

Chapter 9

Federally Assisted Housing: A Housing Crisis for Poor Women

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This nation is facing a housing crisis. There is a grave lack of safe, sanitary and decent housing at levels affordable to the poor. In 1989 there were 12 million households that had incomes below the poverty level, which means an income of approximately \$10,000 for a family of three.¹ This housing shortage is a particular crisis for poor women. More than half of all poor households in 1989 were women living alone or female-headed households.² In 1989, about three-fifths (i.e., 7.5 million) of all poor households were renters. Approximately 70% of the single-parent poor households were renters. In 1989, more than half of the single-parent households (53%) spent more than 30% of income on housing; 31% spent more than 50% of income on housing, lived in substandard housing, or both.³

What is Creating the Housing Crisis?

There is a widening gap between the supply and the demand for low-rent housing. Low-rent housing is housing affordable by a poor person paying 30% of income for rent. For example, if net income is \$10,000, the affordable rent would be \$250 per month (30% of monthly income of \$833). In 1970 there were 6.9 million low-income units and 6.4 million low-income renters. In other words, there were more affordable units than poor families. By 1989 there were 9.6 million poor renters, an increase of 3.2 million, but only 5.5 million low-rent units. In 1989, there was an affordable housing gap of 4.1 million units. The gap is probably wider today because of the recession and slow economic recovery.

The Federal Housing Programs Are Not Meeting the Need

The government assists only one-third, or 2.7 million, of the poor-renter households. The remaining 4.8 million poor-renter households paid the full cost of housing without government assistance. Three-fifths of all households in subsidized housing are elderly women or female-headed households.⁴ There are estimated to be 1.8 million people on the waiting lists for public and subsidized housing.⁵ Federal funding for poor households declined precipitously in the 1980s. From fiscal year 1977 to 1980, HUD made commitments to assist an average of 290,000 families each year. From 1981 to fiscal year 1991 the average number of new commitments fell to 78,000 per year. Had the level of commitment been maintained during the 1980s, some 2.3 million more poor families would be receiving assistance.

The amount of housing benefits provided to poor families should be contrasted with the housing subsidies that primarily benefit the middle and upper income families. In fiscal year 1990, direct federal spending on low-income housing assistance was \$18.3 billion. But the tax deductions for mortgage interest and property taxes amounted to \$78.4 billion, or more than four times as much. These tax benefits go to the highest-income families. In 1991, some 81% of the tax benefits from mortgage interest went to 20% of the families, those with incomes above \$50,000. In addition, the richest 5%—the 4.3 million households with incomes above \$100,000—received 31% of the benefits of this deduction.

The Current Stock of Federally Assisted Housing Is Threatened

Currently, 1.3 million families are served by the public housing program. During the 1980s nearly 15,000 units of public housing were lost. In 1987, it was anticipated that as many as 50,000 more units could be lost.⁶ In 1990 about 80,000 public housing units across the country were vacant. About two-thirds of these were vacant because of needed rehabilitation.⁷

Prior to 1990 it was anticipated that as many as 300,000 units of federally subsidized housing would be lost through prepayment of the federal mortgages by private owners and cancellation of all federal controls. Congress has addressed this problem.⁸ But the Act is estimated to cost \$2.9 billion in fiscal year 1993 and similar amounts for the next several years. If the funds are not provided, the federally subsidized private owners will be able to leave the program and displace their tenants. Over 960,000 units of Section 8 housing are also threatened. Similar to the operation of public housing, Section 8 pays the difference between 30% of tenant income and a contract rent for the unit. Contracts for these units are expiring. It will cost nearly \$30 billion to renew the contracts for all these units in the next four years.

Women Residents and Applicants for Public and Federally Assisted Housing Face Special Barriers

Women have faced barriers in obtaining admission to federally assisted housing. Housing is not an entitlement program. Not every eligible low-income tenant is entitled to a low-rent unit or housing subsidy. Federally assisted landlords and public housing authorities establish admissions criteria to determine who is eligible

and to screen tenants so as not to admit tenants who will not be able to comply with the obligations of tenancy. Some PHAs and federally assisted landlords have interpreted their obligation to screen tenants in a manner that denies housing to certain classes of women. These PHAs and landlords have adopted admissions criteria that have nothing to do with whether the family or individual will fulfill the obligations of tenancy. Instead, the criteria are based upon the individual's status. For example, PHAs and federally assisted landlords have excluded families because the head of household was an unwed mother,⁹ a battered spouse,¹⁰ not a member of a two-parent household,¹¹ or had not established a residence separate from the current family member whom she wished to leave.¹²

Many women have successfully challenged such admission policies. The successful cases have been those that attacked established policies of the PHA or landlord which sought to exclude a certain class of applicants. One of the first public housing admissions cases involved a challenge to the automatic exclusion of unwed mothers from housing run by the Housing Authority of Little Rock.¹³ The court proscribed the automatic exclusion of unwed mothers, describing the policy as "drastic beyond reasonable necessity." In the court's eyes the policy possessed the fatal flaws of inflexibility and general disharmony with the spirit and aims of the low-rent housing program. In so finding the court explained that the prohibition was absolute, making no distinction between the unwed mother with one child and the unwed mother with ten children. Shortly after the decision in *Thomas*, HUD issued a directive which prohibited a PHA from establishing policies which automatically deny admission to a particular class, such as unmarried mothers.¹⁴

Despite this directive, nearly fifteen years later the New York City Housing Authority was sued by a number of applicants including a battered woman who wanted admission to public housing but was being denied it because she had not established a residency independent from the batterer and lived independently for six months.¹⁵ This minimum duration-of-family composition policy was also found to be illegal. The *James* court relied upon the decision in *Thomas* and the regulations to strike down the policy because it created an absolute category and denied housing to everyone who fell into the category without allowing for a fuller investigation to determine the individual circumstances of the applicant. Thus, the lesson of this case is that, despite clearly enunciated regulations, the tenant had to resort to litigation to obtain admission. Undoubtedly

similar policies in effect that adversely affect women in particular have not been challenged, and prevent women from obtaining the affordable housing that they desire.

The more difficult case is that of the battered spouse who was denied a unit because the PHA director feared for her safety if she were to be admitted to the public housing unit.¹⁶ The relevant facts in this case are that the applicant was residing in temporary housing owned by the public housing authority that was leased to a battered women's shelter. The aggressor was at the time of the assault staying with friends or one of his two sisters who also lived in the project. The batterer damaged PHA property at the time of the assault. The applicant filed and obtained a protective order after the assault at the project. Criminal charges were not pursued because she did not receive notice of the hearing. Later the applicant filed criminal charges against the batterer on a subsequent assault for which he served 10 days. The mother of the applicant was a long-time employee of the PHA, and she told the director that she feared for her daughter's life if she were admitted to the project.

The court in upholding the denial of admission found that the PHA had not acted in an arbitrary or capricious manner. The opinion of the court is, however, wrong. It is arbitrary and capricious to deny admission to an applicant based upon the acts of a third party over whom the applicant had no control, especially since she took all reasonable steps to prevent the recurrence. The reason that this case is more difficult is because it provides the appearance of an individualized determination, but fails to focus on the policy of excluding an individual based upon the acts of a third party over whom the tenants had no control. The court also noted but failed to weigh the changed circumstances (i.e., the actions that the applicant took to prevent the recurrence) which indicate the probability of future favorable conduct.¹⁷ Finally, it is likely that this opinion would not be followed today because a person who lives with an individual who engages in physical violence is considered involuntarily displaced and is afforded a priority for admissions to public housing and Section 8.¹⁸ This priority policy could be used to overcome the PHA's policy based upon a claim of fear for the safety of the applicant and should aid in convincing a court or PHA that excluding a tenant on this basis is arbitrary.

Women also face barriers in maintaining the federally assisted housing at affordable rental levels. Most low-income tenants residing in federally assisted housing pay a rent set at 30% of adjusted income. Because rent is a function of income, the definition of income is very

important. Family income is defined to include all income anticipated in the next 12 months. Child support payments are considered to be income. Women are often charged more for rent because child support payments are included in income, whether the woman receives the payment or not. Those tenants who have challenged the practice have been successful in getting the landlords to exclude this income.¹⁹ But the problem will undoubtedly recur because PHAs and federally assisted landlords are instructed to include the child support and alimony and to exclude it (in the case of several programs) only if the tenant reports that it has not been received and has taken steps to collect the money, including filing a court action or with the appropriate agencies. There is no basis for requiring tenants to take steps to collect child support payments or pay an excessive rent, but the HUD policy has not been changed.²⁰ In addition, there is no directive explaining to the PHAs and federally assisted landlords that child support is notoriously an unreliable source of income for poor women, so that care should be used to anticipate it realistically.

Women are also harmed by a related policy that includes that child support payments in the income of the payer, even though the payer does not receive the income because it is deducted from payer income through garnishment.²¹ Such a policy discourages the payer, generally the man, from earning income and thereby increasing the child support payment: his rent, based upon 30% of his income, will include the payment and thus exceed ability to pay.

Both of these issues, including income, for purposes of establishing rent, money not actually received, and a deduction for payments made for child or spousal support, have been addressed in legislation.²² But these legislative changes were made subject to appropriation acts and Congress has not taken the necessary next step in an appropriations act.

Women also face eviction for reasons that impact adversely upon them because they are women. Women are often faced with eviction for the acts of guest or other third parties and for allegations that they have boyfriends living in their apartments. In federally assisted housing, tenants can be evicted only for good cause. The case law is still developing to define the permissible grounds for eviction. But good cause is generally defined to mean that there must be a serious or repeated violation of the lease or local law. Using this standard, women whom the PHAs have sought to evict because they were assaulted and battered on the pre-

mises have argued that there were no grounds for eviction because the disturbance was a one-time event that did not seriously disturb other tenants.²³

In situations involving the acts of other third parties, women and others have successfully argued that they should not be evicted for the acts of parties over whom they have no control or for acts of which they have no knowledge. Thus a woman has successfully argued that she should not be evicted because a brother brought a gun into the apartment without the tenant's knowledge.²⁴ In another case, a woman's tenancy was threatened by a fight between a boyfriend and ex-spouse and subsequent property damage by the then ex-boyfriend and assault by the ex-spouse. But because the tenant could not have known that the fight would happen, and took steps to keep the ex-spouse off the premises, she retained her tenancy.²⁵

A change in circumstances or responsible reaction to an unanticipated event are also arguments that women have used successfully. For example, women have argued that they reported the assault of the batterer to the police, or that they have obtained a restraining order to keep the aggressive individual away from the unit, or have excluded the offending family member from the household.

When the project owner or PHA is seeking to evict a woman because her boyfriend is allegedly living with her, the arguments made by the woman to retain her tenancy are different. In some cases the woman is in a Catch-22 situation. She wants the man on the lease but the landlord will not permit it, and upon being informed of the tenant's desire the landlord seeks to evict her. In these cases the woman argues that the landlord's action to deny her request for a lease change is arbitrary. The issues become more complicated when the individual that the woman wants to add to the lease has a criminal record. But some tenant organizations have been able to negotiate with the landlord. The tenant has to demonstrate changed circumstances that will portend the boyfriend's or spouse's favorable future behavior.

When the man is merely visiting, tenants have successfully argued that PHAs and federally assisted landlords cannot impose standards of morality upon the tenant if the tenant's conduct is not interfering with others tenants' use and enjoyment of the property. This argument is most successful when the boyfriend who sleeps over at a woman's apartment has another fixed place of residence.²⁶ The woman has a more difficult argument when the boyfriend has no other fixed place of

residency but still is not living with her. Nevertheless, some courts have been sympathetic to the woman's position and have focused the inquiry on whether the facts demonstrate that the man was actually living in the unit or was just visiting.²⁷

Conclusion and Recommendations

The issues facing women applying for or residing in federally assisted housing are varied. The most significant problem, however, is the critical lack of affordable units. This lack is most emphasized by the statistic that one-third of the homeless population is women with children. The issues involving a woman's security in tenure in federally assisted housing can be addressed through legislation and aggressive enforcement of tenant's rights. Some recommendations for action are:

- Expand the public housing program and continue to fund the Section 8 Certificate program so that more families are served.
- Increase the operating subsidies for public housing so that the vacant units can be rehabilitated and returned to the market and the occupied units can be adequately maintained. Also, fully fund the flexible subsidy program so that federally subsidized, privately owned housing can be fixed up.
- Monitor compliance with the current requirement that for every public housing unit sold or demolished another is built.²⁸
- Demand adequate funding of the prepayment program for the federally subsidized projects.
- Demand adequate funding for the extension of the expiring Section 8 contracts.
- Urge that the tax deduction that a family can take for mortgage interest and taxes be changed (by either capping it, changing the deduction to a credit, or eliminating the deduction for a second home) and that any savings be earmarked specifically for low-income housing.²⁹
- Amend the Public Housing and Section 8 statute to provide that "no tenant or household member shall be evicted for activities of others if he or she did not know about these activities or did not consent to them."
- Implement the statutory provisions (1) defining income that states that "any amounts not actually received by the family may not be considered as income"³⁰ and permitting (2) the deduction of \$550 for each dependent, (3) the \$550 deduction for payments made for child or spousal support, (4) the deduction of medical expenses for non-elderly families and the deduction of 10% of earned income.³¹
- Limit project owners and PHAs admissions criteria to consideration of only (1) the applicant's history of meeting financial obligations including rent, (2) any history of the applicant's family causing a disturbance to neighbors or

destruction of property, (3) any history of criminal activity, and (4) any prior evictions. Any information should be considered only to the extent that it provides a sound basis for predicting the applicant's likelihood of defaulting on his or her obligations as a tenant. Consideration must also be given to the time, nature, and extent of the applicant's conduct and any other factors which might indicate a reasonable probability of favorable future conduct.

Notes

¹ Unless otherwise noted, the statistics cited in this paper are from Lazere, Edward B., *A Place to Call Home; The Low Income Housing Crisis Continues*, Center on Budget and Policy Priorities (Wash. D.C. 1991).

² Of the 4.5 million poor people who lived alone 73% were women, two-thirds of which were elderly. Nearly one-half of the 7.9 million poor households of two or more were female-headed.

³ In 1989, 62 percent of the poor elderly households were homeowners. But they too bore a heavy cost of housing. Approximately 68 percent of the poor elderly spent at least 30 percent of their income on housing and 41 percent spent at least half of their income on housing.

⁴ *Unlocking the Door: An Action Program for Meeting the Housing Needs of Women*, Women and Housing Task Force, National Low Income Housing Coalition (March 1991).

⁵ These figures are not completely reflective of the need. The waiting lists may contain duplicate names as some people apply for several types of housing. But many PHAs and project owners have closed their waiting lists, so that no new families can apply.

⁶ National Housing L. Project, *Public Housing in Peril*, Berkeley: National Housing Law Project, 1990.

⁷ There is more than likely an overlap between the units projected for demolition and the number of vacant units. These two figures were obtained from different reports.

⁸ 12 U.S.C. § 12,713.

⁹ *James v. Housing Auth.*, 282 F. Supp. 575 (E.D. Ark. 1967).

¹⁰ *Ullom v. Housing Auth.*, No 82-0085-W (N.D. W. Va. June 21, 1983).

¹¹ *Hoskie v. Housing Auth.*, No. N 78-17 (D. Conn. consent decree filed Oct. 27, 1983), 17 *Clearinghouse Rev.* 1,240 (No 23,499, Mar. 1984).

¹² *James v. New York City Hous. Auth.*, 622 F. Supp. 1356 (S.D.N.Y. 1985).

¹³ *Thomas v. Housing Auth.*, 282 F. Supp 575 (E.D. Ark. 1967).

¹⁴ 24 C.F.R. § 960.204 (1991).

¹⁵ *James v. Housing Auth.*, 282 F. Supp. 575 (E.D. Ark. 1967).

¹⁶ *Ullom v. Housing Auth.*, CA No 82-0085-W (N.D. W.Va. June 21, 1983).

¹⁷ 24 C.F.R. § 960.205(d) (1991) (the criteria for selecting applicants shall include consideration of other mitigation information if adverse information is received).

¹⁸ See, e.g., 24 C.F.R. § 960.211(d)(2) (1991).

¹⁹ See, e.g., Letter from Kirk L. Gray, HUD Regional Director, Office of Public Housing (Region III), to Tony Sade, Legal Aid Society of Charleston, West Virginia (Sept. 1985) (in income determination calculations, when there is a verifiable pattern of nonpayment of child support, PHA should consider the actual documented pattern of payments, not the payments ordered by the court); *Johnson v. United States Dept. of Agriculture*, 734 F.2d 774 (11th Cir. 1984) (FmHA case involving, *inter alia*, challenge to policy of including as income all court-ordered support payments: court stated that FmHA will have to prove reasonableness of this income calculation).

²⁰ Compare *Hemekes v. Plourde*, No. SKO-90-FE-84 (D. Me. Apr. 17, 1991) (only income received is counted towards rent calculations; failure of tenant to attempt to collect child support due but not paid is not grounds for eviction for nonpayment of rent in Section 8 new construction unit, despite HUD Occupancy Requirements of Subsidized Multifamily Housing Programs 4350.3, through CHG-20 (Nov. 1981-Jan. 1992), ¶ 3-6), CHG-1 (Mar. 1985).

²¹ *Lorain Metropolitan Housing Auth. v. Cajka*, No. 88 CVG 1065 (Ohio Mun. Ct., Lorain Cnty., Feb. 6, 1989) (Clearinghouse No. 44,256) (child support payments are not income for the payor).

²² 42 U.S.C. § 1437a(b)(4) and (5).

²³ *Moundsville Hous. Auth. v. Porter*, 370 S.E.2d 341 (W.Va. 1988) (beating of tenant by boyfriend was not good cause to evict even though tenant did not take steps before the assault to exclude him from household); *Heartland Realty Management, Inc. v. Case*, CV-90-04160 (Idaho 3rd Dist. Ct., Canyon Cnty., Finding of Fact Conclusions of Law & Order, Dec. 28, 1990) (Clearinghouse No. 46,512) (no good cause for parties and domestic violence because other tenants had similar parties and only proof of disturbance of other tenants due to domestic violence was that police were called).

²⁴ *Chicago Hous. Auth. v. Rose*, 148 Ill. Dec. 534, 560 N.E.2d 1131 (Ill. App., 1st Dist. 1990) (guns in apartment without tenant's knowledge are not grounds for eviction).

²⁵ *Peabody Properties v. Donnelly*, No. 18066 (Mass. Super. Ct. Apr. 26, 1985), *aff'd*, 22 Mass. App. 1101 (1986).

²⁶ See, e.g., *Messiah Baptist Hous. Dev. Fund v. Rosser*, 400 N.Y.S.2d 306 (1977).

²⁷ *Kurdi v. DuPage Cnty. Hous. Auth.*, 161 Ill. App.3d 988, 514 N.E.2d 802 (1987) (reversing trial court approval of Section 8 termination decision based on alleged unauthorized occupant because the decision was based on hearsay and against "manifest weight of evidence").

²⁸ 42 U.S.C. § 1437p.

²⁹ In California it is estimated that if the mortgage interest deduction was capped at \$70,000, it would save \$60 million.

³⁰ 42 U.S.C. § 1437a(b)(4).

³¹ 42 U.S.C. § 1437a(b)(5).