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Housing

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HOUSING

HOUSING AND URBAN DEVELOPMENT ACT OF 1965

In August 1965 Congress enacted the Housing and Urban Development Act of 1965.¹ Title I of this act contains, *inter alia*, two rent supplement programs: section 101 provides for rent supplements in conjunction with new construction, while section 103, which amends the United States Housing Act of 1937,² provides for rent supplements in conjunction with existing private accommodations.

In its original form, the rent supplement programs in Title I were designed to meet the needs of middle-income families.³ However, these

¹ 79 Stat. 451 (1965) [hereinafter cited as HUDA].

² 50 Stat. 888 (1937) (codified in scattered sections of 42 U.S.C.).

³ This was the Administration's proposed program, introduced as H.R. 5840 by Representative Patman. Hearings on H.R. 5840 Before the Subcommittee on Banking and Currency, 89th Cong., 1st Sess., pt. 1, at 107 (1965).

These are the four million families whose incomes fall within the statutory "twenty per cent (income) gap." Under the United States Housing Act of 1937, the Public Housing Administration (PHA) does not have authority to make any contracts for annual contributions with a local public housing agency until the latter demonstrates that there is a gap of at least twenty per cent between the lowest rents at which private parties are providing a substantial supply of standard housing in the locality and the upper rental limits for admission to its public housing project. United States Housing Act of 1937, § 15, 50 Stat. 895 (1937), 42 U.S.C. § 1415 (1964), as amended by § 206(a)(4), 75 Stat. 164 (1961), 42 U.S.C. § 1415 (1964). The 1961 amendment eliminated the gap for the displaced and the elderly.

The twenty per cent gap is also used to determine the maximum allowable income limits for admission to low-rent public housing. Once the upper rental limits for families of varying size have been set at eighty per cent of the lowest rents at which private parties are providing a substantial supply of standard housing, the local public housing agency uses a five-to-one ratio of income-to-rent to fix the eligible incomes. See, e.g., Boston Housing Authority, *The Low-Rent Public Housing Program in Boston 12* (1960). To illustrate, if a public housing agency determines that \$100 is the lowest monthly rental at which private enterprise is providing a substantial supply of standard units which can accommodate a family of four, it will set the upper monthly rental limit for a family of this size at \$80. By applying the five-to-one income-to-rent ratio, it will then set the maximum yearly income limit for eligibility for these families at \$4800 ($5 \times \80×12 months). A family of four will, therefore, only be eligible for admission if its yearly income, less all allowable deductions and exemptions, is \$4800 or less. *Id.* at 11-14. If the five-to-one ratio of income-to-rent were applied to both the \$100 and \$80 monthly rentals, converted to a yearly basis (i.e., $\$100 \times 12$ months $\times 5$ or \$6000, and $\$80 \times 12$ months $\times 5$ or \$4800, respectively), the difference between them, \$1200, would be a "twenty per cent (income) gap."

Since the income of these middle-income families falls within the twenty per cent income gap, they are unable to afford decent private housing at a rental which represents a reasonable proportion of their income, and yet are ineligible for public housing. The below-market-interest-rate mortgage program under the 1934 National Housing Act § 221(d)(3), 48 Stat. 1252 (1934), 12 U.S.C. § 1715l (1964), has provided some relief for families in the higher-income brackets of the gap. Hearings on H.R. 5840, *supra* at 229. The effectiveness of this program, however, has been decreasing with the continual rise in the applicable interest rate. See U.S. Code Cong. & Ad. News 2691 (1965). Although HUDA § 102(b) puts a three per cent ceiling on the interest rate, its benefits remain confined to those families in the higher-income brackets of the gap. HUDA § 102(b), amending the National Housing Act § 221(d)(5), 48 Stat. 1252 (1934), 12 U.S.C. 1715l (1964).

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families were completely excluded from Title I by a subsequent amendment which limited eligibility for the rent supplement programs to those low-income families eligible for admission to the existing low-rent public housing program.⁴

Although passed, the act has not yet become entirely operative. Not all of the funds necessary to implement the act have been appropriated, and regulations have not been promulgated. Congress has, however, appropriated certain funds for the purpose of conducting studies to discover how best to administer section 101.⁵ Congress has not, as yet, appropriated other funds for section 101, because the provisional regulations formulated by the Housing and Home Finance Agency (HHFA) were found to be inconsistent with congressional intent. However, it will undoubtedly do so when the 89th Congress reconvenes in 1966 and the HHFA issues acceptable regulations.

While the section 101 rent supplement program remains unfunded, the section 103 program was funded by the passage of the act. Under section 103, rent supplement payments to housing owners will be made from funds authorized for annual contributions to the existing low-rent public housing program established under the United States Housing Act of 1937.⁶ The aggregate of such payments in a locality will be limited to the amount of the fixed annual contributions payable to a public housing agency for a newly constructed public housing project offering comparable accommodations.⁷ Since section 103 amends the United States Housing Act of 1937, and the section 103 rent supplement program is merely another means to be utilized by local public housing agencies to house low-income families, the regulations and procedures of the Public Housing Administration (PHA) covering public housing under that act should also encompass the new section 103 program.

The basic purpose of the new act is to provide decent, safe and sanitary housing for all low-income families. The present low-rent public housing program, which is the major plan in operation today designed to achieve this end, has proved inadequate, principally because only 580,000 public housing units have been constructed since this program was first authorized in 1937.⁸ Approximately 5½ million families with annual incomes of less than \$3,000 are presently occupying substandard dwellings,⁹ and 500,000 families are presently on waiting lists for public housing units.¹⁰ While the new act contains many provisions, the primary features designed to supply this additional needed adequate housing are the two rent supplement

⁴ See 118 Cong. Rec. 14669-70 (daily ed. June 30, 1965). It seems likely that this amendment was the result of the concern displayed by legislators over the possibility that, as originally designed, the rent supplement programs would offer assistance to middle-income families with incomes as high as \$8,000. See U.S. Code Cong. & Ad. News 2754-55 (1965).

⁵ 197 Cong. Rec. 26867 (daily ed. Oct. 21, 1965).

⁶ HUDA § 502, amending § 10(c) of the United States Housing Act of 1937.

⁷ HUDA § 103, adding § 23(e) to the United States Housing Act of 1937.

⁸ 118 Cong. Rec. 14669, 14671 (daily ed. June 30, 1965).

⁹ Hearings on H.R. 5840, *supra* note 3, pt. 2, at 1136.

¹⁰ 118 Cong. Rec. 14669, 14671 (daily ed. June 30, 1965).

programs contained in Title I. In addition to accomplishing this primary objective, these programs have certain inherent advantages over the present low-rent public housing program.¹¹

I. BASIC PROVISIONS OF THE RENT SUPPLEMENT PROGRAMS

Many of the provisions of the two rent supplement programs are similar. For example, both programs utilize the same basic rent supplement theory. Pursuant to this theory, the tenant pays the owner of the dwelling unit a portion of the rent, and the Government pays an amount representing the difference between the fair rental value of the unit and that amount which the tenant pays.¹² Under section 101, the tenant will pay at least twenty-five per cent of his applicable net income,¹³ and the Federal Housing Administration (FHA) will pay the balance.¹⁴ Under section 103, the tenant will presumably pay that portion of his net income which he would pay if he occupied a unit under the present low-rent public housing program,¹⁵ and the PHA will pay the housing owner the remainder. Under the present public housing program, rent is determined by starting with the statutory twenty per cent of the tenant's net applicable income,¹⁶ less exemptions and then adding an amount that will produce a rent which is economically feasible to prevent insolvency of the project while at the same time not overburdening the tenant.¹⁷

Whether a tenant will fare better under the section 101 program or the section 103 program will depend partly on what his final rental charge will be under both. Even though the percentage of a tenant's income charged for rent under section 103 will probably be less than that charged under section 101,¹⁸ this difference may be reduced or even eliminated. This will depend upon whether the HHFA allows more deductions than those presently allowed by the PHA. If the allowable deductions are equivalent,

¹¹ See *infra* p. 319.

¹² Rent supplement payments are not entirely novel. See, e.g., Mass. Gen. Laws Ann. chs. 115-19 (1958) (welfare payments, in effect, include amounts apportioned for rent); Housing Act of 1961, § 207, 75 Stat. 165 (1961), 42 U.S.C. § 1436 (1964) (demonstration program); United States Housing Act of 1937, § 10, 50 Stat. 891 (1937), 42 U.S.C. § 1410 (1964). Under the latter program, the PHA makes annual contributions to local public housing projects. These contributions fill the gap between the economic cost of the project, which is based on its operating expenses plus the debt service on the bonds used to finance it, and the rents the low-income families are required to pay. See Housing and Home Finance Agency, *supra* note 3, at 156.

¹³ Section 101 provides that no rent supplement payments under this section may be more than the difference between the rental value and 25% of the tenant's income. HUDA § 101(d). The tenant will, therefore, have to pay at least 25% of his income in order for the rental payment plus the rent subsidy to equal the rental value of the unit. The housing owner has the responsibility of collecting from the tenant his portion of the fair market rent. Federal Housing Administration, Rent Supplement Program Bulletin 3 (Sept. 28, 1965).

¹⁴ *Ibid.*

¹⁵ HUDA § 103, adding § 23(d)(2) of the United States Housing Act of 1937.

¹⁶ See Boston Housing Authority, *supra* note 3, at 16-18.

¹⁷ For example, the Boston Housing Authority has fixed its rent at 21.8% of its tenant's applicable monthly income, less exemptions. *Ibid.*

¹⁸ See note 14 *supra*.

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the tenant under the section 101 program will be paying more rent, assuming no local public housing agency is charging more than twenty-five per cent. Nevertheless, this monetary factor must be balanced against a tenant's desire for new as opposed to older dwelling units.

Eligibility requirements under the two rent supplement programs are also basically the same.¹⁹ To be eligible for the section 101 program, a tenant must have an income qualifying him for participation in the public housing program in his locale.²⁰ The income limits for eligibility under the section 103 program should be the same. This presumption arises from the fact that the section 103 program is a means to be utilized by local public housing agencies to house low-income families in conjunction with the present public housing program. It therefore seems likely that a local public housing agency will apply its existing admission income limits to the new section 103 program.²¹

The HHFA will adopt, for use under the section 101 program, regulations concerning the determination of tenants' incomes²² and their recertification at least once every two years.²³ Such regulations are already established under the present public housing program and will presumably be applied to the section 103 program.²⁴ The recertification procedure will be employed under both of the new programs to adjust the tenants' rental charges.²⁵

In addition to meeting the income requirements, a tenant, to be eligible under the section 101 program, must fall into one of the following categories: (1) Those displaced by governmental action, (2) the elderly, (3) the physically handicapped, (4) those occupying substandard housing, or (5) an occupant or former occupant of a dwelling determined by the Small Business Administration to be in an area affected by a natural disaster which has extensively damaged such dwelling.²⁶ Similar categories are used

¹⁹ HUDA § 104 amends the tenant eligibility qualifications of the United States Housing Act of 1937 to conform to the tenant eligibility qualifications set out in § 101.

²⁰ HUDA § 101(c)(1).

²¹ There may, however, be a difference in the income limits for the two rent supplement programs. Under the existing public housing program, the local public housing agencies often set the upper income limits for admission below the maximum permitted, utilizing the statutory 20% gap requirement and the five-to-one income-to-rent ratio. See Boston Housing Authority, *supra* note 3, at 12-15. Yet, HUDA § 101(c)(1) provides that a tenant may have an income "below the maximum amount which can be established" in his area. Therefore, if § 101(c)(1) is interpreted strictly, a tenant could have an income qualifying him for the § 101 program which is too high for the § 103 program.

²² HUDA § 101(e).

²³ *Ibid.* The incomes of elderly tenants will not be recertified at these two-year intervals due to their more stable nature.

²⁴ Under the present public housing program, a yearly examination of tenants' incomes is conducted, with the exception of the elderly tenants whose incomes are recertified every two years. See, e.g., Boston Housing Authority, Resolutions Establishing Policies and Standards Governing Occupancy of Federally-Aided Developments 27 (Oct. 28, 1965).

²⁵ Under the present public housing program, a tenant is required to report substantial changes in income as they occur. See, e.g., *id.* at 29. Presumably, this will also be required under both of the new programs.

²⁶ HUDA § 101(c).

under the present public housing program,²⁷ and it is to be expected that they will be applied to the new section 103 program.

A potential additional requirement under section 103 for prospective tenants is one of residency. Some local public housing agencies now require a tenant under the existing public housing program to have resided within its jurisdiction for a specified period of time²⁸ as a condition precedent to eligibility. Such agencies might also require this under the new section 103 program, whereas the HHFA probably will not do so under the section 101 program.

Both of the new rent supplement programs are unique in that they utilize private enterprise to provide low-rent housing. Under section 101, the HHFA is authorized to enter into contracts with private nonprofit, limited dividend, and cooperative housing corporations²⁹ which are mortgagors and have been approved for mortgage insurance under section 221(d)(3) of the National Housing Act (1934).³⁰ These corporations will be the owners of the newly constructed units under section 101, entitled to receive rent supplements.³¹ Under the program, these owners are given the right to select their own tenants.³²

Under section 103, each local public housing agency will conduct a continuing survey and maintain a listing of available dwelling units within its jurisdiction which are (or may be made) suitable for "low-rent housing in private accommodations."³³ To be suitable under this section, a unit must "provide decent, safe, and sanitary dwelling accommodations" at reasonable rentals. Each local agency will notify the public when it believes that dwelling units for the program will be in demand, and the owners³⁴ of the units listed with the agency will be invited to make them available.³⁵ If the units offered by an owner are approved, the agency and the owner may enter into a one to three year contract for rent supplements, renewable at the end of each term.³⁶ The contract will provide that the agency and the owner will determine the rent to be received by the latter.³⁷ It will

²⁷ See, e.g., Boston Housing Authority, *supra* note 24, at 11.

²⁸ See, e.g., Boston Housing Authority, *supra* note 3, at 10.

²⁹ HUDA § 101(b). For example, these corporations will include labor unions and church groups which are interested in providing for eligible members. See generally Federal Housing Administration, *supra* note 14, at 2-3.

³⁰ 48 Stat. 1252 (1934), 12 U.S.C. § 1715l (1964). The mortgages under HUDA § 101(b) will be National Housing Act § 221(d)(3) market-interest-rate mortgages. However, HUDA § 101(j)(1) also provides for an "experimental" program whereby the housing owners may be mortgagors with National Housing Act § 221(d)(3) below-market-interest-rate mortgages. HUDA § 101(j)(2) stipulates that not more than five percent of the aggregate of funds allocated to the rent supplement program may be paid to the latter class of mortgagors.

³¹ The contracts for rent supplements between these owners and the HHFA may have a duration of up to forty years. HUDA § 101(a).

³² See HUDA § 101(e)(3).

³³ HUDA § 103, adding § 23(b) of the United States Housing Act of 1937.

³⁴ The term "owner," as used in HUDA § 103, refers to any person or entity having the legal right to lease or sublease dwelling units.

³⁵ HUDA § 103, adding § 23(c) of the United States Housing Act of 1937.

³⁶ HUDA § 103, adding § 23(d) of the United States Housing Act of 1937.

³⁷ *Ibid.*

also provide, *inter alia*, that the owner has the right to select his tenants, subject to the provisions of the contract between the PHA and the local agency; but the agency has the sole right to give a tenant notice to vacate, although the owner may initiate such a request.³⁸

II. INHERENT ADVANTAGES OVER EXISTING PROGRAMS

One of the major criticisms of the existing public housing program has been that it promotes a concentration of low-income families into particular "projects." This confinement has resulted in a "ward of the Government" stigma which has been severely criticized even by the tenants themselves.³⁹ Both of the new rent supplement programs will provide the desired heterogeneity in low-rent housing. Higher-income families, ineligible for rent supplements, will initially be permitted to live in the units constructed under section 101.⁴⁰ The same result is reached under the section 103 program by a proviso that tenants participating in the program cannot occupy more than ten per cent of the units in any one structure.⁴¹ Further, whereas a tenant in the existing public housing program is evicted when his income rises above the maximum limit set for continued occupancy,⁴² the legislative intent concerning section 101 is that an over-income tenant may remain if he is willing to pay the full rent thereafter.⁴³ And, there being no prohibition in the act, it would seem that an over-income tenant under section 103 would also be permitted to remain by signing a private lease with the owner.

Not only do the new programs achieve a desired degree of heterogeneity, but they also lessen the restraint on a tenant's desire to increase his income. This restraint results from the policy under the existing public housing program of evicting over-income tenants;⁴⁴ for in addition to the burden of being compelled to move to another home, the tenant often finds that his increased income is insufficient to enable him to procure decent housing in the private market at a rent equal to a reasonable percentage of his income.⁴⁵

³⁸ *Ibid.*

³⁹ See Housing and Home Finance Agency, *supra* note 3, at 158.

⁴⁰ Federal Housing Administration, *supra* note 14, at 1.

⁴¹ Unless the local public housing agency desires to waive this limitation. HUDA § 103, adding § 23(c) of the United States Housing Act of 1937.

⁴² *Id.* at 156.

⁴³ U.S. Code Cong. & Ad. News 2690 (1965); Hearings on H.R. 5840, *supra* note 3, at 169; see Federal Housing Administration, *supra* note 14, at 1.

⁴⁴ Housing and Home Finance Agency, *supra* note 3, at 153.

⁴⁵ When the public housing agencies set their income limits for admission and continued occupancy at less than the maximum amount permitted by statute, the gap between that income which would permit a tenant to rent a private standard dwelling at a reasonable rental and that income with which he is evicted, becomes greater. See note 3, *supra*.

Opponents of rent supplements have argued that even if there is to be no mandatory eviction of over-income tenants under the new programs, the mere fact that a tenant receives rent subsidies will destroy both his incentive to increase his income (since he knows that a portion of his additional income will be added to his existing rental charge), and his incentive to ultimately own a home. See U.S. Code Cong. & Ad. News 2751-52 (1965). It would seem, however, that most participants would be

An additional advantage to low-income tenants under the section 103 program is that more flexibility is afforded them in accommodating their various needs. Since this program provides for the efficient use of existing housing, the local public housing agencies will be able to furnish quickly temporary or permanent housing to families displaced by governmental action or a natural disaster. Such families usually require immediate assistance in relocation, and the existing public housing program⁴⁶ is not adequate due to the limited number of units available. Other examples of the flexibility afforded by the section 103 program are that elderly persons can be housed in existing structures which are convenient to public transportation and shopping areas, and very large families can be accommodated in existing larger units⁴⁷ which are often unavailable in public housing projects.

The new rent supplement programs will also be more acceptable to municipalities.⁴⁸ In the first place, the real estate tax exemption required under the existing public housing program⁴⁹ is not available under the new programs.⁵⁰ Secondly, the "workable program" requirement under the present public housing program⁵¹ is not applicable to the new section 103 program.⁵² Thirdly, municipalities will benefit from both the increased property values and the decreased need for urban renewal which will result from the indirect stimulus provided by section 103 to owners to rehabilitate substandard units. Where the supply of existing substandard units exceeds their demand in the private housing market, owners of such units may voluntarily rehabilitate them in order to participate in the section 103 program, whereby their vacant units will become income producing and they will be assured

willing to expend the effort to earn the additional income—particularly if it is a substantial increase—since they could utilize approximately 75% of this income for items other than housing; and it is doubtful that the desire for homeownership, where it exists, would be replaced by complacency with the status of tenancy. Cf., participants in public housing in Boston increased their incomes with a resultant increase in their rental charges. Boston Housing Authority, Annual Report 35 (Dec. 31, 1964).

⁴⁶ Under this program, these families are afforded statutory preference for admission. Boston Housing Authority, *supra* note 3, at 11. It seems reasonable to assume that this governmental policy will be continued under the new § 103 program.

⁴⁷ U.S. Code Cong. & Ad. News 2695 (1965).

⁴⁸ The § 103 program will not go into effect in any community unless the local governing body approves the program. HUDA § 103, adding § 23(a)(2) of the United States Housing Act of 1937.

⁴⁹ See Housing Act of 1949, § 305(b), 63 Stat. 427 (1947), 42 U.S.C. § 1410 (1964), adding § 10(h) of the United States Housing Act of 1937.

⁵⁰ HUDA § 103, adding § 23(f) of the United States Housing Act of 1937. No mention of a tax exemption is made in § 101.

⁵¹ United States Housing Act of 1937, § 10(e), 50 Stat. 892 (1937), 42 U.S.C. § 1410 (1964). This section requires a local governing body to submit a general program encompassing all plans for improvement of housing in the community to the PHA for its approval before annual contributions for a public housing project in that community can be made.

⁵² HUDA § 103, adding § 23(f) of the United States Housing Act of 1937. However, it will be applicable to those units under the § 101 program which are located in a community where a workable program had been required previously under some housing legislation. HUDA § 101(f).

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of receiving rents for extended periods of time due to the renewable nature of the section 103 contracts.⁵³

III. PROBLEM AREAS

While the act is quite explicit as to tenant eligibility, it does leave many questions concerning tenants unanswered. Presumably, such questions will be answered by the HHFA's regulations when they are finally promulgated. For instance, the act is silent as to whether a tenant in the existing public housing program will be able to qualify for the new rent supplement programs with their newer and/or more desirable accommodations. It seems unlikely that an existing public housing project would be judged substandard so as to allow a tenant to move to accommodations under the new rent supplement programs. It would appear that a tenant in existing public housing could transfer to a unit under the section 103 program only upon a showing that such a transfer is necessary due to his special needs, e.g., health condition, since this is the policy presently utilized under the public housing program regarding transfers of tenants between projects.⁵⁴

A second question touching upon tenant eligibility concerns the tenant's assets. While the act requires tenants to meet certain income criteria, it does not mention what effect, if any, a tenant's assets will have upon his eligibility. The HHFA, however, has already exercised its power under section 101 to clarify this potential source of unfairness. It has announced its intention to use a form requiring applicants to state, *inter alia*, the combined assets of all members of their household.⁵⁵ There still remains, however, the problem of preventing fraudulent misstatement of assets. Conceivably, the solution might be found in evicting a tenant when the mis-

⁵³ This indirect stimulus has great potential, since a local public housing agency may contract with an owner whose units "may be made suitable" for use under this program. HUDA § 103, adding §§ 23(c), (d) of the United States Housing Act of 1937. As a result, an owner may be assured of participation before he undertakes to rehabilitate his units.

Another suggested improvement to help attain the objective of this act would be a provision granting tax relief to participating landlords in the § 103 program. By permitting accelerated amortization for rehabilitation expenditures, there would be greater assurance that sufficient standard units would be available for use under § 103. Use of such income tax subsidies has already proven effective in the housing programs of other countries. See Wendt, *Housing Policy—The Search for Solutions* 269 (1963). The act does provide for rehabilitation grants to families which own and occupy homes in urban renewal areas. Such grants are limited to \$1,500 per dwelling. HUDA § 106, adding § 115 to Title I of the Housing Act of 1949.

⁵⁴ See, e.g., Boston Housing Authority, *supra* note 24, at 29-30. Whether or not a transfer from public housing to a unit under the § 101 program will be possible seems to depend entirely on the regulations to be issued by the HHFA.

⁵⁵ Federal Housing Administration, *supra* note 14, at 3. The form is entitled "Application Tenant Eligibility for Rent Supplement."

Although there are no formal regulations under the public housing program concerning assets in relation to eligibility, the local public housing agencies do consider an applicant's assets, and presumably they will continue to do so under the new § 103 program. See, e.g., Boston Housing Authority, *supra* note 24, at 10-11.

Assets are not considered in establishing rental charges under the existing public housing program, and presumably this policy will continue under § 103. See, e.g., *id.* at 24-25.

statement is discovered or by imposing still more severe penalties.⁵⁶ An appropriate penalty would be the imposition of a fine up to the extent of the hidden assets.⁵⁷

Opponents argue that the new programs discriminate against those low-income families which have commendably allocated proportionately large shares of their incomes for standard housing; for while they may have incomes low enough to qualify for rent supplements, they will not be eligible since they already live in standard housing.⁵⁸ While this argument has merit, this type of problem is inherent in all housing legislation and thus should not be used to detract from the many advantages that these new programs offer over existing housing programs.

Although this type of "discrimination" is unavoidable, discrimination in the normal sense of the term is avoidable, and the existing housing legislation and the regulations promulgated thereunder already provide the framework for preventing its occurrence with the new rent supplement programs. For example, corporate mortgagors under section 101 will be participating in an FHA mortgage insurance program and are thereby prohibited from engaging in any discrimination when renting their units.⁵⁹ If such a mortgagor is found to be discriminatory and, when given the opportunity, fails or refuses to discontinue his discriminatory practice, the FHA will reject its future applications for mortgage insurance.⁶⁰ In addition, although the HHFA has not already stipulated that the section 101 program is covered by its regulations, which prohibit discrimination in federally assisted programs administered by it,⁶¹ it seems reasonable to assume that the program will be so covered.⁶² The section 103 program is already covered by these regulations since that program is part of the United States Housing Act of 1937 to which they specifically apply.⁶³ Therefore, if an owner under sections 101 and 103 is found to be discriminating in his selection of tenants, the rent supplement payments earmarked for the benefit of participants may be suspended or terminated after he has been given an opportunity to correct the situation and it has been found upon a hearing that he has failed to do so.⁶⁴ A less drastic sanction would be to refuse to grant the owner rent

⁵⁶ Hearings on H.R. 5840, *supra* note 3, at 263.

⁵⁷ Perjury is a penalty currently used by local public housing agencies in their operation of the public housing program. See, e.g., Boston Housing Authority, Application for Dwelling 3.

⁵⁸ Hearings on H.R. 5840, *supra* note 3, at 232.

⁵⁹ 24 C.F.R. §§ 200.300, .310, .315 (1965).

⁶⁰ 24 C.F.R. § 200.345 (1965).

⁶¹ Part I, 24 C.F.R. (1965) was enacted by the HHFA to effectuate Title VI, Civil Rights Act of 1964, 78 Stat. 252 (1964), 42 U.S.C. §§ 2000d to d-4 (1964). Part I provides that federally assisted programs to be enacted in the future may be added to the list of programs already covered by publishing a notice in the Federal Register. 24 C.F.R. § 1.3 (1965).

⁶² See 24 C.F.R. § 1.2(f) (1965).

⁶³ Public Housing Administration, Civil Rights Act of 1964 Circular at 1, Dec. 30, 1964; see 24 C.F.R. § 1.2(f) (1965).

⁶⁴ 24 C.F.R. §§ 1.8, .9 (1965). If subsidies are thus terminated, the question arises whether the owner can require the participating tenants either to pay the full rent or move out, or whether the tenant may legally remain while continuing to pay only his pre-determined share of the total rent. To remedy this, the contract

supplements for future tenants, but continue them for tenants already participating.⁶⁵ In addition, the HHFA may take some other enforcement action, such as referring the matter to the Department of Justice for appropriate proceedings.⁶⁶

Some legislators, although favoring the rent supplement programs in general, argue against their application to existing private accommodations under section 103 on the ground that it is impossible to control the maintenance standards of these private dwelling units. It is true that standard quality can better be assured with new construction rather than with existing units, since the owner of the new units must comply with FHA construction requirements to be eligible for participation under section 101.⁶⁷ However, the great need for additional units to house low-income families is immediate, and, therefore, the use of existing units is imperative. Practically speaking, insufficient maintenance of the units utilized under section 103 should only pose a problem when the demand for private substandard housing is great and its supply is limited. To meet this problem, the local agency could exercise its power to refuse to renew the contract with the owner. This, however, would have an adverse affect on participating tenants. An alternative—and more preferable—solution would be to include a provision in the contract⁶⁸ giving the agency a renewal option and requiring the owner to undertake specified maintenance upon exercise of this option. If the owner then fails to comply, the local agency can remove him from the program and sue for breach of contract. It would seem reasonable that the tenant's relocation expenses would then be a recoverable element of the damages.⁶⁹

The need for adequate low-rent housing is great and immediate. Although the rent supplement programs could lead to many administrative problems, these programs as enacted would seem to meet the great needs and would appear to provide other social and humanitarian benefits which would far outweigh any resultant administrative problems.

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between the Government and the owner should provide that discrimination by the owner will amount to a breach of the contract. The tenant's relocation expenses would seem to be an allowable element of the damages recoverable for this breach.

⁶⁵ See 24 C.F.R. §§ 1.8, .9 (1965).

⁶⁶ *Ibid.*

⁶⁷ Property offered as security for an FHA insured mortgage must meet specified planning and construction requirements proposed by the FHA. See Federal Housing Administration, Minimum Property Requirements for Properties of Three or More Living Units, Bull. No. 160 (1961); Federal Housing Administration, Minimum Property Standards for Low Cost Housing, Bull. No. 18 (1961).

⁶⁸ The owner and the local agency are to determine the procedure for the maintenance of the unit. HUDA § 103, adding § 23(d)(4) of the United States Housing Act of 1937.

⁶⁹ See note 64 *supra*.