

# Subsidized Housing Policy:

## *Defining the Family*

By Madeline Howard†

### INTRODUCTION

Since the Great Depression, the federal government has provided housing for families who are unable to afford market rent.<sup>1</sup> Government-subsidized housing was originally intended to serve traditionally structured families, with a working husband and a wife who labored in the home caring for children.<sup>2</sup> Government housing policies have become more progressive in the last few decades, and eligibility guidelines no longer exclude unmarried couples. However, the families that depend on government-subsidized housing programs are still subject to regulations that may impair their family relationships and limit the people they are allowed to include in the home. Families headed by single women of color now predominate in subsidized housing, and policies governing residents must be understood in the context of gender and race.<sup>3</sup>

This paper will examine the effects of current subsidized housing programs<sup>4</sup> on families that do not fit the traditional model of husband and wife

---

† J.D. Candidate, 2007, University of California, Berkeley School of Law (Boalt Hall); B.A., 2000, Haverford College. Warm thanks to Mara Escowitz, Jessica Brown, and Odessa Donnell for their amazing editing. Thank you also to my fantastic article team and to the 2006-07 Editorial Board of the *Berkeley Journal of Gender, Law & Justice*. Eternal gratitude to Sarah Spiegel – this article would not have been written without her. Comments on earlier drafts from Professor Steve Sugarman are also very much appreciated. Finally, thank you to Rob Onorato and to my family for your patience and support.

1. See United States Housing Act of 1937 (Wagner-Steagall Housing Act), ch. 896, 50 Stat. 888 (1937) (codified as amended at 42 U.S.C. § 1437 (2000)); Michelle Adams, *Separate and Unequal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413, 433-48 (1996) (discussing the development of public housing).
2. Michael S. FitzPatrick, Note, *A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. ON POVERTY L. & POL'Y 421, 424-25 (2000).
3. U.S. DEP'T OF HOUS. & URBAN DEV., A PICTURE OF SUBSIDIZED HOUSEHOLDS: GENERAL DESCRIPTION OF THE DATA AND BIBLIOGRAPHY (1998), <http://www.huduser.org/datasets/assthsg/statedata98/descript.html> [hereinafter *Households Report*].
4. The term "subsidized housing" will be used in this paper to refer to both public housing and Section 8. Both programs are funded by the Federal Department of Housing and Urban

with children. Female-headed families are discussed in depth because they represent the majority of those residing in subsidized housing.<sup>5</sup> For the millions of people who live in government-subsidized housing or attempt to access it, the government's concepts of family rights and responsibilities may determine very fundamental aspects of their lives, such as whom they can marry and live with, whether certain family members must be excluded from the home, and how to cope with violence within the family. In addition to interfering with family structure, subsidized housing programs often perpetuate racial and economic segregation by isolating residents from the larger community.<sup>6</sup>

The plights of nontraditional families, low-income families, and families of color are closely linked. Often, nontraditional family status is a proxy for low-income status or racial "otherness," and claims of protecting family values are used as a tool to exclude struggling families of color from affluent communities.<sup>7</sup> Low-income families may share living space with other families out of financial necessity, and as a result, may fall outside of certain zoning schemes' definition of family.<sup>8</sup>

Low-income families and families of color are also more likely to have a fluid composition with children entering and exiting the household as financial necessity requires.<sup>9</sup> In order to exclude all low-income families, wealthy communities may use zoning restrictions to exclude both shared family homes and affordable housing developments.<sup>10</sup> As a result, subsidized housing developments are often located in remote and undesirable locations, and low-income families of color are segregated from wealthier, whiter communities.<sup>11</sup> The high concentration of people of color in subsidized housing developments has contributed to racially motivated, punitive eviction policies.<sup>12</sup> The disproportionate representation of people of color in both the criminal justice system<sup>13</sup> and the subsidized housing system interact to further the cycle of

---

Development and administered by local public housing authorities. Some federal housing funds go to private organizations that administer Section 8 vouchers or subsidized housing developments. This paper will focus on housing administered by local housing authorities.

5. *Households Report*, *supra* note 3.
6. MARGERY AUSTIN TURNER & LYNETTE A. RAWLINGS, URBAN INSTITUTE, OVERCOMING CONCENTRATED POVERTY AND ISOLATION 5 (2005), available at [http://www.urban.org/UploadedPDF/311205\\_Poverty\\_FR.pdf](http://www.urban.org/UploadedPDF/311205_Poverty_FR.pdf) [hereinafter *Overcoming Concentrated Poverty*].
7. See *Moore v. City of E. Cleveland*, 431 U.S. 494, 505-506 (1977); J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761, 763 (1982).
8. Richards, *supra* note 7.
9. Mandel School of Applied Social Sciences, Research Spotlight, *Low-Income Families with Children In Foster Care Breaking Up Under Welfare Reform*, Oct. 12, 2006, <http://msass.case.edu/spotlights/101206a-RS.html>.
10. *Moore*, 431 U.S. at 510.
11. *Overcoming Concentrated Poverty*, *supra* note 6, at 6.
12. Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. ON POVERTY L. & POL'Y 35, 46-48 (2002).
13. See, e.g., HUMAN RIGHTS WATCH, PUNISHMENT AND PREJUDICE: RACIAL DISPARITIES IN THE WAR ON DRUGS (2000), available at [http://www.hrw.org/reports/2000/usa/Rcedrg00-01.htm#P167\\_28183](http://www.hrw.org/reports/2000/usa/Rcedrg00-01.htm#P167_28183). "Blacks comprise 13 percent of the national population, but 30 percent

poverty, isolation, and imprisonment.

This paper argues that, in order to support low-income families and reduce racial segregation, governmental housing policy should go further towards promoting the integration of low-income housing into the larger community. Part I of this article provides a brief history of subsidized housing programs in the United States and describes the population currently residing in, or in need of, affordable housing. Part II outlines the eligibility guidelines subsidized housing programs use. Part III describes the way that bedroom guidelines and other subsidized housing rules regulate residents' family relationships. Policies that mandate eviction and banning of family members are described in Part IV. In order to place subsidized housing policies in the context of larger social policy, Part V concludes with a comparison of the vision of the family employed by subsidized housing programs with that of the Food Stamp Program and Temporary Assistance for Needy Families (TANF), the modern welfare program.

## **I. GOVERNMENT-SUBSIDIZED HOUSING IN THE UNITED STATES: FAMILIES SERVED AND FAMILIES IN NEED**

### **A. A Brief History of Subsidized Housing in the United States**

Nearly eleven million families and individuals in the United States depend on some form of government-subsidized housing.<sup>14</sup> The two principle types of subsidized housing are public housing, which consists of government-owned apartment buildings, and portable voucher programs, which provide a voucher that covers a portion of the rent for a privately owned apartment.<sup>15</sup>

The federal government has been subsidizing housing costs for low-income people since 1937.<sup>16</sup> From its inception, one of the principle goals of the federal subsidized housing program has been to promote morality in families.<sup>17</sup> The primary goal of the first public housing developments was to provide a safe haven from the slums that developed during the Depression, when the supply of affordable housing failed to keep pace with the influx of workers into cities.<sup>18</sup>

The first public housing developments were intended for middle class

---

of people arrested, 41 percent of people in jail, and 49 percent of those in prison. Nine percent of all black adults are under some form of correctional supervision (in jail or prison, on probation or parole), compared to two percent of white adults. One in three black men between the ages of 20 and 29 was either in jail or prison, or on parole or probation in 1995. One in ten black men in their twenties and early thirties is in prison or jail. Thirteen percent of the black adult male population has lost the right to vote because of felony disenfranchisement laws." *Id.*

14. See *Households Report*, *supra* note 3.

15. *Id.*

16. *Id.*

17. FitzPatrick, *supra* note 2, at 428.

18. *Id.*

families who suffered financially during the Depression, not the more deeply impoverished families who had lived in poverty for generations.<sup>19</sup> This goal is reflected in the original rents for public housing being set at a flat rate that would have been unattainable for deeply impoverished families.<sup>20</sup> The stated goal of this policy was to ensure that only “poor but honest workers” would occupy the units.<sup>21</sup>

After World War II, when the middle class had recovered from the Depression, veterans emerged as a new group in need of housing.<sup>22</sup> Both middle class families and veterans generated public sympathy and wielded significant power at the polls.<sup>23</sup> As a result, government funding for public housing was relatively generous during this time period.<sup>24</sup>

During the 1950s, African Americans, the elderly, and female-headed households became the dominant populations served by public housing.<sup>25</sup> The increased number of African American residents was the result of a racially motivated “slum clearance” program where the federal government pushed African American families into high-rise public housing developments to make way for white gentrification in more “desirable” areas.<sup>26</sup> This population has generated less public sympathy than the groups that formerly dominated public housing.<sup>27</sup> As a result, suburbs have resisted the development of new subsidized housing, and housing programs have been less generously funded.<sup>28</sup> Today, many public housing developments are isolated from the larger community, limiting residents’ access to jobs, educational programs, and medical services.<sup>29</sup>

In 1970, Congress directed the Department of Housing and Urban Development (“HUD”) to create a new government-subsidized program allowing low-income families to live in existing, privately-owned rental apartments.<sup>30</sup> HUD responded with the Housing Allowance Experiment, which allowed families to live in private, market-rate apartments with government assistance. The experiment was successful, and the Housing and Community Development Act of 1987 made what is now known as Section 8 a permanent

---

19. *Id.*

20. *Id.*

21. See Veterans’ Emergency Housing Act of 1946, ch. 268, 60 Stat. 207 (1946) (codified as amended at 12 U.S.C. §§ 1738, 1739, 1743 (1988)); Shelby D. Green, *The Public Housing Tenancy: Variations on the Common Law that Give Security of Tenure and Control*, 43 CATH. U.L. REV. 681, 690 (1994).

22. Green, *supra* note 21, at 691.

23. *Id.*

24. *Id.*

25. *Id.*

26. Hendrickson, *supra* note 12, at 44-46.

27. *Id.* at 45.

28. *Id.*

29. *Overcoming Concentrated Poverty*, *supra* note 6.

30. U.S. DEP’T OF HOUS. & URBAN DEV., SECTION 8 TENANT-BASED ASSISTANCE: A LOOK BACK AFTER THIRTY YEARS 1 (2000), available at <http://www.huduser.org/Publications/pdf/look.pdf>.

program.<sup>31</sup> Families who receive a Section 8 voucher must pay thirty percent of their income towards rent, and the voucher covers the remaining cost.<sup>32</sup> The program was specifically targeted to serve the needs of families paying more than half of their income for rent, a situation HUD refers to as “worst case” housing need.<sup>33</sup> The program is less costly to administer and less burdensome to manage than public housing.<sup>34</sup> It is also helpful for disabled individuals who are not elderly and therefore ineligible for most handicapped-accessible public housing units.<sup>35</sup>

In addition to allowing families to rent apartments anywhere in their community, vouchers can also be used in any community around the country that operates a Section 8 program.<sup>36</sup> Although the voucher itself does not restrict a tenant’s mobility, landlords are free to refuse to accept vouchers.<sup>37</sup> This limits the desegregative effects of Section 8 programs, because landlords in affluent communities and neighborhoods can simply refuse the vouchers.<sup>38</sup>

### B. Subsidized Housing Today

This section examines the demographics of the subsidized housing population today, and the guidelines and policies that control access to housing programs. It also describes the demographics of the homeless population, because the nearly eleven million people who access subsidized housing do not fully represent the need for affordable housing in the United States.<sup>39</sup> In fact, fewer than thirty percent of those eligible for low-income housing receive it, and three and a half million Americans are homeless.<sup>40</sup> The people who need affordable housing but are unable to access it must therefore be considered in any discussion of subsidized housing programs.

---

31. *Id.* at 5. Although HUD has renamed the program “housing choice vouchers,” the program is still most popularly known as Section 8.

32. *Id.*

33. *Id.* at i.

34. *Id.*

35. *Id.* at 6.

36. *Id.* at 15.

37. *Id.* at 7. Landlords who do accept Section 8 vouchers must sign a contract with the Housing Authority or agency administering the vouchers. In order to receive payment, the landlord must allow inspection of the property and meet Housing Quality Standards and local safety guidelines. U.S. DEP’T OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHER FACT SHEET 1 (2006), available at [http://www.hud.gov/offices/pih/programs/hcv/about/fact\\_sheet.cfm#4](http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm#4).

38. DEBORAH J. DEVINE ET AL., U.S. DEP’T OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHER LOCATION PATTERNS: IMPLICATIONS FOR PARTICIPANT AND NEIGHBORHOOD WELFARE 1 (2003), available at [http://www.novoco.com/low\\_income\\_housing/resource\\_files/research\\_center/Location\\_Paper.pdf](http://www.novoco.com/low_income_housing/resource_files/research_center/Location_Paper.pdf).

39. See generally Nat’l Law Center on Homelessness & Poverty, Homelessness and Poverty in America, [http://www.nlchp.org/FA\\_HAPIA/HomelessnessFactsJune2006.pdf](http://www.nlchp.org/FA_HAPIA/HomelessnessFactsJune2006.pdf) [hereinafter *Homelessness*] (last visited Mar. 1, 2007).

40. NAT’L ALLIANCE TO END HOMELESSNESS, WHY IS HOMELESSNESS AN IMPORTANT ISSUE? (2006), available at [http://www.endhomelessness.org/files/1074\\_file\\_NatlFacts.pdf](http://www.endhomelessness.org/files/1074_file_NatlFacts.pdf).

### 1. Recent Trends in Subsidized Housing Development and Homelessness

The most recent subsidized housing reform effort occurred with Home Ownership for People Everywhere (HOPE) in 1993, which Congress implemented in an effort to revitalize the public housing stock and assist low-income families in purchasing homes.<sup>41</sup> Although HOPE had laudable goals, such as increasing family self-sufficiency and improving quality of life for public housing residents, it has ultimately led to a decrease in the overall number of housing units available to low-income people.<sup>42</sup> HOPE was originally intended to improve public housing while maintaining the number of total units, but the requirement that one unit be maintained for each unit that was destroyed was recently eliminated.<sup>43</sup>

HUD now professes to make ending homelessness and increasing access to affordable housing a major goal,<sup>44</sup> but recent budget reforms have actually resulted in fewer affordable housing units for families.<sup>45</sup> Although the new mixed-income developments created with HOPE funds benefit the families living there, the projects displaced thousands of families, and HUD continues to demolish more housing than it creates.<sup>46</sup> According to HUD's own data, the number of units affordable to very low-income households dropped by 1.14 million between 1997 and 1999.<sup>47</sup> Between 2001 and 2005, HUD constructed or redeveloped 33,002 units and demolished 42,314.<sup>48</sup>

While housing authorities' funds have been spent on creating mixed economic developments and improving facilities, thousands of families wait for housing and many housing authorities' waiting lists are so long that they close for years at a time.<sup>49</sup> The number of people unable to afford adequate housing has been rising steadily over the last three decades.<sup>50</sup> Although mixed-income developments are valuable in reducing the ill effects of concentrated poverty,

---

41. FitzPatrick, *supra* note 2, at 436.

42. *Id.* at 436, 444.

43. W. David Koeninger, *A Room of One's Own and Five Hundred Pounds Becomes a Piece of Paper and "Get a Job": Evaluating Changes in Public Housing Policy from a Feminist Perspective*, 16 ST. LOUIS U. PUB. L. REV. 445, 449 (1997).

44. See U.S. Dep't of Hous. & Urban Dev., *Priorities: Ending Chronic Homelessness*, <http://www.hud.gov/initiatives/homeless.cfm> (last visited Feb. 21, 2007).

45. See FitzPatrick, *supra* note 2, at 444.

46. See *id.*

47. U.S. DEP'T OF HOUS. & URBAN DEV., *A REPORT ON WORST CASE HOUSING NEEDS IN 1999: NEW OPPORTUNITY AMONG CONTINUING CHALLENGES* 12 (2001), available at <http://www.huduser.org/Publications/pdf/look.pdf>.

48. Office of Mgmt. & Budget, *Detailed Information on the HOPE IV (Severely Distressed Public Housing) Assessment*, <http://www.whitehouse.gov/OMB/expectmore/detail.10001162.2005.html> (last visited April 12, 2007).

49. See OAKLAND HOUS. AUTH., *MAKING TRANSITIONS WORK ANNUAL PLAN 7* (2007), available at <http://www.oakha.org/MTW/AnnualPlan2007.pdf> [hereinafter *Making Transitions Work*].

50. See FitzPatrick, *supra* note 2, at 444.

when such developments do not include enough housing for the previous low-income residents, the ultimate result is more homelessness.<sup>51</sup>

In addition to the millions of homeless individuals in need of affordable housing, nearly five million low-income American households pay more than fifty percent of their income for rent.<sup>52</sup> Low-income families who spend half of their income on housing costs are forced to make hard choices between heat, food and rent. The risk of homelessness among families with severe rent burdens is high, and the number of homeless families is rising in the United States.<sup>53</sup> In 2004 alone, the demand for shelter rose fourteen percent.<sup>54</sup> The homeless and rent-burdened populations represent those who are most obviously in need of government-subsidized housing. In addition, significant numbers of families living in overcrowded or otherwise unsafe conditions may not be represented in these already staggering numbers.

## 2. Family Composition Among Those in Need of Affordable Housing

The most common family composition in the homeless population is a female with a child or children.<sup>55</sup> Forty percent of the homeless population is made up of families with children.<sup>56</sup> Of those families, eighty-four percent are female-headed.<sup>57</sup> Families of color are particularly likely to be homeless, and more than fifty percent of the homeless population is African American or Latino.<sup>58</sup> This population is demographically similar to the population living in subsidized housing, although an even greater percentage of those living in subsidized housing are families with children.<sup>59</sup>

The female-headed families that now predominate in public housing are a very different group than those families who lived in the first public housing developments. In fact, the original subsidized housing eligibility guidelines excluded unmarried and same-sex couples completely.<sup>60</sup> Today, many of the original rules governing the “morality” of families seeking public housing have given way to modern standards and broadening conceptions of family.<sup>61</sup> Regulations prohibiting unmarried couples from living together have been

---

51. See *Homelessness*, *supra* note 39.

52. *Id.*

53. *Id.*

54. *Id.*

55. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, KEY DATA CONCERNING HOMELESS PERSONS IN AMERICA 3 (2004), [http://www.nlchp.org/FA\\_HAPIA/HomelessPersonsInAmerica.pdf](http://www.nlchp.org/FA_HAPIA/HomelessPersonsInAmerica.pdf) [hereinafter *Key Data*].

56. *Id.*

57. *Id.*

58. *Id.*

59. See *Households Report*, *supra* note 3.

60. See, e.g., *Hann v. Hous. Auth. of Easton*, 709 F. Supp. 605, 606 (E.D. Pa. 1989); *Atkisson v. Kern County Hous. Auth.*, 130 Cal. Rptr. 375, 381-82 (Ct. App. 1976).

61. Caroll J. Miller, Annotation, *What Constitutes Illegal Discrimination Under State Statutory Prohibition Against Discrimination in Housing Accommodations on Account of Marital Status*, 33 A.L.R.4th 964 (2006).

replaced with definitions of family that include adults who “evidence a stable family relationship” regardless of marriage or blood ties.<sup>62</sup> As a result, housing authorities now allow gay couples with children to access subsidized housing.<sup>63</sup> Similarly, regulations that deny admission to unwed mothers, or mandate eviction when a resident has a child while unmarried, have been eliminated.<sup>64</sup> HUD has also adopted regulations prohibiting exclusion of welfare recipients and nontraditional families.<sup>65</sup> In addition, teenage mothers are eligible for some subsidized housing programs if they are emancipated.<sup>66</sup>

Far from being dominated by married couples living with children, subsidized housing today primarily serves single mothers and other female-headed families.<sup>67</sup> While only six percent of families living in subsidized housing are married couples with children, seventy-nine percent of households are female-headed families.<sup>68</sup> Sixty-nine percent of those living in public housing and fifty-eight percent of those living in Section 8 programs are people of color.<sup>69</sup> The population of public housing is also fairly stable; only eleven percent of those living in public housing and fifteen percent of people living in Section 8 housing have moved in the last year.<sup>70</sup> The majority of subsidized housing units are occupied by long-term residents, while a small number of units turn over more frequently.<sup>71</sup>

Fortunately, the rules governing residents of public housing have evolved with the changing structure of the family and increasing acceptance of families that do not fit the traditional husband and wife model. However, some of the same conceptions of the ideal family persist. Bedroom guidelines and limitations on foster parenting may prevent grandparents and other relatives from taking in children in times of need. In addition, felon exclusion rules and strict occupancy guidelines limit single parents’ ability to bring new partners into their homes.

## II. PUBLIC HOUSING ELIGIBILITY GUIDELINES: WHAT IS A FAMILY AND WHO MAY BE INCLUDED IN THE FAMILY HOME?

This section discusses the definition of family in low-income housing programs, and the various ways in which public housing authorities’ and HUD’s vision of the family shapes life for subsidized housing residents. HUD sets guidelines that all housing authorities must follow, including the Area Median

---

62. OAKLAND HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY 49 (2006), available at <http://oakha.org/MTW/ACOPFY07.pdf> [hereinafter *Oakland ACOP*].

63. Telephone Interview with Teresa Miller, Chief of Eligibility, Oakland Hous. Auth., in Oakland, Cal. (Oct. 2005).

64. Green, *supra* note 21, at 735.

65. *Id.* at 736.

66. *Oakland ACOP*, *supra* note 62.

67. *See Households Report*, *supra* note 3.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*



Income (“AMI”) level, which determines income eligibility for subsidized housing programs.<sup>72</sup> Public housing income eligibility is set at eighty percent of the AMI, which is categorized as “low-income.” Section 8 eligibility is set at fifty percent of the AMI, which is defined as “very low-income.”<sup>73</sup> For example, in Oakland, California, the AMI for a family of three is \$74,500.<sup>74</sup> In order for a family of three to be income-eligible for public housing, the family must have an income of less than \$59,600. For that same family to be eligible for Section 8, it must have income of less than \$37,700.<sup>75</sup> In addition, forty percent of public housing units are reserved for families who have incomes below thirty percent of the AMI, or \$22,650 for a family of three in Oakland.<sup>76</sup>

Individual housing authorities are allowed to develop their own preference systems for deciding who is selected from the waiting list first.<sup>77</sup> Under the most recent regulations, housing authorities are permitted to pass over extremely low-income families in favor of higher income families on waiting lists in order to create mixed-income developments.<sup>78</sup>

### A. The Family Defined

As a result of lawsuits brought against housing authorities around the country, unmarried couples can no longer be excluded from subsidized housing on the basis of marital status.<sup>79</sup> Today, on paper, the eligibility rules appear liberal and inclusive.<sup>80</sup> Fitting within the definition of “family” is one of several requirements applicants must meet in order to be allowed in public housing.<sup>81</sup>

---

72. The AMI is based on the median income of a set geographic area, generally a city or metropolitan region. Oakland’s AMI is based on incomes in Oakland, Fremont, and San Francisco. HUD USER, Data Sets: FY 2006 Income Limits, Tables for Section 8 Programs 19 (Mar. 8, 2006), [http://www.huduser.org/datasets/il/il06/Section8\\_IncomeLimits\\_2006.pdf](http://www.huduser.org/datasets/il/il06/Section8_IncomeLimits_2006.pdf); U.S. Dep’t of Hous. & Urban Dev., Rental Help: HUD’s Public Housing Program (Apr. 25, 2006), <http://www.hud.gov/renting/phprog.cfm>.

73. See Oakland Hous. Auth., Income Limits for All Programs FY 2006, <http://oakha.org/ph.html> [hereinafter *OHA Income Limits*] (last visited Feb. 21, 2007).

74. *Id.*

75. *Id.*

76. *Id.* See HUD USER, Data Sets: FY 2006 Income Limits, Tables for Section 8 Programs 19 (Mar. 8, 2006), [http://www.huduser.org/datasets/il/il06/Section8\\_IncomeLimits\\_2006.pdf](http://www.huduser.org/datasets/il/il06/Section8_IncomeLimits_2006.pdf); *Oakland ACOP*, *supra* note 62, at 92.

77. Telephone Interview with Teresa Miller, *supra* note 63.

78. Although eligibility guidelines are an important consideration in assessing housing policies, it should be noted that these policies do not come into play often, because the population of subsidized housing is very stable and a small number of new families is admitted each year. See Green, *supra* note 21, at 738.

79. See, e.g., *Hann v. Hous. Auth. of Easton*, 709 F. Supp. 605, 606 (E.D. Pa. 1989); *Atkisson v. Kern County Hous. Auth.*, 130 Cal. Rptr. 375, 381-82 (Ct. App. 1976).

80. See generally *Oakland ACOP*, *supra* note 62.

81. Families must also meet income guidelines, immigration status requirements, and screening guidelines in order to qualify for public housing. The income of all members of the family who plan to reside in the unit will be included in the income eligibility calculation. In general, subsidized housing programs do not count the income of absent family members. Families are expected to pay thirty percent of their income for rent in both public and Section 8 housing. *Id.* at 14.

HUD defines family as:

One or more adult persons with a child or children, including an emancipated minor, or two or more adult persons sharing residency whose income and resources are available to meet the family's needs and who are either related by blood, marriage, or operation of law, or have evidenced a stable family relationship. This includes multigenerational and other family compositions.<sup>82</sup>

Elderly or disabled single persons are also eligible for subsidized housing, as are pregnant women, and people in the process of adopting a child.<sup>83</sup> In general, individuals can show evidence of a "stable family relationship" by showing that they have been living together.<sup>84</sup> Individuals applying for housing together are not required to have cohabitated in the past; however, if they are not related by marriage or blood, past cohabitation will illustrate the stability of the relationship.<sup>85</sup> This definition allows individuals with no biological or legal ties to live together in public housing, as long as they do so regularly and share financial resources.<sup>86</sup>

Eligibility guidelines for families were not always so broad. Many housing authorities had policies banning all unmarried couples from public housing.<sup>87</sup> These policies were based on a presumption that unmarried couples were a bad influence on other families and were immoral.<sup>88</sup> In 1968, HUD took the first step toward ending discrimination against unmarried couples when it passed a regulation that there could be no per se rule denying admission or continued occupancy in public housing on the basis of marital status.<sup>89</sup> Since then, several state and federal courts have held that unmarried status cannot be the basis of exclusion from public housing.<sup>90</sup> Housing authorities' attempts to limit unmarried cohabitation through policies requiring registration for overnight guests have also been invalidated for violation of substantive due process rights.<sup>91</sup> These decisions represent a positive trend in allowing more diverse types of families into public housing.

Although the definition of family is federally mandated, local housing authorities have some leeway in determining preference systems and the number

---

82. *Id.* at 3-2.

83. *Id.*

84. Telephone Interview with Teresa Miller, *supra* note 63.

85. *Id.*

86. *See id.*

87. *See, e.g.,* *Atkisson v. Kern County Hous. Auth.*, 130 Cal. Rptr. 375, 377 (Ct. App. 1976); *Hann v. Hous. Auth. of Easton*, 709 F. Supp. 605, 606 (E.D. Pa. 1989).

88. *See Atkisson*, 130 Cal. Rptr. at 377 (describing the immorality of unmarried cohabitation as the reason for the Housing Authority's policy); *Hann*, 709 F. Supp. at 606 (recounting that the reason for exclusion of unmarried couples from public housing is the Housing Commission's belief that unmarried cohabitation is immoral).

89. *Atkisson*, 130 Cal. Rptr. at 379.

90. *See Hann*, 709 F. Supp. at 606; *Atkisson*, 130 Cal. Rptr. at 379.

91. *See McKenna v. Peekskill Hous. Auth.*, 647 F.2d 332, 333 (2d Cir. 1981).

of bedrooms for which families are eligible. To facilitate comparison of local policies, I will profile Oakland Housing Authority in Oakland, California and contrast Oakland's guidelines with those of Montgomery Housing Authority in Montgomery, Alabama, where there are informative differences. I selected these cities because they represent different parts of the country with contrasting political environments, racial demographics and patterns of development.

Although they have similar poverty rates (sixteen percent in both cities), Montgomery is about half the size of Oakland and is located in a more rural and conservative state.<sup>92</sup> Montgomery has just under 200,000 residents, and the population is primarily made up of African Americans, who make up fifty-three percent of the population, and whites, who make up forty-four percent of the population.<sup>93</sup> All other racial groups make up less than one and a half percent each.<sup>94</sup> In contrast, Oakland is located in a heavily developed urban area and is nearly twice the size of Montgomery.<sup>95</sup> Oakland is more racially diverse: about a third of the population is African American, another third white, sixteen percent Asian, and there are significant minorities of several other racial and ethnic groups.<sup>96</sup> The contrasting political contexts, racial compositions, and levels of urban development in these two cities allow for a meaningful comparison of local housing authorities.

### **B. The Suitability Determination: Who May be Included in the Family Home**

Despite inclusive eligibility guidelines, entire families may still be excluded from subsidized housing based on the past behavior of one family member.<sup>97</sup> This can occur through the screening process that takes place once a group of people has been determined to fit within the definition of family.<sup>98</sup> A finding of unsuitability for one member will result in exclusion of the entire family.<sup>99</sup> In order to avoid this result, the family may choose to remove that family member from the application and certify that he or she will not be allowed to visit or stay as a guest.<sup>100</sup> Oakland Housing Authority may require the family to provide the address of the excluded family member.<sup>101</sup> Montgomery Housing Authority has a similar policy, but it does not require the family to

---

92. U.S. CENSUS AMERICAN COMMUNITY REPORT, MONTGOMERY CITY, ALA. (2005), available at <http://factfinder.census.gov>.

93. *Id.*

94. *Id.*

95. U.S. CENSUS AMERICAN COMMUNITY REPORT, OAKLAND, CAL. (2005), available at <http://factfinder.census.gov>.

96. *Id.*

97. *Oakland ACOP*, *supra* note 62, at 74.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

provide the excluded member's address upon request.<sup>102</sup> Neither housing authority keeps records of how many families are excluded by suitability rules.<sup>103</sup>

In Oakland, the Housing Authority determines suitability based on whether or not the individual's recent behavior could "reasonably be expected to have a detrimental effect on the development, environment, or other tenants."<sup>104</sup> Evidence of past conduct is seen as the best predictor of future conduct.<sup>105</sup> Criminal behavior, or noncriminal behavior that is seen as a threat to the safety of others, such as a history of abusing alcohol, can be cause to deny housing.<sup>106</sup> Criminal behavior is defined very broadly, and a family may be denied housing if "illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member."<sup>107</sup> Oakland Housing Authority may waive these exclusions if the person demonstrates that he or she is rehabilitated or is currently participating in a rehabilitation program.<sup>108</sup>

In addition to past criminal behavior, both housing authorities will consider the family's financial history, especially its history of paying rent.<sup>109</sup> Poor housekeeping habits and a "history of disturbing neighbors" are also cause for refusing a family housing.<sup>110</sup> Until recently, Oakland Housing Authority had a policy of conducting home visits to determine whether a family's home was maintained in a "safe and sanitary" condition.<sup>111</sup> Montgomery's Occupancy Guidelines also allow the Housing Authority to conduct a home inspection and determine whether the tenants would create "health or sanitation problems."<sup>112</sup> Both housing authorities also require applicants to go through a screening process to determine admissibility.<sup>113</sup>

In addition to determining initial eligibility, housing authorities apply screening rules when a current resident of public housing wishes to add a new individual to his or her household, such as when a single mother wishes to get married and bring her new husband to live in the public housing unit.<sup>114</sup> If the

---

102. See HOUS. AUTH. OF THE CITY OF MONTGOMERY, ALA., NEW ADMISSIONS AND CONTINUED OCCUPANCY POLICY 22-23 (2004), available at [http://www.mhatoday.org/Documents/ACOP\\_4-20-2004.pdf](http://www.mhatoday.org/Documents/ACOP_4-20-2004.pdf) [hereinafter *Montgomery ACOP*].

103. Interview with Teresa Miller, Chief of Eligibility, Oakland Hous. Auth., in Oakland, Cal. (Nov. 2005).

104. *Id.*

105. *Id.*

106. *Oakland ACOP*, *supra* note 62, at 66.

107. 24 C.F.R. § 960.205(b)(1) (2006).

108. *Oakland ACOP*, *supra* note 62, at 73.

109. *Id.* at 71; *Montgomery ACOP*, *supra* note 102, at 20-21.

110. *Oakland ACOP*, *supra* note 62, at 68.

111. *Id.* at 18 (discussing OHA policy of examining landlord references, police records, and other sources to determine whether tenant kept home "safe and sanitary").

112. *Montgomery ACOP*, *supra* note 102, at 22.

113. *See id.* at 21-22.

114. *Id.* at 34.

husband-to-be has a felony record, the resident is effectively forced to choose between living with her spouse and leaving her home.

Eligibility rules are clearly intended to preserve a safe and peaceful environment for public housing tenants, which is a commendable goal. Given the number of families in need of housing, it is understandable that housing authorities use the criminal record as a straightforward marker of undesirability that allows families with unblemished records to access housing more quickly. However, the current method of determining suitability can result in the exclusion of many individuals who are not an actual threat to the community. As discussed above, the definition of criminal behavior may lead to exclusion of families where there is nothing more than a history of alcohol abuse. Screening out people with recent criminal backgrounds may leave those individuals and their families without housing options. Families that include an individual with a criminal history, no matter how minor, are thus forced to choose between affordable housing and maintaining the family unit.<sup>115</sup>

The broad scope of the exclusionary terms includes individuals who have not been convicted of any crime. This gives housing authorities tremendous discretion in determining eligibility. Since none of the housing authorities contacted keep records of who is screened out by these guidelines, it is difficult to determine how many families are affected and what types of families are most likely to be affected.

### C. The Preference System

Waiting lists for subsidized housing programs are often so long that they close entirely for years at a time.<sup>116</sup> Once a waiting list becomes too long for the housing authority to administer, the housing authority will simply stop taking names. Those on the list may wait for many years before actually getting an apartment. There are more than three thousand people on the waiting list for public housing in Oakland, and the list has only opened once since 2003.<sup>117</sup> When the list did open, the Oakland Housing Authority only accepted names for three days.<sup>118</sup> Similarly, the Section 8 list has only opened once since 2001, and only for four days.<sup>119</sup> Despite the need for subsidized housing among the very poor, when a family residing in public housing increases its income such that the family no longer meets income eligibility guidelines, they may remain in the unit.<sup>120</sup>

---

115. The Housing Authority does have discretion to waive these exclusionary rules, but no data was available as to how that discretion is exercised. *Oakland ACOP*, *supra* note 62, at 294.

116. *Id.* at 84 (discussing how OHA manages and administers waitlist).

117. *See Making Transitions Work*, *supra* note 49, at 6.

118. *See* Oakland Hous. Auth., Waiting List Open! (Dec. 2006) (on file with author).

119. Press Release, Oakland Hous. Auth., Oakland Housing Authority Announces Open Application for Low Income Housing Program (Jan. 17, 2006), *available at* <http://www.oakha.org/OhaNews/Section8OpenEnrollment.pdf>.

120. *See Oakland ACOP*, *supra* note 62, at 303 (noting that HUD gives local Housing Authorities

When there are open spots in public housing, some families will be chosen over others based on the individual housing authority's preference system.<sup>121</sup> Oakland gives preference to people already living in the City of Oakland and people who are not receiving subsidized housing or Section 8.<sup>122</sup> In addition, elderly and disabled people are preferred over other singles.<sup>123</sup> Oakland also gives preference to veterans.<sup>124</sup>

Within these preferences, half of the applicants are selected from among "self-sufficient" families and the other half are selected from among "non-self-sufficient" families.<sup>125</sup> Self-sufficient is defined as "at least fifty percent of household income from gainful employment, or a minimum of twenty hours of work per week, or participation in job training or education programs and those who are elderly and disabled."<sup>126</sup> Although self-sufficiency is referred to as a preference category by the Housing Authority, this system does not operate to advantage working families, because half of the open slots are given to non self-sufficient families.

Oakland Housing Authority also uses income preference guidelines. At least forty percent of newly admitted families each fiscal year must have an income below thirty percent of the Area Median Income.<sup>127</sup> Because the current preference system only requires that forty percent of the open units be filled with extremely low-income families, a significant number of units may be occupied by relatively affluent families making up to \$59,600 for a family of three.<sup>128</sup> Despite the high income limits for subsidized housing programs, the average income for families residing in Oakland's Public Housing Program is only \$15,328.<sup>129</sup>

The preference system Montgomery Housing Authority uses differs slightly from the Oakland system. Montgomery Housing Authority gives first preference to up to twenty-five homeless families per year and to victims of

---

the discretion to evict families that are over-income, and stating Oakland's policy of not evicting families solely because they become over-income).

121. See *Id.* at 91 (discussing permitted preference systems for selecting families from the waiting list).

122. See *id.*

123. *Id.* In addition, some buildings in Oakland are designated for the elderly and disabled, and others are designated as seniors only. First priority in these buildings is given to the elderly and disabled or seniors, respectively. *Id.* at 93.

124. *Id.* at 91.

125. *Id.*

126. *Id.*

127. *Id.* at 92.

128. See *Making Transitions Work*, *supra* note 49. Immigration status affects the income limits a family must meet. If a family made up of two citizens and one undocumented immigrant applies for housing, they will be allotted a unit suitable for a two person household, and must meet the income guidelines for a two person household. The undocumented person's income would be counted against the family even though no additional space would be provided for that person. More detailed discussion of the immigration status rules is beyond the scope of this paper.

129. *Id.* at 8. Data not available by family size.

natural disasters.<sup>130</sup> Montgomery Housing Authority grants second preference to working families or those unable to work because of age or disability.<sup>131</sup> Third preference goes to those currently or previously enrolled in training and upward mobility programs (similar to Oakland's self-sufficiency program discussed in Section IIIB).<sup>132</sup> Fourth preference is given to families meeting specified income goals.<sup>133</sup> Unlike in Oakland, veterans and current city residents do not receive preference in admissions.<sup>134</sup>

Although both Oakland and Montgomery have preferences for working families, neither housing authority's priority system benefits working families above all others. Both cities include families that are unable to work in the self-sufficient category, and Oakland only allots half of its open units to self-sufficient families. Non-disabled, non-elderly singles are the only group disfavored by both housing authorities' preference systems.

### III. REGULATION OF FAMILY RELATIONSHIPS IN SUBSIDIZED HOUSING

#### A. Bedroom Guidelines and Shifting Family Compositions

##### 1. Bedroom Guidelines

In addition to determining eligibility for families, housing authorities determine how many bedrooms each family requires.<sup>135</sup> Housing authorities' policies on the number of rooms for which each family is eligible reveal further assumptions about family relationships. In general, bedroom guidelines only establish the maximum number of bedrooms a family is allocated, and the housing authority does not actually decide which family members use which bedroom once the family moves into the unit.

Public housing in Oakland has a maximum of five bedrooms, which will accommodate ten people under the guidelines.<sup>136</sup> Bedroom guidelines assume that two people will share each bedroom, except for the head of household, who will be given a separate bedroom, which he or she is only required to share with a spouse or partner.<sup>137</sup> Despite this assumption, the Housing Authority may try to

---

130. See U.S. DEP'T OF HOUS. & URBAN DEV., MONTGOMERY HOUSING AUTHORITY 5 YEAR PLAN 27 (2006), available at <http://www.mhatoday.org/PHA%20Plans%202007%20Final.pdf> [hereinafter *MHA Plan*].

131. *Id.* at 17.

132. *Id.*

133. *Id.*

134. *Id.*

135. See *Oakland ACOP*, *supra* note 62, at 103.

136. Email Interview with Teresa Miller, Chief of Eligibility, Oakland Hous. Auth., in Oakland, Cal. (Oct. 2005). Note: Montgomery Housing Authority's bedroom guidelines are similar to Oakland's and will not be discussed separately.

137. See *Oakland ACOP* *supra* note 62, at 103.

provide unrelated adults separate bedrooms if it seems “appropriate.”<sup>138</sup> For example, if three unrelated adults, none of whom are partnered, were to apply for housing with one child, they would likely be found eligible for a three bedroom unit, but they could nonetheless be assigned a four bedroom unit if the Housing Authority determined that no two adults could share a bedroom.<sup>139</sup> Although the guidelines do not include any specific policy on same-sex couples, an Oakland Housing Authority manager explained that they are interpreted to mean that a same-sex couple with two children would be eligible for a two bedroom unit, with the couple sharing one bedroom and the children sharing another bedroom.<sup>140</sup> Single parents are not required to share a bedroom with a child, but may do so.<sup>141</sup>

Oakland Housing Authority guidelines assume that children of opposite sexes will share a bedroom, regardless of age.<sup>142</sup> For example, a single mother with one son and three daughters would be eligible for a three bedroom, and the guidelines would assume that the mother would have a separate bedroom, and the other two bedrooms would be occupied by two sisters and a brother and sister, respectively.<sup>143</sup>

Oakland Housing Authority guidelines also determine the method that must be used in counting the number of children in a family. Oakland’s regulations mandate that a child will only be counted as part of the household if she or he lives with the family more than fifty percent of the time.<sup>144</sup>

## 2. Adding New Family Members to the Household

When a family already residing in Oakland public housing wishes to add a new member to the household, the Housing Authority must be notified.<sup>145</sup> The new individual will then be screened for eligibility.<sup>146</sup> If the individual passes the screening, she or he may move into the unit.<sup>147</sup> If the addition of the new individual makes the family eligible for a unit with more bedrooms, as would be the case if the new individual is an adult who is not partnered with another adult

---

138. Interview with Teresa Miller, *supra* note 103.

139. *Id.*

140. *Id.*

141. *Id.* There are additional exceptions, such as allowing disabled individuals a separate room as a reasonable accommodation and allowing foster children a separate bedroom.

142. *Id.*

143. *Id.* Although allowing additional bedrooms is not listed among the types of reasonable accommodations the Housing Authority will provide for disabled family members, the Housing Authority has provided families with disabled members extra bedrooms to meet special needs. *Oakland ACOP*, *supra* note 62, at 36 (listing types of reasonable accommodations).

144. *Oakland ACOP*, *supra* note 62, at 55.

145. Interview with Teresa Miller, *supra* note 103.

146. *Id.* Montgomery Housing Authority’s regulations are similar and will not be discussed separately.

147. *Oakland ACOP*, *supra* note 62, at 235.



in the household, the family will be placed on a waiting list for a larger unit.<sup>148</sup> Unfortunately, due to the length of waiting lists, it may be difficult for a family who adds an additional member to get a larger unit even when the bedroom guidelines allow it.

HUD requires all housing authorities to follow certain procedures when a new member of the household is a child who is not the biological child of another household member. HUD rules allow families to bring foster children into the home, but define foster child as a child in custody of a state or other public agency, thus excluding unofficial caretaking arrangements.<sup>149</sup> In Oakland, when a child stays in the home for longer than fourteen days, the family must notify the Housing Authority in writing.<sup>150</sup> Foster children in Oakland may be brought into the home, and are considered members of the household, but not members of the family.<sup>151</sup> Foster families in Montgomery must obtain written consent from the Housing Authority before a foster child may reside on the premises.<sup>152</sup> These rules may limit the flexibility of struggling families who depend on unofficial foster parenting relationships.

Although most Section 8 eligibility guidelines are similar to public housing eligibility guidelines, Section 8 standards for adding a new individual to the unit are less flexible. Families residing in a Section 8 home only have a right to bring in a new family member if that individual joins the family by marriage, birth, adoption, or court-ordered custody.<sup>153</sup> If a family wishes to bring a foster child into the home, they must ask the housing authority for approval.<sup>154</sup>

Housing authority felony exclusion laws also restrict families from adding members who have committed violent or drug-related criminal offenses within the last five years.<sup>155</sup> These individuals are considered “undesirable.”<sup>156</sup> For instance, if a single mother residing in public or Section 8 housing develops a relationship with a man with a recent violent or drug-related conviction, he may not move into the unit even if they marry.<sup>157</sup>

Taken together, these limitations may severely curtail the ability of

---

148. *Id.*

149. *Id.*; *Montgomery ACOP*, *supra* note 102, at 60. Despite the written rules, Oakland Housing Authority staff reported that Section 8 housing is flexible in allowing children to stay in the home regardless of a formal foster care arrangement. Interview with Teresa Miller, *supra* note 103.

150. *Oakland ACOP*, *supra* note 62, at 236.

151. *Id.* at 56. This distinction affects income eligibility. Foster care payments are not counted as income for the household, and foster children may not be included in the dependent income deduction.

152. *Id.* at 6.

153. *Making Transitions Work*, *supra* note 49, at 297.

154. *Id.* According to a Housing Authority manager, occupancy limits are not always strictly enforced against families who take in children and are more likely to come into play when an unrelated man moves into a home. Interview with Teresa Miller, *supra* note 103.

155. *See Oakland ACOP*, *supra* note 62, at 67.

156. *Id.*

157. *See id.* at 66-67.

individuals to live with those they consider part of their family. More flexible policies would enable struggling families to support each other by sharing caretaking responsibilities, and would allow single parents to bring new partners into the home. Despite the limitations these restrictions impose, treating same-sex and unmarried couples the same as married couples represents a tremendous step forward for housing policy.

### B. Self-Sufficiency Programs

In 1990, the National Affordable Housing Act directed HUD to create a self-sufficiency program to assist subsidized housing residents in becoming independent of public benefits.<sup>158</sup> HUD gave housing authorities grants to establish employment-focused services for families in housing voucher programs, including the Section 8 program.<sup>159</sup> There is no longer significant federal funding for these services and most local housing authorities must rely on their own funds.<sup>160</sup>

Oakland Housing Authority is one of the few remaining housing authorities that receive some HUD funding specifically for self-sufficiency programs.<sup>161</sup> Oakland's self-sufficiency program assists families in obtaining employment by providing referrals to job training programs, day care, and other services.<sup>162</sup> Currently, the program is only open to Section 8 recipients; there is no self-sufficiency program for public housing residents.<sup>163</sup>

Normally, if a resident of Section 8 housing increases her income, her rent also increases, because Section 8 residents pay rent based on their income. Residents must pay at least thirty percent of their income for rent.<sup>164</sup> Although participants in the self-sufficiency program are still responsible for paying the same percentage of their income for rent, they are rewarded if they increase their

---

158. HUD, *Housing Choice Voucher Family Self-sufficiency*, <http://www.hud.gov/offices/pih/programs/hcv/fss.cfm> (Oct. 30, 2005) [hereinafter *HUD FSS*]; Pub. L. No. 101-625, 554, 104 Stat 4085, 4225 (codified as amended at 42 U.S.C. § 1437u (2001)).

159. *Id.* In addition to the self-sufficiency program, many housing authorities have housing ownership programs that assist families in saving money for down payments on homes. HUD also provides these services. Since these programs only benefit families with greater income than the lower-income families that are the focus of this paper, they are not discussed here. For more information, see Oakland Hous. Auth., Section 8 Home Ownership Program, [http://www.oakha.org/section8lh/ownership\\_program.shtml](http://www.oakha.org/section8lh/ownership_program.shtml).

160. HUD has been able to provide some funding for FSS program coordinators to assist housing authorities in operating housing choice voucher FSS programs. *HUD FSS*, *supra* note 158. In addition, some federal funding has been provided for the "Jobs Plus" demonstration programs, which also provide employment support services and attempt to help families become independent of welfare. See *Overcoming Concentrated Poverty*, *supra* note 6, at Table 1.

161. Interview with Teresa Miller, *supra* note 103.

162. Oakland Hous. Auth., Self Sufficiency Programs, <http://www.oakha.org/section8lh/sufficiency.shtml> (last visited Mar. 1, 2007).

163. *Id.*

164. See Oakland Hous. Auth., Housing Choice Voucher Program, <http://oakha.org/sec8.html> (last visited Jan. 14, 2007) [hereinafter *OHA Voucher Program*].

income through employment. The program works by helping participants save money as their rent increases. Each month the Housing Authority deposits a portion of the participant's rent increase into an escrow account, which the participant can access upon graduating from the program.<sup>165</sup>

Self-sufficiency program staff are funded by a HUD grant; general Oakland Housing Authority funds cover all other costs.<sup>166</sup> The Oakland program has over three hundred participants.<sup>167</sup> This represents a small percentage of the more than 10,000 families living in Section 8 housing.<sup>168</sup> Due to the lack of funding, the program is unable to serve more participants, and can provide only limited support to those who are involved in the program.<sup>169</sup>

Participants in Oakland's self-sufficiency program must sign a five-year contract, at the end of which they can access the funds from their savings account if they are not receiving TANF.<sup>170</sup> HUD authorizes all housing authorities, including Oakland, to terminate a family's housing voucher if the family fails to meet this goal.<sup>171</sup> Oakland administrators have chosen not to implement this punitive measure, and families who do not succeed in the program do not lose their housing voucher.<sup>172</sup>

Montgomery's self-sufficiency program is similar to Oakland's in that it also provides supportive services to residents seeking jobs, and seeks to help families become independent of TANF benefits. However, in Montgomery, public housing residents may also participate in the program.<sup>173</sup> Montgomery Housing Authority's program assists families in setting aside money for certain goals, including mortgage down payments.<sup>174</sup> Additionally, the Housing Authority assists adults in completing their education or obtaining a higher paying job by connecting them with social service providers.<sup>175</sup>

Self-sufficiency programs illustrate the value that subsidized housing programs place on work and reveal the coercive power that such goals can have on poor families. Although self-sufficiency is a valuable goal, and one that the

165. *Id.*

166. Interview with Teresa Miller, *supra* note 103.

167. *Id.*

168. *Making Transitions Work*, *supra* note 49, at 9.

169. Interview with Teresa Miller, *supra* note 103.

170. *OHA Voucher Program*, *supra* note 164.

171. *Id.*

172. Interview with Teresa Miller, *supra* note 103. In general, families must only meet the income guidelines for Section 8 when they enter the program; they will not lose their voucher if their increased earnings exceed the income limits that determine initial Section 8 eligibility. A family will only lose its voucher if thirty percent of its income is equal to the entire monthly rent. If a family can pay the entire monthly rent with thirty percent of its income, there will be a six month grace period during which the family can retain its voucher if family income decreases. Even if the family loses the voucher, it may remain in the same apartment, but will be responsible for paying one hundred percent of the rent. *Id.*

173. See Montgomery Hous. Auth., <http://www.mhatoday.org/fss.htm> (last visited Nov. 12, 2005).

174. See *id.*

175. *Id.*

majority of families dependent on subsidized housing likely share, the use of harsh penalties like forfeiture of housing vouchers is unnecessary and destructive. Penalizing families who are unable to find sustainable employment by sentencing them to homelessness does not achieve the stated goals of these programs. Data from a demonstration project that provided job training and transportation assistance to public housing residents suggests that these supportive services can have a real impact on a family's earnings even when there is no penalty for failing to increase income.<sup>176</sup> Oakland Housing Authority's policy of rewarding families for success rather than penalizing them for failure is a wise one.

Oakland also allows families who increase their earnings beyond Section 8 income limits to keep the housing voucher until thirty percent of their income is equal to the market rent of the apartment. This policy prevents families from becoming ineligible for housing programs before they are actually able to escape poverty.<sup>177</sup> The fact that forty-four percent of homeless people nationwide are employed makes it clear that work alone is not a solution; minimum wage jobs do not allow many families to afford market rent.<sup>178</sup> Forcing families out of Section 8 before they can afford unsubsidized housing can quickly erode the stability that the increased income provides. Providing adequate training programs is essential to a successful self-sufficiency program; otherwise, working may leave families more impoverished when they become ineligible for benefits. Unfortunately, the current gap between minimum wage and self-sufficiency is large, leaving untrained workers in low-paying jobs unable to meet basic needs without significant income supports.<sup>179</sup>

In addition to job-training programs, providing high quality child care arrangements is an essential component of a self-sufficiency program primarily serving single mothers. The benefits of a low-paying job may be small in comparison with the harm children suffer from inadequate care arrangements. Ironically, many of the most vigorous advocates for mandatory work programs for low-income single mothers also praise more affluent mothers for choosing to stay at home and raise children.<sup>180</sup> If the policymakers who advocate so strongly for mandatory work programs would commit to funding child care for all the parents they compel to work, low-income families would have a more realistic chance to change their circumstances.<sup>181</sup>

---

176. See *Overcoming Concentrated Poverty*, *supra* note 6, at Table 1.

177. See generally Nat'l Econ. Dev. & Law Ctr., Economic Self Sufficiency Standard for California, [http://www.nedlc.org/Publications/publications\\_sss.htm](http://www.nedlc.org/Publications/publications_sss.htm) (last visited Nov. 9, 2005).

178. See *Key Data*, *supra* note 55.

179. WIDER OPPORTUNITIES FOR WOMEN, COMING UP SHORT: A COMPARISON OF WAGES AND WORK SUPPORTS IN 10 AMERICAN COMMUNITIES 9 (2004), available at <http://wowonline.org/docs/dynamic-CTTA-43.pdf> [hereinafter *WOW*].

180. Peter B. Edelman, *Promoting Family by Promoting Work: The Hole in Martha Fineman's Doughnut*, 8 AM. U.J. GENDER SOC. POL'Y & L. 85, 87 (2000).

181. Ironically, HUD acknowledges the vital importance of stable housing to maintaining stable

#### IV. THE WAR ON DRUGS HITS HOME: STRICT LIABILITY EVICTION POLICIES AND BAN LISTS

##### A. Overview

In addition to authorizing housing authorities to take families' housing vouchers when they fail to become independent of welfare, the "one strike" rule mandates eviction for entire families when one member of the household breaks the law. The one strike rule originated with the 1988 Anti-Drug Abuse Act,<sup>182</sup> which was passed in order to combat a highly publicized increase in drug activity and violence in public housing developments.<sup>183</sup> As later amended, the Act included a provision<sup>184</sup> providing that if a public housing tenant, resident family member, guest or person "under the tenant's control" was found engaging in criminal activity on or near public housing premises, the tenant and all residents of the unit could be evicted.<sup>185</sup> In 1996, the provision was expanded to apply to criminal activity occurring anywhere on or off the property.<sup>186</sup> Housing authorities applied varying interpretations of the law, with some assuming that innocent tenants who had no knowledge of or actual ability to control the behavior of a family member should not be subject to eviction.<sup>187</sup> Some housing authorities assumed that a criminal conviction was required in order to evict families.<sup>188</sup> Some housing authorities also applied the law against domestic violence victims and treated assaults on tenants by domestic partners as strikes.<sup>189</sup> Although it is credited with reducing drug activity in public housing developments, this law has had extremely negative effects on families struggling with drug abuse.<sup>190</sup>

---

employment with its participation in the Welfare to Work program. In a demonstration project initiated in 1999, HUD issued fifty thousand additional vouchers to selected housing authorities specifically for families attempting to move from welfare to work. U.S. Dep't of Hous. & Urban Dev., *Welfare to Work Voucher Demonstration*, <http://www.hud.gov/offices/pih/programs/hcv/wtw/overview.cfm> (last accessed Oct. 30, 2005). The program was initiated because HUD has long maintained that stable, affordable housing is a critical but often missing factor in a family's transition from welfare to economic independence. The large number of working families that continue to have worst case housing needs suggests that simply obtaining a job will neither resolve a family's housing problems nor provide economic stability. *Id.*

182. 42 U.S.C. § 1437d(1)(6) (2000).

183. Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, 127 (2002).

184. 42 U.S.C. § 1437d(1)(6).

185. Michael A. Cavanagh & M. Jason Williams, *Low-income Grandparents as the Newest Draftees in the Government's War on Drugs: A Legal and Rhetorical Analysis of Department of Housing and Urban Development v. Rucker*, 10 GEO. J. ON POVERTY L. & POL'Y 157, 159 (2003).

186. *Id.*

187. *Id.* at 159.

188. *Id.*

189. Tara M. Vrettos, *Victimizing the Victim: Evicting Domestic Violence Victims from Public Housing Based on the Zero-Tolerance Policy*, 9 CARDOZO WOMEN'S L.J. 97, 98-99 (2002).

190. *See id.* at 103. *See generally* Renai S. Rodney, *Am I My Mother's Keeper? The Case Against*

This section will discuss the one strike policy of evicting the entire family of a first time drug offender as well as ban lists that prohibit designated individuals from visiting public housing developments. It will also describe the use of the one strike policy against domestic violence victims and the subsequent reversal of this approach with the 2005 reauthorization of the Violence Against Women Act.<sup>191</sup>

The one strike policy and use of ban lists have profound effects on families residing in public housing and their family relationships.<sup>192</sup> In effect, housing authorities enlist families to control their members, forcing them to ostracize troubled family members when they are most in need. While a family living in private housing might respond to a child's involvement in illegal activity by confining her to the house during after-school hours or by seeking the help of a professional counselor, families in public housing may find themselves homeless as a result of a child's behavior.

### **B. Evicting the Family for One Member's Drug Use: the One Strike Policy**

In *Rucker*, the Supreme Court interpreted the Anti-Drug Abuse Act as applied to four elderly public housing residents.<sup>193</sup> The lead plaintiff was an elderly woman whose daughter was arrested for possession of drugs near the apartment the two shared.<sup>194</sup> Another plaintiff was a seventy-one year old grandmother who had resided in public housing for twenty-five years when the Housing Authority sought to evict her because her grandson was caught smoking marijuana in the parking lot.<sup>195</sup> The third plaintiff was also targeted for her grandson's drug use.<sup>196</sup> The fourth plaintiff was targeted for his caretaker's drug use.<sup>197</sup> The Supreme Court held that housing authorities are not required to consider mitigating circumstances, and that entire families could be evicted for the criminal activity of one member regardless of the head of household's knowledge of or involvement with the criminal activity.<sup>198</sup> With this ruling, the one strike policy became a strict liability standard.

---

*the Use of Juvenile Arrest Records in One-Strike Public Housing Evictions*, 98 NW. U.L. REV. 739 (2004) (discussion of the way in which the one strike policy mandates evicting children when they become involved with gangs or drugs).

191. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 606(5), 2006 U.S.C.C.A.N. (119 Stat. 2960) 3046-47 (to be codified at 42 U.S.C. § 1437f(r)(5)) [hereinafter *VAWA*].

192. See generally Rodney, *supra* note 190.

193. Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, 128 (2002).

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.* The elderly man's illness and frailty, and the fact that the caretaker was present in the home specifically because of the man's physical weakness, make the law's assumption that he could control the criminal behavior of his caretaker particularly disturbing in this case.

198. See *id.* at 136.

The *Rucker* decision emphasizes that families have agreed to the strict liability eviction policy because the public housing lease includes the statutory language, stating that the tenant must “assure that the tenant, any member of the household, a guest, or another person under the tenant’s control, shall not engage in . . . any drug-related criminal activity on or near the premises.”<sup>199</sup> This mode of analysis belies the actual lack of choice low-income families have when they are forced to depend on government-subsidized housing. Although the opinion focuses on families’ agreement to the contractual clause, in reality, low-income families are not in a position to negotiate the terms of their leases.<sup>200</sup> In fact, because of the massive gap between wages and housing costs, families who are fortunate enough to make it off a waiting list and be offered a public housing unit have no ability to define the terms of their tenancy.

As a result of *Rucker*, entire families can be evicted from public housing for the criminal activity of one member, regardless of the head of household’s lack of knowledge or active attempts to prevent the criminal activity.<sup>201</sup> In Oakland, families may be able to avoid eviction with the assistance of an attorney, by agreeing not to allow the offending family member into the home.<sup>202</sup> Other housing authorities have adopted similar policies.<sup>203</sup> These agreements often include provisions authorizing the housing authority to make random unannounced inspections of the home to ensure the excluded individual has not been allowed to return.<sup>204</sup> Housing authorities have attempted to evict families under these agreements when the excluded individual is found on housing authority property, even when the individual was not allowed into the family’s apartment.<sup>205</sup>

*Rucker* exposes one of the false promises of public housing: although nontraditional families may be included in the expansive definition of family that appears in the eligibility guidelines, the realities of their lives have no bearing on the policies that housing authorities impose. It is unlikely that an elderly grandparent residing in private housing would be evicted for the criminal behavior of her grandchildren. Basic concerns about family privacy and the realities of teenage behavior make such a policy untenable when applied to private housing residents, yet it is imposed on public housing residents simply because they are poor.<sup>206</sup> Unlike the *Rucker* plaintiffs, caregivers who can afford

---

199. *See id.* at 128, 135.

200. *Id.* at 135.

201. *See id.* Due process challenges to the one strike policy as applied to families who have no actual knowledge or control over the family member’s illegal activity have failed. *See City of S. San Francisco Hous. Auth. v. Guillory*, 49 Cal. Rptr. 2d 367, 372 (App. Dep’t Super. Ct. 1995).

202. Interview with Laura Lane, Director, Housing Practice, East Bay Community Law Center, in Berkeley, Cal. (Sept. 2005).

203. *See Romero v. Martinez*, 721 N.Y.S.2d 17, 18 (App. Div. 2001).

204. *Id.*

205. *Id.* at 20.

206. *See Rachel Hannaford, Trading Due Process Rights for Shelter: Rucker and*

private housing can react to the criminal behavior of a child with the discipline they feel is appropriate, and assist the child in making better choices.

Policymakers should be concerned with the protection of those who are caring for the young, the ill, and the distressed individuals in our society. Although it is understandable for housing authorities and families living in public housing to want to ostracize individuals who use drugs, particularly because of the violence often associated with drug use, the one strike policy fails to account for the individuals who are evicted. The family unit is the traditional place where a distressed individual can gain support and strength in combating a substance abuse problem, and neither evicting the family—a penalty that nearly guarantees homelessness—nor forcing the family to evict the offending individual from the home allows the family to heal.<sup>207</sup>

Drug abuse and violence undoubtedly blight low-income communities.<sup>208</sup> In fact, in a study of families residing in public housing in five major cities, researchers found that single mothers took extreme measures to protect their children from gun violence.<sup>209</sup> Fear for their children's safety prevented many women from taking classes or working outside the home.<sup>210</sup> The study also found that children and mothers suffered adverse health effects as a result of the constant fear of violence.<sup>211</sup> This research provides support for advocates of the one strike policy by illustrating that violence in public housing developments may directly impact single mother-headed families' chances of becoming self-sufficient.<sup>212</sup>

However, the one strike policy is not the solution to ridding public housing developments of crime and does not serve the interests of single mothers. Integrating public housing developments into the community where there are jobs and resources rather than locating them in isolated areas would be far more effective in lowering crime rates. Living in an area of concentrated poverty exponentially increases the risk of adverse outcomes such as TANF receipt and failure to graduate from high school.<sup>213</sup> Until integration can be accomplished, there must be more creative approaches to fighting crime. Evicting troubled individuals and their families further marginalizes them and does not solve the problem. A more narrowly tailored eviction policy would more effectively target

---

*Unconstitutional Conditions in Public Housing Leases*, 6 U. PA. J. CONST. L. 139, 151-54 (2003) (analyzing the argument that before *Rucker*, the one strike policy might have been considered an unconstitutional condition).

207. See Rodney, *supra* note 190, at 756-57 (discussing impact of juvenile courts reporting juvenile crimes to public authorities to facilitate family evictions).

208. See Regina Austin, "Step on a Crack, Break Your Mother's Back": Poor Moms, Myths of Authority, and Drug Related Evictions from Public Housing, 14 YALE J.L. & FEMINISM 273, 274 (2002).

209. See Jeffrey R. Kling et al., *Fear in the Ghetto and its Ramifications for Parents*, 3 JOINT CTR. FOR POVERTY RESEARCH: POLICY BRIEFS 10 (2000).

210. *Id.*

211. *Id.*

212. *Id.*

213. See generally *Overcoming Concentrated Poverty*, *supra* note 6.



serious criminals without leaving so many families homeless.<sup>214</sup> The one strike policy only undermines the ability of single mothers and grandmothers to guide children away from criminal activity and other destructive behaviors. Children with minor involvement in crime lose the chance to make better choices when they are separated from their families and face homelessness.

### **C. Positive Developments in Subsidized Housing Policy: Ending One Strike Evictions of Domestic Violence Victims**

In addition to sanctioning the eviction of individuals involved in drug crimes and their innocent family members, the one strike policy has been used to evict victims of domestic violence because of the criminal abuse they suffer.<sup>215</sup> The original one strike policy's broad language mandated eviction for anyone who resided with an individual involved in criminal activity, and made no exception for victims of domestic violence.<sup>216</sup> The one strike policy contributed to making domestic violence the number one cause of homelessness nationally by requiring housing authorities to treat domestic assaults as "strikes" and evicting the victims.<sup>217</sup>

In one well-publicized case, a public housing resident suffered a concussion and a broken cheekbone at the hands of her husband.<sup>218</sup> She immediately obtained a restraining order against him.<sup>219</sup> Instead of being supported in her effort to remove her violent partner from her home and from housing authority grounds, this tenant was rewarded with a twenty-four hour eviction notice when she brought the restraining order to the housing authority management.<sup>220</sup> The housing authority stated that her husband's violence was the reason for her eviction.<sup>221</sup> In effect, she was punished for being beaten by her husband despite her best efforts to keep herself and other residents safe.

Used against domestic violence victims, strict liability eviction policies were utterly unjust and inimical to the goal of providing a safe environment for families. Domestic violence victims were forced to choose between obtaining legal protection from an abuser or vulnerability to homelessness as a result of eviction. Victims often chose to forgo the legal protection in order to avoid becoming homeless.<sup>222</sup> The closed waiting lists and incredible shortage of low-

---

214. FitzPatrick, *supra* note 2, at 423.

215. *See generally* Vrettos, *supra* note 189, at 98-99. It does not appear that either Oakland or Montgomery has applied the one strike policy against domestic violence victims.

216. *Id.* at 104.

217. NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, THE IMPACT OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) ON THE HOUSING RIGHTS AND OPTIONS OF SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE 1 (2006), [http://www.nlchp.org/FA\\_DV/VAWA\\_HousingFactSheet2-06.pdf](http://www.nlchp.org/FA_DV/VAWA_HousingFactSheet2-06.pdf) [hereinafter *VAWA Impact*].

218. Vrettos, *supra* note 189, at 98.

219. *Id.*

220. *Id.* at 97.

221. *Id.*

222. *VAWA Impact*, *supra* note 217, at 1.

income housing make the fear of homelessness very real.

This destructive pattern finally changed in 2006 with the reauthorization of the Violence Against Women Act (“VAWA”), which reversed the one strike policy as applied to domestic violence victims.<sup>223</sup> Congressional findings acknowledging the connection between homelessness and domestic violence led to the addition of new provisions with the January 5, 2006 reauthorization.<sup>224</sup> The Act specifically addresses the one strike policy’s application to domestic violence victims, and mandates that victims should not be evicted for being abused.<sup>225</sup> Housing authorities may still evict the abuser, but the rest of the family will be allowed to remain in the home.<sup>226</sup>

In addition to preventing victims from being evicted, the new VAWA provisions also allow a domestic violence victim to terminate her lease early if she needs to move in order to escape her abuser.<sup>227</sup> These changes represent a more reasonable, realistic understanding of culpability and family responsibility. Excluding domestic violence victims from the one strike policy is an important step forward for subsidized housing policy. However, because public housing residents living with family members who use drugs do not generate the same kind of public sympathy and political capital as domestic violence victims, this policy shift seems unlikely to alter the overall one strike policy.

#### D. No Guests Allowed: Ban Lists & No Trespass Policies

In addition to implementing the one strike policy, housing authorities across the country are attempting to fight crime by implementing ban lists.<sup>228</sup> Ban lists are lists of individuals who are not residents of the housing development and whom the housing authority declares to be a threat to the safety of the residents.<sup>229</sup> Individuals on the list are not allowed on housing authority property and can be arrested for trespassing if they enter the property.<sup>230</sup> Housing authorities often work closely with law enforcement officials to create these lists.<sup>231</sup> Although at common law there is an exception to trespass for individuals invited onto private property as guests,<sup>232</sup> housing authorities even ban invited

---

223. *Id.* at 2.

224. American Civil Liberties Union, *New Federal Law Forbids Domestic Violence Discrimination in Public Housing*, Jan. 15, 2006, <http://www.aclu.org/womensrights/violence/23929res20060125.html>. (last visited April 12, 2007).

225. *Id.*

226. 42 U.S.C.S. §§ 1437f(c)(9)(A)-(C), (d)(1)(B) (2006).

227. *VAWA*, *supra* note 191.

228. Gregory Beck, Note, *Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?*, 2004 U. ILL. L. REV. 1223, 1229 (2004).

229. *See id.*

230. *Id.* at 1236.

231. Elena Goldstein, Note, *Kept Out: Responding to Public Housing No-Trespass Policies*, 38 HARV. C.R.-C.L. L. REV. 215, 216 (2003).

232. *See, e.g.,* *Todisco v. Tishman Realty & Constr. Co.*, 62 N.Y.S.2d 458, 459 (Sup. Ct. 1946).

family members from entering the property.<sup>233</sup> There are often no strict criteria for being put on the ban lists; police and housing authority managers add names at their discretion, even if the individual was not actually doing anything illegal.<sup>234</sup>

Ban lists have been upheld by several courts, even when they interfere with family relationships.<sup>235</sup> In Richmond, Virginia, a father was put on a ban list because he frequently visited the Housing Authority property to see his children and mother.<sup>236</sup> Although he committed no crime, he was charged with trespassing on several occasions and then finally arrested and jailed when he entered the property to bring diapers to his baby.<sup>237</sup> After the Virginia Court of Appeals found the use of the ban list unconstitutional, the Virginia Supreme Court reversed and found that the Fourteenth Amendment did not protect the defendant when he committed “intentional acts of criminal trespass.”<sup>238</sup>

The Washington Supreme Court also upheld a ban list that was challenged on First Amendment grounds by a man who was arrested for trespassing when visiting his fiancé at a public housing development.<sup>239</sup> The court reasoned that, unlike the marriage relationship, the right to intimate association does not protect couples who are merely engaged.<sup>240</sup> Although there are no clear statistics, the prevalence of single mothers in public housing makes it very likely that there are numerous nonresident fathers who may be subject to bans.

In order to serve the interests of resident safety in public housing while protecting families’ right to maintain their homes and relationships, both the one strike policy and ban lists should be more narrowly tailored to restrict only those individuals who actually endanger other residents. Clear standards for who can be put on a ban list would make them more effective, alleviate the due process concerns they raise, and prevent them from unnecessarily interfering with family relationships. At a minimum, invitees of public housing residents should not be banned without a formal written warning, written notice of the reason for the ban if the warning is violated, and opportunity for a prompt informal hearing. Individuals who are not invited should also receive a written warning and, upon a violation, a written notice including reasons for the ban. In addition, housing authorities should have clear standards listing reasons for which an individual may be banned, and the reason for the ban should be presented to the individual in writing before the ban goes into effect.

---

233. Beck, *supra* note 228, at 1231.

234. See, e.g., *Bean v. United States*, 709 A.2d 85, 86 (D.C. 1998) (overturning criminal trespass conviction based on the fact that the police made no effort to determine whether the defendant had a legitimate reason to be on the property).

235. See, e.g., *City of Bremerton v. Widell*, 51 P.3d 733 (Wash. 2002); *Brown v. Dayton Metro Hous. Auth.*, No. C-3-93-037, 1993 U.S. Dist. LEXIS 21297 (S.D. Ohio Aug. 26, 1993).

236. *Hicks v. Commonwealth*, 548 S.E.2d 249, 252 (Va. Ct. App. 2001) (en banc).

237. See *id.*; Beck, *supra* note 228, at 1224.

238. *Commonwealth v. Hicks*, 596 S.E.2d 74, 80 (Va. 2004).

239. *Widell*, 51 P.3d at 741.

240. *Id.*

Like the ban list, the one strike policy is too broad to serve the interests of public housing residents. Although protecting residents from violence and criminal activity is clearly important, the current policy harms too many innocent victims. It is highly over-inclusive in that it results in the eviction of victims of crime, and innocent family members, along with those who are actually involved in criminal activity. Housing authorities should be required to consider whether the head of household was aware of the illegal activity, or was attempting to stop it before initiating eviction proceedings. Using a two strike policy where families would be given a written warning at the first offense before being evicted would be more humane and reasonable. This would allow those involved in drug activity the chance to obtain treatment for their addiction. Even after the second strike, only the offending individual should be evicted.

Because eviction is a sentence of homelessness for many families, the one strike policy destroys the only hope troubled families have of achieving stability. While another family coping with drug addiction can move or seek professional assistance, public housing residents' choices are constrained by their poverty. Current policies also permit public housing and law enforcement officials to abuse their power because decisions to evict or ban are entirely discretionary.<sup>241</sup> Individuals who have not been convicted of any crime can be banned or evicted, and basic standards of due process, such as clear notice and opportunity for appeal, are often absent. In order to avoid discriminatory exercise of discretion, there should be a clearer standard requiring a conviction, which must be met before a family is penalized.

#### **V. CONCEPTS OF THE FAMILY IN TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND THE FOOD STAMP PROGRAM: HOW DO SUBSIDIZED HOUSING POLICIES COMPARE?**

Low-income families often benefit from several need-based programs in addition to subsidized housing. The primary income supports available to non-disabled low-income families are the Food Stamp Program and Temporary Assistance for Needy Families ("TANF"), the modern welfare program.

TANF is the most recent name for the welfare program that began as Aid to Dependent Children under Roosevelt's New Deal.<sup>242</sup> Since its inception, the program has been saturated with racial bias. While white widows were treated as "entitled" to support under the original program, immigrants, divorcees, unmarried women, and women of color were only grudgingly granted sub-poverty level benefits.<sup>243</sup> Today, women of color are the dominant group receiving benefits, and the widely-held image of the typical welfare recipient is that of a lazy, promiscuous African American woman who lives in luxury at

---

241. See, e.g., *Bean v. United States*, 709 A.2d 85 (D.C. 1998).

242. Frank Munger, *The New Economy and the Unraveling Social Safety Net: How Can We Save the Safety Net?*, 69 BROOK. L. REV. 543, 549 (2004).

243. *Id.* at 550.

taxpayers' expense.<sup>244</sup> In reality, TANF benefits remain far below subsistence level.<sup>245</sup> The current monthly benefit level in California, an exceptionally generous state, is \$723 for a family of three with no income.<sup>246</sup> This is not enough to pay rent, let alone cover utilities, transportation costs, and other needs.<sup>247</sup> Although benefit levels are universally low, states where a higher proportion of women of color receive benefits tend to have more punitive sanction policies and stringent work requirements.<sup>248</sup> Stereotypes that welfare recipients are lazy are also patently false; the most recent trend in welfare policy has involved imposing stringent work requirements for recipients and punitive sanctions for those who fail to meet them.<sup>249</sup>

The Food Stamp Program provides families and individuals with a monthly benefit that can be used to purchase food items.<sup>250</sup> It is administered by the United States Department of Agriculture, and was founded as an effort to support farmers by creating more demand for surplus products.<sup>251</sup> The original program provided recipients with actual stamps, some of which could be used to buy any kind of food, and others of which could only be used to buy surplus foods.<sup>252</sup> Today food stamp recipients receive an Electronic Benefits Transfer (EBT) card that can be used like a credit card to purchase food items.<sup>253</sup> The current federal benefit for a family of three with no income is \$408.<sup>254</sup> Able-bodied adults who receive food stamps are subject to work requirements.<sup>255</sup>

- 
244. Elena Christine Acevedo, Recent Development, *The Latina Paradox: Cultural Barriers to the Equitable Receipt of Welfare Services Under Modern Welfare Reform*, 20 BERKELEY J. GENDER L. & JUST. 199, 207 (2005).
245. See Legal Services of N. Cal., CalWORKs: How Much Should I Get? Fact Sheet (2006), [http://www.lsnec.net/fact\\_sheets/cw\\_region\\_1.pdf](http://www.lsnec.net/fact_sheets/cw_region_1.pdf).
246. *Id.* This benefit amount is for a "nonexempt" family living in Region 1. Families are exempt if everyone in the family receives disability benefits. Region 1 includes the more urban areas in California where the cost of living is higher.
247. See generally *WOW*, *supra* note 179.
248. *Id.*
249. See generally Social Security Act, Block Grants to States for Temporary Assistance to Needy Families, 42 U.S.C.S. § 607 (2006).
250. USDA Food and Nutrition Service, A Short History of the Food Stamp Program, <http://www.fns.usda.gov/fsp/rules/Legislation/history.htm> (last visited Jan. 14, 2007).
251. *Id.*
252. *Id.*
253. USDA, Food Stamp Program: Retailers, <http://www.fns.usda.gov/fsp/retailers/default.htm> (last visited Jan. 14, 2007). Recipients who lack a kitchen can receive slightly increased benefits and are allowed to purchase prepared food. USDA, Food Stamp Program, Food Stamp Outreach Materials: 10 Myths About Food Stamps and the Homeless (2006), available at <http://www.fns.usda.gov/fsp/outreach/pdfs/myths-homeless.pdf>. Alcohol cannot be purchased with food stamps. USDA, Food Stamp Program, Using Food Stamps, [http://www.fns.usda.gov/fsp/applicant\\_recipients/using\\_foodstamps.htm](http://www.fns.usda.gov/fsp/applicant_recipients/using_foodstamps.htm) (last visited Feb. 16, 2007).
254. USDA, Food Stamp Program, Applicants and Recipients: Allotment Chart, [http://www.fns.usda.gov/fsp/applicant\\_recipients/ALLOTMENTCHART.HTM](http://www.fns.usda.gov/fsp/applicant_recipients/ALLOTMENTCHART.HTM) (last visited Jan. 14, 2007).
255. USDA, Food Stamp Program, Applicants and Recipients: About FSP, [http://www.fns.usda.gov/fsp/applicant\\_recipients/about\\_fsp.htm](http://www.fns.usda.gov/fsp/applicant_recipients/about_fsp.htm) (last visited Jan. 14, 2007).

Many of the families residing in subsidized housing also rely on income support programs like TANF and food stamps to make ends meet.<sup>256</sup> Despite the overlap between the programs, the policies governing eligibility are far from coherent, with each imposing different restrictions and requirements on beneficiaries. Families dependent on several income-based programs find themselves subject to a confusing and contradictory web of work-requirements, income restrictions, and rules about who can and cannot receive benefits as part of the family unit.

A comparison of these three programs illustrates the different visions of family responsibility and control embodied by our social programs, and reveals subsidized housing to be relatively progressive and free of moralistic overtones. The following sections will analyze the way each public program defines the family and the way these definitions affect families' lives. The functional definitions of family that appear in subsidized housing and Food Stamp regulations will be contrasted with the status-based definition of family that characterizes TANF. The first section examines the way each program characterizes the group of people who will receive benefits and determines who is financially responsible for family members. The next section compares the way these programs treat individuals who are added to the family or household. The third section compares the way in which the three programs incentivize certain behaviors.

### **A. Defining the Family and Allocating Financial Responsibility**

Subsidized housing programs define the family as a group of people evidencing a "stable family relationship."<sup>257</sup> This definition is functional and does not depend on formalistic legal ties or biological relationships. However, some subsidized housing programs rely on more status-based definitions of family when determining whether an individual can be brought into a subsidized housing resident's home. For example, in Oakland, Section 8 regulations do not give a family with a voucher the right to add a new member to the household unless that person is legally or biologically related to the current residents.<sup>258</sup> The definition of the family used by subsidized housing programs can therefore be seen as both functional and status-based.

In determining who is financially responsible for the family unit, and whose income will be counted for eligibility determinations, subsidized housing programs again use a functional definition of family. Only those individuals living in the unit are financially responsible for the family, and income eligibility

---

256. HUD User, *Welfare Reform Impacts on the Public Housing Program: A Preliminary Forecast* (Mar. 31, 2005), <http://www.huduser.org/publications/pubasst/welfare/intro.html>; HUD User, *Effects of Housing Vouchers on Welfare Families* 32 (Sept. 2006), [http://www.huduser.org/publications/pdf/hsgvouchers\\_1.pdf](http://www.huduser.org/publications/pdf/hsgvouchers_1.pdf).

257. *Oakland ACOP*, *supra* note 62, at 49.

258. Interview with Teresa Miller, *supra* note 103.

is based on the income of those applying for housing together. Despite the functional nature of this definition, the group living in the unit is called a family, and housing authorities determine allocation of bedrooms based on family relationships.<sup>259</sup>

The Food Stamp Program uses a purely functional definition to define the group of people who receive benefits together and does not use the term family at all.<sup>260</sup> The Food Stamp Program uses a “household” concept that defines the group of people receiving benefits by the food preparation activities they share.<sup>261</sup> If a group of people who live together also buy and prepare food together, they will be considered a household and receive benefits as a group even if they are unrelated.<sup>262</sup> Conversely, if a group of related individuals living together do not buy and prepare food together, they can be considered separate households unless they have certain specified relationships with each other.<sup>263</sup>

Although the Food Stamp Program primarily relies upon a functional household concept, certain status-based relationships trigger presumptions that determine the way benefits are allocated.<sup>264</sup> For example, marriage triggers an irrebuttable presumption that a couple buys and prepares food together.<sup>265</sup> A husband and wife living together cannot receive benefits as separate households because the Food Stamp Program will presume that they are part of one household based on their status as a married couple.<sup>266</sup> Similarly, a child under eighteen cannot apply as a separate household if he or she is living with a parent or is otherwise financially dependent on another member of the household.<sup>267</sup>

Although these presumptions are status-based, the Food Stamp Program gives benefits to unrelated individuals based entirely on whom they prepare food with, and does not make determinations about which individuals are part of the family.<sup>268</sup> This also means that the Food Stamp Program only counts household members’ financial resources when determining eligibility.<sup>269</sup> This approach allows the individuals in the family or household to determine financial responsibility: all those who are included in the benefit unit are responsible for each other, while those who are not included are not responsible and are not considered in the eligibility determination, regardless of any legal or biological ties. The household concept is morally neutral when compared with the concept

259. *Oakland ACOP*, *supra* note 62, at 103. For example, siblings are expected to share rooms. *See id.* and discussion above.

260. Food Stamp and Food Distribution Program, 7 C.F.R. § 273.1(a) (2002).

261. § 273.1(a)(3).

262. *Id.*

263. § 273.1(a)(2).

264. § 273.1 (b)(1)(i)-(ii) (stating that spouses living together and children under the age of 22 living with a parent, adopted parent, or step-parent are considered to buy and prepare meals together).

265. § 273.1 (b)(i).

266. *Id.*

267. § 273.1(b)(1)(iii).

268. *See generally* § 273.1.

269. § 273.8.

of the family, and using the functional definition avoids the thorny issues that arise when the government attempts to define intimate relationships.

TANF and the Food Stamp Program represent opposite extremes in terms of the extent to which the program guidelines attempt to enforce a certain model of familial responsibility. While the Food Stamp Program provides benefits based on a functional, flexible “household” concept, TANF eligibility guidelines have an inflexible, status-based vision of who must be included in a family, and explicitly promote marriage among recipients.<sup>270</sup> Rather than allowing individuals to define who will be included in the family group, TANF makes receipt of benefits contingent upon the inclusion of biological fathers in single mothers’ families, and rewards states that provide marriage promotion programs.<sup>271</sup> Although the government cannot require a mother to include the father of her children in her life, when she applies for TANF benefits she will be required to identify the father of her children to the welfare agency.<sup>272</sup> TANF requires applicants to identify absent parents so that the agency can seek child support from them.<sup>273</sup> Many single mothers may choose not to inform the father of their children about their lives, but TANF’s child support requirement treats the biological father as a financially responsible part of the family regardless of the mother’s wishes.<sup>274</sup> Angela Onwuachi-Willig persuasively argues that the TANF program’s promotion of marriage echoes back to post-bellum period efforts to “civilize” freed slaves by forcing them to marry.<sup>275</sup>

TANF’s policy of forcing single mothers to include biological fathers in their families can be contrasted with subsidized housing programs’ felon exclusion rules and ban lists. While TANF requires single mothers to involve the fathers of their children in their lives, eligibility restrictions used by subsidized housing programs may actually prohibit single mothers who wish to include a father in their lives from doing so. While the TANF program focuses on marriage and financial responsibility as its primary goals and values, subsidized housing programs may break up families with the one strike policy. The policies seem to be based on opposite assumptions: TANF rules are based on the assumption that adding a man to the household will “save” the family from poverty and make government intervention unnecessary, while the overbroad ban lists and exclusion policies in subsidized housing programs sweep many men into the undesirable category of people who will “taint” family homes. This creates tension between the policies and mechanisms of behavioral control employed by the two programs, and reveals the lack of coherence in our social

---

270. See Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647, 1663 (2005).

271. *Id.*

272. 42 U.S.C.S. § 608(a)(2) (2001).

273. § 608(a)(3)(A). There is one exception to this requirement for women who fear that they will be in danger if the agency seeks child support from the father. See 42 U.S.C.S. § 654(29)(A)(i) (2002).

274. *Id.*

275. Onwuachi-Willig, *supra* note 270, at 1661-62.



policy. For example, a woman receiving TANF benefits and living in public housing may be forced to identify the father of her children to the welfare agency but unable to invite him into her home.

### B. Treatment of New Family Members

Subsidized housing programs use a status-based definition of family to limit who can be added to the family home. For example, foster children may be prohibited from moving into the subsidized housing unit if there is no formal foster care relationship.<sup>276</sup> In contrast, the Food Stamp Program's household concept allows new members to be added to the benefit unit regardless of formal ties.<sup>277</sup> As long as the additional individual does not raise the household's income beyond the income guidelines, the group will not be prevented from adding new members.<sup>278</sup>

In comparison to the Food Stamp Program and subsidized housing programs, TANF's rules about new family members are punitive and moralistic. TANF denies benefits to new family members in spite of biological ties.<sup>279</sup> When a mother receiving TANF benefits bears a child, she will not receive additional benefits, and will be forced to provide for a larger family without additional financial support.<sup>280</sup> This "family cap" rule punishes mothers for having children: its stated purpose is to deter childbearing.<sup>281</sup> It imposes moral judgment on single mothers and penalizes the entire family for the new child's existence.

While the limitations on new household members imposed by subsidized housing programs can be justified by the administrative difficulty of determining who is a legitimate part of a family, TANF's family cap rule can only be explained as an attempt to control recipients' childbearing choices. In fact, the stated goals of the program include promoting marriage and discouraging out-of-wedlock births.<sup>282</sup> In contrast to both programs, the Food Stamp Program allows recipients to add new members to the household without being judged or limited by status-based relationships.

### C. Incentivizing Behaviors

The systems of incentives and sanctions used by public programs reveal both the goals of these programs and the vision of the family that the programs

---

276. See discussion in section IIA.

277. See § 273.1.

278. See *id.*

279. Susan Frelich Appleton, *Standards for Constitutional Review of Privacy-Invasive Welfare Reforms: Distinguishing the Abortion-Funding Cases and Redeeming the Undue-Burden Test*, 49 VAND. L. REV. 1, 39 (1996).

280. *Id.* at 39-40. There are exceptions to the family cap rule in very narrow circumstances, including rape. *Id.* at 40 n.232.

281. 42 U.S.C.S. § 601(a)(3)(2006).

282. *Id.*

seek to promote. Subsidized housing programs, TANF, and the Food Stamp program all reward recipients for working, and sanction them for failing to work. Both the Food Stamp Program and subsidized housing programs incentivize work by either requiring recipients to work or providing additional benefits to those who work.<sup>283</sup> Self-sufficiency programs reward subsidized housing residents for working with asset building programs and may sanction them for failing to work. TANF recipients are also required to work or engage in approved training programs in order to retain benefits.<sup>284</sup> All three programs attempt to promote financial independence through these sanctions and rewards.

In addition to requiring employment, TANF also explicitly aims to promote marriage and prevent out-of-wedlock pregnancy among recipients.<sup>285</sup> The family cap rule clearly creates a strong disincentive for pregnancy.<sup>286</sup> In addition, recipients are encouraged to attend federally funded marriage promotion workshops and to abstain from sex until marriage.<sup>287</sup> Finally, fatherhood initiatives aim to promote the involvement of fathers in recipients' lives.<sup>288</sup>

Although the Food Stamp Program does not attempt to control recipients' intimate relationships the way that TANF does, the system of presumptions actually incentivizes non-marital partnerships. Since Food Stamp benefits are calculated based on the assumption that it costs more to feed two single individuals than it does to feed two individuals in one household, unmarried cohabitating adults have an advantage over married adults because they can apply as separate households and receive more benefits. As a result, the Food Stamp Program dis-incentivizes the very behavior that TANF seeks to promote.

The differences between subsidized housing, Food Stamp, and TANF policies can be partially explained by the type of benefits each program provides and the public's view of benefit recipients. While subsidized housing and the Food Stamp Program provide an in-kind benefit, TANF provides families with cash. The public's distrust of the poor, and stereotypes about single women of color seem to be the source of TANF's moralistic rules. While housing and food programs may be seen as providing the necessities of life to poor working families, TANF is often viewed as a handout to lazy single mothers.<sup>289</sup> Unfortunately, TANF's strict work requirements and time limits have not altered the public perception of TANF recipients as undeserving of public assistance.

---

283. DAVID SUPER, CTR. ON BUDGET & POLICY PRIORITIES, BACKGROUND ON THE FOOD STAMP PROGRAM 4 (2001), <http://www.cbpp.org/7-10-01fs.pdf>.

284. U.S. Dep't of Health & Human Serv., Fact Sheet: Office of Family Assistance, [http://www.acf.hhs.gov/opa/fact\\_sheets/tanf\\_factsheet.html](http://www.acf.hhs.gov/opa/fact_sheets/tanf_factsheet.html) [hereinafter *OFA*] (last visited Jan. 11, 2007).

285. *Id.*

286. Onwuachi-Willig, *supra* note 270, at 1673.

287. *Id.*

288. U.S. Dep't of Health & Human Serv., Fact Sheet: Promoting Responsible Fatherhood (2002), <http://fatherhood.hhs.gov/factsheets/fact20020426.htm>.

289. *See generally* Onwuachi-Willig, *supra* note 270.

TANF is also unique in its policy focus. Although the stated goal of subsidized housing and food programs is to provide a benefit to needy families, the TANF program explicitly aims to change recipients' behavior.<sup>290</sup> Specifically, the architects of the modern TANF program embrace the idea that single motherhood causes poverty and that single mothers should be encouraged to marry and discouraged from having more children.<sup>291</sup> The program is structured around the idea that the women who seek benefits cause their own poverty, and that their need for benefits gives the government license to impose certain moral views on their lives.<sup>292</sup>

## VI. CONCLUSION

The broad definition of family utilized in subsidized housing eligibility guidelines allows low-income individuals in a nontraditional family structure to share a home. This functional definition of family does not impose a moralistic vision of who must be included in a family unit, and does not force single mothers to include fathers in their lives. However, this flexibility is severely undercut by harsh eviction policies and rigid occupancy guidelines. The one strike policy undermines the ability of subsidized housing residents to care for their families in times of crisis. Similarly, rigid occupancy guidelines and ban lists may actually prevent single mothers who wish to involve fathers in their lives from doing so.

When compared with other public programs, subsidized housing policy appears quite progressive and inclusive of nontraditional families. However, several specific policy changes would allow subsidized housing programs to serve families more effectively and better support single women raising children.

### A. Increase the Supply of Subsidized Housing

First, the most basic and obvious goal of any program that seeks to promote the welfare of low-income families should be increased funding for the development of subsidized housing. There is simply not enough housing for families who cannot afford market rent. Increasing the availability of affordable housing would help families in need, and save public funds by unburdening other costly social supports such as emergency medical care and shelter. In order to accomplish an increased level of affordable housing stock without politically unattractive direct costs, the Low Income Housing Tax Credit ("LIHTC") should be adjusted to meet the needs of very low-income families. The LIHTC works by rewarding developers for building or rehabilitating affordable housing. It has the potential to shoulder some of the burden for providing affordable housing with relatively low cost to the government, but currently does not meet the needs of

---

290. *OFA, supra* note 284.

291. *Id.*

292. Onwuachi-Willig, *supra* note 270, at 1673.

the poorest families.<sup>293</sup> This is because the requirements for the credit do not incentivize developers to build housing for the poorest families. In order to earn the credit, owners must either set aside twenty percent of units for families with less than fifty percent of Area Median Income, or forty percent of units for families with less than sixty percent Area Median Income.<sup>294</sup> In Oakland, a family of three with an income of \$44,700 could qualify for this affordable housing.<sup>295</sup> This is currently the most significant federal expenditure towards the development of affordable housing, yet it primarily serves relatively affluent families.<sup>296</sup>

Although the LIHTC has resulted in the development of up to 80,000 “affordable” housing units per year, the families benefiting from these new units could likely afford non-subsidized housing. Developers have no incentive to serve the lowest income families when they can generate the most revenue by serving families of moderate income. In addition, there is currently no system in place to ensure that developers benefiting from the LIHTC are in fact complying with fair housing laws, which leaves them free to select tenants in a discriminatory manner.<sup>297</sup> Changing the LIHTC so that developers could only receive a credit if they comply with fair housing laws and allocate a significant portion of housing to families below thirty percent of AMI would greatly benefit the neediest families.

Even without an increase in overall funding, many more families could be assisted if housing programs used resources more efficiently. Simply adjusting the formula by which housing voucher funds are distributed could increase access to subsidies.<sup>298</sup> Current housing policy leads to inexcusable waste and inefficiency on every level. For example, many cities are forced to rent motel rooms for homeless families because shelters are full.<sup>299</sup> This practice does not serve families well and is extremely wasteful of public funds. Those same dollars could be used to fund mobile voucher programs and emergency assistance to help families avoid eviction in situations of temporary income loss.

Although HUD’s HOPE programs aim to benefit families by deconcentrating poverty, mixed-income housing should not be developed at the

---

293. Shilesh Muralidhara, *Deficiencies of the Low-Income Housing Tax Credit in Targeting the Lowest-Income Households and in Promoting Concentrated Poverty and Segregation*, 24 LAW & INEQ. 353, 356, 363 (2006).

294. *Id.* at 358. As discussed above, in Oakland, the AMI is \$74,500 for a family of three.

295. *See OHA Income Limits*, *supra* note 73. This amount was derived from the income limits on the Oakland Housing Authority Page.

296. Muralidhara, *supra* note 293.

297. *Id.* at 368.

298. Detailed discussion of these formula changes is beyond the scope of this paper. For more information, see BARBARA SARD & MARTHA COVEN, CTR. ON BUDGET & POLICY PRIORITIES, *FIXING THE HOUSING VOUCHER FORMULA: A NO-COST WAY TO STRENGTHEN THE “SECTION 8” PROGRAM* (2006), available at <http://www.cbpp.org/11-1-06hou.pdf>.

299. U.S. DEP’T OF HOUS. & URBAN DEV., *HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE* (1999), available at [http://www.huduser.org/publications/homeless/homelessness/ch\\_3f.html](http://www.huduser.org/publications/homeless/homelessness/ch_3f.html).

expense of the poorest families. It is imperative that HOPE's initial promise of one-for-one replacement of low-income units be kept. Low-income families in need should not be refused housing in favor of middle class families. Integrating subsidized housing into mixed-income communities, while maintaining or increasing the number of affordable housing units, will begin to address some of the problems that plague housing projects, such as drug use and violence. Isolation of subsidized housing developments prevents families from finding and keeping jobs, and accessing basic necessities such as food and medical care.

### **B. Provide Services Tailored to Meet the Needs of Single Parent Residents**

Second, the needs of the single mother-headed families that predominate in subsidized housing should guide subsidized housing policies. This approach would involve providing high quality, on-site child care, and job training programs that prepare mothers for well-paying jobs. In addition, providing drug treatment programs and after-school programming at public housing developments would assist single mothers in keeping their children safe and healthy. Although these programs would create large up-front costs, the long-term benefit would be immense.

To this end, projects like the family self-sufficiency program in Oakland should be fully funded on a national basis. This program gives families a real chance to escape poverty by building assets. By allowing families that increase their income to stay in Section 8 housing until they can afford market rent, Oakland allows families to achieve financial stability. Any funds devoted to self-sufficiency and job training programs will ultimately result in cost savings as families move out of subsidized housing and unburden the shelter system.

### **C. Amend the One Strike Policy**

Finally, regulations that govern subsidized housing residents should be less punitive and more focused on supporting families. Specifically, rules that condition continued occupancy on the head of household's control over other family members should be tailored to avoid evicting entire families for one family member's mistake. The one strike policy should be changed into a two strike policy with added supports, such as on-site drug treatment, so that families can help struggling members escape further involvement with the criminal justice system. The staggering number of men of color involved in the criminal justice system has deprived many young men of color of positive role models and fathers. The one strike policy exacerbates this trend by preventing single mothers and grandmothers from protecting and guiding their children away from drugs and violence. While the TANF program touts marriage as the cure for single black mothers' poverty, many black men have limited or no earning potential because they are, or have been, under the supervision of the criminal

justice system.<sup>300</sup> The hypocrisy of these interacting systems would be comical if it were not so tragic.

Evicting public housing residents who are struggling with drug or alcohol problems has long-term implications beyond the initial risk of homelessness. Eighty-six percent of homeless adults have experienced a drug or alcohol problem, or mental illness, in their lifetime.<sup>301</sup> This should serve as a strong reminder of what can happen to families who are evicted from the only housing they can afford instead of being allowed a chance to recover.

The home is both the center of family life and a building block of the community. Protection of families' right to access and maintain housing is essential. The government must take an active role in facilitating the integration of marginalized families into the broader community. Currently, struggling families may find that the public housing system fails to serve them in moments of crisis, when a policy violation by one family member causes an entire family to be evicted, or when a mother must evict her child in order to maintain her home. Reasonable eviction policies, increased supportive services, and integration into the larger community would allow subsidized housing programs to give low-income families a real chance at self-sufficiency.

---

300. See, e.g., Onwuachi-Willig, *supra* note 270, at 1680-81; MARK MAUER, THE SENTENCING PROJECT, THE CRISIS OF THE YOUNG AFRICAN AMERICAN MALE AND THE CRIMINAL JUSTICE SYSTEM 3 (1999), available at [http://www.sentencingproject.org/Admin/Documents/publications/rd\\_crisisoftheyoung.pdf](http://www.sentencingproject.org/Admin/Documents/publications/rd_crisisoftheyoung.pdf).

301. *Homelessness*, *supra* note 39.