

# The Banking Law Journal

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Steven A. Meyerowitz

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# The Brooke Amendment and Section 8 Housing: Revisited

*Timothy D. Naegele\**

*In the late 1960s and early 1970s, Congress enacted the Brooke Amendment relating to public housing, and its companion undertaking, the “Experimental Housing Allowance Program,” which morphed into Section 8 housing. In this article, the author of these critical housing*

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\* Timothy D. Naegele served as counsel to the U.S. Senate Committee on Banking, Housing, and Urban Affairs (and as counsel to the late Senator Edward W. Brooke of Massachusetts), 1969-1971. He authored the Brooke Amendment, the Experimental Housing Allowance Program that morphed into Section 8 housing, and other laws. Mr. Naegele, currently managing partner of Timothy D. Naegele & Associates, may be reached at [tdnaegele.associates@gmail.com](mailto:tdnaegele.associates@gmail.com).

This article is the fifth in the “Revisited” series of articles by the author for THE BANKING LAW JOURNAL, which reexamine subjects that have been dealt with previously by the author. See (1) Timothy D. Naegele, *Standby Letters Of Credit And Other Bank Guaranties: Revisited*, 136 BANKING L. J. 198 (April 2019) (<https://naegeleblog.files.wordpress.com/2019/04/timothy-d.-naegele-standby-letters-of-credit.pdf>); (2) Timothy D. Naegele, *The Bank Holding Company Act’s Anti-Tying Provision: Almost 50 Years Later—Part I*, 135 BANKING L. J. 315 (June 2018) (Naegele 2018, Part I) and Timothy D. Naegele, *The Bank Holding Company Act’s Anti-Tying Provision: Almost 50 Years Later—Part II*, 135 BANKING L. J. 372 (July/August 2018) (Naegele 2018, Part II) [The combined article, Parts I and II, can be read at <https://naegeleblog.files.wordpress.com/2018/08/timothy-d-naegele-banking-law-journal.pdf>]; (3) Timothy D. Naegele, *The Bank Holding Company Act’s Anti-Tying Provision: 35 Years Later*, 122 BANKING L. J. 195 (Naegele 2005) ([http://www.naegele.com/documents/antitying\\_3.pdf](http://www.naegele.com/documents/antitying_3.pdf)); and (4) Timothy D. Naegele, *The Anti-Tying Provision: Its Potential Is Still There*, 100 BANKING L. J. 138 (1983) (Naegele 1983) (<http://www.naegele.com/articles/antitying.pdf>). See also Timothy D. Naegele, *Are All Bank Tie-Ins Illegal?* 154 BANKERS MAGAZINE 46 (1971) (Naegele 1971) (<http://www.naegele.com/articles/banktieins.pdf>); Timothy D. Naegele, *Fed Plan Would Simply Gut Enforcement Of Ban on Tying*, AMERICAN BANKER (January 21, 2005) [see [https://naegeleblog.files.wordpress.com/2018/08/op-1158\\_56\\_1.pdf](https://naegeleblog.files.wordpress.com/2018/08/op-1158_56_1.pdf) (letter sent by Timothy D. Naegele to each member of the Federal Reserve Board (“Fed”) (March 16, 2005), and the AMERICAN BANKER article)]; Timothy D. Naegele Resume (<https://naegeleblog.files.wordpress.com/2019/04/timothy-d.-naegele-resume.pdf>).

This article is dedicated to the memory of Senator Brooke—for whom the author wrote the Brooke Amendment, the Experimental Housing Allowance Program that morphed into Section 8 housing, and other laws, and who was their Senate sponsor; to the late Philip N. Brownstein, former Commissioner of the Federal Housing Administration (“FHA”), and to Morton W. Schomer, former Assistant Commissioner of the FHA, who became the author’s law partners in Washington, D.C. when he left the U.S. Senate; and last but not least, to the late Tony Henry, who headed the National Tenants Organization and gave the author the idea of capping the rents that public housing tenants paid at 25 percent of their incomes, with the federal government picking up the difference, and providing other financial assistance to the crime- and poverty-stricken projects, which became the Brooke Amendment.

*programs discusses what was intended, what has been accomplished, and the future of these programs as the centerpieces of America's low-income housing. He provides a sense of what might be expected in the years to come as this area of economic and social activity continues to evolve. In the final analysis, he asks and answers the questions: Have the goals and expectations for these programs been met? If not, why not? Who has benefited from these programs, and were these the intended beneficiaries? Or have the programs evolved into nothing more than wasteful, stigmatized welfare programs, which have saddled their recipients with economic servitude? What can be done by Congress to change such programs so that they truly serve those Americans for whom they were intended? Or should the programs be scrapped completely, as unfortunate examples of failed idealistic social welfare in the United States?*

The United States has an *unenviable* record of providing affordable housing for its poor, much less for the poorest of the poor—America's homeless. They have lived on the streets and wherever they could find shelter; and they have been shunned as “lepers” and cast aside to fend for themselves. Many have been and are in desperate need of mental health care and treatment; and they are not far removed from the poor of Calcutta, who have been chronicled down through the decades.<sup>1</sup>

This is particularly true of the elderly, disabled and families with young children, who have slipped through the “cracks” and the societal “safety nets,” to the extent that such protections still exist. However, the elderly of the Boston area were singled out for humane, dignified and uplifting treatment and protection in the late 1960s and early 1970s, when work began in the Congress—through its two banking committees<sup>2</sup>—to address their plight.<sup>3</sup>

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<sup>1</sup> See, e.g., Chitrita Banerji, “Poor Calcutta,” *New York Times*, Sept. 5, 2007, <https://www.nytimes.com/2007/09/05/opinion/05banerji.html>.

<sup>2</sup> In 1968, the House Banking Committee was renamed the House Committee on Financial Services.

See [https://en.wikipedia.org/wiki/United\\_States\\_House\\_Committee\\_on\\_Financial\\_Services#History](https://en.wikipedia.org/wiki/United_States_House_Committee_on_Financial_Services#History).

<sup>3</sup> As the author has noted in personal remembrances:

I authored two pieces of housing legislation as part of the Housing and Urban Development Acts of 1969 and 1970, with respect to which I will always be very proud: the “Brooke Amendment” relating to public housing; and the national “Housing Allowance” program, which morphed into the Section 8 housing program that has helped millions of Americans. Unfortunately, there is scant mention of the first program in the senator’s book, “Bridging the Divide: My Life”—which is contained in one paragraph. No mention of the second

Since then, billions of dollars have been expended, and millions of poor Americans have been helped, which tragically has only scratched the surface—as the numbers of chronically poor and those who are unable to afford private rents continue to rise in the United States. The ever-accelerating cost of housing, and the short supply of existing affordable housing units, have priced many Americans with even good jobs out of decent housing across America, in such areas as “Silicon Valley” (or the San Francisco Bay Area).

They have lived in campers, recreational vehicles (“RVs”) or wherever they could find to sleep.<sup>4</sup> The effects on the poorest of the poor—those farther down the economic totem pole—have been catastrophic, especially in those areas of the United States where inclement weather is a major factor. Many have died, or been victimized, as homeless shelters have been inadequate or closed entirely for various reasons (*e.g.*, funding and/or staffing shortages) in areas where they are needed the most.

This article discusses the landmark laws enacted by Congress: the “Brooke Amendment” with respect to public housing,<sup>5</sup> and the “Section 8” housing

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program is made at all, yet both have helped enormous numbers of poor Americans, many of them elderly.

Others contributed to the writing of Ed’s book; I did not. Presumably they had no idea about the origins of the Brooke Amendment, nor how many Americans were helped by it and Section 8. The senator told me one day that he was concerned about the plight of public housing tenants in Massachusetts, especially the elderly. Hence, I went to work and tried to determine what could be done. One person who was central to my efforts was a wonderful black man, the late Tony Henry, who headed a group called the National Tenants Organization.

Tony gave me the idea of capping the rents that public housing tenants paid at 25 percent of their incomes, with the federal government picking up the difference; and providing other financial assistance to the crime- and poverty-stricken projects. This became the Brooke Amendment; and in turn, the Housing Allowance program was an outgrowth of that—without tying the government assistance to particular projects, but providing “vouchers” that allowed the poor to choose. Literally millions of Americans have been helped; and without the senator, it never would have happened. Indeed, I used to read handwritten thank you letters to Brooke from the elderly, which moved one to tears.

See <https://naegeleblog.wordpress.com/2015/01/03/edward-w-brooke-is-dead/> (“Edward W. Brooke Is Dead”) (footnotes omitted).

<sup>4</sup> See, *e.g.*, <https://www.cbsnews.com/news/more-americans-are-living-in-their-vehicles-amid-high-housing-prices/> (“More Americans are forced to ‘reside’ in their vehicles”).

<sup>5</sup> It has been noted:

*Public housing* is a form of housing tenure in which the property is owned by a government authority, which may be central or local.

*Social housing* is an umbrella term referring to rental housing which may be owned and



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managed by the state, by non-profit organizations, or by a combination of the two, usually with the aim of providing affordable housing. Social housing can also be seen as a potential remedy to housing inequality.

Although the common goal of public housing is to provide affordable housing, the details, terminology, definitions of poverty and other criteria for allocation vary within different contexts.

See [https://en.wikipedia.org/wiki/Public\\_housing](https://en.wikipedia.org/wiki/Public_housing) (“Public housing”); see also <https://archive.nytimes.com/www.nytimes.com/library/national/public-housing-timeline.html> (“Public housing timeline”) and <https://archive.nytimes.com/www.nytimes.com/library/national/index-housing.html> (“*Razing the Slums to Rescue the Residents*”—“[P]ublic housing projects [are] crippled by flawed policies and mismanagement and overwhelmed by poverty and crime. From Hartford and Newark to Denver and San Francisco, 100,000 apartments in the nation’s worst public housing projects are being razed under a Federal program called Hope VI. The plan is to replace them with smaller developments that mix families of different incomes, while moving thousands of tenants into privately owned buildings. . . . The challenge is not just for the 11,000 people who will leave [Chicago’s notorious Robert Taylor Homes housing project, the nation’s largest housing project], a population 99 percent black, so poor that nearly half of the adults live on less than \$5,000 a year, and so isolated that many are unfamiliar with life beyond the grim monoliths that shadow the Dan Ryan Expressway on the South Side for nearly two miles. . . . The goal is to disperse the project’s concentrated poverty without introducing or aggravating social problems in the new neighborhoods. . . . Ninety-six percent of Robert Taylor adult residents are unemployed and little may change if they are simply moved. So a second goal of Hope VI is to ease tenants off Government dependence. In Robert Taylor, the housing authority is spending \$1.5 million of its initial \$25 million Hope VI grant on social services, trying to place as many residents as possible in high school equivalency courses, training programs and jobs. Some tenants need more basic help: clothes to wear to interviews with prospective landlords, help arranging electric and gas service, classes on such housekeeping skills as cleaning carpets and operating garbage disposals. . . . Residents who needed temporary housing could not move for weeks because they were identified with the Mickey Cobras, the gang that controlled the Hole [the most oppressive section of Chicago’s notorious Robert Taylor Homes housing project], while the apartments available were in a Robert Taylor building controlled by a rival gang, the Black Gangster Disciples. Some tenants had criminal records, drug problems or erratic rent-paying habits that had been tolerated at Robert Taylor but could disqualify them for new housing”—“*Hard-to-Place Tenants, Difficult Move To Private Sector*”—“Angela Smith, 23, hauled out of her apartment anything broken or filthy: ice cube trays, baby shoes, a radio. She asked friends who were smoking marijuana to leave. The housekeeping inspector was coming. ‘I got nowhere for people to sit,’ she fretted. She threw out her cockroach-infested couch and chairs a year ago. She and her children shared one bed and sat on milk crates and the hood of a large hair dryer. But roaches persisted. They crawled over her newborn son. Like most people in the Hole, Ms. Smith was desperate to leave, but not for another housing authority apartment. Virtually all of the Hole’s residents wanted Federal rent subsidies known as Section 8 certificates, which would allow them to rent their own housing. . . . New York has largely ignored Hope VI because demand for its public housing is so high. . . . Aldermen have begun calling to say that their constituents are concerned about Section 8 tenants moving in. . . . To find apartments for the Hole’s tenants, the housing authority contracted with a private relocation agency in February. The agency’s job included taking tenants to see apartments and helping with things like

program that was intended to extend the benefits of the Brooke Amendment to

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applications, credit checks and arranging utilities. But tenants must satisfy landlords' expectations for cleanliness and conduct, and the housing authority expected the agency to be a hand holder: coaching tenants on how to dress for interviews, or making sure they were prepared for housekeeping inspections. . . . Ms. Smith said the father of her children beat her. She struggled on welfare, falling behind on her \$44 monthly rent. She did not permit her children to play outside the apartment because gang violence made even hallways dangerous"—*Decline and Fall, Public Housing Becomes Hell Hole*—"The Robert Taylor Homes, named for Chicago's first black housing authority chairman, was among the last housing projects built in the city. Begun in 1959, it completed a four-mile corridor of public housing along State Street. While its new high-rises were welcome replacements for a shantytown, they quickly became the nation's largest government-sponsored ghetto. . . . In 1969, six years after completion of the last buildings, the three that became known as the Hole, Congress changed public housing policy with disastrous results for projects nationally. Instead of a fixed rent, tenants would pay a percentage of their income. At Robert Taylor, working families moved out as their rent rose while neighbors on welfare paid almost nothing. Housing officials, wary of discrimination suits, stopped screening tenants. Single mothers as young as 16 were given apartments. As the project filled with impoverished people, rent income fell and maintenance had to be cut. Tenants threw things off exterior gangways that linked apartments, so they were covered with steel grating, like a prison. Leaks and broken windows went unfixed. Elevators and hallways reeked of urine. . . . In a housing project with 20,000 residents at its peak but few men, gangs got an early hold. Violence and drugs devastated generations. As families moved out, vacant apartments became havens for drug dealers. Gangs ripped out metal detectors installed at entranceways and cut the wires of intercoms intended to screen visitors. In the Hole, clusters of drug dealers brazenly hawked heroin and cocaine, forming gantlets in the entranceways. The wind whipped crack vials like shrapnel. The police were frustrated by gang lookouts and the ability of dealers to vanish into high-rise hideouts. Dealers became so cocky that recently a gang member waved a roll of money at a group of housing officials and offered to buy the Hole for \$1 million. 'I guess that's why they call it the Hole,' said Deborah Mardis, a resident for 20 years. 'You fall in and you never get out.' Ms. Mardis managed to leave in 1994, but her son Dequan, a gang member, kept returning. In January, visiting a girlfriend at a rival gang's building, he was shot six times. He survived. After a shooting the next day, parents kept children home from the elementary school across a parking lot from the Hole, then formed patrols to escort them to class. In February, a man was killed crossing from the Hole to Disciple territory. In March, postal workers did not deliver mail for a day because of shooting. One April weekend, a man was killed and another wounded. In June, a 9-year-old was shot. In August, a police officer investigating drug dealing was critically wounded. A 16-year-old and two 17-year-olds were charged").

It is worth repeating: "Virtually all of the Hole's residents wanted Federal rent subsidies known as Section 8 certificates, which would allow them to rent their own housing." Also, this poignantly-written 1998 capsule of life in Chicago's public housing—by Pam Belluck for the *New York Times*, which should be read *in its entirety* by everyone who wants to understand what life in public housing can be like—implies that the Brooke Amendment was responsible for rents being raised for *all* tenants:

In 1969, six years after completion of the last buildings, the three that became known as the Hole, Congress changed public housing policy with disastrous results for projects nationally. Instead of a fixed rent, tenants would pay a percentage of their income.

housing wherever it is located. Put succinctly, the Brooke Amendment capped the payment of rent at 25 percent of a person's income, with the federal government paying the difference; and it provided funds to improve public housing, and to assure the safety of its residents.

Section 8 was envisioned as giving “vouchers” to those who qualified for public housing, and permitting them to find housing *anywhere*, with the federal government subsidizing their rents when the 25-percent-of-income threshold was passed. Taken together, the Brooke Amendment and Section 8 were America's answer to the needs of decent housing for its poor. Today, there are two million voucher families.<sup>6</sup>

First, this article sets forth the history undergirding the statutes: the Brooke Amendment, the “Experimental Housing Allowance Program” and Section 8.<sup>7</sup> Second, it assesses where the programs stand today. Finally, it discusses what should be done in the future to address critical low-income housing needs in the United States.

In the process, mention will be made of solutions that have been found and implemented in other countries.<sup>8</sup> Indeed, such countries seem to have made progress, while the United States has lagged behind. Also, many fine housing programs for the poor exist in America, and are being created and administered by state and local governmental agencies, and private groups (*e.g.*, nonprofit, religious and veterans groups; limited dividend and nonprofit developers; labor

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This was never the intent of Senator Brooke or the author. The Brooke Amendment *capped* the rent that the poor would pay at 25 percent of their incomes (*e.g.*, “Limit rents in public housing projects to no more than 25 percent of the occupant's income”). It did not provide that tenants would pay a *minimum* of 25 percent of their incomes. It was a ceiling, not a floor.

*See also* [https://en.wikipedia.org/wiki/HOPE\\_VI](https://en.wikipedia.org/wiki/HOPE_VI) (“HOPE VI”—“HOPE VI is a plan by the United States Department of Housing and Urban Development. It is meant to revitalize the worst public housing projects in the United States into mixed-income developments. . . . Some critics have said that local authorities use the program as a legal means to evict poor residents in favor of more affluent residents in a process of gentrification. They have said that less than 12% of those displaced from old housing eventually move into the replacement housing”) (footnotes omitted).

<sup>6</sup> *See* [https://www.hud.gov/press/speeches\\_remarks\\_statements/Speech\\_091018](https://www.hud.gov/press/speeches_remarks_statements/Speech_091018) (“Dr. Ben Carson, Secretary of Housing and Urban Development, Public Housing Authorities Directors Association (PHADA), Washington, DC, September 10, 2018”).

<sup>7</sup> *See also* [https://www.hud.gov/sites/documents/LEGS\\_CHRON\\_JUNE2014.PDF](https://www.hud.gov/sites/documents/LEGS_CHRON_JUNE2014.PDF) (“U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MAJOR LEGISLATION ON HOUSING AND URBAN DEVELOPMENT ENACTED SINCE 1932”).

<sup>8</sup> *See, e.g.*, [https://en.wikipedia.org/wiki/Public\\_housing](https://en.wikipedia.org/wiki/Public_housing) (“Public housing”).

unions; employer-employee groups that provide housing for employees).<sup>9</sup> While this article does not discuss them, much less in detail, they can provide valuable lessons for federal programs now and in the future.

## HISTORY

### The Brooke Amendment

In 1969, Congress enacted the Brooke Amendment, which was described as follows:

Limit rents in public housing projects to no more than 25 percent of the occupant's income and increase authorizations for annual contributions by \$75 million upon enactment (to cover reductions in rent, existing operating deficits, and improved maintenance and services), and by \$20 million on July 1, 1970 (for physical improvements to older projects)<sup>10</sup>

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<sup>9</sup> One commenter has noted:

Until 1959, public housing authorities had a monopoly in providing affordable housing. Congress broke this pattern by creating the Section 202 program in the Housing Act of 1959. Under the 202 program, as it is popularly known, HUD made direct loans to nonprofit developers of housing for the elderly.

*See* Charles L. Edson, "Affordable Housing—An Intimate History," American Bar Association, p. 7 (2011) [http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201_abs.pdf).

<sup>10</sup> *See* pp. III-IV, "Letter of Transmittal To the Members of the Committee on Banking and Currency," Housing And Urban Development Act Of 1969, Public Law 91-152 And Section-By-Section Summary, Committee On Banking And Currency, House Of Representatives, 91st Congress, First Session, December 1969; *see also* <https://babel.hathitrust.org/cgi/pt?id=uc1.a0000107235;view=1up;seq=3> and <https://www.govinfo.gov/content/pkg/STATUTE-83/pdf/STATUTE-83-Pg379.pdf>.

The Section-By-Section Summary continues:

*Section 213—Reduced rentals for very low income tenants of public housing projects*

Subsection (a) amends section 2(1) of the U.S. Housing Act of 1937 to provide that rent in public housing projects may not exceed one-fourth of a tenant's income, as defined by the Secretary of HUD.

Subsection (b) provides that the requirement that rents fixed by public housing agencies may not exceed one-fourth of the low-rent housing tenant's income (to become effective not later than 90 days following the date of enactment of this Act) shall not apply in any case in which the Secretary of HUD determines that limiting the rent of a tenant will result in a reduction in the amount of welfare assistance which would otherwise be provided to the tenant by a public agency.

Subsection (c) amends section 14 of the 1937 Act to clarify that, for the purpose of

The 25 percent of income limitation was raised subsequently to 30 percent of a tenant's income, which was *not* consistent with the original intent.<sup>11</sup>

As Senator Brooke stated on the Senate floor:

[R]ental assistance payments would be available with respect to public housing and leased housing units to enable families of very low income[s] to afford rentals with no more than 25 percent of their incomes.

. . .

I should emphasize that I do not view public housing as the ultimate answer to the needs of low-income families. On the contrary, I foresee the day when public housing as we know it today will be replaced by new approaches to low-income housing. In the interim, however, we must not lose sight of the need to provide a decent home for persons who are unable to obtain another form of housing. We must not allow the standard of living in these projects to deteriorate in anticipation of the development of more imaginative housing programs and the final

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insuring the low-rent character of public housing projects, any contract for annual contributions may be amended or superseded in order that such annual contributions may be fixed on the basis of the current going Federal rate of interest.

See *id.* at 33; see also *id.* at 11; [https://en.wikipedia.org/wiki/United\\_States\\_Department\\_of\\_Housing\\_and\\_Urban\\_Development](https://en.wikipedia.org/wiki/United_States_Department_of_Housing_and_Urban_Development) (“United States Department of Housing and Urban Development” [or “HUD”]).

Subsections (b) and (c) were inserted by bureaucrats at HUD, and *not* by Senator Brooke or the author.

<sup>11</sup> The Brooke Amendment became the first instance of the benchmark to measure housing affordability, which became known as the “30 percent rule of thumb” in 1981 when the 25 percent cap was raised to 30 percent of tenant income.

See [https://en.wikipedia.org/wiki/Brooke\\_Amendment](https://en.wikipedia.org/wiki/Brooke_Amendment) (“Brooke Amendment”) (footnotes omitted).

Also, one commenter has noted:

As public housing tenancy has evolved, so have income limits. Up until 1981 PHAs [public housing authorities] had leeway in setting eligible tenants' income generally below 80 percent of median. In that year, Congress limited public housing occupancy to lower-income families, that is, families with household income less than 50 percent of median. Congress, reacting to the desperate need of very poor families, required that 40 percent of public housing units be reserved for families below 30 percent of median—i.e., very low income.

See Charles L. Edson, “Affordable Housing—An Intimate History,” American Bar Association, p. 5 (2011), [http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201_abs.pdf); see also 42 U.S.C. §1437n(a)(2)(A) (“Eligibility for assisted housing”).

implementation thereof.<sup>12</sup>

The Brooke Amendment had to be “enacted” twice by the Congress, because bureaucrats at HUD thwarted the legislative intent from Day One, and refused to implement it.<sup>13</sup> Indeed, as Senator Brooke stated in remarks on the Senate floor:

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<sup>12</sup> See 115 CONG. REC. 26720–26722 (1969).

<sup>13</sup> See, e.g., <https://babel.hathitrust.org/cgi/pt?id=osu.32437000468526;view=1up;seq=9> (“Housing and Urban Development Act of 1970, Report on Committee on Banking and Currency, “United States Senate to accompany S. 4368, pp. 13–18 (September 21, 1970).

It is axiomatic that every piece of legislation, and certainly those that are truly groundbreaking, have their critics; and the Brooke Amendment is no exception. Indeed, one has written:

Massachusetts Senator Edward Brooke, who died this past weekend at 95, was remembered in tributes mainly as the first African-American to be popularly elected to the Senate since the Civil War—and as reminder that blacks were once loyal to the Republican Party, remembering it as the party of Lincoln. But a specific aspect of Brooke’s career as a liberal legislator also deserves to be remembered—as a cautionary tale about the unanticipated consequences of social legislation—and how it can actually victimize the poor it’s meant to help. The so-called Brooke Amendment (to the National Housing Act) was designed to lower rents for public housing tenants. In doing so, it unexpectedly played a key role in turning housing authorities into the slumlords they were designed to replace—and helped convert what had once been meant as housing for the employed working-class into the modern-day poorhouse it’s become.

The 1969 Brooke Amendment seems innocuous, at first. It fixed the rent that any public housing household could pay at no more than 25 percent of its income—a goal not unlike that for which many households strive when signing a private apartment lease or making mortgage payments. But the Brooke Amendment would hit the nation’s more than 3000 public housing authorities like a financial tsunami. Here’s why. Although rightly known today as America’s housing for the poorest of the poor, public housing, as originally conceived by the Roosevelt Administration, was to be housing for working families having difficulty finding affordable housing in the private market. Indeed, Catherine Bauer, whose book *Modern Housing* was the road map for the program, believed two-thirds of the population might need to be housed this way. Bauer (who went on to serve in the New Deal-era United States Housing Authority), along with other public housing advocates saw housing as a sort of public utility—financed and operated by government.

Their vision, however, was built on a financial model in which, although construction was subsidized through government, day-to-day operations were to be supported, just as in private apartments, by rents paid by the tenants. To be certain they did, tenants in some cities, were even screened for character. Two-parent families were initially favored. For a time—especially before the vast expansion of private housing choices in post-war suburbs—the model worked. But as aging buildings required maintenance, housing authorities sought to raise rents—and tenants (including those at the infamous Pruitt-Igoe project in St. Louis) began, in the mid-1960s, to stage rent strikes. That set the stage for Senator Brooke. But in playing the hero to public housing tenants, he would literally help precipitate, in Chicago, Atlanta and cities across the country, its destruction. In many other cities, it helped

The 1969 Act placed a *ceiling* equal to 25 percent of tenants' income[s] on the rent which is required to be paid.

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make surviving public housing much worse, especially in terms of physical maintenance.

Predictably, the Brooke Amendment began to starve local housing authorities of the funds they needed to operate—including funds they historically set aside for maintenance. By the mid-1980s, tenant rents, which had once covered fully 95 percent of public housing operating costs, were covering only 43 percent—and going down fast. Today, the New York City Housing Authority, by far the nation's largest, covers just 25 percent of its operating costs in rent.

Indeed, the New York system—home to some 600,000 residents today faces an estimated \$18 billion in deferred maintenance. Horror stories abound of rampant plumbing, electrical and heating problems. In the wake of Brooke, [t]he federal government was to begin to provide “modernization” funds to make up for the lost revenue—even as taxpayers, not tenants, were increasingly on the hook.

*See* <https://www.forbes.com/sites/howardhusock/2015/01/08/how-senator-brooke-helped-destroy-public-housing/#229d74e23fc3> (“How Brooke Helped Destroy Public Housing”) (chart omitted).

First, Senator Brooke was a history-making American, who paved the way for Barack Obama's presidency. He was not and is not a “reminder that blacks were once loyal to the Republican Party, remembering it as the party of Lincoln.” Also, he never sought to “[play] the hero to public housing tenants.” That is nonsense. He will be remembered as a trailblazer, long after everyone is gone who remembers whom this critic—or the author—ever was.

*See, e.g.*, <https://naegeleblog.wordpress.com/2015/01/03/edward-w-brooke-is-dead/> (“Edward W. Brooke Is Dead”).

Second, with respect to the criticism that the “so-called Brooke Amendment . . . played a key role in turning housing authorities into the slumlords they were designed to replace,” the Brooke Amendment was envisioned as a “way station,” not as a final solution. The elderly poor were being caught in the twin pincers of rising rents that they could not afford, and declining and unsafe projects where their day-to-day existence was at risk. Ultimately, the voucher system was intended to give them and others viable options, to choose decent and safe housing wherever it could be found, at a cost that they could afford.

Third, the Brooke Amendment was never intended to “save” America's public housing authorities. That was never its goal, nor was it envisioned that they would administer any voucher program.

Fourth, the critic wrote:

[I]n playing the hero to public housing tenants, [Brooke] would literally help precipitate, in Chicago, Atlanta and cities across the country, [public housing's] destruction. In many other cities, it helped make surviving public housing much worse, especially in terms of physical maintenance.

It is often said, “the proof is in the pudding.” Adequate funding for the physical maintenance of public housing projects was contemplated in the Brooke Amendment. Whether it was *actually* adequate, or administered properly—especially given the rapidly-declining nature of such projects—are open to debate and conjecture, and a function of bureaucratic and congressional competence (or the opposite) and will.



Seventy-five million dollars in contract authority was authorized for these purposes; however, Congressional intent was clear as to HUD's ability to provide funding in excess of this amount. . . . [T]he Brooke Amendment was later subjected to narrow administrative interpretations which limited its effectiveness. Specifically, while tenants' rents were limited to 25 percent of their income[s], additional funding was not provided to improve the quality of operating and maintenance standards.

I introduced legislation earlier this year which was designed to remove any uncertainty as to Congressional intent. I am pleased to note that the Conference Committee has accepted this provision. Thus, sufficient funds will be available to insure that public housing tenants are not forced to pay a disproportionate share of their incomes for rent; and to insure that public housing authorities will have sufficient funds to achieve and maintain adequate operating and maintenance services and reserve funds.

Among the operating and maintenance services which will be funded are the following: tenant counseling on family budgets and on care and upkeep of property; guard and other costs relating to the physical security of project residents; tenant access to available community services relating to employment, health, welfare, education, and personal counseling; effective management liaison on all aspects of housing administration, management and maintenance; recreational equipment and facilities; and adequate and timely repairs to structures, including the removal of any code violations.

The Conferees have earmarked contract authority in the amount of \$75 million per year, which when added to the funds provided under last year's Housing Act, will bring the level of operating and maintenance subsidies to \$150 million per year. Thus, adequate funds should be available to restore public housing projects to adequate levels of operating and maintenance services and to insure that a sound physical and social environment is maintained.

It should be emphasized that the Committee is *not* giving a blank check to local housing authorities, which will enable them to spend extravagantly and irresponsibly. These groups must act in a responsible manner and must insure that the additional funding is used to up-grade the quality of living in public housing and to improve legitimate services which contribute to a sound living environment.

It should be noted that although \$150 million has been specifically



earmarked for the subsidies discussed above, HUD is not limited to these funds if conditions require that additional funds be used.<sup>14</sup>

### The Experimental Housing Allowance Program

After the Brooke Amendment was enacted and underway, thought was given by the late Senator Brooke and the author to extending its benefits to those Americans who did not wish to live in public housing for various reasons (*e.g.*, crime, stigma), and instead preferred to obtain decent housing wherever it was located. The notion of vouchers was conceived as the solution.<sup>15</sup> Again, there are two million voucher families today.<sup>16</sup>

As Senator Brooke stated on the Senate floor:

I am extremely pleased that the Conference Committee has adopted the Experimental Housing Allowance Program, which I proposed earlier this year. Thus, the Secretary of HUD will be authorized to provide low-income families with housing allowances to assist them in obtaining existing standard rental housing of their choice.

The housing allowance will not exceed the difference between 25 percent of a tenant's monthly income and the maximum fair market rental for standard housing in the community involved. The benefits provided to public housing tenants last year under the Brooke Amendment will thereby be extended to those persons who qualify for public housing but are unable to obtain it for a myriad of reasons.<sup>17</sup>

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<sup>14</sup> See 116 CONG. REC. 42440 (1970) (emphasis added).

<sup>15</sup> It has been noted:

[T]here is now general consensus in the housing field that if there is an adequate supply of existing housing in an area, vouchers should be utilized to make the units affordable for low-income families. In the absence of such supply, new units should be built.

See Charles L. Edson, "Affordable Housing—An Intimate History," American Bar Association, p. 17 (2011), [http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201_abs.pdf).

By "consensus," presumably the commenter is referring to the bureaucrats at HUD, homebuilders and other vested interests. Contrariwise, the author believes that vouchers should be used in all circumstances, and widely—to give the poor the greatest number of options possible—and he believes that the late Senator Brooke would have agreed.

<sup>16</sup> See [https://www.hud.gov/press/speeches\\_remarks\\_statements/Speech\\_091018](https://www.hud.gov/press/speeches_remarks_statements/Speech_091018) ("Dr. Ben Carson, Secretary of Housing and Urban Development, Public Housing Authorities Directors Association (PHADA), Washington, DC, September 10, 2018").

<sup>17</sup> See 116 CONG. REC. 42440 (1970) (emphasis added).

## Section 8

The experiment proved successful, and it morphed into the Section 8 housing program that we know today.<sup>18</sup> The problem is that vouchers are largely “tethered” to specific housing projects, rather than allowing the poor to obtain decent and safe housing wherever it is located. Like receiving Social Security retirement benefits, where the recipient can use the monies as he or she sees fit, the late Senator Brooke and the author envisioned vouchers as being used in the same way.

In addition to HUD bureaucrats, perhaps the “vested interests” that have opposed the simplicity of vouchers for the poor can be described best as follows:

[M]ortgage lenders, appraisers, packagers, Wall Street investment bankers, bond rating firms, guarantors, and their counsel, taking advantage of very low-income people beguiled by the American home-ownership dream.<sup>19</sup>

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<sup>18</sup> Indeed, it has been noted:

In the early 1970s, HUD commissioned widespread demonstrations of a housing allowance program in which the government would provide funding to low-income people to rent individual units in the private market. The administration was pleased with the results of this experiment. It envisioned that the revised Section 23 program (soon to be renumbered as Section 8) would be mainly a certificate program.

See Charles L. Edson, “Affordable Housing—An Intimate History,” American Bar Association, p. 9 (2011), [http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201_abs.pdf). Absent the efforts of the late Senator Brooke and the author, none of this would have happened.

Also, it has been noted:

[I]n 1993 Congress adopted the HOPE VI program to demolish distressed housing and to replace it with new developments. Generally, a limited partnership, with a PHA and developer general partner and a syndication entity as the limited partner, developed the project. Attractive design is the hallmark of these projects, with low-rise, less dense units replacing the obsolete multistory development of the 1950s and 1960s. Many of the projects are mixed-income, which means that not all former tenants can return. These displaced tenants received housing vouchers—not always a perfect solution, but on balance, HOPE VI has proved to be a very successful program.

See *id.* at 6 (footnotes omitted).

<sup>19</sup> See *id.* at 20. Indeed, the commenter added:

All Americans recognize that they share a vital interest in such domestic issues as health care, energy, transportation, environment, and education. As the debate over President Obama’s health-care proposal demonstrated, these issues captivate the public. However, except for a few years after World War II, there has never been such public concern on housing issues, especially affordable housing. The reason is simple: The vast majority of Americans are well housed, so the issue is of no real concern to them. This explains why providing housing has

*None* of these groups represent the poor, as the late Tony Henry did when he helped Senator Brooke and the author to craft the Brooke Amendment.<sup>20</sup> Arguably the goals of these vested interests (*e.g.*, the builders of what become “ghettos”) are antithetical to the needs of the poor—and certainly those of the elderly poor.

## LOW-INCOME HOUSING IN AMERICA TODAY AND IN THE FUTURE

One commenter has described low-income (or “affordable”) housing, in part, as “an antidote to civil unrest in the 1960s.”<sup>21</sup> This was not true of the Brooke Amendment or the Experimental Housing Allowance Program. Neither was conceived as such an “antidote,” nor was that a motivating factor in the least. Both were based on more idealistic, altruistic and laudatory humanitarian goals: to *actually* help the poor obtain decent and safe housing that they could afford. While Congress’ worthy goal of “a decent home and a suitable living environment for every American family”<sup>22</sup> might seem like a pipe dream, and unattainable, Senator Brooke and the author believed that helping the

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generally been a secondary goal to some other purpose for enacting affordable housing legislation.

This by no means minimizes the need for affordable housing for the people that it serves. Nor does it minimize the efforts of the often lonely advocates in the housing community who for 75 years have fought for the enactment and funding of the housing programs described in these pages in the face of general public apathy.

Today’s programs are the product of past struggles undertaken by participants in all sectors of the housing community. The future will be no different.

*See id.*

<sup>20</sup> *See supra* n.3. Indeed, the author would have welcomed the late Tony Henry’s valuable insights—and wonderful smile and sense of humor, and captivating laughter—and contributions to this article.

<sup>21</sup> Affordable housing is not deemed to be an end in itself, but a way to serve another purpose—for example, to house defense workers during the world wars, to create jobs during the Depression, to provide an antidote to civil unrest in the 1960s, or to stimulate the economy in today’s Great Recession.

*See infra* n.18 at 3.

The same commenter cited catty comments about the Brooke Amendment and the late Senator Brooke as follows:

As the federal operating subsidy amount began to spiral steeply upwards, pundits claimed that there was one too many letter “o”s in Brooke.

*See id.* at 5.

<sup>22</sup> *See* 12 U.S.C. § 1701t; *see also* 42 U.S.C. § 1441.

poor—especially the elderly—obtain decent and safe housing that they could afford was not.<sup>23</sup>

On January 26, 2019, HUD’s Secretary Dr. Ben Carson<sup>24</sup> announced nearly \$2 billion in homeless assistance grants, to renew support to more than 5,800 local homeless assistance programs nationwide. In doing so, he stated:

On any given night, more than a half-million people experience

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<sup>23</sup> With respect to the homeless, which is a critical problem in the United States today, it has been noted:

In the mid 1980s, homelessness reached the national housing agenda, in part because of the shortage of housing for low-income families, and in significant part because of an emerging practice of mainstreaming persons into society who had been institutionalized for mental disabilities.

Congress, in the Homeless Housing Act of 1986, appropriated \$15 million for a shelter demonstration program. The following year Congress made \$500 million available for homeless assistance and renamed the legislation the “Stewart B. McKinney Homeless Assistance Act of 1987” to honor the memory of Stu McKinney, a moderate Republican congressman from Connecticut and a tireless housing advocate. In 2000, after the death of Bruce Vento, a Democrat from Minnesota equally zealous on housing issues, Congress renamed the legislation “the McKinney-Vento Act.”

A principal thrust of the legislation is to fund Emergency Shelter Grants to bring buildings into suitable conditions to become homeless shelters. Funds are also available for tenant services, rental assistance, and funding for permanent housing for homeless people.

See Charles L. Edson, “Affordable Housing—An Intimate History,” American Bar Association, p. 11 (2011) (footnotes omitted), [http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201_abs.pdf); see also McKinney-Vento Homeless Assistance Act, Pub. L. 100-77, July 22, 1987, 101 Stat. 482 (42 U.S.C. 11301 *et seq.*).

Also, it has been noted:

In 1989, Congress passed the Financial Institutions Reform, Recover and Enforcement Act to bail out and restructure the savings and loan industry. Rep. Henry Gonzales, chair of the House Banking and Urban Affairs Committee and a staunch friend of affordable housing, insisted that the legislation include a program to assist affordable housing. Congress required the 12 Federal Home Loan banks to establish an affordable housing program (AHP) by making subsidized cash advances to member institutions, generally savings and loans, so they could make below-market-rate loans for affordable housing. The legislation also required each Federal Home Loan bank to contribute the greater of 10 percent of earnings or \$100 million to its affordable housing fund. Member banks utilize the funds to finance the purchase, construction, or rehabilitation of single and multifamily housing for low—and moderate-income families. Such funds are often used to aid the feasibility of LIHTC [Low Income Housing Tax Credit] projects.

See Charles L. Edson, “Affordable Housing—An Intimate History,” American Bar Association, p. 12 (2011) (footnote omitted), [http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5530024%20chapter%201_abs.pdf).

<sup>24</sup> See [https://en.wikipedia.org/wiki/Ben\\_Carson](https://en.wikipedia.org/wiki/Ben_Carson) (“Ben Carson”).

homelessness—approximately a third of these individuals were found in unsheltered locations.

. . .

As I witnessed those living in reprehensible conditions just steps from the halls of Congress, I was saddened to hear their stories of addiction, mental illness and joblessness.

Each year, HUD serves more than a million people through emergency shelter, transitional, and permanent housing programs. Our grants are an important reason why we're seeing homelessness decline significantly among Veterans<sup>25</sup> and families with children.<sup>26</sup>

With respect to vouchers, the Secretary stated:

[W]e recently sponsored the first large-scale studies on how and why landlords treat people with vouchers differently from other renters. . . .

Landlords are frustrated about the program's paperwork, inspections,

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<sup>25</sup> See, e.g., [https://en.wikipedia.org/wiki/Homeless\\_veterans\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Homeless_veterans_in_the_United_States) (“Homeless veterans in the United States”—“Many of these veterans suffer from post traumatic stress disorder, an anxiety disorder that often occurs after extreme emotional trauma involving threat or injury. . . . As of January 2017, the state of California had the highest number of veterans experiencing homelessness. There were an estimated 11,472 homeless veterans. The biggest population of homeless veterans, after California, in 2017 lived in Florida—an estimated 2,817, and in Texas—2,200”)

Also, it has been noted:

Many programs and resources have been implemented across the United States in an effort to help homeless veterans. Among the prominent are:

- National Coalition for Homeless Veterans
- United States Department of Veteran Affairs
- United States Department of Housing and Urban Development
- The American Legion
- National Association of State Directors of Veterans Affairs
- Veterans of America

HUD-VASH, a housing voucher program by the United States Department of Housing and Urban Development and Veterans Administration, gives out a certain number of Section 8 subsidized housing vouchers to eligible homeless and otherwise vulnerable U.S. armed forces veterans.

See *id.* (footnotes omitted).

<sup>26</sup> See [https://www.hud.gov/press/speeches\\_remarks\\_statements/Speech\\_012619](https://www.hud.gov/press/speeches_remarks_statements/Speech_012619) (“Remarks by Secretary Carson on HUD Renewing Funding to Thousands of Local Homeless Programs, January 26, 2019”).

and other bureaucratic processes, along with how local housing authorities handle and resolve tenant disputes. Some even point to the perceived lack of competitive rents. What landlords do like—and no surprise here—is the program’s reliable rent deposits. . . .

Overall, the decision to accept vouchers is a delicate balancing act which can tip either way—depending on the landlord, tenant, local ordinances, and tight rental market.

So, the question is: how can we further the opportunities for our two million voucher families who seek affordable and quality housing?

In our recently released report on landlords and vouchers—which centered on a five-city survey—the report noted how some local jurisdictions are undertaking a number of innovative solutions: which range from new insurance programs which cover unit damages and early lease cancellations, to providing landlord access to low or interest-free loans to rehabilitate their properties.

Of course, each incentive should be tailored to the local community’s needs and ability to fund such proposals—there is no national clear-cut solution.

I’m not making any recommendations at this point, as I’m in a “studying mode” to get a better handle on the challenges. After all, we first need to understand why landlords say no to voucher holders, before we can persuade them to the point of saying yes.

*My goal is to turn landlords from adversaries to advocates for the voucher program.*

As with all our initiatives, we’re inclined for local and voluntary, rather than federally mandated and compulsory, solutions. It’s the best way to get a buy-in from all the parties involved—thereby making it a “win-win” for both tenants and landlords.<sup>27</sup>

Query *why* public housing authorities are involved at all? Why does HUD not give the vouchers directly to those who qualify for them, and pay their landlords directly, for use wherever decent and safe housing is found? Yes, millions of payments would be involved, but the Treasury does that every month with Social Security retirement benefits.

With respect to public housing rents, the Secretary has stated:

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<sup>27</sup> See [https://www.hud.gov/press/speeches\\_remarks\\_statements/Speech\\_091018](https://www.hud.gov/press/speeches_remarks_statements/Speech_091018) (“Dr. Ben Carson, Secretary of Housing and Urban Development, Public Housing Authorities Directors Association (PHADA), Washington, DC, September 10, 2018”).

It's no secret that the current rent system is counterproductive. . . . [T]he current model of public housing is unsustainable, in both dollars and common sense.

. . .

First, the rent system, as it currently exists, perpetuates an economic disincentive to earn more in wages.

Our policies ensure that the more our residents earn, the more rent they have to pay. Where then, is the incentive to work, or to get a better paying job, or have two parents living together and sharing their wages? There isn't any, I'm afraid to say.

The unintended consequences of the way we calculate the level of assistance—more specifically, how it can hold back the very people we're supposed to help—must be the central piece of any reform efforts.

Second, it is common knowledge that the current system is unduly difficult.

Is there a tenant, housing authority or policy maker who hasn't been puzzled by the complexity of our rental model? Or, extremely troubled by the resources in time and staff, you must allocate to carry out the necessary procedures?

[P]ublic housing agencies, owners, and residents must monitor and record more than several dozen different sources of income—from figuring out future incomes and tax deductions, to recording detailed medical, child, and other mandated information.

It creates a perfect storm of paperwork that is incredibly burdensome and often creates confusion along with errors. We have discovered that each year, nearly 25 percent of rents charged to HUD-assisted families are miscalculated, resulting in \$750 million in improper rent payments.

So, why would we continue a policy that costs us millions of dollars in errors? Any rental reform also needs to tackle head-on this mounting burden as well.

Third, we also find common cause in changing a policy that forces all public housing authorities into a one size-fits-all system, to one that grants greater flexibility—so that those with “boots on the ground,” not Washington, will have increased local control and choice on how best to serve their communities and encourage residents on the road to independence.

. . .

The question remains then, why are we still committed to a policy that gives very little flexibility to local housing agencies that best understand the specialized needs of their residents?

We therefore need to push for policies that encourage choices and grant waivers that allow more innovation and experimentation.

. . .

Most of you know the large number of new [applicants] who file for housing assistance and receive it—only one in four—and the small number who graduate out.

Overall, public housing was originally meant to help vulnerable people take their first step toward self-sufficiency, and not be an end in itself—with families locked into helplessness for generations, relying solely on the federal purse for survival. Though, in rare cases, some agencies do require time limits on staying in federal housing.

That's why we need to make rental reform a top priority. But I would be remiss if I also didn't mention the need to encourage more private sector investment in affordable rental units, as well as helping our able-body residents secure better job opportunities.

. . .

Overall, the Administration's legislative proposal is only the first step on the road to major reform. But even today, we are having an impact on helping define the debate and drawing attention to the pressing need for a change—both in the way we calculate rent and require minimum work requirements for work-able households.

Since our original proposal to increase tenant contributions, both houses of Congress plan to continue to fund our housing assistance programs at historic funding levels, around \$1.25 billion—so that decreases for now, the immediate need for any rent increases.

. . .

For generations, the idea of the government providing housing assistance meant only one thing—helping to pay the rent so families can have a roof over their heads. But we must think also about how we can help families access financial, education, and other opportunities.

In short, we must think beyond investing in bricks and mortar and invest in human capital. In today's very tight labor market, employers are desperate for workers, and we need to rise to the challenge. The



result being a win-win for everyone—with tenants ear[n]ing more money so they can move out, and the local economy getting the manpower it needs.

That's why HUD is focusing far more on policies and partnerships with the public and private sector and nonprofit community to further develop the skills and talents of our residents—with the end goal an independent life out of public assistance.

. . .

We need to envision a new path forward for our residents—one takes a holistic approach and goes beyond simply providing housing—and these Centers will provide a one-stop shop, for key services in health, education, and job training.<sup>28</sup>

Is HUD poised to become—or has it become already—the alter ego of HHS<sup>29</sup> or the Departments of Labor<sup>30</sup> and Veterans Affairs<sup>31</sup>? The Secretary is correct: the Brooke Amendment and the Experimental Housing Allowance Program that morphed into Section 8 were not intended to create new welfare programs,<sup>32</sup> or dependency—except to the extent that the disabled or elderly (including veterans<sup>33</sup>) are involved who may be near the end of their lives.<sup>34</sup>

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<sup>28</sup> See [https://www.hud.gov/press/speeches\\_remarks\\_statements/Speech\\_080618](https://www.hud.gov/press/speeches_remarks_statements/Speech_080618) (“Dr. Ben Carson, Secretary of Housing and Urban Development, Florida Association of Housing & Redevelopment Officials (FAHRO) Annual Convention, Orlando, FL, August 6, 2018”).

<sup>29</sup> See [https://en.wikipedia.org/wiki/United\\_States\\_Department\\_of\\_Health\\_and\\_Human\\_Services](https://en.wikipedia.org/wiki/United_States_Department_of_Health_and_Human_Services) (“United States Department of Health and Human Services”).

<sup>30</sup> See [https://en.wikipedia.org/wiki/United\\_States\\_Department\\_of\\_Labor](https://en.wikipedia.org/wiki/United_States_Department_of_Labor) (“United States Department of Labor”).

<sup>31</sup> See [https://en.wikipedia.org/wiki/United\\_States\\_Department\\_of\\_Veterans\\_Affairs](https://en.wikipedia.org/wiki/United_States_Department_of_Veterans_Affairs) (“United States Department of Veterans Affairs”).

<sup>32</sup> See <https://en.wikipedia.org/wiki/Welfare> (“Welfare”—“Welfare can take a variety of forms, such as monetary payments, subsidies and vouchers, or housing assistance. Welfare systems differ from country to country, but welfare is commonly provided to individuals who are unemployed, those with illness or disability, the elderly, those with dependent children, and veterans. A person’s eligibility for welfare may also be constrained by means testing or other conditions. . . . According to the U.S. Census Bureau data released September 13, 2011, the nation’s poverty rate rose to 15.1% (46.2 million) in 2010, up from 14.3% (approximately 43.6 million) in 2009 and to its highest level since 1993. In 2008, 13.2% (39.8 million) Americans lived in relative poverty. In a 2011 op-ed in *Forbes*, Peter Ferrara stated that, ‘The best estimate of the cost of the 185 federal means tested Welfare programs for 2010 for the federal government alone is nearly \$700 billion, up a third since 2008, according to the Heritage Foundation. Counting state spending, total Welfare spending for 2010 reached nearly \$900 billion, up nearly

one-fourth since 2008 (24.3%).’ California, with 12% of the U.S. population, has one-third of the nation’s welfare recipients”).

<sup>33</sup> On August 2, 2018, Secretary Carson noted in Miami:

Effectively ending veteran homelessness is a significant victory. By reaching this goal, you are joining a national movement, along with 63 other communities—cities such as Kansas City and Pittsburgh and even the states of Virginia and Delaware!

Ending homelessness isn’t some lofty goal or a public declaration—it involves the challenging work of creating a system to ensure that when homelessness happens, it’s rare, brief and non-recurring.

Miami-Dade County has decreased the number of veterans experiencing homelessness and built a system that supports long-term, lasting solutions. You accomplished this while coordinating a local response to last year’s hurricanes and responding to the many families who fled their homes in Puerto Rico and the U.S. Virgin Islands.

What you did required vision, dedication and partners coming together and refusing to accept the notion that this is a problem too big to solve. There has been significant coordination with the Miami V-A Healthcare System, the local housing authority, and an extensive network of other committed partners and providers—all answered the call.

We need our veterans to flourish. We need their contributions, their skills, and their love of country. They’re vital to our national character, to our spirit, to the very soul of democracy itself. Their sacrifices remain the foundation of our liberties—the rock upon which our economy rests.

Once a soldier, sailor, airman, marine, or coastguardsman completes their duty, we MUST make it our duty to help them transition to civilian life, and when there is a derailment, we must be there to get them back on track.

While we gather today to celebrate a goal reached, we must also recognize our work never ends. In fact, the numbers tell us we still have work to do.

According to HUD’s most recent Point-In-Time count, local communities across the country reported approximately 40-thousand veterans were in shelters or living on the streets. Throughout Florida, nearly 28-hundred veterans are experiencing homelessness.

In spite of all the political disagreements we’re having today, this is one issue that we ALL agree on. And because this issue is nonpartisan, we’ve made tremendous progress as a nation to reduce homelessness.

They say all housing is local and it’s especially true when it comes to homelessness. In some high-cost areas, homelessness is actually on the rise. But we’re also seeing that when local communities take a laser-focused approach to homelessness, like you are doing here, the numbers are greatly reduced.

Across the country, homelessness among veterans has fallen nearly 50 percent since 2010, prompting a number of States and local communities to declare an effective end to veteran homelessness in their areas. *63, make that 64, communities, across 33 different states have effectively ended veterans’ homelessness in their communities.*

The decline in veterans’ homelessness is largely attributed to the close collaboration between HUD and the U.S. Department of Veterans Affairs (VA). For example, since 2010, more than 480[] thousand veterans and their family members have been permanently housed,

Also, query why there is any public housing at all? With vouchers available to choose housing wherever it is located—from a small house to an apartment rental unit, *anywhere*—wouldn't public housing disappear over time? Yes, the public housing authorities represent “vested interests” to insure that this does not happen, but isn't it inevitable as public housing deteriorates with the passage of time? Yes too, new and exciting public housing projects may replace those that have seen better days.<sup>35</sup>

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rapidly rehoused, or prevented from falling into homelessness in the first place.

We accomplished this through a joint program called the HUD-VA Supportive Housing Program . . . or HUD-VASH. It's a marvelous partnership that is really driving down veteran homelessness, providing permanent housing solutions.

HUD is working closely with medical centers and the VA to address long-term, chronic homelessness. We're working to overcome some of the root causes of homelessness through aggressive street outreach and case management . . . and then connecting those Veterans with housing. It's hard. You know that.

But as a compassionate country, we will not stand idly by while veterans call the streets their home. We believe in each-and-every one of us living up to our God-given potential and having the opportunity to thrive—regardless of race, color or creed—and *we cannot accept anything less* for the individuals who sacrifice for these principles.

Thank you again for helping America live up to, and to honor more deeply, our duty to our men and women in uniform. Together we will dramatically improve the situation and the opportunities for these deserving Americans, assist them as they regain control of their lives, and ensure they enjoy the freedoms they helped preserve.

Thank you. God bless you. God bless our veterans. And God bless this country.

See [https://www.hud.gov/press/speeches\\_remarks\\_statements/Remarks\\_080218](https://www.hud.gov/press/speeches_remarks_statements/Remarks_080218) (“Secretary Ben Carson, Miami, Florida, Thursday, August 2, 2018, “Dr. Benjamin S. Carson, Sr., Announces an End to Veteran Homelessness in Miami-Dade County, Florida”) (emphasis in original).

As a veteran himself, the author is particularly interested in positive developments nationwide with respect to other veterans. He served as a Captain in the U.S. Army, assigned to the Defense Intelligence Agency at the Pentagon, where he received the Joint Service Commendation Medal.

See, e.g., [https://en.wikipedia.org/wiki/Commendation\\_Medal#Joint\\_Service](https://en.wikipedia.org/wiki/Commendation_Medal#Joint_Service) and Timothy D. Naegele Resume, <https://naegeleblog.files.wordpress.com/2019/04/timothy-d.-naegele-resume.pdf>.

<sup>34</sup> Also, as stated previously:

The Brooke Amendment *cap*ped the rent that the poor would pay at 25 percent of their incomes (e.g., “Limit rents in public housing projects to no more than 25 percent of the occupant's income”). It did not provide that tenants would pay a *minimum* of 25 percent of their incomes. It was a ceiling, not a floor.

See *supra* n.5.

<sup>35</sup> On June 27, 2018, Secretary Carson testified before the House Committee on Financial Services, *inter alia*, about the need to end homelessness, and “to make safe, fair, affordable, and healthy homes the foundation for human achievement, freedom, and growth”:

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HUD currently serves 4.7 million low-income families, more than half of whom are seniors and persons living with disabilities. The Department's combined rental assistance programs account for 80 percent of HUD's annual budget and the cost of serving the same number of households increases each year. Demand for these programs far exceeds available resources and this condition has existed for many years. In fact, it is estimated only one in four households that qualify for HUD assistance receive it.

HUD's rent policies have remained largely unchanged since the early 1980s. The system we currently use to calculate a family's rental assistance is overly complicated and provides a disincentive to employment. Public Housing Authorities (PHAs), private landlords, and tenants participating in HUD's rental assistance programs must navigate a complex set of rules to properly calculate a household's rent. Under existing rules, tenants are required to provide extensive amounts of personal information each year, which results in a rent increase if tenants experience even a modest increase in income. This operates as a disincentive to both sustained employment and income growth, the very things that would enable more tenants to become self-sufficient.

Likewise, owners and PHAs, many with limited staff, must spend many hours calculating the correct payments from families, who themselves are often confused by byzantine rent rules for income and rent calculations. The complex annual income recertification process creates a perverse set of conditions that increase the risk of inaccurate income and rent calculations and discourage progress toward self-sufficiency.

In April, the Administration proposed a simplified structure of core rents that offers a more transparent and predictable rent calculation, streamlines program administration for PHAs and owners, and is easier to understand for landlords and tenants alike. Under this core rent proposal, PHAs and owners would only be required to verify income every three years rather than annually. This would substantially ease the administrative burden on PHAs, owners, and residents and would effectively encourage increased earned income without adversely impacting a household's rent for up to three years. HUD would also create a menu of choice rent structures that PHAs and owners could implement, including the option to propose their own rent structures, to promote greater flexibility, local control, and self-sufficiency for non-elderly/non-disabled households.

. . .

HUD is also committed to making significant investments in the fight to end homelessness, in partnership with the United States Interagency Council on Homelessness, which HUD currently chairs. The Department's Point-in-Time count, conducted in January 2017, indicated homelessness was on the rise for the first time in a decade, primarily driven by high-cost housing markets along the east and west coasts. For FY19, HUD is requesting \$2.383 billion, a \$133 million increase over last year's request, which includes \$40 million for rapid re-housing targeted to communities with high rates of unsheltered homelessness.

In addition to being a critical tool in HUD's broader fight against homelessness, the Continuum of Care (CoC) program is HUD's main tool to confront substance abuse and addiction issues. Last year, our grantees reported that 76,000, or approximately 25 percent of those served through CoC funding reported issues with substance abuse, including opioids. This is a worthy effort that we will continue to prioritize.

Last October, the Administration declared the opioid crisis a nationwide public health

The United States and the American people may learn from what has been done successfully in other countries—and from their mistakes.<sup>36</sup> For example, in Brazil:

Of the total 3 million homes [that are being constructed or planned], 1.6 million are for families earning between 0 and 3 times the monthly minimum wage (R\$545); 1 million homes are allocated to families with salaries between 3 and 6 times the monthly minimum wage; and the remaining 400,000 homes are for families earning between 6 and 10 times the monthly minimum wage.<sup>37</sup>

Also, it has been noted that “[n]early half of Hong Kong’s 7.8 million population lives in public housing,” and “[t]he average waiting time for public housing is around 6 years, with some having to wait for over 10 years.”<sup>38</sup>

emergency, recognizing the overwhelming impact of this epidemic that is destroying families and tearing communities apart. The President also created the White House Interagency Task Force on Opioids, which brings together federal agencies and coordinates the joint federal response to the crisis.

In our fight to combat a scourge that is killing tens of thousands of Americans each year, HUD plays a critical role. HUD’s senior leadership from all program offices is working collaboratively to recommend near-term actions to impact awareness and treatment, as well as thinking through strategic changes with rules and guidance that will support the efforts of interdiction, law enforcement, prevention, and recovery.

*See* [https://www.hud.gov/press/speeches\\_remarks\\_statements/Speech\\_062718](https://www.hud.gov/press/speeches_remarks_statements/Speech_062718) (“Testimony, Dr. Benjamin S. Carson, Sr., Secretary of the U.S. Department of Housing and Urban Development, Committee on Financial Services, U.S. House of Representatives, June 27, 2018”); *see also* <https://archives.hud.gov/remarks/byyear.cfm>.

<sup>36</sup> *See, e.g.*, [https://en.wikipedia.org/wiki/Public\\_housing](https://en.wikipedia.org/wiki/Public_housing) (“Public housing”—“The French tradition of ‘universal’ social housing allocation—housing for everyone is called into question by EU competition rules restricting subsidy except for the disadvantaged”—“In 1930 in the industrial city of Dessau, [Germany] . . . ‘Houses with Balcony Access’[] were designed by Bauhaus director Hannes Meyer for a housing cooperative that wanted apartments it could let for no more than a quarter of the occupant’s income”—“In many cities [of the Netherlands] such as Amsterdam, The Hague, Rotterdam and Utrecht the percentage of social housing approaches or even passes 50 percent”).

<sup>37</sup> *See id.*

<sup>38</sup> *See* [https://en.wikipedia.org/wiki/Public\\_housing\\_in\\_Hong\\_Kong](https://en.wikipedia.org/wiki/Public_housing_in_Hong_Kong) (“The vast majority of public housing are provided in high-rise buildings, and recent blocks usually comprise 40 or more storeys”—“A 1988 crime survey reported that crime rates were lower in the public housing estates of Hong Kong than in private housing areas”—“According to the 2006 census, 3.3 million people or 48.8 percent of the population of Hong Kong lived in rental or subsidised-sale public housing; within that group, 31 percent lived in public rental housing, 17.1 percent lived in Housing Authority subsidised-sale flats and 0.7 percent lived in Housing Society subsidised-sale flats”).

Vouchers, and the *absolute* right to choose (*i.e.*, tenant-based vouchers, *not* project-based vouchers), seem to be the best solution for the United States—albeit surely this conclusion will be attacked as overly simplistic, idealistic and unrealistic.<sup>39</sup>

## CONCLUSION

There are desperate housing needs today, which are unfulfilled for many Americans, especially the poorest of its poor. The notion of “home ownership” for every American, which used to be the mantra of Congress’ two banking committees, seems to be a pipe dream in the 21st century.

If the average American cannot afford a home without stretching himself or herself (or themselves) to the utmost financial limits, how can we expect the poor (*e.g.*, elderly) to have decent *shelter*, much less housing? If workers in California’s fabled Silicon Valley are forced to live in RVs because affordable housing is not available, how can we ever expect to alleviate the plight of our great nation’s homeless?

It would be easy to throw up our hands and give up altogether . . . or to simply muddle on, expecting existing programs and remedies to satisfy staggering needs, instead of fashioning new and truly creative solutions to the problems. When the Brooke Amendment, the Experimental Housing Allowance Program and Section 8 were conceived, they were in the vanguard and at the cutting edge of creative thinking; and they represented the very best solutions that were at hand. Today, it is necessary to think “outside the box” again, and rethink the problems and solutions, because with the passage of time they have grown exponentially greater and far more crippling and complex.

Yesterday’s problems are compounded by staggering mental health issues relating to America’s poor and homeless; violent gang activities such as MS-13;<sup>40</sup> dilapidated public housing projects, which may not be helped by the

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<sup>39</sup> For example:

Although there is a law in D.C. that is supposed to protect tenants from being discriminated against based on the source of income, I was told on more than one occasion that the property did not accept vouchers. There needs to be a provision . . . that expressly prohibits discrimination based on source of income at the national level. There also needs to be a mechanism put in place to enforce this provision.

See <https://www.govinfo.gov/content/pkg/CHRG-111hhrg52396/html/CHRG-111hhrg52396.htm> (Testimony of Gloria J. Robinson, a Section 8 vouchers holder, before the Subcommittee on Housing and Community Opportunity of the Committee on Financial Services, U.S. House of Representatives, One Hundred Eleventh Congress, First Session, June 4, 2009).

<sup>40</sup> See, *e.g.*, <https://en.wikipedia.org/wiki/MS-13> (“MS-13”).

infusion of more federal funds; Social Security retirement benefits that have not kept pace with the costs of food, housing and the medical needs of America's elderly poor; the influx of illegal immigrants from other countries, who have few discernible skills and nowhere to live; the shortage of qualified professional staff members who can deal effectively with such problems and challenges, and truly make a positive difference; and the increasing demand by most Americans for affordable housing,<sup>41</sup> which has outstripped the available supply.

On April 3, 2019, HUD's Secretary Dr. Ben Carson testified before Congress about ending homelessness:

This Administration is requesting nearly \$2.6 billion to help local communities house and serve individuals and families who are living in their shelters and on their streets. This represents an increase of nearly three and a half percent over the amount enacted for Fiscal Year 2018.

In my time in Washington, I have learned this is one area on which we can *all* agree. Preventing and ending homelessness remains a strategic goal of this Administration and, working with our local partners, we are seeing a positive and measurable impact.

The data being reported to us from thousands of big cities and small towns alike tell us our collective efforts are working. Since 2010, we have cut Veteran homelessness in this country by half. Family homelessness is also on the decline, falling nearly 30 percent during this same period.

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<sup>41</sup> For example, the relatively-simple home that the author's parents built about four years before he was born—in the Westwood suburb of Los Angeles, a mile west of the UCLA campus and just south of the fabled Sunset Boulevard—is estimated to have a market value today in excess of \$2.5 million. And little has been done to it since it was built. It is a tear-down house, with its value in the land.

Also, the author's father was a real estate broker in the Brentwood suburb of West Los Angeles. One day he noticed the owner of even more modest home just south of Sunset Boulevard putting up a "For Sale By Owner" sign. He contacted the author's great aunt and her husband in Chicago, who were contemplating a move to Los Angeles; and they bought it "sight unseen" for \$21,000. Today, the market value of this tear-down home is estimated to be in excess of \$3.5 million; and it too has changed little since it was built.

These seemingly-extravagant, grossly-inflated prices reflect the often-cited adjunct to the basic laws of supply and demand; namely, the "first rule" of real estate valuation—"location, location, location." For those who work at UCLA, most could not afford anything remotely close to these prices, which is true of Silicon Valley workers and those who work in or near other major U.S. metropolitan areas. *See, e.g., supra* n.4. The "trickle-down" effect on this great nation's poor (especially those who are elderly) and homeless is catastrophic. Many if not most cannot afford to live in the houses where they were born and raised.

This progress is happening because HUD’s homeless assistance programs, and the contributions from state and local governments, are being targeted to proven programs and strategies. Our Budget request further supports these local efforts.<sup>42</sup>

One size does not fit all. What works in one community may not work in another. And simply throwing money at the staggering problems might not be any solution at all. U.S. taxpayers may say “enough is enough,” and they might be right—at least with respect to their own self-interests. Money cannot be wasted if federal housing programs are to enjoy broad support from the American people. The tasks today are daunting, but the United States and Americans have risen to the challenges of the past, and may be expected to do so in the future.<sup>43</sup>

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<sup>42</sup> See <https://docs.house.gov/meetings/AP/AP20/20190403/109216/HHRG-116-AP20-Wstate-CarsonB-20190403.pdf> (“U.S. Housing and Urban Development Secretary Benjamin S. Carson, Sr., Testimony before House Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, April 3, 2019”).

<sup>43</sup> Last but not least is an article that appeared on February 19, 2019, in the *Globe Magazine* published by the *Boston Globe*, entitled: “As rents soar in Boston, low-income tenants try to stave off eviction.” It describes the plight of such tenants—including the elderly—as they seek to avoid evictions in Boston’s Edward W. Brooke Courthouse, which honored the late senator whose Brooke Amendment and “Experimental Housing Allowance Program” (which morphed into Section 8 housing) have helped millions of Americans.

In one case, a nearly-70 percent rent increase proved insurmountable for a 64-year old Boston school bus driver who was trying to stay in the two-bedroom Roxbury apartment where he had lived for 27 years, and he was evicted—even though he was receiving Section 8 subsidies. To say that the late senator would be deeply saddened is an understatement.

See <https://www.bostonglobe.com/magazine/2019/02/19/rents-soar-boston-low-income-tenants-try-stave-off-eviction/QddCq1bLrV3JQhaFTzYnGP/story.html>.