

# NATIONAL INGRATITUDE: THE EGREGIOUS DEFICIENCIES OF THE UNITED STATES' HOUSING PROGRAMS FOR VETERANS AND THE "PUBLIC SCANDAL" OF VETERANS' HOMELESSNESS

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"The government should 'provide against the possibility that any [person] . . . who honorably wore the Federal uniform shall become the inmate of an almshouse, or dependent upon private charity. . . . [I]t would be a public scandal to do less for those whose valorous service preserved the government.'"<sup>1</sup>

"I have the obligation as the commander in chief to go thank them for their service, to comfort them, to make sure that they are getting what they need."<sup>2</sup>

"Conservatively, one out of every four homeless males who is sleeping in a doorway, alley, or box in our cities and rural communities has put on a uniform and served our country."<sup>3</sup>

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I am grateful to Indiana University School of Law—Indianapolis for a Summer Research Fellowship and a sabbatical semester, each of which was essential to the completion of this Article, and to these people for particularly thoughtful and insightful suggestions: Gideon Anders, Esq., Executive Director of the National Housing Law Project; Professor Megan Ballard of Washburn University School of Law; Linda Boone, Executive Director of the National Coalition for Homeless Veterans; Professor Daniel H. Cole of Indiana University School of Law—Indianapolis; Professor Dennis Culhane of the University of Pennsylvania; Harris David, Esq., of New Jersey Legal Services; Professor David M.P. Freund of Princeton University; Professor Beth Harris of Ithaca College; Chester Hartman, Ph.D., Director of Research for the Poverty and Race Research Action Council; Mary Ellen Hombs, Deputy Director of the U.S. Interagency Council on Homelessness; Mary Ellen McCarthy, Esq., Democratic Staff Director of the House Veterans Affairs Subcommittee on Benefits; and Roberta Youmans, an expert on low-income housing issues. Of course, these people do not necessarily agree with what I have written, and I alone am responsible for any errors in this Article. I appreciate the meticulous editing by Seth M. Thomas and his colleagues at the Indiana Law Review and the invaluable help of faculty assistant Mary Ruth Deer; librarians Richard Humphrey and Michelle Burdsall; and research assistants Andrea Bonds, Victoria Déak, Marissa Florio, Paul Jefferson, April Meade, Katie Orton, and Janis Sims. I presented earlier versions of this Article as the Paul E. Beam Fellowship Lecture at Indiana University School of Law—Indianapolis and at the Law and Society Association's May 2003 annual meeting.

1. 1888 Republican Party Platform, *reprinted in* 1 DONALD BRUCE JOHNSON, NATIONAL PARTY PLATFORMS 82 (1978).

2. BOB WOODWARD, PLAN OF ATTACK 280 (2004) (quoting President George W. Bush).

3. National Coalition for Homeless Veterans, *Background & Statistics*, at <http://www.nchv.org/background.cfm> (last visited Oct. 20, 2004).

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## INTRODUCTION

This Article examines the nature and extent of housing assistance provided by the United States government to veterans of its military service.<sup>4</sup> It finds that assistance remarkably limited and inconsistent with our nation's history and rhetoric, providing a sobering corrective for those who wish to believe that public policy in the United States progressively becomes more humane or that national declarations are matched by national performance. The Article also considers the reasons and potential cures for these inadequacies and inconsistencies.<sup>5</sup>

In the late nineteenth century, the United States offered generous assistance, including housing, to disabled and elderly veterans. It was generally agreed that the government owed this debt to veterans with service-connected disabilities;<sup>6</sup>

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4. The Article does not address the government's provision of housing assistance to those who are on active military duty or (except incidentally) to the survivors of servicepeople or veterans. Studies indicate that many servicepeople live in egregiously substandard housing and that some experience literal homelessness. For discussions of the inadequacy of housing for people on active military duty, see Pamela C. Twiss & James A. Martin, *Conventional and Military Public Housing for Families*, 78 SOC. SERV. REV. 240 (1999); INTERAGENCY COUNCIL ON THE HOMELESS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE, FINDINGS OF THE NATIONAL SURVEY OF HOMELESS ASSISTANCE PROVIDERS AND CLIENTS, TECHNICAL REPORT 11-2 (1999) [hereinafter NSHAPC] ("4 percent [of homeless people interviewed] say that they were in the military at the time they were interviewed for [the] study"); Chester Hartman & Robin Drayer, *Military Family Housing: The Other Public Housing Program*, in CHESTER HARTMAN, BETWEEN EMINENCE & NOTORIETY: FOUR DECADES OF RADICAL URBAN PLANNING 233 (2002); Elizabeth Becker, *Army's Newest Objective is Livable Family Housing*, N.Y. TIMES, Feb. 7, 2000, at A12 (stating that housing is a major reason that "midcareer service members leave the armed forces"); Editorial, *Paying the Troops*, N.Y. TIMES, Feb. 15, 2001, at A30 (stating that "[m]ore than 5,000 American military personnel still need food stamps to balance their monthly budgets" and that "[h]ousing conditions are even more scandalous. Of the 300,000 military housing units, 200,000 are rated inadequate by the service's own minimal standards").

5. While there have been studies of educational programs for veterans (see, e.g., KEITH W. OLSON, *THE G.I. BILL, THE VETERANS, AND THE COLLEGES* (1974); Suzanne Mettler, *Bringing the State Back in to Civic Engagement: Policy Feedback Effects of the G.I. Bill for World War II Veterans*, 96 AM. POL. SCI. REV. 351 (2002)), the housing programs have received virtually no critical or scholarly attention. See Kathleen Frydl, Book Review, 17 LAW & HIST. REV. 200, 200 (1999) (reviewing PATRICK J. KELLY, *CREATING A NATIONAL HOME: BUILDING THE VETERANS' WELFARE STATE 1860-1900* (1997)) (noting "the scant attention that the Veterans Administration has received from historians"). I hope that this Article will provoke further consideration of these problems.

6. See THE PRESIDENT'S COMM'N ON VETERANS' PENSIONS, 84TH CONG., *THE HISTORICAL DEVELOPMENT OF VETERANS' BENEFITS IN THE U.S., A REPORT ON VETERANS' BENEFITS IN THE U.S.* 65 (Comm. Print 1956) [hereinafter REPORT ON VETERANS' BENEFITS]:

There has never been any question but that it is the Government's duty and responsibility to provide, and to provide generously, for those who, while or as a result

and a post-Civil War consensus extended that obligation to encompass all veterans with disabilities and all elderly veterans.<sup>7</sup> The rationale was that veterans had earned this compensation from the federal government, and that it would be shameful to allow veterans to suffer want or be forced to rely on state or local aid or private charity.<sup>8</sup>

In the late twentieth and early twenty-first centuries, however, veterans' housing programs assist relatively few veterans.<sup>9</sup> Many veterans and their

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of serving their country in time of war, suffered disease or injury which resulted in their being unable to support themselves—in other words, those with service-connected disability . . . . Also, there has been no question as to the Government's responsibility to the dependents of those veterans who died as a result of their service in time of war.

7. See Judith Gladys Cetina, *A History of Veterans' Homes in the United States, 1811-1930*, at 2 (1977) (unpublished Ph.D. dissertation, Case Western University) (“[B]y the mid 1880s, a veteran disabled by wounds or the infirmities of old age who had participated in any of the major wars of the century . . . could find shelter in one of the branches of the National Home for Disabled Volunteer Soldiers (NHDVS) or in one of the many state soldiers' institutions. The professional soldier or career naval man in need of shelter could seek admission to either the U.S. Soldiers' Home in Washington, D.C. or the U.S. Naval Home in Philadelphia, Pennsylvania.”); THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* 141 (1992) (stating that “in 1884 a new law specified that the branches of the National Home could take in elderly veterans without requiring them to have disabilities linked to wartime injuries”); *REPORT ON VETERANS' BENEFITS*, *supra* note 6, at 65-66 (Faced with the alternative of “do[ing] nothing for the man, thus incurring the criticism that the Government was allowing the men who fought and suffered for it to go unattended in their time of want,” the government usually decided to succor “all veterans with or without restrictions as to disability, age, or indigency.”).

8. SKOCPOL, *supra* note 7, at 150 (“[H]onorable and generous public provision for Civil War veterans was openly defined in opposition to demeaning provision for paupers. The point was to keep these deserving men and those connected to them from the degrading fates of private charity or the public poorhouse.”); see also KELLY, *supra* note 5, at 3 (deprecating “oblig[ing] these veterans] to seek an asylum in the almshouses of the country”); *id.* at 14 (quoting the leaders of Boston's Discharged Soldiers' Home, who said in 1863 that “it cannot be presumed that the Government will long allow its heroic defenders to be dependent on public charity in any form, however delicately or cordially it may be extended”); *CONCISE DICTIONARY OF AMERICAN BIOGRAPHY* 10-11 (Joseph L. Hawkins ed. 1964) (quoting Gen. Josiah Perham as stating, in 1865, that “[t]he poor soldier broken in health, or maimed . . . should not return to be the object of capricious common charity; he should have a nation's gratitude, a nation's care, a place in the nation's household, a seat by the nation's fireside”); *REPORT ON VETERANS' BENEFITS*, *supra* note 6, at 66-67 (“The philosophy is discernible that the Government ought to help the veteran when he is down, on the basis that he is a veteran. This seems to be largely the philosophy which prevailed up until World War II.”).

9. See *THE ENCYCLOPEDIA OF HOUSING* 116 (Willem Van Vliet ed., 1998) (reporting that “about 1% of veterans hold VA loans”). An unknown number of veterans receive federal housing assistance under programs that are available to the general public, including programs administered by the Department of Housing and Urban Development (HUD) and the Department of Agriculture

families pay far more than they can afford for shelter or live in overcrowded or otherwise substandard dwellings,<sup>10</sup> and well over half a million veterans—some with dependent spouses and children—experience homelessness each year.<sup>11</sup>

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(DoA), and the Low Income Housing Tax Credit Program (LIHTC) and tax advantages provided by the Department of the Treasury. It would be very helpful if other housing programs collected and reported statistics on the number of veterans they serve. See Anne B. Shlay & Charles E. King, *Beneficiaries of Federal Housing Programs: A Data Reconnaissance*, 6 HOUSING POL'Y DEBATE 481, 481-83, 486 (1995) (“data are key” for monitoring compliance with requirements).

10. See MARY ELLEN HOMBS, *AMERICAN HOMELESSNESS: A REFERENCE HANDBOOK* 63 (3d ed. 2001) (discussing housing burdens in the general population, which includes veterans); NATIONAL LOW INCOME HOUSING COALITION, *LOSING GROUND IN THE BEST OF TIMES: LOW INCOME RENTERS IN THE 1990S*, at 5 (Mar. 2004), available at <http://www.nlihc.org/research/losingground.pdf>. It appears that no statistics are kept regarding housing burdens of veterans as distinct from the general population.

11. Estimates of numbers of homeless people are notoriously unreliable, depending upon variations in defining “homelessness” and different protocols for compiling statistics. See, e.g., MARTHA BURT ET AL., *HELPING AMERICA’S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING?* 28 (2001). With respect to homeless veterans in particular, the Department of Veterans Affairs (DVA), a department of the federal government, estimated in the 1990s that some 250,000 veterans were homeless on any given night, twice that many over the course of a year. Press Release, DVA, *VA Programs for Homeless Veterans* (June 1999), at <http://www.va.gov/pressrel/99624hmls.htm>; 1990 ANNUAL REPORT, INTERAGENCY COUNCIL ON THE HOMELESS 248 (1991) (stating that between 150,000 and 250,000 veterans are homeless each night). More recently, the DVA has amended this to say that “it has been estimated that more than 200,000 veterans may be homeless on any given night and that twice as many veterans experience homelessness during a year.” DVA, *Fact Sheet: VA Programs for Homeless Veterans* (Dec. 2004), at <http://www1.va.gov/opa/fact/hmlsfs.html> [hereinafter DVA Fact Sheet Dec. 2004]. While the statement that “more than 200,000 veterans may be homeless on any given night” is not inconsistent with the statement that the number of veterans homeless on any given night is 250,000, the change certainly seems designed to suggest that the number of homeless veterans was smaller in 2003 than it was in the 1990s. Unfortunately, there is absolutely no basis for that suggestion; indeed, for several reasons, the likelihood is that even the 250,000 per night, half-million per year, estimate is too low.

In 1991, the National Coalition for the Homeless considered that estimate too low. See NATIONAL COALITION FOR THE HOMELESS, *HEROES TODAY, HOMELESS TOMORROW?: HOMELESSNESS AMONG VETERANS IN THE UNITED STATES* 2 (Nov. 1991) [hereinafter *HEROES TODAY, HOMELESS TOMORROW?*]. One of the most thorough studies of homelessness was the National Survey of Homeless Assistance Providers and Clients (NSHAPC), undertaken in 1996, nine years prior to the publication of this Article. See BURT ET AL., *supra* note 11, at 16-17. NSHAPC data indicate that the number of people who may have experienced homelessness during a year beginning in February 1996 was 3.5 million. *Id.* at 49-50. Using that total, and the estimate that about 34% of homeless people are in families, yields the result that some 2.32 million single people may have experienced homelessness in that year. See *id.* at 33. Using the estimate that 23% of homeless adults are veterans produces the result that some 533,600 single veterans may have experienced homelessness in that year, not including veterans who are in families (which is the case for many women veterans). See, e.g., NSHAPC, *supra* note 4, at 11-2, 11-3; GAO, *HOMELESS*

Moreover, many of those homeless veterans suffer service-connected disabilities, and therefore are veterans to whom the federal government owes a special obligation.<sup>12</sup> Rather than accept responsibility for these homeless veterans, the

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VETERANS: VA EXPANDS PARTNERSHIPS, BUT HOMELESS PROGRAM EFFECTIVENESS IS UNCLEAR, GAO/HEHS-99-53, at 1 (Apr. 1, 1999) [hereinafter GAO REPORT].

NSHAPC's numbers may have underestimated the number of homeless persons in 1996. *See* HOMBBS, *supra* note 10, at 62-63 (discussing other studies of homelessness). Moreover, several studies suggest that the numbers of homeless people increased in at least some of the years since 1996. *See, e.g.*, THE U.S. CONFERENCE OF MAYORS—SODEXHO USA, HUNGER AND HOMELESSNESS SURVEY, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICAN CITIES (Dec. 2004) app. (indicating increases in demand for shelter from 1998 to 2003), available at <http://www.usmayors.org/uscm/hungersurvey/2004/onlinereport/HungerandHomelessnessReport2004.pdf>; Joel Stein et al., *The Real Face of Homelessness*, TIME, Jan. 20, 2003, at 54 (Time magazine's survey of eight jurisdictions with relatively reliable statistics showed year-over-year increases in either 2001 or 2002 of homeless parents and children); INSTITUTE FOR THE STUDY OF HOMELESSNESS AND POVERTY, HOMELESSNESS IN LOS ANGELES: A SUMMARY OF RECENT RESEARCH 5, 8 (March 2004) [hereinafter HOMELESSNESS IN LOS ANGELES]; Jennifer Steinhauer, *Advocates for Homeless Offer Cautious Praise for City Changes*, N.Y. TIMES, Feb. 27, 2004, at B1 (stating that "[i]n the past few years, the number of homeless families in the shelter system has risen significantly . . . [.] an increase of almost 50 percent since 2001").

Furthermore, with respect to the multiplier, note that "[c]ounts estimating the number of homeless people over a period of a year are commonly three or more times larger than point-in-time counts." HOMELESSNESS IN LOS ANGELES, *supra*, at 8 (reporting ratios between 2.8 and 5); *see also* BURT ET AL., *supra* note 11, at 14 (discussing "evidence that the number of people who experience homelessness during the course of a year or longer could be as much as six times the number homeless at any given time") (citation omitted). All of these are reasons to believe that the number of homeless veterans is far higher than 250,000 per night and 500,000 in any given year.

In addition, none of this takes into account, as the DVA Fact Sheet states, that "[m]any other veterans are considered at risk [of homelessness] because of poverty, lack of support from family and friends and precarious living conditions in overcrowded or substandard housing." *See* DVA Fact Sheet Dec. 2004, *supra*.

12. The Department of Veterans Affairs ("DVA" or "VA") reports that "the vast majority of homeless veterans" suffer disabilities. Fund Availability Under the VA Homeless Providers Grant and Per Diem Program, 68 Fed. Reg. 34,489 (June 9, 2003). These disabilities include mental illness, substance abuse disorders, arthritis, rheumatism and other joint problems, high blood pressure, and Post Traumatic Stress Disorder ("PTSD"). *Id.*; NSHAPC, *supra* note 4, at 11-6; Paula P. Schnurr et al., *Randomized Trial of Trauma-Focused Group Therapy for Posttraumatic Stress Disorder: Results from a Dep't of Veterans Affairs Cooperative Study*, 605 ARCHIVES GEN. PSYCHIATRY 481 (2003).

While we do not know how many of these are service-connected disabilities, it is reasonable to assume that a substantial number are. *See* JOEL BLAU, THE VISIBLE POOR: HOMELESSNESS IN THE UNITED STATES 29 (1992) (stating that "many" of the Viet Nam veterans have service-connected disabilities); REPORT ON VETERANS' BENEFITS, *supra* note 6, at 65 (stating that, in the past, when it was not clear whether a veteran's disabilities were service-connected, the government has followed a "prevailing principle that the veteran should be given the benefit of the doubt").

federal government has abandoned them to the mercies of state and local governments and private charities, remitting many of them to the streets or to shelters that are today's equivalent of the poorhouses and almshouses that were to be avoided for veterans in the nineteenth century.<sup>13</sup>

This failure to provide for veterans has occurred despite intervening proclamations that decent housing is the right of all human beings, internationally and in the United States. In 1941, President Franklin Roosevelt asserted that all Americans should live in "Freedom from Want,"<sup>14</sup> and the 1948 Universal Declaration of Human Rights—inspired in part by Roosevelt's 1941 address<sup>15</sup>—proclaimed that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, [and] housing."<sup>16</sup> In the 1949 National Housing Act, the Congress of

The number of people with service-connected disabilities has grown dramatically with the wars in Afghanistan and Iraq. On May 5, 2004, CNN reported the medical evacuation of 40,000 service members from Iraq since the war began. *CNN Newsnight Aaron Brown* (CNN television broadcast, May, 5, 2004), available at <http://edition.cnn.com/TRANSCRIPTS/0405/05/asb.00.html>. Sixteen percent of veterans of operations in Iraq and Afghanistan who have separated from military service, or 26,633, "had filed [disability] benefits claims with the VA for service-connected disabilities" as of April 2004. Josh White, *Influx of Wounded Strains VA*, WASH. POST, Oct. 3, 2004, at A01 (citing a VA accounting).

13. See, e.g., Dan Barry, *Home from Iraq, and Without a Home*, N.Y. TIMES, Apr. 24, 2004, at A12; Dan Barry, *War Veteran Finds Home Has a Heart*, N.Y. TIMES, May 29, 2004, at A13 (describing an honorably discharged veteran of the war in Iraq who, with her young child, suffered homelessness in New York City; a month after the story appeared, she was living in an apartment in a building owned by the New York Coalition for the Homeless); see SKOCPOL, *supra* note 7, at 67-101 for the nineteenth century view; see also HEROES TODAY, HOMELESS TOMORROW?, *supra* note 11, at vi (stating that "some of our troops who fought in Desert Storm are homeless already [in 1991]. Their homecoming has resulted in little more than a parade to the shelter").

For an anticipation of what seems to be the twenty-first century situation, see KELLY, *supra* note 5, at 45-46 (Urging relief for disabled soldiers in 1864, Frederick Knapp prophesied that delay would deplete the public's sympathy for disabled soldiers. Kelly quoted Knapp, who wrote, prophetically, "We shall get *accustomed* to it—and communities will accept the fact & pressure of a larger number of these disabled men among them, struggling for . . . a livelihood, just as they accept the fact of the vast mass of *permanent poverty* in their midst.") (emphasis in original).

14. President Franklin D. Roosevelt, State of the Union Speech (Jan. 6, 1941), in 9 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 672 (Russell & Russell 1969) (1950) [hereinafter PUB. PAPERS].

15. MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 176 (2001).

16. UNIVERSAL DECLARATION OF HUMAN RIGHTS, art. 25, G.A. Res. 217 A, U.N. Doc. A/810 (1948). The United States also has signed (though not ratified) the International Covenant on Economic, Social, and Cultural Rights, which also recognizes the human right of every person to "an adequate standard of living," including housing. See Office of the United Nations High Comm'r for Human Rights, *Ratifications and Reservations*, at <http://www.ohchr.org/english/countries/ratification/3.htm> (last updated Nov. 24, 2004).

the United States declared the national housing goal to be “the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family,”<sup>17</sup> and Congress re-affirmed that goal in 1968.<sup>18</sup> There also have been rhetorical commitments to adequate provision for veterans in particular. President Lincoln concluded his Second Inaugural Address with the exhortation that now is engraved over the entrance to the building that houses the Department of Veterans Affairs: “to care for him who shall have borne the battle and for his widow and his orphan.”<sup>19</sup> President Franklin Roosevelt, when signing the G.I. Bill of Rights into law on June 22, 1944, said that members of the armed forces “have been compelled to make greater economic sacrifice and every other kind of sacrifice than the rest of us, and are entitled to definite action to help take care of their special problems.”<sup>20</sup> In accordance with President Roosevelt’s reference to entitlement, popular opinion has considered that the G.I. Bill embodies “a soldier’s *right* to fair treatment from a grateful nation.”<sup>21</sup>

The G.I. Bill, in general, has been hailed as creating an “American welfare state for veterans and their families,”<sup>22</sup> a “universal”<sup>23</sup> program that establishes

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17. Housing Act of 1949, Pub. L. No. 81-171, § 2, 63 Stat. 413, 413 (codified as 42 U.S.C. § 1441 (2000)). See BRUCE HEADEY, HOUSING POLICY IN THE DEVELOPED ECONOMY: THE UNITED KINGDOM, SWEDEN AND THE UNITED STATES 14 (1978) (discussing similar statements in Sweden (1967) and Britain (1961) and characterizing the U.S. statement as made “[w]ith greater bombast but even less prescience”).

18. Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 2, 82 Stat. 476, 476 (1968) (codified as 42 U.S.C. § 1441 (2000)). See also Chester Hartman, *The Case for a Right to Housing*, 9 HOUSING POL’Y DEBATE 223 (1998).

19. President Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865), in INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES: FROM GEORGE WASHINGTON 1789 TO GEORGE BUSH 1989, at 142, 143 (1989); Veterans Benefits Administration, *Leadership Covenant of the Veterans Benefits Administration* (June 28, 2002), at <http://www.vba.va.gov/> (stating that Lincoln’s words “are found in every VA office and convey the sanctity of our mission”).

20. Franklin D. Roosevelt, The President Signs the G.I. Bill of Rights (June 22, 1944), in 13 PUB. PAPERS, *supra* note 14, at 180, 181; Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 587 (commonly known as the G.I. Bill of Rights).

21. See, e.g., I’LL BUY THAT!: 50 SMALL WONDERS AND BIG DEALS THAT REVOLUTIONIZED THE LIVES OF CONSUMERS 74 (1986) (emphasis added); *Legion Bill Asks Wide Veteran Aid*, N.Y. TIMES, Jan. 9, 1944, at 28 (quoting Congressman John E. Rankin as describing the proposed G.I. Bill as “the minimum of the just dues owed to the men and women of the armed forces for their services in the preservation of the nation in World War II”).

22. Edwin Amenta & Theda Skocpol, *Redefining the New Deal: World War II and the Development of Social Provision in the United States*, in THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES 81, 81-82 (Margaret Weir et al. eds., 1988); see also GEOFFREY PERRETT, DAYS OF SADNESS, YEARS OF TRIUMPH: THE AMERICAN PEOPLE 1939-1945, at 341-42 (1973) (describing veterans’ benefits as “a variety of Socialism”).

23. SAR A. LEVITAN & JOYCE K. ZICKLER, SWORDS INTO PLOWSHARES: OUR GI BILL 7 (1973).

a “happy ending” for all veterans.<sup>24</sup> On the contrary, however, the housing program created by the G.I. Bill was an extremely limited measure that was available only to some veterans and provided eligible veterans with restricted aid. The program served the interests of industries more than the needs of veterans. The ironic reality is that since the enactment of the housing provisions of the G.I. Bill of Rights, government housing assistance has been unavailable to most veterans, particularly for veterans and veterans with service-connected disabilities, who have the strongest claim on and greatest need for government help.

Whatever may be the case with respect to the educational and other provisions of the G.I. Bill,<sup>25</sup> the housing provisions of the G.I. Bill never did, and do not now, “take care of [veterans’] special problems”<sup>26</sup> or provide to all or even most veterans a “rich bounty,”<sup>27</sup> or “fair treatment from a grateful nation.”<sup>28</sup> The housing provisions excluded some people by design and others by administration and left a legacy of veterans living in unaffordable, overcrowded, or otherwise substandard housing, in shelters and in cars, and literally on the streets.

The substandard housing and homelessness suffered by veterans—particularly those with service-connected disabilities—is inconsistent with the long-standing understanding that the nation owes a debt to its veterans, with the nation’s history, and with the nation’s rhetorical commitments. The goal of this Article is to illuminate these inconsistencies, to consider why these contradictions exist, and to propose ways of assuring that every veteran has access to decent, affordable housing.

Part I of this Article describes the development of housing assistance for veterans in the United States from the Civil War to 2004. The focus is on the period after the 1944 enactment of the G.I. Bill of Rights, which created a veterans’ housing program that provided only homeownership assistance. Part II discusses one of the consequences of the decision to offer that homeownership assistance only: the exclusion from the G.I. Bill’s housing program of women, veterans of color, and veterans for whom homeownership is infeasible or unaffordable. Part III considers some reasons why only homeownership may have been offered as the response to a problem far too broad to be solved by homeownership. Part IV proposes possible solutions to the current crisis with respect to veterans’ housing, outlining what could be done to help veterans who are suffering housing problems, including homelessness.

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24. DAVIS R.B. ROSS, *PREPARING FOR ULYSSES: POLITICS AND VETERANS DURING WORLD WAR II*, at 3 (1969) (“This story of the origins of the United States’ policy for able-bodied veterans of World War II ends happily”; “[n]ever has a nation lavished so many material benefits upon its heroes”; “World War II veterans received a rich bounty.”).

25. *See, e.g.*, Mettler, *supra* note 5.

26. *See supra* note 20 and accompanying text.

27. *See supra* note 24 and accompanying text.

28. *See supra* note 21 and accompanying text.

I. THE DEVELOPMENT OF VETERANS' HOUSING PROGRAMS IN THE  
UNITED STATES FROM THE CIVIL WAR TO 2004

A. *Veterans' Housing from the Civil War to 1932*

Some students of the subject maintain that nations traditionally are ungrateful to their veterans. Davis R.B. Ross sees the origin of this reaction in the *Odyssey*, which, he writes, "may be said to be a classic description of how societies treat their war veterans."<sup>29</sup> After victory, Ross suggests, those at home "discard rapidly (if ever they held them) feelings of obligation and gratitude to veterans."<sup>30</sup> Richard Severo and Lewis Milford agree that "[t]here were times in American history, including recent history, when such soldiers were lured into service with offers of generous pay, bonuses, and benefits, only to be scorned as mercenaries and social parasites when they tried to collect their due."<sup>31</sup> They write that "[t]hroughout American history, even after 'popular' wars, veterans have had to struggle against a Government that has mostly sought to limit its financial liability, more like a slippery insurance company than a polity rooted in the idea of justice and fair reward."<sup>32</sup>

As Theda Skocpol and others have shown, however, the federal government's provision for veterans after the Civil War "evolved from a restricted program to compensate disabled veterans and the dependents of those killed or injured in military service into an open-ended system of disability, old-age, and survivors' benefits for anyone who could claim minimal service time on the northern side of the Civil War."<sup>33</sup> "Through Civil War benefits, the federal government . . . became the source of generous and honorable social provision for a major portion of the American citizenry."<sup>34</sup> This provision included

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29. ROSS, *supra* note 24, at 2.

30. *Id.*; see also ROBERT JÜTTE, POVERTY AND DEVIANCE IN EARLY MODERN EUROPE 26-27 (1994) (stating that "[o]ften enough the numbers of the poor were increased by demobilized soldiers. . . . Sir Thomas More . . . in *Utopia* (1516) pointed out that in inter-war periods demobilized soldiers and redundant retainers 'were thus destitute of service [that they] either starve for hunger, or manfully play the thieves'") (quoting THOMAS MORE, THE UTOPIA OF SIR THOMAS MORE (J.H. Lupton ed., 1895) (1516)).

31. RICHARD SEVERO & LEWIS MILFORD, THE WAGES OF WAR: WHEN AMERICA'S SOLDIERS CAME HOME—FROM VALLEY FORGE TO VIETNAM 16 (1989).

32. *Id.*; see also DIXON WECTER, WHEN JOHNNY COMES MARCHING HOME 10, 183 (1944) (discussing contradictory views of veterans and stating that, after the Civil War, "stay-at-homes often nourished a secret distrust of the soldier"). The United States did, however, have a history of providing land to some of its veterans—those who were male and white. See, e.g., JAMES W. OBERLY, SIXTY MILLION ACRES: AMERICAN VETERANS AND THE PUBLIC LANDS BEFORE THE CIVIL WAR (1990); REPORT ON VETERANS' BENEFITS, *supra* note 6, at 67 (stating that the provision of compensation and pensions "was followed by land grants (changed after the Civil War to homestead preference)"); *id.* at 110-14 (discussing government aids to land acquisition by veterans).

33. SKOCPOL, *supra* note 7, at 102.

34. *Id.* at 101; see also *id.* at 111, 128-29; see also MICHAEL B. KATZ, IN THE SHADOW OF THE

housing. At the end of the nineteenth century, “the federal government accepted responsibility for sheltering citizen-veterans, both disabled and elderly, who were physically unable to maintain their livelihoods in the rough-and-tumble world of late-nineteenth-century capitalism.”<sup>35</sup> It did this by establishing a series of soldiers’ homes—collectively entitled the National Home for Disabled Volunteer Soldiers (NHDVS)—that offered “a generous and dignified space for citizen-veterans,” “a system of relatively comfortable, modern, and ornamented institutions providing Union veterans with food and board, medical care, recreation, religious instruction, and employment opportunities . . . without suffering from the stigma afflicting nonveterans forced to seek help from the local poorhouse.”<sup>36</sup> The residence was “not a charity,” but “a home tendered to the veteran . . . as a partial remission of a debt the government was obliged to pay directly to every volunteer who fought in the nation’s service.”<sup>37</sup>

By the early 1870s, the United States had “a viable institution for the care of disabled veterans,” with four branches of the National Home and “an efficient system of outdoor relief” for disabled veterans who preferred private accommodations.<sup>38</sup> By 1900, there were eight branches of the NHDVS; when NHDVS was consolidated into the Veterans Administration (VA) in 1930, there were twelve.<sup>39</sup> While the Board of NHDVS also used state homes, it insisted

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POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 200 (1986) (stating that “[i]n the late nineteenth and early twentieth centuries, at least one of every two elderly, native-born white Northern men and many of their widows received a pension from the federal government. Pensions were the largest expense in the federal budget after the national debt. Through its veterans’ pensions, the United States federal government . . . spent much more on old-age assistance than did Britain, which usually is thought to have been far in advance of America in the development of a welfare state”)

35. KELLY, *supra* note 5, at 129. A contrary view was reported, however, by the 1956 presidential commission chaired by General Omar Bradley, which said that “[f]or all wars prior to World War II, . . . veterans without service-connected disabilities were left to their own devices in the matter of their readjustment to civilian life.” REPORT ON VETERANS’ BENEFITS, *supra* note 6, at 51. This finding by the Bradley commission may be related to the commission’s recommendations. See JUNE A. WILLENZ, WOMEN VETERANS: AMERICA’S FORGOTTEN HEROINES 167 (1983) (stating that the Bradley commission “aroused great controversy [when] it questioned the rationale for many of the benefits, particularly for those who had not been wounded or maimed in battle. It concluded that the justification for non-service-connected benefits was quite weak, and that society had other methods at its disposal to meet the needs of veterans who were not wounded in war”).

36. KELLY, *supra* note 5, at 123.

37. Cetina, *supra* note 7, at 94-96.

38. *Id.* at 143; *see id.* at 3 (stating that in some cases, the soldiers’ homes (or “branches”) were residences for the dependents of elderly veterans as well as the veterans themselves); *id.* at 320 (discussing the Wisconsin home’s provision for married couples and widows).

39. KELLY, *supra* note 5, at 2 n.4. The Veterans Administration (VA) became the cabinet-level Department of Veterans Affairs (DVA) on March 15, 1989. Department of Veterans Affairs Act of 1988, Pub. L. No. 100-527, 102 Stat. 2635. Both the DVA and others often refer to the

“that it was not the state’s duty to care for the disabled soldier but that the obligation to assist the needy veteran was a general charge upon the whole country, and all sections of the nation should bear their fair share.”<sup>40</sup>

The homes, distinguished in their architecture and landscaping, were “highly valued prizes for communities . . . . Requiring a steady supply of goods, labor, and services, each branch of this institution played a significant role in sustaining the economic vitality of nearby cities. . . . [L]ocal communities displayed an intense interest in procuring a branch of the National Home for their area.”<sup>41</sup>

The NHDVS housed “colored” as well as white veterans, all of whom initially were said to have lived “together on friendly terms, . . . without thought of each other except [as] soldiers disabled in the cause of a common country.”<sup>42</sup> “[B]y the end of the century, [however,] Jim Crow had apparently destroyed any hopes for full integration. Members of the colored company . . . then messed at separate tables and patronized a special shop separate from the main barbershop.”<sup>43</sup>

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DVA as the VA; this Article does so as well.

40. Cetina, *supra* note 7, at 143; *see, e.g.*, STATE OF CALIFORNIA, GOVERNOR’S COMMISSION ON CALIFORNIA VETERANS HOMES: 1999-2001, FINDINGS AND RECOMMENDATIONS ON SITES FOR FUTURE STATE VETERANS HOMES 4-5 (Oct. 15, 2001) (noting that California’s first veterans’ home, in Yountville, has operated since 1884, and that additional homes were added, in the 1990s, in Barstow and Chula Vista).

41. KELLY, *supra* note 5, at 172.

42. Cetina, *supra* note 7, at 112 (quoting ANNUAL REPORT OF THE BOARD OF MANAGERS FOR 1871, H. Mis. Doc. 298, 42d Cong., 2d Sess., at 2); *see also* KELLY, *supra* note 5, at 98 (“In the decade of the 1870s, the Home housed approximately 80 black veterans a year.”). With respect to the situation of Blacks in the pension system, *see* SKOCPOL, *supra* note 7, at 138, stating that

[S]ome 186,017 blacks served in the Union armies . . . . Blacks made up about 9 to 10 percent of the Union forces . . . . Although there is no systematic evidence about how black Union veterans fared in the pension application process compared to whites, hints from the historical record suggest that free blacks with stable residential histories in the North probably did as well as their white socioeconomic counterparts, while black veterans and survivors from the ranks of freed slaves may often have lacked the documents they needed to establish claims for pensions. Remarkably unlike most U.S. institutions of its day, the Pension Bureau was not formally racist.

*See also id.* at 596 n.130 (noting that about 5 percent of the Pension Bureau’s employees in 1903 were black); *cf.* Ann Shola Orloff, *The Political Origins of America’s Belated Welfare State*, in THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES, *supra* note 22, at 37, 48 (stating that Blacks were excluded from the pension system) and Theda Skocpol & John Ikenberry, *The Political Formation of the American Welfare State in Historical and Comparative Perspective*, 6 COMP. SOC. RES. 87, 97-98 (1983) (same).

43. Cetina, *supra* note 7, at 112; *see also* KELLY, *supra* note 5, at 98-99, stating that

By the end of World War I, provisions for veterans plainly were inadequate. Many veterans, including those with disabilities, suffered severe want in the 1920s.<sup>44</sup> Wecter writes that, in the depression of 1920-21, “the Keys to the City had turned out to be only a pass to the flophouse” for some veterans.<sup>45</sup>

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Black residents, however, lived in segregated quarters, ate their meals at segregated tables, and had their hair cut by separate barbers. The number of African-Americans living in the home network remained small, especially in proportion to the number of African-American men who had served as Union soldiers . . . . By 1899, . . . only 2.5 percent (or 669) of the veterans assisted in the NHDVS were African-American.

*See also id.* at 225 n.33, stating that:

In addition to discrimination, there are other explanations for the disproportionately low number of blacks in the network. One is the traditional reluctance of African-Americans to institutionalize family members. In an agricultural economy, African-American kinship networks were possibly both more willing and more able to absorb and care for disabled family members.

The change in treatment of Black veterans is consistent with the thesis that universal segregation was not imposed in the South before 1887. *See C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW* 6, 16 (1957) (“More than a decade was to pass after Redemption before the first Jim Crow law was to appear upon the law books of a Southern state, and more than two decades before the older states of Virginia, North Carolina, and South Carolina were to adopt such laws.”).

44. *See WECTER, supra* note 32, at 363-64, stating that:

Many veterans now [in 1921] felt the pinch of want . . . . In Greater Boston, in the winter of 1920-21, six thousand veterans and their families sought Red Cross relief. . . . Panhandlers in faded uniforms and veterans selling apples and pencils and poppies stood on street corners, foreshadowing the even bleaker phenomena of ten years later.

*See also* RAYMOND MOLEY, JR., *THE AMERICAN LEGION STORY* 78-80 (1966) (indicating that even veterans who had been disabled in World War I were not adequately cared for after the war. Among other things, “[t]he mentally ill were housed in jails, and other patients were led to cots provided by [American] Legion posts”); *id.* at 111-113 (discussing the plight of disabled veterans); *id.* at 117 (stating that some of “the shattered of World War I . . . . [n]eglected and destitute, bedridden and diseased, . . . sought refuge in insane asylums, poorhouses and even jails . . . . [S]ome [including some with tuberculosis] were compelled to sleep in the open. These were hardly the rewards of a grateful nation”); *id.* at 279 (noting that there were “immediate hardships for most, prolonged displacement for some, and, when the waves of depression rolled across the country, a full measure of misery for hundreds of thousands who had served” and depicting “cold, hungry men in tattered khaki warming themselves in hobo camps along the nation’s railroads, the ex-serviceman selling apples on a street corner or sidling up to a soup kitchen in old shoes repaired with cardboard. The destitute veteran was a familiar sight for two decades between the wars”). These descriptions suggest that Kelly errs in stating that “[t]he creation of this system of veterans’ institutions . . . marked the permanent expansion of the U.S. veterans’ welfare state.” *KELLY, supra* note 5, at 90.

45. *WECTER, supra* note 32, at 345. *But see id.* at 403-04 (stating that “American pensioners of the World War [I] increased 866 percent between 1919 and 1929, whereas among the nations of Europe such pensioners were steadily diminishing” and attributing “these transatlantic

Beginning in 1929, with the Great Depression, the need and suffering of veterans increased dramatically. In May 1932, between 20,000 and 40,000 veterans—the Bonus Expeditionary Force (BEF)—arrived in Washington, D.C. to urge Congress to provide an immediate cash bonus for veterans.<sup>46</sup> In July 1932, Army Chief of Staff General Douglas MacArthur led 600 troops, including mounted cavalry and tanks, to drive the veterans out of their nation’s capital.<sup>47</sup> What has been called “the grotesque spectacle of the rousting of ex-servicemen” contributed to the defeat of Herbert Hoover four months later.<sup>48</sup>

*B. New Deal Housing: The Federal Housing Administration and the Public Housing Program*

The most important contemporary development with respect to veterans’ housing—the G.I. Bill of Rights—emerged in the administration of Franklin Delano Roosevelt (FDR). In order to appreciate the significance of the G.I. Bill, it is necessary first to understand the general housing policies and programs of FDR’s administration—the Federal Housing Administration (FHA) program of 1934 and the public housing program of 1937—and the background for those programs.

Except for military and veterans’ accommodation, the United States government was not involved in providing housing assistance until World War I, and its involvement at that time was limited to assisting in financing the development of housing for shipbuilders and other defense workers.<sup>49</sup> As soon

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differences” to three things: “the generosity of American traditions and our almost reckless gratitude toward the man who has shouldered a gun in the nation’s defense”; “our lack of universal health, old age, and unemployment insurance”; and “our highly developed system of lobby and pressure groups, controlled by specialists skilled in amplifying a minority murmur into a roar imperious and terrifying to any Congressman”).

46. See ROSS, *supra* note 24, at 12-16 (discussing, *inter alia*, the removal of the Bonus Expeditionary Force from Washington, D.C. in 1932 and setting the number of BEF marchers at 20,000); cf. DONALD J. LISIO, THE PRESIDENT AND PROTEST: HOOVER, MACARTHUR, AND THE BONUS RIOT 77 (1994) (setting the number at 20,000); SEVERO & MILFORD, *supra* note 31, at 269 (setting the number between 25,000 and 40,000).

47. See SEVERO & MILFORD, *supra* note 31, at 274 (stating that President Hoover later said that he had intended only that the veterans be moved from the business district of Washington back to their encampment in Anacostia); *id.* at 275 (stating that the VA reported that 67% of the marchers had served overseas and 20% of them suffered some disability); LISIO, *supra* note 46, at x (MacArthur “deliberately disobeyed Hoover’s written order limiting the scope of the Army’s assistance, and he later ignored the President’s repeated oral messages to stop all operations.”).

48. SEVERO & MILFORD, *supra* note 31, at 276 (calling this event a “grotesque spectacle”); *id.* at 278 (“Hoover’s (really MacArthur’s) folly cost Hoover the November election”); LISIO, *supra* note 46, at x (“The expulsion of the bonus marchers delivered an irreparable blow to Hoover’s reputation, as most people assumed that he had ordered the brutal dispersal.”).

49. See GAIL RADFORD, MODERN HOUSING FOR AMERICA: POLICY STRUGGLES IN THE NEW DEAL ERA 16-17, 37-43 (1996); Steven E. Andrachek, *Housing in the United States: 1890-1929*,

as World War I ended, the government ordered that housing sold as swiftly as possible.<sup>50</sup>

After the Great Depression, the homeownership rate in the United States, which had been low in the 1920s, became even lower, as millions of homeowners faced foreclosure.<sup>51</sup> President Hoover and the Congress acted to protect homeowners from foreclosure and to encourage the expansion of homeownership, but their efforts were modest and relatively ineffective.<sup>52</sup>

When Franklin Delano Roosevelt's administration began in 1933, he and Congress acted swiftly to expand efforts to protect and advance homeownership.

*in* THE STORY OF HOUSING 123, 169 (Gertrude Sipperly Fish ed., 1979) ("The role of the federal government in housing reform between 1890 and 1929 was almost nonexistent."); *id.* at 170-72 (discussing the three federal laws enacted in 1918 "to provide housing for laborers in the war-related industries"); Eric J. Karolak, "No Idea of Doing Anything Wonderful": *The Labor-Crisis Origins of National Housing Policy and the Reconstruction of the Working-Class Community, 1917-1919*, *in* FROM TENEMENTS TO THE TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA 60 (John F. Bauman et al. eds., 2000) [hereinafter FROM TENEMENTS TO THE TAYLOR HOMES]; *id.* at 64 ("The wartime production crisis, not the general welfare of urban workers and their families, justified the first federal home-building program.").

This was in sharp contrast to the situation in Great Britain, where, in 1918, Prime Minister Lloyd George famously "pledged himself to secure 'habitations fit for the heroes who have won the war.'" MARK SWENARTON, HOMES FIT FOR HEROES: THE POLITICS AND ARCHITECTURE OF EARLY STATE HOUSING IN BRITAIN 79 (1981) (quoting THE TIMES, 13 Nov. 1918). *See id.* at 67 ("In the wake of the Armistice, the 'homes fit for heroes' campaign was adopted as the major weapon of the state in the 'battle of opinion' on which, it was believed, the future of the entire social order depended."); *id.* at 1 (Thereafter, between World Wars I and II, "local authorities in England and Wales built about three-quarters of a million houses . . ." for returning veterans and their families.); *see also* LAURENCE F. ORBACH, HOMES FOR HEROES: A STUDY OF THE EVOLUTION OF BRITISH PUBLIC HOUSING, 1915-1921 (1977).

50. *See* Karolak, *supra* note 49, at 74-75; Andrachek, *supra* note 49, at 172; Mary K. Nenko, *Housing in the Decade of the 1940's—The War and Postwar Periods Leave Their Marks*, *in* THE STORY OF HOUSING, *supra* note 49, at 242, 245, 247.

51. *See* GWENDOLYN WRIGHT, BUILDING THE DREAM: A SOCIAL HISTORY OF HOUSING IN AMERICA 193 (1981) ("[T]he residential mortgage debt had tripled in one decade [1920s]; and the number of foreclosures mounted precipitously at the decade's end. In addition, the percentage of homeowners had been steadily declining. . . ."); *id.* at 195-96 ("The 1920 census showed that only 46 percent of all American families were homeowners. That figure was even lower in most metropolitan areas . . ."); *id.* at 205 ("After 1925, foreclosures began to increase."); NATHANIEL S. KEITH, POLITICS AND THE HOUSING CRISIS SINCE 1930, at 19 (1973) ("In 1932, foreclosures reached the disastrous level of 250,000 homes."); *id.* at 24 (In early 1933, "homes were being foreclosed at an average rate of about one thousand per day.").

52. *See* WRIGHT, *supra* note 51, at 196-200 (describing Herbert Hoover's encouragement of homebuilding before and during his presidency); Janet Hutchison, *Shaping Housing and Enhancing Consumption: Hoover's Interwar Housing Policy*, *in* FROM TENEMENTS TO THE TAYLOR HOMES, *supra* note 49, at 81, 93; RADFORD, *supra* note 49, at 86-88, 178; REPORT ON VETERANS' BENEFITS, *supra* note 6, at 42-43

To preserve homeownership, Roosevelt urged Congress to create the Home Owners Loan Corporation (HOLC), which “help[ed] to save 10 percent of all owner-occupied nonfarm residences” in its first year of operation.<sup>53</sup> To stimulate housing construction without large federal investment, Roosevelt proposed what became the National Housing Act of 1934, which created the Federal Housing Administration program of insuring home mortgage loans.<sup>54</sup> Mariner Eccles, who was a principal drafter of the legislation, explained that it “avoided any direct encroachment by the government on the domain of private business, but . . . used the power of government to establish the conditions under which private initiative could feed itself and multiply its own benefits.”<sup>55</sup> These efforts served both Roosevelt’s political goals and his personal support for homeownership.<sup>56</sup> Despite the program’s emphasis on the private market, the legislation initially was opposed by building and loan associations, and by many insurance companies and mutual savings banks.<sup>57</sup> The homebuilders and realtors, however, were powerful supporters of the program.<sup>58</sup>

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53. RADFORD, *supra* note 49, at 179; KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 195-203 (1985) (describing the operations of the Home Owners Loan Corporation).

54. *See* JACKSON, *supra* note 53, at 203-18; RADFORD, *supra* note 49, at 179-80.

55. MARRINER S. ECCLES, BECKONING FRONTIERS: PUBLIC AND PERSONAL RECOLLECTIONS 151 (1951); *see also id.* at 150-51 (describing the “revolution[ary]” nature of the FHA proposals); *id.* at 152 (stating that the original FHA legislation also was intended to promote rental housing); *id.* at 303 (stating that the provision for rental assistance was not adequate); *id.* at 159-60 (stating that the original FHA legislation was effective for home repairs but not for new construction until amendments were made in 1938). For a different view, see DAVID M.P. FREUND, COLORED PROPERTY: STATE POLICY AND WHITE RACIAL POLITICS IN THE MODERN AMERICAN SUBURB (forthcoming 2005).

56. *See* RADFORD, *supra* note 49, at 179 (FDR expressed “both a cultural preference for homeownership and an intention to use it to maintain political equilibrium.”).

57. *See* ECCLES, *supra* note 55, at 155 (“[T]he building and loan associations were opposed to the FHA because they did not want to see commercial banks get into the home lending field” and many insurance companies and mutual savings banks also opposed the FHA.); *id.* at 159 (referring to “the almost solid opposition to the program offered by the financial community”).

58. *See, e.g.,* MARK I. GELFAND, A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933-1965, at 113 (1975) (“Nelson, who dominated the association [the National Association of Real Estate Boards (“NAREB”)] for three decades before his retirement in the mid-1950s,” gave “avid support” to the FHA mortgage insurance program, “which practically guaranteed a builder his profit,” but Nelson strongly opposed public housing.); KEITH, *supra* note 51, at 13 (“While the establishment of the FHA mortgage insurance program had some reform aspects from the standpoint of correcting the mortgage abuses of the Twenties, it was primarily sold politically as a program to unfreeze the home-building industry and thereby stimulate employment and the economy.”); *id.* at 25 (The “acutely depressed building materials and equipment industries and . . . the surviving remnants of the home builders” also supported this approach.); *see also* ECCLES, *supra* note 55, at 154-55 (“While the heart of the FHA involved a reform of the whole mortgage market, the character of the opposition that was encountered forced us to soft-pedal that

Meanwhile, federally subsidized rental housing was developed by the Public Works Administration's Housing Division.<sup>59</sup> This program was strongly opposed by the lending, insurance, and real estate industries and by conservatives generally.<sup>60</sup> Liberals of various persuasions tried to transform it into a permanent program, although FDR himself did not offer much support for the effort.<sup>61</sup> As the ravages of the Depression and enthusiasm for the New Deal waned, conservatives in Congress were able to eviscerate these attempts. While Congress did create a federally-financed low rent public housing program in the United States Housing Act of 1937, the legislation had been substantially weakened, and the final bill was considered a victory for the new conservative coalition.<sup>62</sup>

*C. Veterans' Housing in the Administration of Franklin Roosevelt and the G.I. Bill of Rights*

President Franklin Roosevelt shared with President Hoover the view that non-disabled veterans should be assisted only in their status as members of the general population.<sup>63</sup> Addressing the American Legion in 1933, FDR said "that no person, because he wore a uniform, must thereafter be placed in a special class of beneficiaries over and above all other citizens. The fact of wearing a uniform

theme. We were obliged instead to speak merely of the effect the proposed bill would have in stimulating new construction.").

59. See RADFORD, *supra* note 49, at 89-109.

60. See *id.* at 105. "Conservative," a word that recurs throughout this Article, generally refers to those who opposed most of the domestic programs of the New Deal. See JAMES T. PATTERSON, CONGRESSIONAL CONSERVATISM AND THE NEW DEAL, at vii (1967) (citing CLINTON ROSSITER, CONSERVATISM IN AMERICA: THE THANKLESS PERSUASION 12-13, 165 (2d ed. 1962)).

61. See, e.g., H. PETER OBERLANDER & EVA NEWBRUN, HOUSER: THE LIFE AND WORK OF CATHERINE BAUER 130-44 (1999) (describing the different approaches of Catherine Bauer for the Labor Housing Conference and Mary Simkhovitch for the National Public Housing Conference); *id.* at 143 (stating that when the legislation was being considered in 1926, Catherine Bauer "told her union friends that 'the President could change the whole picture in thirty seconds if he would make a statement—even a lukewarm one.' But he remained silent"); TIMOTHY L. McDONNELL, THE WAGNER HOUSING ACT: A CASE STUDY OF THE LEGISLATIVE PROCESS 214-15, 271-72, 342-45 (1957) (describing FDR's lack of enthusiasm for the legislation, although he ultimately did support its passage).

62. See RADFORD, *supra* note 49, at 189-191 (discussing defects in the legislation, which put siting and other crucial decisions under local and state control); PHILLIP J. FUNIGIELLO, THE CHALLENGE TO URBAN LIBERALISM: FEDERAL-CITY RELATIONS DURING WORLD WAR II, at xiv (1978) ("To some extent . . . the urban programs of the Roosevelt administration were a snare and delusion . . . . A matching grant toward construction was very tempting, but there was no similar federal grant for maintenance and upkeep."); PATTERSON, *supra* note 60, at 155 n.68 ("The final version [of the 1937 Housing Act] largely reflected the views of conservatives.").

63. See ROSS, *supra* note 24, at 24; 2 HERBERT HOOVER, MEMOIRS OF HERBERT HOOVER 285 (1951) (referring to "professional money-hunting veterans").

does not mean that he can demand and receive from his Government a benefit which no other citizen receives.”<sup>64</sup> FDR also attempted to prevent the redemption of the bonuses created by Congress in 1924.<sup>65</sup> Even with respect to disabled veterans, FDR “remove[ed] from pension rolls . . . the vast majority having nonservice-connected disabilities” and reduced compensation for veterans with service-connected disabilities.<sup>66</sup>

Despite his earlier determination to serve non-disabled veterans only as part of the general public, when FDR was planning for reconstruction after the Second World War, he became disposed to offer some benefits to non-disabled veterans.<sup>67</sup> The President, his advisers, and the nation in general were very much concerned that demobilization and “[r]emoval of the war-created federal fiscal activity when peace came would lead to widespread unemployment.”<sup>68</sup> They did not want a recurrence of the Great Depression.<sup>69</sup>

In a fireside chat in July 1943, FDR said that veterans “must not be demobilized into an environment of inflation and unemployment, to a place on the bread line or on a corner selling apples.”<sup>70</sup> When the public responded well to this suggestion, the Administration proposed legislation whose principal provision was for educational benefits for veterans.<sup>71</sup> While FDR spoke of the

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64. Franklin D. Roosevelt, Address to the American Legion Convention, Chicago, Ill. (Oct. 2, 1933), in 2 PUB. PAPERS, *supra* note 14, at 373, 375-76. See ROSS, *supra* note 24, at 18-19, 27, 33, 49-50 (discussing the conflict over this view); *id.* at 18 (quoting Treasury Secretary Morgenthau’s view that veterans, “a special-interest group,” “had no special claim on the government”).

65. See ROSS, *supra* note 24, at 17-19.

66. Amenta & Skocpol, *supra* note 22, at 85-86 (While the New Dealers generally sought to expand social welfare programs, they “attempted to cut back one category of social expenditures: benefits for military veterans. They believed that the needs of ex-soldiers should be met chiefly by programs directed at the entire population.”); see also ROSS, *supra* note 24, at 25-28 (describing Roosevelt’s initially successful fight for legislation that enabled him to accomplish these reductions by executive order); *id.* at 78-82 (discussing the 1943-44 attack, led by the American Legion and the Hearst newspapers, against the Administration’s alleged neglect of disabled veterans).

67. See OLSON, *supra* note 5, at 19-20 (discussing the change in Roosevelt’s views).

68. ROSS, *supra* note 24, at 34; see also MOLEY, *supra* note 44, at 279 (stating that more people were seeking work at the end of the war than had been unemployed in 1933: “[t]ens of millions in war work sought peacetime jobs. Compare this with the great depression when eleven million were unemployed in 1933, less than the total World War II demobilization”). *But cf.* KEITH, *supra* note 51, at 22 (“By early 1933, unemployment was estimated variously at from 12 million to 17 million persons . . . (there were no accurate statistics).”).

69. See ROSS, *supra* note 24, at 34-36 (discussing the “Depression Psychosis”); *id.* at 56-58 (discussing proposals to keep servicemen in service after the war ended in order to avoid demobilizing them into unemployment).

70. Franklin D. Roosevelt, Fireside Chat on Progress of War and Plans for Peace (July 28, 1943), in 12 PUB. PAPERS, *supra* note 14, at 326, 333; ROSS, *supra* note 24, at 64.

71. Franklin D. Roosevelt, Message to Congress on the Education of War Veterans (Oct. 27, 1943), in 12 PUB. PAPERS, *supra* note 14, at 449, 451 [hereinafter Roosevelt, Message to Congress

moral obligation to provide for veterans, he emphasized that education would “simplify and cushion the return to civilian employment of service personnel.”<sup>72</sup> The remaining elements of FDR’s proposals—mustering-out pay, a uniform system of federal unemployment benefits, and credit for social security for the time spent in the service—also were designed to soften the impact of demobilization on the labor market.<sup>73</sup>

While housing was not part of the President’s proposals for veterans,<sup>74</sup> FDR and his administration did consider that the federal government should provide some forms of housing assistance—for the public in general, not veterans in particular.<sup>75</sup> Indeed, the National Housing Administrator “advised against a

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on the Education of War Veterans]; ROSS, *supra* note 24, at 82, 89, 92.

72. Roosevelt, Message to Congress on the Education of War Veterans, *supra* note 71, at 450 (“[T]he Nation is morally obligated to provide this training and education.”); ROSS, *supra* note 24, at 92-93; *see also id.* at 61-62 (noting that these points had been made in the report of the National Resources Planning Board (NRPB) and that the planners also “believed that aid to veterans would strengthen the nation’s schools and colleges”).

For a description of the volatility of the situation in the United States, see MICHAEL J. BENNETT, *WHEN DREAMS CAME TRUE: THE GI BILL AND THE MAKING OF MODERN AMERICA* 8-17 (1996); *id.* at 17 (“‘After the last war, except for England, this is the only country where the men who wore uniforms did not overthrow the government on either side of the conflict,’ Henry Colmery, the American Legion national commander who wrote the G.I. Bill, had warned Congress when the bill was under consideration.”) (quoting OLSON, *supra* note 5, at 20); BENNETT, *supra*, at 17 (“If the twelve million veterans of World War II had been dumped off the boats like the nearly four million from the previous war and given only \$60 and a train ticket home with neither educational nor economic opportunity waiting when they got back, violent revolution might have easily been sparked.”); OLSON, *supra* note 5, at 4 (“The sheer numbers of future veterans frightened Americans. Leaders across the country influenced others to believe that something had to be done for the veterans—something beyond a bonus, something that would contribute significantly to a healthy economy, and something that would allay veteran resentment toward government.”).

73. *See* ROSS, *supra* note 24, at 93.

74. *See id.* at 89-94 (describing elements of the Administration’s proposals, which did not include housing, and revealing that the housing agencies were not represented in the interagency committee established by the Budget Bureau to develop the proposals); *id.* at 55 & n.73 (showing that the Housing and Home Finance Agency had not been represented in the Post-War Manpower Conference that met regularly during 1942 and early 1943); *id.* at 52-61; *id.* at 62 (noting, however, that the National Resources Planning Board had recommended “disposal of [farm] lands acquired by the Federal Government during the war to deserving and apt veterans”).

75. Part of the influence on the Administration with respect to housing programs came from the National Resources Planning Board (NRPB), chaired by FDR’s uncle, Frederic Delano, and charged by FDR in November 1940 to develop “national social and economic policies for the postwar period.” Amenta & Skocpol, *supra* note 22, at 87; *see* FUNIGIELLO, *supra* note 62, at 164 (regarding “post-defense planning”); ROSS, *supra* note 24, at 52-53 (referring to the work of the NRPB’s Post-War Manpower Conference as “the single most important effort on the part of the executive department to provide a comprehensive policy for World War II veterans”). With respect to housing, “the NRPB had a radical viewpoint. The ‘right to shelter’ was included in its 1942 New

special program just to meet the postwar needs of veterans alone. He thought a broad policy benefitting all citizens would be more desirable<sup>76</sup> and expressed concern that a special program for veterans might “obstruct or complicate”<sup>77</sup> more general programs.<sup>78</sup>

The source of what became the veterans’ housing program was omnibus veterans’ legislation proposed by the American Legion, legislation that quickly came to be known as the G.I. Bill of Rights.<sup>79</sup> In addition to more customary forms of veterans’ benefits, the Legion’s proposed G.I. Bill also included a relatively new idea, a housing provision that would have had states administer programs for making loans to finance homes and farms, with the federal government providing \$4 for each \$1 contributed by the state.<sup>80</sup>

The G.I. Bill was introduced on January 10, 1944, by Senator J. Bennett (“Champ”) Clark (D-Mo.) and Congressman John E. Rankin (D-Miss.).<sup>81</sup> In the Senate, the bill had 70 co-sponsors. After some amendments, it was approved unanimously by that body on March 24, 1944.<sup>82</sup>

The bill’s progress in the House was considerably slower. The bill was referred to the House Committee on World War Veterans’ Legislation, chaired

Bill of Rights, which President Roosevelt cited in his 1944 reelection campaign.” Amenta & Skocpol, *supra* note 22, at 92.

The NRPB was not able to implement any of its recommendations that conflicted with “VA-supported programs for veterans . . . [I]n matters such as health insurance and disability programs, the jealous control maintained by the VA over national programs for veterans prevented the NRPB from realizing its vision of national programs for all citizens.” *Id.* at 108.

The NRPB was eliminated in 1943 on the urging of “[c]ongressional critics of planning and the New Deal, fiscal conservatives, rural Democrats and Republicans, and interest groups such as the National Association of Real Estate Boards.” FUNIGIELLO, *supra* note 62, at 184. *See also* ROSS, *supra* note 24, at 92 (noting that although the recommendations for educational benefits for veterans had originated with the NRPB’s Post-War Manpower Conference, FDR, in an act of apparent “administrative ‘genius,’” attributed the recommendations to his Armed Forces Committee on Post-War Educational Opportunities for Service Personnel, rather than to the controversial NRPB).

76. ROSS, *supra* note 24, at 72-73.

77. *Id.* at 244.

78. *Id.* at 102 (“The hope of linking veterans’ benefits with the overall task of domestic reconversion had been a polestar for Roosevelt’s planners.”).

79. *See id.* at 99-102; MOLEY, *supra* note 44, at 270 (“The broad concept [of the GI Bill] originated in The American Legion, a member of the Legion wrote the bill, an employee of the Legion suggested its meaningful name, Legionnaires promoted it and handled its legal presentation, and a former Commander secured its unanimous approval in the Senate.”); OLSON, *supra* note 5, at 18-20 (discussing the Legion’s role).

80. *See* ROSS, *supra* note 24, at 101-02.

81. *Id.* at 98, 100.

82. *Id.* at 106. The vote was 50-0, with forty-six members absent, all of whom would have voted for the bill. *Id.*

by Congressman Rankin.<sup>83</sup> Chairman Rankin and members of his committee were not enthusiastic about the legislation.<sup>84</sup> After some delay, they offered a new version of the bill.<sup>85</sup> While the committee's focus was not on the housing provisions, its version did change the direct loans to guaranteed loans, and raised the maximum interest rate from three percent to six percent. The shift from direct to guaranteed loans "represented the successful efforts of Rankin to keep the Federal Government participation at a minimum."<sup>86</sup>

The House as a whole had to decide whether to approve the committee's version or the Senate version, which was "generally favored by the Administration."<sup>87</sup> Rankin's committee's version, with some amendments, passed the House unanimously.<sup>88</sup> An attempt to reduce the interest rate from six percent failed.<sup>89</sup> In the House-Senate conference, the guaranteed loan provision was retained and the maximum interest rate was reduced from six to four percent.<sup>90</sup> President Roosevelt signed the bill into law on June 22, 1944.<sup>91</sup> As Ross writes, "the elimination of direct loans to veterans" was one of "the fees extracted by conservatives in Congress."<sup>92</sup> The enactment of a housing program that benefited only veterans was regarded as a defeat by those New Dealers who had tried to provide a universal program.<sup>93</sup>

Few loans were made under the 1944 provisions, which a later study attributed to the facts that the maximum loan guarantee allowed was \$2000 "and that the careful doublecheck required by law for each applicant was too cumbersome."<sup>94</sup> In 1945, Congress amended the Act to raise the maximum guarantee to \$4000, streamline the loan process, and extend the deadline for

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83. *See id.* at 21, 107.

84. *See id.* at 107-11; *id.* at 21-24 (providing a brief biography of Congressman Rankin).

85. *See id.* at 110-11.

86. *Id.* at 111 n.69.

87. *Id.* at 111.

88. *Id.* at 116. The vote was 388-0, with forty-one not voting. *Id.*

89. *Id.* at 115.

90. *Id.* at 118. The principal issues at conference concerned the unemployment and readjustment sections; dispute over these occasioned a dramatic conclusion to the conference, with the American Legion locating and returning to Washington the congressman whose vote made the crucial difference. *See id.* at 117.

91. *See supra* note 20; *see ROSS, supra* note 24, at 118.

92. ROSS, *supra* note 24, at 124; *see also* John Robert Moore, *The Conservative Coalition in the United States Senate, 1942-1945*, 33 J. S. HIST. 368, 373 (1967) (The year 1944 was "when the coalition [of conservative Southern Democrats and conservative Republicans] reached its peak strength.").

93. *See PERRETT, supra* note 22, at 339 ("A handful of New Dealers fought against the principle of veterans' exclusiveness, without the support of the White House. The Legion was therefore under no serious pressure to compromise, and its bill passed almost intact. Liberals mourned it as a great opportunity lost.").

94. REPORT ON VETERANS' BENEFITS, *supra* note 6, at 58.

securing loans.<sup>95</sup> The program became even more attractive to private lenders in “1950—when Congress increased the amount of the guarantee to 60 percent, or \$7,500, whichever was less, and the maximum maturity was increased to 30 years.”<sup>96</sup> In the decades of the 1950s and 1960s, the VA homeownership program was used by millions of veterans.<sup>97</sup>

The housing program in the G.I. Bill was very similar to the Federal Housing Administration homeownership program created in 1934.<sup>98</sup> This is not surprising, as the American Legion had developed the G.I. Bill’s housing provisions in consultation “with real estate, building and loan and financial associations and the FHA.”<sup>99</sup>

Both the VA and FHA programs helped the lending and real estate industries by encouraging the financing and construction of single family housing and assuring the lenders and builders that a federal agency would make up losses caused by borrower defaults.<sup>100</sup> Both the VA and FHA programs minimized the federal contribution. Both used private lenders to make the loans and limited the federal role to guaranteeing or insuring the lender against loss in case the borrower defaulted.<sup>101</sup> The fundamental difference between the VA and FHA programs was that the veterans’ program was run by the Veterans’ Administration rather than by FHA.

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95. See *id.* at 58-59; *id.* at 162-63 (stating that the “provisions . . . practically meant a fresh start because they changed the law to such an extent”).

96. NENNO, *supra* note 50, at 253; see also *id.* at 254 (stating that “until 1950, about two thirds of all VA loans were used for existing housing”); NATIONAL COMMISSION ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY, H.R. DOC. 91-34, at 103 (1969) [hereinafter THE DOUGLAS COMM’N REPORT] (same); see also PAUL F. WENDT, HOUSING POLICY—THE SEARCH FOR SOLUTIONS 180-81 (1963) (Until October 1950, the VA also guaranteed “Section 505 second mortgage loans which were also secured by” a FHA first mortgage. This “permitted 100-percent government-underwritten financing on the sale of new tract homes to eligible veteran borrowers.”).

97. See MOLEY, *supra* note 44, at 282 (“Of 5,268,000 loans made up to 1964, 4,966,000 were for homes. One-fifth of all single-family residences built since the end of World War II has been financed by the GI program for either World War II or Korean War veterans. Of the twenty-eight million home-owner properties . . . in the United States [before the date of publication of this book, 1966], 16,000,000 are mortgaged properties and about 22 per cent are financed by GI loans. . . . It has been said that the landscape architect of post-war America has been the VA loan-guarantee officer.”).

98. See JACKSON, *supra* note 53, at 204; LEVITAN & ZICKLER, *supra* note 23, at 85 (noting two significant advantages of the VA program).

99. MOLEY, *supra* note 44, at 273.

100. See WENDT, *supra* note 96, at 152 (“The FHA . . . was looked upon as an instrumentality of government designed to serve the private mortgage lenders.”)

101. See HENRY J. AARON, SHELTER AND SUBSIDIES: WHO BENEFITS FROM FEDERAL HOUSING POLICIES? 80, 87 (1972).

*D. The Veterans' Emergency Housing Program and the Wagner-Ellender-Taft Bill: 1945-1949*

When the G.I. Bill was enacted, the United States was facing a severe housing shortage.<sup>102</sup> Millions of civilians were living in overcrowded and otherwise substandard conditions, and that situation soon would be exacerbated by the demobilization of millions of servicepeople.<sup>103</sup> Policymakers knew that rental housing as well as homeownership was needed.<sup>104</sup> A housing report published by the National Resources Planning Board in 1940 noted the need for housing for “the lower income groups,” and said that “this new housing must provide houses for both owner occupancy and rental.”<sup>105</sup> The report continued:

A large percentage of people now live in rented houses and apartments and will probably continue to do so.

Home ownership for everyone is not a feasible objective. Under many circumstances, home ownership is more costly than renting, and the risks are great. Under existing conditions, there are the dangers to be faced of property and neighborhood deterioration, of buying a poorly built house, of being unable to meet the long-time obligations involved. Moreover, there are people who prefer, or whose circumstances make it advisable for them, to rent rather than to own their living quarters. There are those whose present financial position is good but whose future is not assured, those who have been unable or do not wish to save, those who wish to invest their savings in other ways, those whose place of employment is likely to change, those whose occupation demands

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102. See, e.g., RICHARD O. DAVIES, HOUSING REFORM DURING THE TRUMAN ADMINISTRATION 40 (1966); NAT ROGG, OFFICE OF THE HOUSING EXPEDITER, A HISTORY OF THE VETERANS EMERGENCY HOUSING PROGRAM 6-7 (n.d.) (“a housing shortage of unparalleled magnitude”).

103. See NENNO, *supra* note 50, at 255 (In 1946, the Housing Expediter reported to the President that “[i]n October, 1945, 1.2 million families were living doubled-up with other families; an additional 2.9 million married veterans would need homes by December 1945; more than half a million nonveterans who would marry during the course of the year would be looking for homes. In total, 3.5 million families would be looking for homes in 1946, and about 1.1 million new families would need homes in 1947. To accommodate this need, only 945,000 vacant units would be available in 1946, and 430,000 vacant units in 1947. Thus, by the end of 1946, more than 2.5 million families would need homes.”).

104. See, e.g., ROGG, *supra* note 102, at 32 (“Surveys of veterans’ home preferences made in 1945 and 1946 indicated at least half of those seeking homes preferred to rent rather than to buy at current prices.”).

105. NATIONAL RESOURCES PLANNING BOARD, HOUSING, THE CONTINUING PROBLEM 3 (1940) [hereinafter THE CONTINUING PROBLEM]; see also MARION CLAWSON, NEW DEAL PLANNING: THE NATIONAL RESOURCES PLANNING BOARD 132 (1981) (noting that the NRPB disclaimed responsibility for the views expressed in that report); Amenta & Skocpol, *supra* note 22, at 92 n.32 (“In 1940, the NRPB contracted for and published a report entitled *Housing: The Continuing Problem*, but it did not endorse any of its conclusions.”); see CLAWSON, *supra*, at 94-97 (discussing the controversial nature of the NRPB).

frequent absences from home or a central urban location, those who are old and who do not wish the responsibility of a home of their own, and those who are young and need only small quarters. For all these people rental housing must be provided.<sup>106</sup>

The Truman Administration recognized that the VA housing program was limited not just to veterans but to only those veterans who could afford and secure homeownership. Knowing that millions of veterans and nonveterans would be unable to use the VA housing program, the Administration “responded . . . with a twofold program,” seeking enactment of both the Veterans’ Emergency Housing Program (VEHP) and the Wagner-Ellender-Taft (W-E-T) bills.<sup>107</sup>

1. *VEHP*.—On January 26, 1946, President Truman, by executive order, established the office of Housing Expediter, responsible for providing housing for veterans, and appointed Wilson W. Wyatt to that position.<sup>108</sup> In February 1946, Wyatt announced the Veterans’ Emergency Housing Program, proposed legislation that was designed to “facilitate rapid construction of low-cost housing for veterans.”<sup>109</sup> Wyatt based his VEHP proposals on continuation of wartime controls on rents, building materials, and new homes, and establishment of price ceilings on sales of existing houses and building lots.<sup>110</sup> He also sought the establishment of “allocations and priorities for residential builders in purchasing materials and equipment, subject to a stiff preference for veterans in the sale or rental of the resulting housing,”<sup>111</sup> “premium payments” to encourage high-volume production of scarce building materials, and Reconstruction Finance Corporation loans” for factory-built housing.<sup>112</sup>

Aspects of the VEHP bill were powerfully opposed by the “‘real estate’ lobby.”<sup>113</sup> The legislation was enacted only with restrictions and was signed into

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106. THE CONTINUING PROBLEM, *supra* note 105, at 3. In 1981, Marion Clawson wrote that “all housing planners today should be required to read the 1940 report in full.” CLAWSON, *supra* note 105, at 133. His observation is as true in 2005 as it was in 1981.

107. See DAVIES, *supra* note 102, at 41.

108. KEITH, *supra* note 51, at 59.

109. DAVIES, *supra* note 102, at 41-42.

110. KEITH, *supra* note 51, at 60.

111. *Id.*

112. DAVIES, *supra* note 102, at 44-45.

113. ROSS, *supra* note 24, at 256; *id.* at 255-56 (“The Democratic leadership complained about the immense pressure being put on Congress by the ‘real estate’ lobby,” certainly including the National Association of Real Estate Boards (NAREB), which conducted a campaign to defeat it. Herbert U. Nelson, speaking for NAREB, urged all Realtors to contact their Congresspersons urging defeat of the Patman bill (which included some but not all of the VEHP proposals.); *see id.* at 256 n.69 (“‘Act now if you want to save your business,’” he advised them.). Although Ross identifies Nelson as NAREB Executive Director, Gelfand says Nelson was executive vice-president. *See* GELFAND, *supra* note 58, at 112.

law by President Truman on May 22, 1946.<sup>114</sup> But subsequent actions by the conservatives in Congress “dealt the VEHP a telling blow,”<sup>115</sup> and “on January 11, 1947, the President signed an executive order terminating most aspects of the program.”<sup>116</sup>

Part of the VEHP legislation had redirected a program of rental assistance from “war workers” to “veterans.”<sup>117</sup> Under this “Section 608” program, more than 400,000 units of housing were built between 1946 and 1950, when the program ended.<sup>118</sup> Thus, the VEHP did make a short-term contribution to meeting the veterans’ need for rental assistance, but relatively few rental units were produced,<sup>119</sup> and both the “houses and apartments produced were primarily priced at levels suitable only for middle-income and at best lower-middle-income veterans. There was no production for low-income veterans or other families requiring housing subsidy for the simple reason that there was no financing program to accomplish this result.”<sup>120</sup>

2. *The Housing Act of 1949.*—The Truman Administration’s other effort to provide rental housing assistance to veterans—and civilians—was resurrection of the public housing program created by the Housing Act of 1937.<sup>121</sup> NAREB and other conservative forces had persuaded Congress to deny funding for public housing in 1939 and 1940;<sup>122</sup> and conservative opposition to public housing

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114. See DAVIES, *supra* note 102, at 46; KEITH, *supra* note 51, at 62 (“minus only the price ceilings on existing housing”); *id.* at 68 (noting that VEHP passed only with significant restrictions, and the program lasted for one year).

115. DAVIES, *supra* note 102, at 47.

116. KEITH, *supra* note 51, at 67.

117. See IRVING WELFELD, HUD SCANDALS: HOWLING HEADLINES AND SILENT FIASCOES 6 (1992) (Section 608 of the National Housing Act was enacted in 1942 (56 Stat. 303) and amended in 1945 (59 Stat. 47) and 1946 (Veterans’ Emergency Housing Act, Pub. L. 79-388, 60 Stat. 207, 214)).

118. See THE ENCYCLOPEDIA OF HOUSING, *supra* note 9 (“Between 1942 and the termination of the program in 1950, 465,683 units in more than 7,045 developments were built . . . .”); WELFELD, *supra* note 117, at 6 (stating that most of these were produced after 1946—over 425,000 units in a grand total of 7065 projects).

119. See ROGG, *supra* note 102, at 32-36 (discussing rental housing under the VEHP); *id.* at 36 (concluding that “the volume of rental housing started during 1946 and 1947 is still far short of meeting the need for this type of housing”).

120. KEITH, *supra* note 51, at 64; see also United Negro and Allied Veterans of America Representative, Report to the National Veterans Housing Conference 2 (Feb. 29, 1948) (John F. Kennedy Library, Papers of John F. Kennedy, Correspondence Series, National Veterans Conference, 1948 File, Box 83) [hereinafter United Negro & Allied Veterans] (citing Housing and Home Finance Agency surveys that showed that the median monthly rent of units authorized under the VEHP in 1946 was \$59, “compared to the \$39 median rent which Northern Negro veterans were able to pay and the \$31 median rent which Southern Negro veterans could pay”).

121. See *supra* note 62 and accompanying text.

122. See GELFAND, *supra* note 58, at 115 (“Joining forces with other conservative groups seeking to undo the New Deal’s welfare reforms, NAREB succeeded in convincing the House of

“virtually halt[ed] the program from 1939 to 1949.”<sup>123</sup>

While public housing was under attack in the early 1940s, cities and real estate developers were promoting discussion of and plans for urban redevelopment, including the elimination of “slums and other deteriorated areas.”<sup>124</sup> While the interests of the cities and developers were quite different from the interests of the advocates for public housing, the two topics often were merged.

In January 1945, the Senate Subcommittee on Housing and Urban Redevelopment, chaired by Senator Robert A. Taft (R-Ohio), began serious hearings on these topics.<sup>125</sup> The public housing movement at this time had increasing strength. “The war emergency had given the reformers new opportunities to push for government construction. . . .”<sup>126</sup> The administration wanted to expand the public housing program: the National Housing Agency (NHA) Administrator, John B. Blandford, Jr., expressed the administration’s support for resuming the public housing program and “made it quite clear that he was adopting the public housers’ approach to city rebuilding.”<sup>127</sup>

On August 1, 1945, Senator Taft submitted his subcommittee’s report, noting that the only “‘accepted national interest’ was in improving housing conditions.”<sup>128</sup> On the same day, Senator Robert F. Wagner (D-N.Y.), “the Senate’s dean of housing,” introduced legislation, co-sponsored by Senator Allen J. Ellender (D-La.),<sup>129</sup> that included both revived public housing and aid to

Representatives to kill USHA’s [United States Housing Authority’s] request for additional authorizations in 1939 . . . [and] further appeals for more public housing funds were similarly denied in 1940 . . . .”); *see also* Alexander von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUSING POL’Y DEBATE 299, 303 (2000) (“[T]he growing number of anti-New Deal politicians elected to Congress in between 1938 and 1942 cut off funding for the public housing program.”); *id.* at 304 (“During the late 1930s, NAREB campaigned intensively against public housing and helped convince a conservative Congress to stop funding the program.”).

123. GELFAND, *supra* note 58, at 199; *see also* FUNIGIELLO, *supra* note 62, at 84 (“[T]he growing scarcity of building materials and labor in 1940 had virtually halted the slum clearance and public housing” programs.). In the conflict between defense housing and public housing, administration officials were willing to write off the USHA and the slum clearance program in exchange for votes on other legislation. In Congress, fiscal conservatives like Senator Harry F. Byrd of Virginia, anti-New Deal Democrats, and Republicans from rural constituencies . . . intended to make certain that public housing would not emerge after the war to compete with private enterprise.

*Id.* at 87-88; *id.* at 95-96 (In early 1941, Congress “went to considerable lengths to manifest displeasure toward the USHA and the public housing lobby.”).

124. *See* GELFAND, *supra* note 58, at 137-38.

125. *See id.* at 138 (“hearings began in earnest in January 1945”).

126. *Id.* at 140.

127. *Id.* at 138.

128. *Id.* at 142.

129. J. JOSEPH HUTHMACHER, SENATOR ROBERT F. WAGNER AND THE RISE OF URBAN

redevelopment.<sup>130</sup> These bills then were combined in the Wagner-Ellender-Taft (W-E-T) housing bill, introduced later in 1945.<sup>131</sup> President Truman and Wilson W. Wyatt, the Housing Expediter, well aware that neither the G.I. Bill nor the VEHP met the need to provide housing assistance for lower-income veterans, saw the solution to this problem in enactment of the WET bill.<sup>132</sup>

However, the public housing provisions of WET had many opponents, notably the real estate and lending industries and conservatives generally. The industries that benefitted from homeownership had a pragmatic interest in preventing the enactment of rental programs, since the lack of rental opportunities drove people to homeownership, whether they would have preferred that or not.<sup>133</sup> “[T]he Home Building Industry Committee, the National Association of Real Estate Boards, the National Association of Home Builders, and the United States Chamber of Commerce, among others,” were determined to kill the public housing feature of the bill.<sup>134</sup>

LIBERALISM 240, 299-301 (1968).

130. See GELFAND, *supra* note 58, at 144.

131. *Id.* at 144-45.

132. See DAVIES, *supra* note 102, at 42 (Truman “endorsed and actively supported” WET.); *id.* at 49 (Wyatt believed WET would “fill in the gaps in the Veterans’ Emergency Housing Program.”).

133. See FUNIGIELLO, *supra* note 62, at 101 (“[E]ven low-income workers, unable to rent, were being pressured into ownership, usually with a \$100 down payment and the balance of the equity in eighteen monthly installments . . . [which] . . . only a few defense workers could afford to pay. . . .”); WELFELD, *supra* note 117, at 16-17 (Senator Robert Taft, in 1946, noted the relative dearth of rental housing opportunities and the more ample “building of housing for sale, the sale of which is forced on many veterans who should not have to buy them, and who would prefer to live in rental housing.”); *id.* at 17 (Taft’s comment was made with respect to the extension of Section 608 to veterans; he noted that the program is “perhaps somewhat too liberal for builders, but under that [there is] some building of rental housing rather than the building of housing for sale.”); see also MICHAEL HARLOE, *THE PEOPLE’S HOME?: SOCIAL RENTED HOUSING IN EUROPE & AMERICA* 209 n.10 (1998) (“Bowley . . . saw this development [of increasing homeownership in the 1930s] as driven by a lack of investment in rental housing, which led many to home ownership ‘because it was the only way of satisfying a particular need.’”) (quoting MARIAN BOWLEY, *HOUSING AND THE STATE 1919-44*, at 86 (1944)); see also JIM KEMENY, *THE GREAT AUSTRALIAN NIGHTMARE* 57 (1983) (stating that “[l]ower real rents increasingly deter households whose incomes have risen from buying into owner-occupation. . . . The danger [in Australia] in the mid-1970s was that public renting would increasingly be recognised as a cheap and attractive alternative to homeownership”).

134. See HUTHMACHER, *supra* note 129, at 323; GELFAND, *supra* note 58, at 144-47 (discussing WET and listing also the National Association of Manufacturers as an opponent).

Lined up on one side were NAREB, the United States Savings and Loan League, the American Bankers Association, and other business groups, each of which would have liked to get urban redevelopment started, but not at the price of more public housing. . . . Ranged against them were the liberal-welfare groups, many veterans organizations, the big-city mayors, and the Executive Branch.

In addition to the homebuilding and lending industries' financial interest in opposing rental housing, many industry actors were opposed to federal assistance to rental housing on ideological grounds. Industry spokesmen referred to public housing as "European socialism in its most insidious form" and "the cutting edge of the Communist front."<sup>135</sup> Indeed, WET's low-rent public housing provisions were "a *bête noire* for many conservatives of both political parties," who opposed public housing on ideological and financial grounds.<sup>136</sup> Among the opponents of the legislation was the American Legion, whose National Convention overrode some American Legion state departments' support for the legislation.<sup>137</sup>

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GELFAND, *supra* note 58, at 147 (footnote omitted); *see also* ROSS, *supra* note 24, at 269-70 (The national commander of AmVets wrote to President Truman complaining about "the real estate lobby, many of whose members seem to be primarily interested in constructing conventional houses, by handcraft methods at high prices."); DAVIES, *supra* note 102, at 68 (Senator Robert Wagner said: "Domestic treason is being perpetrated on the American Veteran and their fellow citizens by the money-mad real estate lobby and their unholy representatives in Congress.").

135. DAVIES, *supra* note 102, at 18.

136. ROSS, *supra* note 24, at 252; *see also* HUTHMACHER, *supra* note 129, at 301 (on opposition to public housing); von Hoffman, *supra* note 122, at 304 (The leaders of NAREB, including Herbert U. Nelson, "abhorred public housing on ideological grounds."); FUNIGIELLO, *supra* note 62, at 227 (stating that "the anti-New Deal, anti-public housing venom spewed forth across the pages of the *National Real Estate Journal*"); *id.* at 228 (The Urban Land Institute "had cooperated with the Association of Housing Builders [sic] in successfully lobbying Congress to refuse appropriations for public housing beyond what was needed to shelter defense workers."); *id.* at 224 ("In August 1943, the editor of the *National Real Estate Journal* warned fellow realtors that the fight 'against the ideologies of the public housers is not yet over, and may not be over for a long time to come.'"); *id.* at 104 (outlining the National Association of Home Builders' attack on public housing).

137. *See* Letter from Wm. L. Windsor, Department Commander (Pennsylvania), to Paul R. McCauley, National Veterans Housing (Jan. 28, 1948) (John F. Kennedy Library, Papers of John F. Kennedy, Correspondence Series, National Veterans Housing Conference, 1948 File, Box 82) (reciting position of American Legion); Letter from David I. Shapiro, to Paul R. McCauley (Dec. 12, 1947), appended to Letter from Paul R. McCauley, Executive Director, Housing Authority of Kansas City, to John Kennedy, House of Representatives (Dec. 16, 1947) (John F. Kennedy Library, Papers of John F. Kennedy, Correspondence Series, National Veterans Housing Conference, 1948 File, Box 82) (Shapiro writes that his Kings County (N.Y.) delegation "was the only delegation that" supported the T-E-W bill. "The pressure placed by national on the department leadership was horrible to witness. The 'big boys' must certainly have an important stake in the defeat of the Bill."); Letter from W.B. Stone, National Executive Committeeman, The American Legion, Department of Missouri, to Paul R. McCauley, Executive Director, Housing Authority of Kansas City (Feb. 11, 1948) (John F. Kennedy Library, Papers of John F. Kennedy, Correspondence Series, National Veterans Housing Conference, 1948 File, Box 82) (objecting, because of the American Legion's opposition to the Taft-Ellender-Wagner Bill, to McCauley's participation as an organizer of the National Veterans Housing Conference, which supported the bill; Stone expresses the hope "that no voice, represented as an official spokesman of the American

When the Republicans won control of Congress in 1946, the bill was renamed the Taft-Ellender-Wagner (T-E-W) Act.<sup>138</sup> Despite its bipartisan support, the legislation was unsuccessful in 1946 and 1947.<sup>139</sup> It passed in the Senate, but failed in the House, largely because of the opposition of Jesse Wolcott, chair of the House Banking and Currency Committee, a conservative “who was strongly opposed to public housing.”<sup>140</sup>

“Housing was a major issue in the 1948 presidential and congressional races . . . .”<sup>141</sup> That election produced both the surprising victory of President Truman over Governor Thomas E. Dewey and a Democratic Congress, “but the party’s center of gravity had shifted to the right. Truman could not count on members of his own party to unite behind his agenda.”<sup>142</sup> The Senate “had been

Legion, will be recorded at the proposed conference as favorable to the Taft-Ellender-Wagner Bill”); Letter from Paul R. McCauley, Executive Director, Housing Authority of Kansas City, to William B. Stone, National Executive Committeeman, The American Legion, Department of Missouri (Feb. 12, 1948) (John F. Kennedy Library, Papers of John F. Kennedy, Correspondence Series, National Veterans Housing Conference, 1948 File, Box 82) (noting that seven state departments of the American Legion had supported the T-E-W bill).

138. See DAVIES, *supra* note 102, at 61 (“the names were now reversed in deference to Taft’s majority leadership”).

139. See von Hoffman, *supra* note 122, at 308; HARLOE, *supra* note 133, at 270 (A principal opponent of public housing in the Senate was Senator Joseph McCarthy, who “received financial support from William Leavitt [sic; Levitt], one of the most prominent suburban speculative builders of the post-war period.”); DAVIES, *supra* note 102, at 68-72; *id.* at 68 (“The brash young Senator had hit upon housing as the best issue by which he could quickly gain national prominence for himself.”); *id.* at 69 (“McCarthy worked hard to find a way to end public housing. He frequently belabored witnesses with his idea of providing state-controlled cash subsidies to low-income families as a substitute for public housing”)—an idea, as Harloe points out, that the Nixon Administration favored, see HARLOE, *supra* note 133, at 362 n.22, and Congress later adopted as Section 8. Harloe’s assertion about the connection with Levitt apparently is based on a mimeographed, undated paper, but Davies provides evidence of McCarthy’s involvement with another builder, DAVIES, *supra* note 102, at 72, and reports the comment of liberal Republican Senator Charles Tobey, who attacked McCarthy and referred to McCarthy’s following instructions from the real estate lobby, *id.* at 69. See also United Negro & Allied Veterans, *supra* note 120, at 4-5 (“[W]e are alarmed at the sinister implications of Senator McCarthy’s report which sets forth that the Committee is preparing to present comprehensive housing legislation to cover aids to private enterprise. His expressed intention to separate public housing into separate legislation as though it were not a part of the total need, is a clear sign that forces are at work on/in [a strikeover provides both vowels] the Congress to wipe out entirely the possibility of the passage of public low-cost housing legislation at this session of Congress.”).

140. von Hoffman, *supra* note 122, at 308.

141. Peter Dreier, *Labor’s Love Lost? Rebuilding Unions’ Involvement in Federal Housing Policy*, 11 HOUSING POL’Y DEBATE 327, 327 (2000).

142. *Id.* at 336 (Democrats controlled the Senate 54 to 42 and the House, 263 to 171); Amenta & Skocpol, *supra* note 22, at 117-18 (“Truman picked up 74 seats in the House when he was elected in 1948. This . . . gave him a 91-vote majority overall, a margin comparable to Roosevelt’s

voting regularly for public housing since 1946; 1949 was to be no different.”<sup>143</sup> In the House, “public housing squeaked through by five votes on its crucial roll call.”<sup>144</sup>

The Housing Act of 1949 was the only element of President Truman’s Fair Deal that was enacted by Congress.<sup>145</sup> Although it was “hailed as a major achievement by housing reformers,” it proved to be “a hollow victory.”<sup>146</sup> The 1949 Act may have done more harm than good: it was used to displace hundreds of thousands of people and, “in combination with other federal policies, did more to promote suburbanization, encourage businesses and middle-class Americans to abandon the cities, and exacerbate economic and racial segregation than to revitalize central cities . . . . More housing was razed than was built.”<sup>147</sup> Two

in 1938,” which had been “considered a disaster for the Democrats. Moreover, in every House throughout the 1940s, 105 Democrats came from the former states of the Confederacy, whose representatives had always tended to oppose . . . centralized social policies.”); *see* GELFAND, *supra* note 58, at 151 (the election “supplied the public housers with a slim, but working majority”); PATTERSON, *supra* note 60, at vii (“[T]he formation of a conservative coalition in Congress by 1939 was one of the most significant developments of recent American political history.”); *see also* KEITH, *supra* note 51, at 36 (“The passage of the United States Housing Act of 1937 was the high water mark for the tide of New Deal liberalism in housing.”); *but cf.* *supra* note 62 and accompanying text.

143. GELFAND, *supra* note 58, at 151.

144. *Id.*

The conservative Republican-Southern Democrat coalition that had prevented the public housing bill from emerging from committee for four years tried their delaying tactics once again, but persistent White House lobbying and firm Democratic leadership in the House broke through this blockade. During the six long days of debate on the House floor, marred by a fistfight and bitter charges and countercharges about public housing, Title I, the urban redevelopment section, was hardly discussed at all.

*Id.*; Amenta & Skocpol, *supra* note 22, at 110 (Southern Democrats generally did not support “the continuation of New Deal programs or social initiatives”); Margaret Weir et al., *Introduction: Understanding American Social Politics*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES*, *supra* note 22, at 23 (referring to “the special role of the South in modern American social policy making”); *id.* at 24 (referring to “the explicit racism that ensured white dominance over black majorities in all sectors of economic and social life” and explaining “why Southern politicians had so much leverage during and after the New Deal. . . . The influence of southern agricultural interests depended on the insertion of their class power as landlords and their social power as white racial oligarchs into federal political arrangements that from the 1890s to the 1960s allowed an undemocratized single-party South to coexist with competitive two-party democracy in the rest of the nation. Above all, southern leverage was registered through a congressionally centered legislative process in Washington that allowed key committee chairmen from safe districts to arbitrate precise legislative details and outcomes”).

145. Dreier, *supra* note 141, at 331, 336-37.

146. DAVIES, *supra* note 102, at 136.

147. Dreier, *supra* note 141, at 350; *see generally* MARTIN ANDERSON, *THE FEDERAL BULLDOZER* (1964).

parts of the statute, urban redevelopment (Title I) and the expansion of the FHA program, were very much in the interests of developers.<sup>148</sup> While the legislation did include a public housing title, “the public housing program was essentially sabotaged” in several ways.<sup>149</sup>

The public housing legislation had been burdened with restrictions “that limited it to the poor, gave local governments (especially suburbs) the right to decide whether and where to locate it, provided sufficient funding only to design and build boxlike structures, and permitted it to be racially segregated.”<sup>150</sup> Furthermore, as Peter Dreier has noted,

the opponents of public housing successfully undercut the implementation of the public housing part of the Housing Act of 1949 in [these] two ways. First, because federal law required local approval of all public housing developments, the real estate industry organized a national campaign, carried out at the local level, to block the construction of new public housing authorized by the act. . . . Second, Congress persistently failed to appropriate funds for the authorized number of units, and the program’s own regulations—including cost-per-unit limits and other standards imposed by Congress—tied the hands of local public housing officials, making it difficult to construct projects efficiently, quickly, and attractively. The Korean War also slowed down the implementation of public housing.<sup>151</sup>

Thus, when the WET/TWE bill became law, it proved entirely inadequate to provide for lower-income and other veterans who needed a subsidized rental

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148. See, e.g., FUNIGIELLO, *supra* note 62, at 180 (“As Charles Abrams, Mel Scott, and other scholars have observed, it was in the developing programs of government, organized realtors, and their allies that the tentative outlines of the urban redevelopment statutes of the several states in the 1940s and the salient features of Title I of the Housing Act of 1949 were located.”).

149. Dreier, *supra* note 141, at 351.

150. *Id.* at 351; see also Gail Radford, *The Federal Government and Housing During the Great Depression*, in FROM TENEMENTS TO THE TAYLOR HOMES, *supra* note 49, at 102, 118 (describing the program created by the 1937 Act as “stingy” and “physically alienating”).

151. Dreier, *supra* note 141, at 348; see also DAVIES, *supra* note 102, at 126 (“In 1950 and 1951 the PHA had to reject proposals for over 6,000 units because their cost exceeded the \$1,750 per-room limit” established by the 1949 law.); *id.* at 126-27 (regarding industry’s “public education kits” for local opponents of public housing); *id.* at 127-28 (regarding industry’s encouragement of referenda against public housing: “By the end of 1951 thirty-eight such referendums had been held, and in twenty-five cases the real estate lobby emerged victorious”); von Hoffman, *supra* note 122, at 311 (The real estate industry launched “an anti-public housing campaign at the local level. Across the country, members of local real estate agencies and S&Ls [savings and loan associations] mobilized to close local housing authorities, veto housing projects, and reject housing appropriations or bonds.”); DAVIES, *supra* note 102, at 125 (“[B]y the expiration of the Administration’s term of office, forty-three months after the comprehensive bill became law, fewer than 60,000 of the authorized 810,000 units of public housing had been constructed and only twenty-six slum clearance projects had been started.”).

program. While it did mandate that veterans be given preference as tenants in public housing,<sup>152</sup> it did not assure that very much, or very desirable, public housing would be constructed. Millions of veterans who had been left unserved by the G.I. Bill and VEHP continued to be unserved by the Housing Act of 1949.

*E. Veterans' Housing Programs from 1950 to 2004*

The pattern of early twenty-first century inadequate housing assistance to veterans was set in these decisions in the 1940s and early 1950s. While Congress has made some changes in the veterans' guaranteed home loan program,<sup>153</sup> and has added small programs of direct<sup>154</sup> and insured<sup>155</sup> home loans, a manufactured home loan guaranty program,<sup>156</sup> a tax-exempt bond program for five states,<sup>157</sup> and grants and direct loans for specially adapted housing for veterans with service-connected disabilities,<sup>158</sup> the principal housing program for veterans has

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152. Housing Act of 1949, ch. 338, §§ 301-302, 63 Stat. 413, 422-23. The veterans' preferences later were eliminated. See NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS TENANTS' RIGHTS § 2.3 (3d ed. 2004) (discussing preferences).

153. See REPORT ON VETERANS' BENEFITS, *supra* note 6, at 59, 163 (discussing many instances in which the VA housing program served "as a sort of balance wheel for the building industry, and the economy"); 38 U.S.C. § 3710 (2000).

154.

38 U.S.C. § 3711; THE DOUGLAS COMM'N REPORT, *supra* note 96, at 103 ("[T]he VA was authorized to make direct loans where satisfactory home loans were not available. These direct loans were primarily intended . . . for thinly settled regions, small towns, etc. It was difficult to persuade lawmakers and the public that poverty-stricken persons in the cities were also, in practice, not welcome at the loan window—even if they were veterans."); REPORT ON VETERANS' BENEFITS, *supra* note 6, at 63.

Congress also created a direct loan program for Native American veterans to purchase, construct, or improve homes on trust lands. 38 U.S.C. § 3761 (a pilot program, created in 1993 and set to expire on December 31, 2005).

155. 38 U.S.C. § 3710.

156. 38 C.F.R. § 36.4204(a) (2004).

157. BARRY G. JACOBS, HDR HANDBOOK OF HOUSING AND DEVELOPMENT LAW § 3:3 (2004) [hereinafter HDR] (discussing a tax exempt bond program for purchase, rehabilitation, or improvement of homes owned by veterans, but this is limited to five states—Alaska, California, Oregon, Texas, and Wisconsin).

158. 38 U.S.C. § 2101 (creating a specially adapted housing grant program to assist veterans with service-connected disabilities "in acquiring a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran's disability"); 38 C.F.R. § 3.809 (2004). In VA 2005 Budget Highlights, the VA reports that it made 515 such loans in FY 2003 and estimates that it will make 615 in FY 2005. See VA, FY 2005 CONGRESSIONAL BUDGET SUBMISSION 3A-34 (Apr. 2004), available at <http://www.va.gov/budget/summary/index.htm>. But see GENERAL SERVICES AGENCY, THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE 64.118 (Aug. 2004) [hereinafter CATALOG OF FEDERAL DOMESTIC ASSISTANCE] (regarding direct loans authorized by 38 U.S.C. § 3711 for veterans eligible for Specially Adapted Housing grants and reporting that

continued to be that of guaranteed home mortgage loans.<sup>159</sup> Except for a very small provision for homeless, disabled veterans, there is no subsidized rental program for veterans. Moreover, the implementation of the veterans' housing programs by the VA and the courts has not been generous to veterans.

This section discusses the administration of the veterans' housing programs by the VA and the interpretation of those programs by the courts, and then considers the particular provisions the VA has made for homeless veterans.

1. *Agency Administration and Judicial Interpretation of the Veterans' Guaranteed Home Mortgage Loan Program.*—To illustrate the restrictive constructions that have characterized agency and judicial supervision of the veterans' housing program, this section focuses on the standards governing deficiency judgments and foreclosure avoidance.

a. *Deficiency judgments and related issues.*—The first significant court test of the veterans' housing program was presented in *United States v. Shimer*, a case in which a veteran, George Shimer, had defaulted on a VA-guaranteed home mortgage loan.<sup>160</sup> The loan was for \$13,000; the guarantee, \$4000. The default occurred in May 1948, just a few months after the loan and guarantee had been consummated, in January of that year.<sup>161</sup>

After Mr. Shimer's default, the lender foreclosed and purchased the property for \$250 at a sheriff's sale. It then sold the property for \$10,500 and collected the \$4000 guarantee from the VA (thus recouping, in total, more than the loan amount). The VA then sought to recover the \$4000 from George Shimer, who resisted on the ground that the Pennsylvania Deficiency Judgment Act barred a deficiency judgment unless the mortgagee petitioned (within six months of the sale) to fix the fair market value of the property, a step that the lender had not taken. Both the district court and the court of appeals agreed with the veteran. The court of appeals held that the VA's recovery from a veteran "is limited to the amount which the V.A. under the statute is required to pay on its guaranty and not the amount which it actually pays,"<sup>162</sup> and that the VA's obligation was to be determined by the state statute. The court said it was convinced "that Congress never intended to deprive veteran-mortgagors of the benefits of Acts such as the Pennsylvania one that is clearly ameliorative. Certainly there was no intention to put these individuals in a worse position than nonveteran-mortgagors."<sup>163</sup> The United States Supreme Court, however, disagreed, holding that Congress had intended to displace such state law protections for borrowers. The Supreme

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in FY 2002 "no direct loans were made in conjunction with Specially Adapted Housing grants" and that in FY 2004 and 2005, one loan of \$33,000 was expected to be closed each year), *available at* <http://www.cfda.gov/public/viewprog.asp?progid=798>.

159. HDR, *supra* note 157, § 9:140 (Neither the direct nor the insured home loan program is as active as the guaranteed home loan program.).

160. *United States v. Shimer*, 367 U.S. 374 (1961). Many of the facts are taken from the opinion in the court of appeals, *United States v. Shimer*, 276 F.2d 792 (3d Cir. 1960).

161. *Shimer*, 276 F.2d at 795.

162. *Id.*

163. *Id.* at 797.

Court decided that the assistance Congress intended for veterans was limited to “the substantial equivalent of a down payment . . . in order to induce prospective mortgagee-creditors to provide 100% financing for a veteran’s home,” and that Congress had not intended that a mortgagee also be subject to a state law which would impose additional cost and additional risk.<sup>164</sup>

The *Shimer* case illuminates an agency and judicial preference for protecting lenders rather than veterans; in general, that preference has continued through the decades. Many states have protected homebuyer-mortgagors by either prohibiting deficiency judgments after non-judicial foreclosures or allowing deficiency judgments after non-judicial foreclosure only if there has been a judicial determination of the fair market value of the property. The general rule today, however, is that those protections do not cover VA loans.<sup>165</sup>

In 1990, the Ninth Circuit considered the deficiency judgment issue in *Whitehead v. Derwinski*, which concerned Washington State’s foreclosure requirements.<sup>166</sup> Washington State allowed both judicial and nonjudicial foreclosures, but permitted deficiency judgments only after judicial foreclosure.<sup>167</sup> In *Whitehead*, the Ninth Circuit held that when the VA instructed a Washington State lender to use nonjudicial foreclosure, the VA was not entitled to seek a deficiency judgment against the veteran.<sup>168</sup>

*Whitehead* was followed in some cases and not followed in others. In 1993, it was reconsidered and overruled by the Ninth Circuit en banc in *Carter v. Derwinski*.<sup>169</sup> *Carter* puts the Ninth Circuit in agreement with the Seventh and Eighth Circuits;<sup>170</sup> the Fourth and Tenth Circuits have since indicated agreement with that position.<sup>171</sup>

*Carter* involved the Idaho foreclosure laws. In Idaho, as in Washington State, lenders who use judicial foreclosure may secure deficiency judgments. In addition, in Idaho, lenders who use non-judicial foreclosure may secure deficiency judgments if they obtain a fair market valuation within three months

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164. *Shimer*, 367 U.S. at 383.

165. *See, e.g.*, *Dixon v. United States*, 68 F.3d 1253, 1255 n.1 (10th Cir. 1995) (VA regulations preempt Oklahoma’s strict requirement that a motion for a deficiency judgment must be made within ninety days after a foreclosure sale or no right to recover any deficiency “shall exist”); *United States v. Rossi*, 342 F.2d 505, 506 (9th Cir. 1965) (VA regulations preempt California prohibition of deficiency judgments on notes secured by purchase money mortgages).

166. *Whitehead v. Derwinski*, 904 F.2d 1362 (9th Cir. 1990), *overruled by Carter v. Derwinski*, 987 F.2d 611 (9th Cir. 1993) (en banc).

167. WASH. REV. CODE ANN. §§ 61.12.040, 61.24.040, 61.24.100 (West 2004); *see Carter*, 987 F.2d at 611; *Whitehead*, 904 F.2d at 1362.

168. *Whitehead*, 904 F.2d at 1369.

169. *Carter*, 987 F.2d at 611.

170. *Id.* at 613 (discussing *United States v. Davis*, 961 F.2d 603 (7th Cir. 1992), *Vail v. Derwinski*, 946 F.2d 589 (8th Cir. 1991), and *Boley v. Principi*, 144 F.R.D. 305, 1992 WL 330423 (E.D.N.C. Nov. 10, 1992)).

171. *Dixon v. United States*, 68 F.3d 1253, 1255 n.1 (10th Cir. 1995); *Boley v. Brown*, 10 F.3d 218 (4th Cir. 1993).

of the non-judicial foreclosure. The plaintiffs in *Carter* were Idaho veterans who sought relief from the VA's claims for deficiency judgments, because the VA had used non-judicial foreclosure and had not obtained any fair market valuation within three months.

The district court in *Carter*, following *Whitehead*, granted relief to the veterans.<sup>172</sup> On appeal, however, the Ninth Circuit, en banc, held that the VA could secure a deficiency judgment even though it had not complied with the state law requirements for doing so.<sup>173</sup> The majority opinion, written by Judge Kozinski, reached this conclusion by deciding that the VA has two rights, subrogation and indemnity, that only the right of subrogation is affected by the state law, and that the right of indemnity survives.<sup>174</sup>

As the Ninth Circuit acknowledged, the right of subrogation is the only one mentioned in the statute, which directs that "in the event of default . . . the Secretary shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty."<sup>175</sup> The court said that the VA regulation, however, "also gives the Secretary a right of indemnity," for the regulation provides that "[a]ny amounts paid by the Secretary on account of the liabilities of any veteran . . . shall constitute a debt owing to the United States by such veteran."<sup>176</sup> The Ninth Circuit held that the right of indemnity prevails, regardless of the state law. For this holding, it relied on the Supreme Court's 1961 decision in *United States v. Shimer*, in which the Supreme Court had said that "the statute affords an independent right of indemnity to the Veterans' Administration."<sup>177</sup> The Ninth Circuit said that Shimer's "square holding—that the regulation provides an independent right of indemnity against the veteran—is directly applicable to this case."<sup>178</sup>

The *Carter* court rejected the *Whitehead* court's assumption that the "right of indemnity was secondary to the right of subrogation . . . available only when subrogation was impossible."<sup>179</sup> It found no basis for this ranking, although the indemnity right derives not from the statute but from a regulation. The *Carter* court said that the *Whitehead* "rationale has intuitive appeal. It seems fair to recognize the *quid pro quo* involved in the use of nonjudicial foreclosure. . . . But this approach is not consistent with the regulations as written by the VA and as interpreted by the Supreme Court in *Shimer*."<sup>180</sup>

The *Carter* court emphasized that

[t]he VA is not a private litigant, limited to the choices provided by state

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172. *Carter v. Derwinski*, 758 F. Supp. 603, 608 (D. Idaho 1991).

173. *Carter*, 987 F.2d at 614.

174. *Id.*

175. *Id.* (citing 38 U.S.C. § 3732(a)(1)).

176. *Id.* at 611 (citing 38 C.F.R. 36.4323).

177. *United States v. Shimer*, 367 U.S. 374, 387 (1961), *quoted in Carter*, 987 F.2d at 613.

178. *Carter*, 987 F.2d 613 n.1.

179. *Id.* at 614.

180. *Id.*

law; it's an arm of the federal government and cannot be deprived of the benefits of federal law, regardless of any election it may make under state law. Federal law is mandatory, and neither the State of Idaho through legislation, nor the VA through its litigation choices, can waive its applicability.<sup>181</sup>

Four judges on the Ninth Circuit dissented. In an opinion written by Judge Beezer, they maintained that *Shimer* endorsed the application of “equitable principles of surety law . . . in defining the VA’s recovery rights.”<sup>182</sup> They identified as the crucial factor the VA’s voluntary rejection of the opportunity to seek a deficiency judgment.<sup>183</sup> Under the dissent’s reasoning, *Shimer* stands only for the propositions that equitable principles must determine the VA’s rights, and that a state that forbids deficiency judgments altogether would inequitably deprive the VA of recourse against the borrower. The *Carter* dissenters reasoned that since in *Carter* the VA, having an alternative, voluntarily chose a course that, under state law, released the veteran from liability, allowing the VA nonetheless to pursue a deficiency judgment would be inequitable and therefore is not required under suretyship principles. “*Shimer*,” the dissenters maintained, “simply does not stand for the inequitable proposition that the VA may recover amounts paid on its guaranty after authorizing the veteran’s release from liability.”<sup>184</sup>

As the opinion of the four *Carter* dissenters shows, the federal statute does not necessarily require stripping veterans of their protection from deficiency judgments where there has been no independent assessment of fair market value. The dissenters’ reasonable interpretation of *Shimer* would afford veterans the same protections from unsupervised deficiency judgments enjoyed by non-veteran borrowers. But the majority in *Carter*—and other courts of appeals that have considered this issue—hold that the VA is entitled to recover deficiency judgments from veterans even though state law would protect non-veteran debtors from deficiency judgments in this situation and even though the VA could have secured a deficiency judgment had it followed a different procedure.

In a different context, the Fourth Circuit distinguished *Shimer* from the kind of situation presented in *Carter*, noting that “[i]n *Shimer*, the Pennsylvania law . . . was directly in conflict with the federal regulations . . . .”<sup>185</sup> The Fourth Circuit said that where “state law does not conflict with any federal regulation . . . *Shimer* is not directly controlling.”<sup>186</sup> In the Fourth Circuit case, *Boley v. Brown*, however, the Fourth Circuit followed the reasoning of *Carter* and the Seventh and Eighth Circuits,<sup>187</sup> holding that “[t]he VA’s right to indemnification

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181. *Id.* at 615.

182. *Id.* at 617.

183. *Id.*

184. *Id.*

185. *Boley v. Brown*, 10 F.3d 218, 221 n.5 (4th Cir. 1993).

186. *Id.* at 221.

187. *United States v. Davis*, 961 F.2d 603 (7th Cir. 1992), *Vail v. Derwinski*, 946 F.2d 589

is a federal right given as part of a nation-wide federal program that should not be affected by state law.”<sup>188</sup>

The *Carter* court’s holding is particularly surprising—especially in a decision written by Judge Kozinski—because it sacrifices state to federal law, and does that in a situation in which the federal law mandates compliance with state law. Indeed, the federal law does not simply provide, as the *Carter* court paraphrases, that “[f]oreclosure of the property is to be done in accordance with state law.”<sup>189</sup> Rather, the federal statute specifically and particularly preserves protections afforded by state law, directing that “[t]he acquisition of any such property shall not . . . impair the rights under the State . . . law of any persons on such property.”<sup>190</sup> One of the most important “rights under the State . . . law” of the “persons on such property”—the mortgagor-homeowners—is the State law right to be protected against deficiency judgments absent a prior judicial determination of fair market value. This right is impaired—indeed, destroyed—by the *Carter* court’s ruling.

The *Carter* court concluded that “[b]ecause this federal indemnity right doesn’t depend on state foreclosure or deficiency law, preemption analysis is unnecessary.”<sup>191</sup> But the issue is not whether state foreclosure law applies. Rather, the issue is whether the court has honored the federal law, which directs that “rights under the State . . . law” are not to be impaired.<sup>192</sup>

A related situation in which the VA and the courts treat veteran borrowers less favorably than non-veteran borrowers is addressed in *Wells v. U.S. Administrator of Veterans Affairs*.<sup>193</sup> Plaintiffs there were former owners of homes subject to VA loan guarantees. Plaintiffs had defaulted and the mortgagees had foreclosed. Plaintiffs argued that they had a constitutionally protected property interest in continued occupancy—as tenants. They relied on decisions holding that after foreclosure of FHA-insured mortgages, non-owner occupants had a “protectable interest in continued occupancy.”<sup>194</sup> In *Wells*, the

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(8th Cir. 1991).

188. *Boley*, 10 F.3d at 222.

189. *Carter*, 987 F.2d at 612.

190. 38 U.S.C. § 3720(a)(6) (2000).

191. *Carter*, 987 F.2d at 616.

192. For loans guaranteed after January 1, 1990, “veterans who pay the funding fee will not be liable to the VA for any deficiency upon default except in case of ‘fraud, misrepresentation, or bad faith’ by the veteran in obtaining the loan or creating the default.” Bernard Ingold, *The Department of Veterans’ Affairs Home Loan Guaranty Program: Friend or Foe?*, 132 MIL. L. REV. 231, 245 (1991) (citing Veterans’ Benefits Amendments of 1989, Pub. L. No. 101-237, § 304, 103 Stat. 2062 (amending then 38 U.S.C. § 1803)). Prior to this, the VA had the discretion to release a veteran from liability on a defaulted loan if collection of the “indebtedness would be against equity and good conscience.” *Id.* (citing former 38 U.S.C. § 3102(b)(1988)). The 1989 Act, however, eliminated that discretion from the VA. *See id.* (nonetheless advising veterans to seek such waivers).

193. 537 F. Supp. 473 (E.D.N.Y. 1982).

194. *Id.* at 476 (citing *Caramico v. Secretary of HUD*, 509 F.2d 694, 701 (2d Cir. 1974));

court held that occupants of VA-financed homes were not entitled to the protections available to occupants of FHA-financed homes. The difference, the court held, was that the VA legislation had no intent to aid tenants as well as homeowners. “Rental housing is nowhere mentioned in the statute,”<sup>195</sup> the court said. “Its only purpose is to aid the returning veteran in purchasing a home. In no way can such a narrow goal be reasonably stretched to imply an intent to provide subsidized federal rental housing.”<sup>196</sup> Thus, the court said, the plaintiffs “have already received the intended benefit—assistance in purchasing a home. The relief they request, that is, to be allowed to remain as tenants, does not fall within the scope of the statute.”<sup>197</sup> In this way, *Wells* insists not only that Congress was concerned only with veterans who could become homeowners but also that Congress’ interest in those veterans ended the moment they became unable to continue the homeownership status.

*b. Foreclosure avoidance.*—The Veterans Administration—and the courts—also have demonstrated more concern for lenders than for veteran-borrowers with regard to assisting borrowers to avoid foreclosure. Other federal agencies that guarantee or insure home mortgage loans—the Department of Housing and Urban Development (HUD) and the Department of Agriculture (DoA)—have foreclosure avoidance programs,<sup>198</sup> but the Department of Veterans Affairs has refused to administer such a program.

It long has been understood that the primary danger in homeownership is loss of income by the homeowner, whether because of unemployment, illness, spousal abandonment, or other cause. In 1965, Charles Abrams wrote that “[t]he principal hazard in homeownership is unemployment or ‘curtailment of income.’”<sup>199</sup> He cited a 1963 study in which

this was the given reason for defaults for 35 per cent of all FHA

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Manners v. Secretary of HUD, 71 CV 550 (E.D.N.Y. 1973).

195. *Wells*, 537 F. Supp. at 476-77.

196. *Id.*

197. *Id.* at 477.

198. For HUD-assisted borrowers, the current protections are provided by the Federal Housing Administration (FHA) Loss Mitigation Program. See *Ferrell v. HUD*, 186 F.3d 805 (7th Cir. 1999); 12 U.S.C. § 1715(u) (2000); 24 C.F.R. § 203 (2004); HUD, Mortgagee Letter 00-05 (Jan. 19, 2000), available at <http://www.hudclips.org>. With respect to the Department of Agriculture, see Housing Act of 1949, ch. 338, § 505, 63 Stat. 434, 435 (codified as amended at 42 U.S.C. § 1475 (2000)); *United States v. Garner*, 767 F.2d 104 (5th Cir. 1985) (discussing the moratorium and refinancing options available to DoA); NATIONAL HOUSING LAW PROJECT, RHCDS (FMHA), HOUSING PROGRAMS: TENANTS’ AND PURCHASERS’ RIGHTS, at 19/1-19/19 (2d ed. 1995) [hereinafter TENANTS’ AND PURCHASERS’ RIGHTS]; 7 C.F.R. § 1965.26 (2004). Some relief from foreclosure is provided for some service members on active duty. See 50 U.S.C. app. § 533 (Supp. I 2003) (originally enacted as Soldiers’ and Sailors’ Civil Relief Act of 1940, ch. 888, § 303, 54 Stat. 1178, 1183); see also 12 U.S.C. §§ 1739 and 1750c (2000) (providing protection for government-insured lenders disadvantaged by the Civil Relief Act).

199. CHARLES ABRAMS, *THE CITY IS THE FRONTIER* 262 (1965).

borrowers and for about 40 per cent of VA borrowers. The second reason was “death or illness in family.” In each of the six metropolitan areas studied by FHA in 1962, at least 44 per cent of the FHA, VA, or conventional loan borrowers had suffered a decline in income between the time of loan origination and the day of foreclosure.<sup>200</sup>

The VA found that 64 percent of the defaults were due to “curtailment of income,” “death or illness,” or “marital difficulties.”<sup>201</sup>

Subsequent studies have produced similar results: unemployment, death, illness, and spousal abandonment are major reasons why homeowners lose their homes through default and foreclosure.<sup>202</sup> Defaults also are likely to occur in areas where home values are declining.<sup>203</sup> These losses can be devastating to the homeowners and their families not only financially, but also psychologically and socially;<sup>204</sup> the losses also are expensive to the federal agency that has insured or guaranteed the mortgage loan.<sup>205</sup> But despite the human, societal, personal, and financial costs of foreclosure, government agencies have been reluctant to implement any form of foreclosure avoidance program—and the DVA has been most reluctant of all.

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200. *Id.* (citing HOUSING & HOME FINANCE AGENCY, MORTGAGE FORECLOSURES IN SIX METROPOLITAN AREAS (June 1963)).

201. *Id.* (citing VA, REP. OF LOAN SERVICE AND CLAIMS STUDY (Apr. 30, 1962)). The precise percentages were: Curtailment of income, 39%; Death or illness, 16%; Marital difficulties, 9%. The other causes were “Improper regard for obligations,” 26%; “Extensive obligations,” 7%; and “All other reasons,” 3%. *Id.* Abrams wrote that “[i]f the reasons as given by the owners were credited, a good part of the 26 per cent of defaults for ‘improper regard for obligations’ would be added to the 55 per cent [of defaults due to curtailment of income and death or illness].” *Id.* at 263.

202. *See, e.g.*, DVA OIG, REPORT No. 9R5-B10-047, 9-10, 30 (Mar. 25, 1999) [hereinafter DVA OIG REPORT]; *but see id.* at 33 (discussing the difficulties of identifying the reason for a particular default); *see also* Sheila Crowley, *The Affordable Housing Crisis: Residential Mobility of Poor Families and School Mobility of Poor Children*, 72 J. NEGRO EDUC. 22, 28 (2003) (homeowners with few or no financial assets often “spend dangerously high percentages of their income on housing,” and then often are unable to meet the “unanticipated costs for home repair” that frequently appear).

203. *See* DVA OIG REPORT, *supra* note 202, at i, 4-5 (stating that loan defaults were higher in “vicinities with declining home values”); *see also* William N. Goetzmann & Mathew Spiegel, *Policy Implications of Portfolio Choice in Underserved Mortgage Markets*, in LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL 257-8, 263, 266 (Nicholas P. Retsinas & Eric S. Belsky eds., 2002) [hereinafter LOW-INCOME HOMEOWNERSHIP] (discussing the occurrence of such conditions in the United States).

204. *See* William M. Rohe et al., *Social Benefits and Costs of Homeownership*, in LOW-INCOME HOMEOWNERSHIP, *supra* note 203, at 381, 388 (“little, if any, research exists on the impacts of foreclosure on a person’s self-esteem or any other psychological constructs”).

205. *See, e.g.*, DVA OIG REPORT, *supra* note 202, at 5 (discussing losses to the government and the veteran); GAO, HOUSING PROGRAMS: INCREASED USE OF ALTERNATIVES TO FORECLOSURE COULD REDUCE VA’S LOSSES, GAO/RCED-90-4, at 19 (Dec. 1989).

Abrams had made two suggestions in the 1960s: the establishment of a fund from which owners could borrow, and the provision of equity insurance.<sup>206</sup> Abrams's suggestions were rejected.<sup>207</sup> None of the agencies adopted a foreclosure avoidance program voluntarily.

Both the HUD and DoA foreclosure avoidance programs were mandated by litigation,<sup>208</sup> but similar litigation against the VA was uniformly unsuccessful.<sup>209</sup> A typical case is *Rank v. Nimmo*, involving John Rank, a veteran, and his wife, who together bought a home with a VA guaranteed mortgage loan in 1971 but defaulted in 1975, after John Rank had been laid off from his job.<sup>210</sup> The VA had the option of "refunding" defaulted loans, whereby, as the court explained, "[t]he VA . . . may take over defaulted mortgages from private lenders and avoid foreclosure by extending forbearance to the veteran."<sup>211</sup> Moreover, the VA's Lenders' Handbook and pertinent circular and manuals all expressed policies of assisting veterans in retaining their homes where foreclosure might reasonably be avoided.<sup>212</sup> Nonetheless, the VA conceded that it never had exercised the refunding option in the Los Angeles region between 1974 and 1976.<sup>213</sup>

The district court held that the VA had abused its discretion in failing even to explain its reasons for not exercising the refunding option.<sup>214</sup> The court of appeals reversed, holding that the veteran had no cause of action under either the VA statute or the Administrative Procedure Act.<sup>215</sup> Other courts have followed the lead of the Ninth Circuit in *Rank*.<sup>216</sup>

As the courts have not required the VA to implement any foreclosure

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206. ABRAMS, *supra* note 199, at 263.

207. *Id.* at 264-65.

208. See *Brown v. Lynn*, 385 F. Supp. 986 (N.D. Ill. 1974); *subsequent opinions sub nom. Ferrell v. Pierce*, 560 F. Supp. 1344 (N.D. Ill. 1983), *aff'd*, 743 F.2d 454 (7th Cir. 1984) (HUD); *United States v. White*, 429 F. Supp. 1245 (N.D. Miss. 1977), *on remand from* 543 F.2d 1139 (5th Cir. 1976) (DoA); see also David B. Bryson, *The Role of the Courts and a Right to Housing*, in *THE RIGHT TO HOUSING* (Rachel Bratt et al. eds., forthcoming 2005). The HUD Mortgage Assignment Program, created by the Brown/Ferrell litigation, subsequently was replaced by a modified program enacted by Congress. See *Ferrell v. HUD*, No. 73C334, 2002 U.S. Dist. LEXIS 16156, at \*3-4 (N.D. Ill. Aug. 22, 2002) (discussing the Balanced Budget Downpayment Act I, Pub. L. No. 104-99, § 407, 110 Stat. 26 (1996) (codified as amended at 12 U.S.C. § 1715(u) (2000)); see also *supra* note 198.

209. See *Rank v. Nimmo*, 677 F.2d 692 (9th Cir.), *cert. denied*, 459 U.S. 907 (1982); *Simpson v. Cleland*, 640 F.2d 1354 (D.C. Cir. 1981); *United States v. Harvey*, 659 F.2d 62 (5th Cir. 1981); *Gatter v. Cleland*, 512 F. Supp. 207 (E.D. Pa. 1981), *aff'd sub nom. Gatter v. Nimmo*, 672 F.2d 343 (3d Cir. 1982); *Buzinski v. Brown*, 6 Vet. App. 360, 369 (1994).

210. *Rank*, 677 F.2d at 695.

211. *Id.* at 694.

212. *Id.* at 694-95.

213. *Id.* at 700.

214. *Rank v. Cleland*, 460 F. Supp. 920, 926 (C.D. Cal. 1978); *Rank*, 677 F.2d at 693.

215. *Rank*, 677 F.2d at 701.

216. See *supra* note 209.

avoidance program, the VA never has done so voluntarily.<sup>217</sup> Thus, while HUD and DoA borrowers enjoy some protection from foreclosures because of temporary financial problems for which they are not to blame,<sup>218</sup> veterans who suffer temporary loss or reduction of income for reasons beyond their control have no protection from foreclosure that causes loss of their family home.<sup>219</sup>

The virtual absence of any foreclosure avoidance program for VA-assisted homes is a serious problem, for a substantial number of VA financed homes go into default each year.<sup>220</sup> The VA unquestionably has the authority to prevent foreclosures. The statute provides that the Secretary may “consent to the modification, with respect to rate of interest, time of payment of principal or interest or any portion thereof, security or other provisions of any note, contract, mortgage or other instrument securing a loan which has been guaranteed, insured, made or acquired under this chapter.”<sup>221</sup> Under the “refunding” option,

the VA, prior to commencement of foreclosure proceedings, pays the lender the unpaid portion of the veteran’s loan and the lender assigns its interest and security in the loan to the VA. The veteran then makes monthly payments directly to the VA until the loan is satisfied. The veteran must be able to establish an ability to repay the loan and a decision by the VA not to refund a loan is not judicially reviewable.<sup>222</sup>

But the courts have held that veteran-borrowers cannot compel the VA to use any of the ameliorative authority it possesses.<sup>223</sup>

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217. See DVA OIG REPORT, *supra* note 202, at 5 (“[The] VA may choose to refund the loan or accept a deed-in-lieu [of foreclosure], but will do so only if the property has enough equity to make these alternatives advantageous to the government.”).

218. See ABRAMS, *supra* note 199, at 262-65; see also *supra* note 208.

219. VA staff may, in some circumstances, arrange an interest rate reduction refinancing loan. See DVA OIG REPORT, *supra* note 202, at i-ii.

220. See DVA, *Guaranteed Loans, Defaults and Claims, and Property Management, FY 1998-2001*, at <http://www.va.gov/vetdata/ProgramStatics/index01.htm> (last updated Apr. 17, 2003) (indicating 118,426 defaults reported in FY 1999, 132,147 in FY 1998, and 132,534 in FY 1997). Compare DVA OIG REPORT, *supra* note 202, at 19 (132,245 in default at the end of FY 1997). Note that approximately 18.5% of these loans are to service members on active duty, and that a DVA study of loans that defaulted between 1995 and 1997 showed that “[loans] acquired by service members were more likely to default than loans acquired by veterans” and that 26.5% of the default loans were to service members. DVA OIG REPORT, *supra* note 202, at 1.

221. 38 U.S.C. § 3720(a)(2) (2000). In situations of major disaster as determined under the Disaster Relief and Emergency Assistance Act, the act provides that the Secretary “shall . . . pursuant to subsection (a)(2) . . . extend on an individual case basis such forbearance or indulgence to such owner as the Secretary determines to be warranted by the facts of the case and the circumstances of such owner.” *Id.* § 3720(f).

222. Ingold, *supra* note 192, at 242 (citing 38 C.F.R. § 36.4318 (1988); *Fitzgerald v. Cleland*, 498 F. Supp. 341 (D. Me. 1980); 38 U.S.C. § 1816(a) (1988)); 38 U.S.C. § 3732(a)(2).

223. Ingold, *supra* note 192, at 241 (“These discretionary provisions are designed for the benefit of the VA, not the veteran, and are not subject to judicial review.”); see *supra* notes 209-15

2. *The VA's Programs for Homeless Veterans.*—From the enactment of the G.I. Bill in 1944, save for the short-lived VEHP and section 608 programs and the VA hospital system, the federal government's provision of housing assistance for veterans continued to be for homeownership only. Beginning in the 1980s, however, large numbers of people in the United States began to experience homelessness, and a significant percentage of those people were veterans.<sup>224</sup> In response to litigation and other forms of pressure, the VA made available some surplus VA properties to organizations serving homeless veterans.<sup>225</sup> It also sells and leases some foreclosed properties to organizations that serve homeless people.<sup>226</sup> That aside, the “[t]wo major VA homeless programs [have been] Health Care for Homeless Veterans (HCHV) and Domiciliary Care for Homeless Veterans (DCHV),”<sup>227</sup> both of which serve veterans through the VA Medical Centers.<sup>228</sup> HCHV serves veterans who are homeless and mentally ill;<sup>229</sup> in general, it relies on “community-based residential treatment facilities” that are

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and accompanying text (discussing *Rank v. Nimmo*).

224. See MARTHA BURT, *OVER THE EDGE: THE GROWTH OF HOMELESSNESS IN THE 1980s*, at vii-viii, 3 (1992); 42 U.S.C. § 11301(a)(1) (2000) (commonly known as the McKinney Act) (stating that “the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including . . . veterans”); COMMITTEE ON HEALTH CARE FOR HOMELESS PEOPLE, INSTITUTE OF MEDICINE, *HOMELESSNESS, HEALTH, AND HUMAN NEEDS* 138 (1988) (“There are a substantial number of veterans among the homeless, especially from the Vietnam era.”); HEROES TODAY, *HOMELESS TOMORROW?*, *supra* note 11; BLAU, *supra* note 12, at 29 (“Veterans make up about one-third of the homeless male population.”); *HOMELESSNESS IN LOS ANGELES*, *supra* note 11, at 15 (In Los Angeles, “[v]eterans are almost twice as likely as all adults to be homeless,” and “Vietnam veterans make up the largest block of homeless veterans.”).

225. See Nat'l Law Ctr. on Homelessness and Poverty v. U.S. Veterans' Admin., 765 F. Supp. 1, 8-9 (D.C. Cir. 1991) (regarding leasing buildings at a VA Medical Center in Arkansas to a homeless provider); Nat'l Coalition for the Homeless v. U.S. Veterans' Admin., 695 F. Supp. 1226, 1234 (D.C. Cir. 1988) (ordering the VA and other agencies to comply with provisions of the McKinney Act regarding use of surplus federal properties to assist homeless people); *id.* at 1230 n.6 (holding that VA-foreclosed single-family homes are not subject to the McKinney Act); Lee v. Pierce, 698 F. Supp. 332, 340-41 (D.C. Cir. 1988) (holding that HUD-foreclosed single-family homes are not subject to the McKinney Act).

226. See DVA, *Fact Sheet: VA Programs for Homeless Veterans* (Jan. 2003), at [http://www.hrsa.gov/homeless/pa\\_materials/pre-site/pa4/pa4\\_va\\_fact\\_sheet.htm](http://www.hrsa.gov/homeless/pa_materials/pre-site/pa4/pa4_va_fact_sheet.htm) [hereinafter DVA Fact Sheet Jan. 2003] (stating that “more than 180 properties have been sold and 9 properties . . . leased to provide housing for the homeless”); DVA Fact Sheet Dec. 2004, *supra* note 11 (referring only to the properties sold).

227. GAO REPORT, *supra* note 11, at 4.

228. See HOMBS, *supra* note 10, at 112-14.

229. See *id.* at 112; GAO REPORT, *supra* note 11, at 4 n.4 (HCHV initially was called the Homeless Chronically Mentally Ill (HCMI) program; the VA uses the term HCHV to “avoid use of the term ‘chronically mentally ill’”); *id.* at 5 (mental illness in this context includes substance abuse).

time limited, “generally for less than 6 months,”<sup>230</sup> and relatively few beds—about 425 beds in 2002—provided by the VA itself for a Transitional Residence program.<sup>231</sup> Under DCHV, “homeless veterans receive rehabilitative services while occupying dedicated beds at VA medical centers.”<sup>232</sup> DCHV provided more than 1800 beds at 35 VA medical centers in 26 states, offering “residential treatment to over 5000 homeless veterans each year.”<sup>233</sup>

As part of the HCHV programs, the VA also has a Homeless Providers Grant and Per Diem (GPD) program, which is designed to foster the creation of new facilities for homeless veterans.<sup>234</sup> The maximum number of beds VA has attributed to GPD is 8000.<sup>235</sup>

In addition to these programs, in 1992, DVA and HUD agreed to create the HUD-VA Supported Housing (HUD-VASH) program for homeless veterans who have severe psychiatric or substance abuse disorders.<sup>236</sup> HUD-VASH provides a setaside of HUD Section 8 vouchers and VA case management, health, and other supportive services, which are to be made available for the term of the Section 8 assistance.<sup>237</sup> Through 2003, HUD had designated 1780 Section 8

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230. GAO REPORT, *supra* note 11, at 5, 6; GAO, HOMELESS VETERANS—VA EXPANDS PARTNERSHIPS, BUT EFFECTIVENESS OF HOMELESS PROGRAMS IS UNCLEAR, GAO/T-HEHS-99-150, at 5 (June 24, 1999) (statement of Cynthia A. Bascetta, Associate Director, Veterans Affairs and Military Health Care Issues), available at <http://www.gao.gov/archive/1999/he99150t.pdf> [hereinafter GAO BASCETTA].

231. *VA Has Largest Homeless Services Network, Works with HUD, Nonprofits to Expand Housing*, 30 No. CD-16 HOUSING & DEV. REP. CURRENT DEVS. 501, 501 (2002).

232. GAO BASCETTA, *supra* note 230, at 7.

233. DVA Fact Sheet Dec. 2004, *supra* note 11.

234. Homeless Veterans Comprehensive Service Programs Act of 1992, Pub. L. No. 102-590, 106 Stat. 5136; 38 C.F.R. § 61.0 - 61.82 (2004); DVA, *Grant & Per Diem Program*, at <http://www1.va.gov/homeless/page.cfm?pg+3> (last visited Dec. 28, 2004); Statement of Frances M. Murphy, Deputy Undersecretary for Health, DVA, before the House Committee on Veterans Affairs 3-4 (Sept. 20, 2001), available at [http://www.va.gov/OCA/testimony/20se01FM\\_USA.htm](http://www.va.gov/OCA/testimony/20se01FM_USA.htm) [hereinafter Murphy Statement]; DVA Fact Sheet Dec. 2004, *supra* note 11 (referring to the program’s inception in FY 1994); GAO BASCETTA, *supra* note 230, at 5.

235. See DVA Fact Sheet Dec. 2004, *supra* note 11 (stating that “[n]early 20,000 homeless veterans are expected to be provided supported housing under this program in more than 8,000 funded beds annually”). This is a dramatic increase from the VA’s January 2003 Fact Sheet, which referred to 6000 beds and stated that “more than 10,000 homeless veterans are provided supported housing under this program annually.” DVA Fact Sheet Jan. 2003, *supra* note 226.

236. See Robert Rosenheck et al., *Cost-effectiveness of Supported Housing for Homeless Persons with Mental Illness*, 60 ARCHIVES GEN. PSYCHIATRY 940, 941 (2003) (describing the origin of the program in an interagency agreement); Murphy Statement, *supra* note 234, at 3-4. The HUD-VASH program was codified in the Homeless Veterans Comprehensive Assistance Act of 2001, Pub. L. No. 107-95, § 5, 115 Stat. 903, 913 (codified as amended in 38 U.S.C. § 2041-43 (Supp. I 2001)).

237. DVA, *VA Homeless Programs and Initiatives*, at <http://www1.va.gov/homeless/page.cfm?pg=2> (last updated July 7, 2004). The Section 8 voucher program originally was a Section 8

vouchers for this program.<sup>238</sup> The VA also operates a VA Supported Housing Program, but it offers only supportive services, including help in finding private or other government assisted housing.<sup>239</sup>

In 1998, Congress enacted the Veterans Programs Enhancement Act, which authorized the VA to guarantee up to \$100 million in loans to construct, rehabilitate, or acquire land for multifamily transitional housing projects for homeless veterans.<sup>240</sup> But DVA has not exercised this authority.<sup>241</sup> Thus, while some provision has been made for homeless veterans, it still is the case that the only significant housing program for veterans is the guaranteed home mortgage loan program.

## II. CONSEQUENCES OF THE FOCUS ON HOMEOWNERSHIP IN THE G.I. BILL

As Part I described, since World War II, the federal government's provision of housing assistance for veterans has largely been limited to guaranteeing home mortgage loans. There are three crucial limitations to this program: the aid is for homeownership only; the aid includes no direct subsidy; and the aid relies on private lenders. The decision to offer such limited homeownership assistance has meant that many veterans have been excluded from the program.

Thus, while discussions of the G.I. Bill, which usually focus on the educational provisions, often characterize it "as a broad-based, universal program . . . open to any veteran who wished to take advantage of it"<sup>242</sup> this certainly is

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certificate program. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 653, § 201(a) (codified as amended at 42 U.S.C. § 1437f(o) (2000)). It now is the Housing Choice Voucher Program. See Quality Housing and Work Responsibility Act of 1998, 42 U.S.C. § 1437f(2000).

238. DVA Fact Sheet Jan. 2003, *supra* note 226; DVA Fact Sheet Dec. 2004, *supra* note 11 ("more than 1,750 vouchers").

239. See DVA Fact Sheet Dec. 2004, *supra* note 11 ("VA staff work with private landlords, public housing authorities and nonprofit organizations to find housing arrangements."). *But see infra* text accompanying note 351 (indicating that many veterans are discharged without housing).

240. Veterans Programs Enhancement Act of 1998, Pub. L. No. 105-368, § 601, 112 Stat. 3315 (codified as amended at 38 U.S.C. § 3772 (2000)).

241. See VA, FY 2005 CONGRESSIONAL BUDGET SUBMISSION, *supra* note 158, at 3A-34 (indicating that no such loans were established in FY 2003, and the FY 2004 estimate of 3 loans is carried forward to FY 2005); *but cf.* DVA Fact Sheet Dec. 2004, *supra* note 11 (stating that "The Multifamily Transitional Housing Loan Guarantee for Homeless Veterans Program has made several conditional commitments to establish housing for formally [sic] homeless veterans").

242. Mettler, *supra* note 5, at 354. There is room for doubt whether in its administration the educational provisions of the G.I. Bill were as available to women as to men, to non-whites as to whites, or to those of lower class and income groups as to those of higher class and income groups. See, e.g., Suzanne Mettler & Eric Welch, Policy Feedback and Political Participation: Effects of the G.I. Bill on Political Involvement Over the Life Course 11 n.11 (Apr. 4, 2001) (presentation at the American Political Development Workshop, University of Wisconsin-Madison) (noting that, with respect to the educational benefits of the G.I. Bill, "racial discrimination was commonplace

not accurate with respect to the housing provisions of the G.I. Bill.<sup>243</sup> Because of the design and administration of the housing program created by the G.I. Bill, several groups of people were excluded from the veterans' housing program: female and non-white veterans were excluded for several decades, and all veterans who could not afford or did not desire homeownership have been excluded for the entire duration of the program, continuing to this date. Each of these groups is discussed below.

#### A. *The Exclusion of Women Veterans*

Although the proposed legislation was described as a bill of rights for G.I. Jane as well as G.I. Joe,<sup>244</sup> the hundreds of thousands of women in the military<sup>245</sup> did not use the veterans' housing programs to the same extent as men did<sup>246</sup> and

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... especially in the South"), available at <http://polisci.wisc.edu/~coleman/apd/mettler.pdf>; Mettler, *supra* note 5, at 353 (noting a scholarly suggestion "that veterans who took advantage of the G.I. Bill's educational provisions were likely to have come from more privileged socioeconomic backgrounds than nonusers"); *id.* at 355 (noting that "considerable variation exists among both G.I. Bill users and nonusers in terms of level of education completed prior to military service").

243. "Fifty-one percent of all returning veterans—7.8 million—took advantage of the educational benefits." *Id.* at 351. By contrast, about 40% of World War II veterans "obtained their homes under VA guarantees or loans." THE DOUGLAS COMM'N REPORT, *supra* note 96, at 103. "About 20 percent of the Korean servicemen . . . obtained such help." *Id.* Today, about 1% of veterans use the guaranteed home mortgage loan program. See THE ENCYCLOPEDIA OF HOUSING, *supra* note 9; see also DVA, *Guaranteed Loans, Defaults and Claims, and Property Management, FY 1998-2001*, *supra* note 220 (indicating that the VA guaranteed 199,160 home mortgage loans in FY 2000 and 250,009 in FY 2001); CATALOG OF FEDERAL DOMESTIC ASSISTANCE, *supra* note 158, at 64.11 (In FY 2002, VA guaranteed loans for the purchase of 185,362 conventionally constructed homes and condominium units; the estimate for FY 2003 was 152,000 purchase loans.) Approximately 18.5 percent of these VA loans are made to service members on active duty. DVA OIG REPORT, *supra* note 202, at 1.

244. ROSS, *supra* note 24, at 99 (citing the N.Y. TIMES, Jan. 9, 1944).

245. See MAJ. GEN. JEANINE HOLM, U.S.A.F. (RET.), WOMEN IN THE MILITARY: AN UNFINISHED REVOLUTION 100 (1982) ("At war's end, of the 12 million people in the U.S. Armed Forces, nearly 280,000 were women.").

246. See LIZABETH COHEN, A CONSUMER'S REPUBLIC: THE POLITICS OF MASS CONSUMPTION IN POSTWAR AMERICA 141 (2003) (noting that in the New York-Northeastern New Jersey Standard Metropolitan Area before 1956, women owned no VA-financed homes and that women owned a much smaller percentage of FHA-financed homes than of privately financed homes. "Whereas women owned 9.8 percent of all mortgaged owner-occupied properties and 12.6 percent of properties with conventional first mortgages (not government-insured), they only owned 8.5 percent of all government-insured first mortgages (FHA and VA combined) and, most revealing, no VA-insured homes"); but see MATTIE E. TREADWELL, THE WOMEN'S ARMY CORPS 738 (1953) (stating that "[f]ewer women than men were interested in loans to buy a home or to go into business," but not indicating any basis for attributing the differential use of the program to relative lack of interest on the part of women).

did not have equal opportunities to do so.

The relative inability of women to use the housing program was due to several causes, some of which were unrelated to the focus on homeownership. Many women who served in various units associated with the military were not accorded veteran status after World War II.<sup>247</sup> Moreover, even women who were accorded veteran status were less likely than men to secure benefits counseling from veterans' organizations and were, for other reasons, less likely to claim veterans' status.<sup>248</sup> The limitation of the assistance to guaranteed home mortgage loans meant, however, that even women who did have veteran status and did seek to use the housing program would experience significant difficulty and differential treatment (less favorable than that accorded male veterans) because the program depended upon private lenders.

Private lenders in the 1940s, '50s, and '60s—and thereafter—discriminated against women who sought to borrow money, for home purchases or anything else.<sup>249</sup> Women veterans who were married were treated less favorably than male veterans because the married women veterans' incomes were disregarded by lenders in determining whether and to what extent to make loans. Until 1968, “if a married woman veteran applied for a loan, her income was not considered among the criteria used to determine whether the couple was a sound credit risk. [S]he was seen as a working wife, [whose] . . . income was seen as supplemental and unstable.”<sup>250</sup>

Women who had not themselves served in the military, but were the “widows of veterans[,] received fewer and poorer benefits than their husbands had received . . . until reforms began in the late 1950s.”<sup>251</sup> The widowers of women veterans were treated less favorably than male veterans' widows. From 1950 until 1972, any widow of a male veteran who died in service or as a result of service-connected disabilities, who did not remarry, was eligible for a GI loan,<sup>252</sup> but “no provision was made for the widowers of female veterans.”<sup>253</sup>

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247. See WILLENZ, *supra* note 35, at 168-79 (discussing the status of the Women's Army Auxiliary Corp, later called the Women's Army Corps, and the Women's Air Force Service Pilots).

248. See COHEN, *supra* note 246, at 138-39.

249. This was one of the reasons for the 1974 amendment of the Fair Housing Act and the enactment of the Equal Credit Opportunity Act to prohibit discrimination on the basis of sex. The Federal Fair Housing Act of 1968 was amended in 1974 to prohibit discrimination on the basis of sex. Housing and Community Development Act of 1974, Pub. L. No. 93-383 § 808(b)(1), 88 Stat. 633, 729 (codified as amended at 42 U.S.C. § 3604 (2000)); Equal Credit Opportunity Act, Pub. L. No. 93-495, § 503, 88 Stat. 1500, 1521 (1974) (codified as amended at 15 U.S.C. § 1691(a) (2000)) (prohibiting discrimination by financial institutions on account of sex and marital status).

250. WILLENZ, *supra* note 35, at 194; see also COHEN, *supra* note 246, at 143; WRIGHT, *supra* note 51, at 268 (stating, in a book published in 1981, that “[b]anks . . . still discriminate against . . . working women”).

251. COHEN, *supra* note 246, at 138.

252. WILLENZ, *supra* note 35, at 194; see REPORT ON VETERANS' BENEFITS, *supra* note 6, at 163.

253. WILLENZ, *supra* note 35, at 194. See *Frontiero v. Richardson*, 411 U.S. 677, 690-91

*B. The Exclusion of Veterans of Color*

From the time the veterans' housing programs were created, in 1944, for more than twenty years—well into the 1960s—VA (and FHA) housing benefits were, on the whole, available only to people who were white.<sup>254</sup> “[L]ess than 2 per cent of the housing financed with federal mortgage assistance from 1946 to 1959 was available to Negroes.”<sup>255</sup> Moreover, housing financed by the VA (and FHA) was strictly segregated on the basis of race, so that the few such homes that were available to non-whites were in non-white neighborhoods.<sup>256</sup>

This limitation of non-whites' access to VA- and FHA-financed housing was accomplished in several ways. First, the VA and FHA<sup>257</sup> required racial covenants until 1950, and allowed developers to use them thereafter.<sup>258</sup> Second,

(1973) (holding unconstitutional federal statutes that allowed servicewomen to claim their husbands as dependents only if the husbands in fact depended upon the wives for over one-half of their support, while servicemen could claim their wives as dependents without showing any degree of actual dependence).

254. See R. ALLEN HAYS, *THE FEDERAL GOVERNMENT AND URBAN HOUSING: IDEOLOGY AND CHANGE IN PUBLIC POLICY* 85-86 (2d ed. 1995) (“[T]hose aided [by the FHA and VA programs] were largely white middle or working class families with enough income to purchase the new suburban tract housing springing up around United States cities.”); COHEN, *supra* note 246, at 166-73 (discussing racial discrimination against black veterans); see also David H. Onkst, “*First a Negro . . . Incidentally a Veteran*”: *Black World War Two Veterans and the G.I. Bill of Rights in the Deep South, 1944-1948*, 31 J. SOC. HIST. 517, 519-20 (1998) (black veterans in Georgia, Alabama, and Mississippi rarely were able to secure VA-guaranteed loans).

255. GELFAND, *supra* note 58, at 221; see also *Jorman v. Veterans Admin.*, 830 F.2d 1420, 1422-23 (7th Cir. 1987) (noting that it was not until 1968 that “the VA ceased excluding inner-city areas from those in which it would guarantee mortgages for qualified veterans” and attributing this change to “pressure from civil rights groups to encourage the use of [the VA] loan program by minorities in the inner city”).

256. The few non-white developments generally were in the South. See CHRISTOPHER SILVER & JOHN V. MOESER, *THE SEPARATE CITY: BLACK COMMUNITIES IN THE URBAN SOUTH, 1940-1968*, at 9 (1995) (noting that in Atlanta, Memphis, and Richmond, cities with relatively large black populations, “the planning process took into account the future expansion needs of blacks”); *id.* at 125 (“In all three cities expansion of the public planning function in the 1940s aimed both at stabilizing an increasingly volatile racial situation and at speeding the process of neighborhood separation by class and race.”); THOMAS W. HANCHETT, *SORTING OUT THE NEW SOUTH CITY: RACE, CLASS, AND URBAN DEVELOPMENT IN CHARLOTTE, 1875-1975*, at 235-36 (1998) (In Charlotte, in “a concerted policy on the part of the city’s white leaders, in association with the FHA . . . real estate developers in Southern cities typically built houses for black buyers on the suburban fringe.”); *id.* at 330 n.4 (“[B]y offering opportunities in one specified sector, developers met FHA requirements to protect their subdivisions elsewhere from the threat of invasion by nonwhites.”).

257. See JACKSON, *supra* note 53, at 204 (the VA “very largely followed FHA procedures and attitudes”).

258. See Arnold R. Hirsch, *Choosing Segregation: Federal Housing Policy Between Shelley*

even where developers might be willing to sell homes to minorities, lenders discriminated on the basis of race and ethnicity.<sup>259</sup> Third, even if developers and lenders might be willing to allow purchases by non-whites, neighborhood forces often used violence to prevent non-white families from buying or occupying housing in neighborhoods that had been identified as “white.”<sup>260</sup>

Although racial discrimination in the sale and financing of housing was made illegal by the Civil Rights Act of 1968,<sup>261</sup> racial discrimination and segregation continue to be practiced by many sellers, lenders, brokers, insurers, neighbors, and others involved in home sales.<sup>262</sup> Although VA and FHA loans today are

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and Brown, in *FROM TENEMENTS TO THE TAYLOR HOMES*, *supra* note 49, at 206, 209, 213; *see also* NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 474 (Bantam Books 1968) (Mar. 1, 1968) (“Until 1949, FHA official policy was to refuse to insure any unsegregated housing.”).

259. *See* AARON, *supra* note 101, at 81 (“all lenders use rules of thumb for choosing among loan applicants: borrowers must have steady employment; monthly payments may not exceed a stipulated fraction of family income; blacks, Spanish-Americans, and Indians need not apply; loans in certain neighborhoods will not be approved”).

260. *See* Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors’ Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 335 (2001) (reviewing STEPHEN GRANT MEYER, *AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* (2000)); United Negro & Allied Veterans, *supra* note 120, at 2-3 (“Because of restrictive covenants, backed up in many instances by the application of outright terror in which a combination of real estate interests, police and politicians play a united role, [nonwhite veterans] are relegated to Jim Crow Ghetto areas by force.”).

261. Civil Rights Act of 1968, Pub. L. No. 90-284, § 801, 82 Stat. 73, 81 (codified as amended at 42 U.S.C. § 3601 (2000)); *see also* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 436 (1968) (holding that the Civil Rights Act of 1866 prohibits racial discrimination in sales or rentals of real property). President Kennedy’s 1962 Exec. Order No. 11,063, 27 Fed. Reg. 11527 (Nov. 24, 1962), did not apply to FHA and VA financed housing but did ask that agencies like FHA and VA insure that their financial assistance programs would not be used to create racially separate housing facilities. ROBERT G. SCHWEMM, *HOUSING DISCRIMINATION: LAW AND LITIGATION* § 3:4 (1996). Title VI of the Civil Rights Act of 1964 barred discrimination on the basis of race in programs receiving federal financial assistance, but excluded any “contract of insurance or guaranty.” Civil Rights Act of 1964, Pub. L. No. 88-352, § 602, 78 Stat. 241, 252 (codified as 42 U.S.C. § 2000d-1 (2000)). *See* David M.P. Freund, “Democracy’s Unfinished Business”: Federal Policy and the Search for Fair Housing, 1961-1968, Report to the Poverty and Race Research Action Council, at 4 (May 9, 2004) (stating that in 1967 “an internal FHA investigation revealed what realtors and home buyers alike had long recognized, that the agency continued to deny mortgage insurance to most non-whites, in defiance of the Executive Order”), *available at* <http://www.prrac.org/pdf/freund.pdf>; *id.* at 54-55 (discussing 1967 opposition to fair housing legislation by NAREB and others and stating that from 1965-1967, “numerous efforts to secure open housing for minority servicemen were unsuccessful”); *see also* SHERIE MERSHON & STEVEN SCHLOSSMAN, *FOXHOLES & COLOR LINES: DESEGREGATING THE U.S. ARMED FORCES* 275, 285, 290 (1998) (As late as 1967, racial discrimination against Black service members was documented in Maryland.).

262. *See, e.g.*, MARGERY AUSTIN TURNER ET AL., *THE URBAN INSTITUTE, DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE 1 HDS 2000*, at 3-10 to 3-19

made to minorities, racial discrimination and segregation undoubtedly continue with respect to VA- and FHA-financed homes as they do with respect to all housing.<sup>263</sup>

The overt, *de jure* racial discrimination that characterized the first two decades of the VA program meant that even those non-white veterans who had the financial capacity to utilize the program were precluded from doing so. (In addition, non-white families were disproportionately too poor to use the homeownership programs, a subject discussed *infra*).<sup>264</sup>

The exclusion of non-white veterans from the VA housing program has had significant and continuing effects on people and places. With respect to financial consequences for individuals, those programs laid the basis for substantial wealth accumulation and class mobility for those who were able to use them. Discrimination against non-whites in the VA and FHA homeownership programs meant, as Melvin Oliver and Thomas Shapiro wrote, that veterans of color were almost entirely “[l]ocked out of the greatest mass-based opportunity for wealth accumulation in American history.”<sup>265</sup> Since the VA and FHA loans were made only in racially segregated neighborhoods, even the few non-whites who were able to secure VA and FHA loans had homes that were in predominantly minority communities where property values usually were lower and appreciated more slowly than in comparable white neighborhoods.<sup>266</sup> And the non-whites who were financially capable of homeownership but were excluded from the VA and FHA programs because of their race had fewer options than did whites. They were barred from much private sales and rental housing because of their race, and they would likely be barred also from public housing, because it had maximum as well as minimum income requirements.<sup>267</sup>

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(Nov. 2002) (showing differential treatment favoring whites over Blacks and Hispanics in home sales), available at [http://www.huduser.org/publications/pdf/phase1\\_report.pdf](http://www.huduser.org/publications/pdf/phase1_report.pdf).

263. *See id.*

264. *See infra* notes 275-77, 280 and accompanying text.

265. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 18 (1995); *see also* HAYS, *supra* note 254, 85-86.

266. *See* Franklin D. Wilson & Roger B. Hammer, *Ethnic Residential Segregation and Its Consequences*, in *URBAN INEQUALITY: EVIDENCE FROM FOUR CITIES* 272, 294 (Alice O'Connor et al. eds., 2001) (Blacks and Hispanics pay a price for living in ethnically homogeneous neighborhoods); Nancy A. Denton, *The Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and Property*, 34 *IND. L. REV.* 1199, 1205-07 (2001) (“both blacks and whites are penalized for living in neighborhoods that are more heavily black”); OLIVER & SHAPIRO, *supra* note 265, at 8 (“We found that the great rise in housing values is color-coded. Why should the mean value of the average white home appreciate at a dramatically higher rate than the average black home?”); DALTON CONLEY, *BEING BLACK, LIVING IN THE RED* 38 (1999) (“[h]ousing in black neighborhoods has a lower rate of value increase (and in some cases may decrease in worth) when contrasted to similar units in predominantly white neighborhoods”); THOMAS M. SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN-AMERICAN* 59, 119-25 (2004).

267. *See, e.g.*, RADFORD, *supra* note 49, at 190 (public housing “excluded all but the lowest income groups”); *see also* LAWRENCE M. FRIEDMAN, *GOVERNMENT AND SLUM HOUSING: A*

Exclusion from the VA homeownership program often meant not only exclusion from an important opportunity to increase one's assets, but also exclusion from the suburbs, where superior educational, employment, and other opportunities flourished.<sup>268</sup> The effects on these communities have been long-lasting. In the late 1990s, for example, Levittown, New York, from which non-whites were openly excluded for decades, still had a black population of less than one percent.<sup>269</sup>

These concrete consequences were not the only results of the focus on homeownership and the racial discrimination. Policy design and administration have not only "resource," but also "interpretive" effects, which "may shape beneficiaries' subjective experience of what it means to be a citizen . . .[,] may affect the formation of political identity . . .[,] and . . . may unify or stratify society and the political community in new and different ways."<sup>270</sup> Suzanne Mettler, studying the G.I. Bill's educational provisions, presents evidence that "program design, featuring universal eligibility and routinized procedures, may have bestowed dignity . . . by including all veterans on an equal basis rather than stigmatizing less advantaged citizens."<sup>271</sup> She finds that "[t]he absence of invasive procedures and the universality of coverage elevated the status of less privileged beneficiaries, rather than stigmatizing them in the manner associated with targeted programs for the poor."<sup>272</sup> It would be instructive to study the "interpretive effects" on non-white veterans of the knowledge that their white counterparts received home mortgage assistance that was not available to them. Anecdotal material suggests what the result of such a study might be. For example, in 1997, on the fiftieth anniversary of the creation of Levittown on Long Island, New York, the *New York Times* reported the reaction of Mr. Eugene Burnett, a retired Suffolk county police sergeant "who was among thousands of military veterans" who sought housing in Levittown "[b]ut . . . was turned away because he is black."<sup>273</sup> Fifty years later, Mr. Burnett said "he still stings from 'the feeling of rejection on that long ride back to Harlem.'"<sup>274</sup>

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CENTURY OF FRUSTRATION 133 (1978) ("[f]ederal law requires over-income tenants to be evicted unless 'special circumstances' make alternative housing unavailable") (citing 42 U.S.C. §1410(g)(2),(3)).

268. See JACKSON, *supra* note 53, at 215-16 (discussing FHA and VA concentration in suburban locations).

269. See Paula Span, *Mr. Levitt's Neighborhood: After 50 Years, It Still Offers the Good Life—for Some*, WASH. POST, May 27, 1997, at C1.

270. Mettler, *supra* note 5, at 352 (citing ANNE SCHNEIDER & HELEN INGRAM, POLICY DESIGN FOR DEMOCRACY 78-89, 140-45 (1997)).

271. *Id.* at 359-60.

272. *Id.* at 360.

273. Bruce Lambert, *At 50, Levittown Contends with Its Legacy of Bias*, N.Y. TIMES, Dec. 28, 1997, § 1, at 23.

274. *Id.*

*C. The Exclusion of Veterans Who Do Not Choose, or Cannot  
Afford, Homeownership*

As discussed above, “there are people who prefer, or whose circumstances make it advisable for them, to rent rather than to own their living quarters.”<sup>275</sup> These include

those whose present financial position is good but whose future is not assured, those who have been unable or do not wish to save, those who wish to invest their savings in other ways, those whose place of employment is likely to change, those whose occupation demands frequent absences from home or a central urban location, those who are old and who do not wish the responsibility of a home of their own, and those who are young and need only small quarters.<sup>276</sup>

In addition, although VA (and FHA) assistance brought homeownership within the reach of households with income and wealth levels lower than those required for conventional financing of new homes, homeownership still was too expensive for many veterans.<sup>277</sup>

275. See *supra* note 106 and accompanying text.

276. THE CONTINUING PROBLEM, *supra* note 105, at 3. With respect to the advantages of rental for those who require mobility, see Rohe et al., *supra* note 204, at 391-94 (discussing ways in which homeownership restricts individual mobility); Steven Hornburg, *Introduction, in* LOW-INCOME HOMEOWNERSHIP, *supra* note 203, at 375, 379 (stating that “[w]e . . . need a better understanding of the downside risk of homeownership, such as the social costs of default and the loss of mobility”).

277. See DAVIES, *supra* note 102, at 117 (The FHA program “supposedly helped families with incomes in the upper-most third to purchase houses.”); LEVITAN & ZICKLER, *supra* note 23, at 86 (“predominantly middle-income veterans” participate in the program); WENDT, *supra* note 96, at 183 (A study of home loans guaranteed by the VA in 1954 and 1955 showed that more than half “were to veterans with incomes between \$300 and \$499 per month, while only between 3 and 4 per cent . . . were to those with incomes below \$300 per month.”); see also *id.* at 209 (concluding that “[t]he evidence would seem to demonstrate that small percentages of low-income families were borrowers under federal loan programs”); *id.* at 215 (noting that “for many of these homeownership is not practical”); *id.* at 214 (“[F]ederal mortgage insurance programs have not specifically met the needs of the families most in need of housing.”); see also THE DOUGLAS COMM’N REPORT, *supra* note 96, at 104 (noting that although the VA did not serve the “very lowest income group,” “the VA apparently reached further down the income scale than did FHA”). Furthermore, even those lower-income households that could afford homeownership were more likely to use conventional mortgages than either FHA or VA mortgages, in part because those purchasers would be more likely to purchase “lower priced, older home[s],” many of which “fail[ed] to meet minimum construction requirements of FHA and VA.” WENDT, *supra* note 96, at 209.

See also United Negro & Allied Veterans, *supra* note 120, at 3. The United Negro and Allied Veterans of America reported to the National Veterans Housing Conference in 1948 that “[w]e must have a major portion of this comprehensive housing program consist of rental housing.” *Id.* at 3. This was based on a 1946 survey by the Housing and Home Finance Agency that showed that,

With the exception of the veterans served by the HCHV, DCHV, and HUD-VASH programs, the VA offers no housing assistance to the millions of veterans who cannot afford or do not want homeownership. The VA program, like the FHA program, provides a relatively shallow subsidy.<sup>278</sup> To make homeownership feasible for households with significantly lower incomes and asset levels, the government would have to provide a deeper subsidy, as it has in DoA and HUD programs.<sup>279</sup> The government's failure to do so meant that "the very lowest income group has been largely left out, since its members are unable to meet the costs of interest and amortization."<sup>280</sup> This lowest-income, lowest-asset group of

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in the South, "[o]nly 51 percent of Negro veterans who were married when they were discharged, had their own homes or apartments, compared to 70 percent of the white veterans." *Id.* at 1. The surveys

showed that over half of all married Negro veterans in the South were living doubled-up or in rented rooms, tourist cabins or trailers, and almost half of them were living in this manner in the North. . . . In the Southern areas, about 40 percent were living in substandard dwelling units and in the Northern areas, about 30 percent were living in such unhealthy conditions.

*Id.* at 2.

278. See WENDT, *supra* note 96, at 188 (reporting a study that found that the VA program made homeownership possible for many who could not have purchased homes "if down payments had not been reduced or eliminated through the veterans' home loan program") (quoting Daniel B. Rathbun, *The Veterans' Home-Loan Program: Success or Failure?*, APPRAISAL J. 408 (July 1954)); see also AARON, *supra* note 101, at 80, 90.

279. A deeper subsidy is provided by the Department of Agriculture's interest credit program, which is available for both homeownership and rental housing. Housing Act of 1949, § 521, 42 U.S.C. § 1490a(1) (2000). See TENANTS' AND PURCHASERS' RIGHTS, *supra* note 198, at 1/13, 1/18. DoA also offers a self-help program for those "who do not have sufficient income to qualify for a loan for a house constructed entirely by a contractor." See *id.* at 1/20. The HUD Section 235 program provided a deeper subsidy for homeownership, and the Section 221(d)(3), Section 236, and Section 8 programs offered deeper subsidies for rental and homeownership. See NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS' RIGHTS, at 1/23, 1/25, 1/27 (2d ed. 1994); HOUSING IN THE SEVENTIES: A REPORT OF THE NATIONAL HOUSING POLICY REVIEW 107-17 (1974) (discussing §§ 235 and 236); HDR, *supra* note 157, §§ 3:1 to 3:124 (discussing § 8).

280. THE DOUGLAS COMM'N REPORT, *supra* note 96, at 104; see also *id.*, Table 7, "Distribution of VA Mortgages by Income Category" (showing the percent of VA mortgages taken out in 1966, with the highest percentage (31%) going to the highest income category, and the lowest percentages (1.6 and 15.4%) going to households with the two lowest levels of income)

While most of the low-income households in the United States are white, the exclusion of lower-income veterans was disproportionately pertinent to non-white veterans, whose incomes and wealth, then as now, were significantly lower than the income and wealth of white veterans. See WENDT, *supra* note 96, at 214 ("[M]ore than four million nonwhite families reported a median income in 1957 of \$2,764, approximately half that for white families. . . . These data suggest that a large proportion, probably above 75 per cent, of these families that in terms of income class are in the lowest one-fifth in the United States. . . . cannot be served on any extensive basis by existing federal mortgage loan insurance programs designed to aid in promoting homeownership. Indeed,

veterans is likely to include many veterans with disabilities, since people with disabilities are disproportionately likely to be poor.<sup>281</sup>

Although institutional discrimination against women and non-white veterans has been unlawful for decades, the twenty-first century begins with the continuation of the VA's institutional discrimination against low income/low asset households and others for whom homeownership is infeasible. Except for the very few veterans who are served by the HCHV, DCHV, and HUD-VASH programs, the VA provides no housing assistance to veterans who cannot access homeownership because of low income or assets. The need for a subsidized rental program for veterans, recognized in the 1940s, continues in the twenty-first century.

[P]ublic policy should not disproportionately promote homeownership at the expense of important investments in affordable rental housing. Rental housing remains the housing of first and last resort for many Americans. More important, rental housing is an appropriate housing

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the data suggest that it is unrealistic to expect that large numbers of families in the lowest income group would be homeowners.”); *see also* United Negro & Allied Veterans, *supra* note 120, at 2 (The HHFA surveys showed that “the median sales price of new homes constructed in 1946 was about \$7,500. Yet, Negro veterans indicated in these surveys that they could afford to pay median prices of \$3,600 in the South and \$5,400 in the North.” Veterans of color “form the great bulk of veterans in the lowest income levels.”); *id.* at 4 (citing a report from the American Federation of Labor “showing that average weekly income of white veterans ranges from 30 to 78 percent above the average for Negro veterans throughout the South, and giving as an example Jackson, Mississippi, where the average weekly wage for white veterans is \$48 while Negro veterans average \$27 per week”). For late twentieth century measures, see OLIVER & SHAPIRO, *supra* note 266, at 7; WILLIAM A. DARITY & SAMUEL K. MYERS, JR., PERSISTENT DISPARITY: RACE AND ECONOMIC INEQUALITY IN THE UNITED STATES SINCE 1945, at 136 (1998).

281. *See, e.g.*, Samuel R. Bagenstos, *The Future of Disability Law*, 114 YALE L.J. 1, 9 (2004) (“[D]isability and poverty are closely intertwined: Disability is a frequent cause of poverty, and living in poverty often causes or exacerbates disabling conditions.”); *see also* Robert A. Rosenheck et al., *Outcomes After Initial Receipt of Social Security Benefits Among Homeless Veterans with Mental Illness*, 51 PSYCHIATRIC SERVS. 1549, 1554 (2000) (finding that for veterans who received SSI (Supplemental Security Income), SSDI (Social Security Disability Income) or veterans’ benefits, the average total annual income was pitifully small: \$8820, “about half the amount defined as poverty level”). Beneficiaries’ incomes, of course, are greater than non-beneficiaries’ incomes. *Id.* (“[T]hree months after the benefit decision . . . the average total income of beneficiaries was 1.6 times that of nonbeneficiaries.”). Rosenheck and his co-authors also found that those whose applications for benefits were granted “were not significantly different from nonrecipients on any health status measure.” *Id.* at 1553. The only significant difference between those whose applications were approved and those whose applications were denied seemed to be “patience—a willingness to carefully and thoroughly proceed through the various steps required to obtain benefits.” *Id.* at 1553-54. “Clients who are impulsive, impatient, or disorganized may be less willing to follow the procedures necessary to obtain benefits, even though they are severely disabled.” *Id.* at 1554.

choice for many, based on life cycle, employment, or just life-style preference.<sup>282</sup>

As Henry Aaron wrote in 1972, “[t]he implicit subsidy through VA loan guarantees . . . presumably rests on a desire to make partial financial amends to men who served in a socially useful, but underpaid, occupation. Why veterans who own their residences deserve such a subsidy, while those who rent do not, is far from clear.”<sup>283</sup>

### III. REASONS WHY VETERANS HAVE BEEN OFFERED ONLY HOMEOWNERSHIP SINCE WORLD WAR II

Parts I and II described the development of the veterans’ housing programs and the consequences of the concentration on homeownership. This Part considers some of the reasons for the focus on homeownership as a basis for Part IV’s discussion of proposals for changing the policies governing veterans’ housing.

As we have seen, there was a severe housing crisis in the late 1940s and early 1950s, particularly for people with the lowest income and asset levels, people who needed help in securing rental housing.<sup>284</sup> There was a powerful public demand for action on housing, and President Roosevelt expressed support for the principle that all people should enjoy “Freedom from Want,” a freedom that would include access to housing.<sup>285</sup> The Truman administration strongly supported programs of rental as well as homeownership assistance.<sup>286</sup>

As we also have seen, the Roosevelt administration favored universal programs. FDR had opposed special programs for veterans, insisting that “the fact of wearing a uniform does not mean that he can demand and receive from his government a benefit which no other citizen receives.”<sup>287</sup> At the end of World War II, FDR’s administration introduced special programs for veterans only to the extent it thought necessary to avoid social disruption.<sup>288</sup>

In the face of this universal need for assistance with rental as well as homeownership, strong public demand that the need be satisfied, and some support within the administration for such satisfaction, the federal government produced a program that served veterans only, not civilians, and served only some veterans—almost exclusively white men, and exclusively those who could afford and desired homeownership. It is essential that we try to understand the forces that created and maintain this limited program in order to consider ways of expanding housing assistance.

The principal forces that prevailed were the veterans’ organizations, fiscal

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282. Hornburg, *supra* note 276, at 379.

283. AARON, *supra* note 101, at 90.

284. *See supra* notes 102-06 and accompanying text.

285. *See supra* note 14 and accompanying text.

286. *See supra* notes 107, 121, 141-46 and accompanying text.

287. *See supra* note 64 and accompanying text.

288. *See supra* notes 63-73 and accompanying text.

and political conservatives, and the lending and real estate industries. The veterans' groups were committed to the principle of veterans' exclusiveness: they insisted on programs that were administered by the VA, rather than programs that were administered by agencies that served the public at large and treated veterans as part of that general public. Their determination that the needs of veterans be met separately was supported by conservatives, who "feared the use of the 'veterans' appeal as a guise to obtain general liberal reforms."<sup>289</sup> Fiscal conservatives wanted to spend as little money as possible, and therefore were relieved to be able to draw a line at helping veterans and not including the general public. Political conservatives—sometimes the same people—wanted to keep government involvement as slight as possible, and distinguished between government provision for veterans (often seen as repaying an obligation) and government assistance to the general public (often seen as socialism). Social conservatives also had some concern to deflect anger and hostility on the part of returning veterans.<sup>290</sup> The combination of these forces secured a veterans-only housing program.

Given that the program would be one that would serve veterans only, the fascinating questions were why and how the decision was made to create a program limited to guaranteeing homeownership loans—a program that would exclude many veterans: women, non-whites, and others who could not satisfy private credit institutions, and all those veterans who could not afford (or did not want) homeownership.<sup>291</sup> The answer seems to be that this limitation, too, served

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289. ROSS, *supra* note 24, at 43 (quoting Congressman Bertrand W. Gearhard (R-Cal.), "a founder of the American Legion, a past commander of his department, and a former National Executive Committee member," who said that "[t]he thing we have to fight down is the crafty effort of so many different groups to use the war for the reorganization of the world after the war; to capitalize upon the war sentiment to accomplish their objectives which have to do with social uplift"; Ross describes Congressman Rankin as a member "of a wrecking team in Congress that hoped to demolish the remaining vestiges of the New Deal"); *id.* at 74-77 (describing the support provided by the American Legion and the Veterans of Foreign Wars (VFW) to Rankin's effort to have all veterans' legislation assigned to the World War Veterans' Legislation Committee, which he chaired, and stating that part of the Legion's explanation for supporting Rankin, as set out by the Legion's Ohio Department Commander, was "so that crack-pots, long-haired professors, and radicals will have as little ground as possible to work on in an effort they will undoubtedly make to influence the thinking of today's discharged Army") (quoting Coffee to Vorys, July 15, 1943); *id.* at 80 (William Randolph Hearst, who long had "dictated a rabid anti-New Deal policy for his [national] newspaper chain," also strongly supported the Legion.); *id.* at 79 n.38 (discussing work of Hearst correspondent); *see id.* at 39-49 (discussing the successful opposition of veterans' organizations and conservatives to efforts to provide job training for all handicapped people, including, but not limited to, veterans); *id.* at 57 (discussing the concern about using "veterans' benefits as a lever for broader domestic policy reforms—a characteristic of most of the later New Deal-Fair Deal veterans' programs").

290. *See supra* note 72 and accompanying text.

291. The G.I. Bill was rooted in a desire to benefit veterans, but it would be a mistake to believe either that such a desire alone is enough to produce any benefit to any veterans or that such

the varied interests of different groups with political power: the veterans' organizations, the lending and real estate industries, and fiscal, political, and social conservatives.

*A. The Interests of Veterans and Veterans' Advocates*

Although veterans were of all genders, races, ethnicities, abilities, and economic classes, the organizations that represented veterans focused on some but not all portions of the veteran population. While all of these organizations supported the principle of veterans' exclusiveness, all of the organizations did not agree about which veterans should be served by federal programs.<sup>292</sup> The Disabled Veterans of America, for example, "doggedly opposed the GI Bill of Rights throughout the entire course of its legislative history,"<sup>293</sup> maintaining that it would divert "needed funds and facilities from the disabled."<sup>294</sup> Other veterans' organizations had other ideas about which veterans should benefit from federal assistance in which ways.<sup>295</sup>

The American Legion, the principal advocate for the G.I. Bill and its housing program, purported to represent all veterans, but, in fact, was less representative of women, non-whites, and those with lower incomes.<sup>296</sup> Many more Legion

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a desire necessarily will produce benefits to all veterans or to veterans only. See JOHN DOLING, *COMPARATIVE HOUSING POLICY* 10 (1997) ("Governments may intervene . . . in ways that improve the lot of those who would not otherwise be able to consume housing of a reasonable size and quality, but such an outcome is a consequence of an underlying motivation to preserve the social order."). Cf. KELLY, *supra* note 5, at 3, 67 (stating that "[t]he violence and scale of the Civil War . . . created a large population of war-disabled veterans and forced the postwar Congress to establish a comprehensive system of veterans' institutional care," and that "in the immediate postwar months the disturbing sight of battle-scarred soldiers begging in the streets of Northern cities once again forced the issue of veterans' institutional care onto the public agenda"). In the late twentieth century, "a large population of war-disabled veterans" has not "forced" Congress to establish "a comprehensive system of veterans' institutional care," and the "sight of battle-scarred soldiers begging in the streets of Northern" (and Southern and Western) cities has not "forced the issue of veterans' institutional care onto the public agenda."

292. See ROSS, *supra* note 24, at 105.

293. *Id.* at 103.

294. *Id.* at 104. This objection seems to have proven true with respect to the housing program, as veterans with disabilities likely are disproportionately too poor to afford homeownership.

295. See *id.* (noting that the Disabled Veterans of America, Veterans of Foreign Wars, Military Order of Purple Heart, and Regular Veterans Association proposed alternatives to the G.I. Bill—without success).

296. See WECTER, *supra* note 32, at 444 (writing of the Legion in 1944: "as statistics showed, the prosperous rather than the unprosperous veteran kept up his Legion membership through the years"); MOLEY, *supra* note 44, at 134 (stating that "[i]n the early 1920's [sic] the Legion despaired of assimilating certain nationalities"); *id.* at 134-35 (discussing the Legion's concern about the "Oriental races"); *id.* at 177 (the Legion opposed increased immigration from China); *id.* at 148, 322-23 (discussing "The Forty and Eight," a "fun-making" group associated with the Legion. The

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group's "rules excluded the colored and Oriental races from its membership." This "became intolerable" to the Legion in 1960, when "the Legion severed its relations with the Forty and Eight and disavowed the organization"); WILLIAM PENCAK, *FOR GOD AND COUNTRY: THE AMERICAN LEGION, 1919-1941*, at 68 (1989) ("From the beginning, the Legion did not know what to do with black veterans."); *id.* at 99 (describing the 1927 "Pilgrimage" to Paris, for which "[t]he Legion travel bureau had refused to accept reservations from black veterans").

Some blacks did join the segregated posts adopted throughout much of the nation. Northern black veterans usually formed their own posts without incident in communities with substantial black populations. . . . But most blacks had little enthusiasm for an organization that had no greater commitment to equality than American society as a whole.

*Id.* at 69. As late as the 1940s, when the G.I. Bill was drafted, the American Legion allowed its state departments to confine African-American members to separate posts and to limit severely the number of posts for African-Americans. *See id.* at 68-69 (while some white Southerners in the Legion wanted "separate but equal" posts, others were concerned that if black veterans were admitted to membership in the Legion, "they would have to be allowed to vote in the Legion, even though they could not vote in general elections" and "they would dominate their states by sheer numbers . . . . Rather than lose Southern whites, Northern supporters of black equality allowed each state to reach its own racial solution"); *id.* at 198 (Arkansas barred black posts altogether); *see also* *Chapman v. The American Legion*, 14 So. 2d 225, 228 (Ala. 1943) (upholding dismissal of a suit brought by "Negro" veterans of World War I who sought to have the American Legion establish, in Birmingham, Ala., a post for African-American veterans). The petitioners alleged that Alabama had more than 125 posts "whose membership is composed exclusively to that of White World War Veterans of World War One; [and] that there is only ONE American Legion Post Chartered and established within the entire State of Alabama, where Negro Veterans of World War One are privileged [sic] to apply for and be elected to membership"—the Britton McKenzie Post #150 in Tuskegee, Ala.. *See* Record at 5, *Chapman* (No. 6815-x). The petitioning veterans said expressly they are not interested in, nor do they want to be and become members in any of said posts now chartered and established in Alabama, whose membership therein is composed entirely of white world war veterans; nor or [are] they interested in, nor do they want social equality with said white veterans . . . that they are only interested in their lawful rights . . . to have issued a charter for the establishment of a . . . American Legion Post in . . . Birmingham for the benefit of . . . qualified negro veterans residing [there].

*Id.* at 12. The petition also refers to a plan in North Carolina, where the American Legion had established a "separate department for Negroes." *Id.* at 7.

It is worth noting that counsel for the American Legion in this case included Richard T. Rives, whose subsequent career on the U.S. Court of Appeals for the Fifth Circuit made him a hero in the civil rights movement. *See* JACK BASS, *UNLIKELY HEROES* 69-73 (1981) (discussing the development of Rives' views on racial issues).

Other Legion positions were affected by racial considerations. *See, e.g.,* PENCAK, *supra*, at 198 (stating that part of the Legion's vacillation and internal disagreement with respect to the question of a "bonus" had to do with racial concerns: "[i]n the South, especially, Legionnaires feared the effects of unprecedented amounts of cash placed in the hands of black veterans, who for the most part were sharecroppers locked into a system of debt dependency"); *id.* at 286 (discussing

members were men than women, white than non-white, financially comfortable than poor. Thus, it is not altogether surprising that the Legion proposed a housing program that excluded all veterans who could not afford or did not want homeownership, which necessarily meant a disproportionate exclusion of women and non-whites. (Although the use of the private market to make guaranteed loans—and the private market’s hostility to women and non-whites—was not part of the Legion’s original proposal, which contemplated direct loans made by a government agency, the government itself at that time practiced housing and lending discrimination against non-whites and women.<sup>297</sup>)

*B. The Interests of the Real Estate, Lending, Construction, Lumber, and Related Industries and Fiscal, Political, and Social Conservatives*

The real estate, lending, construction, lumber, and related industries had a powerful interest in programs that promoted new housing development. Lenders and brokers had a particular interest in promoting private, single family homeownership, which would produce additional business for them.<sup>298</sup> Just as the industries’ interests led to the creation of the FHA homeownership program and the evisceration of the public housing program,<sup>299</sup> the industries’ interests shaped the veterans’ housing program.<sup>300</sup>

The industries’ self-interest was buttressed by the ideological commitment of fiscal, political, and social conservatives, often but not always the same people as the industry actors, who also had strong preferences for homeownership programs. Fiscal conservatives preferred homeownership because it seemed to

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“racial troubles, . . . [the] most serious problem” with the Legion’s program of Junior Baseball).

In other respects, at least where there was no disadvantage to the organization in doing so, the Legion did advance the interests of non-white veterans. *See, e.g., id.* at 195-96 (discussing a Legion field representative’s 1933 protests against review boards that disallowed or reduced benefits for presumptively service-connected disabilities. The representative “noted that the ‘colored boys’ in the South fared the worst: only 10 percent retained their benefits”).

For a discussion of the continuance of American Legion racial segregation, see Pat Arnow, *The Old South: For Some Black Veterans, Segregation Lingers on*, in *IN THESE TIMES* (Mar. 21, 1999) (on file with author).

297. The FHA “insisted on the application of racially restrictive covenants to properties that sought government assistance” until 1948, following the Supreme Court’s decisions in *Shelley v. Kraemer*, 334 U.S. 1 (1948) and *Hurd v. Hodge*, 334 U.S. 24 (1948), and allowed the use of such covenants after 1950. Hirsch, *supra* note 258, at 209, 213; *see also supra* notes 251-53 and accompanying text.

298. *See FUNIGIELLO, supra* note 62, at 249 (“Mortgage bankers and builders, with an eye on returning veterans as a house-hungry group eager to buy whatever they produced, resisted any proposals that might retard the pace of construction or lower their profits.”).

299. *See supra* notes 54-62, 98-101, 133-37 and accompanying text.

300. The industries also built on the desire for programs that would increase employment opportunities, although production of subsidized rental housing also would have created employment opportunities.

cost relatively little government money,<sup>301</sup> and political and social conservatives preferred homeownership to other housing programs which seemed “Communitistic.”<sup>302</sup>

It was the combination of all of these interests that created the G.I. Bill housing program enacted by Congress in 1944.<sup>303</sup> The fiscal, political, and social conservatives and the industries wanted a homeownership program. The American Legion was disposed to accept that, partly because the Legion itself was a conservative organization,<sup>304</sup> partly because it had developed the housing provisions of the G.I. Bill with the advice of representatives of the real estate industry,<sup>305</sup> and partly because its constituency was more the higher-income than the lower-income veterans.<sup>306</sup> The Congress that enacted the G.I. Bill in 1944 was a conservative institution.<sup>307</sup> Indeed, it was conservatives in Congress who changed the American Legion’s original proposal for direct loans into a program of guaranteed loans and increased the interest rate on those loans.<sup>308</sup>

The G.I. Bill’s homeownership program was enacted because it served the interests of the industries and fiscal, political, and social conservatives, and the interests of some of the veterans—white, male veterans—with whom the American Legion was most concerned. By satisfying the needs of a large, politically powerful, group of veterans—those who could afford homeownership—Congress “took the edge off” the demand for housing assistance, even though the G.I. Bill left other veterans without housing help.

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301. See REPORT ON VETERANS’ BENEFITS, *supra* note 6, at 161 (“In a way, the loan guaranty program was advanced as an alternative device to a cash bonus, advocated because it would be vastly less expensive to the Government, and because quite probably it would serve the needs of the veterans equally well.”); *but see generally* KEMENY, *supra* note 133 at 6, 25, 36-37 (arguing that homeownership is more expensive for governments as well as for households).

302. See DAVIES, *supra* note 102, at 41; *see also supra* notes 135-36 and accompanying text.

303. With regard to this general principle, see DOLING, *supra* note 291, at 45 (“Policy may have stated aims to assist specified groups in the population in specified ways, but the groups in the population that actually do benefit may be different than those apparently intended.”).

304. See WECTER, *supra* note 32, at 427-29; *see also* GEORGE SEAY WHEAT, THE STORY OF THE AMERICAN LEGION: THE BIRTH OF THE LEGION 81-92 (1919); DUFFIELD, KING LEGION 9, 156-235 (1931); *supra* notes 296-97 and accompanying text.

305. See *supra* note 99 and accompanying text.

306. See *supra* note 296 and accompanying text. The Legion’s lack of concern with veterans who could not afford homeownership was shown also by its opposition to the Wagner-Ellender-Taft Act. See *supra* note 137 and accompanying text.

307. See FUNIGIELLO, *supra* note 62, at 221, 244; Amenta & Skocpol, *supra* note 22, at 111 (noting that “[a]fter the 1942 elections, the conservatives in Congress were strong enough to roll back the New Deal . . . . By 1943 . . . Congress had claimed the initiative in questions of reconstruction . . . . Congressional planning committees were so weighted by conservatives that a Republican, Robert Taft, was named to head one key Senate subcommittee”).

308. See *supra* notes 86-92 and accompanying text. It was the conservatives, too, who undermined the subsidized rental program that the Administration sought as a supplement to the VA homeownership program. See *supra* notes 121-48 and accompanying text.

The enactment of the G.I. Bill sometimes is presented as an exception to a general retrenchment in social welfare policies.<sup>309</sup> The analysis in this Article suggests, however, that the housing provision of the G.I. Bill was perfectly compatible with the general retrenchment in social welfare policies.<sup>310</sup> By enacting the homeownership program, Congress provided “cover” for a conservative force, by offering a little to satisfy a politically potent group, and thus deflecting the impetus for broader public programs for all, or at least for all veterans.

#### IV. AN INITIAL PROPOSAL OF SOLUTIONS

This review of the development of the veterans’ housing programs illuminates three problems: (1) save for the tiny HUD-VASH program, there is no subsidized rental program for veterans; (2) the existing homeownership program does not work well even for many veterans who choose homeownership; and (3) although the early discrimination against female and minority veterans may have ended, no redress ever was provided for the veterans who were its victims.<sup>311</sup> The review also suggests some actions that might help to solve those problems. Although a great deal has changed since 1944, some of the forces that produced the limited housing provisions of the G.I. Bill—the lending, real estate, and related industries; and fiscal, political, and social conservatives—still have

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309. See, e.g., Amenta & Skocpol, *supra* note 22, at 82; *id.* at 118 (“Conservative coalitions that opposed other strong federal measures collapsed on the issue of generosity towards veterans. Conservatives . . . could not resist veterans’ lobbying groups, especially the American Legion, which was locally organized throughout the nation and actively appealed to wartime sentiments favoring soldiers.”); THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES, *supra* note 22, at 33 (“both interagency rivalries and the leverage of congressional conservatives proved insuperable obstacles . . . except for such measures as veterans’ benefits”).

310. This would be consistent with the G.I. Bill’s conservative origins, as described by a journalist who celebrates the Bill. See BENNETT, *supra* note 72, at 3 (describing the law as being “written hurriedly in a hotel room by a former American Legion national commander, supported editorially by the most widely circulated—but least respectable—newspaper chain in the country, and sponsored primarily by an isolationist senator from the Midwest, a racist congressman from the South, and a patrician Republican congresswoman from a tough industrial town in the Northeast”).

311. The federal government’s response to legal changes invalidating discrimination in housing has been at most a discontinuance of discrimination, not any effort to redress past discrimination. See, e.g., *Young v. Pierce*, 628 F. Supp. 1037, 1045-1047 (E.D. Tex. 1985) (reviewing HUD’s actions with respect to public housing); see also Roberta Achtenberg, *Symposium: Shaping American Communities: Segregation, Housing and the Urban Poor: Keynote Address*, 143 U. PENN. L. REV. 1191, 1193-95 (1995) (stating that “the federal government . . . has a long history of having precipitated and perpetrated housing discrimination . . .” which it was “moving to correct”); Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 47 HOWARD L.J. (forthcoming 2005).

great power on Capitol Hill.<sup>312</sup> Satisfying those interests is likely to be essential to the enactment of corrective legislation. This Part suggests some steps designed to encourage the adoption of legislation that would assure effective housing assistance to all veterans, eliminate the disgrace of United States veterans being homeless, and provide compensation for the housing opportunities that were withheld from women veterans and veterans of color.

*A. The Roles of Veterans and Veterans' Organizations*

The history of the veterans' housing programs indicates that veterans and veterans' organizations played a crucial role in securing housing assistance for veterans. After the Civil War, a veterans' organization, the Grand Army of the Republic ("G.A.R."), was a principal and effective advocate for veterans' homes and other benefits.<sup>313</sup> After the First World War and the wars that followed, the American Legion and other veterans' organizations were advocates for veterans' benefits. The American Legion generally is given credit for securing the enactment of the G.I. Bill.<sup>314</sup> We cannot know whether the American Legion might have succeeded in securing housing assistance for all veterans after World War II, but the fact that the Legion proposed a program that benefitted fewer than all veterans made it very likely that no more generous program would be enacted. Indeed, as we have seen, Congress made the housing program of the G.I. Bill significantly less generous than what the American Legion had proposed.<sup>315</sup>

While the power of veterans' organizations may have diminished since World War II, the increase in the number of veterans of the wars in Afghanistan and Iraq

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312. See, e.g., The Center for Responsive Politics, *Top Industries Giving to Members of Congress, 2004 Cycle*, at <http://www.opensecrets.org/industries/mems.asp?party=A&cycle=2004> (last visited Jan. 2, 2005) (listing the real estate industry as the third of the industries that contribute most to members of Congress. Commercial banks are listed as eleventh on the list; construction services are thirty-second, home builders are forty-ninth, and building materials industries are forty-eighth); see also The Center for Responsive Politics, *Real Estate: Long-Term Contribution Trends*, at <http://www.opensecrets.org/industries/indus.asp?Ind=F10> (last visited Jan. 2, 2005) (showing real estate contributions from 1990 through 2004, with an average rank for the real estate industry as fourth); *Washington Power 25*, FORTUNE, May 28, 2001, at 94 (Fortune Magazine's list of "Washington's most powerful lobbying groups," showing the National Association of Realtors as number nine and the National Association of Home Builders as number eleven); Megan J. Ballard, *Profiting from Poverty: The Competition Between for-Profit and Nonprofit Developers for Low-Income Housing Tax Credit*, 55 HASTINGS L.J. 211, 225 (2003).

With respect to the veterans' organizations, see *infra* note 317 and accompanying text.

313. See, e.g., Cetina, *supra* note 7, at 213; SKOCPOL, *supra* note 7, at 56, 141; but cf. Orloff, *supra* note 42, at 46 n.13 (stating that "the initial legislative liberalization of pensions—the Arrears Act of 1879—was not a product of GAR lobbying; rather, the growth of the GAR was stimulated by the Arrears Act").

314. See *supra* notes 79-80, 93 and accompanying text.

315. See *supra* notes 83-93 and accompanying text.

is likely to make those organizations more potent.<sup>316</sup> The support of veterans' organizations would seem to be a necessary, though not sufficient, condition for the enactment of legislation benefitting all veterans.

When veterans' organizations have been successful, part of the reason has been that they have represented a substantial number of voters<sup>317</sup> at a time when the two major parties were closely divided, making it particularly important to secure the votes of veterans and their families, and those who sympathized with them.<sup>318</sup> Numbers alone are not enough to guarantee success, however; veterans' organizations also have failed in efforts to advantage veterans.<sup>319</sup> Our review of the history of the veterans' housing programs suggests that securing more generous provisions would require that the veterans' organizations play several roles.

First, they should present a prominent and compelling national spokesperson to deliver a powerful national message.<sup>320</sup> Second, they should maintain a strong, professional, effective, national lobbying team.<sup>321</sup> Third, the veterans' organizations should use their local affiliates as the basis for a grassroots campaign.<sup>322</sup> The Legion itself did this very effectively in the battle to secure the

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316. See, e.g., United Veterans of America, *United Veterans of America*, at <http://www.uvofa.org> (last visited Dec. 29, 2004) (stating that as World War II veterans die, "the ranks of our existing veterans organizations are rapidly thinning out, and with that veterans['] influence in the Halls of Congress diminishes daily"); Editorial, *A Means Test for Veterans*, WASH. POST, Aug. 22, 1985, at A22 ("The veterans groups have influence in Congress.").

317. See Orloff, *supra* note 42, at 46 ("In the Northern and Midwestern states, veterans of the Civil War constituted fully 12 to 15 percent of the electorate, making the 'soldier vote a prize of great worth,' a 'prize' that increased in value with the growth of the Grand Army of the Republic (GAR), the veterans' lobbying group."); see also WECTER, *supra* note 32, at 249.

318. See Orloff, *supra* note 42, at 45 ("[I]n the late nineteenth century . . . In the North and Midwest, Democrats and Republicans faced each other with nearly equivalent popular electoral support." Civil war pensions were a way of securing a few hundred votes "in the most politically competitive states."); *id.* at 41-42 (concluding that welfare programs have not been created simply by popular demand or perception of need, but that "some element of political incentive, flowing from a threat to political control or from an opportunity to gain organizational or electoral advantage, especially in periods of electoral competitiveness or when new voters are entering the polity, must be operating in order to stimulate elite interest and coalition-building in the social welfare field"); see also SKOCPOL, *supra* note 7, at 117, 129.

319. See, e.g., *supra* notes 46-48 and accompanying text; see also SKOCPOL, *supra* note 7, at 111 (warning against "simple reliance on the GAR pressure group thesis").

320. See, e.g., DAVIES, *supra* note 102, at 128 (stating that "[h]ousing reform desperately needed a prominent national figure to revive national interest").

321. See, e.g., *id.* at 130 (discussing the "militant real estate lobby").

322. See, e.g., SKOCPOL, *supra* note 7, at 55 ("In general, U.S. political structures allow unusual leverage to social groups that can, with a degree of discipline and consistency of purpose, associate across many local political districts."); *id.* at 182 (discussing reasons why the American Association for Labor Legislation failed in its efforts to promote more general social welfare measures: "It did not devise emotional appeals that might have made its legislative campaigns

G.I. Bill, and the importance of these activities has been demonstrated in a variety of situations.<sup>323</sup> Fourth, recognizing that the united support of veterans and their organizations is necessary but not sufficient to induce Congress to create and fund a program that assures effective housing assistance to every veteran, the veterans' organizations should seek support from the "natural" public interest lobby for housing, including labor, "housers," and environmental, civic, religious, health, and progressive business groups.<sup>324</sup> Fifth, intellectual as well as popular support is essential.<sup>325</sup> Sixth, the advocates should have an

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attractive to mass-circulation magazines. It did not engage in systematic grassroots political mobilization. Nor . . . did the AALL attempt to use its own organizational resources, or those of allied federated associations, to reach directly into the civic life of local communities—and legislative districts—across the United States . . . . Certainly the AALL never developed a fully ramified, federated structure of local, state, and national associations, nor even as extensive a network of formally affiliated local groups as the National Consumers' League"); *see also* Weir et al., *supra* note 144, at 23 ("The American federal state, with its decentralized and nonprogrammatic political parties, has provided enhanced leverage to interests that could associate across many local political districts. Such widespread 'federated' interests—including organizations of farmers such as the Grange and the American Farm Bureau Federation, along with local businessmen linked to the Chamber of Commerce, and certain professional associations including the National Education Association and the American Medical Association—have been ideal coalition partners for nationally focused forces that might want to promote, or obstruct, or rework social policies, especially when proposals have had to make their way through the House of Representatives.").

323. *See* ROSS, *supra* note 24, at 117 (discussing the American Legion's ability, "using their widespread organizational ties," to contact and bring back to Washington a member of Congress who had returned home because of illness); *see also* KEITH, *supra* note 51, at 102 (discussing the ability of the real estate lobby to use local members to launch a national campaign); Weir et al., *supra* note 144, at 23 ("More often, widespread federations—especially those involving commercial farmers and small businessmen prominent in many communities—have obstructed or gutted proposed national social policies."). The veterans' organizations might use the internet to provide a twenty-first century version of the grassroots effort behind the G.I. Bill. *See, e.g.*, Alexis Rice, Campaigns Online: The Profound Impact of the Internet, Blogs, and E-Technologies in Presidential Political Campaigning, Center for the Study of American Government, Johns Hopkins University (Jan. 2004), available at <http://www.campaignsonline.org/reports>.

324. *See* Dreier, *supra* note 141, at 371-74 (discussing the need for such alliances); SKOCPOL, *supra* note 7, at 242 (discussing the alliances made by state federations of labor with "farmers' groups, women's associations, middle-class reform groups, party factions, or reformist professionals and civil administrators").

325. *See* SKOCPOL, *supra* note 7, at 57 (discussing the intellectual and popular alliance that helped secure veterans' benefits after the Civil War); *see also id.* at 25 (stating that "[c]ross-class coalitions between professionals and popular groups have been crucial to the enactment of all modern social policies in every nation"); Orloff, *supra* note 42, at 42 (stating that "[t]he support of reformist elites and new middle-class groups as well as the working classes was a necessary condition for the political success of the new programs"); *but see* FUNIGIELLO, *supra* note 62, at 249 (stating that city planners of the 1940s "lacked the special kind of democratic leadership that would enable them to weld philosophic purpose, scientific fact, and popular initiative into a dynamic

effective program for using the arts and the media, both national and local.<sup>326</sup>

The development of the veterans' housing programs suggests that the substance of a campaign for corrective veterans' housing legislation should have several themes, the most important of which is that veterans have earned the right to decent housing—that their service in the jungles of Vietnam, the mountains of Afghanistan, and the deserts and cities of Iraq require, at the least, that they and their families be assured decent homes.<sup>327</sup> The Grand Army of the Republic succeeded in its arguments for creation of state homes for veterans and their dependents by making people feel ashamed that “Union soldiers [were] living as paupers in” poorhouses.<sup>328</sup> The nineteenth century view was that veterans were entitled to justice—they were “a selected subset of the working- and middle-class people, citizens of both races, who by their own choices and efforts . . . had *earned aid*—for themselves and their dependents, and even for their communities.”<sup>329</sup>

program”).

326. See, e.g., KELLY, *supra* note 5, at 22 (reporting that Frederick Law Olmstead, general secretary of the United States Sanitary Commission, said in 1862 that a policy to aid veterans must “be brought before the public adroitly, cunningly”); see also SKOCPOL, *supra* note 7, at 116-17 (discussing the importance of the press and news sheets “distributed to Union veterans across the country, in order to agitate for arrears legislation”). With regard to the use of the arts in general, see, e.g., ROBERT DARNTON, *THE FORBIDDEN BEST-SELLERS OF PRE-REVOLUTIONARY FRANCE* 191, 246 (1995) (discussing the contribution made by books to the French Revolution); DAVID LEVERING LEWIS, *W.E.B. DUBOIS: BIOGRAPHY OF A RACE, 1868-1919*, at 506-08 (1993) (discussing the effect of the film, *The Birth of a Nation*). Abraham Lincoln is said to have called Harriet Beecher Stowe, author of *UNCLE TOM’S CABIN*, “the little lady who made this big war.” DAVID HERBERT DONALD, *LINCOLN* 542 (1995).

327. “Of the 25 million veterans currently alive, nearly three of every four served during a war or an official period of hostility.” DVA, *About VA: Our Nation’s Veterans*, at [http://www1.va.gov/about\\_va/](http://www1.va.gov/about_va/) (last updated Mar. 3, 2004). The number of veterans in the United States and Puerto Rico varies with different sources—26,549,704, CHRISTY RICHARDSON & JUDITH WALDROP, U.S. CENSUS BUREAU, *VETERANS: 2000*, CENSUS 2000 BRIEF 5 (May 2003), available at <http://www.va.gov/vetdata/Census2000/c2kbr-22.pdf>; 25.2 million on September 30, 2003, VA, FY 2005 CONGRESSIONAL BUDGET SUBMISSION, *supra* note 158, at 1-16.

328. Cetina, *supra* note 7, at 219.

329. SKOCPOL, *supra* note 7, at 151 (emphasis in original); see *id.* at 156-57 (expressing similar sentiments). Skocpol states:

U.S. Civil War pensions (and other forms of public help for veterans and dependents) were not conceptualized in socioeconomic terms at all. Instead they were understood in political and moral terms. Legitimate Civil War pensions were idealized as that which was justly due to the righteous core of a generation of men (and survivors of dead men)—a group that ought to be generously and constantly repaid by the nation for their sacrifices. Politicians constantly spoke of a “contract” between the national government and the Union’s defenders in the Civil War, arguing that in return for their valiant service the former soldiers and those tied to them deserved all the public provision necessary to live honorable and decent lives free from want. . . . [T]he Civil War

In the late nineteenth and early twentieth centuries, the veteran was a model. Indeed, the effort to create new benefit programs for workers used veterans as a point of comparison. As Theda Skocpol reports, Charles Richmond Henderson's 1909 book, *Industrial Insurance in the United States*, argued that since "the nation and the states . . . have already declared it to be our duty to shelter the aged and the wounded soldier, why should the victims of the 'army of labor' be neglected?"<sup>330</sup> When a delegate proposed (unsuccessfully) that the American Federation of Labor (AFL) endorse an old-age pension law, the resolution was that "Congress enact an old-age pension law that will do for the aged who have given so much to the industrial struggle what the soldier's pension is designed to do for the old soldier."<sup>331</sup> When the AFL decided, in 1909, to support such an effort, the Committee on Resolutions sponsored "an exceedingly adroit draft" of a bill to create an 'Old Age Home Guard of the United States Army,'<sup>332</sup> a proposal supported by "explicit positive analogies to Civil War pensions."<sup>333</sup> The reason that the votes of veterans and their sympathizers could be earned in this way was that the public in general regarded veterans as deserving of government assistance.<sup>334</sup>

Although it is not easy to determine what is society's current view about homelessness in general or homeless veterans in particular,<sup>335</sup> the fact that

pension system, like subsequent provision for "deserving" Americans, was also defined in opposition to charity or public programs for paupers at state and local levels.

*Id.* at 149; *see also* KELLY, *supra* note 5, at 166 ("[M]ost Americans believed that the federal government had an obligation to shelter citizen-veterans.").

330. SKOCPOL, *supra* note 7, at 156 (quoting CHARLES RICHMOND HENDERSON, *INDUSTRIAL INSURANCE IN THE UNITED STATES* 308-09 (1909)).

331. *Id.* at 213 (quoting PROCEEDINGS OF TWENTY-SECOND ANNUAL AFL CONVENTION 112 (1902)).

332. *Id.* at 215 (quoting REPORT OF THE PROCEEDINGS OF THE TWENTY-NINTH ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR 97-101, 119, 330-31 (1909)).

333. *Id.* at 231.

334. *See id.* at 115 ("Not only did the expansion of Civil War pensions fit the proclivity of the nineteenth-century U.S. polity for distributive policies; the important legal watersheds also reflected the changing competitive strategies of the major political parties; and the forms of new legislation maximized possibilities for using pensions to recruit voters."); *id.* at 117 ("[I]t was very important that northern elected politicians from both parties were highly susceptible at this juncture to arguments on behalf of the Union soldiers and survivors . . . . Neither party wanted to appear ungenerous to the widows and disabled soldiers.").

335. Reviewing "many polls, surveys, and experiments," Gary Blasi reported the "quite surprising finding" that "while most people blame poverty on the poor, most people blame homelessness on society." Gary Blasi, *Advocacy and Attribution: Shaping and Responding to Perceptions of the Causes of Homelessness*, 19 ST. LOUIS U. PUB. L. REV. 207, 208 (2000). On the other hand, some law review articles and the popular press refer to a "backlash" against the homeless and "compassion fatigue." *See, e.g.*, Vicki Been, *Surveying Law and Borders: Comment on Professor Jerry Frug's The Geography of Community*, 48 STAN. L. REV. 1109, 1114 n.13 (1996) (referring to "compassion fatigue"); Robert C. Ellickson, *Controlling Chronic Misconduct in City*

millions of veterans have suffered homelessness in the 1980s and 1990s and continue to do so into the twenty-first century suggests that the public does not consider that it is shamed when veterans live on the streets. Restoring the earlier sense that a debt is owed to veterans seems essential to securing legislation that will assure decent housing to all veterans.<sup>336</sup>

Another useful theme is concern about recruitment. A principal reason for creation of the original soldiers' homes was to encourage recruitment:

Army officers and military officials saw that a military asylum might not

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*Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1168 (1996) (referring to "the emphatic backlash of the 1990s"); Nancy A. Millich, *Compassion Fatigue and the First Amendment: Are the Homeless Constitutional Castaways?*, 27 U.C. DAVIS L. REV. 255, 265 (1994); Larry Tye, *Seeking Shelter, The Street People Are Finding Scorn*, BOSTON GLOBE, Aug. 27, 1990, at 1 (referring to a "backlash against the homeless" and "compassion fatigue"). The National Coalition for the Homeless and others have concluded that hostility to homeless people is substantial and increasing. See NATIONAL COALITION FOR THE HOMELESS, ILLEGAL TO BE HOMELESS: THE CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES 8 (Aug. 2003); Lois M. Takahashi, *A Decade of Understanding Homelessness in the USA: From Characterization to Representation*, 20 PROGRESS IN HUM. GEOGRAPHY 291, 291 (1996); see also Wes Daniels, "Derelicts," *Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFF. L. REV. 687, 732 (1997) (predicting reductions in services for homeless people because of "'compassion fatigue' and taxpayer frustration, and an 'increasingly hostile climate for homeless persons,'" among other factors).

Although it may be tempting to try to explain current antipathy to homeless people by reference to a philosophy of rugged individualism, that explanation would not take account of the strong sense of individualism of the nineteenth century. See SKOCPOL, *supra* note 7, at 16-17 ("When liberal values of individualism, self-sufficiency, voluntarism, distrust of government, and market competition were supposedly at their height in the late nineteenth century, how was it that Americans countenanced such widespread and relatively generous benefits, delivered directly by the federal government, and often to people not suffering from war wounds or economic privation of any kind?"); as to the level of generosity, see *id.* at 128-29 ("By 1893, . . . the federal government was spending an astounding 41.5 percent of its income on benefits for [veterans]."); see also KELLY, *supra* note 5, at 2 ("It is striking that, in an era notorious for its celebration of self-reliant individualism and laissez-faire government, war-disabled Union veterans . . . could look to a federal institution for shelter and medical assistance.").

336. The veterans' advocates also would need to be prepared to respond to attacks. See SKOCPOL, *supra* note 7, at 267-78 (stating that a significant reason why Civil War pensions were abandoned was fear of corruption, although there is no explanation for the fact that this form of corruption was not tolerated, when so many other forms of corruption were); *id.* at 277 ("Visible and highly emotional negative publicity about Civil War pensions during the Progressive period drowned out the scattered voices of labor leaders, certain reformers, and even an occasional businessman, who were prepared to see Civil War pensions as a positive precedent paving the way toward more universal old-age pensions."); *id.* at 278-85 (discussing doubts about the government's ability to administer a program of benefits).

only serve to reward the brave and faithful soldier, but might also make service in the Regular Army appear more attractive to a larger number of individuals and, perhaps, create for the army the image of a kind and humane protector, helping to elevate its position in the eyes of the American people.<sup>337</sup>

Providing housing assistance to all veterans is likely to serve as an inducement to recruitment today as it did a century ago.<sup>338</sup>

### *B. The Design of the Program*

The history of the development of the veterans' housing programs suggests both general and specific attributes that an improved, corrective veterans' housing program should have.

*1. General Attributes of a Corrective Program.*—This review suggests that a housing program that successfully serves low-income/low-asset veterans should have three characteristics: it should be an integral part of a program that serves all veterans; it should meet the needs of the lending and real estate industries; and it should satisfy fiscal conservatives by relying on tax or other indirect subsidies rather than direct expenditures.

The debate between proponents of universal programs and proponents of targeted programs is not easily resolved.<sup>339</sup> There is much to be said for universal programs, programs that will serve everyone, veterans and non-veterans. This, as we have seen, is what was sought by some in the FDR and Truman administrations; this is what is evoked by the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the national housing goal established by Congress in 1949.<sup>340</sup> Activists and scholars have urged universal housing (and other) programs in the past,<sup>341</sup> and

337. Cetina, *supra* note 7, at 39; *see id.* at 42 (characterizing an 1829 statement by an Army Adjutant General as an observation that “the army asylum might serve as an incentive to increased enrollment in the ranks of the army”); *id.* at 45 (reporting the belief that “the existence of such an institution would aid in attracting a better class of men into the army’s ranks”); *id.* at 54 (characterizing both the navy and army homes as means to encourage enlistment).

338. A case for effective housing assistance as an essential aid to recruitment might effectively be made by those who argued that recruitment for the officer corps justified race-conscious admissions policies in elite law schools. *See Grutter v. Bollinger*, 539 U.S. 306, 331 (2003).

339. *See, e.g.,* Theda Skocpol, *Targeting within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in *THE URBAN UNDERCLASS* 411 (Christopher Jencks & Paul E. Peterson eds., 1991); Robert Greenstein, *Universal and Targeted Approaches to Relieving Poverty: An Alternative View*, in *THE URBAN UNDERCLASS*, *supra*, at 437.

340. *See supra* notes 15-18 and accompanying text.

341. *See, e.g.,* SKOCPOL, *supra* note 7, at 209-10 (discussing Samuel Gompers’s argument against social insurance, for two reasons: “First, it would subordinate [workers] to a state they might not control . . . . Secondly . . . Gompers criticized workingmen’s insurance for its departure from universal principles of citizenship. ‘Compulsory social insurance,’ he wrote, ‘is in its essence undemocratic. The first step in establishing social insurance is to divide people into two groups’”).

continue to do so today.<sup>342</sup> As a matter of political reality, however, the United States Congress does not seem to be ready to implement a universal right to housing. It might be easier to persuade Congress to implement a right to housing for a smaller, more specific, group: all veterans.<sup>343</sup> A program that serves all veterans would mean a program that provides assistance with rental as well as improved assistance with homeownership, and compensation for the uncorrected inequities of the early decades of the veterans' housing program.<sup>344</sup>

Not all of these veterans have equal political appeal or power; it might be easier to secure improvement of the homeownership assistance than to provide rental assistance. However, we have seen from the history of the G.I. Bill the danger of dividing veterans into groups. What happened in the 1940s very likely would happen again: if a group of veterans with great political appeal could be satisfied without any provision for veterans who are less powerful politically, those with political appeal would be served, and the others would be neglected. That is why veterans' housing programs today do not serve lower-income/asset veterans, including many veterans with disabilities. Serving those veterans is most likely to be achieved as part of a program that also advantages other veterans, with the veterans and veterans' organizations agreeing not to allow some veterans to be bought off at the expense of all.<sup>345</sup> The reasons for presenting an all-veteran program are not only altruistic: part of the appeal of such a program would be that it would eliminate inequities. In the past, Congress has made changes in programs in order to eliminate inequities among veterans.<sup>346</sup>

Whatever the nature of the corrective program, the history of veterans' housing programs suggests that, while support from veterans' organizations would be necessary, support from the housing and lending industries would be essential. The FHA program, the original VA program, and virtually all other major housing programs in the United States have been created primarily to serve the industries.<sup>347</sup> If, but only if, the industries support the development of

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342. See, e.g., *id.* at 411; Greenstein, *supra* note 339, at 437.

343. Targeting a program to veterans might, of course, reduce the likelihood of support from advocates for other groups. See *supra* note 324 and accompanying text (discussing the value of coalitions); see also FUNIGIELLO, *supra* note 62, at 248; *id.* at 228-29 (discussing the need for unity, not division, among liberals).

344. See *supra* notes 160-223, 244-83 and accompanying text.

345. See statement of Disabled American Veterans (DAV) National Adjutant Arthur H. Wilson: "Just as we don't leave our wounded behind on the battlefield, we must not leave our homeless veterans behind abandoned on the streets of our cities." DISABLED AMERICAN VETERANS, *The DAV Homeless Veterans Initiative*, at <http://www.dav.org/veterans/documents/homeless1.html> (last visited Jan. 3, 2005). The DAV's official motto is: "We Don't Leave Our Wounded Behind." *Id.*, at [http://www.dav.org/veterans/homeless\\_initiative\\_print.html](http://www.dav.org/veterans/homeless_initiative_print.html) (last visited Jan. 3, 2005).

346. See SKOCPOL, *supra* note 7, at 116 ("[M]any Congressmen and officials were perturbed by inequities among veterans . . . . New laws often originate in this way, as officials and politicians themselves become dissatisfied with the operation of earlier policies and create revised measures, typically more expensive or interventionist, to correct the situation.").

347. See, e.g., *supra* notes 54-58, 98-101, 113-16, 122-52 and accompanying text; Ballard,

housing programs for veterans, those programs may have a chance of enactment.

Moreover, given the growing deficits in the federal budget,<sup>348</sup> a program that relied heavily on direct expenditures would be unlikely to succeed. The major housing programs in the United States—the homeownership deductions and the Low Income Housing Tax Credit program—operate with indirect financing through the tax code.<sup>349</sup> That is the most likely way to provide significant additional housing assistance to veterans or anyone else.

2. *Specific Attributes of a Corrective Program.*—A corrective program that served all veterans would provide (a) rental assistance, (b) improved homeownership assistance, and (c) redress for the early, uncompensated exclusions of women and non-white veterans.

a. *A subsidized rental program for veterans.*—It is clear, and the “VA acknowledges that it alone cannot meet all their [homeless veterans’] needs. These programs are not available in all locations and, where available, capacity for residential treatment is limited.”<sup>350</sup> HUD-VASH provides fewer than 1800 vouchers, and HCHV and DCHV provide small numbers of accommodations. These accommodations, moreover, are not permanent. When veterans are discharged from HCHV and DCHV, many of them are discharged without housing.<sup>351</sup>

While some—though by no means all—of these homeless veterans need physical or mental health or substance abuse services, employment counseling or retraining, or assistance with insurance and benefit programs, what they all need is a place to live: housing.<sup>352</sup> Mental illness and substance abuse do not

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*supra* note 312, at 221, 225.

348. See, e.g., CONGRESSIONAL BUDGET OFFICE, THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2004-2013, at xvii (Jan. 2003).

349. See Steven C. Bourassa & William G. Grigsby, *Income Tax Concessions for Owner-Occupied Housing*, 11 HOUSING POL’Y 521, 521-25 (2000); see also Jean L. Cummings & Denise Dipasquale, *The Low-Income Housing Tax Credit: An Analysis of the First Ten Years*, 10 HOUSING POLICY DEBATE 251, 252, 278 (1999); Ballard, *supra* note 312, at 223 (“supporters of the LIHTC program maintain that it is a more politically palatable alternative to traditional subsidized housing because the tax credits result in federal revenues foregone rather than a direct expenditure of limited federal dollars”).

350. GAO REPORT, *supra* note 11, at 11.

351. See GAO BASCETTA, *supra* note 230, at 7 (“In fiscal year 1997, about 8,500 veterans were discharged from” DCHV and HCMI. Only “57 percent of DCHV veterans were housed at discharge,” and “39 percent of HCMI veterans reported having their own apartment, room, or house at discharge.”). In 1991, the National Coalition for the Homeless had recommended that the VA “immediately implement national discharge planning procedures.” HEROES TODAY, HOMELESS TOMORROW?, *supra* note 11, at iv. This recommendation has not been implemented. See Interagency Council on Homelessness, Innovative Initiative, *Category: Homelessness Prevention/Discharge Planning*, at <http://www.ich.gov/innovations/1/> (last updated Apr. 25, 2003) (discussing discharge planning).

352. See Robert Rosenheck et al., *Special Populations of Homeless Americans*, in HUD & HHS, PRACTICAL LESSONS: THE 1998 NATIONAL SYMPOSIUM OF HOMELESSNESS RESEARCH 2-1, 2-3

cause homelessness: most people who are substance abusers, or mentally ill, or both, are perfectly well housed. What causes homelessness, among veterans and other people, is poverty.<sup>353</sup> As a recent HUD/HHS investigation concluded: “Every study that has looked has found that affordable, usually subsidized housing, prevents homelessness more effectively than anything else. This is true for all groups of poor people, including those with persistent and severe mental illness and/or substance abuse.”<sup>354</sup> “For the most part, veterans become homeless for the same reasons that all Americans become homeless—they can’t afford to pay the rent.”<sup>355</sup>

It would be useful to further study the housing needs of veterans, to gain a more detailed sense of the numbers of veteran households that need housing assistance, the income levels, family sizes, disability status, and geographic distribution of those households, and the extent to which homeownership or rental assistance would meet those needs. Even without such a study, however, the fact that more than half a million veterans experience homelessness each year signals that it is probable that veterans need more than half a million subsidized rental units.

Pending further study of veterans’ housing needs, it is not possible to know to what extent the veterans’ housing needs may be met by subsidizing payments (as with housing vouchers) and to what extent new production of units is required. (New production is most likely to be required for households that need three bedroom or larger units, households that require particular accommodation for physical disabilities, and households in geographic areas with relatively little available housing.) Until further study of veterans’ housing needs has been completed, it is reasonable to assume that both forms of housing subsidy would be required.

Existing programs provide useful models for addressing veterans’ housing

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to 2-4 (Linda B. Fosburg & Deborah L. Dennis eds., Aug. 1999) [hereinafter PRACTICAL LESSONS].

A study of housing vouchers and intensive case management for homeless people with chronic mental illness found that vouchers, but not intensive case management, improved housing outcomes . . . . An evaluation of a nine-city services-enriched housing program for homeless families with multiple problems . . . found that the vast majority of these families were still in Section 8 housing at an 18-month follow-up. The authors concluded “that it may be an investment in helping families to regain their stability and ultimately perhaps, their footing in the workforce.”

*Id.*

353. See BURT ET AL., *supra* note 11, at 8 (“Housing affordability was, and still is, assumed to be the immediate cause of homelessness.”).

354. Marybeth Shinn & Jim Baumohl, *Rethinking the Prevention of Homelessness*, in PRACTICAL LESSONS, *supra* note 352, at 13-1; see also Linda B. Fosburg & Deborah L. Dennis, *Overview*, in PRACTICAL LESSONS, *supra* note 352, at v, vi-vii (“We know that subsidized housing works. . . . Receipt of affordable housing is the single greatest predictor of formerly homeless persons’ ability to remain in housing.”); BURT ET AL., *supra* note 11, at 14 (“the answer [to homelessness], succinctly put, is ‘housing’”) (citation omitted).

355. HEROES TODAY, HOMELESS TOMORROW?, *supra* note 11, at 10.

needs. For those veterans who need only financial assistance, an appropriate model is the Section 8 voucher program.<sup>356</sup> For those who need financial assistance and supportive services, an appropriate model is the HUD-VASH program.<sup>357</sup> And for those who need new production, an appropriate model is the largest subsidized housing production program in the United States today, the Low Income Housing Tax Credit program.<sup>358</sup>

It is clear that these programs do not now produce enough housing to meet the needs of veterans. There are many more people eligible for and in need of Section 8 vouchers and supportive housing and subsidized rental units than these programs can accommodate; the existence of long waiting lists evidences only some of this unmet need.<sup>359</sup> If these programs were capable of meeting the existing need, there would not be millions of people, including at least half a million veterans, experiencing homelessness each year.<sup>360</sup>

The inadequacy of the resources of the existing programs shows why the veterans' needs cannot be met out of those existing resources. Nonetheless, some might be tempted to propose to meet the veterans' needs by creating "setasides," designating some vouchers and supportive housing and subsidized units for veterans, allowing the veterans to claim those benefits in preference to non-veteran households. This is, indeed, what has been done with the HUD-VASH program, designating some Section 8 vouchers as a "setaside" for veterans. But such a "setaside" program meets veterans' compelling needs only by denying relief to the compelling needs of others—the elderly, disabled, and other lower-income people already served by these programs. Such setasides also violate the

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356. 42 U.S.C. § 1437f (o) (2000).

357. See *supra* notes 236-38 and accompanying text.

358. See ABT ASSOCIATES, INC., HUD UPDATING THE LOW-INCOME HOUSING TAX CREDIT DATABASE: PROJECTS PLACED IN SERVICE THROUGH 1999, at 2 (Apr. 2002), available at <http://www.huduser.org/datasets/lihtc/report9599.pdf>.

359. See National Low Income Housing Coalition, *Housing Choice Vouchers (Tenant-Based Rental Assistance)*, at <http://www.nlihc.org/advocates/housingchoicevouchers.htm> (last visited Dec. 28, 2004); see also HUD, *HUD's Public Housing Program*, at <http://www.hud.gov/renting/phprog.cfm> (last updated Dec. 5, 2000) (stating that "[s]ince the demand for housing assistance often exceeds the limited resources available to HUD and the local [housing agencies], long waiting periods are common"). As this Article goes to press, the Administration has proposed funding restrictions that will reduce significantly the number of vouchers available. See Center on Budget and Policy Priorities, *Special Series: Housing Voucher Program*, at <http://www.cbpp.org/housingvoucher.htm> (last updated Oct. 12, 2004).

360. In addition, existing subsidized units are being lost as restrictions on project-based Section 8, LIHTC, and Rural Development units are expiring. See, e.g., NATIONAL HOUSING TRUST, CHANGES TO PROJECT-BASED MULTIFAMILY UNITS IN HUD'S INVENTORY BETWEEN 1995 AND 2003: NUMBER OF AFFORDABLE PROJECT-BASED UNITS DECLINES BY 300,000, at 1-15 (2004), available at [http://www.nhtinc.org/documents/PB\\_Inventory.pdf](http://www.nhtinc.org/documents/PB_Inventory.pdf); WASHINGTON STATE HOUSING FINANCE COMMISSION, A REPORT ON MULTI-FAMILY HOUSING AND PRESERVATION ACTIVITIES 1-2 (2001), available at <http://www.WSHFC.org/preservation/preservation-report.htm>; see also Ballard, *supra* note 312, at 235.

principle of veterans' exclusiveness and administration by the DVA, principles that have been important to veterans for decades.

What will best serve veterans is not an illusory "setaside" of inadequate resources administered by HUD, the Treasury Department, and the state housing finance authorities. Rather, what will best serve veterans is an entitlement program, administered by the DVA, which guarantees every veteran an opportunity to rent or buy housing appropriate for her or his household.

The principal model for such a program would be the Section 8 voucher program, with some modifications: the resident contribution should be limited to 20% (rather than 30%) of household income,<sup>361</sup> there should be no 120-day limitation on the use of the vouchers,<sup>362</sup> and there should be a federal prohibition against discrimination on the basis of having such a veterans' voucher. There is, after all, no reason why a landlord should be permitted to refuse to accept as a tenant a person who has served the country, or the survivor of one who died in the service.

For supportive housing, the HUD-VASH program should be expanded, with an appropriation for additional vouchers specifically for veterans and additional VA supportive housing funding to accommodate the vouchers. For production of new units (and rehabilitation of existing units), the LIHTC program is a good model because it has proven itself to be effective in producing units and has considerable political support. Detailing the mechanics of adapting the LIHTC program to serve veterans is beyond the scope of this Article, but increasing tax credit allocations in proportion to each state's population of veterans would seem to be the basis for such an accommodation. LIHTC sponsors should be required to report on the number of veterans they serve. Just as DVA and HUD collaborate on the HUD-VASH program, DVA and Treasury could collaborate in expanding the LIHTC program so that it serves veterans. The principal defect of the LIHTC program is that its subsidy alone is inadequate to serve the lowest-income households, but the availability of vouchers would help to address that problem.<sup>363</sup>

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361. From 1969 to 1981, public housing rents were limited, in general to 25 percent of household income; Congress changed this in 1981 to reduce HUD's expenses. *See* Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357; MICHAEL STONE, SHELTER POVERTY 34 (1993) ("For a time, analysts and policymakers thought 20 percent was appropriate."). Michael Stone argues that "no universal percentage of income [standard] makes sense." *Id.* at 34. He demonstrates that 25% of income is far too high for many households. *Id.* at 34-50.

362. *See* MARGERY AUSTIN TURNER & KALE WILLIAMS, HOUSING MOBILITY: REALIZING THE PROMISE, REPORT FROM THE SECOND NATIONAL CONFERENCE ON ASSISTED HOUSING MOBILITY 10 (1998).

363. *See* Kathryn P. Nelson, *Whose Shortage of Affordable Housing?*, 5 HOUSING POL'Y DEBATE 401, 411 (1994) ("Unless they have additional subsidies, LIHTC occupants must have incomes between 40 and 60% of the median to avoid severe rent burdens, and research shows that families who occupy such units do have incomes in that range.") (footnote omitted); Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 MIAMI L. REV. 1011, 1016 (1998); Ballard, *supra* note 312, at 231.

*b. Improving the DVA Homeownership Program.*—Although today “[a]lmost anyone who has served on active duty” is entitled to a home mortgage guarantee,<sup>364</sup> only about one per cent of veterans use the program.<sup>365</sup> Of those who do not use the program now, some do not need any housing help at all, and some need a subsidized rental program. Some, however, might well make use of an improved homeownership program.

It would be useful for DVA to study the reasons why ninety-nine per cent of veterans do not use the guaranteed home loan program. What we do know is that the current program’s principal advantage is that it “reduces or eliminates the down payment”; it is “most advantageous to first-time homebuyers.”<sup>366</sup> There are several steps that could be taken to make homeownership available to more veterans.

First, the VA should offer a deeper subsidy for homeownership. The VA vouchers could be used for homeownership, as HUD vouchers are now;<sup>367</sup> for production of homeownership units for lower income/asset households, the Department of Agriculture’s Rural Housing Service offers a model.<sup>368</sup> A foreclosure avoidance program should be established for veterans’ housing; Congress should enact a program like the HUD Mortgage Assistance Program, converting the VA refunding authorization into a mandatory program.<sup>369</sup> To discourage more general restrictive judicial interpretations of the assistance available to veterans, Congress should specify that assistance to veterans is the primary objective of the programs.<sup>370</sup>

*c. Redressing the past discrimination against female and minority veterans.*—The women and veterans of color who were excluded from the benefits of the guaranteed home mortgage program after World War II suffered a significant financial, social, and psychological detriment. They are identifiable people who were the victims of government discrimination on the basis of gender and race. In the expanding discourse about reparations theory and practice, these veterans of United States military service also deserve a place that assures that they will be compensated for what they lost in the early years of the VA housing program.<sup>371</sup>

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364. Capt. Gerald A. Williams, *A Primer on Veterans’ Benefits for Legal Assistance Attorneys*, 47 A.F.L. REV. 163, 178 (1999).

365. See THE ENCYCLOPEDIA OF HOUSING, *supra* note 9, at 116; see *supra* note 9 and accompanying text.

366. *Id.*

367. 24 C.F.R. § 982.625 (2004).

368. See *supra* note 279.

369. See *supra* notes 209-23 and accompanying text.

370. See National Housing Law Project Memorandum from Roberta Youmans and Gideon Anders, to Senator John Rockefeller and Ms. Barbara Pryor (Feb. 4, 1992) (discussing these points and recommending corrective statutory language) (on file with author); see also HEROES TODAY, HOMELESS TOMORROW?, *supra* note 11 at iv, 21, 31.

371. See ERIC K. YAMAMOTO ET AL., RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT 389-443 (2001); Florence Wagman Roisman, Redressing Racial

## CONCLUSION

The United States government's current housing programs for veterans fail to meet the needs of most veterans, the deficiency being starkest with respect to the more than half million veterans who suffer literal homelessness each year. Despite all the current rhetoric of "supporting our troops" and aiding veterans and their dependents and survivors, most veterans today, including most veterans with service-connected and other disabilities, receive no housing assistance whatsoever from the federal government. This is hardly a model of gratitude for the wealthiest, most powerful nation on earth; it can and should be corrected.

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Discrimination and Segregation in the FHA and VA Homeownership Programs (Nov. 16, 2001) (paper presented at the conference on Housing Opportunity, Civil Rights, and the Regional Agenda, November 16, 2001, sponsored by the Civil Rights Project of Harvard University, the Harvard Joint Center for Housing Studies, and The Brookings Institution Center on Urban and Metropolitan Policy).