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PRELIMINARY HOUSING

MEMORANDA NOS. I, II, III, IV

August, 1947

TABLE OF CONTENTS

LIST OF TABLES AND CHARTS

Since this section (Part I) has been prepared the Bureau of Census has published population estimates for July 1946 by states and regions in the United States. The new data makes possible a more adequate basis for estimating regional population in 1947 than is utilized in this draft. The revisions which are being made, however do not alter the conclusions herein presented. The principal effect of the revision will be to slightly lower the population estimates and the estimated housing shortage on the Pacific Coast and to increase it somewhat for the East North Central region.

depression have been very inadequately housed in terms of even such minimum requirements as protection against the elements or from contamination and disease resulting from crowding of persons together without sufficient light, air or sanitary facilities. It is also equally true that large segments of the population exist on very meager and substandard food and clothing rations, but in the United States, at least, periodically we are able to provide and distribute enough of these latter two essentials so that during periods of high national income or prosperity their supply is not a menace to decent living standards. Housing, however, is perenially critical in a social sense. The Housing Census of 1940 provides ample quantitative evidence of deplorable state of a large part of the nation's housing prior to the dislocations and emergency housing problems which have been created by the war, and the current readjustment to peace.[1]

But irrespective of the general standard of housing in 1940 and the serious social problems created by compressing low income families, especially minority groups, in slums or blighted areas, there was little general awareness of a housing problem. Serious concern and interest was limited to those who were professionally concerned, principally public officials, housing students, social workers and local housing commissions and authorities. Those who were badly or inadequately housed were generally thought of as "those who were used to it." In any event 1940 was not generally characterized as a time of a critical housing shortage. Houses were available for sale or for rent throughout a wide price range in almost all sections of the country. What has happened then since 1940 which will explain the current crisis?

A wide variety of reasons have been offered to explain the present plight. Little quantitative data has been presented to substantiate the reasons for the shortage however. As a beginning, therefore, an attempt is made on the basis of available data (much of which is fragmentary) to examine the shortage as it exists today in contrast to the immediate pre-war situation (1940). A series of questions regarding the relationship between the number of dwelling units and the number of persons or groups of persons for whom dwelling space is required pose problems the answers to which should throw some light on the nature of the present emergency.

1. Has the population of the country increased more rapidly than the number of dwelling units since 1940 so that for the country as a whole there are fewer places to live for a given number of persons?

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[1]This aspect of the housing problem is analyzed in Part II.

In 1940 the population of the country was 131.67 million persons. There were at that time 37.3 million dwelling units, 34.85 million of which were occupied.[1] (Population per occupied unit 3.78 persons in 1940). By 1945 the estimated population of the country was 139.6[2] million, the number of dwelling units 40.4[3] million and the number of occupied dwelling units 37.6[4] million. (Estimated population per occupied dwelling unit was down to 3.71).

The 1940 housing census was taken as of April 1940 and the special sample census[5] was as of November 1945. During this period it has been estimated that approximately 3.1 million dwelling units were added to our housing supply.[6] Construction of new non-farm dwelling units during this same period was 2,340,000 units.[7] Thus, new non-farm construction accounted for 75 percent of the estimated new dwelling units added during the period. Applying this same ratio to the non-farm construction of November 1945 to January 1947 (662,000 units completed during 1946 plus 41,000 in the last months of 1945) gives an estimate of new units added since the 1945 census sample of approximately 937,000 units. The population of the United States as of January 1, 1947 is estimated at 141.5 million.[8]

The following tabular summary of this data indicates that the answer to our first question is clearly in the negative.

	Population	Estimated number of dwellings	Persons per dwelling
1940	131.67 million	37.3 million	3.53
Jan. 1947	141.5 million	41.34 million	3.42
Percent increase or decrease	7.5%	10.8%[9]	-3.1%

[1] 16th Census of the U.S., Housing, Vol. II, General Characteristics, Part I.

[2] Houser and Jaffe, The Extent of the Housing Shortage, Law and Contemporary Problems, Vol. XII, Duke University, Winter 1947, No. 1.

[3] Ibib.

[4] U.S. Department of Commerce Bureau of Census, Housing - Special Reports, Series H-46, No. 1, May 16, 1946.

[5] Ibid.

[6] Houser and Jaffe, Op. cit.

[7] Monthly Labor Review, Vol. 64, No. 1, Jan. 1947, p. 12. (2,340,000 units includes 8/12 of 1940, 1941, 1942, 1943, 1944 and 10/12 of 1945).

[8] Est. census population July 1, 1947 including armed services (U. S. Bureau of Census. Population. Special Reports Series P-47, No. 3) = 141.2 million. Add growth to Jan. 1, 1947, 141.2 x (.0012÷2). (Population Index, Vol. 13, No. 3, July 1947) = 142.0 million. Deduct estimated 500,000 armed forces outside U. S. as of Jan. 1, 1947. (N. Y. Times report May 12, 1947 gives estimates of garrisons and occupation forces abroad exclusive of U. S. territory as 408,000 to 448,000).

[9] Even disregarding new units from reconversion, new non-farm construction increased the housing supply 9 percent.

2. Has a large movement of farm population to non-farm areas since 1940 caused an increase in the ratio of non-farm persons to non-farm dwelling units?

The non-farm population of the United States in 1940 was 101.45 million persons.[1] By January 1947 the non-farm population had been increased by 11.5 percent to 113.2 million. (80 percent of total population of 141.5 million).

The number of non-farm dwellings is not directly obtainable but is estimated utilizing two different assumptions - a) that new non-farm dwelling construction added to the 1940 supply approximates the present number of non-farm dwelling units (new units added by conversion being roughly balanced with the retirement from use of outworn structures, losses from fire, etc.); or b) that the total number of dwelling units in 1945 (estimated at 41.34 million on page 4) less the number of farm units in 1940 (7.64 million[2]) represents the non-farm housing supply.[3]

The following table summarizes the results of these estimates:

	Non-farm Population	Estimate "a" Non-farm dwelling units	Estimate "b" Non-farm dwelling units
1940	101.45 million	29.68 million	29.68 million
Jan. 1947	113.2 million	32.72 million	33.70 million
percent increase	11.5%	10.2%	13.5%

It is impossible to conclude from these estimates that migration from rural areas so outstripped the additions to the non-farm housing supply that it created the present emergency conditions. Under estimate "a" only 270,000 additional units would be required to balance the proportionate increase in non-farm population. Under estimate "b" the increase in non-farm dwelling units is 700,000 units greater than required to meet proportionate demands of the increased non-farm population.

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[1] 16th Census of the U.S., Housing, Vol. II, Op. cit.

[2] Ibid.

[3] No increase in farm units is predicted here (a) because there was an 11 percent decrease in number of occupied farm houses from 1940 to 1945 and (b) because the estimated farm population from 1940 to 1947 declined from 30.2 million persons to 28.3 million persons.

On the basis of prewar experience the "b" estimate much more closely approximates the number of dwelling units than does "a". Non-farm residential construction comprised approximately 65 percent of dwelling units added during the period 1930 to 1940.

3. Has net family formation in non-farm areas exceeded the addition of non-farm dwelling units since 1940?

The number of families in the United States has been increasing at a much more rapid rate than has the total population. This is reflected in the number of persons per "census family" which includes all persons related or unrelated living together and sharing common housekeeping arrangements. In 1900 the average number of persons per census family was 4.8. By 1940 the average number was 3.8 and in 1945 it was 3.7 persons. But the census family can include more than one family in the commonly accepted use of the term. A husband and wife with or without children living with parents or with a brother's family, for example, would all be included as a part of one family in census returns. For a more acceptable family definition in terms of housing requirements it is useful to include the doubled-up or sub families in addition to census families. Houser and Jaffe in their study, "The Extent of the Housing Shortage"[1] refer to this family category as "social families" as contrasted to "census families". When the census family designation is used here the term "household" will be applied, when the term "family" is used social family is meant.

The number of non-farm families can be estimated on the basis of existing data. The derivation of the estimate is shown in detail. Primarily it is based upon the family data compiled by Houser and Jaffe.[2]

The following table is directly derived from the Houser and Jaffe study unless otherwise notes:

	Population	No. of Households	No. of Families	Average No. of Persons Per Household	Average No. of Persons Per Family
1940	131.67	35.1 million	37.5	3.75	3.51
1945	139.62	37.5 million	41.3	3.72	3.38
1947	141.50[a]	38.2[b] million	42.5[d]	3.70	3.33[c]
1950		40.9 million			

a) Previously indicated estimate
b) Interpolated from 1945 and 1950 data shown
c) Extrapolated from average persons per family in 1940 and 1945
d) Population, 141.5 ÷ average no. of persons per family, 3.33

[1] Houser and Jaffe, Op. cit.

[2] Ibid.

On the basis of the above estimates, 5 million additional families have been added since 1940.[1] From the above, an estimation of the number of farm families can be derived:

	Population	Households	Average No. of Persons per Farm Household	Estimated No. of Farm Families
1940	30.22[a] million	7.11 million[a]	4.25	7.61[e]
1947	28.30[b] million	6.75[d] million	4.19[c]	7.51[e]

[a] U.S. Housing Census, 1940
[b] Estimate (by U.S. Chamber of Commerce) at 20 percent of total population
[c] Estimated by applying same proportional decline in average size as for all households (3.1 percent)
[d] Farm population (28.3) ÷ average no. of persons per farm family (4.19)
[e] Assumes same percent of doubling up (families ÷ households, 1940 = 107.1; 1947 = 11.3) as for entire population.

The net addition of non-farm families since 1940 is thus estimated as follows:

	All Families	-- Farm Families	Non-farm Families
1940	37.5 million	7.61	29.89
1947	42.5 million	7.51	34.99
Net decrease or increase	5.0 million		5.1 million

Comparing the estimated number of new non-farm families with the increase in the number of non-farm dwelling units under either assumption "a" or assumption "b", previously indicated, shows the general magnitude of the overall housing shortage as compared to 1940.

	Assumption "A"	Assumption "B"
Estimated increase in number of non-farm families	5,100,000	5,100,000
Estimated increase in number of non-farm dwellings	3,040,000	4,020,000
Net shortage over 1940	2,060,000 units	1,080,000 units

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[1] This method of estimation if applied to the 1930 to 1937 period for which data is available, would be within 5% of actual family formation in that period as reported by Houser and Jaffe.

Rapid family formation is a real and cumulative factor in the present housing shortage. During the period 1930 to 1940 addition of dwelling units lagged approximately 1½ million units behind family formation on basis of the data reported by Houser and Jaffe.[1]

4. Has non-farm family formation outstripped the addition of new non-farm dwelling units in all sections of the country?

New construction of non-farm dwellings in the United States since the 1940 census has been indicated to be approximately 3,040,000 units. This construction has been distributed among nine major regions approximately as follows: (See Appendix I for detailed estimates)

New England[a]	3.7%	East North Central[c]	17.8%
Middle Atlantic[b]	11.8	West North Central[d]	5.7
South Atlantic[e]	17.4	West South Central[g]	12.3
East South Central[f]	4.9	Mountain[h]	3.8
		Pacific[i]	22.6

There was considerable shifting of persons and families within the United States during the war period which has been augmented by possible change of domicile of returning veterans. On the other hand, no large back movement from most of the centers of wartime industrial activity is noticeable. Appendix table II gives the derivation of the estimates of regional non-farm population as of January 1947.

The distribution of the increase of non-farm population from 1940 to January 1947 (an increase of 11.75 million) is as follows:

United States	100%	South Atlantic	16.4
New England	3.3	East South Central	4.2
Middle Atlantic	5.2	West South Central	7.4
East North Central	14.1	Mountain	4.7
West North Central	3.1	Pacific	41.6

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[1]Houser and Jaffe, op cit.

[a]Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut.

[b]New York, New Jersey, Pennsylvania

[c]Ohio, Indiana, Illinois, Michigan, Wisconsin

[d]Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas

[e]Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida

[f]Kentucky, Tennessee, Alabama, Mississippi

[g]Arkansas, Louisiana, Oklahoma, Texas

[h]Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Nevada, Utah

[i]Washington, Oregon, California

Now, if the number of new non-farm dwelling units since 1940 is distributed in accordance with the new non-farm construction and the estimated increase in families is distributed in proportion to the increase in population, wide geographic disparity in the housing shortage in apparent as evidenced by the following table:

Region	Increase in No. of Dwelling Units Estimate "A"	Increase in No. of Dwelling Units Estimate "B"	Estimated Increase in No. of families[a]	Aggravation of Shortage "A"	Aggravation of Shortage "B"
U.S.	3,080,000	4,020,000	5,100,000	2,060,000	1,080,000
New England	112,480	148,740	168,300	55,820	19,560
Middle Atlantic	358,720	474,360	265,200	-93,520	-209,160
East North Central	541,120	715,560	719,100	177,980	3,540
West North Central	173,280	229,140	158,100	-15,180	-71,040
South Atlantic	528,960	699,480	836,400	305,440	136,920
East South Central	148,960	196,980	214,200	65,340	17,320
West South Central	373,920	494,460	377,400	3,480	-117,060
Mountain	115,520	152,760	239,700	114,180	86,940
Pacific	687,040	908,520	2,121,600	1,434,560	1,213,080

The above shortage estimates assume that the regional distribution of non-farm families added since 1940 is in direct proportion to the non-farm population increase. That is, that the average size of the families added since 1940 is the same in each region. This assumption would tend to be borne out if newly formed families and migrating families correspond more closely in terms of number of persons with similar families in other areas than with the size characteristics of all the families of the same region. Because there was considerable variation in family size in 1940 among different sections of the country an alternative method of distributing the number of families (which more closely approximates what happened to family formation as measured by census families in the 1930's) is obtained by applying the 1940 family size characteristics of the various regions to the population and correcting each uniformly for the percentage reduction in size

[a]This is the first of two assumptions with respect to the increase in number of families. (Hereafter designated as estimate (1).

of all non-farm families. The distribution of added families by this method (designated estimate (2) is contrasted with the previous distribution based on population designated estimate (1)) in the following summary: (See Appendix III for detailed derivation of assumption 2.)

Region	Increase in No. of Families Estimate (1)	Increase in No. of Families Estimate (2)
U.S.	5,100,000	5,040,000
New England	168,300	230,000
Middle Atlantic	265,200	480,000
East North Central	719,100	770,000
West North Central	158,100	220,000
South Atlantic	836,400	690,000
East South Central	214,200	210,000
West South Central	377,400	360,000
Mountain	239,700	220,000
Pacific	2,121,600	1,860,000

The above material in this section provides the basis for four estimates of the aggravation of the housing shortage since 1940 by regions. (Two estimates on increase in non-farm dwelling units and two on net non-farm family formation, A-1, A-2, B-1 and B-2). These may be summarized as follows:

Region	A-1	B-1	A-2	B-2
U.S.	2,060,000	1,080,000	2,000,000	1,020,000
New England	55,820	19,560	117,520	81,260
Middle Atlantic	-93,520	-209,160	121,280	5,640
East North Central	177,980	3,540	228,880	54,440
West North Central	-15,180	-71,040	46,720	-9,140
South Atlantic	305,440	136,920	161,040	-9,480
East South Central	65,340	17,320	61,040	13,020
West South Central	3,480	-117,060	-13,920	-134,460
Mountain	114,180	86,940	104,480	67,240
Pacific	1,434,560	1,213,080	1,172,960	951,480

Regardless of which of the various estimates is utilized it is clear that the relationship of new families to new dwelling units since 1940 varies greatly

among different regions of the country.[1] Furthermore, the heavy impact of the housing shortage on the non-farm areas of Pacific Coast is clearly evidenced. On the other hand, several regions of the country contain almost as good if not a better ratio of dwelling units to families than obtained in 1940, the West Central States and the Middle Atlantic region (including New York, New Jersey and Pennsylvania) in particular.

5. What effect has the increased national income had upon the current housing shortage when coupled with rent control?

In 1940 the national income of the United States was $77.6 billions, of which 72.9 billion was the disposable income of individuals after taxes. This latter amount was the equivalent of $553 per person. During the last quarter of 1946 national income was at the yearly rate of $177.5 billions and disposable income of individuals after taxes was $153.6 billions or $1085 per person. Per capita income of individuals after taxes had almost doubled since 1940. (96 percent increase). Average disposable income per family was up from $1940 to $3610 during the same period (an increase of 86 percent which reflects the smaller size of the family at the beginning of 1947). The consumer price index rose approximately 53 percent from 1940 to January 1947, and most of this in the last six months.

During much of this same period when incomes were rising rapidly prices for most essentials of living were under price control and many were rationed. In the case of living space, however, part was under price control, part was not, and none was rationed. Control of rental prices applied and still applies in a large part of the United States, but no price fixing of homes for sale has ever been authorized. Nor has any limit been fixed on the amount of space which might be occupied.

In terms of effective demand for rental housing, rent ceilings have caused each increase in income to provide new potential competitors for price fixed rental dwellings which were formerly beyond the means of those with the newly increased incomes. Habitable rental dwellings were soon almost completely occupied on the basis of who got there first, who knew the landlord, the desirability of the

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[1] In evaluating any of these four estimates with respect to the aggravated housing shortage in the United States, it should be re-emphasized that the method used in "B" for calculating the number of dwelling units and the method used in "2" for calculating the number of families correspond much more closely to the prewar data (1930-1940) than do "A" and "1". But regardless by which method of estimation is followed in distributing the number of families by regions [(1) or (2)] their results, and with them the conclusion of this section, basically rests on the correctness of the regional population estimates released by the U.S. Chamber of Commerce on December 11, 1946 as follows:

East	26%	of	Total	Population
Central	29%	"	"	"
South	31%	"	"	"
West	14%	"	"	"

tenant (no children or dogs) and not infrequently on the basis of undercover payments or tie-in purchases. Ceilings on rents and no ceilings on sale of homes also provided strong incentive to home ownership for prospective buyers who had no alternatives. A similar incentive to sell was provided for owners of dwelling units whose incomes from rent was legally restricted but whose capital gain from sale was limited only by what the traffic would bear.

The sample census of November 1945[1] bears out the result of these forces. In 1940 there were 16.3 million non-farm tenant occupied dwelling units in the United States as compared to 11.4 million non-farm owner occupied dwellings (59% tenant occupied). By November 1945, although total occupied non-farm dwellings had been increased by 3.5 million dwelling units, there were 930,000 fewer tenant occupied homes. The percentage of tenant occupancy among non-farm households was down from 59 percent to 50 percent. For the country as a whole the drop was from 56.4% to 46.8%.

The pressure of increased income on rental payments is evidenced by this same census sample.[2] The Bureau of Labor Statistics rent index (1935-1939 base) stood at 104.6 in 1940, was at 108.3 in December 1945 and had only risen to 108.8 by January 1947. This index measures relative rents in comparable urban dwellings.[3] According to the census survey of actual rents paid by non-farm tenants, however, median rental payments had increased from $21.38 in 1940 to $27.88 in 1945, an increase of approximately 30 percent. Although these figures, are not comparable with the Bureau of Labor Statistics data in that they do not measure rentals on comparable dwellings, they are reflective of what tenants were actually paying. The census sample also indicates (as is shown in Chart I) that there were 3 million fewer units renting for less than $25 per month in 1945 than in 1940.

Although detailed information is not available with respect to doubling up and space hoarding during the rent control period, on the basis of the characteristics of crwoding among tenants and owners in 1940, as shown by the housing census[4], it is clear that the worst conditions of overcrowding have been among low income tenant families. Families, who own their own homes have more space per person than tenant families among all but the highest levels of income groups as is indicated in Chart II. Consequently it is to be expected that the great shift of tenant to owner occupancy during war years may have considerably accentuated the adverse ratio of persons to space among renters especially after demobilization got under way. Also, the control of rents, while house sales are uncontrolled, gives rise to higher sales prices which in turn excludes lower income tenants from the home purchase market.

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[1] U.S. Department of Commerce, Op. cit.

[2] Ibid.

[3] Federal Reserve Bulletin, March 1947, p. 324.

[4] U.S. Department of Commerce, op. cit.

Thus, even by November 1945, the data indicates that we had the results of a kind of Gresham's law of housing, in which the inflated homes for sale drove rental homes off the market. Although figures are not available since 1945, it is to be expected that this tendency was not only continued but accelerated during the latter part of 1945 and 1946. In 1945 there were some 12 million persons in the armed forces for whom the domestic housing market did not have to provide. Since that date the major part of demobilization has taken place, and new family formation has been accelerated. Furthermore, a large majority of this new demand for housing is represented by relatively young and low income earners who are in the least favorable position for home purchase without substantial financial assistance or dangerous long-term debt commitments. This increased pressure for space by prospective renters, coupled with the fact that the post-war building program has been almost exclusively homes for sale to owner occupants, along with the great expansion of spendable income, has made for a serious shortage of rental dwellings in all sections of the country and we have a plausible explanation for the current and aggravated housing problem even in those areas in which new family formation and the addition of new dwelling units since 1940 are in substantial balance.

CHART I

Non-Farm Rentals
1940 and 1945

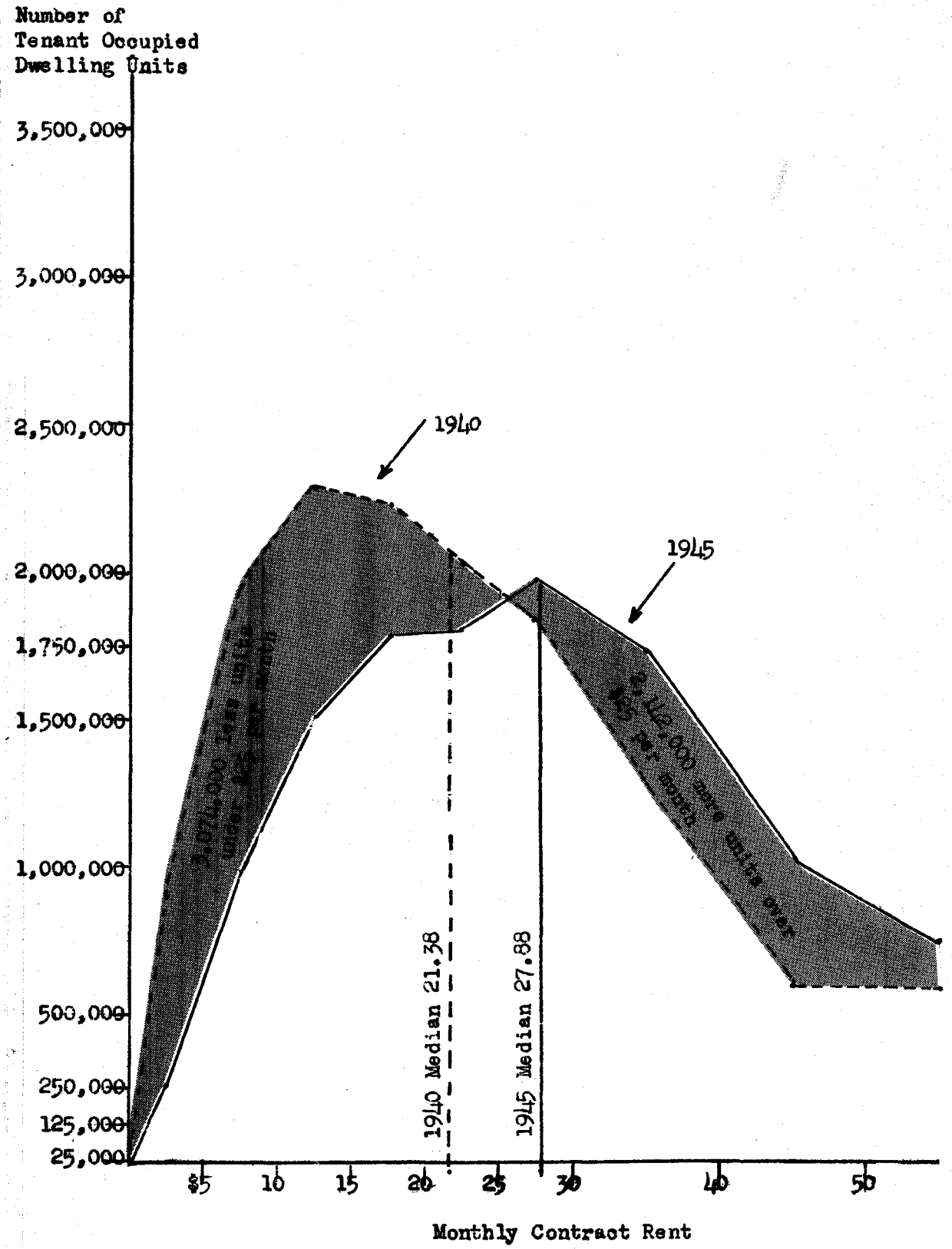
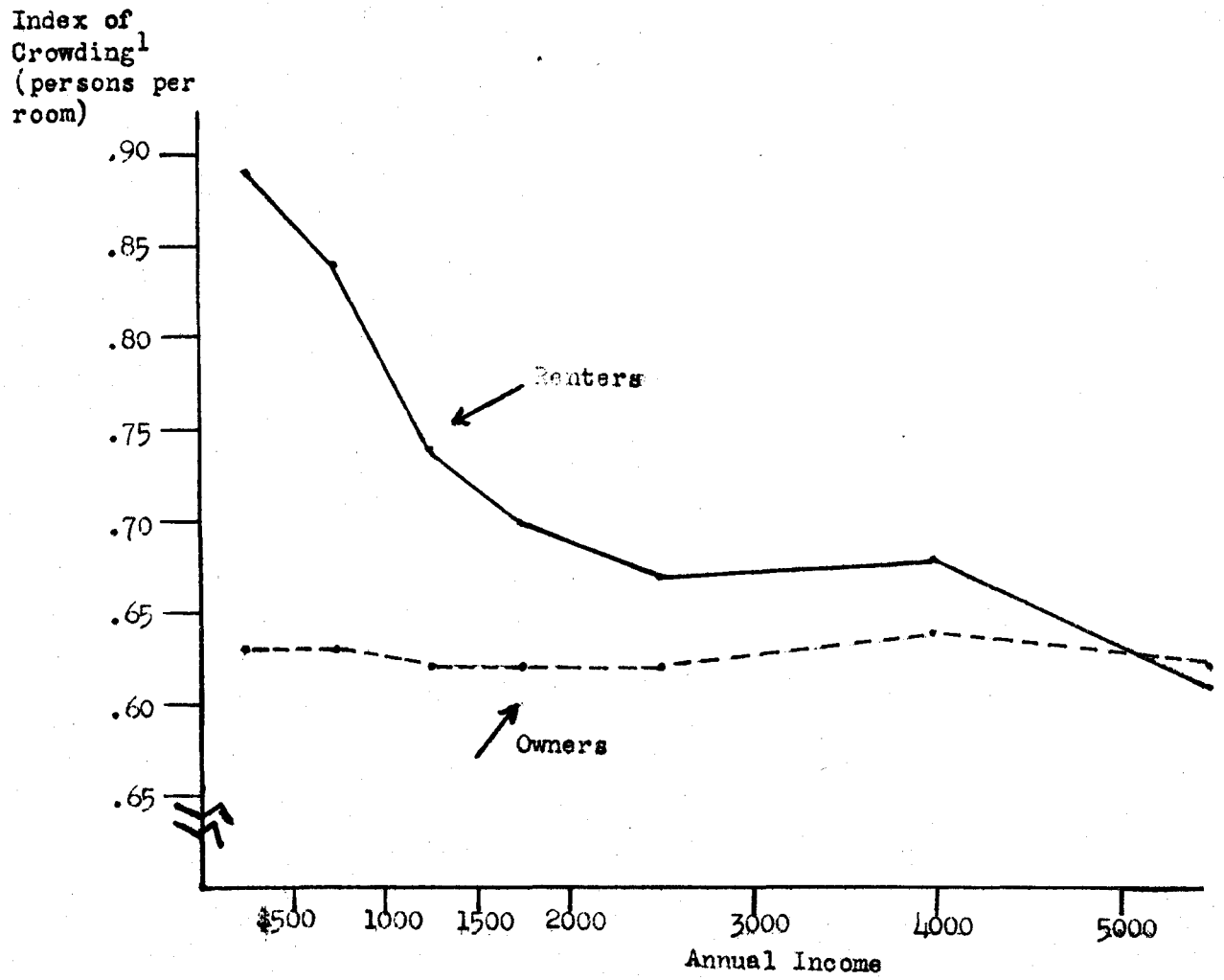


Chart II

Relationship of Crowding to Family Income Among Owners and Tenants 1940



[1]Median number of persons per family divided by median number of rooms per dwelling.

Source: Appendix Table IV.

APPENDIX TABLE I

Non-farm Residential Construction Since April 1940

Estimated by Districts

(in 1000's)

Region	8/12 of 1940[1]	1941[2]	1942[3]	1943[3]	1944[4]	1945[4]	1946[2]	Total	Percent
United States	402[4]	715[4]	497[4]	350[4]	169	247	660[5]	3,040	100.0
			847						
New England	22.9	40.7	15.2		2.0	5.5	25.1	111.4	3.7
Middle Atlantic	68.3	121.6	50.8		7.1	17.9	93.7	359.4	11.8
East North Central	77.6	138.0	146.5		30.2	41.7	106.4	540.4	17.8
West North Central	25.3	45.0	36.4		5.8	12.1	48.8	173.4	5.7
South Atlantic	73.6	130.8	144.8		27.9	43.4	108.1	528.6	17.4
East South Central	21.3	37.9	40.3		9.0	10.7	31.0	150.2	4.9
West South Central	34.6	61.5	129.3		27.5	36.0	84.5	373.4	12.3
Mountain	12.5	22.2	34.4		5.8	11.1	29.0	115.0	3.8
Pacific	65.9	117.3	249.0		54.0	68.3	133.4	687.9	22.6

[1]In this column (except for the United States total), the same percentage distribution by districts as 1941 is assumed.

[2]The figures for this column (except for the United States total) are derived from percentage figures for 9 months of the same year reported in Federal Home Loan Bank Review, January 1947, p. 128.

[3]In this column (except for the United States total), the same percentage distribution by districts as 1944 and 1945 is assumed.

[4]Monthly Labor Review, January 1947, p. 12 for totals, p. 21 for districts 1944-45.

[5]N.H.A. estimate of completions, 1946.

APPENDIX TABLE II

Estimate of January 1947 Non-farm Population

by Regions (in millions)

Region	Total population July 1940[1]	Population increase July 1940 - July 1945[1]	Estimated return of servicemen plus growth 1945 - Jan. 1947[2]	Unadjusted population Jan. 1947	Estimated internal migration 1945 - 1947[3]	Total population 1947[4]	Estimated farm population 1947[5]	Non-farm population 1947
United States	131.95	0.02	9.53	141.5	0	141.5	28.3	113.2
New England	8.45	-0.17	0.63	8.91	-.07	8.84	0.5	8.3
Middle Atlantic	27.55	-1.57	2.14	28.12	-.04	27.98	1.6	26.4
East North Central	26.81	-0.20	1.91	28.37	-.46	27.91	4.2	23.7
West North Central	13.51	-1.18	0.88	13.21	-.07	13.14	4.0	9.2
South Atlantic	17.91	+1.23	1.12	20.26	-.69	19.57	5.9	13.7
East South Central	10.81	-0.46	0.71	11.06	-.42	10.64	4.6	6.0
West South Central	13.08	-0.02	0.92	13.98	-.34	13.64	4.7	8.9
Mountain	4.16	+0.12	0.31	4.58	+.13	4.71	1.1	3.6
Pacific	9.80	+2.32	0.80	12.92	+2.14	15.06	1.7	13.4

[1] U.S. Statistical Abstract, 1946 (Excludes armed forces overseas)

[2] 78 percent of persons "lost to armed services" as reported in special population report series P-43 No. 3, February 1946. (The 78 percent is that quantity needed to bring total population to the 141.5 million figure.)

[3] Estimated correction necessary to arrive at 1947 population estimates reported by U.S. Chamber of Commerce (Washington News Letter, Vol. XII, No. 6, March 10, 1947) East (North East + Middle Atlantic) = 26% of total; Central (East North Central + West North Central) = 29%, South (South Atlantic + East South Central + West South Central) = 31%; West (Mountain + Pacific) = 14%.

[4] See note 3 above for regional estimates.

[5] Estimated on the assumption that the proportion of farm population declined regionally in relation to total regional population in the same ratio as for the United States (total population 1947 x percent of farm population 1940 x 0.88). Farm population in January 1947 is reported (U.S. Chamber of Commerce) as 20% of total.

APPENDIX TABLE III

Region	(1) Non-farm population 1940[1]	(2) Average no. of persons per non-farm household 1940[1]	(3) Average no. of persons per non-farm family 1940[7]	(4) Estimated non-farm population Jan. 1947[2]	(5) Estimated persons per non-farm family 1947[4]	(6) Estimated no. of families 1940[8]	(7) Estimated no. of families 1947[9]
United States	101.45 (million)	3.66	3.37[6]	113.2 (million)	3.24[3]	29.89[5] (million)	34.93 (million)
New England	7.90	3.82	3.54	8.3	3.38	2.23	2.46
Middle Atlantic	25.79	3.76	3.46	26.4	3.33	7.45	7.93
East North Central	22.04	3.60	3.31	23.7	3.19	6.66	7.43
West North Central	8.84	3.49	3.21	9.2	3.09	2.75	2.97
South Atlantic	11.78	3.91	3.60	13.7	3.46	3.27	3.96
East South Central	5.51	3.81	3.51	6.0	3.37	1.57	1.78
West South Central	8.03	3.66	3.37	8.9	3.24	2.39	2.75
Mountain	3.05	3.58	3.30	3.6	3.17	0.92	1.14
Pacific	8.51	3.19	2.94	13.4	2.82	2.89	4.75

[1] 16th Census of U.S., Housing, Vol. II, General Characteristics, part 1, U.S. Summary, table 24, p. 60.

[2] See Appendix table II for derivations of figures in this column.

[3] Estimated total number of non-farm families (see text, table p. 8) 34.99. (113,200,000 ÷ 34,990,000 = 3.24. See note 4 for derivation of regional estimates.

[4] 88.53 percent of column 2 (3.24 ÷ 3.66). [This assumes equal ratios of households to families in each region and also uniform percent of decrease in family size in each region.] (Does not apply for U.S. total).

[5] Estimated number of non-farm families 1940 = 29.89 million from p. 7)

[6] 101.45 ÷ 29.89 (see note 5 above) applies to total only. See note 7 for calculations by regions.

[7] Calculated by applying 92.08 percent (3.37 — 3.66) to figures in column 2.

[8] Column (1) ÷ column (3). (Does not apply for U.S. total).

[9] Column (4) ÷ column (5). (Does not apply for U.S. total).

APPENDIX TABLE IV

Median* Number of Rooms and Median Number of Persons per Family[1] by Income Class among Tenants and Owner Occupants, 1940**

Income Class[2]	Median Number of Rooms		Median Number of Persons per Family		Index of Crowding	
	owners	tenants	owners	tenants	owners	tenants
All non-farm families	5.59	4.12	3.12	2.97	.56	.72
$ 1 - 499	4.14	3.00	2.61	2.68	.63	.89
500 - 999	4.81	3.46	3.01	2.92	.63	.84
1000 -1499	5.18	4.07	3.20	3.02	.62	.74
1500 -1999	5.36	4.42	3.32	3.07	.62	.70
2000 -2999	5.69	4.70	3.50	3.15	.62	.67
3000 -4999	6.09	5.13	3.89	3.47	.64	.68
5000 and over	6.68	5.65	4.01	3.46	.62	.61

*Medians calculated on basis of tabulation groups. (Continuous distributions are assumed. The 3 person or 3 room group is assumed to be between 2.5 and 3.5).

**Sample income study, 1940 Census.

[1]Limited to private family (as contrasted to household) comprising family head and all other persons in the home who are related to the head by blood, marriage or adoption, and who live together and share common housekeeping arrangements. (Non-related persons such as lodgers, servants, hired hands or others who regularly live in the home and are included in the "household" are not included. Note that the number of households and the number of families is the same but that the number of individuals included in the unit may differ).

[2]Income classes are for 1939 income and show only families having wages and salaries and no other income (except for "all families" which include those with other income.). 11,437,180 non-farm owner families (4,831,160 had wage and salary income and no other income). 16,509,140 non-farm tenant families (10,075,960 had wage and salary income and no other income).

PART II. General Characteristics of Housing. 1940

(Adequacy of Housing)

An analysis of the current housing shortage can not properly be limited to the aggravation of housing conditions occurring during and since the war, nor is remedy necessarily found by seeking methods of returning to an approximation of the conditions existing in 1940.

Part I was solely concerned with the wartime and postwar changes with respect to the availability of housing space. But the prewar housing picture, as portrayed by the 1940 housing census -- the first thoroughgoing tabulation of housing conditions in the United States -- does not provide a very high standard for solving the housing problem in this country.

An analysis of the general characteristics of housing from the 1940 housing census gives a fairly clear indication of the adequacy of the nation's housing supply before we entered the war and some additional data is available for the year 1945.

Size of household

In 1940 the population of the United States was 131.7 million persons. These persons occupied 34.85 million separate dwelling units, that is, there were on the average 3.78 persons in each American household in 1940. In 1930 the corresponding figure was 4.10; in 1920, 4.34; and in 1900, 4.69. Thus, along with increases in population there has been relatively greater increase in the number of households. For example, the increase in total population from 1930 to 1940 was 7.2 percent while the number of households increased 16.6 percent.

This trend of growth characterizes farm as well as non-farm areas. The population increase on farms from 1930 to 1940 was 0.3 percent while the number of households increased 7.8%. The corresponding figures for non-farm areas were 9.5 and 19.1. The 30½ million persons who lived on farms in 1940, however, occupied slightly more than 7 million dwelling places, an average of 4.25 per household, whereas the non-farm household averaged 3.66 persons.

Tenure

The 1940 census indicates that 56.4 percent of all occupied dwelling units were occupied by tenants and 43.6 were owner occupied. This was the highest proportion of tenancy of any recent census year (beginning 1890). The proportion of householders who rented their living space had increased from 52.2 percent in 1930 to 56.4 in 1940. Among non-farm families 58.9 percent were renters but among farm families ownership predominates. 46.6 percent of farm families owned their homes in 1940. Home ownership, however, does not necessarily indicate the absence of monthly payment (or other periodic payment) for occupancy. Of the almost 11½ million homes owned and occupied by non-farm families 45.3 percent were mortgaged. Most of these mortgaged properties were one-family homes (84%) the average value of which was reported to be $4400 and the average indebtedness $2300. Thus the owners' equity in the non-farm single family homes occupied by the owners averaged less than 50 percent. (Average mortgage in 1940 was 52.4 percent of average value. The average interest rate on these mortgages was 5.55 percent).

Size of Dwelling Units and Size of Household

Inasmuch as the number of occupied dwelling units and the number of households is for practical purposes the same number of units (34,854,532 in 1940) an approximation of the overall quantity of occupied housing in relation to the total number of people can be made for 1940.

The total number of occupied rooms in 1940 was approximately 169,650,000 (a mean average of 4.87 per occupied dwelling unit). The total number of persons was approximately 131,670,000. On the average, therefore, there were in 1940 slightly less than 1-1/3 (1.29) occupied rooms per person, or an average of .775 persons per room. 1.1 million households, however, were more crowded than 2 persons per room.

The median number of rooms per occupied household and the median number of persons per occupied household among various segments of the population varied considerably however in 1940.

As could be expected the worst crowding in the country is among the non-white tenants in the rural south, where half the households have more than 4 persons and the median size dwelling unit is 2.21 rooms.

Class	Median number of rooms per household (a)	Median number of persons per household (b)	Rough index of crowding (b) ÷ (a)
Total U.S.	4.78	3.28	.69
White	4.92	3.28	.67
Non-white	3.45	3.34	.97
Urban	4.81	3.16	.66
Rural Farm	4.80	3.81	.80
Owners	5.58	3.34	.60
Tenants	4.11	3.24	.79
The North	5.27	3.37	.63
The South	4.09	3.49	.85

Age of Dwelling

The median age of the 37.3 million dwelling units (vacant and occupied) in the United States was 25 years in 1940, and 13 percent were more than 50 years old. Less than 10 percent had been built since 1935.

There was considerable age difference among various segments of the

population as is indicated below:

Class	Median Age	Percent 5.2 years and newer	Percent 50.3 years and older
All United States[1]	25.4	9.2	12.9
New England	34.9	4.9	28.3
Pacific States	17.4	14.5	2.4
Urban Dwellings	26.1	6.2	11.8
Rural Farm Dwellings	28.1	9.8	17.2
Tenant Occupied	27.6	6.2	13.6
Owner Occupied	23.4	12.0	12.5

Although, some very old homes, may provide standards of shelter which are quite adequate, still the high proportion of very old homes in the United States is at least generally indicative of a sizable volume of obsolete and substandard housing which is still in use--especially when it is recognized that over 80 percent of dwelling units in the United States are wood structures and only 11 percent in brick. For example in New England, the area of oldest homes, only 4.2 percent are brick and 94 percent are frame.

State of Repair and Plumbing Facilities

A somewhat better indication of the adequate standard of housing in the United States than is provided by age of dwellings is the data collected on state of repair. Census enumerators were instructed to report structures as "needing major repair" when foundations, floors, walls, roofs or plaster were in the need of the repairs the continued neglect of which would impair the soundness of the structure and create a hazard as to its safety as a place of residence. The presence or absence of plumbing equipment is reported in combination with data on repair. The two sets of data are closely correlated, especially among non-farm dwellings.

Of the 37.3 million dwelling units in the United States in 1940, 6.8 million or 18.3 percent were in need of major repair. And even of those not in need of major repair 309 percent were without private bath and a private flush toilet. In 1940, well over a third (37.8%) of all the dwelling places in the United States comprising 14.1 million dwelling units were either in need of major repair or were without out any running water at all in the dwelling unit. If those without toilet and bath are added to those needing major repair almost half (49.2%) of all dwelling units would be included, making up 18.4 million homes.

[1] Includes 37,325,470 dwelling units (occupied and vacant).

Class	Total number of dwelling units	Dwelling units needing major repair	Dwelling units not needing major repair	
			Without bath and toilet	No running water
Total U.S.	37,325,470 (100%)	18.3%	30.9%	19.5%
Urban	21,616,352 (100%)	11.5	17.1	4.2
Rural - non-farm	8,066,873 (100%)	21.4	42.5	29.7
Rural - farm	7,642,281 (100%)	33.9	56.5	51.0
White (occupied)	31,561,126 (100%)	16.3	28.7	17.4
Non-white (occupied)	3,293,406 (100%)	35.1	47.6	35.5
Owner occupied	15,195,763 (100%)	16.0	29.4	21.2
Tenant occupied	19,658,769 (100%)	19.7	31.4	17.6
Vacant for sale or rent	1,864,382 (100%)	25.0	33.1	21.5
The North	21,910,203 (100%)	14.8	26.3	14.4
The South	10,876,056 (100%)	27.1	43.5	32.9
(White occupied)	(7,870,355 (100%)	(23.4)	40.7	(29.6)
The West	4,539,211 (100%)	13.8	22.7	11.8

From the above table three major characteristics concerning adequacy of dwellings among the various segments of the population stand out. (1) great variation between urban and rural areas; (2) great variation between whites and non-whites; (3) the relatively poor status of housing in the south (among both white and negroes). Consequently, as might be expected the most inadequately housed segment of the population in 1940 was the non-white rural farm tenant family in the South among whom 44 percent of the dwellings were in need of major repair and only 0.2% of those not needing major repair had toilet and bath and only 45 percent had running water.

Lighting and Heating

More than one dwelling unit out of five (21.3%) in the United States was without electric lighting in 1940. Although 95.8 percent of all urban homes had electric lighting, there were still some 900,000 urban homes without electric lights. 22.2 percent of rural non-farm homes comprising 1,800,000 dwelling units were without electricity. On farms, however, 68.7% of the dwellings were without electric lighting, a total of 5,250,000 homes.

Of the almost 8 million homes in the country which were without electricity in 1940 almost two-thirds of them (62 percent) were in the South.

With respect to heating facilities, of the 34.8 million occupied dwellings in the entire country 42 percent were in structures having central heating plants (60.2 percent in the North, 11.4 percent in the South and 27.1 percent in the West). Of the 20 million households without central heating, 8 million were in the North, 9 million in the South, and 3 million in the West.

Converted Structures

In view of the long life of the average dwelling (median age of dwellings in 1940 was slightly over 25 years) and the changing character of family composition (4.34 persons per household in 1920, 3.78 persons per household in 1940) it might be expected that a considerable proportion of the dwelling units might have been converted by subdividing. At the time of the 1940 census 8 percent of all dwelling units, or not quite 3 million dwellings were in structures which had previously housed a different number of households. 80 percent of these conversions were in urban communities. Geographically there is not great variation in the proportion of conversions.

Rental Value of Dwellings

Half of all the dwelling units in the United States in 1940 had a monthly rental value of less than $20 per month (median rental $20.09 per month). There were, however, wide variations in average rentals geographically, by color groups, and between urban and rural areas as the following table indicates:

Rent and Rental Value of Occupied Units

Class	Median rental value (owners and renters)	Owner Occupied Units		Tenant Occupied Units
		Median Value	Median rental (est.)	Median rental
United States	$20.09	$2377	$23.17	$18.22
White		2486	20.07	24.14
Non-white		615	6.22	6.10
Urban and rural				
non-farm	23.73	2938	27.45	21.41
urban	27.31	3501	32.59	24.60
farm	5.97	1028	9.78	4.72
North	24.64	2851	26.81	23.33
South (all)	8.84	1250	12.67	6.99
white		(1451)	(14.65)	(9.94)
West	22.07	2491	24.55	20.80

The 29.7 million non-farm dwelling units in the United States were distributed in terms of rental classes as follows:

Rental Class	Total Non-farm		Owner occupied (est.)		Tenant Occupied (contract	
All units	29,683,189		11,413,036		16,334,937	
	percent	cumulative percent	percent	cumulative percent	percent	cumulative percent
Less than $3	2.2	2.2	2.9	2.9	1.9	1.9
3 to 4	3.2	5.4	2.7	5.6	3.6	5.5
5 to 6	5.4	10.8	4.4	10.0	6.0	11.5
7 to 9	5.1	15.9	3.9	13.9	5.9	17.4
10 to 14	12.3	28.2	9.5	23.4	14.1	31.5
15 to 19	12.0	40.2	9.7	33.1	13.7	45.2
20 to 24	11.6	51.8	10.5	43.6	12.4	57.6
25 to 29	11.1	62.9	11.0	54.6	11.4	69.0
30 to 39	16.1	79.0	17.2	71.8	15.6	84.6
40 to 49	9.2	88.2	10.9	82.7	8.0	92.6
50 to 59	4.8	93.0	6.6	89.3	3.5	96.1
60 to 74	3.2	96.2	4.8	94.1	2.0	98.1
75 to 99	1.9	98.1	2.9	97.0	1.0	99.1
$100 and over	1.9	100.0	2.9	100.0*	0.7	100.0*

* Small rounding errors not corrected in census summary

The distribution of non-farm rents in 1940 indicates, that almost one-third (31.5 percent) of all tenant households spent less than $15 per month for rent, that more than one-third (37.5 percent) spent between $15 and $30 per month and less than 4 percent (3.9) of all renting families paid as much as $50 a month for rent. These figures exclude farm tenants where rentals were considerably lower.

Relation of Family Income to Rents Paid

As would be expected, as family income increases on the average higher rents are paid. But the wide range of rental payments of families in any given income class is probably not generally recognized. The census sample data which compares 1939 family income with 1940 contract rental payments clearly indicates that there is a very wide dispersion in what families of similar incomes spend for the use of dwelling space. Chart III clearly indicates not only the general correlation between income and rent, but the wide range of rental payments in any income group. Detailed distribution figures are shown in Appendix Table V.

The fact that families in similar income circumstances can and do spend widely varying amounts for rent, of course, clearly implies that there are important factors other than income that play an important part in determining rent expenditure. Its particular relevance to a housing study is the limitation it puts on the use of changing family income status as a definitive measure for deriving housing demand at particular rent levels. Such factors as capital accumulation, or other evidences of ability to pay not measured by current income, would appear to be significant especially in the lowest income classes. Family size, neighborhood attachments, the supply of alternate housing space, and regional differentials occasioned by differing climatic conditions, are other important factors effecting what proportion of one's income is spent for rent. This is not to minimize the principal importance of income in determining the limits of a family's rent paying ability, but it does at least cast some doubt about the ability to forecast such things, for example, as how much of a rent increase would be required to force a substantial conservation of living space, especially among upper and middle income families.

Income and Housing Standards

With so large a proportion of the nation's housing in substandard condition (in terms of needing major structural repair or lacking elemental plumbing facilities) it should certainly not be surprising to find these substandard facilities largely concentrated among families at the bottom of the income scale. In fact 80 percent of the families whose income was $500 or less (1939 income) lived in substandard dwellings. Among those in the $500-1000 income range the percentage was 60 to 65 percent, and almost 40 percent of those families with incomes between $1000 and 1500 lived in sub-standard homes. On the other hand among families with incomes over $5000 less than 4 percent lived in sub-standard dwellings. Chart 4 depicts the correlation between family income and substandard housing. (See also Appendix table VI).

Since 1940 there has been some improvement in the quality of the country's housing, but there is still a large amount of dwelling space which fails to meet minimum specifications for decent living. The improvement from 1940 to 1945 is shown below for all occupied dwelling units:[1]

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[1] U.S. Dept. of Commerce, Housing - Special Reports, Series H-46, No. 1, May 16, 1946. Characteristics of Occupied Dwelling Units for the United States: November 1945.

CHART III

Monthly Rents Paid by Non-Farm Tenant Families
by Income Class, 1940

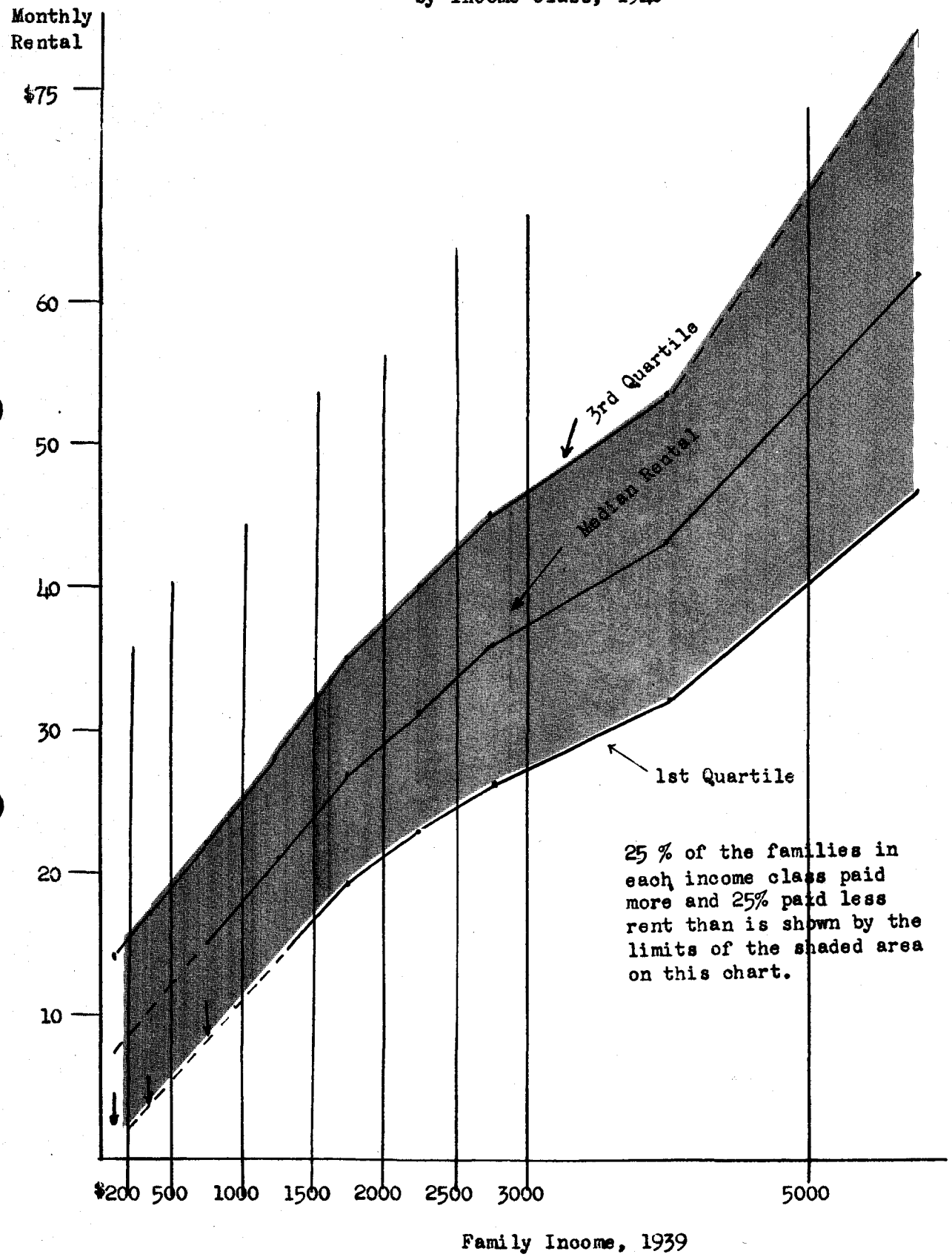
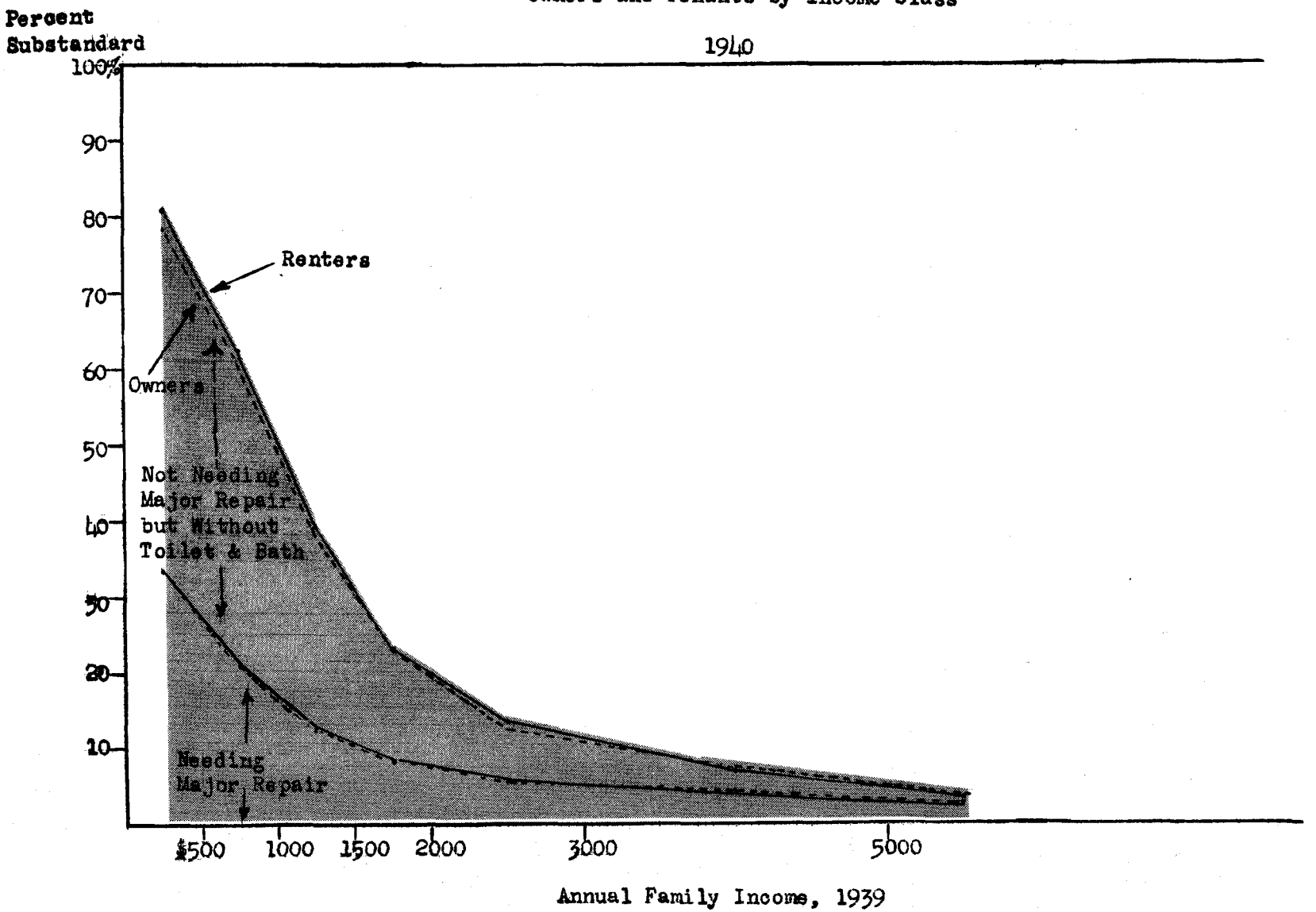


CHART IV

Percent of Substandard[1] Dwellings Among Non-Farm Owners and Tenants by Income Class



[1] In need of major repair or without private bath and toilet.

	1940		1945	
	Number	Percent	Number	Perent
All dwelling units	34,855,000	100.0%	37,600,000	100.0%
In need of major repair	6,267,000	18.0	4,342,000	11.5
Not needing major repair	28,588,000	82.0	33,258,000	88.5
Without bath and flush toilet	10,549,000	48.2	9,820,000	37.7
No running water	6,391,000	18.9	5,657,000	15.0
Without electric lights	7,251,000	20.8	4,244,000	11.3
Urban dwelling units	20,597,000	100.0%	23,748,000	100.0%
In need of major repair	2,326,000	11.3	1,993,000	8.4
Not needing major repair	18,271,000	88.7	21,775,000	91.6
Without bath and flush toilet	3,518,000	28.4	3,169,000	21.7
No running water	856,000	4.2	732,000	3.1
Without electric lights	878,000	4.3	510,000	2.1

Other changes in housing also occurred during the period from 1940 to 1945 which indicate some general improvement in the status of occupied housing. The population of the country in 1940 was 131.7 million, in 1945, 139.6 million (including personnel in the armed services). The number of occupied dwelling rooms during the same period was increased from approximately 171 million to 186 million. The number of persons (total population) per occupied room decreased from 0,77 in 1940 to 0.75 in 1945. The actual crowding in 1945, however, was considerably less in 1945 because of the large number of persons in the armed services. The average number of persons (mean) per occupied household was 3.76 persons in 1940 and 3.42 persons in 1945, whereas the average number of rooms per dwelling unit was slightly greater - 4.94 in 1945 as compared to 4.90 in 1940.

Thus although in terms of over-all standards and in terms of crowding housing conditions prior to demobilization improved somewhat during the war, a very large segment of housing is still substandard and over crowded in terms of minimum standards. Although information is not available concerning the distribution of housing by income classes since 1940, the fact that the substandard housing in 1940 was so heavily concentrated among families of low income suggests that the elimination of substandard dwellings together with increases in family income and control of rents has been of particular benefit to those who could obtain rental space. On the other hand, the elimination of some 3 million units renting for $25 and less per month (Chart I) and the general decrease in number of rental dwellings between 1940 and 1945 has its effect in the opposite direction. The elimination of low priced rental units has especially accentuated the difficulties of families which have been dislocated by war or newly formed in recent years.

Principally it should be emphasized, however, that 4.3 million dwelling units were in need of major structural repair in Nov. 1945, and 5.6 million additional units were without such minimum facilities as running water. These alone, disregarding the absence of such comparative luxuries as a private flush toilet, or a bath tub, or electric lights, make up 10 million homes. The vast majority of them are occupied by the lowest income families. It is only the liberality of census definition which classes a dwelling unit as "any place where a family lives" that most of them get included as a part of our housing supply.

APPENDIX V

Rental Value 1940 by Income Class, 1939

Urban and Rural - Non-Farm Tenant Families

Wage and Salary Income Class	Families Total	Reporting Rental	Contract Rent per Month							
			Under $10	10 - 19	20 - 29	30 - 39	40 - 49	50 - 59	60 - 74	75 and Over
Total tenants	16,509,140	16,263,120	2,836,540	4,530,520	3,878,460	2,518,540	1,310,940	579,160	331,660	277,300
Without other income	10,561,780	10,432,520	1,874,120	2,950,740	2,571,720	1,656,740	813,840	314,840	159,560	90,960
Reporting income	9,979,060	9,867,960	1,727,560	2,780,980	2,459,460	1,589,200	780,260	298,100	148,620	83,780
$ 1- 199	336,920	328,520	210,740	76,680	26,940	10,140	2,400	800	420	400
200- 499	1,116,060	1,094,940	578,800	349,960	114,300	36,260	10,780	2,660	1,180	1,000
($1 and under 500)	(1,452,980)	(1,423,460)	(789,540)	(426,640)	(141,240)	(46,400)	(13,180)	(3,460)	(1,600)	(1,400)
500- 999	2,283,720	2,252,880	622,580	948,340	462,500	157,300	43,780	11,400	4,440	2,540
1000-1499	2,227,720	2,207,160	210,220	807,180	732,740	327,660	93,980	22,540	8,320	4,520
1500-1999	1,743,500	1,730,340	72,300	387,140	617,860	446,040	155,880	35,780	10,960	4,380
2000-2499	1,025,660	1,017,420	21,120	134,980	295,940	310,160	185,640	51,940	15,860	3,780
2500-2999	510,940	507,260	6,640	45,440	116,060	151,420	118,440	48,280	16,880	4,100
3000-4999	608,260	604,380	4,500	28,800	86,940	139,500	155,560	104,380	63,440	21,260
5000 and over	126,280	125,060	660	2,460	6,180	10,720	15,800	20,320	27,120	41,800

Estimated Monthly Rental

Income	1st Quartile[1]	Median[1]	3rd Quartile[1]
$ 1- 199	less than $10	less than $10	$14
200- 499	"	"	17
(1 and under 500)	"		
500- 999	"	15	22
1000-1499	14	21	28
1500-1999	19	27	35
2000-2499	23	31	40
2500-2999	26	36	45
3000-4999	32	43	54
5000 and over	47	62	over 75

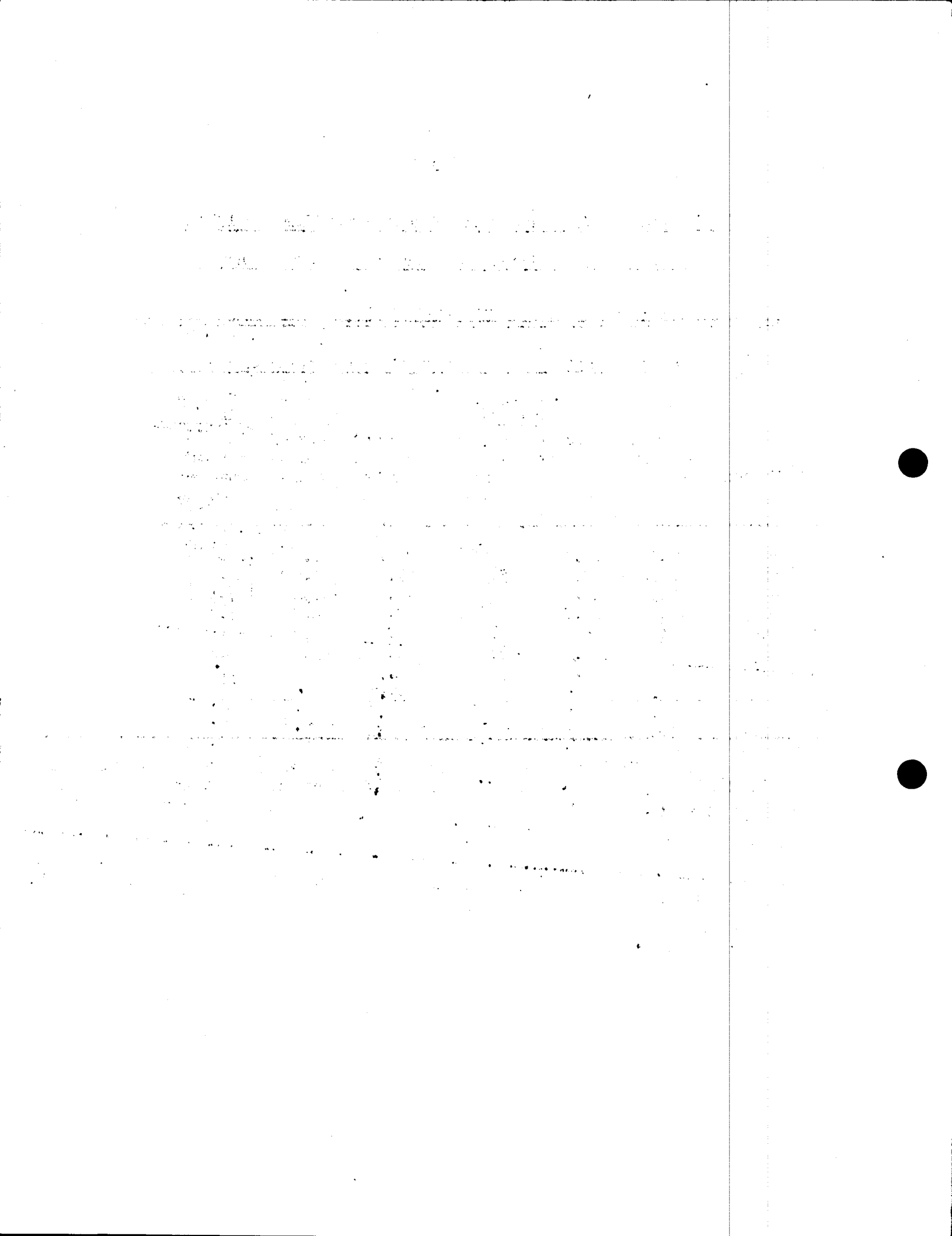
[1]Estimated on the basis of an assumed even distribution within the class.

APPENDIX VI

Family Income, 1939 and State of Repair and Plumbing 1940 by Income Class for Non-farm Owner Occupants and Tenants[1]

Annual Family Income	Non-farm Occupants			Non-farm Tenants		
		Not needing major repair			Not needing major repair	
	Percent needing major repair	Percent without bath & toilet	Percent without running water	Percent needing major repair	Percent without bath & toilet	Percent without running water
$ 1-499	31.2%	47.3%	36.2%	33.3%	47.5%	28.1%
500-999	21.1	39.6	25.2	21.0	41.6	16.6
1000-1499	12.3	26.0	13.4	12.8	26.4	7.1
1500-1999	8.4	14.7	6.8	8.6	14.7	3.3
2000-2999	5.8	6.8	2.7	5.9	7.7	1.4
3000-4999	4.5	2.9	1.1	4.0	3.1	0.6
$5000 and over	2.8	1.0	0.4	2.6	1.1	0.2

[1]Source: Families, Income and Rent, Census, 1940 (Family income includes income of families who reported income from wages and salaries only and no other income during 1939).



Part III. The Current Housing Market, Housing Costs and Family Income

The last prewar building year was 1941 when 715,000 new non-farm dwelling units were placed under construction. Average (mean) income per family after taxes during that year was $2310.[1] As of January 1947 the average income per family after taxes was approximately $3610.[2] Another characteristic of family income during the war period is not shown in the over-all average of income. This change is in the distribution of families by income classes. Low income families have increased their money incomes proportionately more than the higher income groups. As the Bureau of Labor Statistics figures indicate, between 1941 and 1944, even before provision for income taxes, urban family income changed as follows:

	1941	1944	Pct. increase over 1941
Median income of lowest 1/3 of families[3]	$ 805	$1335	66
Median income of middle 1/3 of families[3]	1900	2700	42
Median income of upper 1/3 of families[3]	3320	4570	38

Now, if the above figures are corrected for the applicable income tax[4] in each year the relative monetary position of low income families is more accurately indicated:

	1941	1944	Pct. increase over 1941
Median income of lowest 1/3 of families	$ 805	$1335	66
Median income of middle 1/3 of families	1900	2520	33
Median income of upper 1/3 of families	3210	4070	27

Although current figures are not available on the distribution of families by income class, the average disposable income figure per family of $3610 as against

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[1]Disposable income to individuals $88.7 billion ÷ 38.4 million families.

[2]Disposable income to individuals (last quarter 1946 rate) $153.6 billion ÷ 42.5 million families.

[3]Medians calculated by assuming continuous distribution of percentage distributions in income classes as derived from B. L. S. and shown on pp. 273 & 274 of Statistical Abstract of the U. S. for 1946.

[4]Income tax has been calculated for family consisting of two adults and one child.

$3370 in 1944 is indicative of the continued upward trend of money income since 1944. Nor is there evidence that since 1944 that the distribution by income classes has been to the disadvantage of the lower income groups. Especially is this true in the absence of modification of the current progression rates of the current progression rates of income taxes.[1]

These increases in monetary income of American families since 1941, however, do not provide a satisfactory measure of improved living standards. With the virtual elimination of price controls in the latter part of 1946 and the precipitous rise in consumer prices on many essential commodities since that time, monetary gains for the average family have been almost entirely eaten away by increased living costs.

Although accumulated war-time family savings have unquestionably played their part in the post-war demand for goods and services, there is indication that this is a factor of diminishing importance.[2] Consequently, continued levels of consumer purchases, both durable and non-durable, are principally dependent upon current real family income--that is what the income will buy.

In 1941 when average family income was $2310 the Bureau of Labor Statistics Consumers Price index was 105.2 (1935-39 = 100). As of the beginning of 1947 when average family income was $3610 the B. L. S. Consumer index was at 153.1. This is an increase in living cost of 45.5 percent since 1941. If correction is made in the index to account for rental payments in line with the Census sample study of what renters were actually paying for their living facilities as contrasted with the B. L. S. data on comparable units, the January 1947 living cost index would be approximately 52½ percent greater than the average for 1941. This means that if the average family today, living in his present dwelling and buying the same clothes, food and other budget items as in 1941 has an income which in terms of general purchasing power is approximately $2370. This is approximately the same position that the average family was in during 1941 ($2310).

There are, basically, only two modifying factors which indicate some improvement. (1) The better than average increase in the monetary position of families having the lowest income (This advantage is considerably lessened by the fact that increased living costs of low income families are heavily weighted with items such as food and clothing where the price increases have been the greatest.); and (2) the somewhat smaller size of the family unit in 1947, so that the average family budget does not have to be spread quite as thinly and the per person average is improved. Apart from the fact that current price trends appear to be wiping out even these slight advantages, insofar as ability to pay for new housing at current prices is concerned they are of minor effect. The low income families have never provided the stimulus for new housing demand even at pre-war prices. The fact that

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[1] These figures on distribution of family income give no measure of what has happened to the concentration of wealth among the very wealthy. They are merely indicative of the trend of distribution of income since 1941.

[2] Total installment credit in January 1947 was $4 billion as against $3 billion in July 1946. During 1945 total income payments to individuals was $161 billion of which $33.1 represented net savings of individuals. During the 3rd quarter of 1946 with income payments to individuals at the rate of $173 billion individual savings were less than $18 billion. Federal Reserve Bulletin, March 1947.

the average family in January 1947 has little if any more real income than in 1941 means that even a modest increase in housing expenditure will on the average have to be made to the detriment of expenditure for other cost of living items or savings. This is the kind of a family income position that must be set against today's housing prices in evaluating market prospects for the sale or rent of new homes on a large scale.

Housing Costs

In 1941, the last building year relatively unaffected by war-time restrictions, construction of 715,000 non-farm dwellings was initiated. This was the largest amount of new housing constructed since the building boom of the mid-twenties (some 200,000 units below the all time residential building peak in 1925 when 937,000 homes were started). Building material costs in 1941 were approximately the same as during peak construction in 1925 and total building costs including all cost components had increased above 15 percent over 1925:

	B.L.S. Index of Building* Material Prices	Engineering News Record* Bldg. Cost Index
1925	102	99
1941	103	114

*1926 = 100

Up to the present time the standard dwelling unit in the United States is a complicated, tailor made commodity including some 30,000 parts and constructed as a result of a myriad of on site operations. With so many factors involved in orthodox house production the cost of any single item as a determinant of final price is minimized. Plumbing, for example, which is often held forth as a particularly expensive element in housing cost, includes such items as lavatory, sink, toilet, bathtub, and pipe and fittings. The total of all of these items delivered to the job amounts to less than 6 percent of total housing cost. Thus a 50 percent increase in the cost of plumbing would add about 3 percent to the total housing cost. Similar results are obtained by particularizing about the other cost elements. This segmentation of costs and relatively small purchases in a wide number of markets makes the cost of a home a difficult and unpredictable process and also makes for cumbersome and expensive distribution of building materials. As can be seen in the following table the average delivered price of building materials takes almost twice as much (45.70) of the housing dollar as does the F.O.B. mill price (22.82).

From this same table it can be seen that the cost of the average home, exclusive of land and contractors overhead and profit, is divided in the ratio of 45.7 to 29.5 among materials and on site labor, or approximately 54 percent for materials and 46 percent for on site labor.

Cost of House and Land[1]

Materials	(Pct. of Total Cost of House and Land) F.O.B. Mfg. Cost	Distribution Cost	Transp. Cost	Delivery Price
Lumber, flooring, millwork	9.63	10.49	2.04	22.16
Plumbing and heating	4.77	1.69	.44	6.90
Concrete, masonry, and mortar	4.31	1.84	.63	6.78
Plaster, lath and wallboard	2.00	1.81	.46	4.27
Roofing and insulation	.84	.52	.13	1.49
All other	2.27	1.63	.20	4.10
Total materials	23.82	17.98	3.90	45.70
Labor (site construction)				29.50
Contractors' and subcontractors' overhead and profit				12.30
Total cost of house				87.50
Unimproved land				7.00
Land improvement				5.50
Total capital cost				100.00

During 1941 the costs of a house that sold complete with lot for $5,000 would be on the average divided approximately as follows as contrasted to estimated current cost:

	1941	Jan. 1947
Building materials[6]	2285 up. 64.7%[2] =	3763
On site labor	1475 up. 57.7%[3] =	2326
Contractors' overhead and profit	615	989[4]
Total price without land	$4375	$7078
Land and improvement	625	1012
Total Price	$5000	$8090[5]

[1]National Housing Bulletin 2, Housing Costs, Where the Housing Dollar Goes, National Housing Agency, December 1944.

[2]B.L.S. Index of Wholesale building material prices.

[3]B.L.S. Average hourly wages on private construction projects (latest figure is for December 1946)

[4]Assuming contractors work on same margin of total building cost as in 1941, i.e., 16.4 percent.

[5]Assuming 1941 ratio of land cost to building cost.

[6]B.L.S. Bldg. Material Prices, 1926 = 100:

The above estimate for January 1947 is probably on the conservative side. Although it may be that in many outlying areas land may be procured and developed for something less than the amount shown, on the other hand, the total labor cost for the current period is derived solely on the basis of wage rates and does not reflect the time lost from tie-ups due to material shortages or the relative efficiency of labor in a scarce market. Contractors overhead and profit also involves considerably more risk in the form of job tie-ups due to the relative availability of supplies as compared to 1941 and is probably underestimated. Although both of these factors, which are primarily due to short supplies, are improving they have not yet been reflected in the prices of new homes and have been outweighed in each succeeding recent month by cost increases. The February building cost index for example is another 5 points above January 1947.

Excluding land and improvement costs, approximately 20 percent of total current housing costs arise from increases in the cost of housebuilding materials since 1941, and about 12 percent is accounted for by increased labor rates.

The figures in the foregoing table indicate an increase in building cost (exclusive of land) of approximately 62 percent since 1940. Another source of estimated cost increase is provided by the F. W. Dodge Corporation data on residential building contract awards in 37 states. In June 1941 the award value per square foot of floor area was $3.95. In December 1946 it was $6.45 as evidenced by the following table:

Residential Building Contract Awards, 37 States[1]

	1941 Average	Dec. 1946	Percent Increase
Floor Area	52,098,000	29,975,000	
Value	$250,634,000	$193,365,000	
Value per sq. ft. floor area	$3.95	$6.45	63.3

Building costs have also increased at varying rates in different parts of the country as is evidenced by changes in the principle cost component, building materials. According to the Federal Home Loan Bank Review of February 1947 (Index of Building Cost in Representative Cities, 1935-39 = 100) wide variations are apparent:

	1941 Average	Jan. 1947	Pct. Increase
All building materials	103.2	169.7	64.4
Brick and tile	93.7	132.2	41.1
Cement	92.0	108.3	16.7
Lumber	122.5	249.9	104.0
Paint and paint materials	91.4	171.2	87.3
Plumbing and heating	84.8	117.0	38.0
Structural steel	107.3	127.7	19.0
Other	98.3	139.0	41.4

[1] F. W. Dodge Corp. as reported in Survey of Current Business for dates indicated.

Building Cost Index

	Jan. 1941	Jan. 1947	Percent Increase
Des Moines, Iowa	105.2	151.7	44.2
St. Louis, Mo.	108.5	177.5	63.6
Los Angeles, Calif.	101.6	188.9	85.9
Detroit, Mich.	112.0	191.1	70.7
Buffalo, N. Y.	108.8	182.6	67.9
Seattle, Wash.	107.0	156.5	46.2

Relationship of Family Income and Housing Costs

With average housing costs up more than 60 percent since 1941 and average family income in terms of purchasing power not greatly different from 1941 it is apparent that a house-building program of any size must depend upon diversion of family expenditure from non-housing items, substantially increased family debt commitments for housing, decreased construction costs, decreased costs of living, or subsidy.

a) Housing expenditure

As has been indicated (Part II) the proportion of income expended for housing not only differs greatly by income class but is widely distributed among families in the same income group.[1] Nor is this wide dispersion in the over-all explained by geographic difference or difference in family size, as the data on page 37, showing rental payments by Chicago families of differing composition for 1940 indicates.[2]

The fact that families of similar financial means and size composition spend these rather widely varying amounts for rent makes the problem of predicting housing demand on the basis of income hazardous in anything but very general terms. For example, 25 percent of families in non-farm U. S. with income of $1000 to $1500 per year in 1940 paid less than $14 a month rent and another 25 percent paid more than $28. Among families having $3000 to $5000 of annual income 25 percent paid less than $32 per month and 25 percent more than $54.

With non-housing living costs such as food and clothing up from 70 to 90 percent over 1940 it may be questioned whether families in 1947 would spend the same proportion of their income for rent as in 1940. Even though the need for housing, along with food and clothing, is one of the basic consumption essentials, while rental costs remain relatively well pegged under price control, prices of other cost of living items had by 1947 largely absorbed the families increased income. Contrast for example, the housing expenses by income class in 1941 and 1944:[3]

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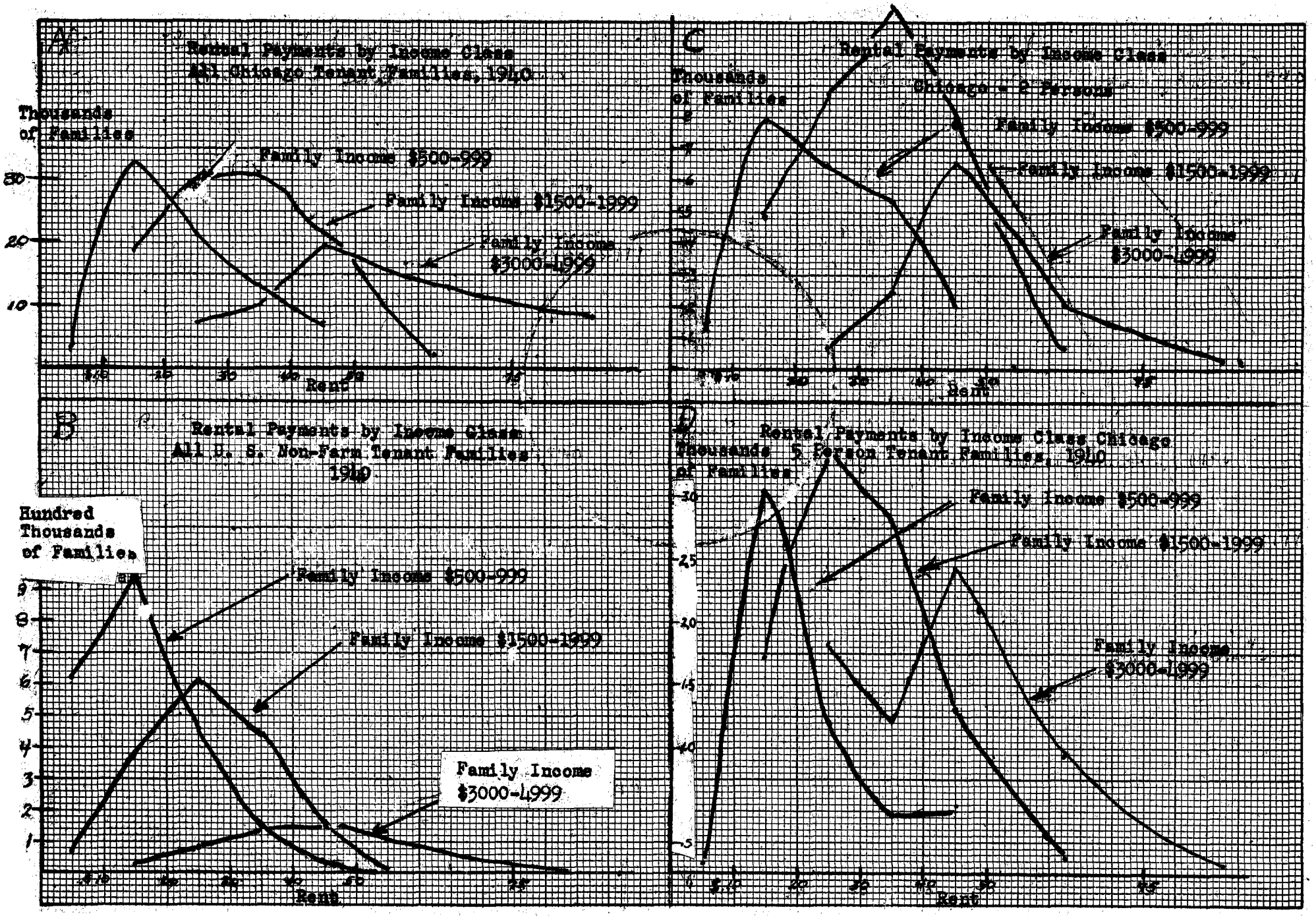
[1] See Part II Chart III, and Appendix Table IV.

[2] See Appendix VII for detail.

[3] 1947 data is not available. It is known, however, that since 1944 family income has increased at a more rapid rate than housing expense, the principal part of which is rental payments.



Urban Family Housing Expenditure*

Family Income	2 Person Family 1941	1944	Percent Decrease	4 Person Family 1941	1944	Percent Decrease
$ 500-1000	$300	$264	12	$276	$240	13
1000-1500	406	320	21	350	294	16
1500-2000	458	334	27	449	335	25
2000-2500	521	385	26	534	382	28
2500-3000	560	422	21	627	403	36
3000-5000	660	500	24	700	501	28

*See Appendix VIII for detailed B.L.S. data

The above table indicates, of course, that as family income increased during the war years the outlay for housing was not increased at anything like the same rate. Even though, as has previously been indicated, the median rental payment of all families increased something like 30 percent from 1940 to 1945, this increase has been far outstriped by increase in money income. The fact that much of this decreasing proportion of income for housing in each income bracket is directly attributable to rent control is not subject to much doubt. On the other hand, increases in non-housing living costs have already absorbed most of the average families' increased purchasing power so that for the large majority of families a substantial increase in housing costs would either entail release of living space or retraction of expenditure for the other items which consumers buy. But insofar as rent control has impeded maximum utilization of living space (especially crowding by low income families) it has increased the apparent demand for new dwelling units at current high prices. This is especially true in those areas of the country in which the addition of new dwelling units has kept pace with net family formation since 1940. (As indicated in Part I.) This obviously raises the question of whether or not much of the demand for today's new high cost housing is not even more tenuous than the data on real income would indicate.

Another equally important factor in the relationship of family income to housing cost which is indicative of the unsoundness of new home acquisition at the present time, is that of the general price level. The cost of even a very modest home or apartment represents an outlay which is normally financed over a period varying from 15 to 40 years and which involves a fixed debt commitment over a time span which normally covers at the very least a complete business cycle. That present building costs represent very serious risks for investment at the present time is clearly evidenced by the almost complete absence of rental dwelling construction. Venture capital is not willing to risk its funds in the ability or willingness of families to continue to make rental payments large enough to support current construction costs. The risk is even greater for individual home purchasers, even though the urgency of their need may temporarily support an inflated market. Continued solvency and retention of the newly purchased home may, therefore, have to rest on the assumption that family income remains high or is actually increased over the life of the debt.

A somewhat rough, but easily applied measure of a family's ability to pay for and maintain a home has been that the purchase price should not exceed twice the

annual income. Such a measure, however, if it characterized the period for 1941 would have to be greatly modified in its application to 1947 income. The following table estimates the approximate equivalent available for housing after taxes at January 1947 prices if living standards on non-housing items are maintained at the 1941 level:[1]

Family Income	General Rule for Cost of House Purchased 1941	Approx. Housing Equivalent at Jan. 1947 Living Costs
$ 1000-1500	$ 2000-3000	$ 1420-2060
1500-2000	3000-4000	2060-2760
2000-2500	4000-5000	2760-3340
2500-3000	5000-6000	3340-3990
3000-4000	6000-8000	3990-5130
4000-5000	8000-10000	5130-6400
5000 and over	10000 and over	6400 and over

Applying the data in the above table to the distribution of urban families of two or more persons in 1941 indicates that in that year some 65 percent of these families found the $5000 house out of their reach and only about 6 percent could afford a $10,000 dwelling. The following table also shows that if family incomes as high as those in 1944 are assumed to apply along with current taxes and living costs, the housing potential without decreasing non-housing living standards is about the same.

Percent of Urban Families of Two or More Persons by Ability to Pay Assuming 1941 Living Standards[2]

Cost of Home	Pct. of Families Affording at 1941 Income and Price	Cost of Home	Pct. of Families Affording at 1944 Income at Jan. 1947 Prices
$ 2000	84.6	$ 2060	88.6
4000	52.8	3990	57.3
5000	35.5	5130	35.4
6000	21.6	6400	19.7
10000	5.8		

The conclusion is inescapable that a mass housing market is not supported by family purchasing power and that any extensive house sales at anything like current prices extremely unsound from the purchaser's viewpoint and would subject the government mortgage insurance agencies to risks which in the event of price decline would either involve mass subsidy or wholesale foreclosure.

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[1] See Appendix IX for derivation of estimates.

[2] City Family Composition in Relation to Income, 1941 and 1944, Monthly Labor Review, Feb. 1946 (Serial No. R. 1824, table 2).

Even though maximum increases are predicted for the diversion of family expenditure from savings or from non-housing expense, there is little basis for predicting a substantial of sustained housing market at current costs and income once urgent emergency need is met.

b) Increased debt commitments

Because of the very high building costs and the relatively low incomes of those in most urgent need of living space (especially veterans) liberalized financing provisions for home mortgage loans guaranteed by the government has proved to be one of the more accessible items for political action. The average interest rate on home mortgage loans was 5.5 percent in 1940.[1] This is the only aspect of home ownership cost that is lower now than then. Mortgage money is now generally available at 4½ percent. This reduction in interest has come about in large part by the assumption of lending institutions' major risks through government insurance agencies. (Federal Housing Administration-FHA, and the Federal Home Loan Bank Board for member institutions through the Federal Savings and Loan Insurance Corporation--FSLIC.)

Not only has there been increased pressure for lower interest rates, there has been a tendency to lengthen the period of mortgage amortization and to minimize down payments in an effort to bring home ownership within the reach of a greater number of families. Such provisions are contained in the pending Taft-Wagner-Ellender general housing bill.

The monthly costs of paying off an F.H.A. home mortgage at current rates are shown in the following table:

Total cost of home	$6000	$7500	$9000
Down payment[2]	600	900[3]	1200[3]
Amount to be financed	5400	6600	7800
Monthly payment at 4½% interest to amortize in:			
20 years	(34.18)	41.78	49.37
25 years	30.02		
1/12 of est. taxes[4]	12.50	15.62	18.96
1/12 fire ins.[5]	1.27	1.33	1.60
Mutual mortgage ins.[6]	2.16	2.64	3.12
Monthly payment	$45.95	$61.37	$73.05

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[1] Part II, p. 19.

[2] Does not include $.30 per $100 appraisal fee, or recordings, etc.

[3] 10% of first $6000 and 20% of balance.

[4] Estimated at $25 per $1000 per year (N.H.A. assumption in "Housing Costs").

[5] Estimated at $2.50 per $1000 on 85% of total cost.

[6] Decreases yearly. It is based on 1/2 of 1% of average unpaid principal balance. (Rate is approximately $.04 per $100 per month.)

The above figures, however, make no provision for maintenance. Approximately two percent of the cost of the house must be expended each year to keep the property from deteriorating.* If such costs are added to the monthly payments we arrive at a fair indication of the monthly cost of home ownership exclusive of fuel and public utility services such as water, light and gas. The additional cost of maintenance would bring the minimum monthly cost on a $6000 house to $55.95 under the most liberal financing provisions generally available. On the $7500 home maintenance costs brings the monthly total to $73.87 and on the $9000 home to $88.05.

With these above figures as a base we are in a position to evaluate quantitatively the effect on monthly costs of proposals to lengthen the amortization period or to cut interest costs.

House Value		Monthly Cost with Interest @4½ percent	Effect of Reduction of Interest Rate from 4½% to 4% (11% decrease)	Percent Reduction
$ 6000	($5400 for 25 yrs.)	$55.95	-$1.51 per mo.	2.7
7500	($6600 for 20 yrs.)	73.87	-$1.78 per mo.	2.4
9000	($7800 for 20 yrs.)	88.05	-$2.10 per mo.	2.4

House Value		Monthly Cost with 20 yr. Amortization	Effect of Extending Amortization 5 yrs. (25% Increase)	Percent Reduction
$ 7500	($6600 @ 4½%)	$73.87	-$5.08	6.8
9000	($7800 @ 4½%)	88.05	-$6.01	6.8

Of course extending the period of amortization actually increases the total cost of home ownership by increasing the amount of total interest required, even though the periodic monthly payment is reduced. But disregarding this fact and looking only at the monthly payments, the financing of the $9000 home is decreased by approximately $8 per month or 10 percent by decreasing the interest rate 11% and extending the amortization period 25 percent.

With respect to reduction in interest rates, which actually reduce costs, it is not to minimize the importance of any cost reduction to emphasize the limitations of this method in achieving anything like the result which would overcome the great disparity between high costs and the real incomes of the majority of American families.

Although extended amortization might conceivably bring about a somewhat greater reduction in monthly payments, this method not only increases total costs but provides incentive to commit families to greater obligations than they might otherwise carry under current income. This aspect of housing financing is especially

*National Housing Agency, Housing Costs, Bulletin 2, December 1944.

serious in view of today's inflated market conditions. It would not be particularly serious if continuation of present housing values could be predicted.[1]

That amortization extension or interest rate reduction afford only limited prospects for solving the current housing problem is corroborated by the absence of rental construction. In this field interest rates bear much closer resemblance to the alternative investment opportunities for safe investment (such as government securities) and amortization is possible over considerably longer periods than for individual dwellings. But there is hardly a perceptible amount of residential apartment building.

c. Decreased construction costs

As has been indicated, home construction costs have increased more than 60 percent since 1941, whereas the ability of American families to pay for housing and maintain non-housing living standards is about the same at today's prices as it was in 1941. Insofar as the solution of this riddle is one for unsubsidized private industry remedy must be found through substantial cost reductions.

The current housing literature has abundant reference to building codes, restrictive labor practices and restraints of trade in the building materials supply industry. Although there has been no serious contention that the increase in these restrictive practices has caused a 60 percent increase in building costs since 1941, there seems to be general agreement that their elimination could make substantial cost reduction possible.

The traditionally built home involves a vast conglomeration of separate materials and parts. To achieve substantial saving through elimination of restrictions obviously would require action on a very broad front.

Another aspect of costs, one which limits the expectation of substantial results through elimination of trade restraints under existing market conditions, is the fact that the prices of those products which are generally conceded to be the most extensively controlled and the most competitive have exhibited gains which far outdistance those in the closely held semi-monopolistic industries. For example, food prices have risen many times more than the price of steel. Clothing pricee increases have far outdistanced price increases in chemical products. And even in the housing field contrast the February 1947 wholesale price indexes (1926 = 100) of lumber, for example at 263.6 with cement at 109.9, or paint at 173.9 with plumbing and heating at 117.1.

But assuming an extensive campaign against restrictions in the most closely controlled aspects of the orthodox building industry were successfully waged, note the magnitude of effect of cost decreases of as much as 20 percent in the total of the following fields in which substantial departure from competitive practice has been alleged to exist:

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[1]Such a prediction is not only to preclude the possibility of a recession but also any substantial improvements which could effectively reduce housing costs.

Product or Service	Alleged Practice	Product as Percent of Housing Dollar[1]	Effect of 20% Reduction on Total Cost
Cement, soil, pipe, plywood	Basing pt. practice	3.5	0.7% of total
Metal, lath, plaster, board, insulation	Patent abuse	2.5	0.5
Plumbing	Controlled distribution	5.5	1.1
Construction labor (1/4 of total)[2]	Restriction of ready built items	7.5	1.5

Even on the basis of the basis of the very liberal assumptions in the above table the reduction of 20 percent in the cost of the sum total of all of the items amounts to less than 4 percent of the cost of the house and land, a reduction of $280 on a $7000 home. Here again, this is obviously not to imply that reductions of such magnitude are not important or that they should be disregarded. The point remains, however, that a great deal more is needed.

To achieve substantial cost reduction, radical departure from traditional housebuilding methods may well be required. It is well known that the orthodox house today is constructed according to methods which have been in effect for years. There is no large scale industrial organization in housing which through technological efficiency has been able to supply housing at reasonable costs to a mass market. Consequently even substantial cost reductions would still leave new houses beyond the reach of half of the families.

The prefabricated housing industry, is often pointed to as the logical solution to this problem. Although an analysis of orthodox housebuilding costs indicates numerous possibilities for substantial savings both in material and labor costs, as yet the results of prefabricators in producing acceptable housing at substantial savings over the orthodox method have not been realized. Their success in achieving substantial mass production, however, is not without promise. To date material assembly problems have been difficult. Experience in new production techniques is gained principally through experience. As yet this experience has been on a small scale.

Evaluating prefabricated housing at this juncture is obviously speculative. In view of the present state of the industry, however, it is not to deny the eventual possibilities of good housing for far less money through new techniques to conclude that its part in the low cost housing field in the next few years will continue to be a minor one. However, the elimination of trade restraints in the prefabricated field

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[1] N. H. A. Housing Costs, Bulletin 2, op. cit.

[2] Restrictions are here assumed to apply to as much as one-quarter of all on site labor.

may prove to be of considerably greater importance in achieving low costs than in the traditional house even under current conditions. Especially with respect to the industries' ability to meet building codes and, even more important, to cut the high distribution cost of most building materials which amount to approximately 50 percent of total material costs through orthodox channels.

Because the gap between present housing costs is approximately 60 percent wider than it was in 1941, it seems extremely unlikely that reduction of building costs of the magnitude necessary to support mass construction can be achieved even if combined with a substantial change in family spending habits.

d) Non-housing costs of living

In Appendix IX the following increases in non-housing living costs since 1941 were derived:

Family Income	Increase in Non-Housing Living Cost 1941 to Jan. 1947
Under $1000	68.5%
$1000 to $2000	64.2
2000 to 3000	54.3
3000 to 5000	50.0
5000 and over	45.7

Using these percentages and assuming that families in each income class maintained their non-housing living standards a figure for real income was derived (after taxes) which when applied to the distribution of families by income class led to the result that the assumed housing potential, so derived, would be approximately the same as in 1941 even at 1941 levels of construction costs (which actually increased more than 60 percent).

The very great importance of price reductions in those items other than housing and their bearing on the housing market has received little attention as a housing problem. Insofar as new housing costs must be financed out of family income, the costs of the non-housing essentials of living are of equal importance to housing costs in determining a family's ability to pay for housing.

In a previous section it was indicated that if family incomes at the level of those in 1944 were applied along with provision for current taxes and living costs the housing potential (without decreasing non-housing living standards would be approximately the same in Jan. 1947 as in 1941.)

Currently there is pressure on the part of the government to achieve price reductions by voluntary action on the part of business and industrial interests. Consequently it is of special interest to measure the probable effect of a general price

decline on the family's ability to pay for housing. If we were able to forecast a cut in non-housing consumer prices of 20 percent from January 1947 levels without changing the previous assumption with respect to the distribution of family income it would only make the following changes in ability to pay for housing in accordance with previous assumptions with respect to ability to pay.[1]

Percent of urban families of two or more persons (1944 income distribution) who could afford homes of given cost:[2]

Percent of Families	At Jan. 1947 Living Costs	At Jan. 1947 Living Costs Less 20%
88.6	$2060	$2185
57.3	3990	4210
35.4	5130	5430
19.7	6400	6760

Thus, we are again confronted with a possibility which even if accomplished gives a minor effect to a problem of great magnitude and we are left with the unpleasant conclusion that even if all of the possibilities so far discussed were achieved, we would still be left with a situation which was less favorable than 1941. This means that in the absence of government participation we shall probably have a limited building program which provides housing for the few relatively well to do families at the top, or families whose emergency needs make unsound financial commitments necessary.

This in effect leaves us with a very large subsidy problem if any sincere attempt is to be made to provide housing for those who are in the greatest need. Various proposals are discussed in Part IV.

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[1] See Appendix X for derivation of estimates.

[2] On the assumption that in 1941 a family could spend twice its annual income for home purchase.

APPENDIX VII

Rental Value 1940, by Income Class, 1939

(Chicago tenant families with income from wages or salary with no other income)

Family income	Families reporting rental	Contract rent per month						
		Under $10	10-19	20-29	30-39	40-49	50-74	75 & over
All size families								
$ 1- 499	30,360	2,960	15,200	6,720	5,480			
500- 999	79,000	3,740	33,080	21,540	13,120	7,520		
1000-1499	114,720	2,200	35,660	35,280	25,400	12,460	3,720	
1500-1999	111,160		19,220	30,620	33,100	22,040	6,180	
2000-2999	125,900		10,140	22,760	32,820	42,680	16,500	800
3000-4999	60,160			7,620	10,140	19,880	20,160	2,360
5000 & over	13,800				1,320	1,120	5,680	5,680
Families of 2 persons								
1- 499	8,760	600	3,960	2,160	2,040			
500- 999	23,220	1,180	7,940	6,580	5,420	2,280		
1000-1499	35,000	480	8,600	10,480	10,200	4,280	960	
1500-1999	35,060		4,900	8,760	11,640	8,040	1,720	
2000-2999	40,300		1,920	5,500	12,160	15,580	4,900	240
3000-4999	15,640			860	2,440	6,600	5,200	540
5000 & over	3,320				80	360	1,440	1,440
Families of 5 persons								
1- 499	1,520	120	760	320	320			
500- 999	5,440	80	3,040	1,200	480	640		
1000-1499	8,720	40	3,980	2,340	1,560	560	240	
1500-1999	9,820		1,720	3,340	2,860	1,360	540	
2000-2999	12,300		1,520	3,320	2,880	3,120	1,440	120
3000-4999	7,980			1,860	1,240	2,440	2,240	200
5000 & over	1,640				160	160	800	520

Source: 16th Census of the U. S., 1940
Population & Housing Families,
Income and Rent, p. 43, table 4.

APPENDIX VIII

ANNUAL EXPENDITURE BY URBAN FAMILIES FOR HOUSING

(incl. fuel, light and refrigeration), 1941, 1944

(Includes actual current expenses, excludes principal payments on owned homes)

Family Income	Housing Expenditure by Family Size			
	2	3	4	5 or more
$ 500-1000, 1941[1]	300	273	276	225
1944[2]	264	201	240	*
1000-1500, 1941[1]	406	336	350	315
1944[2]	320	279	294	*
1500-2000, 1941[1]	458	395	449	428
1944[2]	334	329	335	447
2000-2500, 1941[1]	521	540	534	515
1944[2]	385	405	382	415
2500-3000, 1941[1]	560	591	627	560
1944[2]	422	444	403	508
3000-5000, 1941[1]	660	671	700	639
1944[2]	500	536	501	510

*Insufficient for reliable average.

[1] Hearings before the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-War Economic Policy and Planning, U. S. Senate, Jan. 17, 1945, Part 12, p. 1911, table 1.

[2] Monthly Labor Review, Jan. 1946 (B.L.S. Serial No. R1818.)

APPENDIX IX (a)

	Urban Families of 2 or More Persons							
Family Income	(1) Housing Equivalent (2x income) 1941	(2) 1947 Income after taxes[1]	(3) Housing Expense 1944[2]	(4) Increase in non-housing living cost 1941 to Jan. 1947 estimate[3]	(5) Income after taxes less housing cost	(6) Real income after taxes and after cost of living adj. excl. housing[4]	(7) Real income after tax[5]	(8) Housing equivalent Jan. 1947[6]
Under 500		Under 500	$257	68.5%	Under $243	Under $144	Under $401	
500-1000		500-1000	251		$ 243-$ 749	$ 144- 456	$ 401- 707	
1000-1500	$ 2000-3000	1000-1500	298	64.2%	749- 1202	456- 732	707-1030	1414-2060
1500-2000	3000-4000	1500-1945	341		1202- 1604	732-1040	1030-1381	2060-2762
2000-2500	4000-5000	1945-2360	394	54.3%	1604- 1966	1040-1274	1381-1668	2762-3336
2500-3000	5000-6000	2360-2774	430		1966- 2344	1274-1563	1668-1993	3336-3986
3000-4000	6000-8000	2774-3604	488	50.0%	2344- 3116	1563-2077	1993-2565	3986-5130
4000-5000	8000-10,000	3604-4416	547		3116- 3869	2077-2655	2565-3202	5130-6404
5000 & over	10,000 & over	4416 & over	616	45.7%	$3869 & over	$2655	$3202 & over	6404 & over

[1] Applicable tax for 3-person family, 1946.
[2] Expenditure and Savings of City Families in 1944, Monthly Labor Review, Jan. 1946, Table 2.
[3] See Appendix IX(b) for derivation of estimates.
[4] Column (5) corrected for increased prices.
[5] Column (6) + Column 3.
[6] Twice the limits of Column (7).

APPENDIX IX (b)

(1)	(2) Applicable Tax for 3 Person Family, 1946[1]	(3) Living Cost Index Jan., 1947 (excl. housing) (1941 = 100)
Under $500	--	168.5
500-1000	--	168.5
1000-1500	--	164.2
1500-2000	$ 0-$ 55	164.2
2000-2500	55- 140	154.3
2500-3000	140- 226	154.3
3000-4000	226- 396	150.0
4000-5000	396- 584	150.0
5000 & over	584 and over	145.7

1. The use three family results in a slight overstimate in the number of persons in the low income brackets and an understatement of the number of persons in the upper income brackets.

2. Weights in living cost items utilized in this table have been estimated as follows:

	Index Weighting			
Family Income	Food	Clothing	House Furnish.	Misc.
Net increase 41-47	74.4%	58.0%	65.0%	31.3%
Under $1000	80	10	-	10
$1000-2000	60	20	5	15
2000-3000	40	15	5	40
3000-5000	30	15	5	50
5000 and over	20	15	5	60

These weights were multiplied by the increase in the BLS Consumer Price Index 1941 over to Jan. 1947.

3. Monthly Labor Review, Jan. 1946 (Serial R 1818).

APPENDIX X

Family Income	(a) Net Increase in Non-housing Living Costs After 20% Reduction from[1] current levels	(b) Real Income After Taxes & After Cost of Living Adjustment (a) excluding 1944 Housing Cost[2]	(c) Real Income After Taxes (column b plus housing[3] exp. 1944)	(d) Housing Equivalent at Jan. '47 Prices, Less 20%[4]
Under 500	54.8%	Under $157	Under $414	
500-1000		157-495	414-746	
1000-1500	51.4	495-794	746-1092	$1452-2184
1500-2000		794-1118	1092-1459	2184-2918
2000-2500	43.4	1118-1371	1459-1765	2918-2530
2500-3000		1371-1674	1765-2104	2530-4208
3000-4000	40.0	1674-2226	2104-2714	4208-5428
4000-5000		2226-2832	2714-3379	5428-6758
5000 and over	36.6	2832 and over	3379 and over	6758 and over

1. 80% of column (4) Appendix IX.

2. $\frac{1}{1+\text{column (a)}}$ x column (5) Appendix IX.

3. Column (b) plus column (3) of Appendix IX.

4. Twice limits of column (c).

PART IV

Proposals and Subsidy Requirements

In view of the very wide discrepancy between what housing costs and what the families that need housing most can afford to pay, it seems inescapable that any attempt to build homes for veterans[1] and other low income families at this time must involve substantial subsidy. The alternatives (other than extreme cost reductions already discussed) are extensive building for high income families making existing housing available to lower income families, and/or extensive redistribution of existing housing space.

These latter alternatives involving the so-called "filtering down theory" of housing supply, and the elimination of rent control or other more particular measures to eliminate "space hoarding," provide the rationale for elimination of government controls in the housing field. Their application, it is alleged, involves a return to the kind of housing market which existed prior to the war.

The changes in the housing supply since 1940 have been summarized in Part I and the general status of housing in 1940 in Part II. For those sections of the country in which additions of dwelling units since 1940 has kept pace with net family formation, it has logically been urged that the elimination of housebuilding controls and rent ceilings would, through the operation of the open market, make for a distribution of housing which would be as equitable as 1940, and which would make for greater availability of housing at all prices and all rentals and for the elimination of the irrational balance between houses for sale and houses for rent. This obviously would be achieved through rent increases.

Apart from the inflationary effect of the removal of rent ceilings on already high consumer prices,[2] the basic objection to decontrol in those areas where the shortage has not been aggravated[3] rests on a judgment of unacceptable housing conditions prior to the war. Such a judgment is well confirmed by the 1940 housing census data on the state of repair, adequacy of plumbing and crowding conditions of America's housing at that time. Furthermore, the concentration of substandard housing and crowding among families of lowest income is apparent.

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[1] A census survey for the National Housing Administration analyzing the veterans's position in the housing market as of June 1946 shows 11.83 million veterans, 10.5 million in non-farm areas, 52 percent married. Of the 6 million married veterans, 30 percent were living doubled up or in trailers (1.8 million). 20 percent of non-farm veterans lived in substandard dwellings. Median income of all veterans was $40 per week ($48 for married veterans. Only about 25 percent of the married veterans made over $3000 a year.

[2] Proponents of decontrol argue, with considerable merit, that problems of inflation cannot be met by a few single commodity controls, and that this is a monetary and fiscal problem, not a housing problem. Control of rents at low rates merely makes houses for sale, or butter, or something else more expensive. All items must compete for the consumer's dollar.

[3] Regional estimates in Part I indicate the rather extensive existence of such areas. For conclusion with respect to particular cities, however, more detailed information is essential.

Thus, it is contended by those who favor retention of rent control, that the rental increases, insofar as they cause economizing of space, will provide the greatest pressure on the lowest income families who have the least ability to expand their rental budgets and who have always borne the brunt of inadequate housing. This fact coupled with the current information on family income and housing costs developed in Part III emphasizes the great disparity between housing need and the price of housing which would immediately be widened by decontrol of rents and would thereafter be narrowed only as better dwellings become available to low income families at reduced prices.

The impossibility of currently building new dwellings for low income families should be clear. On the other hand, it has been urged that the elimination of rent ceilings and other building controls would have the effect of providing incentive for the building of more expensive dwellings for higher income families who would in turn release existing space to lower income families, who in turn ---- etc. on down the income scale until the housing of low income families was improved. Although there can be no disagreement with the proposition that any housebuilding regardless of price improves to some degree the housing available to others than those who directly purchase or rent, there is not much reason, on the basis of past experience, for concluding that this process works to any considerable degree in eliminating substandard housing among low income families. Furthermore, the greater is the discrepancy between new house cost and ability of the low income family to pay (the greater distance for filter) the less likely is it to provide better low cost housing for less money.

Today's cost limitations by the government on new rental construction make provision for rentals averaging $32 per month per room ($160 per month for a 5 room apartment). That is almost no control at all. On the other hand, new residential construction permits during 1947 are well behind 1946 and practically all units being built are for owner occupancy rather than for rent. The elimination of building controls and rent controls in order to make low cost housing available would have to incite a substantial increase over current building rates to do more than keep up with current family formation. That decontrol would improve housing conditions where the need is greatest is hardly a possibility for the following principal reasons:

1. The principal control today is on rents of existing dwelling units not on newly constructed units. There are few if any investors in such units now, even though rental limits provides no serious barrier to construction. Elimination of rent control on existing dwellings could be expected to have no appreciable effect on this market, except possibly to diminish the pressure of existing demand for new dwellings.

2. High cost homes provide an inadequate base for housing needs. Families who buy the homes that can be built at current prices represent (a) families whose need is so urgent that they extend their commitments beyond their normal ability to pay -- these families can be expected to have little or no "filterable" living space, and (b) families whose income is such that cost of housing is no particular deterrent to the acquisition of a new home. To conclude that there is enough of the latter group to provide a substantial basis for improving the general housing supply is to completely ignore family income and housing cost data and to dismiss all prewar housing experience.

3. Insofar as the filtering down process works to the advantage of lower income groups, not only must there be an adequate market for homes built, but an

excess of supply over demand must be created at each successively lower income range. The supply at each level must be enough to weaken the price. The only way this relative devaluation can take place is through the relative decrease in value of existing units in comparison to the value of the newly produced home. Just to state this proposition should be sufficient comment under present costs.

4. The filtering down process provides dwellings of a size, type and in a location which does not necessarily fit the requirements of the owners who eventually get them. Even after homes are substantially deteriorated low income families must join with others, or there must be subdivision of the type which leads to slum conditions, before occupancy can be afforded.

A conclusion that there is need for substantial subsidy is inescapable unless the current housing shortage is to be concentrated among the low income families, among whom are a very large proportion of veteran families.

Subsidies

Practically all current housing proposals call for some form of financial assistance from the government either directly or indirectly. Proposals vary all the way from outright cash grants to low income families to indirect incentive proposals such as guaranteed income yields on high cost rental investments. They include proposals for tax relief, accelerated amortization, guaranteed markets, and incentive production bonuses in addition to Federal grants for low rental public housing.

The question of housing need is not one of whether or not subsidies are needed, but rather what form they should take and how they can bring the maximum advantage to those in greatest need at minimum cost. An ancillary, but still important issue is the compatibility of the kind of subsidy plan adopted with a system of competitive enterprise and with a minimum of regimentation and direction of consumer spending patterns.

It is the concern which is attached to the latter issue which gives rise to proposals which would substitute general purchasing power (cash grants) for direct housing aid. That the inadequacy of housing is just a part of the general problem of poverty is not a contention to be lightly dismissed. Part II of this study indicates clearly the close correlation between income and housing standards. That a similar correlation between income and clothing standards, health standards, or dietary sufficiency is certainly to be expected. Why then, it may be asked is housing singled out as a special field for assistance? Why should not the family make its own choice of what it considers to be most urgently needed for its own welfare? A frank answer to this kind of question must recognize that a large part of the housing problem does arise because of inequality of income and that this problem is not limited to housing. One need not, however, conclude that a bathtub is more important than a full meal to suggest direct housing assistance. "It is the duty of a civilized State to lay down certain minimum conditions in every department of life, below which it refuses to allow and of its citizens to fall", as A. C. Pigou has aptly pointed out.[1] More important, however, is the fact that in the absence of drastic reduction in housing costs, there is not prospect of providing sufficient

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[1] Lectures on Housing, Pigou and Rowntree, Manchester University Press. 1914, p. 36.

dwelling units to perceptibly effect the low income market. Under these conditions it is relative income which determines market rationing of housing space, and a cash grant, even for families which chose to spend for housing, could only be effective if it raised the donee's purchasing power higher than someone without a grant. No serious proponent of an incentive system is likely to propose such an alternative to direct housing assistance.

The several subsidy proposals which are designed to make the rental market more attractive to private investment such as investment yield insurance and special taxation relief proposals for private investors, have among other disadvantages the basic defects that they are not directly related to supplying the kind of housing that is urgently needed, the amount of the relief provided is not measurable in terms of the financial assistance given (there is real danger of dissipation of the financial aid among those not in urgent need), and there is no effective device available for retraction or discontinuance in the event of diminution of need or lack of success.[1]

What about the possibility of the government itself entering the house-building business? It is certainly not to be denied that the country has the resources, the man power and the initiative to greatly improve the standard of housing in the United States. We did pretty well in building for war, why not for decent living in peace? Nothing is gained by denying that it could be done if enough people demanded it. The real question, however, is could it be done more cheaply by the government directly than by some other system which utilized existing building institutions. In the first place what does it mean that the government would build homes? The orthodox house is an assembly of some 30,000 parts in a particular location. To make all the parts would be to involve the government in a myriad of special operations on a relatively small scale.[2] It is not reasonable that significant savings could be achieved in this manner. But could the government be expected to achieve savings in mass purchasing of materials? Distribution of building materials through orthodox channels is very costly. The maximum savings in this respect would arise through carload purchases of basic materials from the plant for shipment to a single destination. Insofar as housing is localized it is difficult to see what advantage the government could be expected to achieve over any other large scale builder with a supply depot. Insofar as the government entered the prefabricated housing field its position could not be expected to differ greatly from others who are in this business.

With respect to savings from the elimination of other cost items including hiring of workmen, supervision, landscaping, etc., the result is about the same even disregarding the possibility of waste through political aspects of a government program. Even with respect to the elimination of profit what savings, for example, could be expected over voluntary cooperation or mutual ownership housing?

But any judgment of the ability of a government building industry to make for lower costs must be speculative inasmuch as the government has never been in this field. A pilot organization directed primarily at research in lowering costs, something on the order of what the Department of Agriculture does for farmers might well prove beneficial. Anything the government can do either through research or through

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[1] See Blum and Bursler article with respect to taxation proposals.

[2] The problem would only be slightly less involved in prefabricated housing.

eliminating trade restraints will make for keeping subsidy at a minimum. Restraints, especially against newer and cheaper methods of making and distributing housing and housing materials, is an important state and local as well as a federal problem.

A subsidy program which is consistent with the maximum of private competitive achievement in housing, one which can be retracted when and if private competition can do a greater part of the total job, and one which controls subsidy grants to fields of most urgent need, would seem to meet major objections contained in the other subsidy plans outlined. Because of the particularly local nature of the housing problem it would also seem desirable to maximize the decentralization of administration although retaining federal supervision and depending largely upon federal funds. The importance of federal funds arises principally because of the fact that the worst housing is in the areas with the least money. Another requisite of a housing subsidy is that it be even handed giving no particular interests special advantages not available to others in similar circumstances and that no recipient gets aid greater than is required by his income position.

All of these requirements are met by an existing organization which provides federal aid and supervision of low rent housing for those in most urgent need. The most urgent current need at the present time is a great extension of the work of the Federal Public Housing Authority. It is admirably suited to meet the most urgent housing requirements.

One additional comment is pertinent to the current problem. Under any plan to meet housing need the subsidy required at the present time is especially large due to excessive building costs. Curing the nation's basic housing ills is a long-term program. Substandard housing has been a problem in the United States for many years. We also have experienced recurring economic recessions of varying intensity over a long period of time, and few economists or business forecasters believe that the present upswing will not be followed by a period of declining business activity. Without minimizing the necessity of providing ample funds for meeting current emergency housing needs, there would seem to be real merit in planning a long range program of increasing American housing standards which is keyed to maintaining a more stable economy and which calls for maximum public expenditure of funds when costs are low, when jobs are needed and when the elimination of trade restraints provide realistic prospects for sizeable savings in building costs.

PRELIMINARY HOUSING MEMORANDUM NO. II

LEGALITY OF RESTRICTIVE BUILDING CODES

From all sides today there is surprising unanimity of opinion that houses cost too much. Likewise, from most students of the problem there is general agreement that the high costs of houses result from the failure of the building industry to abandon handicraft, custom building and to adopt large-scale, machine production.[1] The solution of the problem of high housing costs, therefore, seems to require a revolution in the house building industry, and fortunately today there are signs that such a revolution is in the making. Instead of multilayer walls of bevel siding, waterproof paper, studs, lath, and plaster constructed bit by bit on the site, manufacturers are developing one piece panels with enameled steel or aluminum faces and paper or spun-glass insulation filler which can be interlocked to form house walls.[2] Instead of hardwood flooring laboriously cut and fitted piece by piece, they have developed a mastic of wood chips in a plastic which can be laid like cement.[3] Instead of an ungainly heating plant requiring a basement and a maize of individually laid out pipes and ducts through the walls, a jet heating plant occupying only a few square feet and spreading its heat by flexible tubing easily threaded through the walls has been described in a popular magazine.[4] Examples could be multiplied, but the culminating achievement is the completely prefabricated house which can be set up in one day and completed for occupancy in three or four and which takes advantage of the economies of large-scale assembly-line production. Present estimates indicate that one hundred thousand of these houses will be built this year or approximately one eighth the estimated total housing production;[5] but, more important, these prefabricated houses although still too high in price are among the least expensive of the houses going up today.[6]

Prefabricated houses and manufactured building materials require large scale production. Unlike the small builder of yesterday and today who requires only

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[1] Twentieth Century Fund, American Housing 329 (1944).

[2] N. Y. Times, p. 6, col. 2 (Nov. 6, 1946).

[3] 4 Journal of Housing, No. 3, p. 6 (March 1947).

[4] Life Magazine, vol. 21, no. 25, p. 51 (Dec. 16, 1946).

[5] Mr. Frank R. Creedon, National Housing Administrator, predicts that 825,000 new dwelling units will be started in 1947 if federal controls and financial aids are continued and only 750,000 if such controls and aids are not continued. 138 Eng. News-Record 424 (March 20, 1947). Guaranteed market contracts for over 82,000 prefabricated houses have been made. 138 Eng. News-Record 249 (Feb. 13, 1947).

[6] The cost of a two bedroom prefabricated house seems to run around $6000 erected without including the cost of the lot, see 138 Eng. News-Record 1 (Jan. 2, 1947). The actual cost of construction for privately financed one-family houses averaged $7400 in a Bureau of Labor Statistics survey, 138 Eng. News-Record 163 (Jan. 30, 1947).

a hammer, saw, and a small stock of lumber, the prefabricated builder and manufacturer of building materials must have a large plant, a heavy investment in machinery and in stockpiles of materials, and a large staff of workmen. This organization cannot be maintained and returns cannot be earned on this investment unless a large volume of production is attained. The technical and organizational problems of maintaining large-scale production are not serious to a business world that has produced millions of automobiles and thousands of airplanes in a year, but the problem of finding a market for thousands of houses and parts is serious. For the national housing market is not one market but is several thousand local markets each fenced off from the others by a myriad of governmental and private restraints. Each community usually has its own building code setting forth in minute detail and almost infinite variation the specifications of houses and building materials.[1] Each usually licenses building craftsmen and by large fees, examinations, and residence requirements limits building work to native sons.[2] Many communities have zoning and planning laws which limit the type and value of construction even within the various areas of the community itself.[3] Interlaced and interacting with these governmental restrictions to form almost a seamless webb are numerous private restrictions. Building contractors and building materials dealers often by agreements or concerted action block intrusion of new materials and methods into their bailiwicks.[4] Financial institutions with large investments in loans on existing houses refuse to make favorable advances on less expensive prefabricated houses.[5] Building unions see prefabricated houses and manufactured materials as a threat to their skills and livelihood, and often either refuse entirely to work on them or require useless redoing of work.[6] The combination in house building of perhaps the most complete and widespread local government regulation, restraint-of-trade minded builders and material dealers, and some of the strongest, most conservative labor unions in the country has proved in many localities an insurmountable obstacle to the use of new methods. Prefabricated builders have simply confined themselves to those areas where restraints are not serious.

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[1] A recent article pointed out that there are 1600 building codes now in force and that the minimum allowable distance between a vent in the drainage system and the trap varies from 2 ft. in many codes to 8 ft. in one Florida and two Michigan municipalities, 138 Eng. News-Record 709 (April 24, 1947). See also Twentieth Century Fund, American Housing 127 (1944).

[2] See for example, Edwards, Legal Requirements that Building Contractors Be Licensed, 12 Law & Contemp. Probs. 76 (1947).

[3] E.g. Senefsky v. Lawler, 307 Mich. 728, 12 N.W. (2d) 387 (1943).

[4] Antitrust Cases in the Construction Industry, Senate Committee Print No. 12, 79th Cong. 2d sess. (Sept. 12, 1946).

[5] Prefabricated manufacturers say that banks often appraise prefabricated houses at lower values than conventionally built houses and are reluctant to make loans on houses embodying new and unusual design features or equipment because, the bankers say, the resale value may be low. See also Lasch, Breaking the Building Blockade 166 (1946); Loevinger, Handicrafts and Handcuffs--the Anatomy of an Industry, 12 Law & Contemp. Probs. 47, 67 (1947).

[6] Loevinger, op. cit. supra note 11, at 48; Twentieth Century Fund, Trends in Collective Bargaining 108 (1945); Twentieth Century Fund, How Collective Bargaining 226 (1942).

The effect of this Balkanization of the housing market upon prefabricated builders is twofold. In the first place, they are denied access to many markets and thereby lose opportunities to achieve economies by large scale production. Even if the restrictions do not absolutely exclude the prefabricated house, permission to erect is only obtained after protracted wrangling with local officials and expensive tests and hearings. Prefabricators, for example, are making no attempt to sell in Chicago because the size of the market does not warrant the expense of combatting a restrictive building code and a hostile building trades council.[1] In the second place, prefabricated builders are obliged to manufacture a house which conforms to some common denominator of the provisions of all restrictive codes. In one city plumbing requirements may be stringent; in another very high structural strength may be required; in a third special heating equipment may be mandatory. If the prefabricator expects to sell in all three cities, he must manufacture a house which meets the requirements of all three codes or must make modifications in his units for each of the three areas. One prefabricator reports that the cost of modifying his plumbing units to conform to one building code equal the total original cost of the unit. Either modification or conformance to the highest common denominator of restrictive provisions adds to the cost of the house and reduces the economies of prefabrication.

This opposition to prefabricated builders and material manufacturers is merely an example of conservative reaction everywhere to anything new and to anything foreign.[2] The elements of newsness, that conventional accustomed methods must be abandoned with loss to their users, and of foreigness, that local people lose work and sales to outsiders, results in opposition to most new manufactured products. But the present paper is confined to a discussion of the legality of governmental restrictions by laws or ordinances to prevent the introduction of new and foreign materials and methods. It is further confined mostly to the building industry and primarily to building codes, but analogies from other new products that have run into conservative private opposition entrenched in law are useful.

At the outset it should be made clear that the straightforward exclusion of prefabricated houses and new building materials has never been attempted in any code. Such a practice by any of the interest groups would be poor public relations and afford a clear ground for attacks by opponents. Such outright exclusion would also be clearly illegal under the doctrines discussed below.[3] The exclusion is accomplished by devious means cloaked under a beneficent purpose of protecting the public health and welfare. Obsolete building codes drawn up when prefabricated houses and manu-

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[1]Chicago Daily News, p. 7, col. 4 (March 25,1947).

[2]Compare the opposition to filled milk, out-of-town coal dealers and truckers, artificial ice cream manufacturers, oleomargarine, and Instant Whip evidenced by cases cited below in note 3, p. 67, and notes 1-5, p. 69.

[3]Forthright exclusion for no other purpose than the advantage of local, conventional builders would be unreasonable, a denial of equal protection, an interference with property without due process of law, and a grant of an exclusive privilege or monopoly. See the cases cited and discussed below in less clear cut situations.

factured materials were undreamed of are continued in existence in whole or in part so that their detailed terms either absolutely exclude these new methods or subject them to onerous conditions. Or the new methods are required to prove themselves by expensive tests and to meet requirements not applicable to conventional materials. For example, the Chicago building code lists a two inch solid plaster partition on metal studs and metal lath as permissible construction where two hours fire resistance is required. But gypsum plaster, the most fire resistant of the types of plaster authorized for such a partition, would have to be 2-1/4 inches thick to pass a two hour fire resistance test; and other plasters, also permitted, would only pass tests of as low as one half hour. Yet any alternative type of partition would have to meet a full two hour fire test.[1] Again, codes derived from the days of hammer and saw house building require 2 x 4 inch joists 16 inches on the center; but a prefabricated plywood panel with a stressed skin and bonded joints would require only 1 x 4 joists to achieve the same strength.

This mask of kindly concern for the public health and safety imposes an initial serious obstacle to attempts to remove restrictive provisions by legislative or court action. This difficulty is compounded by the fact that despite widespread recognition that code provisions often serve only the baneful purpose of protecting vested interest groups, almost no technical studies have been published to show up particular provisions that are now only restrictive.[2] If well-recognized tests were readily available by which legislators and judges could quickly determine the fire resistance, durability, and sanitation values of various types of construction, restrictive provisions would have shorter lives.

The thesis of this paper is that restrictive provisions in building codes are now illegal upon one or several grounds and that these provisions can be, and have been, successfully attacked in the courts. Wider recognition of these avenues of attack may make special groups more cautious in attempting to bolster their economic positions by resort to building codes and may inspire more widespread attacks upon palpably restrictive provisions. The possible sources of authority for overthrowing restrictive code provisions are as follows: (1) The rules of reasonableness and ultra vires as applied to municipal ordinances. (2) The provisions of state constitutions. (3) The due process, equal protection, and commerce clauses of the federal constitution. Each of these points will now be taken up in turn.

1. Municipal Ordinances Must Not Be Unreasonable or Ultra Vires.

Municipal ordinances must be reasonable. This rule had its origin in the limitations on the implied or incidental power of early English corporations to pass by-laws. These corporations had the implied power to pass by-laws to implement general grants of power, provided the by-laws were consistent with the charter, not in violation of the laws of Parliament or the rules of common law, and reasonable.[3]

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[1]Chicago Association of Commerce, Building Regulation in Chicago 54 (1945).

[2]Colean, Your Building Code 13, 15 (Nat'l Committee on Housing 1946): Thompson, The Problem of Building Code Improvement, 12 Law & Contemp. Probs. 95, 99 (1947): Chicago Association of Commerce, Building Regulation in Chicago 2 (1945).

[3]Dillon, Municipal Corporations § 589 (1911).

The reasonableness requirement thus applies only to ordinances passed under a general or implied power and neither to ordinances passed under a specific grant of power which specifies the manner of its exercise as well as the purpose nor to ordinances subsequently ratified by the legislature.[1] Most building codes are passed under general grants of power to municipalities so that the requirement of reasonableness does apply. Whether an ordinance is reasonable is generally regarded as a matter of law for the court, but some states submit questions of fact to the jury.[2]

The meaning of the term "reasonable" has purposely and probably also necessarily been left vague. It has been said that "the legal rule that by-laws must be reasonable is perhaps as definite as it can be made with safety."[3] But the cases disclose three criteria which give more content to the term with regard to building codes. First, the requirements of the code must constitute reasonable means to promote the public health, safety, or general welfare.[4] This criteria is one of means and ends: the purposes of the code must be public purposes appropriate for the police power, and the means adopted in the code must be reasonably adapted to accomplish these purposes. Thus, a building code could not be adopted for the purpose of protecting the business of local builders or the jobs of a building union, nor could it while ostensibly holding forth public ends contain specific measures that do not promote these ends. Second, the codes must not be unreasonably discriminatory.[5] This criteria requires uniform equal application to all buildings or materials unless substantial differences justify different treatment. Thus, a building code which subjects new or non-local materials and houses to onerous requirements not applicable to favored local materials and builders would be invalid. Third, the codes must not operate to restrain trade or foster monopolies.[6] This criteria prevents the use of building specifications to give undue advantage to local builders in order to give them a monopoly of local business.

Chicago, which is reputed to have one of the most restrictive building codes in the country, has twice had restrictive sections of her code held invalid or inapplicable to new materials. The first cases involved a section of the code which required that all rooms (except attic and basement rooms not used for living) be covered with two coats of plaster or with one coat plus a metal wall or ceiling finish. In Hartman v. Chicago (1918)[7] the plaintiff sought mandamus to compel the issuance of a building permit for a two story brick structure, the first floor of which, to be used as a store, was to have walls and ceilings of sheet metal secured directly to the joists. The only question was the reasonableness of the code requirement that there be one coat of plaster under the metal. The plaintiff produced ten

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[1] McQuillin, Municipal Corporations § 760, 761 (1939).

[2] Ibid., § 766.

[3] Ibid., § 767.

[4] Health Department v. Rector of Trinity Church, 145 N. Y. 32, 39 N.E. 833 (1895), Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885 (1908).

[5] McQuillin, Municipal Corporations §§ 775-777 (1939).

[6] Ibid., §§ 773-4.

[7] 282 Ill. 511, 118 N. E. 731.

witnesses who testified that 29 gauge metal ceilings and walls were better fire retarders and preventers than woodlath and plaster, and the city produced three witnesses who testified to the contrary. The Illinois Supreme Court affirmed the denial of the petition, saying:

> "A court will not hold an ordinance void or unreasonable where there is room for a fair difference of opinion on the question, even though the correctness of the legislative judgment may be doubtful, and the court may regard the ordinance as not the best which may be adopted for the purpose. The evidence is not convincing that the ordinance is manifestly unreasonable, and it does not appear upon its face to be so."[1]

Neither the court nor apparently the city denied the underlying premise that if 29 gauge metal were indubitably as good a fire retardant and as satisfactory in other respects as lath and plaster, the exclusion of it by the code would be unreasonable. The court was probably reluctant to regard metal ceilings as fireproof, just as other courts have been reluctant to regard corrugated iron as a fireproof building material.[2]

Within two years, however, in McCray v. Chicago (1920),[3] the underlying premise in the Hartman case was used as ground for successfully challenging this section of the building code. Plaintiffs, husband and wife, sought an injunction to restrain enforcement of the section against walls of "Preferred Bestwall" three-eighths of an inch thick. Preferred Bestwall was a gypsum board of plaster and paper and was applied by nailing it directly to the joists and filling the cracks with a plastic preparation to make an even seamless finish. Plaintiffs introduced evidence that Preferred Bestwall had been tested and endorsed by Underwriters' Laboratories, Armour Institute, the United States Bureau of Standards, the United States Shipping Board, and the United States Industrial Housing Board; that it had as good fire retardant and non-combustible qualities as lath and plaster; that it was much stronger than lath and plaster and was used by the United States army in ordinance buildings where gunfire concussion destroyed plaster; that it was more impervious to water, moisture and wind, did not crack or deteriorate as rapidly, and was more sanitary and less likely to harbor vermin; and that it was less expensive and required less labor to install. They charged that the requirement of lath and plaster created a monopoly because other materials were equally good. The court concluded that the only question was the reasonableness of the ordinance in excluding Preferred Bestwall three-eighths of an inch thick. Although it found some evidence that Bestwall less than three-eighths inch thick was inferior in some respects to lath and plaster, it found the evidence of the superiority of Bestwall three-eighths inch thick as to fire resistance, durability, health, and sanitation was uncontradicted. The court distinguished Hartman v. Chicago on the ground that metalplates conduct heat and that there was in the earlier case room for a fair difference of opinion whether discrimination against metal plates was unreasonable. It reversed the lower court's dismissal of the bill, saying:

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[1] 282 Ill. 511, 513, 118 N. E. 731, 732 (1918).

[2] City of Odessa v. Halbrook, 103 S.W. (2d) 223 (Tex. Civ. App. 1937); City of Brenham v. Holle & Seelhorst, 155 S.W. 345 (Tex. Civ. App. 1913); Lane-Moore Lumber Co. v. Storm Lake, 151 Iowa 130, 130 N.W. 924 (1911).

[3] 292 Ill. 60, 126 N. E. 557.

the bill, saying:

> "We believe that the ordinance in question is unjust and oppressive in its discrimination as to the material to be used for the partitions and ceilings of the rooms in ordinary dwelling houses. This being so, it must be held that these provisions of the ordinance are void..."[1]

The second case holding invalid a section of the Chicago building code occurred almost twenty years later in the next revival of building activity. The city refused a building permit because the plans called for casement windows with tops less than the seven feet above the floor required by the code. In People ex rel Brewer v. Kelly (1938)[2] the builder sought and obtained mandamus to compel the issuance of a building permit. The lower court found:

> "....the provisions of section 1241 of the Revised Chicago Code of 1931, with respect to the height of windows, are applicable to double hung sash windows and are not applicable to steel casements of the type shown upon the plans which accompanied petitioner's application for a building permit ... and that under that construction of said section 1241 of the Revised Chicago Code of 1931, the said section of the ordinance is valid."

On review the Illinois Appellate Court cited testimony that casement windows as described in plaintiff's plans would furnish more light and air than sash windows and that a number of buildings had been constructed with windows of this type. It found that casement windows open throughout their entire length, whereas double hung sash windows open only half their length. It also found that the applicable section of the code would be traced at least as far back as 1911 when casement windows were unknown and sash windows were the only type in general use. Affirming the decision of the trial court, it said:

> "Upon a consideration of all the evidence in the record we are of opinion that the casement windows described in the plans submitted are superior, from a health point of view, to the old type of double hung sash window, and for the reasons stated the ordinance in question does not apply to the casement type of window in so far as the requirement that the top of such windows be at least seven feet above the floor is concerned."[3]

The language here is that of construction--whether the code "applies" to the new material. This language is milder than language holding the code "void" as to new material, but the effect is the same.

Finally, outside Chicago the reasonableness of a building code has been considered in connection with a prefabricated house. The City of Cuyahoga Falls, Ohio, in 1923 adopted a building code specifying the allowable stresses of materials, size of studs, etc. but allowing new types of construction after tests under direction of the inspector. Fifteen years later a permit was denied for the construction

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[1] 292 Ill. 60, 76, 126 N.E. 557, 564 (1920).

[2] 295 Ill. App. 156, 14 N.E. (2d) 694.

[3] 295 Ill. App. 156, 160, 14 N.E. (2d) 694, 696 (1938).

of a new patented house. The inspector had made no tests of the house but was acquainted with the results of tests in other states. The builder won a mandamus in the trial court to compel issuance of a building permit. In State ex rel. Snyder v. Yoter (1939)[1] the Onio Appellate Court reversed the decision on the ground that the relator had no clear right to mandamus without offering to make a test of the houses under the direction of the inspector. It also held that in view of the opportunity to use new types of construction after test, the code was not unreasonable and arbitrary. The mandate, however, clearly indicates that the court would not countenance arbitrary exclusion of prefabricated houses:

> "The judgment is reversed, and the cause is remanded to the Common Pleas Court, with instructions to afford the owners an opportunity to make the tests provided in the building code if they desire to do so, and to order the inspector to comply with the provisions of the building code in reference to such test, and, if the inspector finds that the new type of construction provides the allowable stresses required by the building code, to issue the permit; and if he does not so find, to report the fact to the court. In the event the latter report is made, the court is ordered to afford to the parties an opportunity to present to the court for decision the question of the reasonableness and validity of the inspector's finding."[2]

This case well illustrates a number of the problems of the prefabricator attempting to introduce his product. First, a 1923 building code largely written in detailed specifications with only an awkward, expensive testing procedure for new methods was still being applied in 1939. Second, once again the parties and the court agree that arbitrary exclusion of prefabricated houses would be illegal. Third, the discrimination against the new product, which must be subject to tests that conventional materials avoid, and the opportunities for harassing the prefabricator, for the inspector may ignore the results of tests made in other communities and insist upon their repetition, are painfully evident.

The foregoing cases, although in none of them did the court make its analysis explicit, are primarily illustrations of ordinances which the courts felt failed to adopt reasonable means to promote the public purposes of building codes.[3] The other two prongs of the reasonableness argument may be dealt with more summarily, for no cases involving a new manufactured building product have arisen under them. The second is that municipal ordinances must not be unreasonably discriminatory. A New York case held that an ordinance could not single out trailer homes that complied in all respects with the building code for arbitrary treatment not required of other structures complying with the building code.[4] A Minnesota case held that an ordinance could not prohibit apartments in two story frame buildings while putting no restrictions on apartments in other buildings.[5] An Illinois case held invalid an ordinance which limited the number of persons that might sleep in one room

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[1] 65 Ohio App. 492, 30 N.E. (2d) 558.

[2] 65 Ohio App. 492, 496, 30 N.E. (2d) 558, 560 (1939).

[3] Cf. also Senefsky v. Lawler, 307 Mich. 728, 12 N.W. (2d) 387 (1945) (zoning ordinance prohibiting erection of houses having less than 1300 sq. ft. usable floor area held invalid as unreasonable and unjust limitation on the lawful use of property).

[4] City of Rochester v. Olcott, 173 Misc. 87, 16 N. Y. S. (2d) 256 (1939).

[5] State v. McCormick, 120 Minn. 97, 138 N.W. 1032 (1912).

in a lodging house but not in hotels or boarding houses.[1] These three cases are merely three examples in housing and under the reasonableness requirement for ordinances of the enormous number of cases holding laws invalid for improper classification and discrimination. They show that a code which imposes burdensome conditions and requirements on prefabricated houses, while imposing none on conventional houses, is probably invalid. They also show that the code may be invalid, no matter how desirable and appropriate its terms may be with regard to their subject matter simply on the ground that they discriminate by applying only to part of all like subject matter. The absence of any cases dealing with the illegality of discrimination against new products is a little surprising, for discrimination, as witness the requirements for plastering in Chicago, is common. Yet the illegality of unwarranted discrimination seems clear.

The third basis for holding a municipal ordinance unreasonable is that it restrains trade and fosters monopolies. The charge that ordinances were enacted to protect private interests from competition has been made in many cases, and the courts agree that such a purpose is improper. An ordinance cannot prohibit hawking and peddling in order to protect permanent merchants against an invasion of summer street peddlers.[2] An ordinance prohibiting the sale of pasteurized milk within the city unless pasteurized within the city has been held invalid as an attempt to erect a tariff barrier.[3] An Illinois case held invalid an ordinance giving a monopoly of slaughtering in Chicago to one company and indicated that an ordinance in effect giving a monopoly by confining slaughtering to one lot owned by a particular company would be invalid.[4] Another Illinois case held invalid an ordinance which permitted the chief of police to reserve the most desirable cab stands at the railroad station for one cab company and said: "...an ordinance framed so as to grant such privileges to some and refuse them on equal terms to others would be invalid for being unreasonable, oppressive, and creating a monopoly."[5] Although no case involving new building materials or prefabricated houses has turned upon the invalidity of a building code as restraining trade, the charge of restraint of trade and monopolization was made in McCray v. Chicago and may have been a factor in that decision.[6] Certainly an attempt to create a monopoly for conventional builders against outside prefabricates is implicit in most restrictive building codes and might be brought out as a ground for illegality.

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[1]Bailey v. People, 190 Ill. 28, 60 N.E. 98 (1901).

[2]N. J. Good Humor v. Board of Com'rs., 124 N.J.L. 162, 11 A. (2d) 113 (1940); cf. McCulley v. Wichita, 151 Kan. 214, 98 P. (2d) 192 (1940) (large grocery and meat stores procuring passage of ordinance limiting hours in order to drive out small stores relying on after-hours trade).

[3]LaFranchi v. Santa Rosa, 8 Cal. (2d) 331, 65 P. (2d) 1301 (1937); but cf. Lang's Creamery, Inc. v. Niagara Falls, 224 App. Div. 483, 231 N.Y.S. 368 (1928) aff'd on another ground 251 N. Y.343, 167 N.E. 464 (1929); McKenna v. Galveston, 113 S.W. (2d) 606 (Tex. Civ. App. 1938).

[4]Chicago v. Rumpff, 45 Ill. 490 (1867).

[5]City of Danville v. Noone, 103 Ill. App. 290, 297 (1902).

[6]292 Ill. 60, 73, 126 N.E. 557, 562 (1920).

The weakness of the requirement of reasonableness as a basis for overthrowing oppressive building codes is clearly evident from these cases. Although it is clear that the codes must reasonably promote public ends, not be discriminatory, and not be in restraint of trade, and although oppressive code provisions have actually been overthrown on the first ground, the cases always require a balancing of the putative public purposes and the means adopted against the charges of illegality. This balancing is in turn heavily weighted in favor of the validity of the ordinance by a presumption of validity which has been stated as follows: "A court will not hold an ordinance void as being unreasonable where there is room for a fair difference of opinion on the question, even though the correctness of the legislative judgment may be doubtful and the court may regard the ordinance as not the best which might be adopted for the purpose.[1] This rule is a necessary judicial self-abnegation, for the courts are incompetent to pass upon the technical questions frequently involved and should not decide matters of policy. The Hartman case is an excellent example of the refusal of the court where evidence conflicts to weigh that evidence and hold an ordinance invalid. Fortunately, a standard fire test has recently been developed and nationally recognized and other standard tests are being developed so that soon it may be possible definitively to determine the qualities of building materials and parts.[2] The use of these tests will afford a firm basis for determining whether a building code arbitrarily and unreasonably prevents the use of new materials and prefabricated houses.

In addition to not being unreasonable, municipal ordinances and building codes must not be ultra vires. Enabling acts generally give municipalities power to regulate the manner of constructing buildings and to prevent fires, etc. in general terms. But the restrictive character of building codes arises from the fact that they usually specify materials and methods in particular terms. Although the issue has not often been raised, serious questions may arise in many instances whether the particular specifications in the code do not go beyond the power granted in the enabling acts. For example, is it infra vires under a power to require fireproof construction to specify only a few types of construction when others, not specified, are equally fireproof? This question suggests that in many instances the adoption of performance standards--now generally recognized as the most modern and flexible method of code writing[3]--is the only legal way of particularizing the standards. This argument finds support in a few cases. In an Iowa case the plaintiff contesting the ordinance contended that authority to require fireproof roofs did not permit a specification of roofs of "iron, stone, brick and mortar or other noncombustible materials," but the court held that the ordinance was saved by the phrase "other noncombustible materials."[4] In Fishburn v. Chicago (1898)[5] an ordinance for a street improvement specified "cement prepared from refined Trinidad asphaltum obtained from Pitch Lake, in the island of Trinidad," and contestants showed that Pitch

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[1]Dean Milk Co. v. Chicago, 385 Ill, 565, 578, 53 N.E. (2d) 612, 618 (1944).

[2]Thompson, The Problem of Building Code Improvement, 12 Law & Contemp. Probs. 95, 98, 101 (1947); see also programs of research reported in 138 Eng. News-Record 473 (March 27, 1947) and 709 (April 24, 1947).

[3]Colean, Your Building Code 20 (Nat'l Committee on Housing 1946); Chicago Association of Commerce, Building Regulation in Chicago 20 (1945).

[4]Lane-Moore Lumber Co. v. Storm Lake, 151 Iowa 130, 130 N.W. 924 (1911).

[5]171 Ill. 338, 49 N.E. 532.

Lake was the exclusive property of one company but that other asphaltum from Trinidad was of equal quality. The court held the ordinance invalid as creating a monopoly and restricting competition and said:

> "If it be the judgment of the city council that the most suitable and best material to be used in any contemplated improvement is the product of some particular mine or quarry, or some substance or compound which is in the control of some particular firm or corporation, the ordinance might be so framed as to make such production, substance or compound the standard of quality and fitness, and to require that material equal in all respects to it should be employed."[1]

In City of Brenham v. Holle & Steelhorst (1913)[2] the city sought to enjoin construction of a building of sheet iron on wooden studs within the fire limits under an ordinance requiring such buildings to "have its walls and roofs constructed of a fireproof material, using for walls, brick, stone or concrete and roofs of tin, slate or iron." The trial judge denied the injunction on the ground that sheet metal was fireproof as to ordinary fires and that the enabling act only empowered the city to forbid the erection of buildings of non-fireproof material but gave no power to specify particular materials. On appeal this decision was reversed, and a mandatory injunction to tear down the building was issued. The appellate court concluded that a structure of galvanized iron on a wooden frame was not a fireproof building. It also concluded that, although the enabling act did not expressly authorize the ordinance to specify materials, such power could fairly be implied. The court, however, clearly indicated that specification of particular materials would not justify exclusion of other equally adequate materials:

> "Brick, stone, and concrete are generally recognized in towns of the size of Brenham as the materials out of which fireproof walls are to be constructed. If a material should be invented which would be equally as fireproof when considered from every aspect as either of such materials, a person building a house of same, or the manufacturer of the same, might well urge the unreasonableness of the ordinance in question when directed against the use of his material, and claim that such ordinance invaded his rights of property. In this case we are met by no such condition."[3]

These cases at least raise a doubt whether under an enabling statute authorizing the passage of ordinances to accomplish a certain purpose, ordinances which merely specify some and not all the means for accomplishing that purpose are valid. In any event, the last case shows that courts are ready to disregard the specified means when other means are equally adequate.

2. The Provisions of State Constitutions.

A second source of authority for contesting the legality of restrictive building codes is the constitutions of the various states. Three types of constitutional provisions might be applicable to restrictive codes: (1) Clauses protecting

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[1] 171 Ill. 338, 343, 49 N.E. 532, 533 (1898).

[2] 153 S.W. 345 (Tex. Civ. App. 1913).

[3] 153 S. W. 345, 349.

against deprivation of property without due process of law; (2) clauses guaranteeing the equal protection of the laws; (3) clauses prohibiting the granting of an exclusive privilege or franchise. On the language of the constitutions themselves one may argue that an unreasonable restrictive building code favoring conventional local builders and preventing the outside prefabricator from selling, or the property owner from putting up, a prefabricated house violates all three types of provisions. A few cases lend some support to this argument.

In Direct Plumbing Supply Co. v. Dayton (1941)[1] the named plaintiff and Sears, Roebuck & Co. sued to enjoin enforcement of an ordinance requiring all sellers of plumbing fixtures to affix labels to equipment sold and to report weekly all sales, the names and addresses of purchasers, and the places of installation. The preamble stated that the purpose of the ordinance was to facilitate detection of violations of the plumbing inspection laws and to deter theft of plumbing fixtures. The court pointed out that the City of Dayton required permits and inspections for all plumbing installations and required that all connections to sewers and the water system be made by licensed plumbers. It, therefore, judged the ordinance according to its value as a third zone of defense and concluded that the increment of increase in the public welfare did not warrant the infringement upon the right of the owner of the plumbing fixture to deal with it as he saw fit. It held that the ordinance violated the due process clause of the 14th amendment and s19 of Art. I of the Ohio Constitution providing that "Private property shall ever be held inviolate but subservient to the public welfare."

This ordinance was apparently adopted as a restrictive device to inconvenience mail order houses and wholesalers selling plumbing equipment direct to consumers. Local plumbing dealers and contractors have long been hostile toward direct-to-you plumbing sales and have attempted to stamp out such sales by agreements not to install for or to sell auxiliary supplies to persons buying direct.[2] Obviously, the labeling and the reports required by this ordinance could be satisfied much more easily by a local dealer with equipment in stock and in direct contact with his customer than by a mail order house or outside wholesaler. The court properly weighed the utility of the ordinance to promote the public health and safety in plumbing against the interference with the rights of property owners to deal with their property and held it invalid. This weighing approach might be used to invalidate restrictive building code provisions which only remotely protect the public health and safety but which proximately prohibit or handicap prefabricated housing.

In Aerated Products Co. v. Godfrey (1943)[3] the plaintiff won a declaratory judgment that a rule of the Public Health Council of New York classifying his product as a "milk product" violated the equal protection and due process clauses of the state and federal constitutions. Plaintiff manufactured Instant Whip by a patented process involving the addition of vanila and sugar to pasteurized cream, enclosing the mixture in a metal container, and adding nitrous oxide gas under pressure both to

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[1] 138 Ohio St. 540, 38 N.E. (2d) 70.

[2] Antitrust Cases in the Construction Industry, Senate Committee Print No. 12, 79th Cong. 2d Sess. p. 50 (Sept. 12, 1946).

[3] 290 N. Y. 92, 48 N.E. (2d) 275. For other trials of Instant Whip see Aerated Products Co. v. Department of Health, 59 F. Supp. 652 (N. J. 1945).

give a foamy consistency like whipped cream and to provide a means to force the mixture out of the container through a valve. The Public Health Council amended its rules for the specific purpose of including Instant Whip in the definition of "milk product" and claimed without substantiating evidence that plaintiff's method of cleaning and capping the containers was not sanitary. The plaintiff pointed out that the application of the rules for "milk products" would require it to maintain a local plant in each of the cities where it sold its product and to use only local sources of cream and that this decentralization of its operations would be impractical and uneconomical. Undisputed evidence showed that plaintiff's containers were clean and sanitary, that its product and ingredients were safe and wholesome, and that Instant Whip marked a sanitary and scientific advance over ordinary whipped cream. The New York Court of Appeals concluded that the amendment to include plaintiff's product in the definition of "milk products" was unreasonable, discriminatory, and arbitrary in violation of the due process and equal protection clauses of the state and federal constitutions. The facts of this case can be generalized to point up the close parallel to the situation of a prefabricated builder: A new product comes into competition with an old product supported by powerful local interests. These interests attempt to apply restrictive laws properly applicable, if applicable at all, only to the old product. These restrictive laws would render the manufacture of the new product uneconomical. The court holds that the restrictive laws cannot be applied to the new product.

Finally, in State v. Sentee (1900)[1] a conviction for violation of a statute forbidding sale of any petroleum product for illuminating purposes with a vaporization point below 105° F. except for use in "the Welsbach hydrocarbon incandescent lamp..." was overthrown. The defendant had used a lamp constructed on the same principle as the Welsbach, which reached the same result and which was equally safe. The court concluded that the reference to a specific lamp by name when others were equally safe violated § 6 of Art. I of the Iowa Constitution, which provides that "the general assembly shall not grant to any citizen or class of citizens privileges or immunities, which under the same terms shall not equally belong to all citizens."

Constitutional provisions prohibiting the grant of special privileges and immunities to any class of citizens are not uncommon.[2] Restrictive building codes are often implicitly designed to give local, conventional builders advantages over outsiders and newcomers. If the uselessness of the restrictive provisions can be demonstrated, and if their necessary operation to confer special advantage on local groups can be brought out, they might be held invalid under these constitutional provisions. The instant case is certainly authority by analogy that a code may be invalid if it specifies particular materials or methods of construction used only by certain builders when other and perhaps newer methods of construction are equally satisfactory.

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[1]111 Iowa 1, 82 N.W. 445.

[2]Legislative Drafting Research Fund, Columbia University, Index Digest of State Constitutions 1091 (1915).

3. The Provisions of the Federal Constitution

A third possible source of authority for contesting the legality of restrictive building codes is the constitution of the United States. Again, three constitutional provisions might be applicable to restrictive codes: (1) the due process clause of the Fourteenth Amendment; (2) the equal protection clause of the Fourteenth Amendment; and (3) the commerce clause.

The Fourteenth Amendment may be summarily dismissed with the observation that although the clause might be applicable to building codes that unreasonably prevent and discriminate against the use of prefabricated houses, no case of that or similar character has come before the court.[1] Indeed, the United States Supreme Court throughout its history and especially recently has been extremely reluctant to invalidate legislation enacted under the police power, even though the only purpose of some of that legislation seems to have been the protection of established local business and the discouragement of new or outside enterprises. The unsuccessful battles of filled milk manufacturers against the federal filled milk act,[2] of out-of-town truckers and coal dealers against municipal ordinances requiring the unloading and reweighing of their trucks inside the city,[3] of "tin-top" box manufacturers against an administrative rule limiting fruit boxes to hallocks,[4] of ice cream manufacturers against laws requiring a minimum butter fat content,[5] and of oleomargarine manufacturers and distributors against restrictive state laws,--[6] all apparently instances of new or foreign products bucking established local interests--discourage resort to the Fourteenth Amendment.[7]

But through all of these cases runs the note that the legislation is justified in any event to prevent the deceiption of the public by substituting the new

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[1] Cf. Chicago v. Fieldcrest Dairies, 316 U.S. 168 (1942) (referring to state courts issues on validity of Chicago ordinance forbidding use of paper milk containers).

[2] Carolene Products Co. v. United States, 323 U.S. 18 (1944).

[3] Hauge v. Chicago, 299 U. S. 387 (1937); but cf. May Coal & Grain Co. v. Kansas City, 10 F. Supp. 792 (Mo. 1935) and earlier reversal of dismissal, 73 F. (2d) 345 (CCA 8th 1934).

[4] Pacific States Box & Basket Co. v. White, 296 U. S. 176 (1935).

[5] Hutchinson Ice Cream Co. v. Iowa, 242 U. S. 153 (1916).

[6] Capital City Dairy Co. v. Ohio, 183 U. S. 238 (1902); Plumley v. Massachusetts, 155 U. S. 461 (1894); Powell v. Pennsylvania, 127 U. S. 678 (1887).

[7] Some eoncouragement may be found in Liggett Co. v. Baldridge, 278 U. S. 105 (1928) (holding invalid a Pennsylvania statute requiring all members of corporations or partnerships owning drug stores to be licensed pharmacists, with an exception for stores already owned), Yick Wo v. Hopkins, 118 U. S. 356 (1885) (San Francisco ordinance forbidding operation of laundries in wooden buildings without permit invalid where permits were only denied to Chinese), and Lone Star Gas Co. v. Fort Worth, 93 F. (2d) 584 (CCA 5th 1937) cert. and rehearing denied 304 U. S. 562, 589 (1938) (holding invalid a municipal ordinance forbidding the addition of any nitrogen gas to natural gas where the gas company had been openly for a number of years introducing variable quantities of nitrogen into natural gas to maintain a constant heat value per volume).

artificial product for the old. For example, in the filled milk case the court said:

> "Although, so far as the record shows, filled milk compounds as enriched are equally wholesome and nutritious as milk with the same content of calories and vitamins, they are artificial or manufactured foods which are cheaper to produce than similar whole milk products. When compounded and canned, whether enriched or not, they are indistinguishable by the ordinary consumer from processed natural milk.... The possibility and actuality of confusion, deception and substitution was appraised by Congress."[1]

Although a prefabricated house or manufactured building material may in a completed house look like a conventional house, the builder or purchaser of such a house is unlikely to be deceived as to what he is getting, at least not as the consumer of margarine, filled milk, or ice cream without butter fat might be deceived. These cases, therefore, do not preclude a decision that arbitrary exclusion of prefabricated houses would be a violation of the property rights of the would-be owner and of the manufacturer contrary to the Fourteenth Amendment.

Under the commerce clause, however, prefabricated house manufacturers have greater protection. States or municipalities cannot prevent the importation of prefabricated houses, even though they may subject them to police regulations after they are in the state.[2] Nor can they in effect exclude prefabricated houses by subjecting them to utterly non-sensical regulations[3] or to unreasonably high discriminatory inspection fees.[4] They may not subject out-of-state prefabricated house dealers to higher license fees than are charged local builders.[5] They probably may not require inspection of the parts of the house before assembly or of the processes of manufacture, even though local building operations are inspected continuously during erection.[6] Finally, prefabricated house manufacturers can send in inspectors and erection

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[1]Carolene Products Co. v. United States, 323 U. S. 18, 23 (1944).

[2]Cf. Schollenberger v. Pennsylvania, 171 U. S. 1 (1898) (state statute forbidding possession or sale of oleomargarine could not prevent purchase in interstate sale); Aerated Products Co. v. Department of Health, 59 F. Supp. 652 (N. J. 1945) (although New Jersey cannot forbid importation of Instant Whip, it can prevent its distribution and sale within the state).

[3]Cf. Collins v. New Hampshire, 171 U. S. 30 (1898) (holding invalid a New Hampshire statute requiring oleomargarine brought into the state to be colored pink).

[4]Cf. Hale v. Bimco Trading Co., 306 U. S. 375 (1939) (holding invalid a Florida inspection fee of 15¢ per hundred pounds on imported cement where fee was 60 times the cost of inspection).

[5]Cf. Bethlehem Motors Corp. v. Flynt, 256 U. S. 421 (1921) (holding invalid license tax of $500 upon automobile dealers but only $100 if three-fourths assets of automobile manufacturer consists of bonds of state or subdivisions or of property taxed within the state); Dozier v. State, 218 U. S. 124 (1910) (holding invalid a license tax of $25 on persons soliciting orders for photographs or pictures but not applying to dealers having a permanent place of business within the state and picture frames in stock).

[6]Cf. Minnesota v. Barber, 136 U. S. 313 (1890) (holding invalid Minnesota

experts to assist in assembling the houses on the site without subjecting themselves to the requirements for admission of foreign corporations to do business within the state.[1] The commerce clause, therefore, gives protection to many substantial rights to participate in the national market but only skirts the periphery of onerous restrictions in local building codes.

A more interesting problem arises whether in order to protect the national commerce in prefabricated houses the federal government could enact national standards under the commerce clause and thereby preempt the field to exclude local regulations altogether. Such legislation may be the only way to remove local restrictions and open up a national market for prefabricated housing. Since no such legislation has been adopted or so far as known proposed, the possibility as a source of protection for prefabricators is only noted here.

In conclusion, the preceding pages show that arbitrary and useless building code provisions have been held invalid in several cases as unreasonable exercise of the municipal powers to enact ordinances. Such ordinances specifying only a few of the methods of construction which satisfy the general purposes of the state enabling acts may also be ultra vires. Further, arbitrary building codes may violate various provisions of state constitutions and in certain limited respects may interfere with interstate commerce contrary to the federal constitution. Every building code contest requires a court to sort out and weigh the hidden purposes of protecting special interests against the well-advertised purposes of promoting the public health and safety. As long as objective tests to determine the qualities of building materials and types of construction were unknown, courts hesitated to overrule in doubtful cases the judgment of local legislators and building officials. But as nationally recognized standard tests become available to grade materials and methods with regard to the qualities necessary in a house, pressure groups attempting to exclude prefabricated housing behind a mask of benevolent concern for the public welfare may find their task more difficult both in the local legislatures and in the courts.

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and Indiana statutes forbidding sale of meat unless the animals were inspected within the state within 24 hours before slaughter).

[1]Cf. York Manufacturing Co. v. Colley, 247 U. S. 21 (1918) (sending engineer into Texas to erect and test ice machinery was part of interstate sale and not doing business in Texas).

GOVERNMENTAL ATTACKS UPON RESTRICTIVE BUILDING CODES

Restrictive building codes which arbitrarily exclude new building materials and building assemblies for the benefit of local conventional builders are probably today in most jurisdictions illegal or unconstitutional. Despite this illegality attacks upon the codes have been infrequent. This paucity of attack is probably largely due to the fact that even now relatively few prefabricated houses or new materials have been manufactured and that these few have been easily absorbed in areas not covered by restrictive codes. It is also due to the fact that only recently have standard tests been developed to provide an objectively measurable means of grading and comparing the qualities of building materials and methods. Then too, the united front of restraints presented by the building codes, the building labor unions, building material dealers, and bankers interested in preserving their investments in conventional houses has discouraged attack upon any one restraint. But, although part of the responsibility for failure must fall on these general factors, part also lies in the unsuitability of private litigation as a means of raising the issues of illegality. Few would-be-owners of a prefabricated house have the financial resources or the crusading spirit to gather the evidence to make the case necessary to overthrow a restrictive code and to prosecute the necessary appeals. Also few new manufacturers or prefabricators have the resources to prosecute such suits or care to brave the hostility of the suppliers or building officials with whom they must deal. As a business proposition litigation against restrictive codes is unprofitable while markets are available elsewhere to absorb full production.

The failure of private litigation suggests the desirability of some sort of governmental action. Such government suits would be able to go against restrictive codes for the benefit of all prefabricated builders and not merely for one particular litigant, and thus the results might be more in proportion to the costs. The government might have readier access to testing facilities and data so that proof of arbitrariness and unreasonableness would be easier. Finally, building officials who might shrug off a private suit as an attempt by selfish private interests to avoid regulation for the public good would be harder put to deprecate a government suit. Such public action might be brought either by state authorities or by federal authorities.

If the Attorney General of the United States were asked today by the President whether the national government might remove through litigation the restraints imposed on the introduction of improved cost saving materials and prefabricated housing by restrictive municipal building codes, what possible solutions might the Attorney General devise? There appear to be several avenues of attack, short of requesting Congress to enact legislation establishing nation wide uniform performance standards for building, which might be explored. It is of course recognised that institution of litigation by the national government against political subdivisions of the states would probably evoke violent criticism from many quarters but a successful test case might well focus public attention upon the restrictive nature of many local codes with dramatic effect sufficient to hasten thorough-going revision of such codes. Litigation might also convince the Congress of the need for uniform building performance standards to encourage the development of a nation wide market for the house prefabrication industry.

The similarity of effect flowing from a boycott imposed by a combination of trade unions, contractors and materials men directed against introduction of out-of-state materials or labor saving devices[1] and the restraints imposed on the introduction of prefabricated houses or cost saving technologically improved materials by a local building code suggests the possibility of invocation of the Sherman Antitrust Act.[2] Labor-employer combinations restraining interstate commerce today are illegal, the Supreme Court has reaffirmed,[3] thereby resolving the doubt created after the Hutcheson[3a] decision had accorded labor groups broad exemptions from the antitrust laws.

But merely recognizing the economic similarity of boycott by labor-capital groups and boycott by municipal ordinance does not aid legal analysis. The Supreme Court has said in Parker v. Brown[4] that the Sherman Act does not prohibit a law restraining trade enacted by a state as sovereign.[4a] The Court distingusihed, however, situations where the state or its municipality participates in a private agreement or combination by others for restraint of trade,[5] implying that such activities were not exempt.

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[1]See, for example, United Brotherhood of Carpenters v. United States_____ U.S._____, Nos. 6,7,8,9, and 10, decided March 10, 1947; Allen Bradley v. Local Union No. 3, 325 U.S. 797 (1945).

[2]26 Stat. 209; 50 Stat. 693.

[3]Footnote 1, supra. Before passage of the Norris-LaGuardia Act, the Court had twice held that combinations of labor unions and business men to restrain trade violated the Sherman Act, United States v. Brims, 272 U.S. 549; Local 167 v. United States, 291 U.S. 293, but their force was discounted until the Allen Bradley case and even in that case the Court placed no reliance on them as authorities, Allen Bradley v. Union, supra, at 807-8.

[3a]United States v. Hutcheson, 312 U.S. 219.

[4]Parker v. Brown, 317 U.S. 341, 350-2, (1943).

[4a]California enacted an agricultural prorate act requiring the pooling and price fixing of raisins of which between 90 and 95 percent ultimately were shipped in interstate or foreign commerce. A raisin packer brought suit to enjoin the state officers from enforcing the prorate act asserting it was invalid under the Sherman Act, the Agricultural Marketing Act of 1937 and the Commerce Clause. As to the Sherman Act the Court said, p. 352:

"The state in adopting and enforcing the proprate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit. Olsen v. Smith, 195 U.S. 332, 344-5; cf. Lowenstein v. Evans, 69 F. 908, 910."

[5]Footnote 4, supra. The Court said, at pp. 351-2:

"True, a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful,

No decisions under the antitrust laws have been found wherein a state or municipality has, by enactment of an ordinance or statute, participated in a conspiracy or combination of private parties to restrain trade, although the Department of Justice has instituted antitrust proceedings in several instances alleging participation by local officials in conspiracies dominated by private groups to restrain commerce. Thus, in a recent criminal information filed against the major gas chlorinating equipment manufacturers, the Department of Justice alleges that municipal, state, and federal sanitary engineers and consulting engineers participated in the alleged conspiracy to restrain and monopolize trade in chlorinating equipment by preparing for issuance specifications excluding others than the defendants from bidding.[2]

And under an allied law, the Elkins Act,[3] prohibiting any person from giving or receiving any concession in respect to interstate transportation, a city was enjoined from further participation in a program of granting discriminatory advantages to shippers, despite the existence of a municipal ordinance authorizing such payments.[4]

If a case could be made that as part of a conspiracy of trade unions and material men to boycott the introduction of prefabricated housing or labor saving materials or devices, municipal building officials had participated by arbitrarily excluding under the building code these technological improvements, equitable relief would probably be decreed against not only the private groups but also the building officials. However, such a case would presuppose a building code containing provisions for exceptions to the code or giving discretion to such officials to permit use of new materials of equivalent performance. Obviously, here, injunctive relief could not properly run against enforcement of the building code itself.

Northern Securities Co. V. United States, 197 U.S. 332, 344-7, and we have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade, cf. Union Pacific R. Co. v. United States, 313 U.S. 450."

[1]United States v. Wallace & Tiernan Co., et al. (D.C.R.I.) criminal information filed May 1, 1947.

[2]Conversely, participation by local officials in an alleged conspiracy to oppose regulatory legislation was charged in United States v. Rufus Dewitt King, et al., (D.C.W.D. Tex.), criminal indictment No. 13147 returned June 6, 1944. Trial pending.

[3]49 U.S.C. secs. 41-45.

[4]Union Pacific R. Co. v. United States, 313 U.S. 450 (1941).

If on the other hand, evidence merely showed concerted action by trade unions and material men to exert pressure on a particular municipality for adoption of restrictive code provisions to exclude new cost saving methods, materials, or types of housing, would this constitute a conspiracy in violation of the Sherman Act? The Act must meet the constitutional test in its application[1] so it might be seriously urged that to condemn essentially lobbying activities by special interests as violative of the Sherman Act would abridge the First Amendment protecting freedom of speech and petition.

Another factual permutation would be the case predicated on a conspiracy to boycott new materials or prefabricated housing by labor-capital groups and to buttress the private boycott the private groups had induced municipal authorities to enact an unreasonably restrictive code. Passing the question of constitutional protection accorded lobbying, and in view of the Parker v. Brown doctrine it would seem the only possible way to attack the code under the Sherman Act would be to prove that the restrictive code provisions are invalid on state grounds, i.e. either ultra vires, or unreasonable since discriminatory, bearing no reasonable relation to public health, safety or welfare, or in violation of the common law rule against restraints and monopolies.[2] If the restrictive provisions of the code were found invalid on one of the above grounds, injunctive relief not only could run against continuance of the conspiracy but could properly enjoin enforcement of the code.

At best, the use of the Sherman Act as a statutory basis for striking down unreasonably restrictive municipal building codes is novel and beset with evidentiary and constitutional difficulties. Militating against its invocation, also, is the objection it does not afford a sufficiently direct avenue of attack on the primary objective -- the restrictive code itself.

A consideration of other methods of approach to the problem seems to be indicated.

But if it is concluded that the Sherman Act alone, is inadequate to afford a sufficiently direct method of attack against restrictive codes, the first problem that arises is whether the Attorney General[2a] may institute, without express statutory authority, an action to overthrow such restrictions. Since the

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[1]Associated Press v. United States, 326 U.S. 1 (1945).

[2]Curiously, a municipal ordinance such as a building code, cannot apparently be invalidated as contravening the Sherman Act (Parker v. Brown) although one of the tests of reasonableness which such an ordinance enacted under the police power must meet is whether it fosters monopoly or unduly restrains trade. See Speck, Legality of Restrictive Building Codes.

[2a]Federal action might conceivably be initiated by the attorney general, federal district attorneys, the national housing administrator, or the housing expediter. Although the two housing officials are most intimately concerned, they do not have express power to institute suits. (Executive Order 9070 of February 24, 1942, 7 Fed. Reg. 1529; Veterans Emergency Housing Act of 1946, 60 Stat. 207, 50 U.S.C.A. Appdx. § § 1821 ff. Supp. (1946).) They could, however, request assistance from the Attorney General; and the Housing Expediter has wide powers of directing the cooperation of other government bodies to meet the national housing emergency. The Attorney General, on the other hand, is expressly directed to render legal

great bulk of litigation instituted by the Attorney General is pursuant to statute, the cases where he has proceeded without such authority are comparatively rare. Nevertheless, as early as 1816 a circuit court held that an act of Congress was not necessary to authorize the United States to institute suit in its own name on a negotiable bill.[1] The right of the United States to institute suits without express statutory authority has since been litigated before the Supreme Court in an action of trespass quare clausum fregit,[2] an action to revoke a patent for land obtained by fraud,[3] and an action to revoke a patent of an invention for fraud,[4] and in each case the right to sue was upheld. In 1921 in a suit to forfeit a grant the Supreme Court said:

> "In the absence of some legislative direction to the contrary, and there is none, the general authority of the Attorney General in respect of the pleas of the United States and the litigation which is necessary to establish and safeguard its rights affords ample warrant for the institution and prosecution by him of a suit such as this.[5]

The federal interest which would justify a suit by the attorney general for the United States is threefold. The first is that of removing obstructions to interstate commerce.

Under the commerce power several celebrated suits have been instituted by the United States to remove obstructions to interstate commerce without express statutory authorization. In the case of In re Debs[6] the federal district attorney had obtained an injunction forbidding interference by strikers with traffic on

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service for all departments and bureaus of the government and to handle litigation in the Supreme Court and Court of Claims; and he may handle litigation in any court. (5 U.S.C.A. §§ 291, 306, 309, 310 (1927).) He exercises "general superintendence and direction" over district attorneys and marshals. (Ibid. § 317; cf. § 312.) The district attorneys have the duty "to prosecute . . . all delinquents for crimes . . . and all civil actions in which the United States are concerned ..." (Rev. Stat. § 771, 28 U.S.C.A. § 485 (1928). The original injunction which was the basis of habeas corpus In re Debs, 158 U.S. 564 (1895), was obtained by a district attorney.) Thus the Attorney General, a district attorney on his own initiative, or a district attorney at the direction of the Attorney General would be proper officers to prosecute litigation for the United States.

[1]United States v. Barker, Fed. Cas. No. 14,517 (C.C. N.Y. 1816).

[2]Cotton v. United States, 52 U.S. 229 (1850).

[3]United States v. San Jacinto Tin Co., 125 U.S. 273 (1888).

[4]United States v. American Bell Telephone Co., 128 U.S. 315 (1888).

[5]Kern River Co. v. United States, 257 U.S. 147, 155 (1921).

[6]158 U.S. 564 (1895).

certain railroads. In a habeas corpus suit turning on the validity of this injunction the Supreme Court said that the first question was: "Are the relations of the general government to interstate commerce and the transportation of mails such as authorize a direct interference to prevent a forcible obstruction thereof?" The court went on to hold that the commerce and postal powers justified action to remove obstacles and that the government had such an interest as to enable it to be a party plaintiff. The court said that if a property interest was necessary to justify an injunction, the "United States had a property in the mails"; but refusing to base its decision on that ground, the court continued:

> "Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one result in injury to the general welfare, is often of itself sufficient to give it a standing in court."[1]

The cases so far cited have been against private interests and were aimed at direct obstructions to interstate commerce. But in Sanitary District of Chicago v. United States[2] the federal government obtained an injunction against a local government body operating by authority of the State of Illinois prohibiting diversion of more than 250,000 cubic feet of water per minute down the Chicago river. In sustaining the power of the United States to sue Justice Holmes said:

> "The United States is asserting its sovereign power to regulate commerce and to control the navigable waters within its jurisdiction. It has standing in this suit not only to remove obstruction to interstate and foreign commerce, the main ground, which we will deal with last, but also to carry out treaty obligations to a foreign power bordering upon some of the Lakes concerned, and it may be, also on the footing of an ultimate sovereign interest in the Lakes. The Attorney General by virtue of his office may bring this proceeding and no statute is necessary to authorize the suit."[3]

Continuing, Justice Holmes said that the fereral power to remove obstructions to interstate and foreign commerce "is superior to that of the States to provide for the welfare or necessities of their inhabitants." The Sanitary District's reliance upon a statute of Illinois authorizing a diversion of 600,000 cubic feet of water per minute as a defense to the suit was rather summarily dismissed by Justice Holmes, who stated:

> " . . . a withdrawal of water on the scale directed by the statute of Illinois threatens and will effect the level of the Lakes, and that is a matter which cannot be done without the consent of the United States, . . ."

Finally, in New York v. New Jersey[4] the United States intervened in a suit to enjoin the Passaic Valley Sewerage Com'rs from discharging large quantities of sewage into

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[1] Ibid. 586

[2] 266 U.W. 405 (1925)

[3] Ibid. 425-426.

[4] 256 U.S. 296 (1921).

into upper New York Bay. The court said:

> "The warrant assigned for this intervention was, the power and duty of the Government with respect to navigation and interstate commerce, and the inherent power which it has to act for the protection of the health of government officials and employees of the Brooklyn navy yard, and its duty to protect from damage the Government property bordering upon New York Bay."[1]

Concerning the authority of the government to intervene and to withdraw upon a stipulation for certain treatment of the sewerage and a certain method of discharge, the court said:

> "Having regard to the large powers of the Government over navigation and commerce, its right to protect adjacent public property and its officers and employees from damage and disease, and to the duty and authority of the Attorney General to control and conduct litigation to which the Government may be a party (Rev. Stats. § § 359, 367), we cannot doubt that the intervention of the Government was proper in this case and that it was within the authority of the Attorney General to agree that the United States should retire from the case upon the terms stated in the stipulation, which were plainly approved by the Secretary of War, who afterwards embodied them in the construction permit issued to the Sewerage Commissioners."[2]

These cases establish the power of the United States to sue to remove direct physical obstruction of the channels of interstate commerce by the states or local government bodies even though acting pursuant to the police power. A suit to invalidate restrictive building codes would not involve any physical obstruction to a channel of interstate commerce even though the codes could be just as effective an obstacle. No case involving a suit of this nature by the federal government has been found, but an analogous suit has been brought by a state. In Louisiana v. Texas[3] the state of Louisiana brought an original action against the governor and health officer of Texas to enjoin enforcement of discriminatory quarantine regulations which, the bill alleged, went beyond the necessities of the situation and amounted to a commercial war to favor Texas cities over New Orleans in the export of the Texas cotton crop. A demurrer to the bill was sustained on the ground that Texas had not so authorized the actions of her health officer as to make his acts her own so as to justify a suit against the state. The interesting point for present purposes is that here is a suit by a state for almost precisely the purpose that a suit is proposed by the federal government. Both the majority and concurring judges recognized that this suit is essentially for "the vindication of the freedom of interstate commerce" and by denying that a state has any power or duty to remove obstructions to interstate commerce imply that such power and duty rest in the federal government. The parallelism between this case and an action by the federal government to overthrow a restrictive building code is striking: Both are suits brought to remove obstructions to interstate commerce. In both the obstruction is a so-called health measure of a state

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[1] Ibid. 303-304.

[2] Ibid. 308.

[3] 176 U.S. 1 (1899).

or its political subdivision alleged to be designed in fact to discriminate against citizens of other states. In both the issues require the court to determine whether the measure is reasonably designed to promote health or goes so far beyond that purpose as to interfere with interstate commerce.

The next two interests of the federal government which would justify such a suit may be dealt with more summarily. The second interest is that of the federal government in forwarding a national housing program to enable every citizen to obtain decent, safe, and sanitary housing. This interest dates back to the National Housing Act in the mid thirties and low-rent housing program commencing in 1937 and in the current housing emergency is evidenced by the Veterans Emergency Housing Act. An important part of this national effort has been devoted to the promotion of good, inexpensive housing within the means of the average citizen, and the newest effort in this direction has been the guaranteed market program for prefabricated houses. Any state or local building codes which arbitrarily exclude new methods and materials thwart the national effort to promote good, inexpensive housing and strike directly at the federal program of promoting prefabricated houses.

The third interest of the federal government is its property interest in prefabricated houses. The federal government through the RFC and the National Housing Agency has now entered into guaranteed market contracts for the production of over 80,000 prefabricated houses and has authority to enter into contracts for 200,000.[1] These contracts provide that if the manufacturer cannot dispose of his output within thirty days after completion of the units, the RFC will pay him 90% of his standard delivery price and take title to the houses. Therefore, any building code restrictions that prevent the erection of prefabricated houses increase the chance that the RFC will be liable on these contracts. Furthermore, should the RFC take title to any of these houses, the federal government would have the same property interest as any manufacturer or dealer as a ground for attacking restrictive building codes. Even though the Supreme Court has said that the federal government need not have a property interest to sue to remove obstructions to interstate commerce, the government's potential liability on its contracts or perhaps its actual ownership of prefabricated houses are additional grounds for the suit proposed. This property interest makes the precedents supporting actions of trespass and to set aside fraudulent grants of land more pertinent.

If the interests of the national government in removing obstructions to interstate commerce, providing means for every citizen to obtain adequate housing, and limiting its liability on guaranteed market contracts for prefabricated houses justify a suit by the federal government, the next problem is the basis of attack upon the restrictive codes. Four bases for holding the codes illegal are available.

The first basis is that the codes discriminate against interstate commerce in prefabricated houses or manufactured building materials and in favor of local conventional builders. It has long been good constitutional law that entirely apart from any federal legislation the commerce clause itself outlaws state legislation

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[1] 138 Eng. News-Record 163 (Jan. 30,1947); Veterans' Emergency Housing Act of 1946, 60 Stat. 207 (1946), 50 U.S.C.A. Appdx. § 1832 s 12 (1946).

which discriminate against interstate commerce.[1] Such discrimination need not appear by the terms of the statute but may arise from their necessary operation.[2] Thus recently in holding invalid a Richmond ordinance imposing a flat annual license tax upon solicitors the court said that the "taxes outlawed in the drummer cases in their practical operation worked discriminatorily against interstate commerce" and pointed out that "the very difference between interstate and local trade taken in conjunction with the inherent character of the tax, makes equality of application as between those two classes of commerce, generally speaking, impossible." Discrimination against interstate commerce might be shown in a building code by demonstrating that the prohibitions and excessively stringent requirements of the code in fact operated only against types of construction and methods of manufacture used by out-of-state builders and manufacturers. Thus, if prefabricated houses are outlawed by a code which sets up general restrictive specifications applicable to everyone but which prefabricated houses cannot meet, the fact that all the prefabricated manufacturers thus excluded from the local market are out-of-state may indicate that the restrictive specifications are really designed to discriminate against this interstate commerce. Or, if the building code requires inspections during the process of construction, which a local conventional builder can easily meet but which a distant manufacturer cannot meet, the code discriminates against interstate commerce. For example, Illinois plumbing statutes make it unlawful "to cover up, or in any way conceal any plumbing work in or about such a building or premises until the examining board or officer approves the plumbing work."[3] This requirement can be easily satisfied by the conventinnal builder putting up a house on the spot but may be prohibitive of prefabricated manufacture of "built-in" plumbing units. The statute, therefore, discriminates against the out-of-state manufacturer or prefabricator who cannot have his plumbing inspected by the examining officer before covering it up. The last example is remarkably similar to the case of Minnesota v. Barber[4] where the court held invalid a Minnesota statute forbidding the sale of meat unless from animals inspected within the state twenty-four hours before slaughter. The court pointed out that the statute

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[1] In South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177, 185 (1938), the late Chief Justice Stone, speaking for the Court, expressed the rule as follows:

> "The commerce clause, by its own force, prohibits discrimination against interstate commerce, whatever its form or method, and the decisions of this Court have recognized that there is scope for its like operation when state legislation nominally of local concern is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state." See also cases cited in N.2 and N.4, pp. 184, 186 of this opinion.

[2] Nippert v. City of Richmond, 327 U.S. 416 (1946); Brimmer v. Rebman, 138 U.S. 78 (1891); Minnesota v. Barber, 136 U.S. 313 (1890).

[3] Ill. Rev. Stat. (1945) c. 24, § § 71-3.

[4] 136 U.S. 313 (1890).

in practice prohibited the sale of meat not slaughtered in Minnesota. These examples are only two instances where factual analysis of the code restrictions shows that in operation they discriminate against interstate commerce. This discrimination would be a ground for federal attack to have them declared unconstitutional.

This argument that restrictive building codes discriminate against interstate commerce raises several issues. The importance of this ground is that at least Justices Black and Douglas have indicated that discrimination is the only basis under the commerce clause of holding state legislation invalid.[1] Further Justices Douglas and Murphy in a dissent have argued that a law cannot be considered discriminatory standing by itself but must be considered in conjunction with other laws that perhaps lay counterbalancing burdens on local business men.[2] This attitude on the part of at least a strong minority of the justices indicates that discrimination may now be the only basis for holding the codes invalid and thus that the second basis for attack mentioned below fails. It also indicates that a strong case of discrimination must be made. Evidence that various restrictive provisions were enacted in response to pressure of trade unions, local material suppliers and contractors who were seeking an exclusion of out-of-state housing and materials might well be relevant to demonstrate the discriminatory purpose and effect of the code. But the fact that the codes discriminate against local prefabricators as well as out-of-state prefabricators may in many instances make a suit upon this basis insufficient. Yet if discrimination against interstate commerce can be proved, probably no counter argument can be made that the discrimination and the restrictive code is reasonable. In Minnesota v. Barber[3] the statute requiring inspection within the state before slaughter was founded on the very reasonable greater ease of detecting diseased cattle than detecting infected meat; but because this reasonable requirement would discriminate against interstate commerce, it was invalid.

The second basis for federal attack is that the regulation of prefabricated must necessarily be uniform nationally. The Supreme Court has recently reaffirmed that commerce is interstate when it "concerns more States than one."[4] It is well recognized law that "Whatever subjects of this power are in their nature national or admit only of one uniform system, or plan of regulation, may justly be said to require exclusive legislation by Congress."[5] On this basis state laws which unduly regulate interstate commerce on a matter requiring uniform, national treatment

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[1]Justice Douglas dissenting in Southern Pacific Co. v. Arizona, 325 U.S. 761, 795 (1945); Justice Black dissenting in Gwin, White & Prince v. Henneford, 305 U.S. 434, 455 (1939).

[2]Justices Douglas and Murphy concurring in dissenting opinion by Douglas in Nippert v. City of Richmond, 327 U.S. 416, 435 (1946).

[3]136 U.S. 313 (1890).

[4]United States v. South-Eastern Underwriters Ass'n, 322 U.S. 535, 550 (1944).

[5]Cooley v. Board of Wardens of Port of Philadelphia, 53 U.S. 299, 319 (1851).

have been held invalid. The home building industry up to now has been almost entirely a local industry erecting individual houses on the site and has thus been peculiarly subject to local regulation. But today a prefabricated house building industry is developing to manufacture thousands of houses in one plant for sale in hundreds of communities. Disparate building code requirements in these communities can make the development of this national industry impossible by barring it from a large enough market to warrant large scale production or by forcing the manufacture of a separate model for each community. The local building code does not, therefore, confine its operation to its local jurisdiction but prevents the growth of a national industry. It may also force the manufacturer to comply with restrictive requirements for his whole output in order that he may be able to sell in a particular local market and at the same time not be obliged to change his assembly line to put out a special house for that market. The extra-territorial effect of the local code and the need for uniform regulation create a situation similar to that in Southern Pacific Co. v. Arizona.[1] There an Arizona statute limited the length of freight trains to seventy cars and of passenger trains to fourteen cars. The Supreme Court held the law invalid and pointed out that the local train length regulation necessarily required the railroad to limit the length of its trains beyond the borders of Arizona at least as far as the nearest assembly yard. The court said that the "reconciliation of the conflicting claims of state and national power is to be attained only by an appraisal and accommodation of the competing demands of the state and national interests involved." In examining those competing demands the court found that the state interest in reducing accidents from slack action of long trains in view of the increase of other accidents from the greater number of trains necessary to handle the traffic was more than offset by the national interest in uniformity. Likewise in the suit proposed, the argument could run that the state interest in the health and safety of its citizens by strict regulation of prefabricated houses in view of the fact that exclusion of such houses forces many to live crowded in slums is outweighed by the national interest in promoting a new industry to meet the housing needs of the nation. Much depends upon showing that under the guise of invoking the police power the state or municipality has gone beyond the legitimate protection of local safety and health by overstringent regulation.[2]

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[1] 325 U.S. 761 (1945).

[2] See Kelly v. Washington, 302 U.S. 1, 15 (1937) where the Court, although upholding a state statute providing for inspection of hulls and machinery of tugs, said: "In such a matter, the State may protect its people without waiting for federal action providing the state action does not come in conflict with federal rules. If, however, the State goes farther and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises."

The disadvantages of a suit predicated upon this basis are serious. In the first place some of the justices, notably, Justices Black and Douglas and probably Murphy have indicated that the need for uniform national treatment in the absence of congressional legislation is no basis for invalidating state legislation. Thus, at least two justices would not invalidate a state building code on this ground. In the second place, this approach requires a weighing of the national interest in uniform regulations of prefabricated houses in a relatively new field of national endeavor against the local interest in promoting the health and safety of its inhabitants by exercise of the police power in a field long left solely in the hands of the states and municipalities. Because of the novel application of the necessary uniformity doctrine to a case involving local building codes, the proponent of such an argument must, of necessity, lay great emphasis upon demonstrating concretely how 2,000 different building codes make impossible the economic utilization of mass production techniques indispensable to successful house prefabrication. But since local building codes have been accepted, traditionally, as a legitimate exercise of the police power, it can be anticipated that most courts would react to an argument stressing the need for uniformity of building standards for prefabricated housing by pointing out that building standards are essentially ". . . matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of Congressional action has for the most part been left to the states by the decisions of this Court. . . ."[1]

The third basis for federal attack is that the federal government has already occupied the field by regulating prefabricated houses. It is well settled that even on matters of essentially local concern the states may not act where congress has already regulated under the commerce power.[2] The efforts of the federal government to meet the housing emergency by promoting the use of prefabricated houses and the effect of restrictive building codes in thwarting that effort have already been mentioned. But state and local building regulation of prefabricated housing conflicts with federal regulations much more directly, for Congress has undertaken to regulate prefabricated houses. The Veterans Emergency Housing Act of 1946 provides that before entering into a guaranteed market contract for prefabricated houses the expediter must apply among others the following standard, "New type materials and prefabricated houses shall be tested for sound quality and (in the case of such houses) for durability, livability, and safety."[3] Thus, it can be argued that Congress under the commerce power has undertaken to regulate the "durability, livability, and safety" of prefabricated houses for which it guarantees a market; that this regulation and guarantee are undertaken in order to promote the manufacture and use of such housing to meet a national housing emergency; that these

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[1] South Caroline Hwy. Dept. v. Barnwell Bros., 303 U.S. 177, 185 (1938).

[2] Occupation of the Field in Commerce Clause Cases 1936-1946: Ten Years of Federalism, 60 Harv. L. Rev. 262 (1946).

[3] 60 Stat. 207 (1946), 50 U.S.C.A. Appdx. § 1832 (Supp. 1946).

efforts to meet the housing emergency are well within the federal powers under the commerce clause and other sections of the Constitution, and that therefore any state regulations which thwart this national program and regulate prefabricated houses and materials already regulated by the national government are invalid.

The difficulties of this basis for attack are also obvious. The Supreme Court has shown considerable reluctance to invalidate state laws on the ground that Congress has preempted the field[1] unless the record clearly indicates incompatibility of the two types of legislation.[2] The Court has said: "An unexpressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred and ought not to be applied where the legislative command, read in the light of its history, remains ambiguous. Considerations which lead us not to favor repeal of statutes by implication, . . . should be at least as persuasive when the question is one of the nullification of state power by Congressional legislation.[3] Thus, the Court has failed to find a state law requiring price fixing of milk sold to the Army incompatible with federal statutes requiring competitive bidding in the purchase of Army supplies.[4]

Nor does the fact that Congress has undertaken to regulate a field by authorizing an administrative agency to formulate regulatory plans or orders necessarily set aside state regulation of the same field if the federal agency has not exercised its regulatory authority.[5] One of the attacks upon the constitutionality of the California Agricultural Prorate Act in Parker v. Brown[6] was the contention that Congress had preempted the field of market control of raisins by passage of the Agricultural Marketing Act of 1937 and, accordingly, the State act conflicted with the federal act. But since the United States Secretary of Agriculture had not promulgated any order regulating raisins, (and, indeed, had given approval to the state plan by arranging federal loans) the Court concluded there was not such occupation of the legislative field by the adoption of the Agricultural Marketing Act as to preclude operation of the state act. Proponents of the building codes may argue that

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[1]Penn. Dairies v. Milk Control Comm'n, 318 U.S. 261 (1943); Kelly v. Washington, 302 U.S. 1 (1937); Parker v. Brown, 317 U.S. 341 (1943); Terminal Ass'n v. Trainnen, 318 U.S. 1 (1943).

[2]Hill v. Florida, 325 U.S. 538 (1945); Hines v. Davidowitz, 312 U.S. 52 (1941); The rule was formulated in these words almost a century ago in Sinnot v. Davenport, 22 How. 227, 243 (1859): ". . . in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together."

[3]Penn. Dairies v. Milk Control Comm'n, 318 U.S. 261, 275 (1943).

[4]Id.

[5]Southern Pacific Co. v. Arizona, 325 U.S. 761, 765 (1945); Parker v. Brown, 317 U.S. 341 (1943).

[6]317 U.S. 341 (1943).

the federal regulation of prefabricated houses was designed solely to protect the federal government in entering into guaranteed market contracts and that no one dreamed local building codes were thereby made inapplicable. They may also point out that when Congress intended to permit the erection of temporary war housing without regard to local building codes, it expressly gave authority to disregard such codes.[1] They may emphasize that the exemption of those prefabricated houses from local building codes goes too far. Permitting the erection of frame prefabricated houses in a fire zone where construction has been limited to structures with fire resistant walls without any safeguarding requirements of minimum distances between buildings seems an unwise and extreme exemption of prefabricated houses. On balance, it appears very doubtful that the Supreme Court would consider that the provisions of the Veterans Emergency Housing Act, standing alone, had either by express purpose or operation superceded pertinent provisions of local building codes. Of considerable significance, however, would be the promulgation by the Housing Expediter (if such office survives this session of Congress) of performance standards for prefabricated housing. Such standards adopted to insure the "durability, livability, and safety" of prefabricated houses would appear directed to the same objectives generally expressed for local building codes, namely, protection of the health, safety and welfare of the citizenry. With the enunciation of such standards, the argument might be more seriously entertained that the national government had acted to remove those prefabricated dwellings for which it had entered into guaranteed market contracts from conflicting regulation by local codes. For it can be said with some degree of confidence that once federal administrative orders have been made effective pursuant to legislative authorization, they supercede state action.[2]

The fourth basis for federal attack upon restrictive building codes is not peculiar to the federal government but is simply the right of any manufacturer of prefabricated houses to attack as illegal ordinances which exclude his product. As the owner of prefabricated houses acquired under its guarantee contracts or perhaps merely by virtue of its potential liability under these contracts the federal government would have the same rights to sue as any owner. The bases of the suits have already been discussed in another memorandum and include the unreasonableness of the codes under municipal law and violation of provisions of the state and federal constitutions.

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[1] 42 U.S.C.A § 1521 (1943).

[2] Northwestern Bell Tel. Co. v. Nebraska State Railway Comm., 297 U.S. 471 (1936); H.P. Welch Co. v. New Hampshire, 306 U.S. 79 (1939). In the latter case state law forbade operation of motor carriers by drivers continuously on duty more than 12 hours. The federal Motor Carrier Act required the ICC to establish maximum hours of service. After passage of this act but before ICC established maximum hours, the state commission suspended appellant for violation of the state law. Although the Court held the grant of power to ICC did not supercede the state regulation, it said: "Without so deciding, we assume, so far as concerns the periods of continuous service condemned by the state commission, that when the federal regulations take effect they will operate to supercede the challenged provisions of the state statute." P. 84. See also Southern Pacific Co. v. Arizona, 325 U.S. 761, 765 (1945) where suit was brought for violation of the Arizona Train Limit Law prior to promulgation of an ICC order suspending operation of state train limit laws for the war. The Court implicitly recognizing the preclusive effect of the ICC order, said: "We are of opinion that, in the absence of administrative implementation by the Commission [ICC], Sec. 1 [of the ICC Act] does not of itself curtail state power to regulate train lengths."

One possibly troublesome feature of a federal suit designed to overthrow restrictive provisions of a building code is that of demonstrating to the court that the restrictive provisions are in fact arbitrary and unreasonable. Thus if a particular code specifies enumerated materials but allows the building commissioner to approve use of other materials with equivalent performance, it would seem that federal litigation could not be successfully maintained until the administrative remedies had been exhausted. For example if the Federal Government proceeded on the sole ground of its proprietary interest in prefabricated housing stemming from its guaranteed market contracts with prefabricators, it seems likely that the court would view an attack on restrictive code provisions as premature until the government had demonstrated that it or prospective purchasers of the prefabricated houses had been denied an opportunity to demonstrate that this housing met the code requirements or that after tests had been conducted before the building commissioner, this official had arbitrarily refused a permit.[1] Obviously this extremely cumbersome procedure militates against clearcut determination of the issue.

Given a code drawn largely in terms of specified materials which does not repose administrative discretion in the building commissioner to approve use of new materials (as for example, the 1939 Chicago Building Code) the Federal Government, bringing suit based on its pecuniary interest, would in all probability merely have to show a denial of permission by the building commissioner.

But if the Attorney General were proceeding for the United States in its sovereign capacity to remove an obstruction to interstate commerce on one of the grounds previously discussed, such as the charge that the code discriminates against interstate commerce, it would not appear as a prerequisite to maintenance of the suit that the Government had exhausted its administrative remedies. For the Government's suit would not be predicated on its pecuniary interest in prefabricated housing but on its interest to protect interstate commerce against burdens locally imposed. Rather, showing that the administrative procedures for obtaining approval of new materials or housing had actually resulted in stifling the introduction of new materials and prefabricated housing (based upon the experience of private parties), would strengthen the Government's position that the local code as drawn and as administered resulted in a substantial restriction or interstate commerce.

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[1] See State ex rel. Snyder v. Yoder, 65 Ohio App. 492, 30 N.E. (2d) 558 (1939).

POSSIBILITIES OF STATE ACTION AGAINST RESTRICTIVE BUILDING CODES

Any consideration of the possible avenues of action by state officials against unreasonably restrictive municipal building codes, should be based upon a recognition at the outset of the difficult evidentiary problems attendant to proving that a building code is, in fact, unreasonable, quite apart from questions of procedure. This is best illustrated by a concrete example. The building code of Chicago adopted in 1939 requires lath and plaster for all partitions and ceilings in dwellings of ordinary (masonry) and wood frame construction,[1] thereby eliminating at one stroke introduction of prefabricated housing as well as use of plywood or various metals in custom-built housing. No provision is made for according the building commissioner power to test and approve materials having equivalent fire resistive and strength qualities, indeed the absence of performance standards eliminates such a procedure. This provision could be attacked as an ultra vires exercise of power by the municipality but to support such a charge it seems clear that resort must be had to much more than the mere language of the code. Nor is support for such an attack derived from the enabling legislation, the Revised Cities and Villages Act[2] which in very general language delegates to corporate authorities of a municipality the power, inter alia, "to prescribe the thickness, strength and manner of constructing all buildings . . . " It is difficult to visualize a local code which could not be defended as falling within the delegated authority. Clearly, the focal point of suit must be the municipality's unlawful exercise of delegated power by enacting a building ordinance which is clearly unreasonable.[3]

Evidence is needed to demonstrate that other materials have equivalent or superior properties to the specified materials; that the effect of the specification is to accord a local monopoly to the plastering union and contractors to the detriment of manufacturers of competitive materials and prefabricated houses. Resort to nationally recognized performance standards should aid in demonstrating the unreasonable and arbitrary nature of the provision thereby affording a basis for charging an ultra vires exercise of power by the city. To be effective this should be done for each unduly restrictive provision. Obviously, it is a large undertaking.

Whether or not one is willing to make the possibly naive assumption that a state attorney general or state's attorney may be sufficiently interested in eliminating such road blocks to housing construction as to undertake such a case, patently it is necessary to explore the procedural remedies available to the state officers in order to formulate any opinion as to whether continued inaction by them is justified.

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[1] Chicago Building Code, ch. 61 § 61-70.

[2] Smith-Hurd Ill. Rev. Stat. ch. 24 § 23-70.

[3] See Speck, Legality of Restrictive Building Codes, pp. 5-6.

Historically, the Crown, by writ of quo warranto, proceeded against one who had usurped an office or franchise to show by what authority he supported his claim.[1] In Illinois quo warranto has changed in form from a criminal to civil proceeding[2] and has been broadened in scope.

The revised quo warranto act of Illinois enumerates six categories of activities which will support such an action[3], but only subsection (e) appears relevant to establishing grounds for a quo warranto proceeding against a municipality which enacts a building code which is ultra vires. Subsection (e) provides, in part,

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[1]People v. Healy, 230 Ill. 280 (1907); People v. Lewistown School District, 388 Ill. 78, 82-3 (1944). "The ancient common-law writ of quo warranto was an original writ issuing out of a court of chancery in the nature of a writ of right for the King against one who claimed or usurped any office, franchise, or liberty, to inquire by what authority he asserted a right thereto in order that it might be determined.

[2]People v. Lewistown School District, supra, p. 83:

". . . Under our statute as it existed prior to 1937, the proceedings were criminal in form. By the enactment of the 1937 Quo Warranto Act a new form of procedure was adopted, the purpose of which was to make quo warranto actions conform in pleading, practice and procedure to the Civil Practice Act . . . Under the new act the proceedings are instituted on behalf of the People by the filing of a complaint by the Attorney General or the State's Attorney of the proper county. The proceedings are civil in form."

[3]Smith-Hurd Ill. Rev. Stat. ch. 112, § 9, provides:

"A proceeding in quo warranto may be brought in case:

(a) Any person shall usurp, intrude into, or unlawfully hold or execute any office, or franchise, or any office in any corporation created by authority of this State;

(b) Any person shall hold or claim to hold or exercise any privilege, exemption or license which has been improperly or without warrant of law issued or granted by any officer, board, commissioner, court or other person or persons authorized or empowered by law to grant or issue such privilege, exemption or license;

(c) Any public officer shall have done, or suffered any act which by the provisions of law, works a forfeiture of his office;

(d) Any association or number of persons shall act within this State as a corporation without being legally incorporated;

(e) Any corporation does or omits to do any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises powers not conferred by law;

that "Any corporation . . . ." which ". . . exercises powers not conferred by law" is open to suit by quo warranto. "Corporation" as used in this subsection has been construed by the Illinois courts to include municipal[1] as well as private corporations. It seems clear that a suit contesting the power of a city to enact a restrictive building code must be directed to the ultra vires exercise of powers by the city and must avoid the pitfall of challenging unlawful acts of municipal officials such as the building commissioner. For with reference to unlawful acts of public officials as distinguished from usurpation of public office, it has been held that quo warranto will not lie.[2]

No case has been found in which quo warranto has been brought against a municipality for adoption of an illegal building code. For quo warranto most commonly has been used to question the validity of the organization of various public bodies such as school districts[3] or drainage districts[4], rather than to challenge the validity of the exercise of power by a municipality. The cases charging public corporations with exercising "powers not conferred by law" are sufficiently numerous, however, to throw light on the scope of this language.

(f) If any railroad company doing business in this State, shall charge an extortionate rate for the transportation of any freight or passenger, or shall make any unjust discrimination in the rate of freight or passenger tariff over or upon its railroad."

[1]People ex. rel. Gage v. Village of Wilmette, 375 Ill. 420; People v. City of Chicago, 349 Ill. 304 (1932).

[2]People v. Whitcomb, 55 Ill. 172, 176 (1870): "This writ [quo warranto] is generally employed to try the right a person claims to an office, and not to test the legality of his acts. If an officer threatens to exercise power not conferred upon the office, or to exercise the powers of his office in a territory or jurisdiction within which he is not authorized to act, persons feeling themselves aggrieved may usually restrain the act by injunction." See also People v. Hogan 257 Ill. App. 206, 208 (1930) where it was held that quo warranto would not lie against a municipal officer charged with misappropriation of funds" until it has been previously determined, either by some court of competent jurisdiction or by a self-executing provision of the law, that such officer has forfeited his office."

[3]People v. Lewistown School District, 388 Ill. 78 (1944); People v. Dodds, 310 Ill. 607 (1924); People v. Hartquist, 311 Ill. 127 (1924); People v. Myers 276 Ill. 260 (1916); People v. Weis, 275 Ill. 581 (1916).

[4]People v. Darst, 265 Ill. 354 (1914); People v. Anderson, 239 Ill. 266 (1909); People v. Baldridge, 267 Ill. 190 (1915).

In People v. Board of Education of City of Quincy,[1] the Attorney General brought quo warranto proceedings against the Board of Education of that city asserting that "without warrant or authority of law" the Board had adopted rules and regulations creating a separate school for negro school children and prohibiting them from attending other public schools in the city. The Board argued that quo warranto would not lie since the phrase "powers not conferred by law" referred to usurped franchises, not powers to do particular acts, relying on cases holding that quo warranto is not the proper remedy against a municipal corporation for committing a particular illegal act. But the Illinois Supreme Court refused to couch the issue in these terms stating simply "The object of the proceeding was to test the legality of the rules adopted by the board of education," . . .,[2] and after quoting from the quo warranto statute (authorizing the Attorney General to file an information in the nature of quo warranto against any corporation exercising powers not conferred by law) the Court stated, "Now, if the board, in the discharge of its duties as a corporation, exercises powers not conferred by law, it is apparent that it will fall within the obvious meaning of the statute, unless the plain reading of the statute is to be disregarded. The very gist of the complaint here is, that the board of education, a corporation, is exercising powers not conferred by law, unless it had the right to adopt and enforce the rules set out in the information."[3]

On the substantive issues the Court directed attention to a provision in the Illinois Constitution providing for a "thorough and efficient system of free schools, whereby all children of this state may receive a good common school education;"[4] and also referred to a statute entitled "An act to protect colored children in their rights to attend public schools" which prohibited directors of schools and boards of education from excluding any child from a public school "on account of the color of such child." The Court decided the Board had violated this statute, pointing to allegations in the information that negro children resided in each of the eight school districts of Quincy but that under the rules negro children were not permitted to attend the schools in their respective districts but were compelled to travel several miles to one school attended exclusively by negroes. From these admitted facts the Court found exclusion and concluded that the Board ". . . had no authority to adopt and enforce the rules. . . ."[5]

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[1] 101 Ill. 308 (1882).

[2] Ibid., p. 312.

[3] Ibid., p. 313.

[4] Ibid., p. 313.

[5] Ibid., p. 317.

Unlike most cases of quo warranto, the Quincy case presented the question of the power of a public corporation to enact regulations within broadly delegated powers of government. By analogy it could be urged that the 1939 Chicago Building Code, adopted pursuant to broadly delegated power stemming from the Revised Cities and Villages Act, is open to question by quo warranto as an unlawful exercise of power if it is shown that the code is unreasonable in fact.

As a sidelight to this decision it may be observed that the Court did not apply one of the well recognized dogmas of quo warranto--that it is an exclusive remedy in the sense that if other remedies are available it is said quo warranto will not lie.[1] Here, rather clearly, mandamus might have been brought to compel the board to admit negro children to the public school in their respective districts. A vigorous dissent by one of the justices pointed this out as well as taking issue with the proposition that the statute applied to municipal corporations.

It seems clear from this decision that validity of a municipal ordinance--not dissimilar from the "rules and regulations" at issue in the Quincy case--can be tested by the appropriate state officers in an action of quo warranto.

Nevertheless an earlier case, People v. Whitcomb,[2] indicated this was not possible. There quo warranto had been instituted on the relation of several private individuals against the mayor and council of Morrison alleging defendants had improperly exercised the powers of the city government over agricultural land adjacent to the old limits of the town. Defendants, in answer, set up an act of the state legislature extending the city's boundaries. This statute petitioners attacked as unconstitutional. The Illinois Supreme Court held that quo warranto was an improper remedy to test the constitutionality of the challenged statute saying: "In this case, there seems to be no question that defendants in error are legally and properly officers of the city, and there can be as little doubt that they may perform all the functions of their offices within the city limits, whatever they may be. If they attempt to pass and enforce ordinances beyond the bounds of the city, or to levy and collect taxes beyond the city limits, such acts would be unauthorized, and might, no doubt, be restrained on a bill properly framed for that purpose. But

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[1] People v. Cooper, 139 Ill. 461 (1891);

"Being an extraordinary remedy, somewhat harsh in its operation, it [quo warranto] will not ordinarily be granted where appropriate and adequate relief can be obtained in some other proceeding to which the parties may have recourse. So relief in quo warranto will not be granted against improper exercise of authority on the part of an official where the law furnishes the relator ample and sufficient remedies at his own suit." 44 Am. Jur. "Quo Warranto", p. 96.

[2] 55 Ill. 172 (1870).

whether a law which purports to attach this territory to the original corporate limits is or is not constitutional, cannot be determined in such a proceeding as this."[1] Although the Court in the Quincy case made no attempt to distinguish the Whitcomb decision (not even mentioning it, although it was relied upon by the defendant) the broadening of the quo warranto statute by the time of the Quincy case affords a ground of distinction, since the earlier statute[2] made no reference to corporations exercising powers not conferred by law.

Unquestionably, the problem of determining whether the board of education had exercised powers not conferred by law in view of express statutes forbidding discrimination against negro school children posed a more clear-cut issue than would be presented by a quo warranto proceeding attacking a building code as an ultra vires exercise of power in which resolution of the issue would probably turn on a consideration of conflicting evidence as to the unreasonableness or reasonableness of the code provisions.

Illinois decisions since the time of the Quincy case--1882--appear to have accepted the notion that it is appropriate to use quo warranto in questioning the constitutionality of statutes[3] or municipal ordinances.[4] The validity of the Chicago "Comprehensive Traction Ordinance" has been tested by quo warranto,[5] as has the validity of a Chicago ordinance providing for issuance of slum clearance bonds.[6] Accordingly, there seems to be no serious procedural objection barring quo warranto proceedings by the State Attorney General or State's Attorney against the adoption of an illegal municipal building code despite the absence of close precedents.

Furthermore, under the Quo Warranto Act adopted in 1937 provision is made for permitting private individuals to bring quo warranto, subject to certain limitations. Section 10 of the Act authorizes institution of proceedings "by any citizen having an interest in the question on his own relation, when he has requested the Attorney General and State's Attorney to bring the same and the Attorney General and State's Attorney have refused or failed to do so, and when after notice to the Attorney General and the State's Attorney, and to the adverse party, of the intended application, leave has been granted by any court of competent jurisdiction, . . ."[7]

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[1] Id., p. 177.

[2] The quo warranto statute obtaining at thetime of the Whitcomb decision merely provided: "In case any person or persons shall usurp, intrude into, or unlawfully hold or execute, any office or franchise" . . . the Attorney General, at the relation of any person desiring to sue, shall bring an information in the nature of quo warranto. Ill. Rev. Stat. 1845, p. 429 § 1.

[3] People ex. rel. Greening v. Green, 382 Ill. 577 (1943).

[4] People v. City of Chicago, 394 Ill. 477 (1946); People v. City of Paris, 380 Ill. 503 (1942); People ex rel. Gage v. Village of Wilmette, 375 Ill. 420 (1941); People v. City of Chicago, 349 Ill. 304 (1932).

[5] People v. City of Chicago, 349 Ill. 304 (1932).

[6] People v. City of Chicago, 394 Ill. 477 (1946).

[7] Smith-Hurd, Ill. Rev. Stat., Ch. 112, § 10.

However, it has been settled that the "interest" of the individual must be one personal to him and not common to the public; the individual interest as a taxpayer, resident, or citizen is not sufficient to maintain the proceedings.[1] Whether the interest of an individual who, for example, is building a residence and is adversely affected by the local building code is sufficiently "personal" to differentiate him from the public is a matter clouded by some doubt; such decisions as there are dealing with the question indicate a narrow interpretation.[2] This doubt is further increased by the availability of other private remedies such as mandamus or injunction.[3]

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[1]Rowan v. City of Shawneetown, 378 Ill. 289 (1941); People ex rel. Buchanan v. Mulberry Grove Community High School District, 390 Ill. 341 (1945); People v. Bevirt, 297 Ill. App. 335 (1938). In the latter case plaintiffs, town clerk and justice of peace of township of Caseyville were held to lack sufficient personal interest to maintain quo warranto against alleged usurper of office of supervisor of that township.

[2]Ibid.

[3]People v. Cooper, 139 Ill. 461 (1891).

PRELIMINARY HOUSING MEMORANDUM NO. 3

RENTAL HOUSING AND FEDERAL INCOME TAXATION

Numerous proposals are being advanced for tailoring the federal income tax system to encourage additional investment in rental housing. These suggestions may be grouped into three basic plans, each involving subsidies in that the recipients of the special benefits would bear a smaller share of the total federal income tax burden than taxpayers who in all other respects are similarly situated. One plan calls for the elimination of the corporate income tax on income from rental properties; a second would permit state and local property taxes to be credited against the net federal income taxes of the property owners; and a third provides for drastically shortening the income tax amortization period for rental dwellings. The sponsors of these proposals expressly or impliedly assume that private enterprise is unable to cope with the present housing shortage without special governmental assistance in some form. They urge that this aid be extended through an income tax subsidy, which would permit private enterprise to perform its traditional functions in the housing field with a minimum of interference by the government.

That the need for more and better housing is urgent has been demonstrated repeatedly. It may well be that this need cannot be satisfied without some type of special governmental assistance. But a critical appraisal of the various tax subsidy schemmes compels the conclusuion that they should be rejected. None of them is well designed to promote the development of the kind of housing for which the need is greatest. Each would further complicate the income tax system and leave gaps in its structure or otherwise cause serious inequities. All of them partake, at least in part, of the major drawbacks which inhere in income tax subsidies generally.

The case for removing the corporate income tax on income derived from rental housing is presented by Randolph Paul and Miles Colean in a study prepared for the National Committee on Housing.[1] In substance they argue that real estate corporations should be exempted from the tax because their yield to investors after taxes is low and unstable relative to that of other business corporations--"especially in view of the long time necessary for the return of capital and the managerial responsibilities involved over that long period." Real property is burdened with heavy local property taxes so that the corporate income tax acts as "a third tax" on rental property income. Yields after payment of property taxes and corporate and personal income taxes are so low that "the possible field for new rental housing investment is narrowed to those who can afford the higher rents." Investors in rental housing furthermore are tempted to "seek to recover their capital in the early years before the corporate income tax becomes hazardous in effect, commonly substituting to the fullest possible extent mortgage financing for equity financing" in order to maximize the deduction for interest in computing the corporate tax. This practice is "a source of instability and hazard and a temptation first to 'milk' the property and then to unload it on the mortgagee or an unsuspecting purchaser."

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[1] Paul and Colean, Effect of the Corporate Income Tax on Investment in Rental Housing 5, 8, 9 (1946). See 86 The Architectural Forum, 132-6 (March 1947) for a review of this book.

The corporate income tax is thus shown to hamper and distort the flow of capital and encourage investment in senior securities in place of equities. These conclusions appear justified by the data compiled. One may nevertheless question the soundness of a proposal to immunize only a single kind of business from the tax. An argument very similar to that presented on behalf of real estate corporations could be made for railroads and public utilities and any other industry in which yields have been relatively low or unstable. Were all such industries whose output of goods or services is considered inadequate exempted from the corporate tax, that levy would become primarily a tax on industries with relatively high yields. It would then serve as a fuzzy kind of excess profits tax which tended to penalize efficiency. If the corporate income tax is generally a sound levy, it is as much so for depressed as for prosperous industries. The relief of an indispensable but depressed industry is then not to be sought in exempting it from the tax but through other means which will enable it to flourish within a sound system of taxation. If, on the other hand, the corporate income tax itself is unsound, why undertake its repeal on a piecemeal basis?

Exemption of realty companies from the corporate income tax would leave many gaps in the personal income tax structure.[1] It would aggravate the difficult problem of treating undistributed earnings of realty corporations and raise the closely related problem of taxing capital gains on realty investments. Unless steps were taken to insure proper inclusion of such corporate earnings in the base of the personal income tax, they could be long shielded from income taxation, be distributed when the tax situation was most favorable to the controlling shareholders, or be transformed into long-term capital gains taxable at reduced rates. Exemption of realty ventures would also frame squarely the issue of how best to cope with windfalls thereby accruing to owners of equities already in existence.[2] Without proper safeguards, old equity investments would gratuitously share in the increased attractiveness which exemption from the tax was designed to confer on investments in new equities. These are the problems which would have to be faced on a broader scale if the corporate income tax were eliminated entirely; and the lack of practicable solutions has been a barrier to repeal. There can be no justification for abrogating the tax in part, by exempting realty corporations, without resolving these issues.

Since housing is imperative it may be argued that realty corporations should be exempted immediately from the corporate income tax with the understanding that resulting gaps in the tax structure are to be patched-up at a later date. This position seems untenable where alternative means of stimulating building are available and some selection is necessary. The cost of exempting realty corporations from the corporate income tax would be outrageous if, in addition to the loss of revenue, huge windfalls were conferred on owners of existing equities and undistributed corporate income were in whole or part immunized from the personal income tax.

It is improbable, moreover, that the plan to withdraw realty corporations from the corporate income tax would achieve its stated objective of stimulating new investment in rental housing. The total size of the subsidy seemingly would be small

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[1] Individual income tax payments in 1946 amounted to $17,883,601,388, as compared with collection from corporate taxation of $11,046,568,029.

[2] Treasury Department, Division of Tax Research, The Post-War Corporation Tax Structure (1946). The arguments for and against the corporate income tax are examined in some detail in this study.

in relation to the quantity of additional investment required to satisfy housing needs. For the five years 1938 to 1942 inclusive, "the average corporate income tax yield for all types of urban realty corporations averaged only $30.5 million per year."[1] The annual tax paid in the past does not conclusively demonstrate the size of the proposed yearly subsidy, but it is some indication that the contemplated incentive is apt to have a light impact at best. In any event much of the subsidy would be dissipated in the form of windfalls to owners of equities in existing dwellings. Individual and partnership ventures in rental housing, which are not subject to the corporate income tax, have failed to call forth sufficient new capital to fill the housing need. There is no reason to believe that combining the tax advantages of partnerships with the other advantages of corporations would produce a substantial inducement to investment in rental properties. More likely, the combination would encourage existing ventures to incorporate.

It is also doubtful whether the plan would accomplish its implied secondary objective of introducing greater stability into the real estate market. The proponents of the plan apparently believe that it would lessen foreclosures, bankruptcies and reorganizations of rental properties by reducing the proportion of debt to equity financing. The corporate income tax, by allowing a deduction for interest payments in the computation of the net tax base, unquestionably has increased the attractiveness of debt financing. But this influence of the interest deduction is probably less significant in the rental housing field than elsewhere. Rental dwellings, including the many not owned in corporate form, generally have been financed through mortgage commitments. This pattern stems from several factors not connected with the income tax system. Investments in rental properties are represented mainly by fixed assets which are highly specialized as to use. Invested capital often cannot be readily withdrawn without loss. The comparatively speculative nature of the real estate market compounds the risk attached to long-term investments in rental properties. These factors constitute strong inducements for the realty operator to lessen his own capital at risk, and gain financial leverage, by obtaining borrowed capital. Exemption of realty corporations from the corporate income tax would not diminish the force of these inducements.

The second income tax subsidy considered here is the scheme to permit landlords to credit state and local property taxes against their net personal income taxes. Under the present personal income tax, property taxes may be deducted from the gross income of the taxpayer. Since property taxes are a price paid for governmental services, there is an air of seeming plausibility to the suggestion that such taxes be offset against the tax on income, which also is paid for the support of the government. An analogy to this relationship is said to be incorporated in the provisions of the federal estate tax. Herbert Nelson, Executive Vice President of the National Association of Real Estate Boards, alluded to the apparent resemblance in testifying before a subcommittee of the United States Senate: "It would be applying the same principle which the Government has already adopted in permitting State inheritance taxes paid to be offset against the Federal estate tax." To this point he linked the observation that "such a policy would clearly recognize the great role of real property in financing local government."[2]

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[1]Note 1 supra, at 19.

[2]Hearings before the Senate Subcommittee on Housing and Urban Redevelopment of the Special Committee on Postwar Economic Policy and Planning pursuant to S. Res. 33, Part 14, 79th Cong. 1st Sess., at 2010 (1945). Mr. Nelson suggested 1)

In fairness to the advocates of the tax credit scheme one might assume that they would limit the credit to cover only property taxes on rental housing constructed in the future, although the specific proposals are not always so restricted. By means of this assumption it is possible to confine discussion of the scheme to situations in which the credit might actually serve as an incentive to new investment in rental housing and not as a mere windfall.

The ultimate condemnation of the tax credit is that it would lead to the worst kind of discrimination among taxpayers in substantially similar economic circumstances. Under the current provision of the personal income tax allowing property taxes to be deducted by the landlord from his gross income, levies on rental dwellings are treated as any other operating cost. Net operating income from rental property enters into the landlord's income tax base and in that respect is added to the income tax measure of his "ability to pay". Changing the deduction for property taxes into a credit against the landlord's net income tax means, in terms of apportioning payment according to ability, that property taxes would represent a part of his "payment" rather than a reduction in his "ability" to pay. To approve of this relationship is to hopelessly confuse the ad rem property levies with the personalized income tax. It may well be urged that property taxes by their very nature violate the ability to pay principle that those in similar economic circumstances (as measured by income) should be taxed equally. But given the continuance of property taxes, the credit scheme necessarily undermines the very qualities of progressivity and equality which distinguish the income tax as uniquely fitted for a democratic private enterprise society.

A simple illustration is sufficient to demonstrate that the credit device would distort the impact of the income tax. Consider the cases of two individuals. One receives $15,000 income yearly in the form of net profits from his unincorporated apartment building on which local property taxes are $8,500 annually; the other has an identical income from his net profits of his merchandising proprietorship. At the present time presumably the two parties pay the same amount of federal income tax--approximately $4,000. But this equality in the treatment of the two businessmen would immediately disappear upon replacing the deduction for property taxes on rental structures with a tax credit. There would be no change in the tax on the merchant's income. On the other hand, the taxable income of the apartment-house owner would increase by $8,500 (the amount of the property taxes no longer deductible) and his net income tax before the new credit would rise to about $8,200. Applying the $8,500 credit for property taxes, the landlord would end up with no income tax to pay--and perhaps even a negative tax to be carried over into subsequent years! What more could any taxpayer ask?

But perhaps the tax credit would confer additional benefits on the owners of rental housing. During the testimony in which he advanced a tax credit proposal to the Senate subcommittee, Herbert Nelson also cautioned that those who blame private enterprise "for not building at lower rentals" forget "that one-fourth of the rent

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that income invested in new construction be taxed at the capital gains rate and 2) that "real estate taxes paid locally . . . be offset against the net federal tax due on the part of an individual or corporation up to a certain percent, say half, of the taxpayer's liability to the federal government." These proposals are discussed on p. 10 of this article.

dollar consist of (property) taxes." This seems to be a shorthand way of stating the economic principle that eventually the burden of property taxes on rental properties is shifted to the tenants through higher rents. To the extent that the shifting principle is valid, the tax credit device has a curious implication. The landlord can reduce his personal income tax by the property taxes which his tenants pay! And he can do this whether or not his income subject to tax was derived from his activities as landlord!

The variety of almost irrational tax consequences stemming from a tax credit suggests that in no event should a subsidy involve a tricky formula. Preferable to the credit formula is the more direct method of granting a potent tax subsidy through exempting rental income of new structures from income taxation entirely. This alternative at least would simplify analyzing the ramifications of the subsidy and prevent ownership of rental dwellings from serving to reduce taxes on income from other sources. New rental dwellings would then occupy a status comparable to tax-exempt securities, except that the usual defenses for retaining that exemption would be missing. So much effective criticism has been directed against exempting income from any particular form of investment from the income tax that further comment is unnecessary. What might be important in this connection is that the most deplorable aspects of tax exemption would be greatly magnified in the case of income from rental property. Of particular concern should be the invariable tendency for the ownership of tax-exempt property to be concentrated in the hands of persons with large incomes.[1] To them the tax exempt property has proportionately greater value because the size of the benefit varies directly with the highest rate at which the beneficiary is taxed.

Between the tax credit scheme and the idea of exempting income of new rental dwellings from the personal income tax there have been numerous variations on the same themes.[2] Essentially the modifications are pared-down subsidies effectuated by means of a tax credit or tax exemption. The proposal to tax income from rental property at the bargain rate for long-term capital gains is merely another plan for granting a partial tax exemption to such income. The suggestion that income from new rental property be eliminated from the income tax base for a limited number of years is similar in nature. The device of allowing a partial credit for property taxes against the landlord's net income tax is simply a qualified form of the tax

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[1] See Simons, Personal Income Taxation c. 8 (1938).

[2] In connection with recent discussions of housing and the federal income tax there of course has appeared the old argument that progression in income tax rates destroys incentive. For example, Thomas Buck, writing in the Chicago Sunday Tribune, Section 1, p. 11, col. 1 (Feb. 23, 1947) states: "The present income tax laws have discouraged some builders from expanding operations, inasmuch as the larger volume of business places them in the high tax brackets, which in turn reduces their profit margins on each new house completed." It seems obvious that profits after taxes would be reduced by progression regardless of how these builders invested their surplus capital (unless tax-exempt securities were purchased). The case of the builders sounds about as convincing as the perennial story of the executive who refused an increase in salary because of the progression in federal income tax brackets. If that executive is a real person he at least has the intelligence to remain anonymous.

credit scheme.[1] To the extent that any of these or other compromise measures resembles the undiminished model of the subsidy, it is subject to the same infirmities as the original. To the degree that the compromise departs from the basic version, its vices may be attenuated but only at the expense of proportionately reducing the effectiveness of the incentive intended.

Shortening the income tax amortization period for new rental dwellings, the last tax incentive proposal considered here, is an old standby that has been revitalized by the wartime tax program concerning so-called emergency facilties. On the ground that facilities acquired specially for war production would become obsolete at the end of the emergency period, contractors were permitted to amortize such facilities over a span of five years, or in less time if the emergency ended before expiration of five years.[2] Proposals that similar benefits be extended to new rental housing invariably cite the war measure as a precedent and usually adopt its five year interval with enthusiasm.[3] This reference is a warning signal. Accelerated wartime amortization was but a part of the government's program to pay for the whole cost of running the war. Will stepped-up amortization for new rental dwellings result in the government's paying for the cost of apartment houses which are to be privately owned throughout their long useful life?

The accelerated amortization plans can be divided neatly into two types which, though similar in appearance, entail markedly different consequences. Under the first type the deduction for depreciation could be offset exclusively against income from the building whose cost is so amortized. Accelerated depreciation in any year consequently could not exceed the net income of the building in that year before depreciation is taken into account. No part of an excess of allowable depreciation could be offset against other income of the taxpayer but an excess might be carried over and used as a similarly limited deduction in future years. A new building thus could be amortized in five years only if during the initial five years of operation the net income from it (exclusive of depreciation and income taxes) at least equaled the cost of the structure. Should such net income for five years fall short of cost, the amortization period, by virtue of the carry-over arrangement, would then total the number of years required for net income to match the cost of the building.

Whether the incentive to new construction provided by the limited type of accelerated amortization would be effective is largely conjectural. Landlords have complained that rental dwellings in the aggregate have not returned very satisfactory yields to investors over extended periods of time. These returns generally have been computed after subtracting a yearly depreciation charge presumably averaging about 2½% of cost. The privilege of limited acceleration of depreciation in effect frees operating profits from income taxation until the dwellings return their cost. It is questionable whether this limited exemption of, or postponement of tax on, the allegedly limited yields in the past would have been an appreciable stimulus to investment in

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[1] Note 5 supra.

[2] Int. Rev. Code, Section 124 (1946).

[3] N.Y. Times, p. 3, col. 8 (Feb. 19, 1947). See also Rosenman, The Racket in Veterans' Housing, The American Magazine (Sept. 2, 1946).

rental housing. The prevailing relatively high income tax rates might be expected to augment the force of the stimulus since the amount of tax saved or postponed varies with the rates. As to the future, one can merely speculate whether the combination of income tax rates and comparative yields from rental housing would render this type of subsidy effective. The accelerated limited amortization plan should also be considered with reference to its impact on parts of the income tax not expressly concerned with depreciation. To the extent that the income of a rental enterprise during its initial five years of operation approximates the total amount of allowable accelerated depreciation, the architecture of the income tax as presently constituted appears inadequate in several respects. The purchaser of a building takes as a new basis of regular depreciation his cost of acquiring the structure.[1] If the original owner recovers his cost (tax free) in five years through accelerated amortization and then sells the property at its original cost less actual physical depreciation, the normal depreciation deductions thereafter claimed by the purchaser will approximate a second tax-free recovery of the initial investment. This situation occurs now under the depreciation rules when there is a sale of property which has sufficiently appreciated in value; but accelerated amortization would tend to make it a common pattern rather than an exception. Accelerated amortization would also provide another avenue for converting income into capital gains in order to take advantage of the bargain rate at which long-term capital gains are taxed.[2] If a new rental dwelling were held by a single person throughout its operational life, accelerated amortization would not materially reduce his total income taxes during that period provided the tax rates and his annual aggregate income remained fairly constant. The acceleration would reduce his taxable income during the early years of the building's operation and increase it in later ones. After exhausting his allowable depreciation in five years, however, the original owner would find it more profitable to sell the building and with the proceeds purchase a substantially similar structure, thus establishing a new basis of depreciation equal to his purchase price. By selling, the original owner would be taking advantage of the acceleration provision to convert the income of the building into capital gain. The difference between normal depreciation and amortization completely accelerated during the initial five years is income to the owner but it is not taxed. This difference also is represented by the actual depreciated value of the building after five years, assuming no change in the price level of such property. When the building is sold for its actual undepreciated value after five years, the price paid is all capital gain to the seller since his adjusted basis for computing gain (cost less amortized depreciation) is zero.[3] The substance of the transaction is thus simply a transformation of the untaxed income received during the first five years of operation into a long-term capital gain upon sale at the end of the period.

There is a sort of hopelessness in pointing out the tax loop-holes lurking in the current system of taxing capital gains. The transformation of income into capital gain is now a well established industry and new embellishments for its product have the same status as pre-war annual alterations in the styles of automobiles. Even so, there should be some hesitancy about giving the fabricators a whole new set of tools with which to work. Those who propose the adoption of accelerated limited

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[1] Int. Rev. Code, Sections 113, 114, (1946).

[2] See Int. Rev. Code, Section 117 (1946).

[3] Int. Rev. Code, Section 113 (1946).

amortization for new rental housing at least might study and reveal its implications as to the further creation of capital gains.

Practically all criticisms of accelerated limited amortization are equally applicable to the second or unlimited type of acceleration. The two types differ solely in that the latter would permit annual accelerated depreciation in excess of the building's net income (before depreciation) to be offset against any other income of the owner. Regardless of the earnings of the building, its entire cost could be amortized in the accelerated period provided only that the owner had sufficient aggregate income against which the recovery of cost might be offset. Unlike the limited plans, the unlimited ones give promise of being adequate incentives for additional investment in rental housing. They do so, however, at about the same high price as that involved in allowing property taxes to be credited against the landlord's personal income tax. Persons with large incomes from various sources could secure complete immunity from the income tax by acquiring a sufficient number of new rental dwellings earning less than the allowable accelerated depreciation charges. Unlimited acceleration, like the tax credit, would shred the pattern of equality and progression which gives strength to the income tax and at the same time assure a greater concentration of ownership of real property among the higher income groups.

To those interested in both satisfying our housing needs and preserving (if not enhancing) the merits of our income tax system, all the proposals here considered may well be cause for dismay. Some of the proposals have been shown to serve neither the cause of better housing nor sound taxation, while the others would increase the supply of dwellings at the expense of justice and fair play in taxation. Because housing needs are vital, there might be a temptation to sacrifice just temporarily the more remote yet sustaining ideals of our society. Before this allurement becomes too strong, it is well to consider the drawbacks of income tax subsidies in general and then take another critical view of the proposed tax subsidies and their variants.

Of the many kinds of lawful subsidies--meaning grants or aids extended to undertakings to which the public interest is imputed--those effectuated through an income tax are probably least suited for a democracy. It is invariably difficult to subject proposals for such subsidies to thorough examination. An income tax subsidy is so indirect that relatively few persons can understand its operation. Analysis of a suggested tax subsidy tends to become confused in discussions concerning the technical aspects of taxation. The aggregate size of a prospective income tax subsidy usually defies calculation because too many unknowns are involved. For the same reason the public cannot be informed as to the probable distribution of the benefits. In these respects the adoption of an income tax subsidy is suggestive of secret diplomacy.

Even after enactment of such a subsidy the public remains shielded from appraising it intelligently.[1] The special benefits conferred on private parties are

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[1]The federal income tax has long provided another subsidy-like advantage to those who own and occupy their homes. No part of the annual use value of an owner-occupant's home is considered to be income for purposes of the tax. The home owner accordingly pays a smaller tax than renters with equivalent effective income since that part of their income which is spent for rent is taxable. Though treated as not receiving taxable income for use of his home, the owner-occupant is nevertheless permitted to deduct from his taxable income the payments made for interest charges and state and local taxes on his property. (Int. Rev. Code, Section 23 (b), (c) (1946)).

accomplished without either open payments or publicity. The ultimate cost of the subsidy is buried in the overall allocation of the income tax burden. Thus the operation of the subsidy is so camouflaged that its very existence is sometimes forgotten except by those who receive its special advantages. The absence of administrative safeguards makes this result doubly certain. An income tax subsidy is never administered by an agency concerned with the particular problem giving rise to the subsidy. To the revenue department it is largely another complication in policing the collection of revenues. The tax gatherers are not interested in how well the subsidy performs its function of providing a specific incentive but only in seeing to it that taxpayers comply with the law in taking advantage of the benefits. No official reports need be rendered on the operation of distribution of the subsidy and the fiscal agents are likely to limit their suggestions for improvement to matters of tax administration. Under these circumstances an income tax subsidy becomes a series of private and inflexible transactions between the government and the preferred taxpayers, with each individual deal isolated from critical scrutiny.

A tax subsidy, moreover, by virtue of being comparatively inconspicuous and painless, is likely to become a fixture that is highly resistant to termination or change. It tends to survive even though it fails to provide the incentive giving rise to its enactment. Where this happens the subsidy may become a continuing windfall to private parties without furthering a public interest. The very fact that the subsidy remains extant conceivably might be used as a make-weight for not adopting really effective incentives.

There are other dangers in focusing too narrowly on the three suggested subsidy plans. Any subsidy is practically equivalent to a cash expenditure by the government for goods and services. Like a prospective cash purchase, it is to be weighed against other possible expenditures to determine how value can best be received by the government--or the public--at the prices demanded for goods and services. A given housing subsidy patently is no a wise investment for the government merely because it results in additional housing. An informed economic decision as to adoption of a subsidy must take into consideration whether the sum involved could better be spent in other ways to secure the desired housing. Discussions of a suggested tax subsidy usually omit reference to relevant comparisons. No attempt at comparisons can be undertaken here, but a reminder is in order that money invested in a tax subsidy could be otherwise utilized to produce additional housing.

The value to be received by the public from a prospective subsidy should also be assessed in terms of how well the subsidy will meet the need it is designed to satisfy. In regard to housing, there is substantial agreement that the most pressing need is for dwellings that families with moderate and low incomes can afford.[1]

In effect he is allowed to deduct from his taxable income some of the cost of enjoying a form of income--the use value of his home--which is itself exempt from tax. This combination near-subsidy, enjoyed by approximately 20 million home owners, scarcely draws attention and rarely is appraised. See Simons, Personal Income Taxation c. 5 (1938) for a discussion of the exemption of income in kind from income taxation.

[1]For purposes of this discussion, families with moderate income are those able to afford between $20 and $40 a month for rental or purchase of a dwelling; families with a low income are those unable to afford more than $20 a month. This classification appears in S. Rep. 1131, 79th Cong. 1st Sess. (1946) which accompanied

The proposed tax subsidies might make investments in new rental ventures more attractive, but capital presumably would be channeled into the most profitable types of residential construction. In the past and at present the most lucrative rental construction is that designed to accommodate families with relatively high incomes. Even if the tax subsidies made all new residential building more profitable, there is no reason to assume that the existing hierarchy of profitability would be altered. The tax subsidies in effect would provide greater incentrives to build the kinds of structures that private enterprise finds most renumerative to construct without subsidies. Rental dwellings for families with low and moderate incomes would still be relatively less profitable after enactment of the subsidies. Is there not something strange about subsidies to encourage construction of the kind of dwellings for which the need is least urgent?

In the background of every subsidy lies the arrangement for apportioning its cost to society. The proposed tax subsidy are not exceptions. The burden of these subsidies of course can be distributed in a variety of patterns and the distribution of burden is unavoidably an integral part of the subsidy plans. Those who prppose huge tax subsdiics do not make it plain how the cost is to be apportioned. This omission is particularly serious when it is proposed to subsidize principally the high income groups in order to confer an indirect benefit on large numbers of taxpayers in the lower income ranges. In view of our present arrangement for apportioning the aggregate cost of government, there is ground for suspecting that the cost of such indirect housing subsidies will be borne in large measure by the very persons most in need of better housing. If that is the case, and if a tax subsidy is warranted, should we not consider bestowing the subsidy directly upon the families whose housing needs require attention?

This is not to imply that the housing situation can be improved by subsidizing rent payments through the income tax. All subsidies linked to income taxation should be avoided for the reasons already given. In regard to housing they confuse the real issues and misplace emphasis. "No matter how much our shortage of adequate housing can be laid to a maldistribution of income in the social structure as a whole, the effect of wastes, inefficiencies, and traditionalisms upon the price of housing must still be considered to be at the heart of the housing problem."[1] At worst, the proposed tax subsidies either are ineffective or disrupt our federal income tax structure. At best, they fail to get at the roots of our housing problem. In the words of Thurman Arnold, "There are two ways of filling a hundred bottles, of different shapes and sizes, with water. One is to put them in the center of the room and throw water at them with a dipper. The other way is to hold one bottle at a time under a faucet."[2] The proposed tax subsidies, whether or not effective, are more apt to give us a shower than the houses we need.

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the Wagner-Ellender-Taft Bill, S. 1592, 79th Cong. 1st Sess. (1946). Under this classification moderate income families represented 38 percent and low income families represented 28 percent of the total number of families.

[1]The Twentieth Century Fund, American Housing Problems and Prospects 325 (1944). The wastes and inefficiencies are clearly reflected in the building codes which in large measure are a product of the building industry as a whole. See 33 Fortune, No. 4, at 262 (April, 1946).

[2]Arnold, The Bottlenecks of Business 274-5 (1940).

PROPERTY TAX SUBSIDIES FOR PRIVATE HOUSING

Property tax subsidies occupy a prominent position in current planning for improving urban housing conditions through private construction. Several states already have adopted legislation authorizing exemption of private redevelopment projects from local property taxes. Others are preparing to enact similar statutes.[1] These measures have been supported by groups with widely diverse economic and political views. The out-look at present is that property tax subsidies are to play an increasingly important role in the drive to attract private capital into the housing field. This article is an attempt to explore some implications of that prospect.

Much of the recent attention to property tax subsidies stems from the use made of them lately by New York state and city. The New York state "Redevelopment Companies Law", enacted in 1942 and amended in 1943, permits a city to condemn property, sell it to a private redevelopment corporation, and exempt from taxation for a period of years that part of the project's value which exceeds the assessed valuation of the land and buildings before redevelopment.[2] Two projects--"Riverton"[3] and "Stuyvesant Town"--are at present being undertaken in New York city under this law, both by the Metropolitan Life Insurance Company. Stuyvesant Town, which covers seventy-five acres or eighteen city blocks, has 35 separate twelve and thirteen story apartment houses containing 8,755 apartments. The tax exemption subsidy granted for it by the city, estimated on the basis of existing tax rates and assessed values, will in time aggregate in the neighborhood of $50 million.[4] This

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[1] See, for example, Mass. Ann. Laws (Supp. 1946) c. 121A, sec. 10; Mich. Stat. Ann. (Henderson, Supp. 1946) sec. 5.3058(12); N. J. Rev. Stat. (1946) sec. 55:14e-11; Wis. Stat. (Brossard 1943) sec. 66.405.

[2] N. Y. L. 1943, c. 234, sec. 26. See also the New York Urban Redevelopment Corporations Law, N. Y. L. 1941, c. 892, sec. 12.

[3] Metropolitan's Riverton Project, intended primarily for Negroes, will house 1,232 families (about 3,500 persons) in seven 13 story buildings constructed on the six blocks bounded by 135th and 138th Streets, Fifth Avenue and the Harlem River. Although Riverton rents were originally planned to average $12.50 per room, Metropolitan subsequently asked that they be increased to $14.00 because of a 50 percent increase in construction costs over the original estimate.

[4] Plaintiffs Brief in Support of Motion for Temporary Injunction. Dorsey vs. Stuyvesant Town Corporation. Supreme Court of the State of New York (July 9, 1947): "The cost of the project is conceded to be 90 million dollars (Gove affidavit, paragraph 20). The cost of the land was about 17 million dollars (see application of Stuyvesant Town Corporation to New York Board of Estimate for an increase in rent, dated April 24, 1947). The total tax exemption over a 25-year period granted to Stuyvesant Town Corporation is thus about 3 percent on the improvement cost (90-17 millions) or well over 50 million dollars, which is about three times the cost of the land." In arriving at the figure of $50 million, Charles Abrams, attorney for the plaintiffs, apparently based his calculations on the current tax rate and the assessed valuation which probably would have been used in the absence of the subsidy, approximately $2 million annually for 25 years. The present value of the total subsidy might more accurately be calculated by discounting the value of future annual subsidies.

sum is more than fifty percent of the original estimated total cost of the project. It is frequently said that the investment of private capital in Stuyvesant Town or Riverton would not have been undertaken without tax subsidies. Whether or not that view is correct, the two projects undoubtedly have stimulated renewed interest in property tax subsidies for private housing.

Even if the New York projects are attributable to property tax subsidies, it does not follow that such subsidies are desirable means of bettering housing conditions. Public assistance to improve housing can be furnished in numerous ways. The property tax abatement method is to be compared not only with an absence of local subsidies for housing but, more pointedly, also with other means of subsidization. The choice of methods in conferring public assistance is not illusory. New York, for example, doubtless could have subsidized Stuyvesant Town by cash payments instead of tax benefits. Realistically, any subsidy--regardless of form--is tantamount to a purchase of goods or services by the government. In weighing the advisability of a property tax subsidy the cost and utility of the subsidy must be balanced against the cost and utility of alternative "purchases" available to the government, particularly those in the field of housing.

All property tax subsidies for private housing consist essentially of special dispensations from the local property tax. The subsidies are conferred through exemptions from the tax. In broad terms, the subsidy may consist of a full exemption or a partial exemption from the tax for the life of the buildings involved, or a full exemption or partial exemption for a specified time. The limiting terms of a partial exemption may be defined in many ways.[1] A ceiling might be placed on the total dollar amount of benefits to be derived from the exemption; or rates might be pegged lower than prevailing levels; or the exemption might be restricted to a percentage of assessed values; or assessment values might be frozen as of a particular date.[2] All varieties of property tax subsidies have one thing in common. The subsidized ventures are taxed less than they would be in the absence of the subsidy.

In analyzing the cost and utility of property tax subsidies for private housing four aspects of their operation deserve attention. These are: (1) what

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[1]Herbert U. Nelson, executive vice president of the National Association of Real Estate Boards, has suggested, for example, that "any owner who tears down an old structure and puts up a new one . . . . be allowed to deduct the value of the old building from that of the new for local tax purposes". The American City, LVI, No. 7 (September 1946), 107. (An article entitled "Tax Incentive for Rebuilding Blighted Areas".) This is probably the worst form of the property tax subsidy since it will encourage the destruction of buildings with high, rather than low, assessed values.

[2]Most of the contemporary redevelopment plans call for pegging assessment values at the level existing prior to redevelopment. Under this arrangement the annual amount of tax on the subsidized development will vary with the tax rate. The aggregate amount of the subsidy in time--that is, the difference between the amount of taxes due and the amount which would have been due on the development were it not subsidized--also depends on the tax rate.

kind of housing will be produced; (2) who will bear the cost of the subsidies; (2) who will bear the cost of the subsidies; (3) who will receive the subsidies; and (4) how will the subsidized accommodations be allocated. These matters are considered in the order given.

What kind of private housing will property tax subsidies promote? If the subsidy were a tax exemption given carte blanche for all new rental dwellings, the answer to this inquiry would be simple. Private enterprise would construct the kind of apartment buildings which it would find most profitable (or least unprofitable) to build without any subsidy. The carte blanche subsidy would merely increase the remunerativeness of all new rental dwellings; it would not rearrange the hierarchy of profitability. This means that as the subsidy accelerated the flow of private capital into the rental housing field it would provide additional new accommodations for the income classes which regularly occupy new apartment buildings. These consist of families in the upper third of the income scale.

The experience of New York following the first world war bears out this analysis of what the carte blanche form of tax subsidy yields. In 1920 New York state authorized municipalities to grant tax exemption for private housing "with no requirement as to standard beyond those which apply to all new dwellings and without the faintest attempt to limit rent or selling price."[1] New York city chose a rather liberal version for its subsidy plan. "The subsidy, for those who obtained the full ten year's exemption and were able to keep construction expenses within the exempt limits, amounted to one-third of capital cost".[2] The story of who could afford to occupy the subsidized structures is succinctly told in the history of the rents charged. "Rents in the new buildings, unaffected by rent restrictions, soared happily. Nearly half the new suites built in 1924 rented for $20 per room per month and up. About 17% rented for $15 per room per month or less. The rest were in between . . . . The newspapers carried advertisements indicating that those who invested in the new apartment houses could recover their capital in three years. Probably they could not, but the suggestion portrays a mental attitude."[3] Clearly the carte blanche tax exemption for housing became "a subsidy to the building industry rather than to health and welfare".[4]

The carte blanche form of a substantial property tax subsidy for private housing is not likely to gain acceptance today. Interest has been centered on property tax subsidies only as parts of more or less comprehensive redevelopment plans. Under these the enterpriser must satisfy various requirements to quality for the tax subsidy. The most significant limitations relate to the rentals which can be charged and the profits which can be drawn out of the projects by their owners. In theory these restrictions are designed to make available apartments which carry

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[1] Wood, Recent Trends in American Housing (1931), p. 107.

[2] Ibid. The New York city ordinance, as first enacted, limited the exemption to $5,000 on a single-family house, $10,000 on a two-family house, and $1,000 per room, with a maximum of $5,000 per family unit, on an apartment house. Later the ordinance was re-enacted, limiting the exemption of multiple dwellings to $15,000 per building. In effect the maximum period for the exemption was ten years, 1921 to 1931.

[3] Ibid., p. 111.

[4] Ibid., p. 107.

lower rentals than those built with unsubsidized capital. The primary aim of the limitations is to channel the public assistance into subsidized lower rents instead of into subsidized higher profits.

It seems highly improbable that rent and profit controls, in the foreseeable future, will bring tax exempt private accommodations within the range of the average city family. The Stuyvesant Town project is an indicator for this pessimistic outlook. Its 25-year tax exemption subsidy, computed on existing rates and assessed values, is equivalent in time to a subsidy of about $5,700 on each of the apartments in the development.[1] During the period of tax exemption, a limitation of 6 percent is placed on the amount of profits which may be earned by the proprietor.[2] Under the schedule originally agreed upon by Metropolitan Life and New York City, the monthly rental on the three, four, and five room apartments making up Stuyvesant Town was to range from $46 to $77. Recently Metropolitan was allowed to increase rents so that the scale now ranges from $50 to $91 per month.[3] These figures are to be contrasted with the ability of families to pay such rentals. The Housing Census of 1940 showed that fewer than 23 percent of New York's tenant families paid more than $50 a month rent in that year. Average monthly rental was $41.26 and half of all New York tenants paid less than $36.71 a month.[4] Family income is somewhat higher now. Nevertheless, using the latest census family income data available and assuming that a tenant can afford a monthly rental equal to one week's wage, the average apartment in Stuyvesant Town (on the adjusted scale) would still be beyond the means of more than two-thirds of the nation's urban families of two or more persons; and even the small number of lowest price apartments at $50 per month would prove too costly for approximately one-half of them.[5]

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[1]Average subsidy per unit computed by dividing total estimated amount of subsidy--$50 million--by the number of units in the project.

[2]During the twenty-five year period of partial tax exemption, Metropolitan "may not take out of the project any more than operating costs and six percent a year to cover interest and amortization". "All other income goes to the city." Windels, Private Enterprise Plan in Housing Faces First Test, National Municipal Review, June 1943, p. 286. However, "There is no provision against accumulating a substantial reserve which would not be paid to the city but which the Company could ultimately add to future profits and distribute in unlimited earnings on its tiny equity". Buttenheim, A Few Warnings on Private Enterprise Housing Plan, National Municipal Review, July 1943, p. 385.

[3]New York Times, April 25, 1947, p. 12, Col. 3; Aug. 8, 1947, p. 15, Col. 1.

[4]U. S. Department of Commerce. Bureau of the Census. 16th Census of the United States, 1940, Housing, Vol. II. General Characteristics, Part I, United States Summary, Table 87, p. 152--Contract Monthly Rent for Tenant Occupied Units, 1940.

[5]Median income for urban families of two or more related persons for the year 1945 amounted to $2,994, or approximately $57 a week: Bureau of the Census report on Family and Individual Money Income in the United States: 1945 and 1944. Series P. S. No. 22, May 8, 1947. Comparable data is not available for New York City for 1945. However, in 1939, when comparable data was available, New York's median family income of $1,654 was 14.5% greater than median urban family income

The failure of Stuyvesant Town to serve families with moderate or low incomes is understandable. Rentals that are high relative to average incomes are needed to enable the private capital invested in the enterprise to yield a satisfactory return. The subsidies granted, although large, simply do not bridge the gap between high building costs and average family incomes. This is the key to foreseeing what kind of private housing developments property tax subsidies are likely to foster even when accompanied by rent or profit controls. Two factors will tend to hold down the amount of such subsidies to a point where comparatively high rentals are in order. The first is that a subsidy which is large in terms of the property tax is probably insufficient to close the gap between present high building costs and average family incomes. This relationship is demonstrated by the arrangements concerning Stuyvesant Town. The second factor is that property tax subsidies for private housing are generally regarded primarily as means of attracting private capital into housing rather than as means of securing low cost housing. For this reason it is likely that such subsidies will not be much larger than the minimum needed to augment the flow of private capital into the housing field. In any case the emphasis is not apt to be on furnishing accommodations which families with low incomes can afford.

There is another feature about the kind of housing promoted by property tax subsidies to private parties which merits notice. The most popular form of such subsidies today is a tax exemption on the value added by redevelopment work. This type of exemption influences the intensity with which the redeveloped land will be used by the recipient of the subsidy. Specifically, the limited exemption will encourage intensified utilization of land because in this manner the exempt portion of the project is increased relative to its entire value. This perhaps is one of the factors accounting for the extreme concentration of tenants in Stuyvesant Town. The project is designed to house 8,755 families--almost three times the number that were physically accommodated in the slums which the development replaced.[1]

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for the country as a whole. Bureau of the Census report on Population. Family Wage or Salary. Table 1, p. 7 and Table 1a, p. 10 (1940). If New York maintained its 14.5% lead over the rest of the country during the war years, which is not at all certain, median family income in New York City in 1945 would have amounted to $3,428, or approximately $66 weekly. On this basis, half of New York's families could not afford Stuyvesant Town's two bed-room apartment at $68.00 monthly. Assuming that a family can afford to pay one-fourth of its income for rent, which is questionable in view of the sharp increase in the cost of living during the past year, accommodations in Stuyvesant Town would require a minimum annual income of $2,912 for the lowest priced one-bedroom apartment; $3,536 for the two bed-room apartment and $5,784 for the highest-priced accommodations.

[1]Testimony of George Gove, Vice- President of the Metropolitan Life Insurance Company before Committee on Banking and Currency--United States Senate--80th Congress--1st session, 1947 Hearings on Bills pertaining to National Housing at p. 342.

"It has been stated that, when completed the project will accommodate a population of approximately 24,000 persons. The existing population in the area is now about 11,000, with a previous population of 21,000 in 1920.

.....

"With a population of 24,000 people, the 75 acres would have a density of 320 persons per acre, which compares with 146 persons per gross acre at present.

.....

Who bears the burden of property tax subsidies for private housing? As phrased this question presupposes that the subsidies involve a burden. It has been argued, however, that they are costless if the exemption from tax is confined to the extra value added by the new housing. The additional value would not have been brought into being, the argument runs, unless exempted. Therefore the extra value--that in excess of values existing prior to the new development--could never have become part of the property tax base. By this reasoning it can be shown, for instance, that the tax exemption granted Stuyvesant Town will not reduce the revenues obtained by New York city from its property tax.[1] The reasoning also lends itself to a demonstration that revenues relative to municipal expenditures might be increased by the exemptions. This neat effect is accomplished by predicting that the subsidized redevelopments which replace slums will reduce city expenditures by lessening the cost of police, fire and health protection.[2]

The something-for-nothing defense of tax exemption rests on an assumption which is not always explicitly stated in full. In its shortened version the assump-

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A density of 320 persons per acre would be 50% more than the present average gross density of the predominantly residential area of Manhattan, which is now 211 persons per acre."

Paul Windels--Private Enterprise Plan in Housing Faces First Test in National Municipal Review, June 1943, p. 287.

[1]Rosenberg, Tax Exemption of Public Housing, 23 Taxes 605 (1945).

[2]The assumption that municipal expenditures will be reduced in this manner may be summarily dismissed. There is no reason to believe that a subsidized relatively high rental project will be more effective in eliminating slums than an unsubsidized high rental project. A somewhat different situation holds with respect to public housing. Unlike subsidized privately owned housing, which presumably would have eventually been constructed without subsidy, public housing for those unable to pay an economic rent would not have come into existence without subsidy. And, the subsidy is less than the opposition to public housing might lead one to suppose. In 1946, New York City's 14 permanent low-rent apartment projects housing 17,047 families, paid into the city treasury in lieu of taxes a sum 11.5 percent greater than the taxes levied on the sites prior to their acquisition for public housing purposes. The New York City Housing Authority estimates that the taxes and payments in lieu of taxes on its first ten projects for the fiscal year of 1944-45 were 95 percent greater than the taxes actually collected on the properties in the year prior to their acquisition by the Authority. Nor is this all. The 13th Annual Report of the New York City Housing Authority shows savings of $25 million in interest payments and $4,640,000 in subsidies. This was accomplished through refinancing bond issues at lower rates and increasing private participation in the loan from the original 17.75 percent to almost 86 percent. "This meant that on 69 percent of the loan, Government bonds bearing an average interest rate of 3.04 percent were replaced with the privately held bonds at only 2.13 percent." The lower interest enabled the Authority to reduce the life of the loan from 55 to 43 years and save almost half of the original interest cost. The savings reported by the New York City Housing Authority on interest payments alone are equal to the tax subsidy granted by the city to Metropolitan's Stuyvesant Project for 12 1/2 years.

tion is that the value of the site prior to construction of subsidized buildings on it would not have been augmented by private capital in the absence of the subsidy; that is private enterprise would not have increased the value of the site at any time during the period for which the subsidy is granted. In the case of Stuyvesant Town, for example, the abbreviated form of the assumption is that without subsidization private capital would not have added to the total value of the site throughout the 25 year tax abatement period. The short version of the assumption, however, is misleadingly simple. In order to validate the something-for-nothing argument in favor of tax exemptions for private housing, a more comprehensive assumption is needed. It must be assumed that the subsidized project will not discourage private capital from investing in whatever new construction it would have undertaken had not the subsidized building been erected. The terms of this assumption must extend to the entire rental market area affected by the subsidized project in question. Again taking Stuyvesant Town as an example, the full assumption behind the something-for-nothing argument necessarily is that the project, throughout its life, will not discourage private capital from entering into construction work in New York City. Should the project encourage some kinds of private building (such as commercial structures) and discourage others, the assumption requires that the values lost through the discouragement not exceed those gained through the encouragement.

Spelled out in this manner the full assumption, which underlies the argument that property tax subsidies for private housing are costless, appears to be highly unrealistic. The unrealism is seen most easily in the case of carte blanche tax subsidies given for all new apartments constructed within a fixed period, say five years. It has been pointed out that under such subsidies private enterprise would build for the markets it would most likely supply in the absence of subsidies. This means that carte blanche subsidies would accelerate the construction of accommodations for families at the upper end of the income scale. If the subsidies are effective more apartments will be built during the five years than if no subsidies were granted. At the end of that time the demand for modern apartments (by high income families) accordingly will be more nearly satisfied because of the subsidization. To the extent that tax exempt buildings supply the needs of those who can afford modern apartments, new unsubsidized ventures in residential construction become less attractive to capital. In other words, because both subsidized and unsubsidized new buildings would aim at drawing tenants from families at the upper end of the income scale, the competition would discourage construction of new unsubsidized accommodations. The assumption that the subsidy would not discourage capital from entering into unsubsidized residential building thus is realistic only if it be further assumed that private capital is no longer interested in providing housing even for those at the top of the income scale. Such pessimism does not seem warranted today.[1]

A similar analysis is applicable to property tax subsidies which are coupled to rent or profit controls. These subsidy plans, it has been shown, might result in rentals below those which would obtain in comparable structures without subsidization; but the plans cannot be counted on to reduce rentals substantially. The experience with Stuyvesant Town indicates that by and large the subsidized accommodations can be afforded only by those in the upper third of the income scale.

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[1]It has been suggested that subsidized private housing projects will stimulate construction of new commercial structures, and that the existence of these would counteract the shrinkage in the tax base. Here again it seems unreasonable to assume that subsidized private housing projects would be a greater stimulant to commercial construction than unsubsidized housing projects. The contrary might be true since some of the Metropolitan projects are more or less self-contained, including appurtenant commercial facilities.

It is for this reason that investment in projects like Stuyvesant Town potentially compete with investment in unsubsidized rental housing. The competition might extend in two directions. On the one hand, those who can afford the subsidized accommodations are sufficiently high on the income scale to be realistically viewed as potential customers of unsubsidized apartments. A relatively small drop in building costs, for example, might turn this group into ready customers if satisfactory subsidized housing were not available to them. On the other hand, some of occupants of the subsidized projects doubtless could afford to pay the higher rentals which would make new ventures attractive to unsubsidized capital. The availability of comparable subsidized accommodations would remove them from that market.

These propositions may be illustrated in terms of two housing projects of the Metropolitan Life Insurance Company. Subsidized Stuyvesant Town already has been described. A few blocks away Metropolitan is completing its Peter Cooper project. This is an unsubsidized 19 acre development containing 2500 units. Monthly rentals range from $85 to $130 as compared with $50 to $91 for Stuyvesant Town. The differential between the two rental scales in part is accounted for by the subsidy granted to Stuyvesant Town. In large measure, however, it is due to the fact that Peter Cooper is a "luxury" project while Stuyvesant Town is not. Even so, the two projects probably compete with each other to the extent that some tenants of the subsidized project could afford the rental charged in the unsubsidized development. And, the existence of Stuyvesant Town is likely to lessen the attractiveness of undertaking another unsubsidized project having accommodations comparable to it.

The fact that subsidized private capital tends to drive out unsubsidized private capital has an important bearing on the distribution of the burden of a property tax subsidy for private housing. Most American cities obtain the bulk of their revenues from a tax on real property. Because existing structures are constantly deteriorating, new improvements are relied upon to maintain the base of that tax. Without new improvements the base would automatically shrink as existing buildings wore out. The same effect will be produced by property tax subsidies for housing. Through discouraging unsubsidized developments they will act to contract the base of the tax itself.

To maintain revenues in face of a shrinking property tax base, local governments will have to increase existing taxes or seek new sources of revenue. Experience indicates strongly that, following the lines of least resistance, it is politically more feasible to hike up established taxes than introduce new levies. The record also shows that when receipts from a property tax fall the usual reaction is to raise assessed values or the rates of that tax. Thus, it is reasonable to predict that shrinkage in the tax base caused by exemptions for private housing will be compensated by increases in the effective rates of the property tax. These increases, in turn, would be an added deterrent to the investment of unsubsidized capital in residential housing construction. They thereby would serve to further impair the property tax base.

Under the circumstances outlined, the burden of increased property tax rates would fall upon several groups. It would fall directly on those who already own their own homes. Annual overhead charges of home-owning would be enlarged; and, because this would make home-owning less attractive, the sales values of homes would decline. In short, the increase in taxes could not be shifted by home-owners. The new effective rates would also apply to unsubsidized landlords, but a substantial part of the increase probably could be passed on to tenants. These relationships

contain an interesting implication as to who will bear the burden of real property tax subsidies for private housing if cities do not develop new sources of revenue. The vast majority of unsubsidized tenants are families with moderate or low incomes; and a large proportion of home-owners are families with moderate incomes. It is they who will be called upon to carry a larger share of the property tax burden in order to provide the subsidized housing--even though they might not be able to afford the subsidized new apartment.

Thus it is apparent that the distribution of the burden of property tax subsidies for housing is intimately linked with the kind of housing which will be fostered by the subsidies. "When . . . . exemption is extended to private development for a higher income tenancy, the city is deprived of the potential revenue which would have accrued to it when private enterprise in the normal course of events got around to providing dwellings for that group."[1] This loss of revenue, if it is to be offset, very likely will place an added burden on the regressive municipal tax systems. Indirectly the inequities and undesirable characteristics of these systems would be further aggravated. On the other hand, when "the city exempts low-rent public housing projects from tax on the improvements . . . it loses no potential revenues, since the low-income families are not prospective customers for the potential private enterprise market."[2] Where this is so the subsidy raises no special problems regarding the distribution of its cost.

Who will be in a position to receive property tax subsidies for private housing? A carte blanche exemption of all new improvements from the tax would not present any complications concerning beneficiaries. Those who invested in housing and received the subsidy by and large would be the kinds of investors who would be most likely to invest in housing in the absence of a subsidy. The subsidy would merely make the investment more attractive to them. It already has been noted, however, that contemporary property tax subsidies for private housing are almost always tied in with comprehensive redevelopment schemes. These plans generally call for large scale housing projects. Consequently it becomes necessary to venture large amounts of private capital in order to qualify for the subsidy. This requirement in part accounts for the fact that each of the subsidized developments in New York has been undertaken by a big insurance company. Few existing organizations except the largest insurance companies and banks have the resources for investing in sizable redevelopment projects. New independent corporations organized especially for redevelopment work are not likely to be in a position to advance the necessary capital. The present prospect is that they would encounter great difficulty in raising funds from the public unless the investments were guaranteed by a governmental unit--another kind of subsidization.

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[1] Abrams, The Future of Housing (1946), p. 336.

[2] Ibid., p. 336.

"Therefore, such exemptions on public housing, while technically they may be subsidies, represent not out-of-pocket loss. The tax exemption on such projects represents a dollar loss only to the extent that payments in lieu of taxes run less than the taxes paid on the site prior to its reconstruction and here it must be matched against the social and economic gains resulting from re-housing." Abrams, The Subsidy and Housing, Journal of Land and Public Utility Economics, May 1946, p. 139.

It is not to be implied that ownership of apartment houses, particularly large projects, by insurance companies (or banks) is necessarily undesirable. In the past a substantial portion of all residential mortgages was held by these organizations. Apart from subsidies there has been a tendency for these institutional investors to become land-lords rather than financiers of rental housing. The change from ownership of debts to ownership of equities may prove to be without significance as far as the over-all housing problem is concerned. What merits comment here is that property tax subsidies accompanying private redevelopment plans are accelerating the trend toward institutional ownership of residential property. Already the world's largest privately managed corporation, the eight billion dollar Metropolitan Life, has become the world's biggest private landlord. Upon completion of the projects presently under construction the corporation will own outright apartment buildings housing 31,566 families, or about 100,000 persons.[1]

There is a curious paradox to be found here. It seems almost certain that tax subsidies for private redevelopment projects will be received primarily, if not entirely, by large institutional investors. The subsidized projects not only will narrow the market for new unsubsidized housing but will tend to depress rentals in existing unsubsidized structures. The subsidies thus will reinforce the movement of large institutions to displace individuals and small corporations as metropolitan

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[1] Hearings before the Committee on Banking and Currency--United States Senate, 80th Congress. 1st Session, 1947 on Bills Pertaining to National Housing. Testimony of Mr. George Gove, Vice President of the Metropolitan Life Insurance Co: (pp. 340-41)

"The Metropolitan Life Insurance Co. has built housing in four cities (New York, Los Angeles, San Francisco, and Alexandria, Va.) for 19,084 families. The company is now engaged in building three more communities (in New York) for 12,482 families.

"When the work now under way is completed in 1947-48 the company will have built apartment homes for 31,566 families or approximately 100,000 persons and will have invested upward of $200,000,000. The housing is distributed as follows:

	Location	No. of Apts.
Long Island City	New York (Queens)	2,125
Parkchester	" " (Bronx)	12,272
Parkfairfax	Alexandria, Va.	1,684
Parklabrea	Los Angeles	1,316
Parkmerced	San Francisco	1,687
Stuyvesant Town*	New York (Manhattan)	8,755
Riverton*	New York	1,232
Peter Cooper Village	New York	2,495
Total		31,566

*Under construction"

landlords and, simultaneously, undermine the values of their properties. Moreover, every new privately owned building exempted from taxation will tend to increase the tax burden of those who bear the cost of municipal services. Yet, in spite of these prospects, the associations representing the property owners who will be adversely affected by the adoption of redevelopment plans and tax subsidies have lent their support to them. And, to complete the paradox, these same associations continually oppose subsidization of housing for those who cannot afford to pay an economic rent.

How will private accommodations subsidized by means of a property tax exemption be allocated? If the subsidy were divorced from rent and profit controls the price system would effect the allocation. When demand at prevailing rentals exceeded the supply of apartments an increase in rents would theoretically equate the two. But, as has been observed, rent and profit controls are usually central features in redevelopment plans embodying property tax subsidies. The controls presumably are designed to keep actual rentals below what they would be in the absence of such controls. If they succeed in this function the demand for subsidized apartments will exceed supply and it will be necessary to ration the accommodations. This predicament already has occurred in Stuyvesant Town. Even before the buildings were ready for occupancy, applications outran apartments better than ten to one.

Rationing either inside or outside the price mechanism is an arbitrary process. In one case it depends directly on human judgments and personal decisions, and in the other the no less arbitrary but less direct operations of the market. The possibility of error, corruption and favoritism cannot be overlooked. Moreover, there is little likelihood (especially in peacetime) of general agreement on what principles should govern in making the distribution. The Federal Public Housing Authority repeatedly has encountered opposition to and dissatisfaction with the system of priorities it has followed in allocating low rental dwellings. There is apt to be even less agreement on the general principles which ought to be employed in rationing subsidized housing among families with moderate or high incomes. The needs of such applicants are not as obvious or measurable as in the case of those at the bottom of the income scale, and no other basis of priority seems acceptable. Under these circumstances rationing becomes all the more arbitrary and subject to abuse.

The power to ration housing is especially important because its exercise has a tremendous effect on the lives of those interested in the accommodations. Whether a family lives in subsidized or unsubsidized housing is apt to determine both the type of environment in which it settles and the share of its income which is devoted to housing (and, therefore, the balance available for other things). If the power is so vital that one hesitates to entrust it to governmental officials, should not one pause even longer before delegating it to private institutions which qualify for a property tax subsidy? The dangers implicit in private rationing of housing are highlighted by the attitude of the proprietors of Stuyvesant Town on racial segregation. Soon after the project was announced, the chairman of the board of Metropolitan Life made the pronouncement that: "Negroes and Whites don't mix . . . . . perhaps they will in a hundred years . . . . If we brought them into this development, it would be to the detriment of the city, too, because it would depress all the surrounding property."[1] The attempt to exclude Negroes from the project led to passage of a New York City ordinance prohibiting discrimination because of race,

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[1] Abrams, The Future of Housing (1946), p. 322.

creed or color in the selection of business or residential tenants for any future properties built by private enterprise when tax exemption is used under the State Redevelopment Companies Law.[1] The dangers of private rationing are thus officially recognized. But of equal or greater significance is that fact that at least some of the potential proprietors of future subsidized redevelopments do not like the policy of the ordinance--and it is they who will be in charge of any rationing programs made necessary by subsidization.

With the power to ration subsidized accommodations placed in private institutional hands, the property tax subsidy--as part of the typical private redevelopment scheme--fosters a curious matrix of relationships. The cost of the subsidy probably will be borne in large part by families with low or moderate incomes. The subsidy will most likely be given to insurance companies and other large investment institutions. It foreseeably will be used to build accommodations which only families with comparatively high incomes can afford. And, the selection of occupants who are to enjoy the subsidized rentals presumably will be undertaken by the institutional owners.

This matrix brings into clearer relief what the public purchases with property tax subsidies for private housing. If the tax subsidy is accompanied by rent or profit controls it may be effective in keeping rents below what they might otherwise be. But the reduction in rents is not likely to be great enough to bring the subsidized accommodations within the reach of two-thirds of all urban families. The combination of tax subsidy plus rent or profit controls is unlikely to do more than lessen the amount of rent which some families in the upper income brackets will pay. On the other hand, omitting rent or profit controls from private redevelopment plans might well result in the same amount of capital being attracted into the rental housing field in the absence of a subsidy. As in the case of Metropolitan's Peter Cooper Project, higher rentals would take the place of the tax subsidy. This arrangement would avoid the need for rationing subsidized accommodations. It would, moreover, underline the most critical aspect of property tax subsidies for private housing: they are not calculated to lead to the production of housing accommodations for the average American family.

Perhaps the most unfortunate aspect of this conclusion is that property tax subsidies for private housing thereby become a part of an old tradition of the housing industry. The tradition is not easily articulated. Its essence, however, seems to be contained in the following exchange of thoughts between Senator Ellender, an advocate of public housing, and Mr. Farr, a past President of the National Association of Real Estate Boards:

> Senator Ellender: "And your method . . . is to tear (the blighted buildings) down and let the people who live in there live in the older houses that would be vacated by those who would be fortunate enough to build on this new ground, supplied partly by Federal aid and State aid, and maybe city aid. That is your plan, isn't it?
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> Mr. Farr: "That has been the custom for years and years."[2]

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[1] Local Law 45; 1947. See also J 41-1.2 Administrative Code of City of New York. Local Law 20, 1944.

[2] Hearings before the Committee on Banking and Currency. United States Senate. 79th Congress. First Session on S. 1592. A Bill to Establish a National Housing Policy and Provide for its Execution. Part 1, 1945, p. 450.

PRELIMINARY HOUSING MEMORANDUM NO. 4

THE CONTINUING CRISIS IN HOUSING

I. The Problem

Few, if any, of the social problems with which we have been confronted since the end of the war have attracted so much attention and study with so little to show for it as the housing problem.[1] Where is there a newspaper whose want ads and news stories do not tell of the desperate need for housing? Where is there a city whose ordinances safeguarding health and prohibiting overcrowding are not honored more in the breach than the observance? Millions of substandard dwellings are now occupied,[2] as well as innumerable reconditioned army barracks and temporary prefabricated units. And the overcrowding is greater than ever! According to estimates of the National Housing Agency, "the construction of 12,600,000 non-farm dwelling units will be needed in the United States" during the first ten years after the war.[3]

Numerous proposals have been made for satisfying this need. In general, they are based on the premise that adequate housing cannot be provided for all income groups without help from the government. Petitions for governmental aid tend to fall into two rather broad categories. In one may be grouped suggestions for various kinds of subsidies to enable the building industry, as presently constituted, to construct houses for income groups for which it could not otherwise build at a profit. In the second category belong the various proposals for lowering building costs through elimination of price-fixing agreements and other restrictions that contribute to the high cost of housing. None of these proposals hold much promise for

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[1] "The housing problem is not one problem but a combination of interrelated problems. Land values, building codes, tax rates, material costs, labor costs, legal problems, adequate financing, zoning and site planning, housing management and the effective administration of the necessary private and public agencies are all problems in themselves, and taken as a whole they constitute the housing problem." National Resources Planning Board. Housing Monograph Series. Housing the Continuing Problem, 1940.

[2] Substandard in that they were in need of major repairs or lacked bathing or toilet facilities. A nationwide sample survey made by the Census Bureau in June 1946 indicated that approximately a fifth of the 10,500,000 veterans of World War II in nonfarm areas were living in dwelling units which were in need of major repairs or lacked a private bath.

[3] "In an age and in a country of big money, power, and mass production, we have the anachronism that the production of one of the three essentials of life has been allowed to remain a matter for small capital, individual action and handicraft." A. C. Shire (Technical Editor. The Architectural Forum, and Consulting Engineer) "Rationalization of the Home Building Industry" in Harvard City Planning Studies XII 1938 Urban Blight and Slums, Ch. XXIV, p. 331.

immediate relief. Notwithstanding priorities, allocation of materials, premium payments, guaranteed mortgages, reduced interest rates and tax concessions, only 1 453,800 permanent, nonfarm family dwellings were constructed during the year 1946, less than enough to house the new families formed during the year. The prospects for new housing in 1947 are even less promising.

The following statement from Senator Taft's report of August 1, 1945 on Postwar Housing is as timely today as when it was written:

> Up to the present time, we have never been able to approach the objective of an adequate supply of decent housing. Our growth has heretofore been so rapid, and the demands upon our resources so great that, except for short periods, we have not been able to do more than to attain the rate of house production approximately that of the net addition in the number of families.
>
> The result is that we have had to keep in use practically all of past production that could be made to stand and have never been able to adopt and adhere to any policy of replacement. Slums have inevitably grown up in all our cities and in our towns and in the open country-side; and overcrowding and makeshift alteration have necessarily been utilized to balance our shortcomings.[2]

The unfilled housing needs of the nineteen thirties generated persistent pressure for governmental intervention in what traditionally had been regarded as an individual problem, subject only to state or local regulation. Only during periods of war or economic stress had the federal government been expected to concern itself with housing. It was the collapse of realestate values during the depression of the early thirties that led to the creation of federal agencies to stem the wave of foreclosures, strengthen the financial position of the mortgage bankers and bring about a revival of the home building industry by insuring private lending institutions on residential loans made in accordance with conditions approved by the Federal Housing Administration. The bi-partisan housing measure known as The Wagner-Ellender-Taft Bill, represented the first serious effort to deal with the housing problem on other than an emergency piece-meal basis. This omnibus bill, S. 1592, which passed the Senate only to die in the House embodied a comprehensive long-term housing program. Its Policy Preamble, declared that

> . . . the general welfare and security of the nation and the health and living standards of its people require a production of residential construction and related community development sufficient to remedy the serious cumulative housing shortage, to eliminate slums and blighted areas, to realize as soon as feasible the goal of a decent home and a

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[1]United States Department of Labor. Bureau of Labor Statistics. Construction, January 1947, Housing, Table 4a. If temporary dwellings, trailers and other emergency units are included, the total for the year will be increased to 661,900.

[2]Report to the Special Committee on Postwar Economic Policy and Planning by the Subcommittee on Housing and Urban Redevelopment Pursuant to S. Res. 33 Postwar Housing Aug. 1, 1945, p. 3.

suitable living environment for every American family, and to develop and redevelop communities so as to advance the growth and wealth of the Nation. The Congress further declares that such production is necessary to enable the construction industry to make its full contribution toward an economy of full production and full employment. The policies to be followed in obtaining these objectives are

(1) private enterprise shall be encouraged to serve as large a part of the total need as it can;
(2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need;
(3) governmental aid to clear slums and provide adequate housing for groups with incomes so low that they cannot otherwise be served shall be extended only to those localities which estimate their own needs and demonstrate that these needs cannot fully be met through reliance solely upon private enterprise and without such aid; and
(4) in order to achieve unified and coordinated activity, and to promote efficiency and economy, the main functions of the Government in housing and related community development shall be consolidated as provided in this Act.[1]

The housing shortage in the United States is not a by-product of war. Under the pressure of organizing the economy for purposes of war, we actually succeeded in building more dwelling units than at any time since the boom period of the twenties. But, housing for workers in war centers could not wipe out the backlog of unfilled housing needs. Between the World Economic Depression and the outbreak of war, residential building had not kept pace with family formation. This was not due to any lack of building materials or of the skills needed to construct homes on a par with such other products of our industrial civilization as automobiles, aeroplanes and electric refrigerators. It was simply due to the fact that houses cost too much. Residential construction is essentially a series of small-scale handicraft operations carried on largely by builders who construct only one or two houses a year.[2] The bulk of the population can no more afford houses built by such costly methods than they can afford "made-to-order" clothing. Nor can they be satisfactorily housed in the structures vacated by those able to afford new homes, because not enough people are in that fortunate category. Until new dwellings are constructed at a rate exceeding the net rate of family formation the housing shortage cannot be alleviated.

The past record of the building industry has not been such as to inspire confidence in its ability to meet such a challenge. Even now it asks only to be let alone to repeat its performance of the twenties by building for the higher-price market. As presently constituted, the industry is in no position to match the performance of the mass production industries and to attain volume production through lower-unit prices. In fact, so many different interests are involved in residential construction that it is unlikely that any one group would be able to reduce prices

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[1]Hearings before the Committee on Banking and Currency. United States Senate. 79th Congress, 1st Session on S. 1592 - A Bill to Establish a National Housing Policy and Provide for Its Execution, Part 1 (Revised), p. 465.

[2]Builders of 1-Family Houses in 72 Cities. From the Monthly Labor Review. (Sept. 1940) Serial R. 1151.

sufficiently to affect volume. As mounting costs price ever larger segments of the population out of the market, it becomes apparent that we can no longer depend on the haphazard methods of the past for housing.

The present housing emergency did not develop without warning. For months before and after V-J Day, extensive hearings were held in Washington on various aspects of the housing problem. Real estate boards, the Chamber of Commerce, associations of architects, builders, building material manufacturers and dealers, mortgage lenders, bankers, insurance companies, veterans' organizations, labor unions, religious and welfare workers, municipal and federal officials,--all called attention to an acute housing shortage that would become increasingly critical as the veterans returned. Everyone agreed that the need was great, but there were differences of opinion as to the number and kind of dwelling units required to satisfy that need. It was agreed that private enterprise should do the job, but there were differences of opinion as to the incentives needed to get private enterprise to do so.

To say that private enterprise should do the job is simply another way of saying that the forms of business enterprise that traditionally have been concerned with financing, building and selling houses should continue to perform their customary functions. Except during time of war, credit, building sites, building materials, and construction services are always available for either individual homes or apartment houses, provided only that the anticipated monetary return to the various groups participating in such residential construction be at least as great as might be obtained from alternative investments or other economic activities such as industrial and commercial construction. In the past, the prospect of such greater profits has provided sufficient incentive to activate the various groups interested in residential construction. To the extent that such relatively higher profits are anticipated, private enterprise, in the person of mortgage bankers, realtors, contractors, subcontractors and building material suppliers, can be expected to make additional housing available. The kind and quantity of housing produced, however, is dependent upon the individual judgments of the various businessmen engaged in residential construction. These judgments are in turn influenced by such ordinary business considerations as interest rates and production costs, and especially by estimates of housing demand. In other words, the day to day decisions of the businessmen concerned with residential construction set the pattern and determine the quantity of such construction.

As a rule, houses are constructed for those who can afford them. The rule of thumb for determining ability to pay assumes 2-1/2 times the annual income to be the maximum amount for which the prospective home-owner can safely obligate himself.[1] The potential effective demand for homes is forecast by checking family income against building consts. Since these consts are, and have been, so high as to discourage the construction of houses for any except those in the upper fifth of the income scale, plans of private builders for the early postwar years called for the construction of houses for the "easier higher-priced market."[2] By the time this profitable market was saturated, it was hoped that building materials would be more plentiful and less costly, so as to permit the construction of lower-priced homes. While the housing requirements of the higher-income groups were being taken care of,

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[1] Hearings, Sub-Committee, Part 12, p. 1859. Statement of L. E. Mahan, President Mortgage Bankers Association.

[2] Private Housing Prospects. The Conference Board Business Record, Vol. II, No. 1. Dec. 1944-Jan. 1945, pp. 271-75.

the homebuilding industry could function more effectively, it was suggested, "if private builders do not have to compete with public housing agencies for lumber, cement and other essential materials."[1] The so-called public housing program, far from being the marked departure from private enterprise that the term public might suggest, actually made it possible for private contractors to build for groups whose incomes are too low to make such construction profitable in the absence of governmental aid; the public aspect is principally in the form of overall planning, through loans to local housing authorities or by guaranteeing the repayment of private loans used for low-cost housing.

The housing problem, obviously, does not mean the same thing to everyone who discusses it. Public officials and representatives of religious and welfare agencies, labor unions and veterans' organizations tend to think in terms of the kind and quantity of housing needed to provide minimum standards of sanitation and decency for everyone without regard to economic status. Business groups, on the other hand, must by their very nature be concerned with effective demand, that is, the kind and quantity of housing for which people are able and willing to pay. However great the overcrowding or need may be, unless the purchasing power is available to translate it into effective demand, it is not part of the housing problem with which business enterprise is directly concerned. The way in which the industry responded to the removal of wartime building regulations was necessarily determined by the views of individual businessmen on the housing problem. An examination of their views should, therefore, aid in forecasting the future of housing in the United States.

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[1] Ibid.

II. The Housing Problem as Seen by Private Enterprise

A. Chamber of Commerce of the United States

"What is the housing problem"? queried L. D. Meredith, an insurance executive representing the Chamber of Commerce before the Committee on Banking and Currency of the United States Senate on December 5, 1945. He thereupon answered that question as follows:

> An acute housing shortage in practically every city in the country results from necessary restrictions on construction during the war period, from a rapid increase in marriages, and the fact that reconversion not yet has reached the state at which houses can be produced in volume. Then there is, as always, the group of individuals with very low income whose housing conditions could be greatly improved. Yet it is difficult for many of us to see anything in the so-called housing problem which cannot be cared for by private enterprise and private production.[1]

The senators were assured that "the quickest and most economical way to meet housing needs is to leave private enterprise free to build for the demand whenever it may appear." The construction of new houses would result in vacancies in less expensive quarters which, in turn, would become available for occupancy by another group "and thus the process of shifting occupancy extends throughout the income scale" until "only the poorest housing remains unoccupied." Pointing out that the home-building industry is comprised of "hundreds of thousands of contractors, builders, suppliers, professional firms, and lending institutions", Mr. Meredith suggested that "the Federal Government can play its most effective role by encouraging and clearing the way for this decentralized industry and community action." In his opinion, "the basic obstacle to an over-all treatment of housing" lay in this decentralized character of the construction industry. "The great hurdle in the path of speedy correction of housing shortages", was in "inflated construction costs and abnormal real estate values." Part and parcel of this problem of inflated costs is the interest rate. "It is imperative that the net return on mortgage loans must be attractive to investors in order to induce them to make loans", Mr. Meredith insisted, at the same time pointing out that prospective mortgagors are in constant competition with other borrowers. "There is little reason to save when interest rates are extremely low," he remarked. An increase in the rate of interest would not only encourage saving but would also check the inflationary boom in real estate. Money which is now seeking investment in mortgages would be drawn toward Government bonds."[2]

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[1] Hearings before the Committee on Banking and Currency. United States Senate. 79th Congress, 1st Session on S. 1592 - A Bill to Establish a National Housing Policy and Provide for Its Execution, Part 1 (Revised). p. 465-473.

[2] Hearings before the Committee on Banking and Currency United States Senate. Seventy-Ninth Congress. First Session on S. 1592, Part 1, pp. 465-473. Mr. Meredith did not explain how increasing such an important part of housing costs as interest rates would aid in correcting housing shortages attributable to excessive costs. "You all know that the interest factor is the biggest single factor over a long period of years in the ultimate rents to be charged for any type of buildings that are

B. Mortgage Bankers Association of America

Earlier in the afternoon on which the Chamber of Commerce made its views known, the Senate Committee heard L. E. Mahan of the Mortgage Bankers Association of America declare: "there is a serious housing shortage throughout the entire nation and mortgage funds are required for industrial and commercial expansion." Months before V-J day, the Association had submitted a statement to the Subcommittee on Housing and Urban Redevelopment calling attention to the acute housing shortage and urging "that present controls be continued until such time as there may be a normal flow of materials and available labor." Reference was made to figures which show that "almost 64 percent of the builders in 72 cities constructed only one house a year" and the suggestion made that "the one or two house a year builder should be discouraged in the building of average homes." If low-priced housing were to be made available, it would have to be produced on a wholesale basis rather than by means of small-scale retail operations as heretofore. Rental housing in particular was needed. The period of speculative apartment building during the boom following World War I had brought "financial ruin to a large number of investors in real estate mortgage bonds." However, we now have the Securities & Exchange Commission to protect the public on investments in issues having nation-wide distribution. Because of their cost, the SEC controls are applicable chiefly to issues in excess of $1 million. The mortgage bankers urged therefore that the Securities & Exchange Act of 1934 be amended to make it "applicable to urban rehabilitation and at the same time, to encourage proper controls over the distribution of real-estate securities so that the investing public may be protected against the unscrupulous promoters." The loss to investors in the apartment houses built during the boom in the twenties was attributed to "competitive lending based on overzealous appraising." While adhering to the principle that "private enterprise and local communities should be responsible for the development of housing needs, the mortgage bankers insisted that the Federal Government has "a clear responsibility to help private enterprise and local communities to do the job." The Federal Housing Administration came in for special commendation as "an aid to the mortgage lending field." The appreciation of the institutional investors of the "advantage of lending funds with FHA insurance" was admittedly influenced by the fact that the majority of the members of the Mortgage Bankers Association recall the conditions prevailing immediately after World War I.[1] Mr. Mahan, during his appearance before the Senate Committee on Banking and Currency on December 5, 1945, estimated that the membership of the Association, consisting of life insurance companies, commercial banks and trust companies, title companies, and mortgage loan correspondents, represented "something in excess of 70 percent of the available mortgage-lending funds of the country" excluding investment funds in the hands of individuals. The mortgage bankers, he said, "commend and are in sympathy with the policies set forth in the preamble" of the Wagner-Ellender-Taft Bill. In their opinion, "any legislation designed to assist the housing program should

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undertaken in a large-scale project, whether it is residential, commercial or industrial," Ira S. Robbins, Acting State Commissioner of Housing for New York told the National Conference on Postwar Housing on March 8, 1944. "The rate of interest over a period of twenty, thirty, forty or fifty years", Mr. Robbins pointed out, "is going to outweigh and be more important than the land cost, the labor cost or the materials cost."

[1] Hearings, Subcommittee on Housing and Urban Redevelopment. Part 12, January 17, 1945, p. 1847-1849.

give encouragement to all the important lending groups which include the life insurance companies, the mutual savings banks, commercial banks and trust companies."[1]

C. Life Insurance Association of America

The first-named of these lending groups, the life insurance companies, already held over 18 percent of the country's nonfarm mortgage debt, the spokesman for the Life Insurance Association of America subsequently told the Senate Committee. During his appearance before the Committee on December 17, 1945 on behalf of the Association, Lewis W. Douglas, president of the Mutual Life Insurance Company, disclosed that "approximately one-third of all the FHA mortgages insured under title II, section 203 of the FHA Act" were in the investment portfolios of the life insurance companies at the end of the preceding year. With an investment of more than $5 billion, or about 14 percent of their funds, in nonfarm mortgages, the insurance companies could not but be concerned at "the decline in the rate of interest, continuous and steady, and the precipitate fall in the rate during the last 14 years." In pleading their case for higher interest rates, Mr. Douglas went into some detail to show how much a 1 percent increase in the rate of interest would mean to them. "Housing, if undertaken in an appropriate economic environment and under a legislative mantle of encouragement," he declared, "can be the same sort of prop to the economic life of the American people, and can play the same role during the next decade, perhaps even during the next quarter of a century that the construction of the railroads across the continent, the development of the automobile industry, and the expansion of the public utilities in the twenties, have played in the past."[2]

D. United States Savings and Loan League

Two of the aforementioned lending groups, the mutual savings banks and the commercial banks, at the close of 1944 held, respectively, slightly less than 14 percent of the country's total urban and farm mortgage debt of $31.7 billion. They were exceeded in importance as sources of mortgage funds only by the life insurance companies and the savings and loan associations, the latter holding slightly more than 14 percent of the total.[3] These associations, organized into the United States Savings and Loan League, specialize in loans to individuals for purposes of home ownership. In a statement prepared for the Senate Banking and Currency Committee, Morton Bodfish, Executive Secretary of the League, indicated that the 3,653 member institutions provide credit for "between 35 and 40 percent of the home purchases and home building in the country." Like the spokesmen for the Chamber of Commerce, mortgage bankers and life insurance companies, Mr. Bodfish called attention to the "acute housing shortage . . . in every city and town in the Nation." He attributed this shortage to the "migration from rural to urban areas, increases in the number of family units, and the elimination of small contractors and house building in any volume due to the necessary control and diversion of men and materials for war purposes." On behalf of the members of his organization, Mr. Bodfish urged that every possible

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[1] Hearings, Part I, pp. 393-5.

[2] Hearings, Part II, pp. 905-14.

[3] Ibid., p. 844.

step be taken to (1) reestablish home builders, (2) "persuade several hundreds of thousands of men to seek employment in the construction industry," and (3) "break the existing bottlenecks in the production of brick, lumber, plumbing, roofing, and all the other materials that are essential for home construction." Proposals to extend the period of mortgage amortization to 32 years were deemed ill-advised while suggestions for "new types of FHA apartment house or project mortgages" were opposed as giving "undue encouragement and Government sponsorship in apartment building." In the opinion of the members of the United States Savings and Loan League, "the Government can and should retire entirely from the mortgage business." Slum clearance, on the other hand, they regard as "an appropriate field for public action and public expenditure." It was suggested in this connection that the Government could be most helpful in the acquisition of high-priced slum land, which should be "written down to a reasonable use value" and then made available for its "highest and best use, public or private."[1]

E. National Association of Real Estate Boards

"One of the difficulties of building on land in slum areas under private capital is the high cost of land assembly", the spokesman for the National Association of Real Estate Boards testified. For this reason, the Association urged federal financial assistance for land assembly, but in "lump sum grants on a 50-50 matching basis." Appearing before the Senate Committee on behalf of this organization of more than 700 local real estate boards, Newton C. Farr, a director of the National Association of Real Estate Boards, declared the nation was facing "the most critical housing shortage" in its history. He told the Committee that "every element necessary for opening up a truly big-scale home-building program to meet the extraordinary need is present and available except abundant materials and labor". This deficiency called for "coordinated action that can be given only by the Federal Government." The government could best help, it was suggested, by stimulating the production of materials, curtailing public works so that more materials could be channeled into housing, settling labor disputes, assisting in the recruiting of man-power, and encouraging cities to "put their building codes and zoning requirements on a reasonable basis." The National Association of Real Estate Boards, like the United States Savings and Loan League, opposed the housing bill's yield insurance provisions which were intended to encourage the flow of funds into rental housing by guaranteeing a minimum return on such investments. In summing up the position of his organization toward the housing problem, Mr. Farr repeated that "the country desperately needs immediate construction of dwellings, and every possible effort and coordination should be made by the Government to speed production of houses."[2]

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[1] Ibid., p. 844.

H. R. 2025, introduced on Feb. 18, 1947 by Representative Crawford of Michigan at the request of the National Home and Property Owners Foundation would make FHA insured loans available to local redevelopment agencies for the purpose of assembling and clearing slum sites to be sold at their use value to private developers. In contrast to the procedure followed by the Public Housing Authorities, where a slum dwelling must be eliminated for each new dwelling supplied the Crawford Bill would make federal aid available only on condition that displaced families be accomodated "in existing housing or temporary housing."

[2] Hearings, Part I, pp. 480-2; pp. 435-436.

F. Producers Council, Inc.

The next day the Senate Committee heard the spokesman for the Producers Council declare "there is large pent-up demand for housing and no additional financial incentives are required to get home building extensively underway."[1] Earlier in the year, the president of this national organization of building materials and equipment manufacturers had appeared before the Senate Subcommittee on Housing and Urban Redevelopment to make the following statement:

> Under favorable conditions, it is the belief of the council that as many as 950,000 to 1,000,000 new nonfarm dwelling units can be built annually, on the average, during the 5-year period starting 12 months after the end of the war. If that goal is attained, we will have built 500,000 more units than ever were built in any past 5-year period. Yet only part of the total need will have been met, since by the end of 1952 we will have needed approximately 10,000,000 new dwelling units to house families which had no home of their own before the war, new families formed since the war began, and families residing in obsolete and substandard dwellings.[2]

Moreover, "the need is vast." If it is to be filled, "both private business and Government must do a better job of planning than either has done at any time in the past."[3] In the opinion of the manufacturers of building materials and equipment, the principal limiting factor in the construction of new dwelling units within the next year and a half or two years would be "the facilities of the home building industry."[4] Its best record had been in 1925 when 937,000 houses were constructed. Thirteen years later, the Bureau of Labor Statistics, in a survey of the builders of one-family houses in 72 cities, discovered that 64 percent of all such builders had constructed only one house each during the year 1938, while only 6 percent had erected as many as ten.[5]

G. National Retail Lumber Dealers Association

The National Retail Lumber Dealers Association also called attention to the small-scale, decentralized character of the residential construction industry. The

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[1]Hearings, Part II, p. 564.

[2]Hearings Subcommittee on Housing and Urban Redevelopment, Part 14, p. 1987.

[3]Ibid., p. 1987.

[4]Hearings before Committee on Banking and Currency, U.S. Senate 79th Congress, 1st Session on S. 1592, Part II, p. 564.

[5]Builders of 1-Family Houses in 72 Cities, from the Monthly Labor Review, Sept. 1940, Serial 1151.

president of the Association, S. L. Forrest, observed that more than half of the population of the country lives in towns of 10,000 or less where "there are rarely any operative builders." He indicated that in such localities houses are "most frequently built by carpenter-contractors who are usually financed by the lumber yard, or by lumber dealers who have actually entered the homebuilding business, and in both instances the lumber dealer is most frequently the one who makes the sale, arranges the financing, provides the plans and specifies the materials used."[1] The importance of lumber dealers in this connection was apparent from prewar estimates that they "have been responsible for as high as 70 percent of the homes built annually in the United States."[2] The "free-enterprise" system has made the United States "the best housed Nation in the World," and this without direct government aid, Mr. Forrest declared. The lumber dealer could see no need for such a housing program as provided in the Wagner-Ellender-Taft bill. A tax reduction program, accompanied by restrictive labor legislation and the removal of war-time controls would encourage "free-enterprise" to get on with the job of housing the nation. Contrariwise, "every proposal which indicates a retention of wartime controls, an extension of material allocation into the peacetime period, a disruption of the normal channels of distribution, and a realignment of supply without a consideration for economic demand, acts as a brake upon the normal processes of industry, upon the normal investment of time and money, and upon the hope of the individual citizen for the future prosperity of the country." In fact, OPA was "one of the largest single factors in holding back production in the building field," Mr. Forrest charged, and concluded his testimony as follows: "Our industry implores you to take the necessary action to stop their retarding of production."[3] Earlier in the year, the Secretary-Manager of the National Retail Lumber Dealers Association had assured the Senate Sub-Committee on Housing and Urban Redevelopment:

> The home building industry is ready to go; there is money available; there is a tremendous need as well as a tremendous desire on the part of the American people for new homes, for the right to modernize, and to proceed with a great volume of deferred civilian maintenance and repair.
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> All that is required is the revocation of the construction limitation orders of the War Production Board and assurance that the manufacturers of building materials and equipment are free from wartime restrictions in order that they may produce.[4]

H. National Association of Home Builders

This view was shared by the National Association of Home Builders, an organization claiming active membership of more than 8,000 individual home builders

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[1] Hearings before Committee on Banking and Currency, U.S. Senate 79th Congress, 1st Session on S. 1592, Part II, p. 779.

[2] Ibid.

[3] Ibid., p. 787.

[4] Hearings, Subcommittee on Housing and Urban Redevelopment, Part 14, Feb. 6, 1945, p. 2002. Statement of H. R. Northrup.

throughout the country. Joseph E. Merrion, president of the Association appeared before the Senate Subcommittee on Housing and Urban Redevelopment on February 7, 1945 and urged that the War Production Board's Materials Limitation Order L-41 be lifted "to permit civilian housing as soon as direct war needs for materials and manpower permit--thus relieving the housing shortage, supplying employment and securing the momentum necessary to quickly meet the full post-war housing assignment."[1] The factors affecting the housing market and the Association's estimates of postwar housing needs were reported by Mr. Merrion as follows:

> Due to the dearth of building during much of the depression, followed closely by the cessation of civilian building in 1941, there has developed in this country an unprecedented need for housing. Savings in unheard-of volume await an outlet. The G.I. bill of rights has made it possible for millions of our returning soldiers to finance the purchase of a home. We, therefore, agree that 1,000,000 or perhaps a larger number of houses per year are urgently needed in the first few post-war years.[2]

The production of such an unprecedented volume of new housing, he told the Committee, could be accelerated "by lowering site assembly costs, by lowering the cost of materials, by research, by constantly improved design, by closer cooperation with labor, the modernization of building codes, through more improved financing procedures, and by better planned subdivisions and communities."[3] Mr. Merrion credited the industry he represented with having done "a better job of housing than has been done in any other country of the world." The responsibilities of the housing industry in the postwar period would be greater than ever before. The Government should not interfere in such matters as slum clearance, he said. That was a job for private industry. There were other aspects of the housing problem where government intervention was really needed. If the industry is to meet the demands of the postwar period and supply "an immeasurably greater quantity of housing for all income groups" than in the past, the FHA will have to "blaze new trails in the field of mortgage insurance." In the opinion of the members of the National Association of Home Builders, "longer amortization, smaller equity risk in the lower priced bracket are needed if we are to penetrate further the area of low-income groups." Although convinced that "it is ridiculous to construct new housing for the very lowest income group", the spokesman for the home builders promised that his organization would recommend legislation "which will permit private enterprise to gradually supply the low-cost housing need"[4]

I. The Bankers

Responsive to industry's wishes in the matter, Reconversion Director John W. Snyder announced the removal of restrictions on home building and other construction.

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[1] Hearings before the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-War Economic Policy and Planning, United States Senate. Seventy-Ninth Congress. First Session. Pursuant to S. Res. 33, Part. 15, p. 2076.

[2] Ibid., p. 2078.

[3] Ibid., p. 2076.

[4] Ibid., p. 2085.

As of October 15, 1945, WPB Order L-41 which restricted residential building to quotas established by the National Housing Agency was revoked and priorities for materials and sales price ceilings abolished. With these war-time controls out of the way, those wanting houses and able to obtain the money to pay for them would be free to make necessary arrangements with local contractors, who, in turn, would order building materials and negotiate in the customary manner with the various subcontractors for the roofing, plumbing, plastering, masonry and other work that goes into making the modern house. Less than two months after the allocation of materials was discontinued, a Washington banker appeared before the Senate Committee on Banking and Currency on behalf of the American Bankers Association and the National Association of Mutual Savings Banks and made the following statement:

> It is commonly reported throughout the country that it is now more difficult to secure materials for residential construction than it was prior to the lifting of Limitation Order L-41 of the War Production Board. The major portion of building materials in many communities appears to have been diverted into the construction, repair, and improvement of business and industrial properties within the past few weeks. The residential construction industry seems to be standing begging for what is left.[1]

It was pointed out that building materials and skilled labor were the only essentials to homebuilding in short supply. "We recognize that we are in a major housing crisis and one which may not yet have reached its peak," the bankers warned. In their opinion "the widespread increase in individual and family incomes, the increase in the number of families in our country, and the prospective increase arising from the return of men of marriageable age from the services are the determining elements in creating this crisis." They found it comparable with the housing emergency that followed World War I, with many of its elements greatly magnified, because of the longer period during which home building was suspended.[2]

J. The Building Construction Employers Association of Chicago

The Building Construction Employers Association of Chicago also saw a similarity between the housing emergency following World War I and the present crisis. "Those anxious to bolster their material belongings, or desirous of becoming suddenly wealthy," its publication "Construction" charged, "cling to the opinion that an immediate release of construction controls is urgent, i.e., building construction costs, building material prices and rents." The removal of controls, it warned, would confront the construction industry with the danger of another inflationary boom

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[1] Hearings before the Committee on Banking and Currency United States Senate. First Session (79th Congress) on S. 1592, Part 1 (Revised), p. 367. Statement of F. G. Addison, Jr., Pres. Security Savings and Commercial Bank. Dec. 5, 1945.

[2] Ibid., p. 366.

and collapse. In support of this position, the following argument was advanced:

> During the first World War with no price controls governing the cost of lumber, soil pipe, brick and other building essentials trebled. If price controls are abolished, is there any limit to the atomic height to which building materials prices will ascend? The answer is "No", if we base our judgment on what happened after the first World War.
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> The same is to be said for rent controls. Let us not overlook the fact that 90 percent of the entire increase in rents happened not during the war, but after the war. With our housing shortage definitely larger, could we expect any easements from the landlords?[1]

Recalling the economic distress visited upon many of those who purchased or built houses at inflated values after World War I, "Construction" warned of the danger of a recurrence that would exceed the approximately "1,600,000 families losing their homes by foreclosures between 1926 and 1936." While the maintenance of controls might afford veterans and other homeseekers some protection against such inflation, additional measures were necessary if their housing needs were to be filled. In the words of the editors of "Construction": "To meet the requirements of veterans and non-veterans, changes are in order in the National Housing Act of 1934 for lower interest rates on guaranteed loans, and an extension of the period of loan amortization."[2]

K. The Architects

Meanwhile, the Government decided to restore priorities. In commenting on this "complete reversal of Washington's earlier let-Building- have its-head point of view," The Architectural Forum reported that "even the most embattled sectors of the housebuilding industry, who had fought tooth and nail for removal of all controls, now welcomed a return to priorities. Reason: fixing and building stores, bars, factories was stealing the lean materials supply."[3] Several months later, the editors of this publication made the following observations:

> Despite the fact that everyone in the industry yearns for the day when controls will go off, at the moment that is merely an unpious hope. Actually, the removal of controls would produce in much exaggerated form the same result that followed the premature lifting of L-41. First viewed as a bonanza, that hasty action is now generally seen as a complete bust. What would happen if controls were completely removed now need not be left to conjecture. Out of the resulting chaos would come even more stringent regulations by government and a better than even chance that a major share of the housing would be assumed by

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[1] The Editor's Corner in "Construction." Published by the Building Construction Employers Association of Chicago, Inc., Feb. 1946.

[2] Ibid.

[3] 84 Architectural Forum, January, 1946 at pp. 5-6.

government, in unhappy contrast to the Wyatt program which places 90 percent of the goal in the hands of private enterprise."[1]

The American Institute of Architects had been one of the first organizations to respond to Senator Taft's request for information on postwar housing and urban development. "In general", its letter read, "all those interested in residential construction seem to want to do it in their own way, without interference or direction, but with federal cash on the barrel head." The architects urged that Congress let it be known that "the principal burden must be borne by private enterprise, which must approach the problem realistically, without the expectation that public funds will 'bail out' all broken-down real estate, or subsidize an assured profit for every operator."[2]

L. Summary

In general, it was agreed that the need for housing was critical, but there were differences of opinion as to the number and kind of dwelling units required to satisfy that need. There was agreement that private enterprise should do the job, but differences of opinion as to what incentives would be required to stimulate the construction of the kind of additions to the nation's housing supply that those needing them could afford. There was fairly general agreement that costs had been the principal obstacle in the way of a larger volume of housing in the past but no one knew what to do about it. The pressure of builders and realtors for governmental aid in reducing housing costs by means of lower interest rates was countered by that of banking, insurance and mortgage groups seeking higher interest rates. The yield insurance scheme that the producers Council wanted substituted for FHA mortgage insurance on rental housing, might have encouraged the flow of insurance funds into rental housing. But the National Association of Real Estate Boards didn't like the idea of having the government guarantee a minimum return on investments in rental housing. Furthermore, the United States Savings and Loan League has been adamant in its opposition to "undue encouragement and Government sponsorship in apartment building." The National Association of Home Builders sought, and the Wagner-Ellender-Taft Bill would have provided, "longer amortization, smaller equity risk in the lower-priced bracket" to enable the builders to "penetrate further the area of low-income groups." But, the United States Savings and Loan League, specializing in loans to individuals for purposes of home ownership, opposes such measures as ill-advised. The realtors suggest as a means of expanding the facilities of the house-building industry that every possible step be taken to re-establish the small contractors who were eliminated during the war, but the mortgage bankers insist that low-priced housing cannot be produced by such small scale operators. The possibility that governmental efforts to cope with the housing problem might bring about an "over-expansion of house-building capacity" appears also to have been a cause of some concern. The Architectural Forum, in its June 1946 number, quotes Carl Distlehorst, manager of the American Savings and Loan Institute as saying: "Three million

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[1] 84 Architectural Forum, April, 1946 at p. 93.

[2] Hearings before the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-war Economic Policy and Planning. United States Senate Seventy-Ninth Congress First Session Pursuant to S. Res. 33, Part 15 Housing and Urban Redevelopment, Letter of August 31, 1944 to Senator Robert A. Taft from the American Institute of Architects, D. E. Este Fisher, Jr. Washington Representative, pp. 2152-2158.

houses in two years means developing a productive plant greater than ordinary needs. You can't deflate this capacity with the same ease that you can spend it. It is conceivable that an over-expanded housebuilding industry could start a flash postwar depression."[1]

There are still other differences of opinion among the groups interested in residential construction. Some wanted wartime controls continued, but they appear to have been outnumbered by those who wanted them removed. On one matter, however, there was much more agreement; that is, with respect to public-housing, so-called. Public hearings on housing had served to focus attention on the conflicting interests of those on whom the country depends for housing. At a meeting of the Mortgage Bankers Association, the Chairman of the Advisory Board of the Producers Council characterized the provisions of the Wagner-Ellender-Taft Bill as a trick to "get us all fighting among ourselves while a true socialized program goes through."[2] While the principal provisions of the bill were opposed by one or more of the business groups interested in housing, the public housing features were opposed by most industry spokesmen. These would have authorized the "continuance of the public low-rent housing program under the United States Housing Act of 1937 to permit local housing authorities to undertake 125,000 units of public low-rent housing a year for a 4-year period, or 500,000 units" out of a total of 12,600,000 new homes which the bill aimed at achieving during the next ten years. As has already been pointed out, the only point at which private enterprise does not operate in public housing is in the supplying of the accommodations to the tenant. In fact, it was the inability of private enterprise to supply anything but dilapidated structures for the lowest income groups that caused the government to respond with public housing to the plea of peace officers and mayors for aid in alleviating the burden caused by the slums.

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[1] 84 Architectural Forum, June 1946, p. 32.

[2] N. Y. Times, April 30, 1946, p. 16, col. 5.

III. Governmental Intervention

Despite its reluctance to encroach upon what it concedes to be "the proper functions of State or local government or of private enterprise", the federal government was forced by the inaction of state and local governmental agencies to intervene in housing, one of the most obvious of local problems. At the close of the war, the Subcommittee on Housing and Urban Redevelopment, through its chairman, Senator Robert A. Taft, declared that "from the social point of view, a supply of good housing, sufficient to meet the needs of all families, is essential to a sound and stable democracy."[1] Attention was directed to the following basic facts summarized in the Subcommittee's report from the Housing Census of 1940:

> Of the 27,000,000 nonfarm dwelling units reported, nearly 4,000,000 need major repairs and over 6,500,000 more lack running water or private indoor sanitary and bathing facilities. On farms, conditions are relatively much worse. Of the 7,600,000 farm dwellings, nearly 2,500,000 need major repairs, and over 3,700,000 more lack any sort of indoor water supply.[2]
>
> During the last 15 years there has been an insufficient addition to the housing supply, although there has been a steady increase in the total population of the country and in the number of families. To provide for the net increase in the number of families during the next decade and to permit the elimination of present overcrowding, it is estimated that probably as many as 6,000,000 new dwellings would be required. It is further estimated that during the same period an equivalent number of existing dwellings should be replaced if a measurable improvement in our housing standards is to be accomplished. The total would average 1,200,000 dwellings a year.

This goal would not be easy to reach. "With a better balance between housing cost and family income, it would be easier to market a satisfactory volume of housing through the normal channels of private enterprise. But the evidence indicates that for a substantial portion of our population, this balance does not

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[1]Report to the Special Committee on Postwar Economic Policy and Planning by the Subcommittee on Housing and Urban Redevelopment pursuant to S. Res. 33 Postwar Housing, Aug. 1, 1945, pp. 2-4.

[2]"Although some improvement has been made in the facilities and condition of the existing supply of housing compared to 1940, there are still three million nonfarm units which need major repairs, and 5.8 million (substandard units) which were not in need of major repairs but lacked essential plumbing equipment, such as 1.2 million which lacked a private bath; 2.3 million which lacked a private flush toilet, and 2.3 million which did not have running water in the unit." National Housing Agency Press Release, June 11, 1946. See Appendix for data from 1940 Census.

exist."[1] Although convinced that the solution of the housing problem was dependent upon the maintenance of "a high level of income" together with "a reduction in the cost of housing" the Taft Subcommittee concluded: "With the best that may be accomplished, however, we shall for the present continue to face a condition in which the relationship between the cost and income will, in all probability hamper the construction and sale, or rent, of a sufficient number of houses to meet the potential demand. Government policy consequently must be developed in the light of this circumstance."[2]

Through limitation of nonresidential construction, allocation of materials, price adjustments and, after May 22 when the Veterans' Emergency Housing Bill became law, through subsidies as well, the federal government attempted to clear the way for the construction of houses which were in such great demand. The trade publication, BUSINESS WEEK, reported in its issue of July 27 that the housing program had gained enough momentum so that "the death or debility of price control won't cut it down--not so far as getting houses built is concerned." However, since "houses are already priced above what most surveys indicated the bulk of veterans can pay, a further rise will put them well out of reach" of those for whom they were built. In other words, "what the tilting of the price lid will do is to put the houses in the hands of a different group of buyers--a higher income group." Moreover:

> Even though production of materials should rise faster in a free market than under controls, it's doubtful that housing would get much of the benefit. Without ceilings, builders of commercial and industrial properties are free to bid up prices to levels that house-builders can't match. The house-builder's priority only gives him the right to meet the other fellow's price.[3]

As everyone knows, the price lid was tilted and we are only beginning to pay for such recklessness.

The Veteran's Emergency Housing Program embodied in H. R. 4741 had never been intended to stand alone. The Senate Committee on Banking and Currency felt called upon to point out "precisely and unequivocally how the bill now being reported (S. 1592) is equally indispensable to its achievement." In reporting the Wagner-Ellender-Taft Bill, the Committee quoted from the April 5 report of the committee on H. R. 4761 as follows:

> The bill (H. R. 4761) provides for the minimum indispensable first things which must be done to solve the critical problem of hous-

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[1]Report to the Special Committee on Postwar Economic Policy and Planning by the Subcommittee on Housing and Urban Redevelopment pursuant to S. Res. 33 Postwar Housing, Aug. 1, 1945, p. 4.

[2]Report to the Special Committee on Postwar Economic Policy and Planning by the Subcommittee on Housing and Urban Redevelopment pursuant to S. Res. 33 Postwar Housing, Aug. 1, 1945, p. 5

[3]Business Week, July 27, 1946, pp. 15-16.

> ing for veterans of World War II. These indispensable first things to be done consist primarily in expediting the production of building materials and of completed houses, both now suffering from a low rate of productivity as an aftermath of the war. This expedition is the first task.* * * The committee believes that additional legislation will be concurrently necessary to make it feasible that, when house production is expedited, the increased product is trained specifically upon the needs of the vast majority of veterans who are in the moderate-income groups or who are of low income * * * The additional legislation for that purpose (S. 1592) is being reported unanimously to the Senate by the committee. Speedy passage of both measures is equally essential to meet the veterans' housing needs * * *[1]

The Wagner-Ellender-Taft Bill, after passing the Senate by an overwhelming majority, died in the House, apparently defeated by the very business groups it had been intended to benefit. The American Builder, lauded the "real estate lobby" for its "patriotic service" in this connection.[2] But the real estate interests had not been alone in their opposition to the bill. Both the Chamber of Commerce and the National Association of Home Builders were among the business groups campaigning against this omnibus housing bill which represented an attempt to enact into law various measures sought by spokesmen for business enterprise over a period of years.

The long-range housing program embodied in the Wagner-Ellender-Taft Bill was the outgrowth of extensive study of the housing problem by the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Postwar Economic Policy and Planning of the United States Senate. From the very beginning of its inquiry in mid-1944, the committee had been solicitous of business interests. The detailed written questionnaires forwarded to "every type of major organization throughout the country concerned with housing from the financing, construction, management, or consumer viewpoint" were followed by extensive hearings after which the Subcommittee on August 1, 1945 submitted its unanimous report setting forth the recommendations that became the basis of the Wagner-Ellender-Taft Bill. Several weeks before the bill was introduced, the Senate Committee on Banking and Currency received a draft bill from a number of interested business groups and "in substance incorporated many of their proposals."[3] Spokesmen for business groups interested in financing, building,

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[1]Report No. 1131. 79th Congress, 2d Session. U.S. Senate. General Housing Act of 1946, p. 7. [To accompany S. 1592.]

[2]The American Builder, September 1946, p. 11: "The 'real estate lobby' has rendered a patriotic service the effectiveness of which is perhaps best illustrated by the Apparent death of the Wagner-Ellender-Taft Bill.

[3]Report No. 1131. 79th Congress, 2d Session. U.S. Senate. General Housing Act of 1946, p. 11. [To accompany S. 1592.]

or management of houses had long urged modification in both the Home Loan Bank System and the operations of the Federal Housing Administration, and pleaded for additional assistance from the government in the form of housing research and local studies as well as aid in assembling land for urban redevelopment. The housing bill embodied these proposals and other inducements as a means of removing the "obstacles which have prevented private enterprise from sustaining a sufficiently large volume of home building in the past." The report accompanying the bill indicated, however, that "the main obstacle has been that the cost of the housing has been too high for a large proportion of the people who have needed housing."[1]

The principal housing agencies, it will be remembered, were created by Congress during the depression of the early thirties. The Emergency Relief and Construction Act of 1932 authorized the Reconstruction Finance Corporation to make loans to private limited dividend companies under state or local regulation. The only result was that a slum was cleared to make way for Knickerbocker Village, a housing project for white-collar workers near New York's financial center. Under the National Industrial Recovery Act of 1933, the Public Works Administration make loans for seven limited dividend projects. Subsequently, under the National Industrial Recovery Act and the Emergency Relief Act of 1933, the Public Works Administration "launched the first Federally-financed public housing as part of the depression-born work recovery program." All told, "the PWA built 50 projects, with 21,612 units, in 37 cities, at a cost of $127,000,000." The United States Housing Act of 1937, while recognizing the responsibility of the government to remedy the unsafe and unsanitary housing conditions, limited the role of the Federal Government to financial and technical assistance. Twenty-nine states had already passed laws authorizing communities to form local housing authorities with the powers needed to meet requirements for federal housing aids. By 1945, such legislation had been enacted by 40 states. By the time the war interrupted the construction of low-rent housing under the United States housing Act, local housing authorities in 173 communities had constructed 334 projects containing 105,600 units for low-income families formerly living in slum dwellings, at a cost of $483,468,000.[2] Compared with the need, it was only a drop in the bucket. In opposing an extension of the government's activities along these lines, Morton Bodfish, of the United States Savings & Loan League, pointed out that "if we built Government homes for everybody that lives in the city who is now a tenant and has an income of less than $1,000, it would involve 8,000,000 families."[3]

Whether the need was for 8 million dwelling units, or 11 million as was suggested earlier in the Hearings before the Subcommittee on Housing and Urban Redevelopment, no one suggested that "the Government should attempt to provide for all

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[1] Ibid., p. 7.

[2] Public Housing. The Work of the Public Housing Authority National Housing Agency Federal Public Housing Authority, March 1946, pp. 27-32.

[3] Hearings before the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-War Economic Policy and Planning. United States Senate. 79th Congress, 1st Session. Pursuant to S. Res. 33 (Extending S. Res. 102, 78th Cong.), Part 15. Housing and Urban Redevelopment, Feb. 7, 1945, p. 2063.

families now living in substandard shelter." It was assumed that most of the low-income families could be taken care of in old houses once the post-war construction boom got under way. Senator Taft's report restated the principle that "public housing is only justified as long as private industry is not able to provide for the lower-income families". The record was clear, however, that "unaided private initiative has not provided a sufficient supply of decent houses in the past." The proposal of the National Association of Real Estate Boards that rent certificates be substituted for the so-called public housing activities of the Government was rejected for the following reasons:[1]

1) "The number of families entitled to rent certificates upon any such basis would be infinitely larger than those requiring other relief."

2) "It is not at all certain that such a plan would bring about improvement in the bad housing accommodations that now exist. In fact, the scheme might work to maintain the profitability of slum areas and, consequently, to retard their elimination."

3) "It would certainly require a detailed regulation of private rental quarters both as to condition and rent."

The National Association of Real Estate Boards has waged a vigorous fight against public low-rent housing, even though it has been unable to provide anything but slum dwellings for the income groups eligible for such housing. While waging a bitter fight against this form of housing built by private contractors with the aid of private realtors and appraisers, from materials obtained in the normal channels of trade, this association of 721 local real estate boards composed of 25,000 real estate firms engaged in "building, management, financing, appraising and brokerage of houses and other forms of real estate" appear to have overlooked developments that menace their very existence.

Charles Abrams in "The Future of Housing" cites the following example of a form of subsidized private housing with which the small realtor at least could never compete:

Failure to see the relative difference between the write-down of land cost and the grant of tax exemption has been responsible in New York City for the Stuyvesant Town grant--a gift to private enterprise that makes the worst of our municipal dissipations look like a hand-out--the moral difference is, of course, that Stuyvesant Town was accomplished with taxpayers' approval. The figures tell the story. The cost of the assembled land is estimated at about $14,000,000. The city gave the Metropolitan Life Insurance Company tax exemption amounting to about $25,000,000. If the city had bought the Stuyvesant Town site at $14,000,000 and handed it as a gift to

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[1]Report to the Special Committee on Postwar Economic Policy and Planning by the Subcommittee on Housing and Urban Redevelopment pursuant to S. Res. 33. Postwar Housing, Aug. 1, 1945, pp. 6-7.

> Metropolitan, the city would have saved about $11,000,000, not to mention the potential revenues which would have accrued to it when private enterprise in the normal course of events got around to providing dwellings for the higher income tenants displacing the slum dwellers who were crowded into other areas to make room for the new development.[1]

What realtor can hope to compete with the insurance companies with 96 percent of their funds free from tax, not to mention the advantage from supplying their own funds and deducting from their income tax interest paid to themselves.

The idea expressed in the report of the Subcommittee that those whose incomes are too low to make it profitable for private enterprise to supply them with anything but used homes is not a new one. Most of them have never known anything else. In fact, it is because so many of them live under overcrowded conditions in slums that slum properties become so costly as to deter private operators from acquiring and clearing such land for new residential construction.[2] One might think from reading Senator Taft's report that enough of the so-called public housing units would be supplied which when added to the number of good used houses, would take care of the families living in substandard dwellings. But this has not been done. Prior to the outbreak of the recent war, this so-called "filtering down" theory was examined before the Temporary National Economic Committee. It was pointed out that "the rate of hand-me-down during the twenties was about once every eleven years" and that "at that time about 25% of the families, or 6 million of them," could afford the housing then being produced, approximately 700,000 dwelling units a year. For "the new housing being constructed in recent years . . . to be handed down sufficiently quickly to keep up the level of housing for the population as a whole, those now buying new houses would have to do so once every four years." This estimate was based on 1936 figures showing that approximately 85 percent of the homes built were for the 2,900,000 families constituting the upper 10 percent of the income classes.[3]

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[1]Charles Abrams, The Future of Housing (New York: Harper Bros., 1946), pp. 379-80.

[2]"If an effective slum clearance and redevelopment program is to be carried on, one of the outstanding problems to be met is the high cost of land acquisition. A significant factor tending to maintain such costs is the disregard for building, health, and sanitation laws; the combination of over-crowding and low maintenance costs increases profits whose capitalized value gives to the property a value far above what such value would be were there effective law enforcement". University of Chicago Law Review, Vol. 14, Feb. 1947, No. 2 at p. 243 -- "Condemnation of Slum Land--Illegal Use as a Factor Reducing Valuation."

[3]TNEC Hearings, Part II, Construction Industry, p. 5441.

In this connection, the following paragraphs from 85 The Architectural Forum, 6-7 (July, 1946), may be of interest:

"Last month a private enterprise spokesman, appearing before a House committee interested in the President's plan to make the National Housing Agency permanent, put his foot in his mouth in something approaching the 'Let 'em eat cake' classic. When a Representative asked George W. West, chairman of the Chamber of Commerce's construction and development department and president of Atlanta's First Federal Savings & Loan, just what private enterprise proposed as an alternative to public housing aid for lower-income groups, West replied: 'Let the poor people live in poor houses.'

With the relaxation of war-time controls, it became apparent that the industry would operate in the only way it knew and build houses for the well-to-do. If lower-income groups could afford the dwellings vacated by those for whom new housing was supplied, well and good. Otherwise, it was no concern of the building industry. This industry--if scores of thousands of building contractors each operating within a single city and its environs can be called an industry--has never been able to supply houses at prices those needing them most could pay. As industrialization attracted people to the cities, they were provided with housing commensurate with their ability to pay and as the income figures suggest even this late date, it is far from adequate for millions of families. To be sure, a more efficient housing industry might have attained volume production through lower costs, but at best it could not have provided new housing for all those in the lower-income groups. This is not to suggest that the housing problem as we know it today is synonymous with the slum problem with which welfare and other public spirited men and women have been concerned almost since the beginning of modern industrialism. The slum is but one manifestation of a much broader problem that for more than a decade has found expression in a chronic housing shortage.

"The United States has probably never before in history been so far behind in keeping up with the demand for homes", wrote the Executive Director of the Twentieth Century Fund in releasing for publication a study of "American Housing".[1] A quarter of a century earlier another authority on housing had written "it has been estimated that there are two million homes in the United States so bad as to constitute a menace to the health, morals, and citizenship of those whom they purport to shelter, while several million more are below any standard we could possibly accept as normal. . . From 1910 to the beginning of 1917 approximately 400,000 new dwellings were constructed annually in this country. Had the normal building rate been maintained, about 1,200,000 more dwellings would, therefore, been built by the beginning of 1920. The actual number was 228,000."[2] At the same time a member of the New York State Board for the Registration of Architects wrote: "Nowhere in the entire western world are houses being erected in sufficient number. Voluntary committees, official committees, governmental commissions are surveying conditions, reporting, framing legislation. Thus far all this talk about it has not produced homes; we are faced with the stubborn fact that sufficient houses are not being built."[3] In a like vein the Secretary of the Tenement House Committee of the City of New York pointed out: "Within the recollection of men now living there has been no such acute shortage of housing as is now manifested. It has become a world problem. The press of all civilized peoples bears testimony to the fact that people everywhere are unable to find

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"Next day West's remark drew censure on the House Floor, hit the press wires, got a sharp rebuke from Housing Boss Wyatt, who said it typified the blindly selfish opposition of some groups to the W-E-T bill. Red-faced West hastily explained that he had been misunderstood. He was, he said, merely stating a well-known housing fact: when the top of the market moves into new houses, lower-income groups can take advantage of second-hand, but still very usable housing."

[1]Twentieth Century Fund Housing Committee. American Housing. The Twentieth Century Fund, 1944 (New York), p. viii.

[2]Edith Elmer Wood in John J. Murphy. Edith Elmer Wood, Frederick L. Ackerman, The Housing Famine. E. P. Dutton & Co., 1920 (New York), pp. 9, 33.

[3]F. L. Acherman in Ibid., p. 14.

homes in cities. . . . In American cities the hitherto rare phenomenon of two or even three families occupying rooms, formerly the home of a single family, has become frequent, if not common."[1]

Nor was the housing need satisfied by the building boom of the twenties with its record construction averaging more than 700,000 dwelling units a year. During the Hearings on the National Housing Act before the Committee on Banking and Currency of the United States Senate in 1934, representatives of industry called attention to the need. The Chairman of the Housing Committee of the National Association of Real Estate Boards reported that "a large number of buildings in the United States have been used for human habitation that are not fit for the habitation of cattle."[2] A former president of the Association declared "there are 4,000,000 families living in doubled-up quarters."[3] The president of one of the country's largest building material producers, the Johns Mansville Corporation testified: "A very definite need for homes exists that has been variously estimated by reliable sources from 800,000 to 1,500,000 single units. This need has not been apparent as a real demand because of lack of purchasing power, lack of availability of mortgage money, and the doubling up of families."[4] The president of the National Association of Real Estate Boards directed particular attention to the need for homes in the lower-price brackets and urged passage of legislation to accomplish a lowering of interest rates for both home-building and home-repairs to eliminate second mortgages.[5] Still, home-building during the thirties did not keep pace with the net increase in urban families.

Governmental intervention in housing in the early thirties was characterized as follows in the Engineering New-Record of February 24, 1944:

> It is worth noting that the government agencies all aided the mortgages and bankers directly and only indirectly the home owner. The banker was bailed out by HOLC and RFC loans, and it is the banker whose mortgages are guaranteed by FHA. These agencies are functioning because the private financial agencies took no initiative.
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> By using the guaranteed form to encourage loans, the government avoided construction through its own agencies. Full liberty of action was left to architects, engineers, enterprisers and builders to formulate developments, make plans and purchase materials and labor.[6]

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[1]John J. Murphy in Ibid., pp. 3-4.

[2]Statement of Edward A. MacDougall, Chairman, Housing Committee, National Assn. of Real Estate Boards in Hearings before Committee on Banking and Currency, United States Senate, 73d Congress, 2d Session on S. 3603, pp. 396 ff.

[3]Hearings, p. 405.

[4]Statement of Lewis H. Brown, Hearings, pp. 286-94.

[5]Statement of Hugh Potter, Pres. NAREB, in Hearings, pp. 225-37.

[6]Stage Set for a Housing Boom. Engineering News Record at 128-30 (Feb. 24, 1944).

Between the world economic depression of the thirties and the world war of the forties the residential construction industry remained depressed. The savings make possible by lower interest rates and government subsidies had been absorbed by higher construction costs. During the depression period, 1929-1933, building materials prices were prevented from declining to the same extent as the prices of other commodities. With such materials accounting for between one-half and three-fourths of total construction costs, it is not surprising that residential construction was discouraged by the marked increase in building material prices which occurred in 1933. Subsequent price advances in other fields provided a basis for resumption of building activities during the next two years when the cost of construction materials was relatively lower than that of other commodities. However, this stimulus to residential construction disappeared with the disproportionate rise in the price of building materials that occurred during the winter of 1936-37. Not until such prices began declining later in the year did the volume of residential building increase, only to be halted again after a few months as construction costs once more became disproportionately high when building material prices failed to fall as rapidly or to the same extent as other prices from the summer of 1937 to the spring of 1938. As building costs increased the housing market shrunk.

The price policies of the residential construction industry reflect not only the collusive activities of building materials suppliers, but also the wasteful, handicraft methods of thousands of small builders. The building contractor is actually little more than a broker who sublets contracts for masonry, painting, glazing, plastering, paper-hanging, plumbing, heating, electrical and sheet metal work. The builder and his various subcontractors, some of whom supply materials as well as skilled labor, purchase their supplies from other dealers, both wholesale and retail, whose profits and overhead are ultimately reflected in construction costs. "Thus the second largest industry in the country, operating as a large number of picayune businesses, is overloaded with a whole series of overheads and profits, bogged down by waste and inefficiency, unable to benefit by advancing productive techniques developed in other fields, and tied down to an obsolete and expensive system of land utilization."[1] By the time the 30 thousand or more components of the modern house--products of four-score industries--take the form of a finished dwelling, only those in the upper income brackets can afford to pay for it. Public housing programs and such emergency housing programs as that proposed by the National Housing Expediter rely principally on the residential construction industry as presently constituted with all its wasteful handicraft methods, its cumbersome, inefficient distribution system and rigid prices.

In an address before the New York Building Congress on June 21, 1939, Thurman Arnold described the situation in the building industry as follows:

> In building we have a series of restraints, protective tariffs, and aggressive combinations which has practically stopped progress. No one knows how a house ought to be built or what materials are the most economical or how they should be distributed. Because of the existence of aggressive combinations, experimentation in housing has to proceed by compromise with various gangs. Both standardized equipment and experiments with standardized methods of construction are limited in large scale housing projects largely

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[1] A. C. Shire (Technical Editor, The Architectural Forum and Consulting Engineer), "Rationalization of the Home Building Industry", in Harvard City Planning Studies, XII, 1938, "Urban Blight and Slums, Ch. XXIV, p. 331.

> because of these compromises. . . . No one who furnishes any single element which goes into the completed product can greatly raise or lower the cost of the whole product. Neither a single heavy industry, nor the distributors of its products, nor the contractors who install them, nor the labor which works on them, operating alone, can do more by vigorously competing than handicap itself for the advantage of others. Like a number of dogs who have hold of the same piece of meat, none of them dares drop it because he would lose out completely. . . .
>
> The building industries are unique in that they have frankly given up half of their job. They take for granted that it is impossible, as things are today, for them to build houses without public aid and sell them cheaply enough that the lowest paid half of the population can afford to live in them. This has been true for four reasons: that financing costs are high, that taxes were high, that land was high, and that the costs of construction were high. Recently a broad Federal and State program has undertaken to provide adequate cheap credit and even subsidies. But the easing of this difficulty has afforded an opportunity for costs of construction to go still higher."

After a survey undertaken to reveal the "obstacles to industrial progress in house building" and suggest ways in which they might be overcome, the Twentieth Century Fund's Housing Committee concluded that "there is realdoubt that the industry--at this time and under traditional methods of operation--is capable to the same extent" as other industries of "providing for the general need." Although treating the housing problem "as a problem in industrial organization and efficiency," the Twentieth Century Fund's monograph does not suggest that "all the difficulties in providing adequately for the country's shelter needs could be wholly remedied by improved industrial techniques." In fact, it expressly points out that "pursued far enough, housing will be found to touch upon nearly every sore spot in the economic and social structure." Nevertheless, "the thesis is accepted that only by creating an industrial environment conducive alike to volume expansion and cost reduction can an approach to meeting the housing need be accomplished." The development of a housebuilding industry "capable of producing and distributing in sufficiently large quantities and at sufficiently low costs to meet the vast housing need the country faces" is found to be held back by "barriers built up from every side--from our land system, from our methods of taxation, from building organizations, labor, real estate operators, mortgage lenders; and even government itself." As a consequence, the new housing market has been limited largely to the top income groups. "The basic questions that appear again and again through the survey are those of cost and price: production, financing and operating costs, land prices and market values. No matter how much our shortage of adequate housing can be laid to a maldistribution of income in the social structure as a whole, the effect of wastes, inefficiencies and traditionalisms upon the price of housing must be considered to be the heart of the housing problem." Notwithstanding the high income level in the postwar period, "the existing cost of new housing will still be too high to permit a continued large volume of production."[1]

These comments were made at a time when such expressions as "mass production", "rationalization", "standardization" and "efficiency system" had already be-

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[1] The Twentieth Century Fund. Housing Committee. "American Housing Problems and Prospects." (1944) at p. 325.

come by-words. Yet the construction industry, one of the country's largest in terms of the number employed, continued to supply its product in much the same way as always. Whereas the mass production industries with their products priced for volume sales have been prosperous, the construction industry with its custom-made houses has been depressed. As has been pointed out, the industry has not been completely unaware of the fact that it had priced itself out of the market for all but a relatively small portion of the population's housing needs. So many different interests are involved that there simply wasn't very much that any one could do about it. The building contractor's attempt to cope with the problem of costs has been in marked contrast with the procedure followed in the mass production industries. Whereas the latter attain volume sales through lower unit costs, the builder curtails production through offering less house for more money. The construction industry's approach to the cost problem was described by James C. Downs, Jr. of the Real Estate Research Corporation of Chicago during his appearance before a Senate Subcommittee. After pointing out that "throughout the history of our economy the price of houses has steadily gone up", Mr. Downs testified:

> But the thing that we did was, we began to squeeze, and we began to squeeze the house itself. We took out the front parlor, which I had when I was a youngster; we took out the sewing room. We invented the apartment in-a-door bed to accommodate this squeeze that was necessary because there wasn't technological improvement in building. And then we got all through squeezing, when we invented the dinette, which was not in the dictionary in 1900; when we invented the dining alcove to further accommodate, and when we couldn't cope with those high prices, we began to squeeze the capital, because we had squeezed the house down so far that we couldn't squeeze it any more. And with the advent of FHA we began to think of housing not in terms of its gross cost but in terms of monthly payment required for the man to buy that house.[1]

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[1] Hearings before a Subcommittee of the Committee on Banking and Currency United States Senate. 79th Congress, Second Session on H. R. 4761 (1946) at 199.

SUBSIDIES FOR URBAN REDEVELOPMENT

I. Tax Concessions as Incentives.

The chronic shortage of adequate housing for the growing population of our cities has stimulated a variety of proposals for increasing the supply of living accommodations. In one way or another, these proposals call for governmental intervention in the operations of the housing industry, the preferred form being a subsidy to enable private enterprise to construct houses for income groups for which it could not otherwise build at a profit. For more than a decade, the need for more and better housing, rental dwellings in particular, has been widely recognized. That the need for rental housing has not been supplied is due in large part to the speculative nature of that type of enterprise. Entrepreneurs are reluctant to undertake the construction of multi-family dwellings for rental purposes because of the risk that their investment may be reduced in value when future lower construction costs fosters the construction of superior, competitive facilities. The construction and operation of apartment houses involves long-term investment which can be expected to yield a satisfactory return at rents which only a small portion of the nation's families can afford. Not only may a decline in construction costs bring newer and more desirable accommodations into existence to compete for the tenants of older establishments, but moreover, deterioration of the neighborhood, through circumstances outside the owner's control may depreciate the value of the investment. The institutional owners of mortgages on existing apartment houses are unwilling to finance new developments that through increasing the supply of such living accommodations may result in lower rents and hence smaller yields on older investments. Neither lower interest rates nor guaranteed mortgages could blot out the memory of the losses resulting from the speculative building boom of the twenties. It is not enough, business insist, for Government to assume the risks incident to financing; additional incentives must be provided.

Among the proposals that have been favored by business interests as inducements for the construction of additional housing for middle and lower income groups are the following:

1) Governmental acquisition of slum land to be written down in value and made available to private builders.[1]

2) Partial exemption from property taxes on new rental dwellings for periods as long as a quarter of a century.[2]

3) "Authorization for issuance of tax-exempt bonds of private limited-dividend housing corporations."[3]

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[1]Morton Bodfish, Executive Vice President, United States Savings and Loan League testifying before Comm. on Banking and Currency, House of Representatives, 79th Congress, 1st Session on H. R. 4761, Jan. 31, 1946; hearings p. 493; also Newton C. Farr of the Nat'l Assn. of Real Estate Boards, NYT 10/2/46.

[2]This proposal has already been embodied in New York's Redevelopment Statute and is being copied by other states.

[3]Newton C. Farr of the Nat'l Assn. of Real Estate Boards, NYT 10/2/46.

4) Acquisition by the Reconstruction Finance Corporation of "modest amounts" of "preferred stock in newly establishing or existing small building companies, the stock subject to a statutory required retirement, say 20 percent a year, after 3 or 4 years."[1]

5) Direct rent-relief payments for families in income groups eligible for subsidized public housing.[2]

6) Exemption of real estate corporations from the federal income tax.[3]

The principal proposals advanced for altering the federal income tax system to encourage additional investment in rental housing have already been considered.[4] Hence the primary emphasis in this paper is on the use of other tax concessions as incentives to investment in rental housing.

II. Slum Clearance and Urban Redevelopment.

A. Federal Aid

A great deal of pressure has been exerted on behalf of programs for providing cities with sufficient governmental aid to permit the purchase and clearance of slums and other blighted areas with a view to making the cleared land available to private developers at lower prices. This proposal like most proposals for urban redevelopment, is based on the assumption that the high cost of acquiring and clearing land in slum and blighted areas is a deterrent to privately financed residential construction.[5] The acquisition and clearance of such land and its transfer to private enterprise and public agencies for new uses in conformity with some general plan has been recognized as a proper subject for governmental aid in both the Wagner-Ellender-Taft Bill, S. 1592, and its successor, S. 866. Under the urban redevelopment provisions of the latter, the Federal Government would be empowered to assist cities in covering part of the loss involved in acquiring the land and disposing of it at prices consistent with its most appropriate re-use. When assembled and prepared for building, the land would be made available for whatever use the local government deemed appropriate to the needs of the community, the intention being that most of it would be turned over to private interests for residential construction,

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[1]Morton Bodfish, Executive Vice President United States Savings and Loan League testifying before Comm. on Banking and Currency, House of Representatives, 79th Congress, 1st Session on H. R. 4761, Jan. 31, 1946, hearings p. 479 and 492.

[2]Herbert Nelson, Exec. Vice President Nat'l Assn. of Real Estate Boards. Hearings before the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-War Econ. Policy and Planning, United States Senate, 79th Congress, 1st Sess. Pursuant to S. Res. 33, p. 2017.

[3]Paul and Colean, Effect of the Corporate Income tax on Investment in Rental Housing (1946).

[4]Blum and Bursler. Rental Housing and Federal Income Taxation.

[5]"It is utterly impossible to clear slums and pay the prices which the courts will award for land and improvements in midtown areas and rehouse the same population. That can not be done, at least not by private enterprise." Testimony of

if suitable for moderate or high-income families, or for commercial or industrial use. Land considered appropriate for low-rent public housing or needed for public improvements, parks, or playgrounds, would be sold respectively to local housing authorities and the municipalities at its new use value. The total cost to the public agency of land and site improvements would then be determined, as well as the cost to the municipality for improvements in the area. One third of the difference between this sum and the amount received by the local public agency would be covered by the locality, either through the cost of its installations in the project area or by cash grants to the local public agency. The Federal Government would provide the balance in the form of annual contributions. In other words, the loss would be shared by the Federal Government and the cities on a two to one basis. The initial financing of redevelopment projects would be undertaken by means of temporary loans from the Federal Government for periods not exceeding five years and limited to a total of $500 million. At the end of the five year period, the projects would be financed on a long-term basis. Long-term government loans limited to a maximum period of 45 years would cover only the re-use value of land leased by the local public agency. No more than half of the total amount of the temporary loans would be convertible to long-term loans and all loans from the Federal Government would have to be repaid in full with interest at not less than the prevailing Federal rate (presently 2½%). The balance of the unliquidated project costs would be financed through sale by the local public agency of long-term bonds to private investors. These bonds, secured by the pledge of the Federal Government's annual contribution, could be offered at low interest rates. The contribution to pay off, on an installment basis, the portion of the write-down assumed by the Federal Government, would be limited to a total of $20 million a year for a period not to exceed 45 years. This system of annual contributions was selected in preference to capital grants on the theory that since the benefits from slum clearance are of long duration, the costs involved should be met on a pay-as-you-go basis over a period of years. Moreover, any reduction in interest costs or any future increment in the rents of leased land would serve to reduce the amount of future contributions.

B. State Aid

Half of the states and the District of Columbia have already enacted urban redevelopment legislation in order to provide a legal basis for reclaiming blighted areas for redevelopment purposes through condemnation of land within cities. Most of these statutes authorize the formation of private redevelopment corporations for the purpose of acquiring and clearing slum, blighted, or otherwise substandard neighborhoods and constructing and operating apartment houses and appurtenant commercial or recreational facilities in the reclaimed areas. The redevelopment corporations are given all necessary general corporate powers, including the power to borrow money and issue bonds. They are further aided through the power of eminent domain, the urban redevelopment laws authorizing the exercise of such power either by the corporations themselves or by municipalities in their behalf. Partial tax exemption, or exemption from increased assessment for tax purposes, is also authorized in widely varying degrees. Public and private agencies and fiduciaries are permitted to invest in obligations of redevelopment corporations and to sell or lease property for use in

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George Gove, vice President of the Metropolitan Life Insurance Company before the Senate Committee on Banking and Currency, 80th Congress. 1st Session on Bills pertaining to National Housing at p. 339.

redevelopment purposes and receive in exchange stock or obligations of the corporations. Some of the statutes authorize other forms of public assistance, including financial aid and donation of streets, parks and other public works and facilities.

Acceptance of assistance in the form of certain public powers, privileges, and exemptions imposes upon the redevelopment corporations certain limitations, including regulation and nominal supervision by public bodies. Before a project may be undertaken, detailed plans for its location, construction and operation must be approved by one or more designated municipal agencies, including, as a rule, its planning commission. These plans generally call for a description of land and buildings to be acquired, dwelling, recreational and other structures and open spaces to be provided, anticipated costs and methods of financing, statement of approximate rentals to be charged, as well as data to show that the project will not result in undue hardship to families living in the area to be cleared. Other public controls and regulations provided by urban redevelopment legislation, include limitation on the amount of dividends a redevelopment corporation may pay each year, restrictions to prevent the transfer of a project for use not intended by the law, and the general supervision of a redevelopment corporation's finance and financing operations by a designated agency of the municipality.

III. Implications of Subsidized Privately Owned Housing.

A. New York as an Example

The implications of this method of subsidizing privately owned housing can readily be appreciated from an examination of New York's urban redevelopment legislation and its accomplishments. New York, the pioneer in this field, has been more successful than other states in bringing about the formation of limited dividend corporations to undertake construction of apartment houses. The Redevelopment Companies Law of New York has been credited with attracting private capital "because the degrees of public control over the operations of corporations formed under it, is less than that required by the earlier law."[1] According to Arthur C. Holden of the American Institute of Architects, "The 1942 legislation seeks to create a direct outlet for the investment funds of large insurance societies and to utilize these funds to accelerate the redevelopment of blighted sections. The remedy proposed aims to replace existing so-called private interests by other private interests which are stronger."[2]

Under the Law as amended in 1943, a city may condemn property, sell it to a redevelopment corporation and exempt from taxation for a period of years that part of the value of the project which exceeds the assessed valuation of the land and buildings before redevelopment. The investor's return is fixed at 6% to cover interest and depreciation. The two principal results intended to be accomplished are (1) the clearance, replanning and reconstruction of blighted areas, and (2) the provision of adequate housing for families for whom private enterprise has been unable to build.[3]

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[1] New York State Legislative Annual, 1946, p. 203.

[2] Technique of Urban Redevelopment. Journal of Land and Public Utility Economics, May 1944, pp. 133-148.

[3] New York State Legislative Annual, 1946, p. 203.

1) Housing Activities of the Metropolitan Life Insurance Co.

All of the projects initiated under the Redevelopment Companies Law are being sponsored by insurance companies, the best known being the Metropolitan Life Insurance Company's Stuyvesant project. The site for the 35 thirteen-story apartment buildings of Stuyvesant Town, covering 18 city blocks on New York's lower east side, was acquired at a cost of $17 million—125 percent of the aggregate assessment. Approximately two-fifths of the site was purchased by Metropolitan through intermediaries; the rest by condemnation. "Parcels acquired by standard broker methods without benefit of eminent domain brought 79 percent of assessed value. Parcels acquired by condemnation brought 119 percent of assessed value plus 6 percent for fixture awards."[1] Nineteen percent of the total site area consists of public streets which were released to the Metropolitan Life Insurance Company. The tax-exemption subsidy conferred on Metropolitan amounts to about $50,000,000 more than 50 percent of the total project cost.[2] This is equivalent to a subsidy of $5,710 on each of the 8,755 apartments in Stuyvesant Town. Metropolitan's original agreement with the city called for a basic average monthly rental of $14 per room. Subsequently, Metropolitan requested an increase to $17 on the grounds that construction costs had exceeded earlier estimates by 50 percent.[3] Under the originally agreed upon schedule, the monthly rental on the three, four and five room apartments making up Stuyvesant Town was to range from $46 to $77. Under the increase granted the rental scale now ranges from $50 to $91 per month.

The Housing Census of 1940 shows that fewer than 23% of New York's tenant families paid more than $50 a month rent in that year. Average monthly rental was $41.26 and half of all New York tenants paid less than $36.71 a month.[4] To be sure, family incomes have increased since 1940. But on the basis of the latest census data available on family income, the lowest-priced apartment in Stuyvesant Town would be beyond the means of more than half of the nation's urban families of two or more persons and the two-bedroom apartment at $68 per month would prove too costly for

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[1] Architectural Forum, April 1946, p. 20, col. 3.

[2] Plaintiffs Brief in Support of Motion for Temporary Injunction. Dorsey vs. Stuyvesant Town Corporation. Supreme Court of the State of New York (July 9, 1947): "The cost of the project is conceded to be 90 million dollars (Gove affidavit, paragraph 20). The cost of the land was about 17 million dollars (see application of Stuyvesant Town Corporation to New York Board of Estimate for an increase in rent, dated April 24, 1947). The total tax exemption over a 25-year period granted to Stuyvesant Town Corppration is thus about 3 percent on the improvement cost (90-17 millions) or well over 50 million dollars, which is about three times the cost of the land." In arriving at the figure of $50 million, Charles Abrams, attorney for the plaintiffs, apparently based his calculations on the current tax rate and the assessed valuation which probably would have been used in the absence of the subsidy, approximately $2 million annually for 25 years. The present value of the total subsidy might more accurately be calculated by discounting the value of future annual subsidies.

[3] New York Times, April 25, 1947, p. 12, col. 3.

[4] U.S. Dept. of Commerce. Bureau of the Census, 16th Census of the United States, 1940. Housing, Vol. II General Characteristics, Part I U.S. Summary Table 87, p. 152—Contract Monthly Rent for Tenant Occupied Units, 1940. See appendix for Distribution of Urban Occupied Dwelling Units by Type of Structure, Median Age and Median and Average Rental.

almost two thirds of such families.[1] This is on the assumption that in spite of higher living costs, a tenant can pay a monthly rental equal to one week's wage.[2] On this basis approximately three-fourths of the nation's urban families of two or more persons have insufficient income to pay the rental on the lowest priced apartment in Metropolitan's Peter Cooper Project, seven blocks to the north of Stuyvesant Town. This nineteen acre development was acquired without benefit of tax exemption or condemnation proceedings. The monthly rental on its 2,500 apartments ranges from $85 to $105 for suites with one bedroom, living room, kitchen and bath and from $110 to $130 monthly for two bedroom suites.* Less than ten percent of the nation's urban families of two or more persons have sufficient income to pay the rental asked for the highest-priced suites in this former slum neighborhood. Slightly more than 3 percent of New York's tenants paid a monthly rental in excess of $100 in 1940.[3]

The first limited rent housing of the Metropolitan Life Insurance Company was constructed during the period of 1922-24. The special enabling act of 1920 permitting life insurance companies to build and rent apartments, specified that they should be let at not more than $9 per month per room. Five-story walk-up apartments were erected in the Borough of Queens to house 2,125 families on several tracts of land containing from one to three city blocks at points accessible to subway stations. Monthly rentals ranged from $27 to $45. During the ten years of tax exemption, it

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[1] Dept. of Commerce. Bureau of the Census. Family and Individual Money Income in the United States: 1945 and 1944. Series P. S No. 22, May 8, 1947.

[2] United States Department of Commerce. Bureau of the Census. Sixteenth Census of the United States: 1940. Population. Families. Family Wage or Salary Income in 1939. Regions and Cities of 1,000,000 or More, 1943. Table 1, p. 7 and table 1a, p. 10. See Appendix for data on Distribution of Tenant Families by Wage and Salary Income and Rental Classes.

Median income for urban families of two or more related persons for the year 1945 amounted to $2,994, or approximately $57 a week. Comparable data is not available for New York City for that year. However, in 1939, when comparable data is available, New York's median family income of $1,654 was 14.5% greater than median urban family income for the country as a whole. If New York maintained its 14.5% lead over the rest of the country during the war years, which is not at all certain, median family income in New York City in 1945 would have amounted to $3,428, or approximately $66 weekly. On this basis, half of New York's families could not afford Stuyvesant Town's two-bedroom apartment at $68.00 monthly. Assuming that a family can afford to pay one-fourth of its income for rent, which is questionable in view of the sharp increase in the cost of living during the past year, accommodations in Stuyvesant Town would require a minimum annual income of $2,912 for the lowest priced one-bedroom apartment; $3,536 for the two-bedroom apartment and $5,784 for the highest priced accommodations.

[3] Ibid.

*New York Times. Feb. 16, 1947, p. 44, col. 3.

netted between 8 and 9 percent before depreciation.[1] Despite its success as landlord--the project enjoyed 100% tenancy until 1931--Metropolitan did not extend its activities in the field of rental housing until the recession of 1937-38. The emergency enabling laws of 1920 had expired in 1925 and it was not until 1938 when the state recognized a shortage of "decent, safe, and sanitary dwelling accommodations for persons of low and moderate income," that the insurance code was amended to permit life insurance companies to invest up to 10 percent of their assets in "moderate-rental" housing. Metropolitan having been consulted in advance on the terms of the legislation, had announced it would invest $100 million.[2] This time the law made no provision for tax exemption and specified no maximum average rental. Nevertheless, Metropolitan's $60 million Parkchester project housing 35,000 persons in the Bronx is said to be the best-paying item in its entire investment portfolio.[3] Its housing developments in San Francisco, Los Angeles and in the suburbs of Washington, D. C. provide living accommodations for 13,000 persons. Another 34,000 persons will be housed in the three projects presently under construction, Stuyvesant Town, Riverton and Peter Cooper Village, which will bring Metropolitan's investment in rental housing to more than $200 million.[4]

2) Other Limited Dividend Housing

Although the expiration of the emergency enabling act in 1925 deprived the insurance companies of a legal basis for extending their holdings in the ownership and management of rental housing, they were able to participate indirectly through mortgages. Metropolitan held the mortgage on the first project undertaken under the State Housing Law of 1926, the Amalgamated Clothing Workers cooperative housing venture. This 20-year first mortgage in the amount of $1,180,000 paid 5% interest. Metropolitan also took a 20-year mortgage on the 474 apartment unit subsequently constructed under this statute by the Academy Housing Corporation.

As long as apartment houses were being built, and insurance companies and other large financial institutions could finance them with mortgages paying as much as 5 percent interest, there was little incentive for them to engage directly in the planning, building and management of such undertakings. However, the decline of residential construction during the nineteen thirties, coupled with the continued downward trend in interest rates, confronted the insurance companies with a serious problem. Ever larger sums of money had to be invested in order to prevent a decline in income.[5] Lack of private investment opportunities prompted them to place an in-

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[1] Fortune. April 1946. Vol. XXXIII, p. 134.

[2] Ibid., p. 136

[3] Ibid.

[4] Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1st Session, 1947 on Bills Pertaining to National Housing, p. 340. Testimony of George Gove, Vice President of the Metropolitan Life Insurance Co.

[5] Pointing out that the life insurance companies of the United States earned 2.92 percent on their invested funds in 1946, the Institute of Life Insurance reports that "The investment earning rate of the life insurance business has been declining almost continuously since 1925 when an earning rate of about 5.25 percent was reported." New York Times, May 29, 1947, p. 35 col. 2.

increasing amount of their funds in government obligations at relatively low rates of interest. Governmentally guaranteed mortgages through the Federal Housing Administration had helped some. "Approximately one-third of all the FHA mortgages insured under title II, section 203 of the FHA Act" were in the investment portfolios of the life insurance companies at the end of the preceding year, Lewis W. Douglas, spokesman for the Life Insurance Association of America, told the Senate Committee on Banking and Currency during hearings on the Wagner-Ellender-Taft Housing Bill in December 1945.[1] Mr. Douglas, who was also president of the Mutual Insurance Company, declared that the insurance companies, with more than $5 billion, or about 14 percent of their funds in nonfarm mortgages, were concerned at "the decline in the rate of interest, continuous and steady, and the precipitate fall in the rate during the last 14 years."[2] It was this concern that led to their renewed interest in rental housing as a more lucrative investment than alternative uses to which their funds could be placed.

The State Housing Law of 1926 authorized the formation of limited-dividend corporations. Municipalities were permitted to exempt buildings, but not land, from local real estate taxes under conditions limiting dividends to 6% and monthly rentals at an average of not more than $12.50 per room in Manhattan and $11.00 a room elsewhere in the State. The City of New York passed an ordinance providing for exemption from taxation for local purposes, other than special assessments, for a period of 20 years after the completion of building and improvements constructed in New York City before January 1, 1937 by limited-dividend housing companies organized under the State Housing Law.[3] Six companies (three cooperatives, two commercial and one civic concern) were organized within a few years and undertook housing projects under this law. The first, a cooperative venture of the Amalgamated Clothing Workers to house 303 families in the Bronx, was completed in 1928 at a cost of $1,930,000. Another Amalgamated cooperative was made ready for occupancy the following year at a cost of $1,200,000. The 128 apartment cooperative housing project of the Jewish National Workers Alliance was finished in 1928 at a cost of $682,500. Two projects, containing 164 and 111 apartments respectively, were built by the Brooklyn Garden Apartments, Inc. under sponsorship of the Brooklyn Chamber of Commerce. Another Amalgamated Clothing Workers cooperative housing project was completed in 1930 with accommodations for 234 families. Two purely commercial projects having 44 apartments each were developed by the Stanton Homes Corporation and one by the Academy Housing Corporation, housing 474 families. In all, 6,925 dwelling units were provided in twelve projects, the largest being Knickerbocker Village, a thirteen-story elevator type project housing 1,587 families, Hillside Homes, a predominantly four-story walk-up type project housing 1,411 families, and Boulevard Garden Developments, a six-story elevator type project housing 1,170 families.[4]

Knickerbocker Village was planned as a high class residential development for minor executives in the financial district of New York. By 1930, its promoters had acquired a fifteen acre site in one of the city's worst slum areas on the lower east side, but were unable to obtain private financing. Construction of the project was delayed until the Fred F. French Company obtained from the Reconstruction Finance Corporation the only loan which it made for housing purposes. When the construction

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[1] Hearings before the Committee on Banking and Currency, United States Senate, First Session on S. 1592, Part II, pp. 906.

[2] Ibid., p. 912.

[3] Local Ordinance No. 9 enacted by the New York Municipal Assembly, June 22, 1927.

[4] Wood. Recent Trends in American Housing, 1931, pp. 264-68.

of Knickerbocker Village was completed the city assessed the development at $7 million ($5,150,000 on improvements and $1,850,000 on land). This assessment was protested in petition for judgment asking that the Board of Estimates be ordered to either cancel the assessment or limit it to the amount assessed for the land without improvements. In denying the petition, Justice Samuel I. Roseman of the New York Supreme Court affirmed the right of the city to a trial as to the merits of the claims.[1] In the ensuing trial, it was argued that the city had not been in possession of all relevant facts at the time exemption was granted, and that the rentals charged ($12 per room per month), the income of the tenants, and the character of the tenancies were such as to exclude all of the persons for whom such projects were intended by the State Housing Law. "Obviously any project that through inflated acquisition or construction can gain more than 6 percent return is not authorized by the State Housing Law", declared Assistant Corporation Counsel Gaston. Nevertheless, Supreme Court Justice Samuel J. Harris ruled on July 8, 1937 that the buildings were exempt from real estate taxes under the State Housing Law, but that the value of the land on which the buildings stand is taxable.

3) Objections to Limited Dividend Housing

The Knickerbocker project was criticised on the ground that its costs were inflated, that rents are too high for low-income groups, that families with relatively high incomes were allowed to rent the apartments, and that its more than 5,000 occupants results in a density of more than a thousand persons per acre, or four times the average residential density of Manhattan.

Similar criticisms have been directed against the housing developments of the Metropolitan Life Insurance Company. Criticism of the Stuyvesant Town formula, which other states are hastening to adopt, may be summarized as follows: 1) it subsidizes profits of entrepreneurs who undertake to construct housing for income groups for which private enterprise has been able hitherto to provide housing without subsidy; 2) it establishes a dangerous precedent in granting public powers to private enterprise without subjecting private enterprise to the obligations imposed on public agencies in the exercise of such powers; 3) it aggravates the slum problem through failure to provide adequate housing for displaced residents of the cleared areas; 4) it increases population density; 5) it imposes on cities the expenses of relocating public schools and other public facilities; 6) it deprives cities of revenue that would normally accrue from taxes on buildings constructed to house upper income groups, and at the same time does nothing to lessen the costs to the city of maintaining overcrowded slum areas. It has been suggested that the city might have saved money by giving the land to Metropolitan and taxing the development at its usual rate.[2]

In an effort to restrain the Metropolitan Life Insurance Company and the City of New York from proceeding with plans for the Stuyvesant Project, the constitutionality of New York's Redevelopment Companies Law was challenged on the grounds that

1) it permits the exercise of the power of eminent domain by "a municipality for the benefit of a private corporation

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[1] People ex rel. Knickerbocker Village, Inc. v. Miller.

[2] Abrams. The Future of Housing. 1946, p. 321.

ostensibly regulated by law as to rents, profits, dividends and disposition of its property or franchises to engage in providing housing facilities, but which enables that private corporation to shake off the regulations imposed by law, at its will;"

2) "The mere physical clearance and reconstruction of slum areas without regard to the welfare of the slum dwellers is not within the meaning of the public purpose as intended by the Constitutional Convention when it adopted article XVIII."

3) "The purpose for which the Stuyvesant project is to be built is a private and not a public purpose."

The court found the statute a valid exercise of legislative power designed to accomplish the constitutional purpose of rehabilitation.[1] In the words of Judge Lewis

"That the Constitutional provision [Article XVIII, Section 1][2] grants to the Legislative authority to provide for low rent housing for persons of low income, !or! to provide for !the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas.! The two purposes, however, are distinct, one

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[1] In the Matter of Mary V. Murray et al., Appellants, against Fiorello H. LaGuardia as Mayor of the City of New York, et al., Respondents. 291 N.Y. 320, 1943.

[2] New York State Constitutional Convention, 1938, Revised Record, Vol. II, pp. 1533, 1559, 1567, 1577, 1581. Article XVIII.

"Section 1. Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto.

"Section 2. For and in aid of such purposes, notwithstanding any provision in any other article of this constitution, but subject to the limitations contained in this article, the legislature may: * * * authorize and provide for loans by the state and authorize loans by any city, town or village to or in aid of corporations regulated by law as to rents, profits, dividends and disposition of their property or franchises and engaged in providing housing facilities; * * * grant or authorized tax exemptions in whole or in part, except that no such exemption may be granted or authorized for a period of more than sixty years; * * * grant the power of eminent domain to any city, town or village, to any public corporation and to any corporation regulated by law as to rents, profits, dividends and disposition of its property or franchises and engaged in providing housing facilities."

being designed to authorize low rent housing for persons of low income as defined by law, the other authorizing appropriate legislation to bring about the clearance and rehabilitation of substandard areas as a means to protect public health and morals and to restore and preserve the financial stability of municipalities which suffer indirectly from conditions existing in those blighted districts."

It is not clear how rehousing relatively high income groups in tax exempt buildings will contribute to municipal financial stability. The tax exemption on new construction in New York City under a 1920 statute granting tax exemption until January 1, 1932 on new construction started before April 1, 1924, is estimated to have amounted to $191,387,000.[1] This tax exemption has been credited with having broken the post war residential building deadlock in New York City earlier than would have otherwise been the case,[2] but there is some question as to how much of the construction which enjoyed the tax subsidy might have been undertaken without it. The Report of the Commission of Housing and Regional Planning[3] indicated that "those who obtained the full ten years' exemption and were able to keep construction expenses within the exempt limits, amounted to one-third of the capital cost" while those not building until 1924 "received a benefit equal to about 22% of capital cost." According to the 1929 report of the Commissioners of Taxes and Assessments[4] the assessed value of property exempted from taxation under the provision of the Ordinance of February 15, 1921, was almost a billion dollars, $916,330,075 to be exact. The total assessed valuation of all New York City real estate in 1929 was $17,705,161,490[5] as compared with $16,938,467,453 for the fiscal year 1947-48.[6] More than a decade ago a noted authority on housing concluded that "post-war housing in New York has been as truly and as heavily subsidized by the taxpayers as post-war housing in London or Liverpool or Manchester. The big difference has been that in the English cities the subsidy enabled families of the lower income brackets to live in very high grade new houses, whereas in New York the subsidy made gorgeous profits for the builders, but the houses were very ordinary, and even so, only those of higher income could live in them."[7]

4) Institutional Housing and the Future of the Rental Market

It seems somewhat paradoxical that subsidized housing for those unable to pay an economic rent should encounter overwhelming opposition from real estate interests and subsidized housing for the higher income groups cause so little concern.

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[1] Wood. Recent Trends in American Housing. 1931, p. 111.

[2] Ibid., p. 108.

[3] March 14, 1924, p. 16.

[4] p. 12.

[5] Ibid., p. 12.

[6] New York Times, June 2, 1947, p. 1, col. 1.

[7] Wood. Recent Trends in American Housing, 1931, p. 111.

The owners of non-subsidized housing can hardly expect to compete with such developments as the Metropolitan Life Insurance Company's Stuyvesant Town. Only the larger financial institutions can command the necessary resources to construct a $50 million housing project. With more than 96 percent of their income exempt from the federal income tax, the insurance companies are advantageously situated to undertake the reconstruction of deteriorated metropolitan areas. The very scale on which urban redevelopment must be carried out makes possible savings in the purchase of building materials and in construction.[1] Maintenance expenses can be minimized and the neighborhood, hence the investment, safeguarded against excessive depreciation. The advantages resulting from the concentration of capital and economy of scale, supplemented by exemption from property taxes on new construction for a quarter of a century, make it easy for the nation's largest landlords to offer inducements to attract the more stable income tenantry from the smaller unsubsidized realtors. However, tax exemption for private developments housing higher income tenants deprives the city of revenues which would otherwise have been realized "when private enterprise in the normal course of events got around to providing dwellings for that group" and amounts to a "gift of public moneys for a private purpose."[2] Every income-producing structure exempted from taxation necessarily contributes to increasing the tax load of those which must bear the cost of municipal services. The assessed value of taxable property is not constant; it is subject to a steady decline resulting from the physical depreciation of buildings. The reduction in tax receipts due to the removal of worn-out buildings from the tax rolls, if not compensated for by taxes on new construction and improvements, will compel cities to either increase tax rates on old buildings or to find additional sources of revenue.

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[1] With respect to Metropolitan's first venture into housing in 1922, Fortune wrote in its April 1946 issue, p. 135:

"Mr. Ecker was able to import brick from the Netherlands and Belgium at two-thirds the cost of domestic brick. The project also benefited from depression prices. Bathtubs were obtained at less than the cost of manufacture." . . . "For example, on the construction of exterior walls at Parkchester, the Board of Design achieved a labor cost saving by using specially manufactured oversize bricks, 800 of which cover as much surface as 880 standard-size bricks." p. 212.

[2] Abrams. The Future of Housing, 1946, p. 336.

IV. Low Rent Public Housing as an Alternative to Subsidized Private Housing

In contrast to the adverse effect of subsidized housing for the higher-income groups on municipal revenues, as well as on the unsubsidized property owner, subsidized housing for the lower-income groups neither threatens municipal solvency nor competes with anyone but the slum landlord. The exemption of public low-rent housing projects from the property tax results in no loss of revenue to the city since the low-income families for whom the housing is supplied "are not prospective customers for the potential private enterprise market."[1] Moreover, rehousing the former slum dwellers in public housing enables the city to curtail expenditures for police and fire protection. On the other hand, slum clearance by private limited dividend corporations simply transfers the former slum dwellers to other areas.

The crippling attacks on public housing by the organized real estate interests have made that form of housing for low-income groups appear a much more important contribution to the housing problem than it really is. Public housing is a relatively recent development. It was not until 1933 that the federal government, through the Public Works Administration "launched the first Federally-financed public housing as part of the depression-born work recovery program." All told, the PWA, under the National Industrial Recovery Act and the Emergency Relief Act of 1933, constructed 50 projects with 21,612 units, in 37 cities, at a cost of $127 million.[2] The responsibility of the government to remedy unsafe and unsanitary housing conditions was recognized in the United States Housing Act of 1937, but the role of the Federal Government was limited to financial and technical aid. Forty states, by 1945, had enacted legislation authorizing communities to form local housing authorities with the powers needed to meet requirements for federal housing aids. By the time the war interrupted the construction of low-rent housing under the United States Housing Act, local housing authorities in 173 communities had constructed at a cost of $483 million 334 projects containing 105,600 units for low-income families who formerly lived in slum dwellings.[3] Compared with the need, it was but a drop in the bucket. In opposing an extension of the government's activities along these lines, Morton Bodfish, of the United States Savings & Loan League, declared that "if we built Government homes for everybody that lives in the city who is now a tenant and has an income of less than $1,000, it would involve 8,000,000 families."[4] Whether the need was for 8 million dwelling units, or 11 million as was suggested earlier in the Hearings before the Subcommittee on Housing and Urban Redevelopment, no one actually suggested that "the government should attempt to provide for all families now living in substandard shelter."[5] It was assumed that most of the low-income families

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[1] Ibid. p. 336.

[2] Public Housing. The Work of the Public Housing Authority. National Housing Agency. Federal Public Authority, March 1946, p. 27.

[3] Ibid., p. 32.

[4] Hearings before the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-War Economic Policy and Planning. United States Senate. 79th Congress, 1st Session. Pursuant to S. Res. 33 (Extending S. Res. 102, 78th Cong.), Part 15. Housing and Urban Redevelopment, Feb., 7, 1945, p. 2063.

[5] Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1st Session on Bills Pertaining to National Housing, 1947, p. 11-13.

could be taken care of in old houses once the post-war construction boom got underway. The important consideration as seen by Senator Taft was that sufficient sanitary dwellings be built at the bottom of the pyramid to replace the unsafe dilapidated structures in which the lowest income groups are crowded. The number of new public housing units, in his opinion, should not exceed 10 percent of current construction.

The so-called public housing program, far from being the marked departure from private enterprise that the term public might suggest, actually has been the means whereby private contractors have been able to build for groups whose incomes are too low to make such construction profitable without governmental aid; the public aspect is principally in the form of over-all planning, through loans to local housing authorities or by guaranteeing the repayment of private loans used for low-cost housing. Because of this guarantee, public housing authorities have been able to obtain private financing at interest rates as low as 1.5%.

Unlike subsidized privately owned housing, which presumably would have eventually been constructed regardless of the subsidy; public housing would not have come into existence in the absence of a subsidy. And, the subsidy is less than the opposition to public housing might lead one to suppose. In 1946; New York City's 14 permanent low-rent apartment projects housing 17,047 families, paid into the city treasury in lieu of taxes a sum 11.5 percent greater than the taxes levied on the sites prior to their acquisition for public housing purposes. The New York City Housing Authority estimates that taxes and payments in lieu of taxes on its first ten projects for the fiscal year of 1944-45 were 95 percent greater than the taxes actually collected on the properties in the year prior to their acquisition by the Authority. Nor is this all. The 13th Annual Report of the New York City Housing Authority reports savings of $25 million in interest payments and $4,640,000 in subsidies. This was accomplished through refinancing bond issues at lower rates and increasing private participation in the loan from the original 17.75 percent to almost 86 percent. "This meant that on 69 percent of the loan, Government bonds bearing an average interest rate of 3.04 percent were replaced with the privately held bonds at only 2.13 percent." The lower interest enabled the Authority to reduce the life of the loan from 55 to 43 years and to save almost half of the original interest cost.[1] The savings reported by the New York City Housing Authority on interest payments alone are equal to the tax subsidy granted by the city to Metropolitan's Stuyvesant Project.

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[1] New York City Housing Authority. 13th Annual Report, 1947.

V. Subsidization of the Slum Landlord

The only private enterprise group with which public housing is at all competitive is the slum landlord whose property is profitable only because he has been permitted to capitalize earnings resulting from the violation of laws relating to sanitation and over-crowding. This was recognized by the spokesman for one of the business groups associated with the National Association of Real Estate Boards in the fight against the Taft-Ellender-Wagner Housing Bill. In testifying before the Senate Committee on Banking and Currency, Joseph H. Deckman of the National Home and Property Owners Foundation opposed federal assistance in slum clearance programs and proposed instead uniform legislation to "make it illegal and unlawful for a man to rent a house that does not meet certain minimum requirements, such as central heating plants and inside toilets" and urged that the owners of slum properties be compelled under threat of imprisonment[1] to either keep their properties in good repair or demolish them. Senator Taft was unwilling to accept Mr. Deckman's drastic proposal to place the burden of slum clearance on the owners of slum property. Having previously cited census figures showing that 6 million homes rented for less than $15 monthly the senator insisted that no one could afford at such rentals to keep dwellings in good repair. At the same time Senator Taft recognized that "the one reason public housing cost is high is that they pay three times for the land what the land is worth in order to get it because of the slum clearance element."[2] Nor could he accept the suggestion of the National Association of Real Estate Boards that rent certificates be substituted for the so-called public housing activities of the Government. This proposal for subsidizing landlords was rejected for the following reasons:

1) "The number of families entitled to rent certificates upon any such basis would be infinitely larger than those requiring other relief."

2) "It is not at all certain that such a plan would bring about improvement in the bad housing accommodations that now exist. In fact, the scheme might work to maintain the profitability of slum areas and, consequently, to retard their elimination."

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[1] Hearings before the Committee on Banking and Currency U.S. Senate. 80th Congress, 1st Session, 1947, on Bills pertaining to National Housing, p. 483. In a similar vein, The Chicago Tribune, in its issue of September 1, 1946, editorialized:

"Strict application of the fire and sanitary regulations, which would require the owners to put back a large proportion of their high rents into the maintenance of their property to keep it fit, would very quickly reveal the lack of true value of such property. Rather than make such repairs the owners in many cases would close the buildings or tear them down. One potent factor in the exorbitant valuations placed on slum properties in Chicago is the ease with which charges of building law violations are fixed in the Municipal Court."

[2] Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1st Session, 1947, on Bills Pertaining to National Housing, p. 279.

"If an effective slum clearance and redevelopment program is to be carried on, one of the outstanding problems to be met is the high cost of land acquisition. A significant factor tending to maintain such costs is the disregard for building,

3) "It would certainly require a detailed regulation of private rental quarters both as to condition and rent."[1]

As Senator Taft observed at the time these proposals were made, there is no reason to believe "that people would build houses on the chance that 4 or 5 years from now somebody would be getting rent certificates."[2]

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health, and sanitation laws; the combination of over-crowding and low maintenance costs increases profits whose capitalized value gives to the property a value far above what such value would be were there effective law enforcement." University of Chicago Law Review, Vol. 14, Feb. 1947, No. 2 at p. 243--Condemnation of Slum Land--Illegal Use as a Factor Reducing Valuation."

[1]Report to the Special Committee on Postwar Economic Policy and Planning by the Senate Subcommittee on Housing and Urban Redevelopment pursuant to S. Res. 33. Postwar Housing, August 1, 1945, pp. 6-7.

[2]Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1st Session, 1947 on Bills Pertaining to National Housing, pp. 13-14.

VI. Subsidies, an Aid to Economic Concentration

Some of the suggested subsidies might be expected to increase the supply of rental dwellings. It seems reasonable, for example, to infer that governmental aid in the form of tax concessions might induce investors to place their funds into tax free ventures, especially when guaranteed against loss. It might be well, though, to inquire whether such subsidies should be undertaken in the absence of careful analysis of the significant factors involved, not only with respect to the kind, quantity, and quality of additional dwelling units to be added to the nation's housing supply, but also as to the effect on the economy as a whole. The effect of the government's acquiring slum properties from landlords and making up the difference between the rental the former slum dwellers can pay and the cost of operating what has become known as public housing will not be the same as subsidizing private groups whose activities are not subject to the same scrutiny and control as public agencies. The effect of subsidizing private housing may well be to put a stop to all unsubsidized residential construction. Moreover, one might question the wisdom of demolishing substandard dwellings to make way for higher-income groups without first making available suitable quarters for the former occupants. One result of New York's slum clearance and urban redevelopment program has been to intensify the housing shortage for since the end of the war, the city has lost more dwellings through demolition than have been provided through permanent new construction. By moving the displaced slum dwellers to other blighted areas, the city improves that part of the city selected for middle-class occupancy, but perpetuates the slum problem.[1]

It is widely recognized that the "housing problem arises out of the fact that the cost of housing is out of proportion to the income of the people."[2] The high cost of housing has been attributed in large part to the small-scale, decentralized character of the housebuilding industry and the evidence that this is so is convincing.[3] But slum clearance and urban redevelopment in the nation's principal metropolitan areas are not carried out by small-scale, decentralized homebuilders who on the average construct only one or two homes a year. Even if the land in the centers of the cities were free, it is questionable whether the cleared areas could be reconstructed by other than large-scale organizations, either public or private. The resources necessary to finance slum clearance are not available to the small builder who, in any case, is not technically equipped to engage in such activities. The construction of self-contained multi-million dollar communities like the Parkchester and Stuyvesant projects of the Metropolitan Life Insurance Company demands a completely different type of building organization. Not only do large-scale housing developments require huge building organizations; they also require financing on a scale beyond the resources of most persons, either individual or corporate. During

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[1] New York Times, April 24, 1947, p. 27, col. 8. During 1946, 8,926 dwelling units were demolished and only 4,578 new dwelling units were completed. "New York's housing shortage has reached the point where it is as difficult to find a vacant cold-water flat as a modern apartment" concluded the Times in reporting an occupancy survey of The Real Estate Board of New York in its issue of June 6, 1947, p. 25 col. 3.

[2] Excerpt from statement by Senator Robert A. Taft. Reprinted from the U.S. Municipal News-Conference edition of January 21, 1947 in Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress, 1947. 1st Session on Bills Pertaining to National Housing, p. 224.

[3] See for example, American Housing. Problems and Prospects. The Twentieth Century Fund, 1944, pp. 313-15.

the building boom of the twenties, it was customary to finance apartment buildings either through the sale of stock or bonds secured by mortgages which insurance companies and other large financial institutions were only too willing to purchase. This method is no longer feasible owing to the unwillingness of investors to risk funds in housing developments which could be expected to yield a return only at rents which most people could not afford. The long-run decline in the rate of interest prompted the insurance companies to seek better paying investments than bonds. Metropolitan's $60 million Parkchester project with a yield in excess of 6 percent demonstrates what can be done without a subsidy.

The same type of large-scale organization that dominates other fields of our economy is now moving into the rental housing field. Subsidies will accelerate the trend. In contrast to the emphasis on rehousing slum dwellers that pervades the public housing literature, the stress here is on building living accommodations for those in the upper third of the income scale, a group which heretofore has been served reasonable well by the traditional building industry. Concentration thus manifests itself in rental housing by making inroads into the most profitable part of the realtors' business, through providing housing for those with sufficient income to pay the rents made necessary by present high construction costs. Upon completion of building presently under construction the world's largest privately managed corporation, an $8 billion enterprise, will have an investment of $200 million in apartment buildings housing 31,566 families, or approximately 100,000 persons.[1]

In a world of large-scale, monopolistic enterprise, the small business is almost hopelessly handicapped. Where raw materials and credit are only available in a controlled market, costs tend to be high. The housing industry, with its custom-made homes, has lagged behind in bidding for the consumer's dollar in competition with the products of industries which enjoy the economies of mass production methods. It must now meet the challenge of billion dollar corporations with easy access to cheap credit and raw materials, operating on a scale which permits more efficient utilization of labor and technical equipment. And as if this were not enough, the billion dollar corporations are subsidized.

One of the obstacles to the construction of additional rental housing has been the concentration of control in the field of finance. A complaint filed in the United States Court for the Southern District of New York by the Antitrust Division of the Department of Justice on August 6, 1946 charges the Mortgage Conference of New York, including insurance companies and other institutional investors, with conspiring "to prevent new construction in areas where such construction might lesson the income from real estate in which mortgage lending institutions have substantial interests." The government alleged among other things that "the erection of six-story elevator apartment house buildings, particularly in the Borough of Brooklyn, New York City, has been prevented by the deliberate withholding of mortgage financing by the defendants".[2] The Government also charged that the "defendants prepared,

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[1] Statement of George Gove, Vice-President of the Metropolitan Life Insurance Company during Hearings on Bills Pertaining to National Housing before Committee on Banking and Currency--United States Senate. 80th Congress. 1st Session, 1947, pp. 34-41.

[2] Civil Action No. 37-247. In the District Court of the United States for the Southern District of New York. United States of America v. The Mortgage Conference of New York, et al. August 6, 1946.

published, kept current, and distributed maps of each section of New York City showing blocks on which Negroes and Spanish speaking persons resided; refrained from making mortgage loans on properties in such blocks; and induced owners of real estate in certain sections of New York City to refuse to permit Negroes and Spanish speaking persons to move into." Metropolitan, although not named with the other insurance companies as party to the conspiracy, follows a racial discriminatory policy at its housing projects. Frederick H. Ecker, Chairman of the Board of the Metropolitan Life Insurance Company has been quoted as saying: "Negroes and whites don't mix. . .perhaps they will in a hundred years. . . . If we brought them into this development, it would be to the detriment of the city, too, because it would depress all the surrounding property." In commenting on this statement, Charles Abrams wrote: "He barred Negroes from the project. Nor was Stuyvesant Town to have a school, though its population would be one-fourth that of Nevada, for Ecker feared Negro children might attend. The city meekly complied. It even agreed to raze the existing school in the area and erect a new one outside. It divested itself of all public streets and property within the enclosure. The entrances were to be posted with signs marked 'private property.' The city comptroller is permitted to enter under the contract, but only during the period of tax exemption!"[1] Order is maintained within Metropolitan's self-contained communities by corps of uniformed company police.[2] The effect of granting public powers to private enterprise without subjecting it to the obligations imposed on public agencies in the exercise of such powers may indeed be far-reaching. The protest generated by Metropolitan's racially-discriminatory policies at Stuyvesant Town led to the passage of a law providing for the cancellation of tax exemption on any project where the Supreme Court finds there has been discrimination against any person because of race, creed or color.* The New York Times of July 1, 1947 quoted the State Housing Commissioner as saying that "many large investors had told him they would not build moderate-rent, tax-exempt housing while the city anti-discrimination law was in effect." Mr. Stichman was also reported as saying that "the sponsor of a proposed limited-dividend project to house 3,000 families had told of dropping his plans when a Federal agency declined to take part in financing it because of the city's anti-discrimination law."[3]

There is no doubt that additional housing can be made available either through reducing housing costs or increasing family income, or both. A conservative estimate of the proportion of the nation's families whose incomes are too low to permit the purchase or rental of "decent housing" appears in Senator Taft's statement to the Committee on Banking and Currency during hearings on housing bills introduced at the 1st session of the 80th Congress. "No private housing that I know of", the senator declared, "can be built at such a cost that more than half of the families of the country can buy that housing or live in it."[4] Moreover, the same situation prevails with respect to decent second-hand houses with the result that "the cost of housing, old and new is almost beyond the means of half the population."[5]

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[1]Abrams. The Future of Housing. 1946. 1946, p. 322. See also Dorsey, Dowling and Harper vs. Stuyvesant Town Corp. and Metropolitan Life Ins. Co. 1947.

[2]Fortune, April 1946, p. 212.

[3]p. 19, col. 2.

[4]Hearings, p. 226.

[5]Ibid., p. 11.

*Local Law 45, 1947. See also J 41 - 1.2 Administrative Code of City of New York: Local Law 20, 1946.

Convinced of the need for a subsidy, Senator Taft justifies governmental assistance in the form of public housing for those in the lowest income group on the theory that "the Federal Government is interested to see that there is a floor under the necessities of life for all the people in this country, to give equality of opportunity, particularly to the children, in all fields."[1] This public housing proposal, embodied in the Taft-Ellender-Wagner Bill S. 866 would have authorized the construction of only 500,000 dwelling units over a period of four years "to take the edge off this pressure at the bottom."[2] It nevertheless encountered the furious opposition of realtors and builders. They had other things in mind. A spokesman for the National Association of Real Estate Boards had previously informed Senator Taft's subcommittee on Housing and Urban Redevelopment of the Special Committee on Postwar Economic Policy and Planning that real estate was peculiarly handicapped by triple taxation. Rents are high, it was asserted, because a fourth of the rental dollar consists of taxes so that if "a builder is able to build accommodations at a $40 a month rental he is in fact building for a $30 a month economic rent if the local taxes are deducted."[3] In appealing for tax relief, nothing was said about the relationship between tax liability and service. For example owners of real estate are in a peculiarly strategic position to capitalize on public expenditures for highways, viaducts, bridges, schools, parks, sewers, reservoirs, fire, police and health services. The speculative apartment house building boom following World War I it will be recalled took place in spite of such "triple" taxation.

Senator Taft answered the attack on his public housing proposals as follows:

> "The private enterprise system says, 'Let us do it and we will provide these houses,' but they never have provided the houses. We have always had a large number of indecent houses, under the play of the private enterprise system, for the simple reason that they cannot do it. They say that public housing would compete with them. It does not compete with them because they cannot possibly construct houses for people in the lower income group and what happened in 1925 is exactly what is going to happen over again.
>
> "You built up the number of houses after the last war very rapidly until you got '25 or '26 and then new housing began to fall off, although we were in the most prosperous period we ever had in 1927, '28 and '29, still housing fell off because the market had been exhausted. They were unable to take care of the lower income groups and they did not have enough of the upper groups to buy any more houses."[4]

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[1]Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress, 1st Session, 1947 on Bills Pertaining to National Housing, pp. 13-14.

[2]Ibid., p. 224.

[3]Hearings before the Senate Subcommittee on Housing and Urban Redevelopment of the Special Committee on Postwar Economic Policy and Planning pursuant to S. Res. 33, Part 14, 79th Congress. 1st Sess. at 2009 (1945).

[4]Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1st Session on Bills Pertaining to National Housing, 1947, p. 12.

The various subsidy measures contribute nothing whatever to the basic problem of cost reduction. Rather they are indirect methods of transferring to the community-at-large a portion of housing costs of those eligible for the subsidized accommodations. A subsidy can be justified as a matter of public policy when the beneficiaries of the subsidy are unable to pay an economic rent. It cannot be justified when it results in subsidizing housing for upper-income groups at the expense of those who themselves cannot afford such accommodations. While the realtors concentrate their efforts on a form of housing which menaces only the slum landlord, a form of subsidized housing that really endangers them has been largely ignored. An executive of the Metropolitan Life Insurance Company appeared before the Committee on Banking and Currency of the United States Senate and discussed his company's arrangement with the city of New York with respect to Stuyvesant Town and pointed out that "we expect to get 6 percent before depreciation and amortize in a period of somewhere around 33 to 35 years, and so far, we have no reason to doubt that we shall be able to do so."[1] No mention was made of the exemption of the structure from taxation for a quarter of a century, amounting to a subsidy of $50 million.[2] The Metropolitan executive told the senators, "We have not sought any incentive. That is the point I want to bring out. We have not sought incentives, and we do not need any incentives. And so far as we are able to learn, the other insurance companies feel quite the same way."[3] The extension of urban redevelopment legislation patterned after the New York Redevelopment Companies Law may well lead to the gradual elimination of all non-subsidized housing in the nation's principal cities and the concentration of metropolitan rental dwellings into the hands of the largest financial institutions. Since the construction of large scale developments are not undertaken by the typical home builders, the development may not concern them. However, it bodes no good for the realtor who can expect to lose his best paying tenants to the planned neighborhood developments. The typical home builder is menaced from another quarter. The competition of prefabricators for the individual home market should eventually force the rationalization of the residential construction industry. Otherwise it will continue to be incapable of catering to the mass market to the same ex-

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[1] Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1st Session, 1947 on Bills Pertaining to National Housing, p. 340. Testimony of George Gove, Vice-President Metropolitan Life Insurance Co.

[2] Plaintiffs Brief in Support of Motion for Temporary Injunction. Dorsey vs. Stuyvesant Town Corporation. Supreme Court of the State of New York (July 9, 1947):
"The cost of the project is conceded to be 90 million dollars (Gove affidavit, paragraph 20). The cost of the land was about 17 million dollars (see application of Stuyvesant Town Corporation to New York Board of Estimate for an increase in rent, dated April 24, 1947). The total tax exemption over a 25-year period granted to Stuyvesant Town Corporation is thus about 3 percent on the improvement cost (90-17 millions) or well over 50 million dollars, which is about three times the cost of the land." In arriving at the figure of $50 million, Charles Abrams, attorney for the plaintiffs, apparently based his calculations on the current tax rate and assessed valuation which probably would have been used in the absence of the subsidy, approximately $2 millions annually for 25 years. The present value of the total subsidy might more accurately be calculated by discounting the value of future annual subsidies.

[3] Op. cit.

tent as the mass production industries. But the testimony of the builders' representatives before the Senate Committee suggests that many will resist change to the bitter end. During the testimony before the Committee, spokesmen for the builders were so much upset by the questioning that Senator Taft felt called upon to explain:

> "I have not criticized any private builder. I am criticizing the economic system of the United States that has resulted for 150 years in this pass-me-down thing into slums, and will go on doing it exactly unless the cost of housing comes down. That is not the fault of the builders. I am not blaming them."[1]

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[1] Hearings before the Committee on Banking and Currency. United States Senate. 80th Congress. 1947. 1st Session on Bills Pertaining to National Housing, p. 507.

CONTRACT MONTHLY RENT FOR URBAN TENANT-OCCUPIED DWELLING UNITS, 1940

	I United States		II The North		III Illinois		IV Chicago City		V Metropolitan Chicago	
	No.	%	No.	%	No.	%	No.	%	No.	%
All Dwelling Units	12,881,540		8,788,441		1,059,988		718,769		861,271	
Reporting Monthly Rent	12,790,473	100.0	8,728,512	100.0	1,054,808	100.0	716,774	100.0	858,731	100.0
Less than $3	51,477	0.4	9,062	0.1	1,019		156		248	
$3 to $4	196,023	1.5	30,692	0.4	4,344		744		975	
Less than $5	247,500	1.9	39,754	0.5	5,363		900		1,223	
$5 to $6	417,365	3.3	108,244	1.2	16,425		4,624		5,822	
Less than $7	664,865	5.2	147,998	1.7	21,788		5,524		7,045	
$7 to $9	545,816	4.3	209,551	2.4	29,493		12,756		14,082	
Less than $10	1,210,681	9.5	357,549	5.1	51,281	4.9	18,280		21,128	
$10 to $14	1,576,886	12.3	901,142	10.3	116,436	11.0	68,810		77,516	
Less than $15	2,787,567	21.8	1,258,691	15.4	167,717		87,090		98,644	
$15 to $19	1,799,984	14.1	1,230,940	14.1	135,893	12.9	89,003		104,780	
Less than $20	4,587,551	35.9	2,489,631	29.5	303,610		176,093		203,424	
$20 to $24	1,774,408	13.9	1,280,078	14.7	126,057		83,018		99,630	
Less than $25	6,361,959	49.8	3,769,709	44.2	429,667		259,111		303,054	
$25 to $29	1,663,812	13.0	1,206,844	13.8	115,529		70,961		89,522	
Less than $30	8,025,771	62.8	4,916,553	58.0	545,196	51.7	330,072		392,576	
$30 to $39	2,384,318	18.6	1,822,852	20.9	202,189		140,708		173,325	
Less than $40	10,410,089	81.4	6,799,405	78.9	747,385		470,780		565,901	
$40 to $49	1,252,784	9.8	1,012,973	11.6	168,240		136,879		159,067	
Less than $50	11,662.873	91.2	7,812,380	90.5	915,625	86.8	607,659		724,968	
$50 to $59	546,414	4.3	437,443	5.0	70,428		56,471		66,975	
Less than $60	12,209,287	95.5	8,249,823	95.5	986,053		664,130		791,943	
$60 to $74	313,445	2.5	256,787	2.9	37,985		29,771		36,497	
Less than $75	12,522,732	98.0	8,506,610	98.4	1.024,038	97.1	693,901		828,440	
$75 to $99	155,877	1.2	127,476	1.5	17,901	1.7	13,013		17,508	
Less than $100	12,678,609	99.2	8,634,086	98.9	1,041,939	98.8	706,914		845,948	
$100 or more	111,864	0.9	94,428	1.1	12,869	1.2	9,860		12,873	
*Average Rent	$27.01		$29.65		$31.25		$33.53		$33.75	
*Median Rent	24.60		26.96		28.73		31.51		31.62	

Source: United States Department of Commerce, Bureau of the Census, Sixteenth Census of the United States, 1940, Housing, Volume II, General Characteristics.

I, II, Table 18, 18a, pp. 50-51, Part I U. S. Summary.

III, IV, Table 18, p. 784-85, Part II.

V, p. 787, Part II.

*I, II, III, p. 109, U. S. Summary, Part I; IV p. 151; V, p. 184 (includes Rural nonfarm).

M. B.
Aug. 1946

DISTRIBUTION OF URBAN TENANT OCCUPIED DWELLING UNITS BY TYPE OF STRUCTURE, MEDIAN AGE, AND MEDIAN AND AVERAGE RENTAL -- 1940

	All Occupied Urban Dwelling Units (Owner and Tenant) I	Tenant—Occupied Dwelling Units									
		Total		Multiple Family		Single Family		Median Age VI	Median Monthly Rent		Average IX
		Number II	Percent of I III	Number IV	Percent of II	Number V	Percent of II		Contract VII	Gross VIII	
A United States	20,596,500	12,881,540	62.5	8,735,743	67.8	4,145,797	32.2	28.5	24.60	30.33	27.01
B North	13,911,316	8,788,441	63.2	6,561,502	74.6	2,226,939	25.4	31.5	26.96	33.72	29.65
C South	4,134,172	2,641,534	63.9	1,380,478	52.3	1,261,056	47.7	24.3	15.13	19.32	18.71
D West	2,551,012	1,451,565	56.9	793,763	55.7	657,802	44.3	21.1	25.06	27.35	26.13
E Illinois	1,633,017	1,059,988	64.9	854,820	80.6	205,168	19.4	28.5	28.73	34.38	31.25
F Metropolitan Chicago	1,237,297	863,020	69.8	769,220	89.1	93,800	10.9	27.5	31.62	36.52	33.75
G City of Chicago	949,744	718,769	75.7	674,261	93.8	44,508	6.2	29.5	31.51	36.10	33.53

Source:

A to D incl.- U. S. Department of Commerce, Bureau of the Census. Housing Vol. I I General Characteristics Part I, Summary, 1940.

IV, V, Tables 4 and 4a, pp. 10-11; VI, Table 5, p. 12; VIII Table 21, p. 57.

E - I, II, III, Table 26, p. 62; IV, V, computed; VII, IX, Table 68, p. 109, VIII Table 71, p. 112.

F - I, II, III, Table 89, p. 156; IV, computed; VI, Table 92, p. 162; VII, IX, Table 103, p. 154; VIII, Table 104, p. 186.

G - I, II, III, Table 72, p. 113; IV, computed; V, Table 75, p. 121; VI Table 76, p. 123; VII, IX, Table 87, p. 151; VIII, Table 88, p. 153.

Median Age for all Urban Dwellings--Illinois is included by the Census in the North where the median age is 29.3 as compared with 31.5 for tenant-occupied dwellings. The median age of urban tenant-occupied dwellings in the State might be expected therefore to be higher than 28.5 which includes the age of owner-occupied dwellings.

N. B.
Aug. 1946

URBAN RESIDENTIAL STRUCTURES BY TYPE, STRUCTURE MEDIAN AGE, BATHING EQUIPMENT, AND STATE OF REPAIR

		I	II		III									IV		V	VI		VII
		All Residential Structures	Single Family Structures		Total Number Reporting	Structures by Exterior Material								All Dwelling Units	(years) Median Age	Percentage of Owner-Occupied Dwelling Units	Dwelling Units Lacking Bath-tubs or Showers in Structure		Percentage of Units Needing Major Repairs
			No.	%		Wood		Brick		Stucco		Other							
						No.	%	No.	%	No.	%	No.	%				No.	%	
A	U. S.	14,267,378	10,658,732	74.7	13,961,614	9,932,753	71.1	2,827,328	20.3	892,606	6.4	308,927	2.2	21,616,352	26.1	37.5	3,240,110	15.2	11.3
B	North	8,971,258	6,329,856	70.6	8,774,312	6,124,086	69.8	2,113,264	24.1	321,935	3.7	215,027	2.5	14,572,010	29.3	36.8	1,839,180	12.8	10.1
C	South	3,293,419	2,612,562	79.4	3,226,986	2,495,207	77.3	566,277	17.5	110,693	3.4	54,809	1.7	4,324,822	21.6	36.1	1,211,884	28.5	16.7
D	West	2,002,701	1,716,314	85.7	1,960,316	1,313,460	67.0	147,787	7.5	459,978	23.5	39,091	2.0	2,719,520	19.5	43.1	189,046	7.1	8.9
E	Illinois	947,880	628,055	66.2	930,708	539,056	57.9	333,888	35.9	32,829	3.5	24,935	2.7	1,687,563	28.5	35.1	230,476	13.8	11.4
F	Metropolitan Chicago	605,762	336,526	55.6	596,578	249,730	41.8	306,663	51.4	23,458	3.9	16,727	2.9	1,284,345	25.9	30.2	113,429	8.9	9.0
G	City of Chicago	389,013	164,920	42.4	382,628	131,148	34.3	238,959	62.5	5,797	1.5	6,724	1.7	999,503	28.8	24.3	81,501	8.3	8.2

Source: U. S. Dept. of Commerce, Bureau of the Census, 16th Census of the United States, 1940, Housing, Vol. II General Characteristics.

A to D incl.: Part I, United States Summary, I, II, III, Table 3, p. 9; IV Table 5, p. 12; V Table I, p. 7; VI Table 7b, p. 22; VII, Table 6c, p. 18.

E, F, G.: Part 2, Reports by States, I, II, III, Table 3, p. 764. Part I, IV E, Table 33, p. 71; IV F, Table 92, p. 163; IV G, Table 76, p. 123; V, Part 2, Table 1, p. 763; VI, Table 7, p. 770; VII, Table 6, p. 768.

N. B.
Aug. 1946

MORTGAGE STATUS FOR NON-FARM OWNER-OCCUPIED DWELLING UNITS
(Urban and Rural Non-Farm)

	Non-farm Dwelling Units						One-family Owner-occupied Mortgaged Properties									Urban Dwelling Units					
	Owner and Tenant Occupied	Owner Occupied		Mortgage Status Reported Owner Occupied			One-family Dwelling Units			One-family Dwelling Units · Owner Occupied	VIII					Owner and Tenant Occupied	Owner Occupied		Mortgage Status Reported Owner Occupied		
	I	II		III	IV		Owner and Tenant Occupied V	Owner Occupied VI		VII	(a)	(b) Reporting Debt and	(c) Average Value of	(d) Average Outstanding	Percent Average	(e) Average Interest Rate on First	IX	X		XI (a)	XI (b)	
	Total No.	No.	%	Total No.	No.	%	Total No.	No.	%	Median Value	Total No.	Value	Property	Indebtedness	Value	Mortgage	Total No.	No.	%	Total No.	No.	%
A United States	27,747,973	11,413,036	41.1	10,611,259	4,804,778	45.3	16,270,639	9,506,758	58.4	$2,996	4,025,815	3,745,366	$4,403	$2,305	52.4	5.55	20,596,500	7,714,960	37.5	7,275,576	3,682,839	50.6
B Northeastern States	8,922,359	3,207,838	36.0	2,995,413	1,600,590	53.4	3,823,048	2,383,004	62.3	3,979	1,206,055	1,125,274	5,363	2,883	53.7	5.45	7,340,558	2,339,357	31.9	2,182,522	1,264,238	57.9
C North Central States	8,665,972	4,015,014	46.4	3,764,900	1,675,926	44.5	5,278,905	3,393,963	64.3	2,945	1,435,006	1,338,888	4,077	2,088	51.2	5.46	6,570,758	2,783,578	42.4	2,645,889	1,318,215	49.8
D The South	6,646,750	2,573,512	38.7	2,332,158	838,610	36.0	4,674,510	2,263,177	48.4	1,989	751,092	680,248	3,851	2,011	52.2	5.75	4,134,172	1,492,638	36.1	1,400,927	585,929	41.8
E The West	3,522,892	1,616,676	45.9	1,518,788	689,652	45.4	2,494,176	1,466,614	58.8	2,926	633,662	600,956	3,956	2,041	51.6	5.74	2,512,012	1,099,447	43.1	1,046,238	514,457	49.2
F Illinois	1,943,463	758,474	39.0	704,885	314,298	44.6	887,390	584,054	65.8	3,533	234,243	222,239	5,026	2,490	49.6	5.42	1,633,017	573,029	35.1	539,057	267,163	49.6
G Metropolitan Chicago	1,233,179	371,908	30.2	353,982	203,910	57.6	320,153	235,373	71.5	5,215	137,074	134,620	6,083	3,082	50.7	5.19	1,204,983	353,141	29.3	335,777	193,957	57.8
H City of Chicago	949,744	230,975	24.3	217,316	124,423	57.3	161,661	117,153	72.5	4,975	68,857	67,344	5,487	2,868	52.3	5.20	949,744	230,975	24.3	217,316	124,423	57.3

Source: U. S. Dept. of Commerce, Bureau of the Census, Sixteenth Census of the United States, 1940. Housing

AI to VI inc.; VIII to XIb inc., Vol. IV, Mortgages on owner occupied Nonfarm Homes, Part I, United States Summary, p. 7.
BI to VI " ; VIII to XIb " , Ibid., p. 43.
CI to VI " ; VIII to XIb " , Ibid., p. 48.
DI to VI " ; VIII to XIb " , Ibid., p. 53.
EI to VI " ; VIII to XIb " , Ibid., p. 58.
VII A, p. 16; B, p. 60; C. p. 86; D, p. 112; E, p. 144.
VI-VII F, Vol. III, Characteristics by Monthly Rent or Value, part 2, p. 342; G., Ibid. p. 356, H, Ibid., p. 350.
I F Ibid., p. 341; G, Ibid., p. 355; H, Ibid., p. 349.
F IX, X, Vol. II, General Characteristics, Part I, United States Summary, p. 62; II, III, IV, XI a and b, Ibid., p. 102; V, VI, Vol. II, General Characteristics, Part 2, p. 765.
H I-IV, VIII a to e incl, IX-XI, Vol. IV, Part I, p. 80, V, VI, Vol. II, General Characteristics, Part 2, p. 675.
G I-IV, VIII a to d incl., Vol. IV, Part I, p. 89; e, p. 92; IX, X, XI, Vol. IV, Part II, p. 357.

N. B.
Aug. 1946

MORTGAGE STATUS FOR NON-FARM OWNER-OCCUPIED DWELLING UNITS
(Urban and Rural Non-Farm)

	Non-farm Dwelling Units						One-family Owner-occupied Mortgaged Properties									Urban Dwelling Units					
	Owner and Tenant Occupied	Owner Occupied		Mortgage Status Reported Owner Occupied			One-family Dwelling Units			One-family Dwelling Units · Owner Occupied	VIII					Owner and Tenant Occupied	Owner Occupied		Mortgage Status Reported Owner Occupied		
	I	II		III	IV		Owner and Tenant Occupied V	Owner Occupied VI		VII	(a)	(b) Reporting Debt and	(c) Average Value of	(d) Average Outstanding	Percent Average	(e) Average Interest Rate on First	IX	X		XI (a)	XI (b)	
	Total No.	No.	%	Total No.	No.	%	Total No.	No.	%	Median Value	Total No.	Value	Property	Indebtedness	Value	Mortgage	Total No.	No.	%	Total No.	No.	%
A United States	27,747,973	11,413,036	41.1	10,611,259	4,804,778	45.3	16,270,639	9,506,758	58.4	$2,996	4,025,815	3,745,366	$4,403	$2,305	52.4	5.55	20,596,500	7,714,960	37.5	7,275,576	3,682,839	50.6
B Northeastern States	8,922,359	3,207,838	36.0	2,995,413	1,600,590	53.4	3,823,048	2,383,004	62.3	3,979	1,206,055	1,125,274	5,363	2,883	53.7	5.45	7,340,558	2,339,357	31.9	2,182,522	1,264,238	57.9
C North Central States	8,665,972	4,015,014	46.4	3,764,900	1,675,926	44.5	5,278,905	3,393,963	64.3	2,945	1,435,006	1,338,888	4,077	2,088	51.2	5.46	6,570,758	2,783,578	42.4	2,645,889	1,318,215	49.8
D The South	6,646,750	2,573,512	38.7	2,332,158	838,610	36.0	4,674,510	2,263,177	48.4	1,989	751,092	680,248	3,851	2,011	52.2	5.75	4,134,172	1,492,638	36.1	1,400,927	585,929	41.8
E The West	3,522,892	1,616,676	45.9	1,518,788	689,652	45.4	2,494,176	1,466,614	58.8	2,926	633,662	600,956	3,956	2,041	51.6	5.74	2,512,012	1,099,447	43.1	1,046,238	514,457	49.2
F Illinois	1,943,463	758,474	39.0	704,885	314,298	44.6	887,390	584,054	65.8	3,533	234,243	222,239	5,026	2,490	49.6	5.42	1,633,017	573,029	35.1	539,057	267,163	49.6
G Metropolitan Chicago	1,233,179	371,908	30.2	353,982	203,910	57.6	320,153	235,373	71.5	5,215	137,074	134,620	6,083	3,082	50.7	5.19	1,204,983	353,141	29.3	335,777	193,957	57.8
H City of Chicago	949,744	230,975	24.3	217,316	124,423	57.3	161,661	117,153	72.5	4,975	68,857	67,344	5,487	2,868	52.3	5.20	949,744	230,975	24.3	217,316	124,423	57.3

Source: U. S. Dept. of Commerce, Bureau of the Census, Sixteenth Census of the United States, 1940. Housing

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N. B.
Aug. 1946