receive any form of government housing assistance." Barry Zigas, *After the HUD Scandal: A Housing Agenda*, N.Y. NEWSDAY, Nov. 10, 1989, at 85. While a small percentage of the poor receive rental assistance, the federal government subsidizes millions of middle-class and upper-class homeowners by continuing the federal tax deduction on home mortgage interest. Karen Hosler, *Tightening of Tax Breaks Seen as Tool to Cut Deficit*, BALTIMORE SUN, July 26, 1993, at A1, A5. The mortgage interest deduction costs the federal government \$48 billion a year in lost revenue. *Id.*

35. Jason DeParle, *Big Bills Come Due, and H.U.D. is Forced to Scramble for Money*, N.Y. TIMES, Apr. 8, 1993, at A1. Unlike other government poverty programs, housing assistance is not an entitlement, and the level of assistance is dependent on Congressional appropriations each year. Housing analysts estimate that from \$10 to \$25 billion in additional federal appropriations are needed each year, depending on the population group to be served and the level of subsidy. Jill Khadduri & Kathryn P. Nelson, *Targeting Housing Assistance*, 11 J. POL'Y ANALYSIS & MGMT. 21, 22 (1992) [hereinafter Khadduri & Nelson, *Targeting Housing Assistance*]. In addition, current federal housing policy allows households with incomes about twice the poverty line to live in Section 8 and public housing, which has the effect of diverting assistance away from needier people. *Id.* at 23.

36. *Housing Waiting List*, *supra* note 9, at 7A. The New York City Housing Authority has a waiting list of 240,000 families and an apartment vacancy rate of only 4.5% each year. *Id.*

37. Several PHAs in Florida have closed their waiting lists due to the great demand for these programs. David Olinger, *A New Generation of Homeless Americans*, ST. PETERSBURG TIMES, Feb. 16, 1992, at 1D. For instance, the Clearwater Housing Authority reportedly takes applications only from those people who qualify for a federal preference. *Id.* Still, these applicants must wait between a year and 18 months before receiving assistance. *Id.* See Sard, *Housing the Homeless*, note 29, at 1132 (asserting that the practice of closing waiting lists may be illegal by denying applicants claiming a federal preference from being placed on the waiting list).

intended to be "housing of the last resort."<sup>38</sup> Congress initially designed the public housing program in a way that the rents paid by tenants would fully cover its operating costs.<sup>39</sup> As a result of this funding scheme, PHAs set rents so high that the very poor were effectively excluded from public housing.<sup>40</sup>

Beginning in the late 1960s, several important changes in policy opened up public housing to the poor. For instance, litigation challenged patterns of favoritism and racial discrimination that narrowed housing choices for low-income people.<sup>41</sup> In *Holmes v. New York City Housing Authority*,<sup>42</sup> the United States Court of Appeals for the Second Circuit ruled that arbitrary selection procedures which had the effect of discriminating against the poor were unconstitutional.<sup>43</sup> In 1969, Congress limited rent to twenty-five percent of a tenant's income.<sup>44</sup> Thus, for the first time, families with little or no incomes were able to afford public housing.<sup>45</sup> By 1974, Congress enacted a policy of "promoting economically mixed housing,"<sup>46</sup> and PHAs had to lease at least thirty percent of their vacant units to

---

38. Telephone Interview with Maryann Russ, Executive Director of the Council of Large Public Housing Agencies, Washington, D.C. (Feb. 18, 1993).

39. Prior to 1969, rents in public housing were determined by taking into "account the rent-paying ability of the family [and] the financial stability and solvency of the [housing] project." See 42 U.S.C. § 1402(1) (1964) (repealed 1969).

40. See Shuldiner, *supra* note 28, at 17.

41. For example, a 1966 suit by public housing residents against the Chicago Housing Authority and HUD culminated in a landmark victory and a remedial consent decree. *Gautreaux v. Chicago Hous. Auth.*, 436 F.2d 306, 313 (7th Cir. 1970) (holding that site selection of public housing based on race is unconstitutional), *cert. denied*, 402 U.S. 922 (1971). On the impact of this decision in dispersing inner-city residents to the suburbs, see Edelman, *supra* note 16, at 1740-42.

42. 398 F.2d 262 (2d Cir. 1968).

43. *Id.* at 265. Prior to *Holmes*, a PHA had no generally established procedures to follow in its selection of public housing tenants. As a result, tenant selections were often guided by political patronage, nepotism, or other subjective methods. Sard, *Housing the Homeless*, *supra* note 29, at 1128 n.49. In *Holmes*, the Second Circuit held that "due process requires selections among applicants for public housing be made [by the housing authority] in accordance with ascertainable standards." 398 F.2d at 265 (quoting *Hornsby v. Allen*, 326 F.2d 605, 612 (5th Cir. 1964)). Further, if housing applicants are equally qualified, the officials must make selections in a reasonable manner, such as by "lot or on the basis of the chronological order of application." *Id.* (quoting *Hornsby*, 326 F.2d at 609-10).

44. Pub. L. No. 91-152, § 213(b), 83 Stat. 379 (1969) (codified as amended at 42 U.S.C. § 1402(1) (1970)).

45. Shuldiner, *supra* note 28, at 17.

46. 42 U.S.C. § 1437f(a) (1988 & Supp. III 1991).

“very low-income” families.<sup>47</sup> Regulations also required PHAs to use their best efforts to lease Section 8 housing “to families with a range of incomes” resulting in average family incomes “at or above 40 percent of the median income of the area.”<sup>48</sup>

Although the policy of economically mixing introduced “very low-income” families into assisted housing, federal law also mandated that government housing remain socially and financially manageable. HUD required PHAs to consider the needs of individual families for low-income housing, while at the same time operating economically sound low-income housing projects that would foster economic and social diversity in the tenant body as a whole.<sup>49</sup> Reconciling these goals, however, remains a source of tension for PHAs.

### B. The Federal Preference System

By 1979, Congress began to acknowledge that economically mixed housing policies had diverted assistance to higher-income families at the expense of needier applicants.<sup>50</sup> Congress responded with three important changes that targeted housing subsidies to the neediest applicants. First, Congress increased the portion of income paid by assisted households from twenty-five to thirty percent.<sup>51</sup> This change induced some higher-income households to seek market alternatives to assisted housing.<sup>52</sup>

Second, Congress reserved up to ninety-five percent of a PHA's public housing units and Section 8 subsidies for “very low-income” tenants.<sup>53</sup> Some critics, however, viewed such quotas as part of a

---

47. 42 U.S.C. § 1437f(c)(7) (1976) (repealed 1981). The term “very low-income” refers to lower income families, adjusted to family size, whose incomes are less than 50% of the median family income in the relevant geographic area. 42 U.S.C. § 1437a(b)(2) (1988 & Supp. III 1991).

48. 24 C.F.R. § 880.603(c) (1980) (repealed).

49. See 24 C.F.R. § 880.603 (1978). To achieve these goals, PHAs were to develop policies designed to avoid concentrations of the most economically and socially deprived families in any one or all of the local housing authority's low-income projects and to preclude admission of applicants whose habits and practices were reasonably expected to have a detrimental effect on the tenants or the project environment. *Id.*

50. See Kathryn P. Nelson & Jill Khadduri, *To Whom Should Limited Housing Resources Be Directed?*, 3 HOUSING POL'Y DEBATE 1, 2 (1992) [hereinafter Nelson & Khadduri, *Limited Housing Resources*].

51. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 322, 95 Stat. 357, 400 (1981).

52. Nelson & Khadduri, *Limited Housing Resources*, *supra* note 50, at 2.

53. Omnibus Budget Reconciliation Act of 1981, § 323, 95 Stat. at 404. See S. REP.

long-term strategy to undermine political support for entitlement programs.<sup>54</sup> In any case, the quotas for “very low-income” households later were decreased to current levels of between seventy-five and eighty-five percent.<sup>55</sup>

Third, Congress designed housing preferences as a remedy to the underrepresentation of the very poor, instituting mandatory “federal preferences” to applicants with “worst-case” housing needs.<sup>56</sup> PHAs thereby were required to provide assistance first to those applicants who qualified for a federal preference, even if there were applicants who had spent more time on the waiting list.<sup>57</sup> In

---

No. 139, 97th Cong., 1st Sess. 229-30, *reprinted in* 1981 U.S.C.C.A.N. 396, 525-26. Congress applied a 95% quota to units that were first occupied as assisted housing after October 1, 1981. 42 U.S.C. § 1437n(b) (1982) (repealed 1990). A 90% quota applied to units that were occupied as assisted housing before October 1, 1981. 42 U.S.C. § 1437(a) (1982) (repealed 1983).

54. This argument assumed that by narrowing the program's beneficiaries primarily to the very poor and minority populations, political support for assisted housing would wane. Shuldiner, *supra* note 28, at 17. Further, by targeting the neediest for assistance, conservatives could then posture that these programs did not need to expand since a larger share of need was being met. *Rationing Housing*, (Editorial), WASH. POST, Apr. 25, 1993, at C6.

55. 42 U.S.C. § 1437n(a)–(b) (1988 & Supp. III 1991). *See* Domestic Housing & International Recovery & Financial Stability Act, Pub. L. No. 98-181, § 213, 97 Stat. 1153, 1184 (1983) (codified at 42 U.S.C. § 1437n(a) (1985)); Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 511(2), 104 Stat. 4079, 4194 (1990) (codified at 42 U.S.C. § 1437n(b)(1) (Supp. III 1991)).

56. *See* Khadduri & Nelson, *Targeting Housing Assistance*, *supra* note 35, at 25. Following the results of the 1987 American Housing Survey (AHS), HUD estimated the number of “worst-case” households as comprising 5 million households whose experience with severe rent burdens (50% of income towards rent) and 450,000 households who live in substandard housing. Although these figures include single, non-elderly individuals who previously were not eligible for assistance, homeless individuals were excluded because the AHS survey only measured households. *Id.* at 25-26. Based on a conservative estimate of 600,000 homeless families, the number of households qualifying for a federal preference under current definitions probably approaches 6 million households. *See* FEDERAL TASK FORCE ON HOMELESSNESS AND SEVERE MENTAL ILLNESS, OUTCASTS ON MAIN STREET 7 (1992) (estimating the number of homeless people at 600,000).

57. Until 1979, PHAs had broader discretion in developing their own policies and procedures for selecting families for the public housing and Section 8 programs. PHAs had the option of giving preferences to certain groups of tenants, but were not required to do so. *See* 24 C.F.R. §§ 882.204(b)(3), .209 (1979). A PHA was required to include the preferences in its annual administrative plan to HUD which set forth the PHAs policies and procedures in selecting tenants. *Id.* Annual administrative plans were required to be approved by HUD. *See* 24 C.F.R. § 882.204(b)(3) (1979). Under current law, any individual or family evicted from government-assisted housing due to drug-related criminal activity cannot receive a preference unless the applicant completes a rehabilitation program approved by the PHA or the PHA has obtained a waiver from HUD to not apply this rule. 42 U.S.C. § 1437f(d)(1)(A)(iii) (Supp. III 1991).

1979, Congress enacted federal housing preferences for “families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance.”<sup>58</sup> In 1983, Congress added a third preference for families who had severe rent burdens, i.e. families paying more than fifty percent of their income in rent.<sup>59</sup> However, most PHAs did not apply these preferences until 1988 because of HUD delays in promulgating final regulations.<sup>60</sup>

The homeless are the latest intended beneficiaries of the preference system. Less than three years after the final regulations for the 1979 and 1983 preferences were promulgated, Congress passed the Cranston-Gonzalez National Affordable Housing Act (the Act) and broadened the definition of the preference for applicants living in “substandard housing” to include homeless people.<sup>61</sup> Adopting in part the definition contained in the Stewart B. McKinney Homeless Assistance Act,<sup>62</sup> HUD regulations refer to a “homeless” individual

58. Housing and Community Development Amendments of 1979, Pub. L. No. 96-153, § 206(a), 93 Stat. 1101, 1108 (codified at 42 U.S.C. § 1437d(c)(4)(A) (1988)).

59. Domestic Housing and International Recovery and Financial Stability Act, Pub. L. No. 98-181, § 203(a), 97 Stat. 1153, 1178 (1983) (codified at 42 U.S.C. § 1437d(c)(4)(A) (1988)).

60. *See, e.g.*, 53 Fed. Reg. 10,1122 (1988). According to a HUD policy analyst, sharp divisions within HUD over proposed regulations delayed their promulgation. Telephone interview with Kathryn P. Nelson, HUD Senior Policy Analyst (Mar. 3, 1993). During this period of delay, lawsuits arose challenging local PHAs who did not follow the preference system. In *Martinez v. Rhode Island Hous. & Mortgage Fin. Corp.*, 738 F.2d 21, 25 (1st Cir. 1984), the court held that a PHA must implement the new law that gives selection preference to very low-income applicants even in absence of final HUD regulations. *Cf. Gholston v. Housing Auth. of City of Montgomery*, 818 F.2d 776, 784-86 (11th Cir. 1987) (stating federal preferences are not self-executing and local housing authorities are not required to follow them before HUD promulgates final regulations), *reh'g denied*, 826 F.2d 15 (11th Cir. 1987).

61. Pub. L. No. 101-625, § 501, 104 Stat. 4079, 4180 (1990) (codified at 42 U.S.C.A. § 1437d(c)(4)(A) (West Supp. 1993)).

62. Pub. L. No. 100-77, § 103, 101 Stat. 482, 485 (1987) (codified as amended at 42 U.S.C. § 11302 (1988)). The Act provides in part:

(a) IN GENERAL.— For purposes of this Act, the term “homeless” or “homeless individual” includes—

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is—
  - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
  - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

as a person who occupies substandard housing or who has no fixed residence or whose primary residence is a shelter or other temporary place or whose residence is not designed for human beings.<sup>63</sup> Under proposed HUD regulations on preferences for admission to assisted housing, the federal preferences do not include all recognizable homeless people, such as those who live “doubled up” with friends or relatives, but local preferences can address such overcrowding factors.<sup>64</sup> For the public housing program, however, PHAs may expand the HUD definition of homelessness after HUD review and approval.<sup>65</sup>

The Cranston-Gonzalez Act was a “good news/bad news” message for homeless persons. Even while bringing the homeless into the preference system, the Act also weakened the influence of federal preferences in determining tenant selection for public and Section 8 housing. As he signed it, President Bush complained that the Act would divert housing resources away from those most in need.<sup>66</sup> The Cranston-Gonzalez Act initially required an allocation of ninety percent of the Section 8 tenant-based subsidies,<sup>67</sup> and seventy percent of the public housing units made available each year went to house-

---

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

42 U.S.C. § 11302(a).

63. 24 C.F.R. § 960.211(f)(3)(i)–.211(f)(3)(ii)(C) (1993).

64. 58 Fed. Reg. 163,44968, 163,44970 (1993) (Aug. 25, 1993) (comment to proposed rule) (HUD's definition of substandard housing does extend to persons living in units “doubled up” with others). HUD's Occupancy Task Force has recommended that “HUD revise the definition of homelessness throughout its programs to people who are homeless and living in institutions or with friends or relatives.” HUD OCCUPANCY REPORT, *supra* note 15, at 1-17.

65. 58 Fed. Reg. 163,44968, 163,44986 (1993) (to be codified at 24 C.F.R. § 960.212(b)(1)) (proposed regulations for federal preference system for public housing).

66. President Bush stated:

I am further concerned that this legislation, in several instances, would relax longstanding provisions of current law that provide a preference for housing assistance for those families who are most in need. Although the Federal Government currently serves about 4.3 million low-income families, there are about 4 million additional families, most of them very low income, whose housing needs have not been met. We should not divert assistance from those who need it most.

President George Bush, Statement by President George Bush Upon Signing S. 566, 26 WEEKLY COMP. PRES. DOC. 1930 (Dec. 30, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6231-1, 6231-3.

67. 42 U.S.C. § 1437f(d)(1)(A)(i) (Supp. III 1991).

holds qualifying for a federal preference.<sup>68</sup> By 1992, Congress had lowered the seventy percent quota to fifty percent of units required to be set aside for public housing applicants qualifying for federal preferences.<sup>69</sup>

### C. The Local Preference System

In response to the criticisms by PHAs and their demands for more control over the selection of tenants,<sup>70</sup> the Cranston-Gonzalez Act also established the local preference system.<sup>71</sup> Under the Act, PHAs can elect to use local preferences to govern the selection of applicants who do not qualify for a federal preference.<sup>72</sup> They also can use the local preferences to rank applicants who qualify for Section 8 subsidies under a federal preference.<sup>73</sup> Before establishing their local preferences, PHAs must hold public hearings to determine the community's housing needs and priorities.<sup>74</sup>

The local preference system gives PHAs greater discretion to target certain groups of the "housing needy" for government-assisted housing. PHAs are not required to favor groups who have "worst-

---

68. *Id.* § 1437d(c)(4)(A) (Supp. III 1991) (repealed 1992).

69. Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 112, 106 Stat. 3672, 3689 (1992) (to be codified at 42 U.S.C. § 1437d(c)(4)(A)(1)). 58 Fed. Reg. 163,44968, 163,44985 (1993) (to be codified at 24 C.F.R. § 960.211(b)(2)(i)) (selection preferences for public housing).

70. Telephone Interview with Jerry Benoit, HUD Director of Assisted Housing (Mar. 3, 1993).

71. 42 U.S.C. § 1437f(d)(1)(A)(ii) (Supp. III 1991) (local preferences for public housing and Section 8 programs). The enactment of "local preferences" is consistent with the traditional housing policy of the 1937 Housing Act "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." *Id.* § 1437 (1988).

72. *Id.* § 1437f(d)(1)(A)(ii). *See also* 58 Fed. Reg. 35,11292, 35,11335 (to be codified at 24 C.F.R. § 982.205(a)(2)) (proposed Feb. 24, 1993) (Section 8 Certificate and Voucher selection criteria) and 58 Fed. Reg. 163,44968, 163,44985 (to be codified at 24 C.F.R. § 960.211(b)(ii)) (public housing selection criteria). Sometimes the articulation of local preferences fails to narrow the field of applicants. In Baltimore, for example, the only local preference is given to applicants who are Baltimore City residents, which is practically everyone who is on the waiting list. Interview with Floryne Howard, Program Officer, Housing Authority of Baltimore City (HABC) Housing Assistance Payments Program, in Baltimore, Maryland (Dec. 2, 1992). A PHA can have different local preferences for its public housing and Section 8 programs. 58 Fed. Reg. 163,44970 (HUD commentary on proposed rules for preferences for public housing).

73. 58 Fed. Reg. 35,11292, 35,11335 (to be codified at 24 C.F.R. § 982.205(a)) (local preferences for Section 8 Certificate and Voucher programs).

74. *Id.* (to be codified at 24 C.F.R. § 982.205(b)).

case” housing needs under the federal preference system. Instead, the only substantive requirements are that local preferences must respond to the community's housing needs and priorities.<sup>75</sup> The Section 8 Certificate and Voucher programs place additional restrictions on these selection criteria. For these subsidies, PHAs may not select participants based on “family characteristics” and may not give preference to “low-income” families over “very low-income” ones.<sup>76</sup>

Although it did not mandate specific local preferences, Congress expressly recommended that local preferences should favor certain groups of homeless or “at-risk of homelessness” people. Legislation now requires PHAs to consider assisting persons in such categories as:

[1] very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act . . . or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities . . . [2] families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care . . . [3] youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available . . . .<sup>77</sup>

The net result is that PHAs have more flexibility under the local

75. *Id.*

76. The list of “family characteristics” which may not be selection criteria include:

- (A) Employment history or education of family members;
- (B) Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;
- (C) Whether the family includes children (family status);
- (D) Any discrimination because of age, race, color, religion, sex, or national origin;
- (E) Any discrimination because of disability; or
- (F) Whether a family elects to participate in a family self-sufficiency program.

58 Fed. Reg. 35,11292, 35,11334 (1993) (to be codified at 24 C.F.R. § 982.202(c)(3)(i)(A)-(F)). The proposed public housing regulations allow “selecting a higher income family that is lower on the waiting list” if the selection is in accordance with the “duly-adopted” local preference system. 58 Fed. Reg. 163,44988 (to be codified at 24 C.F.R. § 960.213(d)(2)). *But cf.* 24 C.F.R. § 913.105 (1993) (other income-related restrictions on selection).

77. 42 U.S.C. § 1437f(d)(1)(A)(ii) (Supp. III 1991).



preference system than under the federal scheme. They also can direct housing resources to those targeted for intensive services. For instance, one of the suggested local preferences is to select applicants who are already participating in rehabilitation programs designed to stabilize their lives.<sup>78</sup> The question is the extent to which PHAs are using this discretion. The preference systems may result in local preferences undermining federal preferences and bureaucratic complexity frustrating the laudable objectives of relieving the poor.<sup>79</sup> However the preferences are used, there is no question that the gap between the number of low-rent units and low-income renters is huge.<sup>80</sup>

#### IV. RECONCILING COMPETING DEMANDS: THE APPLICATION OF THE HOMELESS PREFERENCE

##### A. Allocating Housing Assistance Based on Need

PHAs face several competing pressures when developing selection policies for government-assisted housing. If a PHA establishes selection policies based solely on the housing needs of its community, one can make a very strong argument that local governments should give preference to families and individuals earning incomes at or below thirty-five percent of local median income, which is approximately the poverty line in most areas.<sup>81</sup> This income group is much more likely to have a “worst-case” housing problem such as being homeless, having a severe rent burden, or living in substandard housing.<sup>82</sup>

---

78. *See id.*

79. *See* THERESA FUNICIELLO, TYRANNY OF KINDNESS: DISMANTLING THE WELFARE SYSTEM TO END POVERTY IN AMERICA (1993) (discussing the negative effects of a complex, labor-intensive welfare system that essentially serves to manage, at best, the effects of poverty); Peter W. Salsich, Jr., *A Decent Home for Every American: Can the 1949 Goal Be Met?*, 71 N.C. L. REV. 1619, 1637 (1993) (criticizing divided responsibility and bureaucratic operation that is “inefficient, unresponsive, and inflexible,” leading to “a serious lack of public support for the public housing and assisted housing programs, as well as isolation of public housing and its residents”).

80. *See* Salsich, *supra* note 79, at 1624, n.34 (stating “a 4.1 million gap existed in 1989 between the number of low rent units and the number of low-income renters.”).

81. *See* Nelson & Khadduri, *Limited Housing Resources*, *supra* note 50, at 50.

82. OFFICE OF POL'Y DEV. & RES., U.S. DEP'T OF HOUS. & URB. DEV., THE LOCATION OF WORST CASE NEEDS IN THE LATE 1980'S 9 (Dec. 1992) [hereinafter HUD, LOCATION OF WORST CASE NEEDS]. For example, in 1989, 41% of the nation's “very low-income”

A second argument is that people living in any permanent housing have less of a housing need than homeless individuals and families. Most of the "very low-income" households who have "worst-case" housing needs only qualify for the rent-burden preference.<sup>83</sup> Due to the relatively few vacant units available each year, the homeless preference must be ranked above the other preferences if it is to have any real benefit for currently homeless applicants.<sup>84</sup> The counter-argument that this preference will induce people to abandon their present housing in hopes of receiving better government-assisted housing lacks an empirical foundation.<sup>85</sup>

Allocating benefits based on degree of economic need is a logical feature of anti-poverty programs. For rental assistance programs, however, government policymakers must also consider how the government's subsidy directly affects the quality of life of other people — the subsidized tenant's neighbors. When tenants bring their social problems to the housing complex, the government-assisted housing problem is asked to solve "a whole set of problems that the rest of America refuses to accommodate."<sup>86</sup> Clearly these housing programs cannot bear all the burdens without substantial ancillary

---

renters had rent burdens greater than 50% of local median income, compared with only 2% of those "low-income" renters. Low-income means 51-80% of local median income. *Id.*

83. *Id.* at 17.

84. If a PHA gives equal weight to any federal preference, a new applicant claiming a homeless preference might have to wait until all applicants who claimed any preference were housed before receiving assistance. In cities like Baltimore which has not ranked the federal preferences, applicants claiming the homeless preference can wait up to 14 years for assistance. U.S. DEP'T OF HOUS. & URB. DEV., REVIEW OF THE HOUSING AUTHORITY OF BALTIMORE CITY SECTION 8 CERTIFICATE AND HOUSING VOUCHER PROGRAMS 3 (May 1992). See Sard, *Housing the Homeless*, *supra* note 29, at 1122 (noting annual turnover rates are approximately 10% for Section 8 subsidies and 5% for public housing in Massachusetts).

In his 1995 budget proposal, President Clinton asked Congress for \$514 million for 15,000 rental vouchers for previously homeless families. OFFICE OF THE PRESIDENT OF THE UNITED STATES, *supra* note 5, at 115.

85. Charles V. Raymond, Commissioner of New York City's new Department of Homeless Services, estimates that 40 to 60 of the 2,800 families seeking shelter each month could be turned away under the City's new policy of rejecting families who have a safe, alternative place to live. This figure is not based on any hard data. As Mr. Raymond acknowledged: "It could be 50 families a week; I just don't know." Charisse Jones, *2% Rejection for Shelter, Estimates Say*, N.Y. TIMES, Oct. 28, 1993, at B1. For more on whether the homeless preference encourages homelessness, see *infra* notes 147-50 and accompanying text.

86. Schmidt, *supra* note 10, at A1 (quoting Gordon Cavanaugh, Legal Adviser to the Council of Large Public Housing Authorities). See also David Whitman, *Exodus of the "Couch People"*, U.S. NEWS & WORLD REP., Dec. 23, 1991, at 30.

services, especially for some of the persons who have endured prolonged ordeals of homelessness.

### B. Maintaining Viable Government-Assisted Housing Projects

Many housing specialists believe that a successful government housing program requires a mix of low- and middle-income tenants. Critics opposed to the federal preference system charge that it has brought too many "very low-income" tenants into public housing and has caused the destabilization of many complexes.<sup>87</sup> New York City is often cited as having one of the more successful public housing systems in the country due, in part, to its careful screening procedures and economically mixed housing.<sup>88</sup>

No one can deny that many public housing complexes are in physical disrepair<sup>89</sup> or in areas plagued by drugs and violence.<sup>90</sup> Where these conditions exist, public-housing tenants are further isolated from other socio-economic classes.<sup>91</sup> However, these prob

---

87. See, e.g., Rafael Alvarez, *Housing Chief Doesn't Want Working People Ousted from Projects*, BALTIMORE SUN, June 7, 1993, at 3B (Housing Authority of Baltimore City Director Daniel P. Henson III says that a federal policy that allows only poor people to live in public housing is "the dumbest thing I've ever seen . . . . If all you have is poor people, then all you're going to have is people with poor attitudes.").

88. *New York Successes Touted*, CHICAGO SUN-TIMES, Nov. 29, 1992, at 25. See also Jane Fritsch, *New York Agency Cuts Apartments for the Homeless*, N.Y. TIMES, Aug. 19, 1992, at A1. In 1992, the New York City Housing Authority rented 53% of its family units to working families. In contrast, less than 11% of the households in Chicago's assisted housing were employed. *Resident Income* (Chart), CHICAGO SUN-TIMES, Nov. 29, 1992, at 27 (data from Chicago Housing Administration). The health of New York's public housing is also due to spending more money on its buildings and security features, scattering its developments throughout the city to connect rather than isolate them from the community, and increasing law enforcement in the projects. *New York Successes Touted*, *supra*, at 25. This trend continues with a recent \$100 million HUD grant over five years to permit NYCHA to hire 400 additional police officers to go on foot patrol in public housing projects. Todd S. Purdum, *New York Contest Goes Down to Wire in Hectic Weekend*, N.Y. TIMES, Oct. 31, 1993, at A1.

89. For example, in Baltimore, 25% of the Lexington Terrace's 577 high-rise apartments are vacant and vandalized. William F. Zorzi, Jr. & Melody Simmons, *Mayor Removes Hearn from City Housing Posts*, BALTIMORE SUN, Feb. 23, 1993, at A1, A8.

90. Professor Edelman would remedy such problems with inner-city neighborhood revitalization, such as the City of Baltimore's and the Enterprise Foundation's Sandtown-Winchester initiative, and by dispersed public housing. Edelman, *supra* note 16, at 1739-42. "Concentrated poverty," he observes, "means crime, violence, drugs, and premature death." *Id.* at 1736.

91. Chicago illustrates the problems of deteriorated and concentrated public hous-

lems are not prevalent in most public housing and Section 8 housing complexes in the United States. In fact, a large portion of these units serve elderly tenants and are located in "relatively small and well-designed projects that do not have the effect of concentrating the poor."<sup>92</sup>

Large-scale public housing complexes with acute physical and social problems are still prominent features of the urban landscape.<sup>93</sup> To help stabilize these complexes, some proponents of housing reform propose following New York City's model and increasing the percentage of families with incomes substantially above the

---

ing. A congressionally-appointed committee rated public housing in 25 cities on physical condition, environment, and poverty and determined that half of Chicago's public housing developments are "distressed," compared with only 6% nationally. In one four-mile stretch, there are 8,858 apartments in 101 buildings including the Robert Taylor Homes, the nation's largest public housing development. Due to its isolation from the rest of the city, police find public housing difficult to patrol. Finally, in most of Chicago's complexes, less than 10% of the households have employment income. Deborah Nelson, *CHA Worst in Nation*, CHICAGO SUN-TIMES, Nov. 29, 1992, at 1. For a perspective of two young boys living in Chicago public housing, see ALEX KOTLOWITZ, *THERE ARE NO CHILDREN HERE* (1991).

92. Khadduri & Nelson, *Targeting Housing Assistance*, *supra* note 35, at 30. See *Hearings on S. 1299 Before Senate Banking, Housing and Urban Affairs Committee*, 103rd Cong., 1st Sess. (July 28, 1993) (available from Federal News Service) (statement of Henry G. Cisneros, HUD Secretary) [hereinafter, *Senate Hearings*] "[M]ost public housing is well maintained, indistinguishable from any other rental housing, and is well integrated into the communities where it is located . . ." *Id.*

93. See Andi Rierden, *The Last Farewell to Father Panik Village*, N.Y. TIMES, Oct. 17, 1993, § 13, at 1, 12 (detailing the pervasive problems including building deterioration and crime in a public housing complex in Bridgeport, Connecticut). Housing officials generally recognize that the government-assisted housing in the future should consist of scattered-site and smaller complexes. Citing high crime and the deterioration of buildings that made Father Panik Village uninhabitable, the Bridgeport Housing Authority is razing it and replacing the 1,063 units lost with a combination of scattered-site and mixed-income housing. *Id.* at 12. See Alan S. Oser, *Public Housing: Seeking to Improve Quality in Shelter*, N.Y. TIMES, Dec. 13, 1992, § 10, at 3.

Although a thorough overhaul of public housing requires an extended period of time, PHAs can institute relatively inexpensive reforms now such as the placement of an on-site housing manager in each complex. Interview with Bonnie Milstein, Attorney, Bazelon Center for Mental Health Law, in Baltimore, Maryland (April 14, 1993). Another example is Baltimore housing authority's massive cleanup of the Flag House Courts, a 487-unit public housing project, which reportedly has significantly improved the quality of life in the project. During the seven-week sweep, maintenance workers made needed repairs and renovated vacant units, and police officers arrested drug dealers and squatters. Crime-related police calls dropped dramatically since new security procedures, including staffed guard booths, were instituted. Michael A. Fletcher, *Flag House Courts: Suddenly Cleaner, Safer, Nicer*, BALTIMORE SUN, Nov. 1, 1993, at 1B, 10B.

poverty line in public housing.<sup>94</sup> Both Congress<sup>95</sup> and HUD also favor more mixed-income housing.<sup>96</sup>

For homeless people, the crucial question is how this economic integration of government housing is to be achieved. There are attractive policy reasons for PHAs to bring working-class families into housing complexes, some premised on the hope that such families will act as role models for other tenants.<sup>97</sup> This method of reintegration, however, shifts scarce vacant housing units from those most in need of housing assistance, including people who are currently homeless.<sup>98</sup> Thus, advocates for the homeless urge a sparing use of this approach, such as for particular projects that are in extreme

---

94. See Schmidt, *supra* note 10, at A1.

95. In 1990, Congress authorized the Public Housing Mixed Income New Communities Strategy Demonstration. This program allows up to 25% of the units in each participating public housing complex involved to be occupied by low-income families who are not very low-income families. 42 U.S.C. § 1437f(f)(2)(A) (Supp. III 1991). The participating PHA provides support services for families including education, job training and preparation, child care, substance abuse treatment and counseling, training in homemaking and parenting skills, family counseling, and financial counseling services. *Id.* Despite Congress' initiative, the one PHA (Chicago) approved to participate has yet to implement the program due to its difficulty in developing housing under this program with the private sector. Telephone Interview with Steven Sprague, Financial Management Specialist, HUD Office of Public and Indian Housing (Dec. 8, 1993).

96. See Secretary Henry G. Cisneros, Remarks at the Progressive Policy Institute Conference 4, in U.S. DEPT OF HOUS. & URB. DEV., *THE CHANGING FEDERAL ROLE IN URBAN POLICY* (Apr. 19, 1993) [hereinafter Cisneros, *URBAN POLICY*] (transcript available from HUD Office of the Assistant Secretary for Public Affairs, Washington, D.C.). The new Assistant Secretary for Public and Indian Housing, Henry G. Cisneros, has also urged reducing the concentration of poor persons in public housing. Joseph Shuldiner, *Bringing Pride to Public Housing*, A SPECIAL LETTER FROM THE SECRETARY, U.S. DEPT OF HOUS. & URB. DEV., July 12, 1993, at 3.

97. Assistant HUD Secretary Shuldiner maintains that "very low-income" tenants would actually benefit from mixed-income policies. Shuldiner, *supra* note 28, at 18. The current selection system isolates the poor from working-class families. "More working people in the [public housing] buildings would enhance diversity and community life, and ensure stronger role models to compete with the gangs and drug dealers." Schmidt, *supra* note 10, at A1 (quoting Vincent Lane, Chairman of the Chicago Housing Authority). By having relatively higher-income tenants interacting with lower-income residents, they would eventually "understand that they share the same ambitions and desires." Shuldiner, *supra* note 28, at 18. Shuldiner also contends that the "ghettoization" of public housing since 1981 has been part of a larger effort to undermine several entitlement programs and diminish political support for housing programs. *Id.* at 17. However, if more moderate- and middle-income people were living in government assisted housing, he believes there would be greater support to fund these public housing programs. *Id.* at 19.

98. The HUD mixed-income demonstration project is an example of this shifting of assistance away from very low-income households. See *supra* note 95.

physical and social distress.

In 1993, Congress targeted "severely distressed" public housing complexes<sup>99</sup> and authorized HUD to provide \$200,000 in planning grants for each complex to qualifying PHAs to develop revitalization programs.<sup>100</sup> Once PHAs develop such plans, they can apply to HUD for implementation grants of up to an aggregate of \$250,000 per project.<sup>101</sup> For complexes revitalized under this program, PHAs can obtain waivers from HUD regarding rules governing rents and income eligibility.<sup>102</sup> In addition, PHAs may suspend the use of federal preference system and may use local preferences to govern all tenant selections in these identified complexes.<sup>103</sup>

Housing officials can foster economic integration by developing programs that assist current tenants to return to work and achieve self-sufficiency.<sup>104</sup> One relatively simple solution is to remove financial disincentives for families who seek to leave the public assistance rolls and return to work. Under current law, rents in government-assisted housing are tied to thirty percent of a tenant's income. As a tenant's income rises, so does his or her rental payments. When a tenant's income reaches a certain level, the tenant loses any rental subsidy and must pay rent according to the apartment's fair market

99. "Severely distressed" public housing is defined as a project that:

(i) [R]equires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including appropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems . . . ;

(ii) is occupied predominantly by families with children who are in a severe state of distress, characterized by such factors as high rates of unemployment, teenage pregnancy, single-parent households, long-term dependency on public assistance and minimal educational achievement;

(iii) is in a location for recurrent vandalism and criminal activity . . . ; and

(iv) cannot remedy the elements of distress . . . through assistance under other programs . . .

42 U.S.C.A. § 1437v(h)(5)(A)(i)-(iv) (West Supp. 1993).

100. 42 U.S.C.A. § 1437v (West Supp. 1993) (Revitalization of Severely Distressed Public Housing). In their revitalization program, HUD encouraged PHAs to include plans for "economic development, job training and self-sufficiency . . . of residents . . ." *Id.* § 1437v(c)(3)(F).

101. *Id.* § 1437v(d), (f).

102. *Id.* § 1437v(e)(1) (exceptions to general program requirements).

103. *Id.* § 1437v(e)(2).

104. HUD is on record as favoring the approach of raising the standard of living of tenants already in public housing. See *Senate Hearings, supra* note 92. For a discussion of the federal Family Self-Sufficiency Program, see *infra* text and accompany notes 169-74.

value.

This increase in rent and the possible loss of Medicaid benefits are financial disincentives for welfare recipients to return to work. The Clinton Administration's health care and welfare reform initiatives are intended to reduce such disincentives. Further, the Housing and Community Development Act of 1993 calls for a ceiling on rents as tenants' income rises, so that rents do not become prohibitively expensive for people returning to work.<sup>105</sup> Indeed, reforms in ceiling rents may be an effective way to reverse demographic trends that have resulted in a rising percentage of low-income tenants in public housing.<sup>106</sup>

#### V. BEYOND HOUSING: SUPPORT NEEDS OF DEPENDENT HOMELESS PERSONS

Homelessness has been characterized as the most extreme condition of poverty.<sup>107</sup> Entitlement programs do not provide enough money for families to pay for decent shelter in the private market, let alone provide for their other needs.<sup>108</sup> Providing subsidized permanent housing to formerly homeless people does offer shelter, but

105. See S. 1299, 103d Cong., 1st Sess. (July 28, 1993). With rents pegged at 30% of a tenant's income, at a certain level 30% of income becomes much greater than the rents for private housing in the surrounding community. When this occurs, working class tenants leave government-assisted housing. Senate Bill 1299 proposes to exclude for 18 months the earned income of public housing residents who have been unemployed for over a year. *Id.* § 203(d). Additionally, the bill would establish rent ceilings based on the reasonable value of the unit and not on the 30% guideline. *Id.* § 204. See also *Senate Hearings, supra* note 92.

106. HUD OCCUPANCY REPORT, *supra* note 15, at 1-16 n.14 (positing that the 10-year trend of falling incomes among public housing tenants is more likely attributable to the increase of formula rents from 25% to 30% of income in 1981 than the federal preference system).

107. ALICE S. BAUM & DONALD W. BURNES, A NATION IN DENIAL: THE TRUTH ABOUT HOMELESSNESS 141 (1993). James Wright, lead researcher of the Health Care for the Homeless Project, claimed;

[H]omelessness is basically a poverty problem; it is created by a large group of extremely poor and socially marginal people who cannot compete successfully in an ever-dwindling low-income housing market . . . [T]he solution to homelessness is ultimately easy: Do away with poverty and you will simultaneously do away with homelessness as well.

JAMES D. WRIGHT, ADDRESS UNKNOWN: THE HOMELESS IN AMERICA 135 (1989).

108. For example, in 1991, "[a] typical one-bedroom apartment in a Florida City rented for \$400 . . . about 135% of the maximum welfare payment to a family of three." Olinger, *supra* note 37, at 1D. See PETER ROSSI, DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS 204-09 (1989) (discussing the erosion of public welfare benefits).

unfortunately it is not enough to break the cycle of homelessness for many people.

This point was debated during New York City's recent experience of placing homeless people in permanent housing. In 1988, the New York City Housing Authority (NYCHA) intended to place 2,000 homeless families each year at the head of the public housing waiting list.<sup>109</sup> However, in the first group served under this policy, NYCHA found that the formerly homeless had "a high incidence of contact with the police department, drug dealing and harassment of other tenants."<sup>110</sup> Without counseling, some of those tenants squandered their furniture allowances and overpaid for household items because they did not know how to comparison shop.<sup>111</sup>

While New York's experience is not necessarily typical and the political backlash may have been unfair,<sup>112</sup> it reinforced the view

---

109. Telephone Interview with Maryann Russ, *supra* note 38. The 2,000 homeless families represented 25% of all new admissions to public housing. Oser, *supra* note 93, at 3. Between 1988 and 1992, about 7,000 homeless families had been placed in public housing and another 30,000 homeless families have received other housing assistance, including apartments in renovated apartment buildings managed by the city or non-profit organizations. Celia W. Dugger, *Placing the Homeless: No Easy Solutions*, N.Y. TIMES, Aug. 22, 1992, § 1, at 24. See also Whitman, *supra* note 86, at 30.

110. Fritsch, *supra* note 88, at B2 (quoting Sally Hernandez-Pinero, Executive Director, NYCHA). Such incidents caused veteran residents to resent the presence of formerly homeless tenants in their complexes. *Id.* The fact that homeless people "jump ahead" of others on the waiting list may make residents distrustful of the means by which the homeless obtained their apartments. Catherine S. Manegold, *Projects' Have-Nots Fear Have-Nothings*, N.Y. TIMES, Aug. 22, 1992, § 1, at 23, 24. For example, in Borinquen Plaza, a housing project in Brooklyn, 52 homeless families moved in ahead of 79 families on the waiting list. *Id.* See also Peter S. Canellos, *Shelters a Grim Growth Industry*, BOSTON GLOBE, Nov. 26, 1992, at 57.

111. See Fritsch, *supra* note 88, at B2.

112. New York City not only has the nation's largest concentration of homeless people, but a judiciary and media willing to put the performance of its homeless services officials under intense scrutiny. For instance, Justice Helen E. Freedman has found city officials in contempt of court three times in one year for leaving some 1,000 homeless families to sleep in city offices for days. In fining officials \$7,500 each, the court also chided the city for not using available facilities and "for providing 400 fewer permanent apartments to homeless families than the city had told her would be necessary in the fall of 1992." Celia W. Dugger, *5 New York City Officials Fined in a Homeless Case*, N.Y. TIMES, Dec. 10, 1993, at B3.

Housing officials in the Boston area have also criticized the preference for bringing homeless families with a disproportion of social problems into public housing complexes. According to Barbara Sard, a lecturer at Harvard Law School and an attorney at Greater Boston Legal Services:

To me it looks like you have a classic case of scapegoating . . . It's hard for me to tell how much of this is what people really think, how much is politi-



that homelessness is compounded by more than just housing or economic problems.<sup>113</sup> Like other low-income residents, some of the formerly homeless require improved social services to make the transition into permanent housing. Two of the major non-economic "causes" of homelessness that housing providers must address for certain subgroups are issues of mental illness and substance abuse. Whether these are true causes of homelessness or its stubborn effects and symptoms becomes an almost irrelevant debate in the face of the problem's magnitude.

The federal government estimates that approximately one-third of single adult homeless individuals suffer from severe mental illness.<sup>114</sup> In a study of homeless men and women in Baltimore, researchers from Johns Hopkins Hospital found that ninety-one percent of the men and eighty percent of the women surveyed were diagnosed as having at least one Axis I diagnosis<sup>115</sup> with over for

---

cians scapegoating the homeless for the problems of changing neighborhoods, and how much is the media playing it up because it makes a good story. Canellos, *supra* note 110, at 57.

113. Baum and Burnes rhetorically ask: If sheer indigence was the only force at work, then why in earlier decades when poverty was more widespread, the rates of homelessness were not as great as now? "Indeed, if poverty is the cause of homelessness, why are there so many very poor people in this country who are not homeless?" BAUM & BURNES, *supra* note 107, at 108. The authors maintain that homelessness is far more than "simply being poor and without a home." *Id.* at 141. Their critics counter that this analysis minimizes the structural shortcomings in the economy that perpetuate poverty, and that some of the well-publicized social problems of the homeless follow from, or are aggravated by, their lack of shelter, rather than precede it. James Bock, *Homelessness Experts Debate Remedy*, BALTIMORE SUN, Oct. 7, 1993, at B4. They and their critics may have some common ground in the acknowledgement that supported housing for recovering substance abusers and for persons with mental illness demonstrates that "recovery is possible and that many formerly homeless people are able to make the transition to independent and healthy lives." Alice S. Baum & Donald W. Burnes, *Denial and Delusions: America's Homelessness Hokum*, WASH. POST, Dec. 5, 1993, at C3.

114. See FEDERAL TASK FORCE ON HOMELESSNESS AND SEVERE MENTAL ILLNESS, *supra* note 56, at 7. The task force defined severe mental illnesses as "persistent mental or emotional disorders (including, but not limited to, schizophrenia, schizoaffective disorders, mood disorders, and severe personality disorders) that significantly interfere with a person's ability to carry out such primary aspects of daily life as self-care, household management, interpersonal relationships, and work or school." *Id.* See also INSTITUTE OF MEDICINE, HOMELESSNESS, HEALTH, AND HUMAN NEEDS 50-57 (1988) [hereinafter INSTITUTE OF MEDICINE].

115. William R. Breakey et al., *Health and Mental Health Problems of Homeless Men and Women in Baltimore*, 262 JAMA 1352, 1355 (1989). This study was supported by the National Institute of Mental Health and the National Institute on Alcohol Abuse and Alcoholism. *Id.* at 1357. Diagnoses were made according to the guidelines in the DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3d ed. 1987) (DSM-III). *Id.*

ty-five percent of both men and women diagnosed as having a more severe Axis II disorder.<sup>116</sup> Researchers found high prevalence rates for schizophrenia, unipolar and bipolar affective disorders, and phobic and anxiety disorders.<sup>117</sup>

High rates of alcoholism and other substance-abuse disorders are also associated with homelessness. The Hopkins study identified about sixty-eight percent of the homeless men and some thirty-two to thirty-eight percent of the homeless women surveyed as probable or definite alcoholics.<sup>118</sup> Fifty-six percent of men and seventeen percent of women were diagnosed as having alcohol-dependence syndrome, a more severe condition.<sup>119</sup> Prevalence rates for other substance abuse were much lower than for alcohol use but were still significant.<sup>120</sup> Researchers also found a high incidence of comorbidity of mental illness and substance abuse problems in homeless people.<sup>121</sup> These findings strongly support the need for intensive mental health and substance abuse programs as part of the continuum of care.

Finally, the continuum of support services must include job

---

at 1354-55. Axis I disorders are considered mental illnesses and disorders of behavior and emotion including substance-abuse disorders and phobic and anxiety disorders. *Id.*

116. *Id.* at 1355. Axis II disorders are considered long-standing disorders of personality. *Id.*

117. *Id.*

118. *Id.* The Hopkins study conducted two different surveys for alcoholism. "[T]he Short Michigan Alcoholism Screening Test . . . identified 69% of men and 38% of women as probable or definite alcoholics." *Id.* Based on psychiatrists' examinations, the overall alcohol rate was 68% for men and 32% for women based on the guidelines of alcohol-use disorders in DSM-III. *Id.* See also INSTITUTE OF MEDICINE, *supra* note 114, at 60-65 (surveying other studies on the prevalence of alcoholism among homeless adults).

119. Breakey, *supra* note 115, at 1355. Alcohol dependence syndrome is characterized "by features such as increased stereotypy of drinking, compulsive drinking, tolerance, repeated withdrawal symptoms, and drinking to avoid withdrawal symptoms." *Id.*

120. *Id.* More than half surveyed in the Hopkins study admitted using illicit drugs on an occasional basis, but only 22% of men and 17% of women met the criteria in DSM-III for drug abuse or dependence. *Id.* In New York City, urine testing of homeless shelter residents found "[h]alf the single adults and a quarter of the women with children tested positive for illegal drugs, mostly cocaine." Celia W. Dugger, *Setbacks and Surprises Temper a Mayor's Hopes to House All*, N.Y. TIMES, July 5, 1993, at A1.

121. Breakey, *supra* note 115, at 1355. Professor Breakey and his colleagues concluded: "Of the 85 men diagnosed with active or remitted alcohol use disorders, 32 (38%) also had a major mental illness, and of the 78 women, 24 (32%) also had a major mental illness. Of the 53 men diagnosed with a major mental illness, 32 (60%) also had an alcohol use disorder and 13 (24%) also had a substance abuse disorder." *Id.* See also INSTITUTE OF MEDICINE, *supra* note 114, at 65-66.

training and job creation.<sup>122</sup> The notion that homeless people can learn a “work ethic” by simply living around working-class tenants is rather simplistic.<sup>123</sup> To compete in this technologically advanced workplace, people with a limited education need to acquire analytic and specific job-related skills.<sup>124</sup> Such training is crucial for underskilled and “variously troubled people” who have little or no prior work history.<sup>125</sup> But the measure of success of any job skills program is not the quality of the training but the ability to place retrained workers into decently paying positions in the labor market.<sup>126</sup> Unfortunately, while over 151 federal employment training programs exist, this “fragmented system” produces confusion and frustration, pointing to the need for “one-stop career centers” as a common entry point for counseling, training, job search, job creation, and related placement services.<sup>127</sup> Even when a local program to employ the residents of a homeless shelter is recognized as very successful, government agencies may prove unwilling to replicate it.<sup>128</sup>

---

122. Edelman, *supra* note 16, at 1754. For a discussion on how the labor market affects homelessness, see ROSSI, *supra* note 108, at 200-03.

123. See KOZOL, *supra* note 23, at 198.

124. *Id.*

125. See Edelman, *supra* note 16, at 1751-53.

126. KOZOL, *supra* note 23, at 198. Even if a person works 30 hours a week at twice the minimum wage, he or she cannot earn enough to keep a family of four above the poverty line (\$14,335 in 1992). Robert Pear, *Poverty 1993: Bigger, Deeper, Younger and Getting Worse*, N.Y. TIMES, Oct. 10, 1993, § 4, at 5. If the labor market cannot provide these new jobs, the government should consider creating public-sector employment. ROSSI, *supra* note 108, at 472. Rossi points out that “some of the most popular welfare programs have been public employment programs — for example, the Civilian Conservation Corps of the Great Depression days, the Job Corps, the Peace Corps, and Vista.” *Id.* Newly retrained workers could build and refurbish urban projects, including low-income housing, and assist understaffed government departments such as tax collection agencies. See *id.*; KOZOL, *supra* note 23, at 198. For instance, one emerging vocational field is personal assistance for persons with disabilities. On the expansion of subsidized voluntary service, see the National and Community Service Trust Act of 1993, Pub. L. No. 103-82, 107 Stat. 785 (1993).

127. General Accounting Office, Testimony of Clarence C. Crawford, Associate Director of GAO Human Resources Division, before Sen. Subcomm. on Education, Labor, and Health and Human Services, Sen. Comm. on Appropriations, *Multiple Employment Programs: National Employment Training Strategy Needed*, at 4-5, 10 (June 18, 1993).

128. See Celia W. Dugger, *Homeless Program Where Work is Key*, N.Y. TIMES, Dec. 26, 1993, at 31. “Ready, Willing and Able,” a four-year old Brooklyn transitional shelter run by the Dole Fund, has received an award of national excellence from the Interagency Council on the Homeless. Forty percent of its graduates have found private sector jobs, and its 66 current residents pay 70% of the cost of their room and board while

The inability of New York City to obtain sufficient resources to address the root causes of homelessness undermined the admirable effort to provide permanent housing and “ensure a successful transition back to the community” for homeless single adults and families.<sup>129</sup> But even with these constraints, local officials succeeded in allocating more than 40,000 Single Room Occupancy (SRO) rooms and apartments between 1983 and 1993 to people who were homeless.<sup>130</sup> The city also emphasized the financing of supported housing operated by nonprofit service providers and distributed according to the following formula: sixty percent for homeless adults who have lived in transitional shelters or have special needs such as the acquired immunodeficiency syndrome (AIDS) or mental illness, twenty percent for other referrals described as “housing needy (i.e. persons homeless or at risk of homelessness),” and twenty percent other low-income persons.<sup>131</sup> In order for such programs of permanent housing to be effective, applicants may need some screening assessment of special needs, and provision of adequate support services.<sup>132</sup> New York City's experience suggests that if these housing policies are ultimately to benefit the dependent homeless and remain politically possible, planners must better link support services with housing for people in transition to permanent housing and self-sufficiency. For a significant segment of the vulnerable homeless, this approach is crucial to breaking the cycle of homelessness.<sup>133</sup>

---

earning five dollars an hour. Despite this success, no city agency was willing to pull together the funding for the work, shelter, and social service package needed to duplicate or expand this program. *Id.* at 31, 34.

129. MARSHA A. MARTIN ET AL., NEW YORK CITY REVISED AND UPDATED PLAN FOR HOUSING AND ASSISTING HOMELESS SINGLE ADULTS AND FAMILIES 1 (Mar. 1993).

130. *Id.* at 51. These units included 31,000 locally financed apartments and SRO rooms produced by the New York City Department of Housing Preservation and Development at a cost of \$1.3 billion. *Id.* NYCHA has allocated 8,311 units of public housing for homeless persons since 1988. *Id.* at 59.

131. *Id.* at 54.

132. When it developed this policy, New York City's Human Resources Administration was supposed to provide social services to these tenants, including mental health and substance abuse programs. However, the understaffed agency could not provide enough of these services, and alternative resources were not mobilized. Telephone interview with Maryann Russ, *supra* note 38. In August 1992, New York City scaled back the number of homeless families placed from 2,000 to 1,420 a year to allow the Housing Authority to conduct more intensive screening and the Human Resources Administration to provide increased social services to the families. Manegold, *supra* note 110, at 23.

133. Holders of tenant-based subsidies may also need assistance in finding a landlord willing to accept the subsidy. While the family is still in the transitional shelters,

VI. THE SEARCH FOR NEW APPROACHES:  
HOUSING PLUS SUPPORT SERVICES

A. The Case for Intensive Screening  
of Prospective Tenants

With the advent of the local preference system, PHAs gained greater local autonomy in formulating their tenant selection policies. As a result of the weakened federal preference system, HUD forecasts that less housing assistance will be available to very low-income families and individuals, including the homeless.<sup>134</sup> These projections stem from the assumption that PHAs will use their local preferences to shift housing resources to relatively higher-income families. Those families are viewed as stabilizing the projects and do not exhibit “worst-case” needs.<sup>135</sup>

PHAs need not and should not adopt such policies as the primary means of stabilizing their government-assisted housing. As expressed earlier, PHAs should concentrate on raising the income levels of tenants already in the complexes to achieve a greater economic mix.<sup>136</sup> As new units become available, PHAs can select currently homeless individuals and families without destabilizing their housing complexes. This process requires care and human relations sensitivity to avoid tipping the balance and provoking working-class flight.

The key to including homeless families and individuals in government-assisted permanent housing is the selective recruitment of

---

PHA workers could help the parent develop a housing search strategy. Such a strategy identifies priorities and ways to find the size and location of housing desired. PHAs should also provide access to telephones, transportation, and child-care services to help the holder with his or her search. Barbara Sard, *The Massachusetts Experience with Targeted Tenant-Based Rental Assistance for the Homeless: Lessons on Housing Disfavored*, 1 GEO. J. ON FIGHTING POVERTY 16, 21-23 (1993) (stating that Massachusetts homeless families receiving tenant-based rental subsidies have a 95% success rate in finding a landlord to accept the subsidy).

134. HUD estimates that the changes to the preference system in the National Affordable Housing Act and the Housing and Community Development Act of 1992 “will likely reduce by 80,000 the number of worst-case families newly assisted each year” as vacancies in units occur. HUD, LOCATION OF WORST CASE NEEDS, *supra* note 82, at 47.

135. Telephone Interview with Kathryn P. Nelson, *supra* note 60.

136. See *supra* notes 104-06 and accompanying text. PHAs may increase tenants' income not only through rent ceilings, but by initiatives to increase the education, social skills, and self-esteem of their tenants. See *infra* text accompanying notes 137-39.

homeless applicants who can adjust to permanent housing. When selecting applicants for federal rental assistance, PHAs are required under HUD regulations to consider factors which might indicate favorable future financial prospects or conduct, such as evidence of a willingness to participate in social service or counseling programs, and to increase family income.<sup>137</sup> Thus, PHAs should focus their recruitment on the residents of transitional homeless shelters after they have secured income either from employment or public benefits.<sup>138</sup> Active recruitment from these homeless people also takes advantage of their connections to existing support services and a demonstrated motivation to restructure their lives.<sup>139</sup>

However, housing providers should not assume that homeless persons living in other types of shelters, on the street, doubled-up with friends, or in institutions simply because of lack of housing are incapable of demonstrating that they can meet the "essential obligations of tenancy."<sup>140</sup> Even while recommending a thorough screening, verification of information to establish applicant selection crite-

---

137. 24 C.F.R. § 960.205(d) (1993) (providing standards for PHA tenant selection criteria for public housing).

138. Individuals in transitional shelters are often referred to as the "marginal" homeless and "recent" homeless. Belcher, *supra* note 6, at 88-90. The "marginal homeless" are individuals who "live below or slightly above the poverty line [and] [t]heir connection to housing is tenuous and may be episodic." *Id.* at 88. The "recent" homeless "still identify themselves with the mainstream of their communities rather than with other homeless individuals." *Id.* at 89. At a transitional shelter, social, mental health, employment, and health services are often available through state and private providers. Nancy K. Kaufman, *Homelessness: A Comprehensive Policy Approach*, in HOUSING THE HOMELESS 335, 340 (Jan Erickson & Charles Wilhelm eds., 1986).

139. Belcher, *supra* note 6, at 91-92. In contrast, the "chronic" homeless are not good candidates for permanent housing until their lives can be stabilized in a transitional shelter where their basic needs can be addressed. Kaufman, *supra* note 138, at 341. For a definition of chronic homelessness, see Belcher, *supra* note 6, at 90. After a year of being homeless, most people are disconnected from mainstream society and have lost hope that their lives will improve. *Id.* Other individuals may have mental health and alcohol problems that make them disruptive and unwilling to seek shelter. See, e.g., Richard Cohen, *Forced Shelter*, WASH. POST, Dec. 8, 1993, at A23 (asserting that Yetta Adams, a homeless person who lived "on and off" in shelters for 13 years and was found dead on a bus shelter bench near the HUD headquarters, was deranged, and observing that "[w]hen you have a bed to go to, when you have \$300 in your pocket, you do not spend the night on the street in cold weather").

140. HUD OCCUPANCY REPORT, *supra* note 15, at 1-23. The independent federal HUD Occupancy Task Force refers to those lease-compliance obligations as "timely payment, care of the premises, respect for the rights of others, avoiding criminal activity, and complying with other reasonable requirements" of HUD, the housing provider, and health and safety codes. *Id.*

ria, and pre-occupancy orientation for new residents, the HUD Occupancy Task Force stresses safeguards for those with unconventional housing histories. Thus, they recommend lengthy interviews with such applicants and the use of alternative types of documentation sources for individuals who have not had landlords. For applicants with disabilities who failed an initial screening, they urge a second interview to determine if a reasonable accommodation to the individual's disability or a mitigating circumstance existed.<sup>141</sup>

While HUD must ensure fairness to all comers, it must also devise plans to combat homelessness and provide affordable housing with affordable services. For instance, by recruiting primarily from transitional shelters, housing providers can be encouraged to use Section 8 housing and public housing as the final step in breaking the cycle of homelessness.<sup>142</sup> At this point, PHAs can assist homeless people by putting together a package of support services that "provide ongoing stability."<sup>143</sup> Officials should design this package of services according to an individual's or family's needs. For example, a woman on Aid to Families with Dependent Children assistance (AFDC) with two young children may need access to employment training or schooling,<sup>144</sup> counseling, and daycare, in addition to a permanent place to live.<sup>145</sup> A homeless man who is chronically mentally ill may require frequent visits by mental health professionals who can provide counseling and monitor medications.<sup>146</sup> Such indi-

---

141. *Id.* at 1-25, 1-31, 1-38 to 1-41. For example, the resident of a homeless shelter could be able to show care for one's space, respecting the rights of co-residents, and compliance with the shelter's rules. *See id.* 1-40 to 1-41.

142. This phase is also known as the "stabilization" phase. Kaufman, *supra* note 138, at 341.

143. *Id.*

144. Instructors can teach General Educational Development (GED) classes in public housing complexes. For example, the Orange County (Florida) school system runs GED classes at a public housing complex and at a homeless shelter. Susan Jacobson, *Free GED Classes Help Dropouts Get Back to the Books*, ORLANDO SENTINEL TRIB., Jan. 8, 1993, at 1. Osceola County (Florida) sponsors GED classes at low-income housing apartments. *Id.*

145. Kaufman, *supra* note 138, at 341.

146. *See id.* For a discussion of the Program on Chronic Mental Illness (PCMI), see *infra* notes 213-17 and accompanying text. Those individuals who cannot or will not accept such help *and* as a result substantially disrupt their neighbors' rights may require supportive housing specifically designed for their mental conditions. Models now exist in some localities for supportive housing designed for the participatory involvement of persons who are mentally ill and homeless. *See* Peter Margulies, *Building Communities of Virtue: Political Theory, Land Use Policy, and the 'Not in my Backyard' Syn-*

vidually tailored programs are critical components of future welfare and homeless service reforms. On a community level, service providers can identify a sufficient number of individuals having a similar profile of needs, and muster the resources and expertise to spare people with special needs from languishing in shelters.

In addition, intensive screening of applicants would respond to concerns that giving preference to homeless people may actually increase their number. Some critics argue that people who live in marginal housing or in "doubled-up" living arrangements move into homeless shelters in order to bypass PHA waiting lists.<sup>147</sup> Others believe that only a small percentage of families who are not in need of housing seek shelter.<sup>148</sup> If there is a subset of "voluntarily" homeless, a PHA could establish screening practices to determine whether an

---

*drome*, 43 SYRACUSE L. REV. 945, 984-94 (1992); David C. Anderson, *Ellen Baxter*, N.Y. TIMES, Dec. 19, 1993, § 6, at 36-39. See also CENTER FOR COMMUNITY CHANGE THROUGH HOUSING AND SUPPORT, BUILDING A SOCIETY WITHOUT STIGMA FOR PEOPLE WITH PSYCHIATRIC DISABILITIES (brochure describing technical assistance services provided in 49 states "to promote community integration through a network of high quality mental health services and natural supports").

147. See Ellickson, *supra* note 11, at 49; Randall K. Filer, *What Really Causes Family Homelessness?*, NY: THE CITY J., Autumn 1990, at 31, 38. As one critic said, "shelters frequently serve as little more than waiting rooms for the housing authority." Whitman, *supra* note 86, at 31. In Massachusetts, the number of homeless seeking shelter dropped from 5,700 to less than 2,500 for the three years after the housing preference for shelter residents was eliminated. Celia W. Dugger, *New York Rivals Differ Strikingly on Dealing With City's Poor*, N.Y. TIMES, Oct. 2, 1993, at 1, 28. While some individuals may be able to finesse screening procedures, the reality is that at the present time no screens are in place in most jurisdictions for those who present themselves as in need of shelter. Some screening can serve as a deterrent to abuse of the shelter system.

148. See Jones, *supra* note 85, at B1 (New York City's Department of Homeless Services estimates only two percent of the families seeking shelter do not need it). Steve Banks of the Legal Aid Society of New York refutes the "housing-breeds-dependency thesis" by pointing out that this "requires you to believe that mothers would accept utter misery for months and willingly expose their children to dangers such as measles in barracks-style shelters just to get an apartment." Whitman, *supra* note 86, at 30. Homeless families applying for emergency shelter must first spend an average of four days and nights in New York City's Emergency Assistance Unit offices due to a lack of shelter beds. This practice is in violation of a court order. *New York in Contempt Over Handling the Homeless, Morning Edition*, National Public Radio broadcast, Nov. 11, 1993, transcript #1214-12 available in LEXIS, Nexis library, NPR file (citing the annual report of the Action Research Project on Hunger, Homelessness and Health). After being placed in emergency shelter, homeless families in New York City must wait in these shelters for nine months before qualifying for an apartment that has not yet been fully renovated and one year for units in the Housing Authority's fully renovated city-owned apartments. Celia W. Dugger, *Placing the Homeless: No Easy Solutions*, N.Y. TIMES, Aug. 22, 1992, at 24.



applicant genuinely has no housing alternatives.<sup>149</sup> Only those applicants who truly lack housing, as narrowly construed, would qualify for the homeless preference. However, a Congressionally-mandated task force quite properly has urged HUD to broaden its definition of persons who “are homeless and living in institutions or with friends or relatives.”<sup>150</sup>

When developing local supportive housing programs for the homeless using Section 8 and public housing, PHAs should study programs underway in other communities. The following discussion explores the range and variety of supportive housing models.

### B. The HUD-D.C. Initiative

The HUD-D.C. Initiative (the Initiative) is a bold demonstration project to shift a shelter-oriented system to one that addresses the diverse needs of the homeless people in the nation's capital.<sup>151</sup> The Initiative will develop a three-step “continuum of care”<sup>152</sup> in the District of Columbia. These components include (1) outreach and assessment of homeless people in public places and placement in emergency shelters, (2) transitional housing combined with rehabili-

---

149. For example, the Dinkins Administration recently proposed to tighten the definition of homelessness for families applying for temporary shelter in New York City. Under these new rules, families who live “doubled-up” with friends and relatives would not be eligible for assistance unless a family claimed that their living conditions were untenable. Alan Finder, *To Reduce Numbers, Dinkins Offers Rules on Who's Homeless*, N.Y. TIMES, Apr. 1, 1993, at B3. Instituting the new policy, however, may be problematic. If case workers are too harsh in finding a family ineligible, people who really are needy will be hurt. If they are too lenient, they will undermine the policy. *Revising the Meaning of Homeless*, (Editorial), N.Y. TIMES, Aug. 14, 1993, at 14.

However, the lack of investigators may undermine the goals of this new screening. Only 17 case workers will be assigned to determine the homeless status of 800 to 950 families who apply for shelter each month. Another 300 employees who now work with homeless families will be retrained to use the new selection guidelines. Celia W. Dugger, *New Rules Tighten Access to Shelter in New York City*, N.Y. TIMES, Aug. 11, 1993, at A1, B2.

150. HUD OCCUPANCY REPORT, *supra* note 15, at 1-17.

151. HUD-D.C. INITIATIVE, *supra* note 4. HUD and the Interagency Council on the Homeless worked in conjunction with the government of the District of Columbia to develop the Initiative. The Initiative also draws on the financial resources and technical expertise of the Department of Health and Human Services, the Federal Emergency Management Administration (FEMA), ACTION/VISTA, the Department of Veteran Affairs, and the 12 remaining federal agencies and departments represented on the Interagency Council on the Homeless. *Id.* at 67-68.

152. *Id.* at 8.

tative services, and (3) "supportive permanent housing designed around the specific, individual needs of homeless families and individuals."<sup>153</sup>

After being stabilized in emergency or transitional shelters, homeless individuals and families will receive a range of permanent housing and supportive housing options. For homeless individuals, the Initiative will develop additional units of supportive SRO housing as well as group homes and other special needs housing for persons with AIDS, mental disabilities, or substance abuse.<sup>154</sup> For homeless families, planners will set aside five hundred units of public housing for Initiative participants during the first two years of the program.<sup>155</sup> In all of the permanent supportive housing settings, case managers will guide participants to use the "continuum of care."<sup>156</sup>

HUD will contribute \$20 million to the Initiative and the District of Columbia will establish a new public/private entity to finance and coordinate the new homeless assistance system.<sup>157</sup> HUD plans to replicate the program in other cities as well<sup>158</sup> and will have funds

---

153. *Id.* at 20. At the District's Income Maintenance Administration (IMA) centers, IMA workers will conduct the initial assessments and eligibility screenings before an individual is admitted to an emergency shelter. *Id.* at 46. Homeless families with special needs will receive a more intensive screening before being placed in an appropriate transitional facility with housing and services. *Id.* Families who complete the transitional treatment stage and those who no longer need short-term shelter can progress to permanent supportive housing if required. *Id.*

154. *Id.* at 41. The new SRO housing will leverage existing sources of local funds and federal support under the McKinney Act and through low-income housing tax credits. *Id.* The plans call for supportive housing in buildings with 50 or fewer units, or in clusters of supportive housing units serving six to ten people in existing public housing. *Id.* In addition to new supportive housing, planners hope to make existing mental health, substance abuse, and other residential treatment settings available to homeless persons. *Id.*

155. *Id.* at 51.

156. *Id.*

157. HUD-D.C. INITIATIVE, *supra* note 4, at 61.

158. *HUD Washington Initiative To Be Prototype for Other Cities*, 21 HOUS. & DEV. REP. 292 (Sept. 27, 1993). HUD will select cities for future initiatives based on the existence of three factors: (1) the presence of a large homelessness problem, (2) a commitment to change the current homeless assistance system, and (3) a coalition of providers, governmental agencies, foundations, and others to carry out the program. *Id.* HUD plans to identify these other cities by September 30, 1994. U.S. DEP'T OF HOUS. & URB. DEV., CREATING COMMUNITIES OF OPPORTUNITY: PRIORITIES OF U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 6-7 (Oct. 1993) [hereinafter HUD PRIORITIES].

totalling \$100 million for such innovative efforts.<sup>159</sup> This step is consistent with the development of comprehensive homeless systems being one of HUD's top priorities as well as Secretary Cisneros' highest personal commitment.<sup>160</sup>

Because the Initiative is only a blueprint to date and the District of Columbia has not yet created a new "entity" to coordinate this "six-cornered partnership,"<sup>161</sup> evaluation of this design would be premature. The District of Columbia certainly poses a challenging political terrain for this experiment.<sup>162</sup>

---

159. HUD Demonstration Act of 1993, Pub. L. No. 103-120, 107 Stat. 1144 (1993). The monies will be used to "demonstrate methods of undertaking comprehensive strategies for assisting homeless individuals and families . . . through the coordination of efforts and the filling of gaps in available services and resources." *Id.* See Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1994, Pub. L. No. 103-124, 107 Stat. 1275, 1286 (1993) (appropriation of \$100 million in fiscal year 1994 for homeless demonstration projects). HUD has allocated \$75 million for the "Innovative Cities" fund and \$25 million for the "Innovative Housing" fund for comprehensive housing and support services. Interview with Wendy Greuel, Deputy Director, Interagency Council on the Homeless, in Washington, D.C. (Dec. 22, 1993).

160. HUD PRIORITIES, *supra* note 158, at iii, 6. HUD Secretary Cisneros lists as his first commitment during his tenure at HUD helping "more homeless persons and families progress to permanent housing through local HUD-assisted comprehensive homeless systems." *Id.* at iii. He proposes to structure this federal assistance through a new "continuum-of-care" approach. *Id.* HUD's most recent Program and Management Plan states:

This approach recognizes that homelessness represents the most extreme breakdown of our housing and social services systems. Many homeless persons face multiple barriers to independent living in addition to lack of housing, including mental illness, lack of a job, job training and placement, and others. The continuum-of-care concept brings the homeless into a system, assesses needs and provides those persons with a full range of services, if any, needed to regain independent living and helps ensure transition into permanent housing at whatever point the person is ready.

*Id.* at 6.

161. DeNeen L. Brown, *D.C. Homeless Initiative Gets a Home*, WASH. POST, Dec. 16, 1993, at D4 (HUD is willing to accept a compromise of an existing nonprofit organization, the Community Partnerships for the Prevention of Homelessness, provided that its board include homeless people, foundation leaders, and federal government representatives and that the D.C. Council approve this plan); Cisneros, *Lonely Death*, *supra* note 17, at C1 (prodding the District of Columbia Government to expedite creation of the new entity).

162. See *infra* note 219 for reference to early criticisms of the Initiative.

### C. The Supportive Housing Demonstration Program

The Supportive Housing Demonstration Program is a promising collaboration between the State of Connecticut and the Corporation for Supportive Housing (CSH).<sup>163</sup> The program's goal is to produce four hundred units of supportive housing in nine communities within three years.<sup>164</sup> The State of Connecticut will provide \$30 million for building construction and renovation,<sup>165</sup> and CSH will contribute \$1.8 million in predevelopment financing and secure \$8.5 million in private investment through the National Equity Fund.<sup>166</sup> The state will also provide \$1.5 million a year for on-site case managers at each project.<sup>167</sup>

Under the demonstration project, the complexes will average thirty units in size and have a residential mix of single persons who were formerly homeless, who are "at risk" of future homelessness, or

---

163. The Pew Charitable Trusts, the Robert Wood Johnson Foundation, and the Ford Foundation founded the Corporation for Supportive Housing in 1991. The goal of CSH is to forge partnerships between the private and public sectors in order to develop supportive housing models for homeless and "at risk" single adults with special needs, including mental illness, substance addiction, physical disabilities, and AIDS. In addition to Connecticut, CSH has supportive housing projects in New York City, San Francisco, Chicago, Minneapolis/St. Paul, and Atlanta. CSH has also provided \$6 million in grants to 61 non-profit corporations to "jump start" the development of nearly 3,300 units of supportive housing. CORPORATION FOR SUPPORTIVE HOUSING, BREAKING NEW GROUND (1993); CORPORATION FOR SUPPORTIVE HOUSING, CSH FACT SHEET (1993) (available from CSH, 342 Madison Avenue, New York, NY 10173). See also Jay Mathews & Todd Barrett, *Roofs, Aides and Teachers*, NEWSWEEK, Oct. 5, 1992, at 67; Kathleen Teltsch, *Foundations Give \$8 Million to House New York Homeless*, N.Y. TIMES, Dec. 17, 1992, at B12.

164. *More than a roof for the homeless*, HARTFORD COURANT, (Editorial), July 31, 1993, at C6.

165. *Id.* The Connecticut Department of Housing will provide up to \$25 million in capital financing and the Connecticut Housing Finance Authority will commit another \$4 million in capital financing and access to Low Income Housing Tax Credit allocations. CORPORATION FOR SUPPORTIVE HOUSING, STATE OF CONNECTICUT/CORPORATION FOR SUPPORTIVE HOUSING — SUPPORTIVE HOUSING DEMONSTRATION PROGRAM (1993) (available from CSH, 129 Church Street, Suite 815, New Haven, CT 06510) [hereinafter CSH, SUPPORTIVE HOUSING].

166. Managed by the Local Initiatives Support Corporation, the National Equity Fund (NEF) funnels low-income tax credit investments to targeted cities. From 1987 through 1992, NEF raised \$620 million from corporate sponsors to help develop 15,000 units of affordable housing. Over the next five years, NEF plans to raise \$1.5 billion in low-income tax credits that will help produce 35,000 affordable housing units. *National Equity Fund Commits to Five-Year, \$1.5 Billion Effort*, 21 HOUS. & DEV. REP. 326 (Oct. 11, 1993).

167. CSH, SUPPORTIVE HOUSING, *supra* note 165, at 2.

who have incomes below sixty percent of local median income.<sup>168</sup> On-site case managers will assist residents to obtain community services, including employment programs, counseling and treatment services, and entitlement benefits. If successful, this model could be replicated elsewhere in Connecticut and in other states.

#### D. The Family Self-Sufficiency Program

In 1990, Congress created the Family Self-Sufficiency Program (FSS) as a nationwide supportive housing program under the Cranston-Gonzalez National Affordable Housing Act in 1990.<sup>169</sup> The Act requires each PHA to develop a FSS program to train, support, and reward family efforts toward economic self-sufficiency.<sup>170</sup> A family volunteers for the program and is assigned a case worker who can offer various support services through public and private agencies.<sup>171</sup> Another valuable and distinctive feature of the FSS program is the financial incentive to return to work. If the head of the household becomes employed, part of the tenant's increase in rent is

---

168. The units will consist of one-bedroom or studio apartments, each with a private bath and kitchen. The buildings will also have common areas for residents and offices for management and service staff. *Id.* at 3.

169. *See* Pub. L. No. 101-625, § 554, 104 Stat. 4079, 4225 (1990) (codified at 42 U.S.C. § 1437u (Supp. III 1991)).

170. 42 U.S.C. § 1437u. For each Section 8 Certificate or Voucher and public housing unit added each year, the PHA must increase its FSS program by a corresponding number of families, unless it is not feasible due to a lack of funding or cooperation from other local or state government agencies. *Id.* § 1437u(b) (establishment and scope of FSS program). PHAs should provide these services on-site if possible. For example, the Housing Authority of the City of Tampa, Florida (HACT) has created an FSS Resource Center within a 700-unit public housing complex. The center houses the FSS case managers, a subsidized day-care center, a computer laboratory, office space for service providers, and classroom space for educational programs. HACT, FAMILY SELF-SUFFICIENCY (1993) (available from HACT, 1514 Union Street, Tampa, Florida, 33607).

171. Those services include:

- (A) child care;
- (B) transportation necessary to receive services;
- (C) remedial education;
- (D) education for completion of high school;
- (E) job training and preparation;
- (F) substance abuse treatment and counseling;
- (G) training in homemaking and parenting skills;
- (H) training in money management;
- (I) training in household management; and
- (J) any other services and resources appropriate to assist eligible families

to achieve economic independence and self-sufficiency.

42 U.S.C. § 1437u(c)(2) (Supp. III 1991).

put into an interest-bearing escrow account. This money is returned to the family when its members no longer qualify for a rental subsidy.<sup>172</sup> Families can use such funds, for example, as a security deposit on a private apartment or even for a downpayment on a house.<sup>173</sup>

The FSS program has the potential to be the cornerstone for supportive housing for residents of government-assisted housing. Lack of funding for support services, however, has limited the expansion of this program. Because HUD does not provide any monies for support services under the program, PHAs must piece together funding from donations and/or city and state grants. For example, in Clearwater, Florida, the FSS program allocates a total of only \$12,900 for client expenses for its ninety-five participants for such items as child care, transportation, counseling, and tuition reimbursements.<sup>174</sup>

#### E. The McKinney Act Programs

The Stuart B. McKinney Homeless Assistance Act<sup>175</sup> (McKinney Act) established several programs to assist homeless individuals, including those who are chronically mentally ill (CMI).<sup>176</sup> Three McKinney Act programs offer permanent housing with supportive services: (1) the Section 8 Moderate Rehabilitation Program for Single Room Occupancies (SROs);<sup>177</sup> (2) the Supportive Housing Program;<sup>178</sup> and (3) the Shelter Plus Care Program.<sup>179</sup>

The Section 8 Moderate Rehabilitation Program for SROs pro-

---

172. *See id.* § 1437u(d) (Supp. III 1991).

173. Telephone Interview with Clara Bailey, Supervisor, HABC Family Self-Sufficiency Program (Mar. 30, 1993).

174. CLEARWATER HOUSING AUTHORITY, PARTNERS IN SELF-SUFFICIENCY: 1992 ANNUAL REPORT (available from Clearwater Housing Authority, 210 Ewing Avenue, Clearwater, Florida 34616). The FSS program also budgeted \$34,790 for FSS program staff salaries, office expenses, public relations, and staff training. *Id.*

175. Pub. L. No. 100-77, 101 Stat. 482 (1987) (codified at 42 U.S.C.A. §§ 11301-11489 (West Supp. 1993)).

176. HUD has proposed consolidating the McKinney Act housing programs discussed in this section beginning in fiscal year 1995. HUD PRIORITIES, *supra* note 158, at 7. *Cisneros Outlines Department's Priorities for Fiscal 1994*, 21 HDR CURRENT DEV. 355 (Oct. 25, 1993).

177. 42 U.S.C.A. § 11407 (West Supp. 1993).

178. *Id.* §§ 11381-11389.

179. *Id.* §§ 11403-11406c.

vides rent and utility subsidies and supportive services to homeless individuals who move into SRO units which were rehabilitated under the McKinney Act.<sup>180</sup> The PHA is responsible for selecting the applicants, providing outreach to homeless individuals and organizations that work with the homeless, and monitoring the provision of the program's supportive services.<sup>181</sup> Over its ten-year rental assistance period, the program plans to assist the residents of an estimated 2,000 units.<sup>182</sup>

The Supportive Housing Program focuses on housing homeless people with disabilities in both transitional and permanent housing.<sup>183</sup> Program sponsors, government entities, or nonprofit organizations<sup>184</sup> have broad discretion in offering various support services.<sup>185</sup> While living in transitional housing, homeless persons work with counselors to become as independent as possible and move into permanent housing within twenty-four months of entering the program.<sup>186</sup> Participants can receive up to six months of follow-up services after they move into permanent housing.<sup>187</sup> Congress appropriated \$334 million for the Supportive Housing Program in fiscal

---

180. *Id.* § 11407. HUD awards these funds through a competition among PHAs submitting applications. Sandra J. Newman, *The Severely Mentally Ill Homeless: Housing Needs and Housing Policy*, JOHNS HOPKINS U. INST. FOR POL'Y STUDIES 60 (1992) (Occasional Paper 12) [hereinafter Newman, *Severely Mentally Ill Homeless*]. "The application must address both the proposed rehabilitation and the supportive services which would be necessary for the population to be served." *Id.* at 61 (emphasis added). HUD places greater weight on the supportive service component of the proposal. *Id.*

181. Newman, *Severely Mentally Ill Homeless*, *supra* note 180, at 61.

182. *Id.* at 63. Congress appropriated \$150 million for the program in fiscal year 1994. Pub. L. No. 103-124, 107 Stat. 1274, 1288 (1993).

183. 42 U.S.C.A. §§ 11381-11389 (West Supp. 1993). Funds are competitively awarded by HUD. Newman, *Severely Mentally Ill Homeless*, *supra* note 180, at 62. The matching rates for operating costs and services provide 25% for the first two years and 50% in the subsequent three years. *Id.* Funds can be used for the acquisition, rehabilitation, new construction, leasing and operating costs of the structures used for the program and for the costs of the supportive services. *Id.*; 42 U.S.C.A. § 11383.

184. 42 U.S.C.A. § 11382.

185. *See id.* § 11385. The statute provides a list of suggested support services, including (1) establishing and operating a day care program or employment assistance program, (2) providing outpatient health services, food, and case management, and (3) providing assistance in obtaining mental health services, employment counseling, medical assistance, and permanent housing either through the private sector or other government programs. *Id.* § 11385(c).

186. *Id.* § 11381. *See* INTERAGENCY COUNCIL ON THE HOMELESS, FEDERAL PROGRAMS TO HELP HOMELESS PEOPLE 49, 50 (1993) (describing the Supportive Housing Program).

187. *Id.*

year 1994.<sup>188</sup>

The third plan, the Shelter Plus Care Program, links federal rental assistance with locally supplied supportive services for hard-to-serve homeless persons with disabilities.<sup>189</sup> The program serves primarily homeless persons who have chronic mental illness, severe problems with drugs and alcohol, or have AIDS.<sup>190</sup> This program is particularly attractive to PHAs because of the flexibility of its various housing options and supportive service components.<sup>191</sup> Some potential program sponsors may, however, be discouraged by the cost of the required match of the value of HUD's rental assistance with sponsor-funded supportive services.<sup>192</sup> But on December 22, 1993, in the largest single allocation of homeless assistance funds, President Clinton announced that \$411 million would be awarded for 11,000 units of SRO and Shelter Plus Care housing at 187 sites in forty-four states.<sup>193</sup> Thus, it appears that there will be no lack of

---

188. Act of October 28, 1993, Pub. L. No. 103-124, 107 Stat. 1275, 1288 (1993). The fiscal year 1994 appropriation is more than double the previous year's. INTERAGENCY COUNCIL ON THE HOMELESS, *supra* note 186, at 49 (\$150 million appropriation for the Supportive Housing Program in fiscal year 1993).

189. 42 U.S.C.A. § 11403 (West Supp. 1993).

190. *Id.* At least 50% of the program's funds must be directed to homeless persons with severe mental illnesses or other such chronic problems. *Id.* In addition, the Housing Opportunities for Persons with AIDS (HOPWA) program provides funds for short-term supportive housing for persons with AIDS who are homeless or at risk of becoming homeless. *See* 42 U.S.C.A. § 12907 (West Supp. 1993). HOPWA also provides additional funds for rental assistance to low-income persons with AIDS in public housing, Section 8 housing, and in community residences. The HOPWA programs require the provision of services to enhance quality of life, encourage individuals to participate more fully in community life, and delay or prevent placement in hospitals or other institutions. *See id.* §§ 12908-12910.

191. Newman, *Severely Mentally Ill Homeless*, *supra* note 180, at 66-67. Housing is provided either through "tenant-based rental assistance," "sponsor-based rental assistance," or the "SRO moderate rehabilitation subsidy." *Id.* *See* 42 U.S.C.A. §§ 11404-11407 (West Supp. 1993). The program also provides that if hospitalization is appropriate for the individual with a mental illness, HUD will continue rental assistance payments for up to 90 days in order that the individual does not become homeless upon discharge from the hospital. Newman, *Severely Mentally Ill Homeless*, *supra* note 180, at 66.

192. *Id.* at 66-67. *See* 42 U.S.C.A. § 11403b(a)(1) (West Supp. 1993). Congress appropriated \$123.7 million for the Shelter Plus Care Program in fiscal year 1994, down from \$266 million in 1993. Pub. L. No. 103-124, at 1288; INTERAGENCY COUNCIL ON THE HOMELESS, *supra* note 186, at 52.

193. Maria Puente, *\$411M Poured into Fight Against Homelessness*, USA TODAY, Dec. 23, 1993, at 10A. Henry G. Cisneros, Secretary of HUD, Press Briefing at the White House Briefing Room, Dec. 23, 1993, transcript available in LEXIS, Nexis Library, U.S. Newswire File.



bidders for such federal funds.

Besides these three programs, local sponsors can fund components of supportive housing through other McKinney Act programs. The Projects for Assistance in Transition from Homelessness (PATH)<sup>194</sup> provides support services primarily for individuals with CMI or substance abuse problems who are homeless or at risk of becoming homeless.<sup>195</sup> States have broad discretion in allocating their PATH funds among public and private housing and service providers.<sup>196</sup> Eligible services under PATH include outreach services, habilitation and rehabilitation services, community mental-health services, alcohol and drug treatment services, staff training, case management services, and referrals for other health, job training, educational, and housing services.<sup>197</sup> In addition, this program funds supportive and supervisory services in residential settings.<sup>198</sup>

The McKinney Act is another source of funds and assets. The Adult Education for the Homeless Program (AEH) provides literacy and life-skills training for targeted groups of homeless people.<sup>199</sup> Such programs operate in thirty-five states.<sup>200</sup> Under the Job Training for the Homeless Demonstration Program,<sup>201</sup> state and local government agencies as well as nonprofit organizations can receive funds to provide basic skills training, remedial and literacy instruction, job counseling, job search assistance, and other services to assist homeless people in obtaining employment.<sup>202</sup>

---

194. 42 U.S.C. §§ 290cc-21 to -30 (Supp. III 1991).

195. *Id.* § 290cc-22.

196. Newman, *Severely Mentally Ill Homeless*, *supra* note 180, at 63. *See* 42 U.S.C. § 290cc-27 (Supp. III 1991) (describing the intended expenditures of a grant). The state's matching part of the PATH grants, usually a one-third match, is based on a formula that favors urbanized states. Newman, *supra* note 180, at 63. *See* 42 U.S.C. § 290cc-23 (Supp. III 1991).

197. 42 U.S.C. § 290cc-22(b) (Supp. III 1991).

198. *Id.* § 290cc-22(b)(8). Although 20% of PATH funds may be used for housing services, funds cannot be used to maintain emergency shelters or to construct housing facilities. *Id.* § 290cc-22(h).

199. 42 U.S.C.A. § 11471 (West Supp. 1993). AEH program regulations require that the programs be accessible and encourage basing programs at shelters or transitional housing sites. INTERAGENCY COUNCIL ON THE HOMELESS, *supra* note 186, at 15.

200. 42 U.S.C.A. § 11471.

201. *Id.* §§ 11441-11444.

202. *Id.* INTERAGENCY COUNCIL ON THE HOMELESS, *supra* note 186, at 65. Homeless people can also receive assistance through the Job Training Partnership Act (JTPA), the nation's major job training program for the economically disadvantaged. JTPA received \$2.4 billion in funds during fiscal year 1993. *Id.* at 66. The Job Opportunities and Basic

In addition, HUD provides surplus or underutilized federal real property to government agencies and nonprofit organizations to use as facilities to assist homeless people.<sup>203</sup> Finally, the General Services Administration can provide homeless services agencies with personal property no longer needed by the federal government, such as beds, bedding, clothing, kitchen equipment and utensils, and other items that may be useful to homeless persons.<sup>204</sup>

Despite the array of programs under the McKinney Act, advocates for the homeless view it as an initial step and campaign for an expansive (and expensive) legislative agenda to "end homelessness."<sup>205</sup> Under the rubric, "Beyond McKinney," they continue to press for federal responses that go beyond emergency measures to long-term solutions.<sup>206</sup>

#### F. Homeless Families Program

Families living in shelters or transitional housing are in need of permanent housing and supportive services. The Homeless Families Program, a demonstration program of HUD and the Robert Wood Johnson Foundation, offers a national model to satisfy that need.<sup>207</sup>

---

Skills (JOBS) Program can assist homeless individuals with children to obtain the training, education, and employment necessary to avoid prolonged dependence on welfare. Congress appropriated \$1 billion for JOBS in fiscal year 1993. *Id.* at 33.

203. 42 U.S.C.A. § 11411 (West Supp. 1993) (identification and use of surplus federal property). See INTERAGENCY COUNCIL ON THE HOMELESS, *supra* note 186, at 52. This program received \$266 million in appropriations in fiscal year 1993. *Id.*

204. INTERAGENCY COUNCIL ON THE HOMELESS, *supra* note 186, at 20.

205. *E.g.*, Maria Foscarinis, *The Politics of Homelessness: A Call to Action*, 46 AM. PSYCHOLOGIST 1232, 1234-36 (Nov. 1991).

206. Maria Foscarinis, *Beyond Homelessness: Ethics, Advocacy and Strategy*, 12 ST. LOUIS U. PUB. L. REV. 37, 57 (1993). The "Beyond McKinney" proposal seeks policies to address the fundamental causes of homelessness by ensuring affordable housing, adequate income, and human services such as social services, health and mental health care, substance-abuse treatment, and child care. It also urges a ban on laws that discriminate against homeless people. For recommendations on local responses to such laws, see NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *THE RIGHT TO REMAIN NOWHERE: A REPORT ON ANTI-HOMELESS LAWS AND LITIGATION IN 16 U.S. CITIES* 127-38 (Dec. 1993).

207. See ROBERT WOOD JOHNSON FOUNDATION, PROGRAM DESCRIPTION: THE HOMELESS FAMILIES PROGRAM 2 (1993) (available from Robert Wood Johnson Foundation, College Road, P.O. Box 2316, Princeton, N.J. 08543). The demonstration program is underway in nine metropolitan areas: Atlanta, Baltimore, Denver, Houston, Nashville, Oakland, Portland, San Francisco, and Seattle. Since 1990, HUD has contributed 1,200 Section 8 housing certificates and foundations have donated \$4.7 million to the nine cities. *Id.* The program has also generated \$7.6 million in additional local, state, and federal

The program's goal is to show that for any family, "appropriately designed health and supportive services, combined with suitable housing, can help parents and children become healthy and hopeful, and avoid [becoming] permanent members of the nation's underclass."<sup>208</sup> Without programs of this type, families are at risk of separation. In recognition of the separation risk, HUD recently has taken steps to avoid the dispersal of family members by attempting to keep the homeless families intact.<sup>209</sup>

The Homeless Families Program uniquely focuses on the families who are most difficult to serve. In Baltimore, the program is working to house 290 homeless families in Section 8 and public housing, 100 of whom are headed by women who were pregnant at the time of their enrollment.<sup>210</sup> Each family is required to sign a ser-

---

funds for supportive services. *Id.* at 6-7.

208. ROBERT WOOD JOHNSON FOUNDATION, CALL FOR PROPOSALS: THE HOMELESS FAMILIES PROGRAM (1989) (available from Robert Wood Johnson Foundation, College Road, P.O. Box 2316, Princeton, N.J. 08543). The program also seeks to make institutional changes in each city to increase access to housing and services by reducing bureaucratic inefficiencies and maximizing existing funding sources. *Id.*

209. See statement by Secretary Henry G. Cisneros, U.S. Dep't of Hous. & Urb. Dev. (Aug. 12, 1993) (transcript available from U.S. Dep't of Hous. & Urb. Dev., Comm. Center, Washington, D.C.) [hereinafter Statement by Secretary Henry Cisneros].

210. Interview with Varnell Britt, Social Work Supervisor, HABC Division of Family Support Services, in Baltimore, Maryland (Mar. 2, 1993). Families who wish to participate in the program are referred by emergency homeless shelters and social service agencies to the Homeless Families Program Center which begins an intensive screening process. HOUSING AUTHORITY OF BALTIMORE CITY, BALTIMORE CITY'S HOMELESS FAMILIES PROGRAM 3.

The family must exhibit one or more risk factors, such as those listed below. It is the object of the HFP [Homeless Family Program] to assist those most difficult to serve, those who typically are underserved by the housing and social support systems available to Baltimore citizens.

1. The family has a history of recurrent homelessness, including having been homeless for at least one month.
2. Head-of-household (HOH) is under 21 years of age.
3. HOH has no tenant history or unsuccessful history as a tenant.
4. HOH or a family member suffers from a chronic physical or mental health problem (e.g. substance abuse, handicap or physical disability).
5. One or more of the children are currently living apart from the family.
6. HOH or family member has a history of neglect or abuse.
7. HOH has never held a job or has a spotty job history.
8. HOH has not finished high school.
9. In addition to the above risk factors, families must contain at least one head of household and at least one child between the ages of 0 and 3 or a head of household who is at least six months pregnant with at least one other child of any age.

vice agreement to work with a case manager on problems identified during their participation in the program. Case managers provide services such as developing parenting skills, educational and job development, child development, access to health care, emotional and social support, recreational and child care services.<sup>211</sup> The goal of the program is for families to maintain a permanent residence independently within two years. However, case managers will continue to work with the family as long as necessary.<sup>212</sup>

#### G. Robert Wood Johnson Foundation-HUD Demonstration Program on Chronic Mental Illness

The Program on Chronic Mental Illness (PCMI), a five-year demonstration program to reorganize the mental health system in nine large cities, seeks to serve more effectively persons with this condition, especially those who are homeless.<sup>213</sup> Each participating city must establish a non-profit housing development corporation to obtain, own, and manage housing for person with such illnesses.<sup>214</sup> Officials in the redesigned mental health system link the housing provider to a provider of support services.<sup>215</sup> Evaluations of the program suggest that many clients with CMI can live independently in scattered-site housing with only support services rather than live-in staff.<sup>216</sup> The generally positive findings from the two project sites

---

*Id.*

211. HOUSING AUTHORITY OF BALTIMORE CITY, *supra* note 210, at 3.

212. Interview with Varnell Britt, *supra* note 210.

213. This program is co-sponsored by the Robert Wood Johnson Foundation and HUD. Opened to the nation's largest 60 cities, the program selected nine sites: Austin, Texas; Baltimore, Maryland; Charlotte, North Carolina; Cincinnati, Ohio; Columbus, Ohio; Denver, Colorado; Honolulu, Hawaii; Philadelphia, Pennsylvania; and Toledo, Ohio. Martin D. Cohen & Stephen A. Somers, *Supported Housing: Insights from the Robert Wood Johnson Foundation Program on Chronic Mental Illness*, 13 PSYCHOSOCIAL REHABILITATION J. 43, 44 (Apr. 1990). The foundation and HUD provided each site selected with annual grants of \$500,000, access to loans for housing development, an additional 125 Section 8 housing certificates for the CMI participants, and technical assistance. Each site was expected to develop 300 new residential units for CMI individuals over the five years of the program. *Id.* at 43-45.

214. *Id.* at 45.

215. Newman, *Severely Mentally Ill Homeless*, *supra* note 180, at 38.

216. Sandra J. Newman et al., *The Effects of Independent Living on Persons with Chronic Mental Illness: An Assessment of the Section 8 Certificate Program*, 72 MILBANK Q. (forthcoming 1994) [hereinafter Newman, *Independent Living*]; Howard H. Goldman et al., *Lessons from the Program on Chronic Mental Illness*, 11 HEALTH AFFAIRS 51, 66 (Fall 1992).

studied, Baltimore and Cincinnati, should encourage the greater use of Section 8 certificates through set-asides or the general Section 8 program.<sup>217</sup>

## VII. ELEMENTS OF A SUPPORTIVE HOUSING PROGRAM

### A. Assessing the Community Needs of Homeless Persons

In developing housing and homelessness programs, local government officials should consult homeless citizens and homeless advocates. Officials can encourage such groups to present testimony at PHA public hearings to determine local preferences for the Section 8 and public housing programs.<sup>218</sup> These groups can offer PHAs a first-hand perspective on the needs of the local homeless community and can help stimulate service providers to create supportive housing programs. Without this input and stimulus, officials may fail to develop any programs, let alone those that will satisfy the needs for supportive housing programs that treat homeless citizens with human dignity.<sup>219</sup>

Top-down guidance can also accelerate the availability of an array of supportive services to public tenants.<sup>220</sup> Such services should be geared to "successful living," not merely to help tenants achieve compliance with their leases.<sup>221</sup> They can include hiring service coordinators, developing lists of governmental and non-profit service providers, conducting tenant orientation and education programs, and negotiating collaborative agreements between housing and social service providers for tenants who may need case manage-

---

217. Newman, *Independent Living*, *supra* note 216.

218. See 42 U.S.C. § 1437f(d)(1)(A)(ii) (Supp. III 1991); 42 U.S.C.A. § 1437f(o)(3)(B) (West Supp. 1993).

219. A failure to involve homeless persons themselves and their legal advocates may also create political problems and undermine the credibility of the planning processes. *E.g.*, *D.C. Initiative Excludes Legal Clinic*, 4 HOME FRONT (newsletter for WASHINGTON LEGAL CLINIC FOR THE HOMELESS) Nov./Dec. 1993, at 1 ("The intended beneficiaries of the Initiative, homeless people themselves, have not been recognized as a separate partner, but rather have been grouped in with non-profit service providers . . . . A number of service providers, including the Legal Clinic, have serious concerns with both the process producing, and the substance of the Initiative.").

220. For a definition of "supportive services," see *supra* note 15 and accompanying text. For a list of such services, see *supra* note 171.

221. HUD OCCUPANCY REPORT, *supra* note 15, at 6-3 to 6-13.

ment, intervention, and related services to remain in their apartments.<sup>222</sup>

To design interventions sensitive to human rights, PHAs should also involve homeless persons and their advocates in developing the local Comprehensive Housing Affordability Strategy (CHAS).<sup>223</sup> Congress requires that each PHA submit to HUD a five-year plan describing how the PHA will spend various government housing resources, including McKinney Act funding.<sup>224</sup> Such strategies must discuss the nature and extent of homelessness in the community, including long-term plans to prevent and end homelessness and address the immediate need for the provision of emergency and transitional shelter.<sup>225</sup> The CHAS must address how the community will assist “homeless persons make the transition to permanent housing and independent living.”<sup>226</sup> In preparing the CHAS, Congress requires the PHA to confer with local social service agencies to coordinate programs.<sup>227</sup> As part of this process, the PHA should seek out the expertise of homeless citizens and low-income housing advocates.<sup>228</sup>

## B. Funding

Funding is an obvious constraint on the scope of the housing and supportive service programs available to homeless citizens. The federal government generally does not fund supportive services in public housing and Section 8 housing.<sup>229</sup> For specially designed fed-

---

222. *Id.*

223. 42 U.S.C. § 12705 (Supp. IV 1992).

224. *Id.* § 12705(b) (required contents of CHAS). The CHAS must be updated annually. *Id.* § 12705(a).

225. *Id.* § 12705(b)(2)(B).

226. *Id.* § 12705(b)(2)(C).

227. *Id.* § 12705(e).

228. To ensure that the needs of the homeless are properly identified and addressed, advocates should make presentations at the required public hearing and review drafts of the CHAS during the public comment period. Ann O'Hara, *The Comprehensive Housing Affordability Strategy*, 1 HOUS. CTR. BULL. 1, 4 (1992) (available from the Housing Center, University of Maryland School of Medicine 645 W. Redwood Street, Baltimore, Md. 21201). The PHA must consider the written comments submitted during the public comment period and explain why specific recommendations were not followed. *Id.*

229. According to Marcia Siegel, Housing Programs Officer of the National Association of Housing and Redevelopment Officials (NAHRO), the congressional committees which review the HUD budgets maintain that monies for supportive services should come from the Department of Health and Human Services (HHS), not HUD. However,

eral housing and supportive service initiatives, HUD requires sponsors to match a significant percentage of the program's funding or fund the entire social service component.<sup>230</sup> Although greater federal support for supportive housing is expected despite HUD budgetary pressures,<sup>231</sup> PHAs must seek funds more aggressively from state and local governments and grants from foundations to provide supportive services.<sup>232</sup>

In order to develop and expand supportive housing initiatives, state and local governments need to tap varied new sources of revenues. The Enterprise Foundation, established by social visionary and former CEO of The Rouse Company, James Rouse, helps government agencies and nonprofit groups solicit banks and corporations to fund low-income housing initiatives in exchange for federal low-income housing tax credits.<sup>233</sup> For example, with assistance from

---

the congressional committees which approve the HHS budget maintain that supportive services in government housing is a HUD appropriation. Telephone Interview with Marcia Siegel, Housing Programs Officer, NAHRO (Feb. 25, 1992). One exception is the so-called "HUD-D.C. Initiative" in which HUD will allocate \$20 million to the District of Columbia without a local matching contribution. *See supra* notes 151-62 and accompanying text.

230. For a discussion of the McKinney Act programs and the FSS program, see *supra* notes 169-206 and accompanying text. In 1990, the Los Angeles Housing Authority (LAHA) won a \$66 million federal grant to provide 1,898 Section 8 subsidies to homeless families, with the provision that LAHA provide and fund support services through a network of 11 non-profit homeless agencies. Frederick M. Muir, *HUD to Pay Rent for 1,898 Homeless Families*, L.A. TIMES, Oct. 6, 1990, at B14.

231. DeParle, *supra* note 35, at D20. Due to unplanned expenditures in several of its programs, HUD is under intense budgetary pressure. In 1988, no HUD monies went to renewing Section 8 financing contracts, but in fiscal year 1993, about \$7 billion out of HUD's \$25 billion budget went towards these renewals. This figure is expected to rise to \$15 billion by 1997. Second, HUD may be required to pay up to \$4 billion over the next three years to compensate Section 8 landlords for not returning their properties to the private market and for not increasing rents. Third, it will cost \$27 billion to bring some 1.4 million public housing units of deteriorated public housing into code compliance. Finally, HUD will need \$2 billion in subsidies to make the 48,000 foreclosed apartments it manages marketable to potential buyers. *Id.*

232. Interview with Varnell Britt, *supra* note 210.

233. Timothy Noah & David Wessel, *Inner-City Remedies Offer Novel Plans — And Hope, Experts Say*, WALL ST. J., May 4, 1992, at A1. Edelman, *supra* note 16, at 1739 (Baltimore's Sandtown-Winchester Initiative has drawn national attention for its holistic approach to neighborhood revitalization). *See* I.R.C. § 242 (1993) (low-income housing credit). Nonprofit organizations should seek pro-bono assistance from their local bar to help broker these projects. For a directory of such bar association projects, see American Bar Ass'n Comm'n on Homelessness and Poverty, *State and Local Bar Association Homeless Programs* (forthcoming 1994). *See also* ABA Representation of the Homeless Project, *Lawyers to House the Homeless: Creative Tools* (Dec. 1989). In New Haven, Yale's Hous-

the Enterprise Foundation, the Greater Miami Neighborhoods raised \$6 million from banks and corporations to help construct three housing projects in less than a year.<sup>234</sup>

State and local government officials should also seek out pension-fund managers and university trustees to invest in low-income housing development and homeless programs. Six states currently set targets for public-employee pension funds to make social investments, such as low-income housing projects.<sup>235</sup> In addition, the AFL-CIO's Housing Investment Trust plans to invest \$660 million and help obtain another \$550 million from private and public sources to finance a variety of low-income housing projects, including Section 8 Project-Based Assistance and SRO housing for homeless individuals.<sup>236</sup> The AFL-CIO investment will help alleviate the low-income housing crisis and at the same time provide up to 20,000 union construction jobs in the thirty target cities.<sup>237</sup>

Several universities have made substantial investments and contributions to their community's housing programs.<sup>238</sup> In 1989, Yale University loaned \$1 million to a nonprofit corporation to purchase, renovate, and manage twenty-nine low-income apartment units in New Haven, Connecticut.<sup>239</sup> The University of Notre Dame donated \$400,000 to a community group to purchase and renovate a

---

ing and Community Development Clinic, an innovative law school clinical program, provides free legal assistance to nonprofit organizations to develop supportive housing initiatives. See Rebecca Arbogast et al., *Revitalizing Public Interest Lawyering in the 1990's: The Story of One Effort to Address the Problem of Homelessness*, 34 HOW. L.J. 91, 99 (1991).

234. Don Finefrock, *Local Investment Fund to Aid Low-Income Housing Projects*, MIAMI HERALD, June 21, 1992, at G3. "Since . . . 1988, the New York City Equity Fund has raised \$118 million in investment capital . . . [to help] create more than 3,250 units of affordable rental housing throughout the city." Christine Dugas, *Unrest Moves City's Bankers*, N.Y. NEWSDAY, May 6, 1992, at 39.

235. Stephen H. Wildstrom & Howard Gleckman, *Uncle Sam Wants to Fix Potholes With Your Pension Fund*, BUS. WK., May 3, 1993, at 45.

236. Neal R. Pierce, *Organized Labor Investing in America*, HOUSTON CHRON., Sept. 6, 1993, at 28. AFL-CIO INV. TRUSTS, A FRAMEWORK FOR REBUILDING AMERICA 1, 8 (1993) (overview of program).

237. Pierce, *supra* note 236, at 28. Miami is one of the 30 cities. AFL-CIO INV. TRUSTS, *supra* note 236, at 12.

238. Julie L. Nicklin, *More Colleges are Making Investments in Projects that Deal with Problems of Their Communities*, CHRON. HIGHER EDUC., Mar. 7, 1990, at A29.

239. *Id.* at A32. For information on Yale's commitment to invest \$50 million in the New Haven community over a 10-year period, see Jennifer Kaylin, *Fixing Up the Neighborhood*, YALE ALUMNI MAG., Nov. 1993, at 38.



homeless shelter.<sup>240</sup> Such financial commitments, although not always producing the highest, if any, investment returns for the institutions, may generate other dividends.<sup>241</sup> They can foster better relations between the university and the community, while making a real difference in the lives of some homeless individuals.

In addition to financial commitments from the private sector, governments will also need new public funds to tackle the massive problem of homelessness. States have developed distinctive sources of revenue for homeless services and low-income housing development. For instance, Florida authorized counties to institute a one-percent restaurant tax to raise funds to provide shelter and rehabilitation for the county's homeless citizenry.<sup>242</sup> In 1992, Maryland enacted the Maryland Affordable Housing Trust Act with the interest from title accounts.<sup>243</sup> Advocates for the homeless subsequently lobbied heavily for the trust's funds for housing with support services and the first request for proposals reflected that priority.<sup>244</sup>

Governments have raised needed revenue by increasing or instituting a documentary (doc) stamp tax, a transfer tax to be paid at the time of a real estate closing.<sup>245</sup> Such enactments exist at both the state and local government levels.<sup>246</sup> In 1992, the Florida Legislature raised the state's doc stamp tax on deeds and notes and established the State Housing Initiatives Partnership Program (SHIP) to fund

---

240. Nicklin, *supra* note 238, at A32.

241. *Id.* Duke University has pledged \$1.2 million to the Triangle Housing Partnership to develop low-income housing. Both Yale's and Duke's investments are at competitive market rates, but other colleges have loaned money at below-market rates. *Id.*

242. FLA. STAT. § 212.0306 (1993). The law permits a two percent tax on the sale of food, beverages, or alcohol in hotels and motels. *Id.* The tax is levied at restaurants with sales over \$400,000 a year, and in Dade County alone it is expected to raise \$7.5 million a year. *Restaurant Tax to Help Miami's Homeless People*, BALTIMORE SUN, July 29, 1993, at 13A.

243. MD. ANN. CODE art. 83D, § 11-107 (Supp. 1993); *id.* art. 48A, § 486-2.

244. Telephone Interview with Ann Ciekot, Government Relations Specialist, Action for the Homeless (Oct. 11, 1993 and Feb. 21, 1994).

245. See MICHAEL A. STEGMAN & J. DAVID HOLDEN, NONFEDERAL HOUSING PROGRAMS 15-17 (1987) (reviewing selected real estate transfer taxes). California has capitalized housing trust funds from other dedicated revenues such as off-shore oil leases. *Id.* at 16-17.

246. *Id.* at 15. For example, Delaware raises governmental housing funds through a two percent tax on the purchase price of property. Since 1970, Howard County, Maryland has had a one percent tax on the sale price of all property transferred in the county. Dade County, Florida has had a \$.45 per \$100 value transfer tax on commercial property payable by both buyer and seller since 1983. *Id.*

low-income housing development.<sup>247</sup> From the increase in the doc stamp tax, the SHIP program will have \$114.2 million a year to disburse to local and state governments by fiscal year 1995-96.<sup>248</sup>

Unfortunately, under current Florida law, SHIP funds may not be used for supportive services for homeless people in shelters or permanent housing. By statute, most SHIP funds are dedicated to support home ownership programs and the construction or rehabilitation of affordable housing.<sup>249</sup> Furthermore, counties are required to place "very low-income" people in only thirty percent of the new units constructed or rehabilitated under SHIP.<sup>250</sup> The homeless citizens of Florida will benefit if the SHIP program is amended to give local governments the flexibility to use their SHIP funds for supportive housing for the homeless and to provide greater assistance to very-low income households.

Finally, when preparing grant applications or advocating for new taxes, local government officials can make a persuasive case that these combined housing and social service programs are cost-effective. Funding these supportive housing programs may save money for the government and taxpayers in the long run. With appropriate interventions now, government officials can reduce demands on emergency homeless shelters,<sup>251</sup> hospital emergency room

---

247. FLA. STAT. § 420.907-.9076 (1993). The doc stamp tax on deeds was raised 10 cents per \$100 from \$.60 to \$.70. This \$.10 increase and a \$.10 transfer from the existing doc stamp tax (effective July 1, 1995) will provide the funding for affordable housing. Jaimie Ross, *The William E. Sadowski Affordable Housing Act*, 20 ENVTL. & URB. ISSUES 13 (1992).

248. Ross, *supra* note 247, at 13.

249. Of the SHIP funds made available to each Florida county and municipality, 65% must be used for homeownership and 75% percent for construction or repair of affordable housing. FLA. STAT. § 420.9075(3)(a)(6) (1993).

250. *Id.* § 420.9075(3)(d). In contrast, local governments may place moderate-income persons in 40% of the SHIP-funded units. *Id.* § 420.9078(2)(g).

251. A bed on a New York City armory floor costs more than \$40 a night, while a private room at an SRO with social services can cost less than \$20. Anderson, *supra* note 146, at 36 (profile of a nonprofit housing developer's effort to create and operate five SRO residences for homeless persons in New York City). Some shelters must hire full-time security guards while supportive housing buildings often use their own residents both as "a money-saving and confidence building device." Jay Mathews, *Tax Credits Used to Help Homeless*, WASH. POST, Nov. 21, 1992, at C1. With such high overhead costs and profit-taking, it is not surprising that welfare hotels and shelters are so costly. New York has recorded average costs of \$126 per day for a family of four in a barracks-style shelter and \$92 per day for a welfare hotel, while a single room in a suburban motor inn can cost \$3,750 per month. Susan Bennett, *Heartbreak Hotel: The Disharmonious Convergence of Welfare, Housing and Homelessness*, 1 MD. J. CONTEMP. LEGAL ISSUES

visits, welfare assistance, psychiatric hospitals,<sup>252</sup> and the criminal justice system.<sup>253</sup> Similarly, early-childhood programs for homeless children can avoid special education expenditures later. Homeless children at risk of developmental disabilities, mental health problems, and other disabilities need early investments in their lives before their difficulties become intractable.<sup>254</sup>

With their goals of economic self-sufficiency, these programs will be politically attractive because they constitute genuine “welfare reform.”<sup>255</sup> Policymakers can build economic incentives into every program to encourage individuals to return to work, if at all possible.<sup>256</sup> Such reforms should aim to break the dependency and

---

27, 48-49 (1990).

252. States should continue to decrease the number of hospital beds for the mentally ill and use the savings for community care. Such reforms are both humane and cost-effective. Over the next five years, New York State will reduce by 2,400 the number of beds in mental hospitals and dedicate the \$180 million in savings to spend on clinical care, rehabilitation, and vocational care for people with mental illness who are not hospitalized. Another \$30 million in savings will be set aside to aid people with mental illness who are homeless and/or have substance abuse problems. Celia W. Dugger, *Albany Accord Supports Clinics for Mentally Ill*, N.Y. TIMES, Nov. 17, 1993, at A1.

253. HUD Secretary Cisneros has testified that it costs \$53,000 for a single prison bed, about the same as building a subsidized home for a low-income family. Cisneros, URBAN POLICY, *supra* note 96, at 4. A study in San Antonio, Texas, found that government agencies spent nearly \$700,000 on 21 homeless men for health care, mental health services, shelter and life support, and processing in the criminal-justice system over a two and one-half-year period. Over the course of the study, these men were arrested 1,398 times, including 870 arrests for public intoxication, at a cost of \$472,762. PAMELA M. DIAMOND & STEVEN B. SCHNEE, LIVES IN THE SHADOWS: SOME OF THE COSTS AND CONSEQUENCES OF A “NON-SYSTEM” OF CARE 8-10 (1991) (available from Hogg Foundation for Mental Health, The University of Texas, Austin, Texas, 78713-7998).

254. See Stanley S. Herr, *Children Without Homes: Rights to Education and to Family Stability*, 45 U. MIAMI L. REV. 337, 344-46 (1990-91). Chris Roberts, a counselor at Suncoast Center for Community Mental Health in St. Petersburg, Florida, says that many children who are homeless have developmental disabilities because they do not have the same experiences that housed children have. Their mothers do not sit and read with them, sing them songs, or have coloring books available for them because she is “too busy keeping things together.” Olinger, *supra* note 37, at 10.

255. Nelson & Khadduri, *Limited Housing Resources*, *supra* note 50, at 51-52. For an outline of a broad antipoverty strategy that includes low-income housing to stabilize families and “enable low-income people to reside on a scatter-site basis throughout metropolitan areas,” see Edelman, *supra* note 16, at 1734.

256. These incentives can include raising the minimum wage and providing universal health-care coverage. Some proponents of welfare reform argue that an increase from \$4.25 to \$6.00 per hour is required to reach the Maryland-set minimum living level even when such workers receive food stamps and the Earned Income Tax Credit. Homeless Persons Representation Project, Health Care for the Homeless, and Maryland Food Comm., *Working Communities: Welfare that Works and Work that Pays: Principles and*

the trap of poverty and homelessness that the current welfare system tends to foster.

### C. Designing Supportive Housing Initiatives

In designing these supportive service programs, local government officials should carefully consider the value of separating lines of authority over the housing and social service components. There is a real potential for conflict if the PHA is both landlord and service provider.<sup>257</sup> In following the model of the Robert Wood Johnson Foundation-HUD PCMI demonstration program, local governments might establish a separate non-profit agency, perhaps under the auspices of an existing mental health and/or social service agency, to administer these supportive services homeless programs.<sup>258</sup> By creating an agency separate from the local housing department, there is greater "administrative, fiscal, and clinical control over the entire array of services."<sup>259</sup> Further, without such programs, "the potential exists for the client to receive only parts of a genuine system of support, thereby increasing the likelihood that clients will fail within their new living environments."<sup>260</sup> This separation can prevent the creation of new poorhouses and the type of "total institutions" that are now so discredited.<sup>261</sup> Regardless of the configuration of the housing-social service collaboration, the rights of tenants to refuse

---

*Proposals for Welfare Reconstruction in Maryland* 8 (Sept. 23, 1993).

257. Interview with Bonnie Milstein, *supra* note 93. If the PHA is both landlord and social service provider, formerly homeless tenants might be discouraged from participating in programs such as drug treatment due to the fear that information they reveal might later be used to evict them. *Id.* Dr. Paul Carling, Executive Director of the Center for Community Change through Housing and Support, has stated: "Housing management and traditional mental health service delivery are very different functions . . . . We see terrific struggles when housing and supports are not separated organizationally." *Public Housing is a Viable Option for Persons with Disabilities*, 5 ACCESS 4 (Mar. 1993) (available from the National Resource Center on Homelessness and Mental Illness, 262 Delaware Avenue, Delmar, N.Y. 12054).

258. For guidance on how to establish and administer a nonprofit corporation designed to provide supportive housing for the homeless, see *Homes for the Homeless* (Adam Berger et al. eds., 1990).

259. Cohen & Somers, *supra* note 213, at 46. This separate structure would also "foster a system of care that stresses integration and cooperation." *Id.*

260. *Id.* at 46-47.

261. See ERVING GOFFMAN, *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* (1961); STANLEY S. HERR, *RIGHTS AND ADVOCACY FOR RETARDED PEOPLE* (1983); DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC* (1971).

services and to confidentiality in the handling of personal information must be respected.<sup>262</sup>

#### D. Eliminating Inequities in Waiting Lists and other Selection Practices

Part of the rationale behind the local preference system is to streamline the selection procedures for PHAs.<sup>263</sup> PHA officials have found it very difficult to maintain waiting lists of thousands of applicants on outdated computer systems and with confusing preference rules.<sup>264</sup> A sampling of management reviews of six PHAs in Florida conducted by HUD indicates a frequent failure by PHAs to weigh and rank federal preferences properly and to maintain waiting lists correctly.<sup>265</sup> These Florida PHAs are not alone in receiving critical reviews of waiting lists and other selection practices.<sup>266</sup>

---

262. HUD OCCUPANCY REPORT, *supra* note 15, at 6-2, 6-12.

263. Telephone Interview with Jerry Benoit, *supra* note 70.

264. *Id.*

265. According to this data, HUD found that the following PHAs are not verifying whether applicants actually qualify for claimed federal preferences: St. Petersburg Housing Authority, City of Jacksonville Department of Housing and Urban Development, Pinellas County Housing Authority, and Fort Meyers Housing Authority. Tenant selections were not done in accordance with proper policies at the Housing Authority of the City of Fort Pierce and the Pinellas County Housing Authority. In addition, waiting lists were apparently not properly maintained in St. Petersburg, Jacksonville, and in Fort Pierce. See U.S. DEP'T OF HOUS. & URB. DEV., *Limited Management/Occupancy Review of the Low Income Public Housing Program and the Section 8 Certificate and Voucher Programs by Pinellas County Housing Authority* (May 24, 1993); U.S. DEP'T OF HOUS. & URB. DEV., *Management Review of the St. Petersburg Housing Authority*, Section 8 Rental Assistance Programs (Mar. 4, 1993); U.S. DEP'T OF HOUS. & URB. DEV., *Management Review of the City of Jacksonville Department of Housing and Urban Development Section 8 Rental Assistance Programs* (Feb. 16, 1993); U.S. DEP'T OF HOUS. & URB. DEV., *Management and Occupancy Review Housing Authority of the City of Fort Pierce Public Housing Program* (Dec. 16, 1992); U.S. DEP'T OF HOUS. & URB. DEV., *Combined Management and Occupancy Review of the Fort Meyers Housing Authority* (Nov. 10, 1992).

266. In February 1992, HUD rated the overall management of the Housing Authority of Baltimore City (HABC) Section 8 programs as "below average." HUD found that all Section 8 applicants were selected from the waiting list out of turn or were not selected from the waiting list at all. Letter from Maxine S. Saunders, HUD Area Manager (Housing Division) to Dr. Robert W. Hearn, Executive Director of HABC, May 5, 1992. HUD found a large number of people on the waiting list claiming a federal preference as long ago as 1974, yet applicants between December 1990 and May 1992 were being housed within a two-month to two-year period of time. Further, HABC was aggregating federal preferences and giving priority to applicants who claimed a higher number of these preferences, even though its stated policy was to give equal weight to all preferences. Verification of preferences in public housing was not evident in most cases, and HUD found

Even if PHAs properly follow selection procedures, homeless applicants face other administrative practices which threaten to remove them from PHA housing waiting lists. PHAs periodically update their waiting lists by sending out cards to the permanent address of every applicant on the waiting list.<sup>267</sup> Applicants are instructed to return the card to the PHA if they are still interested in subsidized housing and want to maintain their place on the waiting list.<sup>268</sup> In some cases, applicants are given less than two weeks to return these cards.<sup>269</sup>

This manner of updating waiting lists has a discriminatory effect on those applicants with certain disabilities or those without a permanent address, such as homeless people.<sup>270</sup> If homeless applicants do not have a permanent address such as a relative's home or a post office box, it is unlikely that they will ever receive the card. Even if they have a permanent address, it is quite possible that over the years many applicants either never receive or fail to return the card within the short time provided and are then excised from the waiting list. Those homeless persons who are illiterate, mentally disabled, vision impaired, wary of opening official correspondence, or skeptical of the efficacy of making replies may also fall by the way-

---

numerous cases in which letters were sent to HABC by elected officials requesting and obtaining assistance for their constituents. See HUD Management Review of the Housing Authority of Baltimore City's (HABC) Section 8 Certificate and Housing Voucher Programs, May 5, 1992. HUD Limited Management Review of HABC Public Housing Program, Sept. 14, 1992 [hereinafter HABC Public Housing Review]. See also Sard, *Housing the Homeless*, *supra* note 29, at 1130-31 (discussing violations of PHA waiting list rules in Massachusetts).

267. Although this manner of updating waiting lists is not required by law, HUD recommends maintaining annual updates of those applicants still interested in housing subsidies. See U.S. DEP'T OF HOUS. & URB. DEV., PUBLIC HOUSING HANDBOOK 7465.1 Rev-2. § 2-3 (1979). See also Sard, *Housing the Homeless*, *supra* note 29, at 1141. In the HUD Management Review of HABC Public Housing, HUD officials in the required corrective action section stated that the waiting list should be purged via letters or post-cards that were not returned to the housing authority by the applicants. See HABC Public Housing Review, *supra* note 266.

268. Interview with Floryne Howard, *supra* note 72, at 49.

269. In Houston, for example, applicants had only 10 days to return their letters or their names were crossed off the list. Claudia Feldman, *The List*, HOUSTON CHRON., Nov. 3, 1991, at 34. During Baltimore's last updating, HABC gave people only two weeks to return their cards to indicate that they wanted to be kept on the waiting list. Melody Simmons, *Housing List Cut May Be Restored*, BALTIMORE SUN, Feb. 17, 1993, at 3B. See also Sard, *Housing the Homeless*, *supra* note 29, at 1132-33.

270. For more on the purging of waiting lists and other procedural barriers, see Sard, *Housing the Homeless*, *supra* note 29, at 1140-43.

side.

PHAs should provide alternative means of updating their lists that minimizes these risks and do not have a discriminatory effect on homeless people. HUD is now reviewing some recommendations to reform waiting-list practices in general, such as notifying applicants at the time of their initial application that they can anticipate being contacted for an annual waiting-list update at the same time each year, or reinstating applicants who do not respond for factors related to their particular disabilities.<sup>271</sup> These changes are desirable, but do not exhaust the innovative steps PHAs could take. For example, PHAs could exempt applicants claiming the homeless preference from these updates.<sup>272</sup> In the alternative, housing officials could notify advocates and service providers for the homeless of the timing of updates; post notices of these updates in homeless shelters, soup kitchens, and welfare offices; extend the period to respond to these notices for homeless persons; and liberally reinstate homeless persons who file late for reasons related to disability or communication problems.<sup>273</sup> Such notices may also prompt individuals who are homeless to seek advice and to join the queue for housing for the first time. The waiting lists may then become a more accurate indicator of the local needs for housing.

### VIII. CONCLUSION

While homelessness has received some national political attention for over a decade, progress remains elusive. During the Reagan and Bush administrations, its place on the political agenda was fairly low. As a result, the number of homeless people continued to increase and the problems facing them seemed to grow more com-

---

271. HUD OCCUPANCY REPORT, *supra* note 15, at 1-17 to 1-18.

272. During HABC's last update of its list, HABC mailed letters to 32,000 persons on its waiting list. "About 6,000 letters were returned . . . because of insufficient addresses and those letters were mailed again." Simmons, *supra* note 269, at 3B. The list was then pared down to 15,000 applicants but the Board of Commissioners of HABC "instructed a committee to study whether HABC should have made a more aggressive effort to contact" applicants on the waiting list before purging their names. *Id.* Subsequently, due to pressure from homeless advocates, all applicants who had claimed a homeless preference were returned to the waiting list. Telephone Interview with Linda Grier, Assistant Supervisor of HABC Housing Application Office (Apr. 27, 1993).

273. See HUD OCCUPANCY REPORT, *supra* note 15, at 1-17 to 1-18; U.S. DEP'T OF HOUS. & URB. DEV., PUBLIC HOUSING HANDBOOK, *supra* note 267, 2-5 to -9 (discussion on community outreach to eligible populations for public housing).

plex every year. Economic stagnation left little hope for decent-paying jobs for millions of Americans, especially those lacking specific skills or education. AIDS and the re-emergence of tuberculosis posed new and deadly health hazards to which the poor were especially vulnerable. States reduced the population in mental hospitals without establishing adequate community mental health systems readily accessible to those at risk of homelessness. The rise in violent crime and drug use made living on the streets or in shelters more dangerous than ever.

These conditions, years in the making, will not vanish overnight. But as President Clinton has recognized, the problem of homelessness is so large and complex that it demands federal leadership and coordination. That leadership, reflected in added funds for supportive housing and other homeless assistance measures, energetic interagency projects, and the HUD-D.C. Initiative, can make a difference. Even with this renewed federal effort and increased funding of homeless services, each locality in this country must design, implement, and help fund these programs. The urgency of this need cannot be overlooked as homeless people continue to die in the very shadows of the government agencies that decry failures to address homelessness' root causes.<sup>274</sup>

To break the cycle of homelessness in each community, local governments will need to build a continuum of services to assist people at each stage of homelessness. Such a coordinated system would first provide emergency services including food, clothing, and shelter. Next, a network of transitional shelters with case managers would coordinate referrals for mental health counseling, health care, job training, and other concrete social services. Finally, permanent housing with an integrated supportive service component would give people the chance to return to the mainstream of society.<sup>275</sup> Sustaining this continuum of services will be costly, but many municipalities are already spending millions of dollars each year for emergency homeless services that bring few results.

As they develop their Comprehensive Housing Assistance Strategy and promulgate their local preferences, local government

---

274. Brown, *supra* note 161, at A4 (discussing HUD's reaction and response to the death of Yetta Adams across the street from its headquarters); Cisneros, *Lonely Death*, *supra* note 17, at C1.

275. See Kaufman, *supra* note 138, at 337-42.



officials have a unique opportunity to reform their homeless assistance policies. Officials can direct more attention to long-term solutions rather than to short-term fixes. As HUD Secretary Henry Cisneros aptly noted, “It is easy to just give help, but much more challenging to provide solutions that are long-lasting and permanent.”<sup>276</sup> Supportive housing and the selective use of housing preferences can offer just that — a way for homeless families and individuals to go home.

---

276. Statement by Secretary Henry Cisneros, *supra* note 209.

