

# RENT SUPPLEMENTS AND THE SUBSIDY DILEMMA

## THE EQUITY OF A SELECTIVE SUBSIDY SYSTEM

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The issues are rarely right against wrong in the law, but rather right against right. For the ultimate issues veiled by time and mystery, in law as in life, the most meaningful answer may be the question.

—Paul Freund<sup>1</sup>

I pray to the God within me that He will give me the strength to ask Him the right questions.

—A Transylvanian Beadle<sup>2</sup>

### INTRODUCTION

With existing technology, private enterprise unaided cannot meet the needs of the millions of low-income families living in substandard housing. Without a carrot of high caloric content the building industry is unable—in an era in which development costs are rising faster than the personal income of the poor—to produce an adequate supply of housing for families with incomes below the median.<sup>3</sup> As the Senate Committee on Banking and Currency has noted:<sup>4</sup>

Since the end of World War II, there has been a remarkable increase in new housing production. The accelerated production pace can be attributed in large part to the energy and resourcefulness of American private enterprise, and it has rounded to the benefit of the Nation.

It has become increasingly clear to the committee, however, that lower income families have not been able to participate fully in the benefits of this great burst of new housing production.

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There are almost 8 million American families who still live in sub-standard housing. The great majority of these families are below the income level needed to afford decent housing.

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The views expressed in this article are those of the author, who in no way purports to speak for the Department of Housing and Urban Development, with which Department he is presently employed.

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<sup>1</sup> Johnson, *Prof. Freund's 'Avuncular Qualities' Help Students Pit Right Against Right*, Harvard Law Record, March 23, 1967, at 2, 12.

<sup>2</sup> E. WIESEL, NIGHT 16 (1960).

<sup>3</sup> See generally J. McMURRAY, WAYS AND MEANS OF PROVIDING HOUSING FOR FAMILIES UNABLE TO AFFORD RENTALS OR MORTGAGE PAYMENTS NECESSARY FOR ADEQUATE HOUSING (1960) (an independent study financed by the National Association of Home Builders); Welfeld, *The Condominium and Median-Income Housing*, 31 FORDHAM L. REV. 457, 477-80 (1963).

<sup>4</sup> S. REP. NO. 378, 89th Cong., 1st Sess. 3 (1965).

To fulfill an unredeemed pledge to these eight million families the administration brought forth a new incentive to the homebuilding industry—the rent supplement. Paradoxically, although few disagreed with the premise that a subsidy was necessary, and even fewer disagreed with the fact that we were a goodly distance away from fulfilling the pledge the nation made in 1949 to provide “a decent home and a suitable living environment for every American family,”<sup>5</sup> the proposal immediately became embroiled in controversy.

At the heart of the controversy was what we would call the subsidy dilemma. Can an effective program be devised which is fair vis-à-vis non-recipients of the subsidy? Thus the main issue was neither the income floor nor the income ceiling, neither the rent income ratio nor the payment formula, neither the construction standard nor the workable program proviso, but, rather, the fundamental clash between two values—the need to fulfill the pledge to the poor and the need to be fair to the overwhelming majority of non-recipients.

The first part of this article will trace the history of the proposal from its introduction into Congress<sup>6</sup> through its final passage, initial funding, and first days of life. The second part will show how the substantial changes which occurred in the legislative journey—changes which radically transformed the program—illustrate in rather sharp relief the subsidy dilemma.

## I

### THE LEGISLATIVE HISTORY

#### A. The Administration Proposal

The initial administration proposal<sup>7</sup> authorized the Administrator of the Housing and Home Finance Agency<sup>8</sup> to undertake a program of rent supplement payments to help make certain private housing available to certain lower income families.

The recipients of the supplements would be landlords who satisfied two criteria:<sup>9</sup> (1) that they were non-governmental; and (2) that they were either nonprofit, limited dividend, or cooperative entities. The type of housing eligible for supplements also had to satisfy two criteria:<sup>10</sup> (1) it had to be new or rehabilitated; and (2) the construction or rehabilitation had to be financed with a mortgage loan insured by the

<sup>5</sup> Housing Act of 1949, § 2, 42 U.S.C. § 1441 (1964).

<sup>6</sup> No attempt is being made to trace the rent supplement proposal itself or any of its components to specific persons or groups. “[T]he American political structure puts so heavy a premium on diffusion of decision-making power that it is difficult to determine the relationship between the desires of particular persons and groups and what eventually emerges as effective government policy. After all, the drum beater may be credited, or blamed, for the cloudburst, but whether he is responsible is another matter.” Greenberg, *The Myth of the Scientific Elite*, PUBLIC INTEREST, Fall 1965, at 51, 53. See also Foard & Fefferman, *Federal Urban Renewal Legislation*, 25 LAW & CONTEMP. PROB. 635, 636 n.4 (1960).

<sup>7</sup> S. 1354, 89th Cong., 1st Sess. §§ 101-05 (1965); H.R. 5840, 89th Cong., 1st Sess. §§ 101-05 (1965) (Special Provisions for Disadvantaged Persons, Title I, Housing and Urban Development Act of 1965).

<sup>8</sup> The immediate predecessor of the Secretary of Housing and Urban Development.

<sup>9</sup> S. 1354, *supra* note 7, § 101(b).

<sup>10</sup> *Id.*

Federal Housing Administration (FHA) under the section 221(d)(3)<sup>11</sup> market interest rate mortgage insurance for low and moderate income families.

The subsidy would be on the behalf of a tenant who satisfied two criteria:<sup>12</sup> (1) he had to have an income below the amount required to obtain standard privately owned housing but above the amount necessary to obtain admission to public housing; and (2) he had to be (a) displaced by governmental action, (b) elderly, (c) physically handicapped, or (d) occupying substandard housing.

The amount of the payment was subject to two limitations:<sup>13</sup> (1) it could not exceed the amount by which the rent of the unit exceeded twenty per cent of the tenant's income (twenty-five per cent in situations in which the tenant was given an option to purchase the unit<sup>14</sup>); and (2) it could not exceed the estimated amount of subsidy payable under the public housing program for a comparable unit.

The location of the unit was governed by local planning and zoning requirements. However, rent supplement housing was not limited to communities which had enacted a workable program for community improvement—a requirement of other federal housing and urban renewal programs.<sup>15</sup>

The size of the program requested was large. Authorization was sought for the appropriation of \$50 million in the first year with increases of \$50 million in the three following years—to a total of \$200 million per annum in the fourth year of the program.<sup>16</sup>

## B. Committee Action

### 1. House Committee

On May 21, 1965, after public hearings,<sup>17</sup> the House committee considering the bill reported out<sup>18</sup> a new bill<sup>19</sup> that contained a number of important modifications.

The bill altered the first of the qualifying tests for tenant eligibility. In order to be eligible, a tenant was now required to be one who, through the expenditure of twenty-five per cent of his income, was unable to obtain standard private housing, whether or not his income was above or below the level necessary to obtain admission to public housing.<sup>20</sup> The provision dealing with the amount of the payment was

<sup>11</sup> National Housing Act, 12 U.S.C. § 1715l(d)(3) (1964), as amended, (Supp. II, 1965-66).

<sup>12</sup> S. 1354, *supra* note 7, § 101(c).

<sup>13</sup> *Id.* § 101(d).

<sup>14</sup> *Id.* § 101(f).

<sup>15</sup> Housing Act of 1949, § 101(c), 42 U.S.C. § 1451(c) (1964), as amended, (Supp. II, 1965-66).

<sup>16</sup> S. 1354, *supra* note 7, § 101(a).

<sup>17</sup> *Hearings on the Housing and Urban Development Act of 1965 Before the Subcomm. on Housing of the House Comm. on Banking and Currency, 89th Cong., 1st Sess., pts. 1 & 2 (1965)* [hereinafter cited as *House Hearings*].

<sup>18</sup> H.R. REP. No. 365, 89th Cong., 1st Sess. (1965); HOUSE COMM. ON BANKING AND CURRENCY, 89TH CONG., 1ST SESS., CORRECTION OF MISLEADING AND FALSE STATEMENTS CONCERNING RENT SUPPLEMENT PROGRAM MADE IN MINORITY REPORT ON THE HOUSING AND URBAN DEVELOPMENT ACT OF 1965—H.R. 7984 (Comm. Print 1965).

<sup>19</sup> H.R. 7984, 89th Cong., 1st Sess. (1965).

<sup>20</sup> *Id.* § 101(c).

altered by (1) limiting the payment to the amount by which the rent of the unit exceeded twenty-five per cent (formerly twenty per cent) of the tenant's income and (2) eliminating the requirement that the rent supplement payment not exceed the subsidy payable under the public housing program.<sup>21</sup>

No changes were made with respect to the qualifications of the recipients, the type of housing, the location of the housing, or the size of the program.

## 2. Senate Committee

On June 28, 1965, after public hearings,<sup>22</sup> the Senate committee considering the bill also reported out<sup>23</sup> a new bill<sup>24</sup> containing a number of important modifications.

The type of housing eligible was broadened by allowing ten per cent of the appropriations to be used as an experiment<sup>25</sup> in housing financed under the section 221 (d) (3) below market interest rate program,<sup>26</sup> the section 231 program of mortgage insurance for the elderly,<sup>27</sup> and the section 202 program of direct loans for the elderly,<sup>28</sup> subject to an additional limitation that the number of units in any such project receiving the benefit of rent supplements was limited to twenty per cent of the total.<sup>29</sup> The Senate bill also altered the first of the qualifying tests for tenant eligibility. In order to be eligible, a tenant must now have an income below the maximum amount that could be established for occupancy in public housing.<sup>30</sup>

The Senate committee also modified the provision dealing with the amount of the payment<sup>31</sup> in exactly the same fashion as had the House committee. No changes were made with respect to the qualifications of the recipients, the location of the housing, or the size of the program.

## C. House Floor Action

After debate on the bill,<sup>32</sup> and after a roll call vote in which the rent supplement narrowly survived a motion to recommit,<sup>33</sup> the House bill was passed on June 30, 1965.<sup>34</sup> The major changes were the adoption of the Senate bill's provision limiting tenant eligibility to individuals and families with incomes below the maximum

<sup>21</sup> *Id.* § 101(d).

<sup>22</sup> *Hearings on S. 1354 Before the Subcomm. on Housing of the Senate Comm. on Banking and Currency*, 89th Cong., 1st Sess. (1965) [hereinafter cited as *Senate Hearings*].

<sup>23</sup> S. REP. NO. 378, 89th Cong., 1st Sess. (1965).

<sup>24</sup> S. 2213, 89th Cong., 1st Sess. (1965).

<sup>25</sup> *Id.* § 101(d)(3).

<sup>26</sup> National Housing Act, 12 U.S.C. § 1715l(d)(3) (1964), as amended, (Supp. II, 1965-66).

<sup>27</sup> National Housing Act, 12 U.S.C. § 1715v (1964), as amended, (Supp. II, 1965-66).

<sup>28</sup> Housing Act of 1959, 12 U.S.C. § 1701q (1964), as amended, (Supp. II, 1965-66).

<sup>29</sup> S. 2213, *supra* note 24, § 101(d)(2).

<sup>30</sup> *Id.* § 101(c)(1).

<sup>31</sup> *Id.* § 101(e).

<sup>32</sup> 111 CONG. REC. 14,327-51 (daily ed. June 28, 1965); 111 CONG. REC. 14,588-622 (daily ed. June 29, 1965); 111 CONG. REC. 14,669-714 (daily ed. June 30, 1965).

<sup>33</sup> 111 CONG. REC. 14,711-13 (daily ed. June 30, 1965).

<sup>34</sup> *Id.* at 14,713-14.

amount that could be established for occupancy in public housing<sup>35</sup> and the reduction of the size of the program by twenty-five per cent by limiting the authorization to \$30 million upon enactment, with cumulative increases of \$35 million for fiscal 1967, \$40 million for fiscal 1968, and \$45 million for fiscal 1969.<sup>36</sup>

#### D. Senate Floor Action

The Senate passed its version of the bill on July 15, 1965.<sup>37</sup> A number of amendments had been accepted after lengthy debate.<sup>38</sup>

The major changes were (1) the imposition of a new limitation as to the housing that would qualify, that is, housing whose cost of operation was not in excess of the cost of operation of similar housing,<sup>39</sup> (2) the broadening of the class of qualified tenants to include persons (meeting the income qualifications) whose dwellings were extensively damaged or destroyed in a disaster area,<sup>40</sup> and (3) the reduction of the size of the program by twenty-five per cent (to the same level as the House).<sup>41</sup>

The major differences between the House and Senate bills related to the type of housing and the type of tenant that was eligible. The Senate bill (1) allowed, as an experiment, a limited number of below-market and elderly projects to be used, (2) limited the operating costs, and (3) extended the class of eligible tenants to include disaster victims. The House bill had no comparable provisions.

#### E. Conference Report

The Conference Committee accepted the Senate's amendments with respect to the broadening of the class of qualified tenants (disaster victims) and the limiting of the operating costs of rent supplement housing.<sup>42</sup>

The experimental program in the Senate bill was also accepted but revised by requiring that fifty per cent of the units that received the benefits of the rent supplement be in 221(d)(3) below-market interest rate projects, and removing the twenty per cent limitation on the number of units in a project that could receive rent supplements (except for properties financed with loans under section 202 of the Housing Act of 1959 on or before the date of enactment of the bill).<sup>43</sup>

The Conference Report was approved by the Senate by a voice vote on July 26<sup>44</sup> and

<sup>35</sup> See *id.* at 14,669-82.

<sup>36</sup> See *id.*

<sup>37</sup> III CONG. REC. 16,350 (daily ed. July 15, 1965).

<sup>38</sup> III CONG. REC. 16,132, 16,137-42, 16,149-90 (daily ed. July 14, 1965); III CONG. REC. 16,295-304, 16,308-23, 16,325-50 (daily ed. July 15, 1965).

<sup>39</sup> III CONG. REC. 16,171 (daily ed. July 14, 1965).

<sup>40</sup> *Id.* at 16,161-62.

<sup>41</sup> III CONG. REC. 16,323, 16,325-27 (daily ed. July 15, 1965).

<sup>42</sup> H.R. REP. No. 679, 89th Cong., 1st Sess. 63 (1965).

<sup>43</sup> *Id.*

<sup>44</sup> III CONG. REC. 17,630-37 (daily ed. July 26, 1965).

by the House on July 27 by a vote of 251 to 168.<sup>45</sup> The rent supplement program was signed into law on August 10, 1965.<sup>46</sup>

## F. The Appropriations Fight

### 1. *First Round*

On August 26, 1965, the President requested the full \$30 million authorization for rent supplements.<sup>47</sup> After hearings,<sup>48</sup> the Supplemental Appropriation Bill, 1966,<sup>49</sup> was reported out by the House Appropriations Committee on October 13, 1965.<sup>50</sup> The bill reduced the first year's authorization from \$30 million to \$6 million and limited the location of the housing to areas which had workable programs or in which the rent supplement program had been officially approved by the local community.<sup>51</sup> After debate,<sup>52</sup> the entire appropriation for rent supplements was deleted by the House on October 19, 1965, by a vote of 184 to 162.<sup>53</sup>

The Supplemental Appropriation Bill, 1966, was also reported out, after hearings,<sup>54</sup> by the Senate committee on October 19, 1965.<sup>55</sup> The bill<sup>56</sup> reduced the authorization from \$30 million to \$12 million. No requirement with regard to local approval was contained in the Senate bill. The bill was approved by the Senate<sup>57</sup> after it rejected two motions, one to delete the rent supplement appropriation provision entirely,<sup>58</sup> and a second to reduce the appropriation to \$6 million.<sup>59</sup>

The House-Senate Conference denied any funds for rent supplements but appropriated \$450,000 for the preparation of plans and criteria for implementing the program.<sup>60</sup>

### 2. *Second Round*

On February 11, 1966, the President again requested the full \$30 million authoriza-

<sup>45</sup> 111 CONG. REC. 17,743-51 (daily ed. July 27, 1965).

<sup>46</sup> 12 U.S.C. § 1701S (Supp. II, 1965-66).

<sup>47</sup> H.R. DOC. NO. 278, 89th Cong., 1st Sess. (1965).

<sup>48</sup> *Hearings on the Supplemental Appropriation Bill, 1966, Before Subcomms. of the House Comm. on Appropriations*, 89th Cong., 1st Sess., pts. 1-3 (1965).

<sup>49</sup> H.R. 11588, 89th Cong., 1st Sess. (1965).

<sup>50</sup> H.R. REP. NO. 1162, 89th Cong., 1st Sess. (1965).

<sup>51</sup> H.R. 11588, *supra* note 49, ch. 4. H.R. REP. NO. 1162, *supra* note 50, at 12-13. The question as to whether the proviso was legislation on an appropriations bill was debated. However, the Chair ruled that since the proviso was negative in character it was only a limitation and not legislation. 111 CONG. REC. 26,033-34 (daily ed. Oct. 14, 1965).

<sup>52</sup> 111 CONG. REC. 26,008-45 (daily ed. Oct. 14, 1965).

<sup>53</sup> *Id.* at 26,045-46.

<sup>54</sup> *Hearings on Supplemental Appropriations for 1966 Before Subcomms. of the Senate Comm. on Appropriations*, 89th Cong., 1st Sess. (1965).

<sup>55</sup> S. REP. NO. 912, 89th Cong., 1st Sess. (1965).

<sup>56</sup> H.R. 11588 (in the Senate), 89th Cong., 1st Sess. (1965).

<sup>57</sup> 111 CONG. REC. 26,584, 26,587-631, 26,781 (daily ed. Oct. 20, 1965).

<sup>58</sup> *Id.* at 26,604.

<sup>59</sup> *Id.* at 26,607.

<sup>60</sup> H.R. REP. NO. 1198, 89th Cong., 1st Sess. 4-5 (1965).

tion for rent supplements.<sup>61</sup> After hearings,<sup>62</sup> the Second Supplemental Appropriations Bill, 1966,<sup>63</sup> was reported out by the House Appropriations Committee on March 25, 1966.<sup>64</sup> The bill reduced the first year's authorization from \$30 million to \$12 million and again included the workable program or local approval proviso.<sup>65</sup> The House, after debate,<sup>66</sup> approved the bill on March 29, 1966.<sup>67</sup>

After hearings,<sup>68</sup> the Senate committee eliminated the rent supplement appropriation from the bill.<sup>69</sup> The full Senate, however, overruled the Appropriations Committee and accepted the House version of the bill (by a narrow vote of 46-45) on April 27, 1966.<sup>70</sup>

The bill was signed by the President on May 13, 1966.<sup>71</sup>

### G. Administrative Sequel

May of 1966 also saw the issuance of the administrative regulations which put flesh on the statutory skeleton.

The main changes contained in the administrative regulations and instructions<sup>72</sup> dealt with the housing and the tenants who were eligible for the rent supplement program and with the amount of the payment. Thus, (1) a limitation on the amount of rent that could be charged for a unit was imposed,<sup>73</sup> (2) the maximum income (in order to qualify) was reduced from the maximum permitted for *occupancy* in a public housing project in the area to the maximum permitted for *admission of regular* tenants in a public housing project in the area,<sup>74</sup> (3) a limitation as to the amount of assets which a tenant could have and still qualify was imposed,<sup>75</sup> and

<sup>61</sup> H.R. Doc. No. 380, 89th Cong., 2d Sess. (1966).

<sup>62</sup> *Hearings on the Second Supplemental Appropriation Bill, 1966, Before Subcomms. of the House Comm. on Appropriations*, 89th Cong., 2d Sess. (1966).

<sup>63</sup> H.R. 14012, 89th Cong., 2d Sess. (1966).

<sup>64</sup> H.R. REP. No. 1349, 89th Cong., 2d Sess. (1966).

<sup>65</sup> H.R. 14012, *supra* note 63, ch. 4.

<sup>66</sup> 112 CONG. REC. 6708-69 (daily ed. March 29, 1966).

<sup>67</sup> *Id.* at 6768-69.

<sup>68</sup> *Hearings on the Second Supplemental Appropriation Bill, Fiscal Year 1966, Before the Senate Comm. on Appropriations*, 89th Cong., 2d Sess. (1966).

<sup>69</sup> S. REP. No. 1137, 89th Cong., 2d Sess. 8-9 (1966).

<sup>70</sup> 112 CONG. REC. 8651-83 (daily ed. April 27, 1966).

<sup>71</sup> Act of May 13, 1966, Pub. L. No. 89-426, 80 Stat. 141.

<sup>72</sup> It should be noted that the regulations, to the extent they changed the plain meaning of the legislation, were codifying the stormy legislative history. They can in effect be deemed the price the administration had to pay to get the program funded. See notes 73-75 *infra*.

<sup>73</sup> U.S. FEDERAL HOUSING ADMINISTRATION, DEP'T OF HOUSING AND URBAN DEVELOPMENT, RENT SUPPLEMENT PROGRAM PUBLIC INFORMATION GUIDE AND INSTRUCTION HANDBOOK 5 (1966).

"As a further means of assuring that the program services low-income families in accordance with the congressional intent, the Secretary will establish in each locality maximum per unit rentals which will cover construction costs and maximum mortgage limits based on project prototypes of modest design and cost." *Hearings, supra* note 62, at 273 (a portion of the administration statement placed in the record).

<sup>74</sup> RENT SUPPLEMENT PROGRAM, *supra* note 73, at 10.

"[F]or initial qualification and eligibility, the income limits will be the same as or below the limits that exist now for public housing . . ." *Hearings, supra* note 62, at 271 (testimony of Secretary Weaver).

<sup>75</sup> 24 C.F.R. § 5.20 (1967).

MR. EVINS. Mr. Secretary, let us clear upon the record on one thing, a very crucial and im-

(4) a limitation on the amount of the supplement that any tenant could receive was imposed (it could not exceed seventy per cent or be less than ten per cent of the rent for the unit).<sup>76</sup>

Table 1 summarizes the main differences between the original administrative proposal and the Rent Supplement Program as passed by Congress, signed by the President, and administered by the Federal Housing Commissioner.

## II

### THE SUBSIDY DILEMMA

#### A. The Need for Volume

"One needs only his eyes, his nose, and a willingness to walk through the slums of America's great cities to be aware that we are many leagues away from the goal of tolerable housing for all Americans."<sup>77</sup> The administration, through the use of the rent supplement proposal, attempted to take a giant stride toward the goal. As the Senate committee which held hearings on the proposal stated:<sup>78</sup>

A number of existing Federal and State housing programs have been of significant value in helping low-income families to obtain standard housing. However, as helpful as these programs have been, they reach only a very small part of the total number of these families. Of the approximately 1.6 million housing starts last year, only a small proportion were units assisted under Federal or State programs designed to help low-income families.

....

Sixteen years ago, Congress and the American people pledged themselves to—"the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."

This is our national housing objective. Commendable strides have been made toward achieving that objective, but for too many American families the pledge remains unredeemed. The committee recognizes that to redeem this pledge requires a comprehensive housing program that will provide a substantial volume of housing designed to serve families of low income. The committee has concluded that housing for lower income families can be produced in sufficient supply only through enlisting the experience and resources of private enterprise.

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portant point. . . . This appropriation got into difficulty last October because some members read from tentative regulations . . . that individuals with assets or income up to \$25,000 would be eligible.

That is not the case. That is not the situation and it was not intended by the law. . . .

....

SECRETARY WEAVER. Yes, sir.

MR. EVINS. Your statement is that the asset limitation . . . will be \$2,000 except in the case of the elderly, where it will be \$5,000. This is correct?

SECRETARY WEAVER. Yes, sir.

*Hearings, supra* note 62, at 271.

<sup>76</sup> 24 C.F.R. § 5.25 (1967).

<sup>77</sup> R. VERNON, *THE MYTH AND REALITY OF OUR URBAN PROBLEMS* 46 (1966).

<sup>78</sup> S. REP. NO. 378, *supra* note 4, at 3.

TABLE I  
RENT SUPPLEMENT PROGRAM—SUMMARY OF MAJOR PROVISIONS

Subject	Original Proposal	Operating Program
1. Qualified Owners	Non profit and limited dividend corporations, and cooperatives	Same
2. Eligible Housing	FHA Section 221(d) (3) market interest-rate housing	<p>Limitation placed on operating costs and rents. Program broadened, now includes:</p> <p>A. F.H.A. Section 221 (d) (3) market interest-rate housing</p> <p>B. Experimental Program — 10% of payments authorized by appropriations acts.</p> <p>(1) 5% — F.H.A. Section 221 (d) (3) below market interest rate housing projects approved for mortgage insurance after August 10, 1965.</p> <p>(2) 5% — Housing for the elderly projects</p> <p>(a) Section 202 of the Housing Act of 1959 — Projects approved before and after August 10, 1965. Provided that no more than 20% of the dwelling in a property financed on or before August 10, 1965 may receive supplements.</p> <p>(b) Section 231 of the National Act — Projects whose mortgages have been finally endorsed for mortgage insurance, after August 10, 1965</p>
3. Eligible Tenants	<p>Individuals or families whose incomes are such that they are unable to obtain standard housing at a rental which is equal to or less than 1/5 of their income, and who are</p> <ol style="list-style-type: none"> <li>1. occupying substandard housing</li> <li>2. displaced by governmental action, or</li> <li>3. elderly or handicapped.</li> </ol>	<p>A. Individuals or families who have incomes that do not exceed the the maximum amount that can be established for admission of regular tenants in public housing law, and who are</p> <ol style="list-style-type: none"> <li>1. Same</li> <li>2. "</li> <li>3. "</li> <li>4. victims of disaster after April 1, 1965.</li> </ol> <p>B. Limitation on assets of tenants</p>
4. Amount of Payment	<ol style="list-style-type: none"> <li>A. Could not exceed difference between 1/5 of income and rent</li> <li>B. Could not exceed public housing annual contribution</li> </ol>	<ol style="list-style-type: none"> <li>A. Could not exceed difference between 1/4 of income and rent.</li> <li>B. Could not be more than 70% of rent or less than 10%.</li> </ol>
5. Location of Unit	Workable program required only in community which had had a program.	Workable program or local approval required in all communities.
6. Financing	Authorization to enter into contracts for up to \$200 million in supplement payments during initial four years.	Initial appropriation of \$12 million

The conclusions reached by the committee with respect to using the resources of private enterprise rested on something more substantial than a prejudice either in favor of private enterprise or against government bureaucracy.

SENATOR DOUGLAS. One more question and then I will yield.

. . . [Y]ou propose your low-rent public housing program and you say it will not meet all of the needs, but it represents our best estimate of what can be done. Now what is it that prevents us from doing more?

MR. WEAVER. The absorptive capacity of this program, the availability of sites, the approval of programs at the local level, and these types of problems. These are the things.

. . . .

MR. WEAVER. It isn't a matter of bureaucratic hours or a matter of lack of interest. It is a matter of the fact in order to get public housing you have to go through many steps, and even in the city of Chicago, as you know very well, the Chicago Housing Authority would like to do a great deal more, but it has difficulty with sites and this has nothing to do with the efficiency of the Chicago Housing Authority.<sup>70</sup>

Thus, the main reason for rejection of public housing was that it could not serve as a vehicle for a large volume housing program. As the Senate report summed up the issue:<sup>80</sup>

Valuable as the public housing program is and has been however, it cannot by itself fully meet the housing needs of low-income families. The current waiting list for low rent units has already reached 500,000 families. It is a harsh fact that in recent years the program has been unable to stimulate the construction of more than 30,000 new low rent units a year. There is clearly a pressing need for new programs in addition to this basic tool for low-income housing.

The choice of private enterprise vehicles also revolved around the theme of volume. The 221(d)(3) below-market interest rate program—a program characterized by the administration as successful<sup>81</sup>—was available. Although the interest rate applicable to the program was 3⅞ per cent and as such too high to reach the “rich poor” range which the administration sought to reach, one would have thought that a variant of that program would have been the logical choice.

SENATOR SPARKMAN. I introduced a bill by request that would have provided for further flexibility in the rate, lowering it down, if necessary, even to zero. That would make available housing units for families much lower in the income levels. Have you seen that bill?

MR. WEAVER. Yes, sir. I would say this: We have looked at this very carefully and we have found that even if you had a zero rate of interest, which is kind of hard for me, as a practical person, to conceive of getting, you would not be able to go down as low in the income groups as you can with the administration's rent supplementation program.<sup>82</sup>

<sup>70</sup> *Senate Hearings, supra* note 22, at 23-24.

<sup>80</sup> S. REP. No. 378, *supra* note 4, at 5.

<sup>81</sup> *Senate Hearings, supra* note 22, at 6.

<sup>82</sup> *Id.* at 17.

This answer went unchallenged. However, it does seem to be but a partial answer since (1) the initial rent supplement proposal did not seek to reach the lowest income groups, and (2) it fails to explain why a program which combined rent supplements and below-market interest was not chosen. It would seem logical and cheaper for the government to take advantage of its credit position and "piggyback" a subsidy on a below-market interest rate rather than to create a program in which a substantial portion of the subsidy is used to reduce a rent based on market rate interest.

The need for volume seemed to have been again the key to the rejection of this approach—albeit indirect:

SENATOR PROXMIRE. I am concerned also about the temptation that every administration has, when we decide to lease post offices instead of buying them, the impact on the budget in the year you lease is smaller, but over the years it is much bigger, I am convinced.

Isn't it true also with the rent supplement program, the budget will be less in the first year, but over the years it will cost more.

MR. WEAVER. I would say it will not be as great as many people would assume, because the amount of subsidy would decline each year.

On the other hand, I would say that the figures would indicate that the total impact, the total cost on a lower interest rate is less than on a rent supplement.<sup>83</sup>

\* \* \*

MRS. SULLIVAN. . . .

. . . .

As I understand it, the proposal is that the mortgage financing the construction, which would be FHA insured, would carry a market interest rate. In other words, the capital to finance these projects would come from private markets and the only cost to the Government would be the subsidy payments paid over time to eligible tenants in the housing. That is correct, is it not?

MR. WEAVER. Yes, and it reflects, of course, the extremely favorable mortgage market we have now as far as the flow of funds is concerned.

MRS. SULLIVAN. In other words, I have a suspicion that one of the reasons you were able to "sell" your programs to the Budget Bureau was because of the fact that this program would have a minimum initial impact on the Federal annual budget in contrast to section 221(d)(3) below-market interest rate mortgages, for example, where the whole cost of the mortgage is an immediate charge to the budget the minute FNMA buys it. I would like your comments on that.

MR. WEAVER. Two things. Obviously, it did not hurt the program with the Bureau of the Budget, and I think certainly the President has a concern for this and I think the Congress has, too. It has merit.<sup>84</sup>

To illustrate: the administration proposed a program that would finance 500,000 new units in a four year period. The budgetary impact of such a program (on the assumption of a \$400 per unit subsidy) would be comparatively small—\$50 million—even in the first year of full operation. In contrast, the impact of a below-market

<sup>83</sup> *Id.* at 32-33.

<sup>84</sup> *House Hearings, supra* note 17, pt. 1, at 233-34.

interest rate program would have been massive. Since the ultimate source of the funds for (d)(3) was assumed to be the U.S. Treasury, the federal budget would reflect the full amount of the mortgage loan. Thus, in the first year of a (d)(3) oriented program in which 125,000 units are projected with an average mortgage of \$10,000, the budget "outlay" would be \$1.25 billion, although the actual cost (assuming the interest rate charged to the mortgagor was a full two per cent below the Treasury's borrowing cost) would be \$25 million.<sup>85</sup>

The main thrust of the administration's proposal was the necessity for creating a mechanism that would provide a rapid increase in the supply of standard housing within budgetary and cost limitations. In light of this objective, the rent supplement program held another advantage—namely, the payment was keyed to need. Unlike a fixed interest program in which fine tuning is impossible, the amount of the subsidy could be reduced as income rose. The program, thus, had the economic advantage of (a) not wasting a full subsidy on persons who needed only a partial subsidy, and (b) assuming a rise in the income of the tenants, a reduction in the cost of the program, or an expansion of the program with no increase in cost. There was also the sociological advantage of its being unnecessary to evict families whose income had risen above the point of need, thus (a) encouraging housing in which families of different income groups would live together,<sup>86</sup> and (b) eliminating one of the major sore points of public housing—the disincentive to economic advancement produced by a program in which eviction was the mark of economic success.

Such features of the program as the imposition of the income floor and the elimination of the workable program requirement may seem at first glance to be unrelated to the administration's aim to achieve the greatest bang for the budgetary buck, but upon closer examination it becomes clear that they are crucial components. To the extent a person on the bottom of the income scale requires a greater subsidy input per housing unit, the total volume of units must be reduced. To the extent outlying areas are used, lower land costs and lower construction costs (the predominant type of project in such areas being wood-frame construction) would result in rent levels which require a lesser subsidy input per housing unit, thus enabling an increased volume of units.

In conclusion, given a treasury whose resources are finite, the administration's aim was to achieve the largest possible program (using available home-building resources) with the smallest budgetary impact.

<sup>85</sup> At the present time the distinction between the rent supplement program and the below-market interest rate program with regard to budget impact and cost is in the main academic. Section 102 of the Housing and Urban Development Act of 1965 made it possible for the Federal National Mortgage Association (FNMA) to include the (d)(3) mortgages in its portfolio in its arrangements for pooling mortgages and selling participations. The act did this by authorizing appropriations to reimburse FNMA for the amount of the discount the private market would require to purchase a participation which included below-market interest rate mortgages. This eliminated the adverse budgetary impact of (d)(3) mortgages at the cost of the savings the government achieved by using its credit resources to purchase and then to hold the mortgage.

<sup>86</sup> See H.R. Doc. No. 99, 89th Cong., 1st Sess. 8 (1965).

### B. The Need for Equity

Whereas, the administration was concerned with fulfilling the nation's housing objectives, Congress was concerned with the fairness of the new program to non-recipients, both poor and rich.

Thus the income floor was an immediate target of attack. As a politicoeconomist stated during the congressional hearing:<sup>87</sup>

But there is a grave question raised here as to whether when there are vast unmet needs of people with incomes of below \$2,000 or \$3,000 a year, you then ought to launch a new program to help people who are above the poverty level?

Congress reacted to this argument by striking the economic floor. The program thus avoided the rocks of Scylla by throwing overboard some valuable cargo—housing units.<sup>88</sup> However, having avoided one hazard, the proposal immediately found itself in the whirlpool of Charybdis—the implications of a program which provides better housing for the poor, at a subsidized rent, than is available for a large number of more successful (and possibly harder working) citizens who must pay the full economic rent. A policy of taxing Peter to provide housing for Paul, who would otherwise have to live in squalor, may rest on sweet virtue. A policy of taxing Peter to provide better housing than his own for Paul is a bitter pill.

Can this unappealing prospect be avoided? And if it can, what are the costs? These two questions will be considered in light of the legislative history of the rent supplement proposal.

The administration was aware of the problem and limited the categories of poor that this program would serve. Thus the qualification for tenancy included not only low income but also being in a category that few would begrudge—the handicapped, the elderly, the displaced, and subsequently the disaster victim. The occupant of substandard housing may not qualify as deserving but at least he has served his time in squalor.

Congress added an additional requirement—tangible evidence of the occupant's deservedness. One of the earliest amendments required the occupant to pay an extra five per cent of his income for his new housing. A representative of the American Bankers Association gave the following explanation why this was needed:<sup>89</sup>

<sup>87</sup> *Senate Hearings, supra* note 22, at 18 (Senator Douglas).

<sup>88</sup> The argument was made that by increasing the amount to be paid by tenants from 20% to 25% of income, the lowering of the income ceiling by Congress did not affect volume. See III CONG. REC. 16,059 (daily ed. July 13, 1965) (statement by Senator Douglas). In response it should be noted: (1) that the administration proposal originally contemplated supporting 500,000 units at an annual cost of \$200 million. Secretary Weaver, however, in testimony seeking appropriations after the income limit was dropped, estimated that 250,000 units would be supported by an appropriation of \$150 million—a one-third decrease in the number of units per dollar of expenditure. *Hearings, supra* note 62, at 267; (2) that lowering of the ceiling defeated the purpose of economic integration which was strongly favored by Senator Douglas. See III CONG. REC. 16,060 (daily ed. July 13, 1965); and (3) it is this paper's contention that increasing volume was not the prime motive (or even a motive) for raising the tenant's payment from 20% to 25% of his income. This point is discussed in the text *infra*.

<sup>89</sup> *Senate Hearings, supra* note 22, at 379 (Kurt Flexner, Deputy Manager, American Bankers Association). (Emphasis added.)

What we are saying, Senator, is that since it is generally agreed that a person may spend around 20 percent of his income, gross income, on rent, especially in that group, that income group, that the rent supplements should be based on the criteria of need.

Well, now, if a person has to pay 22 percent of his income on rent, *well, it is a little more than perhaps he should to get his housing*, but it doesn't clearly establish need. But if he had to go as high as 25 percent, it would seem that this is substantially higher than an accepted criteria, so that then supplements would be more logical.

Not only does the occupant thereby show effort but he also guarantees that in order to obtain the good housing he is willing to sacrifice luxuries (or necessities).<sup>90</sup> There will be no shiny new cars outside of rent supplement projects.

Is the conflict real? Must a housing subsidy give the poor better housing than is available to higher income neighbors? Theoretically perhaps not, that is, if there is a surplus of standard housing. However, the premise of the problem and the program is a shortage of standard units.

Can the quality of the housing to be given to the subsidized tenant be limited? Must we build "penthouses for the poor"? Limiting the housing to existing structures has the obvious advantages in this regard in that a "used" house is unlikely to be as good as a new house. Thus it should not be surprising that, although the Housing and Urban Development Act of 1965 contained two new housing subsidy programs, the rent supplement program geared to new construction stirred waves, but the provision granting public housing authorities the power to lease low rent housing in private accommodations scarcely caused a ripple.<sup>91</sup> Nevertheless, although a useful tool in areas in which vacancies in standard housing exists or where rehabilitation of substandard housing is economically feasible, the leasing program does not show any promise of redeeming the pledge to the poor.

Can anything be done to avoid the difficulty if we are forced to rely on new construction? If new construction is a necessary evil, it at least can be restricted to the most basic shelter requirements. The amenities (both structural and environmental) of new housing can be limited.

There are, however, severe economic and urban development constraints in following this course. The building must be of sufficient quality to serve a market for at least the life of the mortgage (forty years). It must, therefore, if it is not to be functionally obsolete many years prior to its attaining physical obsolescence,<sup>92</sup>

<sup>90</sup> See generally on the rent-income ratio, Rapkin, *Rent-Income Ratio*, in *URBAN HOUSING 168* (W. L. C. Wheaton, G. Milgram, & M. E. Meyerson eds. 1966).

<sup>91</sup> 42 U.S.C. § 1421b (Supp. II, 1965-66). This provision, especially in regard to the location of the units, can stir calm waters. See generally W. L. MILLER, *THE FIFTEENTH WARD AND THE GREAT SOCIETY 99-111* (1966), for the experience of a New England city.

<sup>92</sup> "All rent supplement projects must be of modest design and suitable to the market and the location proposed. Swimming pools, two bathrooms per unit, air conditioning, and similar items will not be permitted. Projects should incorporate good design principles and not have features that will contribute to premature obsolescence." RENT SUPPLEMENT PROGRAM, *supra* note 73, at 2.

include certain facilities which were yesterday's (and possibly today's) luxuries.<sup>93</sup> The dangers of false economy go beyond the structure itself. If the model tenements of the nineteenth and early twentieth centuries are the building blocks of today's slums, the overly modest projects of today may be cornerstones of the slums of tomorrow.

The location of the housing can be channeled so as to limit the environmental amenity. A building of superior quality to house the poor does not offend one's sense of equity if it is placed in an inferior neighborhood.<sup>94</sup> If Peter has to pay for Paul's housing, he need not be forced to live next to Paul. The sentiment was put in its universal form by a novelist—"Generally my fellow townspeople, though they would help the poor, were not particularly fond of them."<sup>95</sup> Or as a Congressman put the issue a bit more bluntly:<sup>96</sup>

I think the time has come to call a spade a spade. . . .

When the rent subsidy program was before Congress some of us said the purpose of the bill was to force integration of better class neighborhoods. This was denied by the sponsors. . . .

Let me read from a Federal Housing Administration letter, MF Letter No. 63 to all insuring office directors and multifamily housing representatives under date of September 28, 1965:

"Important criteria with regard to approval of a rent supplement project will include full consideration of its contribution to assisting in integrating income groups and furthering the legal requirements and objectives of equal opportunity in housing."

That is in the regulations, in the instructions to those housing officials who will be spending this \$6 million, and they are told the first consideration of the rent subsidy program is integrating economic groups and furthering the objectives of equal opportunity in housing. Under this implementation of the program, private homeownership in America is doomed because a man cannot protect the value of his property nor the desirability of his neighborhood.

Must we, therefore, place the home in a less than suitable environment? If one man's home can be his castle, another man's home may be his prison. As another Congressman viewed the issue:<sup>97</sup>

We can see no reason why private builders should be forced to obtain local approval for rent supplement projects, which are in essence an "FHA for the poor."

. . . .

<sup>93</sup> "Design Factors Plague Rent Supplement Program. The NAHB Rent Supplement Task Force was told . . . that builders refuse to design down proposed rent supplement projects, and for this reason a number of projects have either been canceled or postponed." NAHB COMPENDIUM BULL., Dec. 1966, at 3.

<sup>94</sup> An architecturally striking public housing development has failed to attract a single white family in spite of strenuous activities by the local housing authority. See DIXON, *Goldberg's Variation on Chicago Public Housing*, ARCHITECTURAL FORUM, Nov. 1966, at 25.

<sup>95</sup> E. WIESEL, NIGHT 15 (1960).

<sup>96</sup> 111 CONG. REC. 26,019 (daily ed. Oct. 14, 1965) (remarks of Congressman Martin).

<sup>97</sup> 112 CONG. REC. 8667 (daily ed. April 27, 1966) (statement of Senator Clark).

. . . The local veto rider, if it should become law, will be used to confine rent supplement housing to the areas in which the families entitled to rent supplements already live, thus frustrating the clear intent of the Congress. The problems of our cities will never be resolved if we establish walls or immovable curtains beyond which the poor and elderly cannot go to find decent housing.

#### CONCLUSION

The fate of the rent supplement program illustrates that the inability to fulfill the nation's pledge to millions of low income families living in substandard housing rests on something more than the failure to enlist private enterprise in the task. Rent supplements were proposed and were necessary because public housing could not produce the necessary volume. However, the introduction of new players did not change the rules of the game. The limitations imposed by Congress assure that private enterprise, even though subsidized, will also fail to produce the necessary volume to achieve the nation's housing goal.<sup>98</sup> Both the thirty-year history of the public housing program and the brief history of the rent supplement program illustrate the paradoxical effect of the subsidy dilemma—the creation of powerful instruments whose use has to be restricted because of their capacity to achieve the very goal for which they were designed.

The most promising solution to the dilemma may be the elimination of the need for a subsidy either by lowering development costs or by raising income levels of the poor. It may not, therefore, be a coincidence that 1966 saw major action on both of these fronts. Legislation was enacted to apply technological advances to housing<sup>99</sup> and a conference was convened whose purpose was the ultimate development of new technologies to enable the upgrading of our physical environment to modern standards at feasible cost levels.<sup>100</sup> The model cities program was also enacted<sup>101</sup>—a program whose premise is that “bricks and mortar” will not renew our cities as

<sup>98</sup>The problems and criticisms which have plagued public housing—(1) site selection; (2) segregation of low-income families; (3) increasing non-white occupancy; (4) income limits which are criticized as being too high and too low; (5) inadequacy of the program; (6) detailed federal supervision; (7) poor design; (8) high development costs—are all applicable to the rent supplement program. See generally U.S. HOUSING AND HOME FINANCE AGENCY, VIEWS ON PUBLIC HOUSING 153-59 (1960).

<sup>99</sup>Demonstration Cities and Metropolitan Development Act of 1966, § 1010, 42 U.S.C. § 3372 (Supp. II, 1965-66).

<sup>100</sup>See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, SCIENCE AND THE CITY (1967) (a report on the Summer Study on Science and Urban Development in June 1966 in Woods Hole, Mass., sponsored by the Department of Housing Urban Development). For the problems even in such a worthwhile endeavor:

“Yesterday Haggerty [President of the AFL-CIO Building and Construction Trades Department], clearly tiffed at a report . . . issued after a HUD-sponsored conference, hit back at charges that the craft unions block progress and resist changes that could mean faster and cheaper construction.” White, *Ribicoff Jabs HUD on Slum Advisers*, The Washington Post, April 19, 1967, at A2, col. 3. “High Court Backs Right to Strike Over Automation, Decides, 5-4, Unions May Enforce Contract Ban on Prefabricated Items, . . . Justices Agree Law Allows Carpenters to Walk Out in Fight to Save Jobs,” N.Y. Times, April 18, 1967, at 1, col. 1. (Headlines.)

<sup>101</sup>Demonstration Cities and Metropolitan Development Act of 1966, tit. 1, 42 U.S.C.A. §§ 1453, 3301-13 (Pamphlet, Feb. 1967).

long as millions of poor and disadvantaged Americans lack the training and opportunity to participate fully in our nation's life.<sup>102</sup>

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<sup>102</sup> For the problems and possibly the dilemmas one again needs only to read the newspapers.

"His name is Jackson, Ernest Jackson. Ernest is something of a celebrity. He's the one-thousandth graduate of the Kilmer Job Corps Center in New Jersey to be placed. Ernest now earns over \$200 a week. Not bad for a fellow who dropped out of school in the 11th grade.

At Kilmer, a lot of young men are being changed from untrained dropouts to skilled craftsmen." Otten, *New Allies for L.B.J.*, The Wall Street Journal, April 19, 1967, at 1, col. 6. *But see Semple, U.S. Finds Only 1% On Welfare Lists Are Employable*, N.Y. Times, April 20, 1967, at 1, col. 1.