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## The Race to Get In, and the Struggle to Get Out: The Problem of Inter-Generational Poverty in Federal Housing Programs

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# The Race to Get In, and the Struggle to Get Out: The Problem of Inter-Generational Poverty in Federal Housing Programs

Matthew Shin\*

## INTRODUCTION

“Escap[ing] public housing projects” is a colloquial phrase describing the plight of people struggling to “escape” publicly subsidized housing projects and assistance programs.<sup>1</sup> This feat often entails overcoming obstacles of considerable magnitude. Even in a modestly performing economy, a given federally subsidized tenant will find innumerable obstacles between her situation, a decent job, and the ability to live independently.

Given society’s tendency to perceive those in lower classes negatively,<sup>2</sup> not enough credit is given to the plight of the publicly subsidized tenant.<sup>3</sup> Consider the predicament of a low-income single

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\* J.D. (2012), Washington University School of Law; B.S. (2007), Michigan State University. I would like to express my deepest gratitude to my family for their unwavering support throughout my legal education; especially Edward for his guidance and encouragement. Further thanks to the devoted members of the Equal Housing Division at the Saint Louis HUD office and the Equal Housing Opportunity Council for sharing their knowledge of and passion for equal housing rights with me.

1. Joseph Seliga, *Gautreaux a Generation Later: Remediating the Second Ghetto or Creating the Third?*, 94 NW. U.L. REV. 1049, 1082 (2000).

2. Susan T. Fiske, *Envy Up, Scorn Down: How Comparison Divides Us*, 65 AM. PSYCHOL. 698, 701 (2010).

3. See Seliga, *supra* note 1, at 1082–83. In Chicago,

The desire of families to escape public housing projects as soon as possible and the lack of staff at the [Chicago Housing Authority] to assist in the relocation process has caused many families to relocate hastily, and has given families few options and little time to explore those options as they relocate. . . . Furthermore, CHA residents entering into the CHA program confront myriad challenges. Some are logistical challenges, including finding “money for transportation and for credit-check and application fees, the time to search and the stamina to navigate an indisputably complex program.” Other challenges relate to landlords who prefer not to accept

mother. Consider the standard costs of raising a child—physician’s visits, formula, diapers, and—especially for single parents—day care.<sup>4</sup> Now consider the plight of a low-income, single mother of a disabled child.<sup>5</sup> In addition to the standard costs of child rearing, she is now faced with the additional emotional and economic costs of raising a disabled child.<sup>6</sup> In both instances, the situation poses an impossible set of circumstances. If a mother misses a day of work, it may at best only be the loss of a day’s pay. But, if her child is disabled and chronically ill, repeated absences are likely to lead to employment termination.<sup>7</sup> Self-sufficiency in these instances seems little more than an impossible dream.<sup>8</sup>

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Section 8 residents. Still other challenges are the discrimination and perception of discrimination felt by public housing residents.

*Id.*

4. Robert C. Ellickson, *The Homelessness Muddle*, 99 PUB. INTEREST 45, 57 (1990), available at [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1459&context=fss\\_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1459&context=fss_papers).

Most homeless families are not random victims of a recent run of bad luck, and it is highly misleading to suggest otherwise. In their study of New York, [James] Knickman and [Beth] Weitzman found that a major cause of family homelessness was the relative inability of heads of homeless families to function independently—a theme missing in the New York Times story on the study, which focused instead on the city’s tight housing market. Similarly, [Harvard psychiatrist Ellen] Bassuk found that the homeless families she interviewed were overwhelmingly headed by young unmarried women, a majority of whom had never had a job and more than half of whom had first given birth in their teens. Some 91 percent of these families were currently receiving [Aid to Families with Dependent Children] payments; a majority had been receiving them for over two years. One-third of these mothers had never known their own fathers and one-third had been physically abused as children.

*Id.*

5. Kari Haskell, *Help Meeting the Challenges of Parenthood and Poverty*, N.Y. TIMES, Nov. 5, 2006, at 45 (acknowledging that poor mothers are 50 percent more likely to have disabled children than wealthier parents).

6. *Id.*

7. *Id.* at 45. “A single mother trying to carve time to tend to a sick child may start off expecting to lose only a few hours of pay. But missing one day too many can lead to losing a job. Unemployment usually means turning to public assistance.” *Id.*

8. This is further accentuated by the fact that the great majority of homeless families consist of single women with young children. See Carol Smith, *A Growing Problem: Fresh Out of Foster Care and Homeless*, SEATTLE POST-INTELLIGENCER (Oct. 18, 2010), <http://www.seattlepi.com/local/article/A-growing-problem-Fresh-out-of-foster-care-and-886284.php>. See also Haskell, *supra* note 5, at 45. “Getting off government rolls or earning above a menial wage requires training, but the conundrum is how a mother already financially strapped and with few options for child care can attend classes.” *Id.*

Another considerable obstacle is subsidized tenants' general lack of access to job training and education.<sup>9</sup> In the scenario above, devoting any meaningful amount of time to attend trainings or school is usually not feasible for single mothers.<sup>10</sup> Prospects for subsequent generations are not very bright either.<sup>11</sup> Unemployment for young adults is a staggering 19 percent, which is the highest recorded rate since 1948.<sup>12</sup> Worse yet, competition for available jobs becomes fierce in depressed economies.<sup>13</sup> The resulting trickle-down effect where overqualified candidates consume entry-level openings formerly available to inexperienced candidates leaves those just entering the workforce at a steep disadvantage.<sup>14</sup>

On the other hand, existing housing subsidy policies allow assisted families to maintain the status quo.<sup>15</sup> Even if a subsidized family does not suffer from the restraints discussed above, there is no external, motivating impetus for such a family to improve its situation.<sup>16</sup> Most housing subsidy programs' primary qualifying

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9. Haskell, *supra* note 5, at 45.

10. *Id.*

11. *See* Smith, *supra* note 8.

For some of those young people, getting pregnant is perceived as a way out of homelessness. There's a perception on the street that if you're about to give birth, you can get housing . . . Children born to homeless mothers, or who experience multiple episodes of housing instability—couch surfing, staying in motels, or shuttling between households when they are young—often mirror that in their own adulthoods.

*Id.*

12. *Id.*

13. "The 30-year-olds are taking the jobs from 20-year-olds, because the 40-year-olds are taking the 30-year-old's jobs," said Putnam. "These guys are truly employment victims of the recession." *Id.*

14. *See id.*

15. *See infra* note 105.

16. *See infra* note 105. *See also* Ellickson, *supra* note 4, at 50. "Conversely, a jobless person who had been staying for months in a round-the-clock, full-service shelter might see little cause to find a job that would enable him to rent a room." *Id.* at 50. "[T]he wretched social environment in many shelters may aggravate underclass pathologies of dependence, unemployment, and substance abuse." *Id.* at 51. Although it may seem tenuous to equate the homeless population with tenants of assisted housing, it seems that homelessness and underclass cultures are intertwined. *Id.*

Finally, the rise in latent homelessness seems linked to the increasing social isolation of the underclass—that is, poor people who grew up in poor neighborhoods in single-parent or no-parent households that were highly dependent on public assistance. During the 1970s the central-city poor became more and more concentrated

criterion is an annual income below a certain level.<sup>17</sup> Upon achieving a level of income that exceeds this threshold, families may become ineligible for continued assistance.<sup>18</sup> In addition, many housing programs provide higher quality living conditions than a family could otherwise afford if their assistance were terminated.<sup>19</sup> Thus, many existing subsidy programs essentially act as disincentives to assisted families' bettering their economic status.<sup>20</sup> As assisted individuals age and have children of their own, the cycle repeats, entrenching a self-perpetuating, socioeconomic prison from which only a fortunate few "escape."<sup>21</sup>

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in poor neighborhoods. The connection between homelessness and the deepening of underclass cultures remains somewhat speculative, however, because interviewers have rarely asked homeless individuals about their cultural backgrounds. Nevertheless, the evidence does suggest that the homeless have disproportionately grown up in underclass households. In 1985 Harvard psychiatrist Ellen Bassuk conducted detailed interviews of families in Massachusetts shelters; she found that one-third of homeless mothers never knew their own fathers. Similarly, [Irving] Piliavin and [Michael] Sosin reported that 38 percent of homeless individuals had received out-of-home care during childhood. The increasing fragility of poor families heightens susceptibility to homelessness in a number of ways. People without appropriate family role models have more difficulty entering the world of work; children who grow up in fragile families (not to mention foster homes) typically have fewer helpers to fall back on when adversity strikes them as adults.

*Id.* at 56–57 (footnote omitted).

17. *See infra* note 105.

18. *See infra* note 105.

19. For example, the Housing Choice Voucher Program subsidizes qualifying tenants by allowing them to pay only 30 percent of their monthly income towards rent while the government covers the difference. Section 8 Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. § 982.1 (1999). This amount of aid enables tenants to live in homes of a higher quality than they otherwise would have been able to afford. If housing assistance terminates with no corresponding increase in income, "it is possible that these residents will move to poor housing stock in segregated areas, further contributing to the creation of a third ghetto." Seliga, *supra* note 1, at 1085–86.

20. Seliga, *supra* note 1, at 1085.

21. *See generally* Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387 (1990).

Even liberal social policy critics, such as William Julius Wilson, view the "truly disadvantaged" as suffering from a social pathology characterized by welfare dependency, unemployment, out-of-wedlock births, female-headed single-parent families, and high crime rates. . . . These social policy critics agree that increasing the availability of affordable housing is not a long-term solution to homelessness. . . . What the homeless need is job training, employment opportunities, day care, counseling, treatment programs for substance abuse and mental disorders, and other social service programs targeted to particular groups designed to enable the homeless

The solution to this problem involves giving subsidized families realistic opportunities and fostering the motivation to take advantage of them. Subsidized families need opportunities to become educated, opportunities to get trained, and opportunities to find sustainable employment.<sup>22</sup> While this sounds simple enough, the current

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or near-homeless to cope with the world and assume responsibility for their lives. The relationship between temporary solutions to, and the roots of, homelessness is exemplified by public housing projects. One need not study the permanent effects of public housing projects to see that such projects fall short as an economical means of housing the poor. Public housing projects ghettoize the poor by entrenching them in environments that are racially segregated, crime-ridden, and populated primarily by welfare-dependent, single-parent, female-headed households. Critics of federal housing policy have argued persuasively that these projects often result in racial segregation, and unsafe, unsanitary living conditions. Nevertheless, in today's housing market, the poor have no other option and actually may be fortunate to end up in public housing.

*Id.* at 390 n.19 (internal citations omitted).

22. Similar stances have been proposed to address the issue of homelessness. *See* Ellickson, *supra* note 4, at 59.

Instead of providing unconditional shelter to all who apply for it, policymakers should devise aid programs that better reflect the diversity of the homeless population and that do more to discourage dependency. . .

. . . [P]olicymakers should reject the policy proposals that stem from the assumption that the homeless are ordinary people down on their luck. . . . [H]omelessness is not mainly attributable to breakdowns on the supply side of the housing market, any more than hunger in the United States can be blamed on inadequacies in food production. Instead, homelessness in most cities stems primarily (if not entirely) from the demand side of the market—that is, from the condition of homeless people themselves. The great majority of homeless people are not random victims of a housing-market squeeze, but rather deeply troubled individuals and families who, when deserving of government aid, should be given tailored financial assistance and help in managing their lives more successfully. . .

. . . [M]ass shelters that serve all comers not only make it difficult to deliver social services, but also foster a subculture of dependence and deviance. A faster, more economical, and less destructive way to house homeless people is to give them vouchers. Voucher programs, however, must be narrowly and carefully designed . . .

. . . Perhaps as many as a third of homeless singles are presently employable. . . and must be encouraged to enter the job market.

*Id.* at 45–59. *See also* Smith, *supra* note 8.

economy is suffering, government budgets are tightening, and even overqualified job applicants are struggling to find work. Therefore, in light of these practical obstacles, a possible solution might be to create community service-based, tenant-operated, government-supervised business operations by conditioning tenant housing assistance on monthly participation quotas. In other words, having subsidized residents work with and for each other via community service initiatives, e.g., tenant-operated, government-supervised childcare facilities in each housing development. The tenants operating it could gain practical experience in running a small business, while tenants taking advantage of it would have an economical means of freeing up time to pursue employment prospects, schooling, and training.

This Note will discuss the issue of inter-generational poverty among the participants of federal housing subsidies and public housing systems. In particular, it will focus on tenants participating in public housing and voucher-based housing subsidies. The Note will also explore and comment on the benefits and shortcomings of related statutes such as the Anti-Drug Abuse Act and the Quality Housing and Work Responsibility Act. Ultimately, this Note concludes that existing conditions on assistance are inadequate, and more rigorous, goal-oriented conditions on housing assistance are necessary to address the issue of inter-generational poverty.

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Young people who have been on the street often don't fit well into existing models of group housing where many young people share small common areas and are required to live under strict rules. [Ruth Blaw, director of the Orion Center, a drop-in center for young adults in downtown Seattle,] suggests a model that allows them more independence, while still providing support service, such as job training and counseling, would be more successful.

*Id.* (alteration added). *See also* Haskell, *supra* note 5.

## I. HISTORY

### A. Types of Public Housing Subsidies

The Housing Act of 1937<sup>23</sup> created federal housing programs with the goal of aiding “low-income families in obtaining a decent place to live and [to promote] economically mixed housing.”<sup>24</sup> Since the Act’s inception, three common means of pursuing this goal have emerged: traditional public housing; project-based Section 8; and the tenant-based Housing Choice Voucher Program.<sup>25</sup>

#### 1. Traditional Public Housing

Traditional public housing involves subsidized housing developments operated by state and local Public Housing Authorities (PHAs).<sup>26</sup> In the past, the United States Department of Housing and Urban Development (HUD) allocated funding for PHAs to acquire and develop new public housing facilities.<sup>27</sup> However, in 1994, HUD ceased allocating funds for new developments in light of Congress’s HOPE VI program, which was established in 1992.<sup>28</sup> HOPE VI subsidized PHAs’ efforts to revitalize distressed public housing facilities in lieu of developing new ones.<sup>29</sup> Tenants’ lease agreements

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23. United States Housing Act of 1937, Pub. L. No. 412, 50 Stat. 888 (codified at 42 U.S.C. § 1437 (2006)).

24. 42 U.S.C. § 1437f(a) (2001). In addition, under its declaration of policy, the act states that:

[T]he Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens, but it is the responsibility of the Government to promote and protect the independent and collective actions of private citizens to develop housing and strengthen their own neighborhoods.

42 U.S.C. § 1437(a)(2).

25. United States Housing Act of 1937, ch. 896, 50 Stat. 888 (codified as amended at 42 U.S.C. § 1437 (2006)); 42 U.S.C. § 1437(v) (1999); Section 8 Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. § 982.1 (1999).

26. 42 U.S.C. § 1437c-1 (2011).

27. 42 U.S.C. § 1437c (2011).

28. Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, 106 Stat. 1579 (1992).

29. 42 U.S.C. § 1437(v). The program “[p]rovides grants to public housing authorities to transform severely distressed public housing sites into economically viable communities and to

in these housing programs automatically renew on an annual basis, and they can only be terminated for good cause.<sup>30</sup>

## 2. Project-Based Section 8

The project-based Section 8 program was created by the Housing Act of 1937, as amended in 1974 (the Act).<sup>31</sup> In this program, private business entities enter into housing contracts with PHAs, where the PHAs agree to supply Housing Assistance Payments (HAPs) to business entities in exchange for dedicating a certain number of their housing units to the program.<sup>32</sup> Qualifying low-income families then apply for and receive housing vouchers that are assigned to specific units in the housing development.<sup>33</sup> Similar to traditional public housing, these agreements automatically renew at the end of each term, and are terminable only for good cause.<sup>34</sup>

## 3. Housing Choice Voucher Program

The Act also provided for the Housing Choice Voucher Program (HCVP), which differs from project-based programs in several key aspects.<sup>35</sup> First, HCVP is considered tenant-based as opposed to

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support service programs.” U.S. GEN. ACCOUNTING OFFICE, GAO-02-76, FEDERAL HOUSING ASSISTANCE: COMPARING THE CHARACTERISTICS AND COSTS OF HOUSING PROGRAMS 2, 75 (2002).

30. Evictions from Certain Subsidized and HUD-Owned Projects, 24 C.F.R. § 247.3 (2009).

31. 50 Stat. at 888.

32. NHLP, HUD HOUSING PROGRAMS: TENANT’S RIGHTS 1/43 (3d ed. 2004).

33. *Id.*

34. 42 U.S.C. § 1437f(o)(7)(c) (2006). Note that this program involves private business entities as owners and operators of these housing developments, and the for-cause standard is actually injected into every lease agreement. *Id.* “[D]uring the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. . . .” *Id.*

35. 24 C.F.R. § 982.1 (2011).

(a) General description.

(1) In the HUD Housing Choice Voucher Program (Voucher Program) and the HUD certificate program, HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. Both programs are generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the

project-based.<sup>36</sup> A tenant-based voucher is not tied to a specific housing unit.<sup>37</sup> When a family is granted a HCVP voucher, it is then free to apply for housing in the private market, and the voucher will subsidize the rent at market rates.<sup>38</sup> However, the housing unit must comply with the voucher-issuing PHA's inspection in order to qualify for the program.<sup>39</sup> A second difference is HCVP vouchers do not

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programs. PHAs are no longer allowed to enter into contracts for assistance in the certificate program.

(2) Families select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rent is reasonable.

(3) In the certificate program, the rental subsidy is generally based on the actual rent of a unit leased by the assisted family. In the voucher program, the rental subsidy is determined by a formula.

(4)(i) In the certificate program, the subsidy for most families is the difference between the rent and 30 percent of adjusted monthly income.

(ii) In the voucher program, the subsidy is based on a local "payment standard" that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

*Id.*

36. 24 C.F.R. § 982.1.

37. *Id.*

38. 42 U.S.C. § 1437f(o)(10)(A); *see also* 24 C.F.R. § 982.1. Market rates will be primarily determined by the unit's size in square footage and number of bedrooms. 24 C.F.R. § 982.

39. 42 U.S.C.A. § 1437f(o)(8)(A)–(C). The inspection requirements are as follows:

(A) In general

Except as provided in paragraph (11), for each dwelling unit for which a housing assistance payment contract is established under this subsection, the public housing agency shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subparagraph (B).

(B) Housing quality standards

The housing quality standards under this subparagraph are standards for safe and habitable housing established—

(i) by the Secretary for purposes of this subsection; or

(ii) by local housing codes or by codes adopted by public housing agencies that—

(I) meet or exceed housing quality standards, except that the Secretary may waive the requirement under this subclause to significantly increase access to affordable housing and to expand housing opportunities for families assisted under this subsection, except

automatically renew at the end of each lease term.<sup>40</sup> Because each voucher is tied to an independent, private landlord's lease agreement, that landlord retains the power to choose not to renew a lease at its own discretion.<sup>41</sup> However, while a landlord retains the right not to renew a HCVP voucher holder's lease, the landlord can prematurely terminate the lease only for good cause.<sup>42</sup>

### *B. Conditions on Assistance*

Qualifying for any of these subsidized housing programs is not difficult for low-income families that do not have members with criminal or eviction records.<sup>43</sup> Additionally, once a family qualifies for subsidized housing, there are only a few requirements for tenants to maintain their housing assistance subsidies.<sup>44</sup>

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where such waiver could adversely affect the health or safety of families assisted under this subsection; and

(II) do not severely restrict housing choice.

*Id.* § 1437f(o)(8)(A)–(B).

40. Owner Termination of Tenancy, 24 C.F.R. § 982.310(d)(iv) (2010).

41. 24 C.F.R. § 982.310(d)(iv). Thus, while traditional public housing facilities and project-based Section 8 programs enter into longer term relationships with tenants that only expire when there is good cause for termination, or the tenant opts out of the program, HCVP vouchers can essentially be indirectly terminated within a year for no cause by simply choosing not to renew a tenant's lease. *Id.*

42. 42 U.S.C. § 1437f(o)(7)(c).

43. *Id.* § 1437f(o)(6).

To be eligible, a family shall, at the time a family initially receives assistance under this subsection, be a low-income family that is—(A) a very low-income family; (B) a family previously assisted under this subchapter; (C) a low-income family that meets eligibility criteria specified by the public housing agency; (D) a family that qualifies to receive a voucher in connection with a homeownership program approved under title IV of the Cranston-Gonzalez National Affordable Housing Act; or (E) a family that qualifies to receive a voucher under section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C.A. § 4113 or 4116].

*Id.* § 1437(f)(o)(4). In addition, PHAs are obligated to screen tenants for “[a] history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants.” Standards for PHA Tenant Selection Criteria, 24 C.F.R. § 960.203(c)(3) (2011).

44. *See infra* note 105.

## 1. Preferences

While many low-income families meet the income requirement for housing subsidies, a significant obstacle can be PHA-imposed waiting list preferences.<sup>45</sup> Housing subsidy waitlists often have thousands of income-eligible families waiting their turn for assistance.<sup>46</sup> However, these waitlists are not necessarily prioritized by how long the families have been waiting.<sup>47</sup>

HUD has authorized PHAs to impose preferences whereby certain qualifications can significantly boost a family's priority on a waitlist.<sup>48</sup> Common examples of such preferences include families with members currently enrolled in school, families with members

45. What Information Must a PHA Provide in the Annual Plan? 24 C.F.R. § 903.7(b) (2011).

46. See Manny Fernandez, *Tenant Held in Scheme to Cheat Subletters*, N.Y. TIMES, Oct. 9, 2010, at A17 (stating New York Housing Authority maintained a waiting list of 130,000 applicants); Cara Buckley, *Housing Authority, Facing Shortfall, May Revoke Rental Vouchers*, N.Y. TIMES, Apr. 7, 2010, at A22 (stating, "Among the many families with newer vouchers in New York are Izolda Mandelblat, 77, and her husband, Moisey Frenkel, 85, who live in a one-bedroom apartment in Inwood, in Upper Manhattan. The couple, immigrants from Ukraine, had been on a Section 8 waiting list for 13 years.");

47. 24 C.F.R. § 903.7(b)(2).

48. See *id.* However, PHAs' preferences are subject to HUD review. *Id.* A PHA must submit to HUD a statement regarding its waitlist policies for verification that it

is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where: . . . (ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site; (iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD; (iv) The PHA includes reasonable measures to assure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity; (v) The PHA provides for review of its site-based waiting list policy to determine if the policy is consistent with civil rights laws and certifications.

*Id.*

who are employed, and families with members who are elderly or disabled.<sup>49</sup>

## 2. Quality Housing and Work Responsibility Act of 1998

The passage of the Quality Housing and Work Responsibility Act (QHWRA) imposed additional requirements on housing subsidies.<sup>50</sup> QHWRA requires nonworking,<sup>51</sup> able-bodied adults in families

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49. Waiting List: Local Preferences in Admission to Program, 24 C.F.R. 982.207(b)(2)–(3), (5) (2005).

50. Quality Housing and Work Responsibility Act (QHWRA), Pub. L. No. 105-276, §§ 501-599H, 112 Stat. 2461 (1998).

51. 42 U.S.C. § 1437j(c)(2)(C) (2000). QHWRA and HUD both fail to specifically define what constitutes “work” in this context. QHWRA’s only guidance is citing section 407(d) of the Social Security Act, 42 U.S.C. § 607(d) (2009).

(d) “Work activities” defined

As used in this section, the term “work activities” means—

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

42 U.S.C. § 607(d).

However, that section of the Social Security Act does not specify how many hours is needed to qualify as “work activity” for the purposes of this kind of exemption. *Id.* However, HUD has in turn suggested that the exemption should require at least thirty hours of work per week. 24 C.F.R. § 960.605(c) (2005); U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE OF PUB. & INDIAN HOUS., PIH NOTICE 2003-17, 2 (2003), available at <http://www.hud.gov/utilities/inter>

receiving federal housing subsidies to participate in an economic self-sufficiency program,<sup>52</sup> or provide eight hours per month of uncompensated, apolitical community service within their community.<sup>53</sup> The consequences of not fulfilling the requirements imposed by QHWRA can be somewhat harsh as “[t]he PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program.”<sup>54</sup> Because of this perceived harshness, there has been some opposition to QHWRA’s requirements.<sup>55</sup> However, a PHA must notify the tenant if it finds that their household failed to meet QHWRA requirements before its lease expires and give it an opportunity to make up the deficiency.<sup>56</sup> Thus, nonexempt

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cept.cfm?/offices/pih/publications/notices/03/pih2003-17.pdf; see also U.S. DEP’T OF HOUS. & URBAN DEV., PUB. HOUS. OCCUPANCY GUIDEBOOK 175 (2003), available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

52. § 512(a)(2), 112 Stat. at 2539.

53. *Id.*

I believe the thinking behind this new requirement was a continued effort to try to get public housing back to what it used to be, which was transitional housing, never permanent housing. Public housing should not be your last stop on the housing road. I think the intent is through this housing, the federal government is helping you become self-sufficient but there may be additional things that can be done to lead to self-sufficiency and one is becoming part of the workforce in some way, even part-time. I think the idea was that by requiring the individuals who live in public housing to do some community work that such work might be a step in the direction of moving closer to the possibility of full-time employment, and it also provides for involvement in the community, to have them contribute to the betterment of the community and to feel more of a part in the community.

*The Experience at HUD*, 13 J. AFFORDABLE HOUS. & CMTY. DEV. L. 280, 296 (2004).

54. Lease Requirements, 24 C.F.R. § 966.4(a)(2)(ii) (2010).

55. See David W. Chen, *In Public Housing, It’s Work, Volunteer or Leave*, N.Y. TIMES, Apr. 15, 2004, at A1 (discussing tenant advocates’ concerns that a single family member that fails to take the QWHRA requirements seriously can result in the entire family losing their home); see also *Affordable Housing Programs: Hearing on H.R. 3995 Before the Subcomm. on Housing and Community Opportunity of the House Fin. Servs. Comm.*, 107th Cong. 5 (2002), available at <http://financialservices.house.gov/media/pdf/042302jw.pdf> (discussing housing advocates’ opinion that the QHWRA requirements are “unjust and discriminatory against low-income persons who receive federal housing assistance”). See also Rachel G. Bratt, *Housing and Family Well-Being*, 17 HOUSING STUD. 13, 14 (2002) (stating the work and program participation requirements have a “punitive ring” to them).

56. 42 U.S.C. § 1437j(c)(3); Assuring Resident Compliance, 24 C.F.R. § 960.607(b)–(c) (2005).

family members' noncompliance with QHWRA requirements will not necessarily lead to termination of housing assistance.<sup>57</sup>

However, of particular concern is a possible imposition of a stricter work requirement for families to continue to receive housing subsidies. The Millennial Housing Commission<sup>58</sup> proposed employment as a condition for housing subsidies<sup>59</sup> in 2002.<sup>60</sup> The Commission argued that "working-age families living in assisted housing, like other able-bodied people, have an obligation to contribute to society as well as accept its help."<sup>61</sup> The brief submitted by the Commission did not offer specifics, but urged Congress to experiment with its ideas.<sup>62</sup> The Commission analogized its proposal with the Aid to Families with Dependent Children, and Temporary Assistance for Needy Families programs.<sup>63</sup> At the same time, several PHAs have already begun experimenting with policies in the same

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57. *Id.*

58. A bipartisan commission was established in 2000 with the purpose of analyzing issues regarding affordable housing by the Departments of Veterans Affairs and Housing and Urban Development. Independent Agencies Appropriations Act, Pub. L. No. 106-74, § 206(a)-(b), 113 Stat. 1047, 1070 (1999).

59. As opposed to employment exempting an individual from QHWRA requirements.

60. BIPARTISAN MILLENNIAL HOUS. COMM'N, MEETING OUR NATION'S HOUSING CHALLENGES 56 (2002), available at <http://govinfo.library.unt.edu/mhc/MHCReport.pdf>.

61. *Id.*

62. *Id.* at 58.

63. *Id.* at 56.

This recommendation is modeled on the reform of the Aid to Families with Dependent Children program, which brought about work requirements coupled with access to support services (such as childcare, education and training programs, and transportation). . . .

This approach helps recipients get and keep jobs, plus provides financial incentives (including more generous income disregards that allow them to keep more of their earnings, and specialized savings accounts exempt from resource limitations) that make work pay.

*Id.*

vein independently.<sup>64</sup> Congress has yet to impose any requirements in line with the Commission's recommendations.<sup>65</sup>

### 3. Cause Requirements

Tenants are obligated to comply with the terms of their landlords' lease agreements.<sup>66</sup> However, participating in housing subsidy programs actually provides some additional protection for the tenant.<sup>67</sup> Landlords that receive federal subsidies in return for their participation in any of the discussed programs can only terminate and evict their tenants prematurely for good cause.<sup>68</sup> Examples of good cause include material violations of the lease agreement, nonpayment of rent, material violation of a state landlord and tenant act, and violent or drug-related criminal activity.<sup>69</sup> However, business, personal, or economic reasons do not qualify as good cause in this context.<sup>70</sup>

### 4. The Anti-Drug Abuse Act

The last requirement for housing subsidies stems from the Anti-Drug Abuse Act of 1998<sup>71</sup> (ADAA) and related HUD-supported PHA

64. *Id.* at 58. However, PHAs have not tackled imposing a work-for-subsidies condition specifically. Instead, experimentation has dealt largely with the issue of housing subsidies posing a disincentive to work. To counter this problem, several PHAs set policies that disregard increased earnings when setting rents, backing work requirements proposed for state and federal welfare policies, set rents that only households with earnings can afford, or setting its admission policies to give preference to working families.

65. *Id.*

66. NHLP, HUD HOUSING PROGRAMS: TENANT'S RIGHTS, Supplement 14/1–14/40 (3d ed. 2007); *see also* 42 U.S.C. § 1437d(l) (2006).

67. *See* 42 U.S.C. § 1437d(l).

68. *Id.* § 1437d(l)(5).

69. *See* 24 C.F.R. §§ 5.858, 5.860, 247.3, 966.4(1)(2)(i), 983.257 (2009).

70. 24 C.F.R. § 247.3. However, if a landlord participating in the Housing Choice Voucher Program wishes to terminate the landlord-tenant relationship for these reasons, it may elect to evict a holdover tenant at the expiration of the lease term. Owner Termination of Tenancy, 24 C.F.R. § 982.310(d)(iii–iv) (2009).

71. Anti-Drug Abuse Act of 1988 (ADAA), Pub. L. No. 100-690, § 5151, 102 Stat. 4181, 4301 (1988) (codified at 42 U.S.C. § 11901 (2000)).

regulations.<sup>72</sup> The ADAA only applies to traditional public housing residents.<sup>73</sup> Basically, the ADAA gives PHAs the authority to evict residents for any criminal or drug-related activity.<sup>74</sup> The ADAA does not distinguish between acts committed on or off public housing property, as a PHA will have authority to evict a tenant for actions alone, regardless of location.<sup>75</sup> In addition, the behavior and actions of each tenant's guests on PHA property is covered under the ADAA as well.<sup>76</sup> Subjective considerations are not taken into account, as tenants will be subject to termination regardless of whether the tenant knew of their guests' drug or criminal activity.<sup>77</sup> Despite how harsh the ADAA may be in this regard, the Supreme Court of the United States approved this particular provision in *HUD v. Rucker* in 2002.<sup>78</sup>

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72. The ADAA was passed in response to drug dealers "increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants." 42 U.S.C. § 11901(3) (1998).

73. 42 U.S.C. § 1437d(1)(6) (2006).

74. 24 CFR § 966.4(f)(12)(i). The regulation states, in relevant part:

To assure that no tenant, member of the tenant's household, or guest engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(B) Any drug-related criminal activity on or off the premises.

*Id.*

75. *Id.*

76. 42 U.S.C. § 1437d(1)(6).

Each public housing agency shall utilize leases which . . . provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

*Id.*

77. Note that this is a stricter provision applying only to traditional public housing facilities. In contrast, property owners are protected under the civil forfeiture statute if they did not actually know that drug-related activity was occurring on their property. 18 U.S.C. § 983(d)(1)(2) (2000). Additionally, a similar defense is available to those with standard leasehold interests if they too did not actually know that such activity was occurring. *Id.* § 983(d)(6)(A).

78. 535 U.S. 125, 128, 135–36 (2002).

Implicit in the terms "household member" or "guest" is that access to the premises has been granted by the tenant. Thus, the plain language of § 1437d(1)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant's knowledge of the drug-related criminal activity.

*Id.* at 131.

In that case, a PHA sought to evict a family from a traditional public housing facility solely based on allegations that their relatives and an in-home caregiver participated in drug-related activities.<sup>79</sup> The tenants themselves did not engage in such activity, and convictions of their relatives and the caregiver were not necessary for grounds for eviction.<sup>80</sup> As for Project-Based Section 8 and the HCVP, alleged criminal and drug activity is also likely to satisfy the good cause requirement discussed above.<sup>81</sup>

However, as a catch-all for criminal activity, Congress passed the “one-strike” statute in 1996<sup>82</sup> in order to counter mass criminal activity in subsidized housing.<sup>83</sup> Under this statute, tenants living in federally subsidized housing or participating in any related federal housing programs are subject to termination for any drug-related or violent criminal activity.<sup>84</sup> Similar to the ADAA, actual convictions are not necessarily required for termination, and only one incident (as the name of the statute suggests) is sufficient.<sup>85</sup>

##### 5. The Section 8 and Public Housing Family Self-Sufficiency Program

After acknowledging the difficulties that many subsidized families face in seeking financial independence, HUD created the Section 8 and Public Housing Family Self-Sufficiency program (FSS).<sup>86</sup> FSS

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79. *Id.* at 128.

80. *Id.*

81. *See supra* notes 68–69, 76–78.

82. 42 U.S.C. § 1437d(1)(6).

83. “The statute provides for the eviction of tenants living in housing projects funded by the Federal government, or otherwise receiving Federal housing assistance, if they . . . engage in certain types of criminal activity on, and in some cases, off, the public housing premises.” *Lowell Hous. Auth. v. Melendez*, 865 N.E.2d 741, 743 (Mass. 2007). In that case, the court upheld the tenant’s eviction for robbing a convenience store. *Id.* at 744. The tenant argued that he committed the crime over a mile from the public housing development, and thus could in no way affect the health or safety of other tenants. *Id.* at 742. The court rejected this argument, stating that some crimes are sufficiently dangerous and violent that it creates fear in fellow tenants that have no choice but to live in the same housing facility. *Id.* at 744–45. In addition, the court’s holding appears to be in line with Congress’s purpose of enacting the “One-Strike” rule of addressing crimes related to the tenants of public housing facilities. *Id.*

84. *Id.*

85. *Id.*

86. 24 C.F.R. § 984.101(a)(1) (2000).

was designed to help low-income families become financially independent of federal or state housing subsidies, or “self-sufficient.”<sup>87</sup> Under the program, only current residents of public housing and Section 8 participants are eligible.<sup>88</sup> FSS is primarily carried out by PHAs, however they are overseen by and remain accountable to HUD.<sup>89</sup>

To aid families’ pursuit of self-sufficiency, PHAs are to provide supportive services under the FSS.<sup>90</sup> The examples of such services most relevant to this Note are child care services, transportation, education, and employment skills training.<sup>91</sup> Unoccupied dwelling

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The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public housing assistance and housing assistance under the Section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

*Id.*

87. 24 C.F.R. § 984.102 (2000). The program defines self-sufficiency as “no longer receiving Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance.” 24 C.F.R. § 984.103 (2000).

88. *Id.*

89. As part of the program, PHAs are to create individual training and services plans with the head of each FSS family along with any adult member of that family who wishes to participate. 24 C.F.R. § 984.103 (2000). The plan is to establish:

(1) The supportive services to be provided to the family member; (2) The activities to be completed by that family member; and (3) The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the PHA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

*Id.*

90. 24 C.F.R. § 984.103(b)(3).

91. 24 C.F.R. § 984.103(b)(3)(1)(4). Other services offered can include:

(5) Personal welfare—substance/alcohol abuse treatment and counseling;

(6) Household skills and management—training in homemaking and parenting skills; household management; and money management;

(7) Counseling—counseling in the areas of: (i) The responsibilities of homeownership; (ii) Opportunities available for affordable rental and homeownership in the private housing market, including information on an individual’s rights under the Fair Housing Act; and

(iii) Money management; and

(8) Other services—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the PHA may

units and common areas in public housing developments may be used for these purposes.<sup>92</sup> HUD's evaluation of the success of these FSS programs is based on the number of families or family members that become self-sufficient, obtain their first jobs or higher paying jobs, become independent of welfare programs, obtain their high school diplomas or higher education degrees, among other such achievements.<sup>93</sup>

Just as PHAs may establish waitlist preferences for housing subsidies, PHAs are also permitted to establish preferences in the FSS selection process.<sup>94</sup> A PHA may apply preferences for up to half of its public housing FSS slots and half of its Section 8 FSS slots.<sup>95</sup> But, unlike pure housing subsidy waitlist preferences, the only express preference that may be imposed for FSS programs is giving priority to families with one or more members that are on a waitlist for, or currently participating in a FSS program.<sup>96</sup> However, "selection factors" may also play a quasi-preference role: while applicant motivation is not classified as a "preference," it is expressly

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determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

24 C.F.R. § 984.103(b)(3), (5), (8).

92. 24 C.F.R. § 984.204 (2000).

93. 24 C.F.R. § 984.102 (2000).

94. 24 C.F.R. § 984.203 (2000).

(a) Preference in the FSS selection process. A PHA has the option of giving a selection preference for up to fifty percent of its public housing FSS slots and of its Section 8 FSS slots respectively to eligible families, as defined in § 984.103, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The PHA may limit the selection preference given to participants in and applicants for FSS related service programs to one or more eligible FSS related service programs. A PHA that chooses to exercise the selection preference option must include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed 50 percent of the total number of FSS slots for each of its FSS programs, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more members participating in the identified programs.

24 C.F.R. § 984.203(a)(1-3).

95. 24 C.F.R. § 984.203(a).

96. *Id.*

permitted as a selection factor, albeit with permissible and prohibited components.<sup>97</sup> Thus, preferences may be given for half of the available slots to families with existing participants or waitlisted members, and a “motivation” selection factor quasi-preference may also apply for all available FSS openings.<sup>98</sup>

A PHA will not be obligated to create a FSS program if it certifies that such a program is simply not feasible in the PHA’s jurisdiction. However, HUD can still override a PHA’s decision to opt out of operating an FSS program.<sup>99</sup> The following factors may render a program infeasible: (1) insufficient funding for, or an overall lack of supportive services; (2) insufficient funding for FSS administrative costs; (3) uncooperative related state and local agencies; or (4) a lack of interest in participating among eligible families.<sup>100</sup>

Upon selection for participation in a FSS program, the head of a family’s household must sign a contract with the PHA.<sup>101</sup> The contract outlines the services the PHA will provide, expectations placed upon the participants, and the means of periodic assessment of progress towards self-sufficiency.<sup>102</sup> The contract also imposes a

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97. 24 C.F.R. § 984.203(c).

98. 24 C.F.R. § 984.203(a), (c). Permissible and impermissible criteria for screening for motivation are listed in the regulation:

(2) . . . Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks which indicate the family’s willingness to undertake the obligations which may be imposed by the FSS contract of participation. However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members’ educational level, and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) . . . Prohibited motivational screening factors include the family’s educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

99. 24 C.F.R. § 984.105(c) (2012).

100. 24 C.F.R. § 984.105(c)(1)(i)–(iv).

101. 24 C.F.R. § 984.303(a) (2012). The contract, known as a contract of participation, includes individual training and service plans, the rights and responsibilities of the family and the PHA, the services expected to be provided by the PHA, and the tasks expected to be completed by the participant(s). 24 C.F.R. § 984.303(b)(1). In addition, the individual training and services plans establish interim milestones that are to be used to gauge the family’s progress towards self-sufficiency. 24 C.F.R. § 984.303(b)(2).

102. *See supra* note 101 and accompanying text.

participant employment obligation: participants must seek and, once the search is successful, maintain suitable employment for the duration of the contract.<sup>103</sup> Noncompliance with the FSS contract may result in the PHA withholding supportive services, terminating the family's participation in the program, or, for families with Section 8 vouchers, terminating or withholding rent assistance.<sup>104</sup> The contract will be considered complete and FSS assistance concluded if the FSS family has met all of its contractual obligations at or before the end of the contract term or 30 percent of the family's monthly income equals or exceeds the published monthly market lease rate for comparably sized rental homes.<sup>105</sup> Upon successful completion of the contract, the PHA may help the family's transition to self-sufficiency by continuing to provide FSS supportive services.<sup>106</sup>

## II. ANALYSIS

A significant issue with existing policies is that they fail to motivate homeless families to improve their economic status or

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103. 24 C.F.R. § 984.303(b)(4). Only the head of the household is actually obligated to seek and maintain employment. 24 C.F.R. § 984.303(b)(4)(i). "Seeking employment" is defined as "[applying] for employment, [attending] job interviews, and [is] otherwise [following] through on employment opportunities." 24 C.F.R. § 984.303(b)(4)(ii). "Suitable employment" is determined by the PHA, and is "based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the PHA." 24 C.F.R. § 984.303(b)(4)(iii).

104. 24 C.F.R. § 984.303(b)(5). However, if the only noncompliance is a lease violation or failure to become independent of welfare, Section 8 assistance should not be terminated or withheld. On the other hand, if the family's failure to become independent stems from the head of the household's failure to adhere to the employment requirement, then termination or withholding may be appropriate. 24 C.F.R. § 984.303(b)(5)(iii). In addition, should the family's participation in the Section 8 program be terminated independent of the FSS program, the FSS contract is terminated as well. 24 C.F.R. § 984.303(h).

105. 24 C.F.R. § 984.303(g). On the other hand, any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for the purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area adjusted for family size. 24 C.F.R. § 984.304(b) (2000). Thus, it appears that for an FSS contract to be considered "complete", income must equal or exceed 80 percent of area median income adjusted for family size *and* 30 percent of monthly income must equal or exceed published market rent for that family's unit.

106. 24 C.F.R. § 984.303(j).

provide support for such improvement among families with histories of serious instability.<sup>107</sup> This issue and others are discussed below.

Waitlist preferences and FSS selection factors appear to encourage low-income families and individuals to focus on bettering their socioeconomic circumstances as a means to more rapidly secure housing subsidies.<sup>108</sup> The idea behind the preferences is to give individuals who are motivated to achieving such improvement priority in obtaining housing.<sup>109</sup> However, a critical flaw in this policy is that many employers and educational programs require at least a permanent address.<sup>110</sup> If a family is in a constant state of transition from place to place—from homes of friends or relatives to homeless shelters and back—that family will be at a sharp disadvantage in seeking employment or schooling.<sup>111</sup> Thus, in some respects, these preference policies only entrench the plight of low-income families who can find neither work nor housing.<sup>112</sup>

While the QHWRA was a step in the right direction, its policies are too weak and its implementation mechanisms too poorly designed to further its intended goals. The requirement of eight hours of community service a month is both too insignificant and too broad to foster an individual's self improvement.<sup>113</sup> First, community service can span a wide range of activities, some of which may or may not impart any sort of particular skills or training to a subsidized or potentially subsidized tenant. Second, eight hours a month does not reflect the realistic demands of a financially independent lifestyle.<sup>114</sup> The eight-hour obligation may have been a compromise among those who insisted on some sort of work requirement and those who resisted a more robust service requirement as punitive and unrealistic.<sup>115</sup> For an entrenched, subsidized family in a subculture where an eight-hour work month is the norm, a standard forty-hour

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107. See Ellickson, *supra* note 4, at 50.

108. 24 C.F.R. § 903.7(b) (2000).

109. *Id.*

110. Smith, *supra* note 8.

111. *Id.*

112. See Haskell, *supra* note 5, at 1.

113. See Ellickson, *supra* note 4, at 50.

114. See Wizner, *supra* note 21, at 387.

115. See *Affordable Housing Programs: Hearing on H.R. 3995 Before the Subcomm. on Housing and Community Opportunity of the House Fin. Servs. Comm.*, *supra* note 55.

work week would be daunting.<sup>116</sup> While the QHWRA gives qualified family members the option to participate in a self-sufficiency program,<sup>117</sup> these programs suffer from the issues discussed below, and family members may similarly be disincentivized to pursue FSS opportunities due to the lifestyle shock that they may entail.

The public housing and Section 8 self-sufficiency act was a definite step in the right direction, but its policies are still too feeble to effectuate its goals.

First and foremost, as discussed above, the self-sufficiency program is optional.<sup>118</sup> One might argue that this is a flaw: if a family member is qualified to participate and federal funding is subsidizing that family's housing costs, he should have a duty to pursue financial self-sufficiency.<sup>119</sup> Real self-sufficiency initiatives should be a central component of federally subsidized housing programs, at least for those family members who are mentally and physically able to work.

Second, PHAs appear to have wide discretion to opt out of operating a self-sufficiency program. Any PHA can exempt itself from operating a self-sufficiency program if it lacks supportive services or sufficient funding, if it deals with uncooperative state and local agencies, or if its eligible families are uninterested in participating. Thus, if HUD does not object, a PHA can avoid the self-sufficiency act by claiming one of the permitted excuses.<sup>120</sup> If a PHA opts out of FSS, that jurisdiction's subsidized families cannot take advantage of the assistance services that the program might provide, thus trapping families who may otherwise be capable of pursuing financial independence. The day care example is particularly relevant in this context:<sup>121</sup> it may be impossibly difficult for a low-income, single mother to find the time or resources to participate in an education program or pursue employment while taking care of her children. Without a self-sufficiency program in place, the only remaining affirmative obligation on family members

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116. See Wizner, *supra* note 21, at 387.

117. See 24 C.F.R. § 984.203(c) (2000).

118. *Id.*

119. BIPARTISAN MILLENNIAL HOUS. COMM'N, *supra* note 60, at 56.

120. 24 C.F.R. §§ 984.105(c)(1)(i-iv) (2010).

121. See Ellickson, *supra* note 4, at 47-49.

in public housing is the eight-hour community service requirement,<sup>122</sup> which for the reasons stated above, is inadequate to meet any of the Act's intended goals.<sup>123</sup>

Third, the self-sufficiency act only uses employment and educational milestones to gauge the success of PHA programs.<sup>124</sup> However, these factors do not take the difficulty of finding jobs, especially in tight job markets and weak economies, into account.<sup>125</sup> It's wrong that opportunities for subsidized families to participate in program benefits turn on the health of the PHA jurisdiction's economy.<sup>126</sup> While the program does allow for time extensions if a participant does not meet his employment goals within the prescribed timeframes, the only acknowledged milestones are formal education and employment.<sup>127</sup> Thus, a participant may have diligently pursued employment or education, but if there are simply no opportunities available, that participant may be in violation of the program contract notwithstanding even herculean efforts.

Finally, while the self-sufficiency program makes job skills training available, participants are not required to take advantage of it.<sup>128</sup> An otherwise employable individual in an entrenched, subsidized family may experience problems finding employment due to lack of skills necessary for holding any type of position.<sup>129</sup> Those skills are not necessarily trade or other specialized skills or education—many entrenched individuals lack time management, punctuality, and commitment skills.<sup>130</sup> If an individual has not had experience in shouldering responsibility or a set and structured schedule due to a life of constant change and hardship, odds are good that they simply have not had an opportunity to develop these obviously relevant skills and considerations.<sup>131</sup>

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122. Quality Housing and Work Responsibility Act, Pub. L. No. 105-276, §§ 501–599, 112 Stat. 2461, 2539 (1998).

123. See Ellickson, *supra* note 4, at 47–49.

124. See 24 C.F.R. § 984.303(b)(2) (2010).

125. See Smith, *supra* note 8.

126. 24 C.F.R. § 984.105(c) (2010).

127. See 24 C.F.R. § 984.303(b)(2).

128. 24 C.F.R. § 984.103(b)(3) (2012).

129. See Ellickson, *supra* note 4, at 57.

130. *Id.*

131. *Id.*

### III. PROPOSAL

The issues described in the foregoing section can be substantially addressed by uniformly imposing a training or work requirement across all government subsidized housing programs. By conditioning each employable subsidized tenant's assistance on either participation in training programs to better that tenant's ability to find and keep work or actually obtaining employment should be a sufficiently motivating and enabling factor to encourage tenants to "escape" inter-generational poverty, as discussed below.

Although the QHWRA does impose these requirements to some extent, the extent is nowhere near sufficient.<sup>132</sup> QHWRA only requires a subsidized, "able-bodied" tenant to work eight hours of community service a month—nowhere near enough time to earn a living wage in an equivalent, compensable job.<sup>133</sup> Instead, because the financial demands of living typically requires full-time employment in order to earn a livable wage, a QHWRA analogue should require able-bodied tenants with housing subsidies to work close to full-time hours in order to prepare them for financial independence. Continued housing subsidies should be conditioned on completion of at least thirty hours of work, education, or training each week.

As a part of imposing a true "work or train" requirement, the application process for any of the housing subsidies, whether it be a HCVP voucher or a public housing unit, should include information designed to elicit the prospective adult tenant's ability to participate in some sort of job training or education program and ultimately work. Information regarding the tenant family's size and age and the presence of legally cognizable disabilities, among other factors, should be taken into account and exemptions granted accordingly. No work or education requirements should be imposed on tenants who are forced to rely on government subsidies because they are physically or psychologically incapable of working and living independently.

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132. See Quality Housing and Work Responsibility Act, Pub. L. No. 105-276, §§ 501–599, 112 Stat. 2461, 2518 (1998).

133. *Id.* at 2533–38.

The major impediment to the success of this approach is the impact of national and local economies on participant success.<sup>134</sup> If unemployment rates are such that qualified, trained, and unassisted job seekers have difficulty securing employment, it may be unreasonable to demand that subsidized tenants with far less training and qualifications successfully compete in those job markets.<sup>135</sup> In addition, an ailing economy inhibits federal, state, and local governments' ability to fund development and operation of effective job training facilities with the capacity to handle all employable low-income adults living in or needing subsidized housing.

Theoretically, some of the significant barriers to work can be addressed by creating tenant-operated, independently managed businesses and facilities. As suggested earlier, a particularly relevant example would be creating a day care in each public housing facility.<sup>136</sup> A PHA could convert two adjacent, two-bedroom apartments into a day care center. Tenants would then be able to drop off their children and pursue their own training programs. The PHA could recruit volunteers or paid employees to manage tenant-employees who actually run the day care center.<sup>137</sup> Part of the managers' duties would include providing day care-specific skills training to the tenant-employees: how to interact with children, how to help children learn, and how to manage the facility's finances. Another part of the managers' duties would be providing tenant-employees with universally applicable skills training: punctuality, professionalism, and responding to and delegating authority.<sup>138</sup>

Other aforementioned conditions on housing assistance can reinforce the viability of these facilities. The ADAA will operate to ensure that all tenant-employee operated facilities remain drug-free.<sup>139</sup> Eviction for cause provisions in subsidized housing leases and

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134. See Smith, *supra* note 8.

135. *Id.*

136. See Ellickson, *supra* note 4, at 50.

137. Much like the FSS program, a governance hierarchy between the facility, the PHA responsible, and HUD would work to ensure that each tenant-employee run facility would ensure accountability. 24 C.F.R. § 984.103 (2012).

138. See Ellickson, *supra* note 4, at 50.

139. 42 U.S.C. § 11901 (2006).

PHA oversight will work to discourage incidences of violence or disruption.<sup>140</sup>

While this is but one example, the model could be applied to a wide range of businesses and facilities. The practical impact would be widespread tenant training in a variety of disciplines, expanded services available to subsidized tenants, and ideally an increase in housing subsidy participant turnover as tenants become more financially independent. As these successful tenants “graduate” from subsidized housing, doors to opportunity for prospective tenants on public housing and Section 8 waitlists, deprived of housing assistance for years due to lack of funding, will unlock. If attitudes toward work can be changed in a new generation of assisted-housing tenants, we can make progress toward eliminating inter-generational poverty.

#### CONCLUSION

While meeting the immediate needs of families who cannot afford to pay market rates for acceptable housing, subsidized housing programs should strive to encourage and help employable, low-income tenants achieve independence and eliminate the need for those families to be subsidized in the future. Intentionally or not, existing subsidized housing program policies now operate to maintain the status quo and do little to reverse inter-generational poverty. Subsidized tenants are treated too similarly to financially independent citizens in that termination can only occur in the event of a lease violation.<sup>141</sup> Instead, public assistance should obligate tenants to participate in programs like the FSS program, or preferably the more rigorous analogue suggested above. As it stands, the FSS program suffers from the fact that it only acknowledges actual employment or formal education as evidence of the program’s success.

While recently enacted applicable statutes do suggest that Congress intended to aim subsidized housing programs towards tenant transition to independence,<sup>142</sup> no current program makes a real

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140. 24 C.F.R. § 984.103.

141. There is also the one-strike requirement imposed by the ADAA, but many lease agreements include some illegal conduct prohibition. *Id.*

142. 24 C.F.R. § 984.102 (2012).

step in that direction. Until the design of these programs is altered to effectively implement workable self-sufficiency strategies, inter-generational poverty and dependence will continue to exist.