

## INDIANA LAW REVIEW

SECTION 235 HOUSING: ONE EMPIRICAL STUDY WITH  
RECOMMENDATIONS FOR THE FUTUREANNE C. SINGER,\* EVERETT E. LANDON,\*\* AND  
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## I. INTRODUCTION

In a country in which a "person's home is his castle," and in which the health of the housing construction industry is a major indication of economic stability, it is not surprising that Congress has enacted legislation to aid the poor in obtaining their own homes.<sup>1</sup> Surprisingly, aside from a small-scale experiment some years earlier<sup>2</sup> it was not until 1968, after two summers of urban riots and in the midst of a severe housing slump, that Congress took major steps in this direction. In that year, attempting to promote for low-income families a developing sense of dignity as well as hard work, thrift, family solidarity, and a "stake in the community,"<sup>3</sup> Congress promulgated section 235 of

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<sup>1</sup>In 1934, Congress passed the National Housing Act, ch. 847, 48 Stat. 1246 (1934), as amended, 12 U.S.C. §§ 1701, 1715l, 1715z 1735b (1970).

<sup>2</sup>The National Housing Act was amended in 1966 to provide for a limited, experimental program, authorizing FHA-insured mortgages to nonprofit organizations for purchase and rehabilitation of substandard houses for resale to low-income families. 12 U.S.C. § 1715l(h) (1970).

<sup>3</sup>See Berger, *Homeownership for Lower Income Families: The 1968 Housing Act's "Cruel Hoax,"* 2 CONN. L. REV. 30 (1969); Butler, *An Approach to Low and Moderate Income Home Ownership,* 22 RUTGERS L. REV. 67, 68 (1967); Note, *Government Programs to Encourage Private Investment in Low-Income Housing,* 81 HARV. L. REV. 1295, 1319 (1968); 20 CASE W. RES. L. REV. 494, 495 (1969).

the National Housing Act,<sup>4</sup> providing subsidies for middle- and low-income home purchasers.<sup>5</sup> It was the first major step which

<sup>4</sup>Act of Aug. 1, 1968, Pub. L. No. 90-488, § 235, 82 Stat. 477, *codified at* 12 U.S.C. § 1715z (1970). The more relevant portions of this section are as follows:

§ 1715z. *Homeownership or membership in cooperative association for lower income families—Authorization for periodic assistance payments to mortgagees*

(a) For the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section.

*Qualifications and eligibility requirements for assistance payments*

(b) To qualify for assistance payments, the homeowner or the cooperative member shall be of lower income and satisfy eligibility requirements prescribed by the Secretary, and—

(1) the homeowner shall be a mortgagor under a mortgage which meets the requirements of and is insured under subsection (i) or (j) (4) of this section . . . .

*Limitation on payments on behalf of mortgagor; occupancy of property; maximum amount of payment*

(c) The assistance payments to a mortgagee by the Secretary on behalf of a mortgagor shall be made during such time as the mortgagor shall continue to occupy the property which secures the mortgage . . . . The payment shall be in an amount not exceeding the lesser of—

(1) the balance of the monthly payment for principal, interest, taxes, insurance, and mortgage insurance premium due under the mortgage remaining unpaid after applying 20 per centum of the mortgagor's income; or

(2) the difference between the amount of the monthly payment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

*Adoption of procedures for recertifications of mortgagor's or cooperative member's income*

(f) Procedures shall be adopted by the Secretary for recertifications of the mortgagor's (or cooperative member's) income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in subsection (c) of this section.

. . . .

Congress had taken toward the goal of "a decent home and a suitable living environment for every American family,"<sup>6</sup> a goal first proclaimed in the Housing Act of 1949.<sup>7</sup>

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*Authorization of appropriations; aggregate amount of assistance payment contracts; maximum income limits of families; annual report to Congressional Committees with respect to income levels; limitation on payments with respect to existing dwellings or dwelling units in existing projects*

(h) (1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make the assistance payments under contracts entered into under this section. The aggregate amount of contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed \$75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by \$100,000,000 on July 1, 1969, and by \$125,000,000 on July 1, 1970.

(3) . . . . [N]ot more than—

(A) per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made prior to July 1, 1969,

(B) 15 per centum of the total additional amount of contracts for assistance payments authorized by appropriation Acts to be made prior to July 1, 1970, and

(C) 10 per centum of the total additional amount of contracts for assistance payments authorized by appropriation Acts to be made prior to July 1, 1971,

may be made with respect to existing dwellings, or dwelling units in existing projects.

*Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance*

(i) (1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b) of this section.

*Deductions for minors in determining income limits; exclusion of earnings of minors*

(1) In determining the income of any person for the purposes of this section, there shall be deducted an amount equal to \$300 per each minor person who is a member of the immediate family of such person and living with such family, and the earnings of any such minor person shall not be included in the income of such person or his family.

Note that section 235 also covers membership in a cooperative housing association. *Id.* §§ 1715x(b) (2), (d). But these subsections are not relevant to this study.

The goal, however, was not to help *every* American family, but only the low-income family. Limits were placed upon the annual income which a family might receive and still be eligible to benefit from the Act. A purchaser's income could not exceed 135 percent of the public housing limit for initial occupancy in a given geographical area, with one limited exception for slightly more affluent families.<sup>6</sup> To determine eligibility, a deduction of \$300 for each minor child was made from the applicant's gross income.<sup>7</sup> Social security taxes, unusual or temporary income, and earnings of minors were also deducted before the eligibility figure, called adjusted gross income, was ascertained.<sup>10</sup> Moreover, the financial status of the purchaser would be reviewed once every two years to adjust the subsidy.<sup>11</sup> Finally, the putative purchaser must be able to afford a \$200 down payment.<sup>12</sup>

Although many purchasers in fact misunderstood the role of the FHA by fancifully attributing to it an involvement, and even

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For a good basic discussion of how section 235 works, see Schafer & Field, *Section 235 of the National Housing Act: Homeownership for Low Income Families?*, 46 J. URBAN L. 667 (1969). For an excellent, detailed account, see C. EDSON & B. LANE, *A PRACTICAL GUIDE TO LOW- AND MODERATE-INCOME HOUSING* (1972) [hereinafter cited as EDSON & LANE].

<sup>5</sup>Some observers have argued that it is too risky for low-income families to own their own houses, and that they should not be encouraged to do so. This assumption appears to be unjustified, as pointed out by Kolodny, *Should Poor Families Own?*, in *HOMEOWNERSHIP FOR THE POOR* 190 (C. Abrams ed. 1970). Kolodny demonstrates that modern changes in the mortgage system make low-income homeownership feasible: (1) mortgages extend for longer periods, (2) they are self-liquidating, *i.e.*, no deficiency judgment results on FHA mortgages when the house is sold, and (3) downpayments are low. *Id.* at 197. Whether homeownership is risky, concludes Kolodny, depends only on whether the payment is within the family's means.

<sup>6</sup>42 U.S.C. § 1441 (1970). This statement is reiterated in the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701t (1970).

<sup>7</sup>Act of July 15, 1949, ch. 338, § 2, 63 Stat. 413, *as amended*, 42 U.S.C. § 1441 (1970).

<sup>8</sup>Twenty percent of authorized funds can be used to aid families whose incomes exceed the 135 percent limitation. 12 U.S.C. § 1715z(h)(2) (1970).

<sup>9</sup>*Id.* § 1715z-1(m).

<sup>10</sup>HUD, *HOMEOWNERSHIP FOR LOWER-INCOME FAMILIES*, No. 444.1, at 12, cited in Krooth & Sprogens, *The Interest Assistance Programs—A Successful Approach to Housing Problems*, 39 GEO. WASH. L. REV. 789, 802 n.80 (1971) [hereinafter cited as Krooth & Sprogens, *Housing Problems*].

<sup>11</sup>12 U.S.C. § 1715z(f) (1970).

<sup>12</sup>*Id.* 1715z(i)(3)(C)(i). For the purchaser whose income exceeds the 135 percent level, the downpayment must be three percent of the acquisition cost. *Id.* § 1715z(i)(3)(C)(ii).

a guarantee of housing quality, which in reality never existed, the method by which purchasers obtain their federal assistance is relatively easy to understand. The mortgagor-purchaser is required to pay to the mortgagee a figure equivalent to twenty percent of the mortgagor's monthly income.<sup>13</sup> HUD, through the FHA, pays the balance between that sum and the actual mortgage payment. In no instance, however, may the government pay more than the difference between the actual monthly payment under the mortgage and what the monthly payment would be if the mortgage were at a one percent interest rate.<sup>14</sup> Thus, if the interest rate were one percent, there would be no subsidy. HUD has estimated that the average monthly subsidy resulting from this formula is \$50.<sup>15</sup>

Aside from paying the subsidy, the only role that the FHA plays in the purchase transaction is to insure to the mortgagee repayment of the full amount of the loan in the event the buyer defaults.<sup>16</sup> The FHA appraisers inspect the property sold under

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(2) the difference between the amount of the monthly payment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest which the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

*Id.* § 1715z(c).

<sup>14</sup>*Id.* § 1715z(c) (2).

<sup>15</sup>*Hearings on Housing and Urban Development Legislation and Urban Insurance Before the Subcomm. on Housing of House Comm. on Banking and Currency, 90th Cong., 2d Sess. 172 (1968).*

<sup>16</sup>*See* 12 U.S.C. § 1715z(j) (1970). For a case holding that the only purpose of the FHA inspection is to protect the FHA itself and that the FHA owes the purchasers no duty to inspect the premises for proper construction because it is not in privity with them, see *United States v. Neustadt*, 366 U.S. 696, 709 (1961). In *Neustadt*, the Court reasoned that the Federal Tort Claims Act, 28 U.S.C. § 2860(h) (1970), did not sanction any suit arising out of a claim of misrepresentation by the Government. This holding itself has important implications for section 235 purchasers. In *Johnson v. FHA*, 128 Colo. 144, 261 P.2d 161 (1953), the Supreme Court of Colorado stated that the only contract entered into by the FHA was with the bank in insuring its loan and that the purchasers could not be considered third party beneficiaries

the program but do so for the limited purpose of insuring that the value of the property exceeds the government's obligation. In fact, the FHA has no direct contact with the purchaser in the typical section 235 transaction. As suggested later, this isolationist approach may well be at the root of section 235 difficulties.<sup>17</sup>

New, existing, and rehabilitated housing can be purchased under the section 235 program. When Congress established the program in 1968, intending that new housing would receive an even greater percent of the funds in later years, it limited the funds which could be expended for existing housing to twenty-five percent of the section 235 budget.<sup>18</sup> In 1969, the statute was amended to permit greater support for the existing housing com-

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of this contract. *See also* United States v. Chelsea Towers, Inc., 295 F. Supp. 1242, 1247-48 (D.N.J. 1967).

In *Davis v. Romney*, 490 F.2d 1360 (3d Cir. 1974), the court denied monetary damages to plaintiffs who had bought homes under sections 235 and 221(d), which did not meet Philadelphia Housing Code standards. Section 221(d)(2), incorporated by reference into section 235, requires that the FHA-guaranteed mortgage be secured by property which meets the standards of state laws and local ordinances. Although plaintiffs' properties did not comply with this requirement, the *Davis* court held that the statutory standard was not intended to protect the homeowner, but rather to assure the United States adequate collateral. However, because the FHA had not made even minimal efforts to discover whether the houses met the standards imposed by local ordinances, narrowly drawn injunctive relief would be available. *See also* Jackson v. Romney, 355 F. Supp. 737 (D.D.C. 1973).

The United States District Court for the District of Columbia has held that the FHA has a duty to inspect homes sold under section 235 by virtue of 12 U.S.C. § 1735(b) (1970) (referred to in the literature both as section 518 and section 104 of the Housing Act of 1970). *Bailey v. Romney*, 359 F. Supp. 596 (D.D.C. 1973). The court distinguished *Neustadt* on the grounds that the *Neustadt* claim arose under the Federal Tort Claims Act. The court said that section 104 (section 518) "recognized the abuses in the § 235 Program and provided a [specific] remedy." *Id.* at 600.

*See Note, Abuses in the Low Income Homeownership Programs—The Need for a Consumer Protection Response by the FHA*, 45 TEMPLE L.Q. 461, 467 (1972), for a discussion of a provision in the FHA manual which states that the FHA inspection is primarily for the purpose of eliminating "conditions threatening the continued economic soundness of the mortgage transaction," and secondarily "to protect the health and safety of the occupants." *But see Note, Liability of the Institutional Lender for Structural Defects in New Housing*, 35 U. CHI. L. REV. 739 (1968), for a statement and analysis of the theory that the lender who makes the inspection, supposedly for his own purposes, should be liable to the buyer in the case that the inspection fails to disclose faulty construction of the new housing.

<sup>17</sup>*See* note 99 *infra* & accompanying text.

<sup>18</sup>Act of Aug. 1, 1968, Pub. L. No. 90-448, § 235(h) (3), 82 Stat. 479, codified at 12 U.S.C. § 1715z(h) (3) (1970).

ponent for 1970 and 1971.<sup>19</sup> While there was no statutory minimum price on houses purchased under the program, statutory maximums ranged from \$18,000 to \$24,000, depending on family size, family income, location of the house, and the year of purchase.<sup>20</sup> In this study, which the authors will refer to as the Cincinnati Study, homes ranged in price from \$7,000 to \$24,000.

Within two years after the inauguration of this "new era in housing," however, the program was vigorously attacked by the media,<sup>21</sup> Congress,<sup>22</sup> and HUD itself.<sup>23</sup> Congressional hearings held by the House Committee on Banking and Currency, chaired by Representative Wright Patman,<sup>24</sup> redounded with charges of widespread corruption in the pricing of the homes for which subsidies were issued, in the acquisition of huge profits by housing speculators, in the disillusionment and distress of purchasers, and in the unnecessary dissipation of federal funds. According to these reports, the concept that only two years earlier was intended to give millions of citizens a "stake in the community" apparently had given them only financial insecurity and overpriced homes. The hearings disclosed numerous examples of houses that had been bought at costs of \$2000 to \$4000, "cosmetized,"<sup>25</sup> and then re-sold through section 235 at prices ranging from \$12,000 to \$16,000.

Normal checks on such chicanery were not present. Lending institutions whose inspectors normally would have discovered this fraud were unconcerned, since the FHA was insuring the loan at 100 percent. Furthermore, the FHA was responsible, at least in-

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<sup>19</sup>Act of Dec. 24, 1969, Pub. L. No. 91-152, § 109, 83 Stat. 381, *codified at* 12 U.S.C. § 1715z(h) (3) (1970).

<sup>20</sup>12 U.S.C. § 1715z(b) (2) (1970).

<sup>21</sup>*See, e.g.*, "Sixty Minutes," CBS Television, Jan. 5, 1971; Wall Street Journal, Sept. 12, 1972, at 40, col. 1.

<sup>22</sup>*See, e.g.*, STAFF OF HOUSE COMM. ON BANKING AND CURRENCY, 91ST CONG., 2D SESS., INVESTIGATION AND HEARING OF ABUSES IN FEDERAL LOW- AND MODERATE-INCOME HOUSING PROGRAMS (Comm. Print 1970) [hereinafter cited as 1970 HEARINGS]. The Report paints a generally dim picture of the program as viewed in its early stages by this Committee.

<sup>23</sup>HUD, OFFICE OF AUDIT, AUDIT REVIEW OF SECTION 235 SINGLE FAMILY HOUSING, No. 05-2-2001-4900 (1971) [hereinafter cited as AUDIT REVIEW]. This study reports that many appraisals were defective, that supervision and review over the appraisers was insufficient, and that the attitudes of FHA personnel were improper. *Id.* at 4-6.

<sup>24</sup>1970 HEARINGS, *supra* note 22.

<sup>25</sup>*Id.* at 3, 29.

directly, for inspections and appraisals which did not fairly represent the condition of the property or its true value.<sup>26</sup>

Although unconscionable, the abuses of overpricing might not by themselves have been intolerable to the poor in light of the substantial FHA subsidy. However, in addition to purchasing an overpriced house, the poor found that they often had acquired a home which required costly repairs. Although an underlying rationale for the section 235 program was that homeownership would have advantageous auxiliary benefits by instilling pride of homeownership, the homes described in the hearings were not likely to provide inspiration for anyone. All too often, buyers walked away from their purchases. Fallen ceilings, faulty furnaces, wiring that violated municipal housing codes, plumbing that had to be repaired, and porches that had to be replaced comprise examples of defects found by the Committee investigators.<sup>27</sup> Many of these defects were so serious that they caused the newly purchased home to be deemed unfit for habitation under municipal housing codes.

These abuses spurred Congress in December, 1970, to authorize expenditures "to correct or to compensate the owner for structural or other defects which seriously affect the use and livability [of homes],"<sup>28</sup> if the defect existed at the time of the issuance of the insurance commitment and had not been discovered because of sloppy inspection techniques. This new provision, section 104 of the Housing Act of 1970,<sup>29</sup> might have aided many families who were so despondent over the condition of their homes that they moved out or accepted foreclosure as the only solution. Unfortunately, the provision required that such homeowners file a claim for repairs within one year of their purchase date,<sup>30</sup> a requirement which often went unsatisfied because of faulty and delayed notification processes.<sup>31</sup> Thus, even the remedy which carried so much hope seemed to be too little, too late.

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<sup>26</sup>*Id.* at 1. Some FHA officials have been indicted and convicted for taking bribes in connection with their work administering the section 235 program. N.Y. Times, Dec. 13, 1973, § 1, at 53, col. 1.

<sup>27</sup>1970 HEARINGS, *supra* note 22.

<sup>28</sup>12 U.S.C. § 1735b(b) (1970).

<sup>29</sup>Act of Dec. 31, 1970, Pub. L. No. 91-609, § 104, 84 Stat. 1771, *codified at* 12 U.S.C. § 1735b (1970). This section is also referred to in the literature as section 518.

<sup>30</sup>12 U.S.C. § 1735b(b) (1970).

<sup>31</sup>*See* note 70 *infra* for results of this study on this point. In addition, section 104 is too limited in scope and may even be inadequate to protect the homeowner who was victimized by deliberate concealment, since the section



Thus, in late 1971, section 235 stood badly scarred, berated by those who had always expected the project to fail, and mourned by those who had hoped that it would succeed. But many questions remained in need of substantive answers if the program was to be objectively evaluated. Prior studies of the program had investigated or reported only dramatic failures and tales of corruption and graft.<sup>32</sup> Were these accounts typical or were they a "parade of horrors" brought forth by those who sought the suspension of the program?

Attempting to find answers to some of these questions, these authors, supported by generous funding from the American Bar Foundation, conducted empirical research into the actualities of section 235 housing in the Cincinnati area. The purpose was not simply to determine whether the interest subsidy method utilized by section 235 as a specific statutory provision was viable but rather to determine whether the entire approach of the Housing Act of 1968, which relied upon the poor to make and live with their own housing choices, was legitimate. The rest of this Article is a report of that study.

Despite the President's suspension of funding<sup>33</sup> for the section 235 program in early 1973, and his recent proposal to substitute direct subsidies to the poor for the section 235 interest subsidy,<sup>34</sup>

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will only remedy defects which "proper inspection could reasonably be expected to disclose." 12 U.S.C. § 1735b(b) (1970). This problem is raised in AUDIT REVIEW, *supra* note 23, at 48.

One final serious bar to section 104's effectiveness arose from the regulations promulgated by the Secretary of HUD, pursuant to 12 U.S.C. § 1735(c) (1970). These regulations provided that the Secretary would evaluate reimbursement claims for defects in light of "the extent to which the defects presented a clear and present danger to the occupants," among other considerations. However, the District Court for the District of Columbia has recently held that this standard is unduly restrictive and contrary to the legislative intent mirrored in section 104. It enjoined the application of this standard. *Bailey v. Romney*, 359 F. Supp. 596 (D.D.C. 1973).

<sup>32</sup>See generally 1970 HEARINGS, *supra* note 22.

<sup>33</sup>Remarks Prepared for Delivery by George Romney, Secretary of HUD at the Twenty-Ninth Annual Convention Exposition of the National Association of Home Builders Astroworld, Houston, Texas, Jan. 8, 1973.

<sup>34</sup>N.Y. Times, Sept. 23, 1973, § 4, at 4, col. 3. Under the direct subsidy approach, the federal government would provide cash to qualified recipients and allow them to choose their own homes on the private market. It is beyond the scope of this Article to compare the advantages of the interest subsidy with those of the direct subsidy. Critiques of direct subsidies can be found in Gans, *A Poorman's Home is His Poorhouse*, N.Y. TIMES MAGAZINE, Mar.

the Cincinnati Study has continuing significance. Perhaps it even has heightened importance at this time of reexamination of the housing problem, for there is certain to be continuing debate over the best and most economical means to assist the poor in attaining adequate shelter. Many members of Congress still favor the interest subsidy method, and within a few days of the announcement of the administration's proposed direct subsidy, critics of the new program became vocal.<sup>35</sup>

Regardless of the final outcome of the direct subsidy versus interest subsidy battle, a minor battle is presently being waged in the courts over the legality of the suspension of funds for the section 235 program. Two suits on this question have been filed. In *Pennsylvania v. Lynn*,<sup>36</sup> defendant Lynn, Secretary of HUD, was enjoined from refusing to accept applications for subsidies and was ordered to process these new applications as well as existing ones. In so holding, the court found without merit his contentions of lack of standing, political question, and sovereign immunity. The court concluded that it was not within the Secretary's discretion to suspend the funds since "the Congressional mandate requires that [the programs] be operated on a continuing basis."<sup>37</sup> The detailed account of legislative history recited by the court strongly supported this conclusion. The court further stated that it was not "within the discretion of the Executive to refuse to execute laws passed by Congress but with which the Executive presently disagrees."<sup>38</sup> After this decision was rendered, the order to process applications for section 235 funds was stayed pending appeal in the United States Court of Appeals for the District of Columbia.<sup>39</sup> A second case to force release of suspended funds, *City of Camden v. Lynn*,<sup>40</sup> is still at an early stage of litigation, no decision having been rendered at the time of this writing. Clearly

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31, 1974, at 20; N.Y. Times, Apr. 2, 1974, § 1, at 15, col. 1. For the results of an experimental direct subsidy project, see HUD, FIRST ANNUAL REPORT OF THE EXPERIMENTAL HOUSING ALLOWANCE PROGRAM (1973).

<sup>35</sup>N.Y. Times, Sept. 23, 1973, § 4, at 4, col. 3.

<sup>36</sup>362 F. Supp. 1363 (D.D.C. 1973), *motion to stay denied*, No. 1835 (D.C. Cir., Aug. 21, 1973), *stayed*, No. 230 (Mr. Chief Justice Burger, Aug. 29, 1973). *But cf.* Housing Authority v. HUD, 340 F. Supp. 654 (N.D. Cal. 1972).

<sup>37</sup>362 F. Supp. at 1369.

<sup>38</sup>*Id.* at 1372.

<sup>39</sup>No. 1835 (D.C. Cir., Aug. 17, 1973), *stayed*, No. 230 (Mr. Chief Justice Burger, Aug. 29, 1973).

<sup>40</sup>No. 961 (D.N.J., filed June 29, 1973).

section 235 has not yet been put to death; the battle has yet to be waged.

## II. METHODOLOGY

Several preliminary points of methodology must be noted, for it is on these points that the Cincinnati Study differs significantly from those which preceded or paralleled it. First, this study, unlike others thus far published,<sup>41</sup> maintained "control" groups against which to measure findings relating to section 235 purchasers. It was not enough to show, as the critics maintained, that section 235 purchasers were being subjected to substandard housing. If persons who bought similar housing but were not being subsidized by the Housing Act were suffering from the same ills and deceits, then the weakness lay not in the provisions of the Act, but in the type of market which was being studied. If, for example, a critic of section 235 pointed to statistics that X percent of all such houses were foreclosed within one year but could not show that the percentage of foreclosures for comparable non-235 houses was less, the only conclusion possible would be that section 235 was not being used by speculators and realtors to bleed the poor any more or any less than they would have been bled without it. And if the rate for non-235 housing were equal to or higher than that for section 235 housing, then perhaps section 235 could even be said to be a blessing for its clients, even if X percent were "too high" on an absolute scale.

Two control groups of forty interviewees each, chosen to correspond with the new and existing section 235 groups, were surveyed. These control groups were chosen by selecting, from land record plat books, houses purchased as close in time and locale to section 235 purchases as possible. The times of purchase were within the time span of the section 235 program being studied, from 1969 to 1972.

A second major difference between the Cincinnati Study and others is that its authors were fortunate enough to obtain interviews with a substantial number of persons whose mortgages had been foreclosed after the purchase of section 235 houses. Although difficult to locate because such foreclosed owners often do not leave forwarding addresses, the interviews with these prior owners provide some fresh insight into the success or failure of

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<sup>41</sup>Note, *The 235 Housing Program in Action: An Empirical Study of its Administration and Effect on the Homeowner-Participant in the Columbia, South Carolina Area*, 25 S.C.L. REV. 93 (1973) [hereinafter cited as *Columbia Study*]. See generally 1970 HEARINGS, *supra* note 22.

section 235. Sixty-seven persons in Hamilton County, Ohio, had left section 235 houses. Sixty had left from old houses; seven from new. A rate of 5.6 percent vacated homes, included a foreclosure rate of about five percent, since one or two of the sixty-seven were voluntary sales.<sup>42</sup> Thirty-one of the sixty-seven persons were located and interviewed, a "finding rate" of nearly fifty percent.

The methodology employed in this study was as follows. First, records of the FHA in Hamilton County were examined and revealed a total of 1,214 homes which had been purchased under section 235 between April, 1960, the start of the program in Cincinnati, and May, 1972. Of these, 636 were new houses and 578 were existing houses. Although the Act provided for the same subsidy in the case of rehabilitated houses,<sup>43</sup> such houses were not part of the Cincinnati program. From each of the two groups, new and existing, forty names were randomly drawn. When a potential interviewee could not be contacted or was contacted and refused the interview, a replacement name was drawn randomly, in order to maintain the sample size at forty.

Finally, because of an interest in ascertaining whether buyers who had purchased homes which eventually required repairs under section 104 had special characteristics,<sup>44</sup> another category was added. Forty interviewees were randomly selected from a pool of the 108 buyers who had received section 104 repairs in Hamilton County. Thus, at the outset there were the following six categories of interviewees:

	<i>Total number from which sample drawn</i>	<i>Percent of total</i>	<i>Number of interviewees</i>
<i>Section 235 purchasers</i>			
1. Purchasers of new homes . . . . .	629	51.8	40
2. Purchasers of existing homes ..	410	33.8	40
3. Purchasers whose homes required § 104 repairs . . . . .	108	8.9	40
4. Purchasers foreclosed			
2. New homes . . . . .	7	0.6	
b. Existing homes . . . . .	60	4.9	31
<i>Control purchasers</i>			
5. Purchasers of new homes . . . . .			40

<sup>42</sup>Compare this rate to the rate in Philadelphia, for example, where the rate of foreclosure was just under eight percent. See Stegman, *Low-Income Ownership: Exploitation and Opportunity*, 50 J. URBAN L. 370, 376 (1973). Apparently Cincinnati's section 235 program has fewer problems than those in Philadelphia.

<sup>43</sup>12 U.S.C. § 1715z(h) (3) (1970).

<sup>44</sup>See note 29 *supra* & accompanying text.

6. Purchasers of existing homes . . .	40
	<hr/>
Total interviewees . . . . .	231

The sample, then, upon which this report is based numbers 231 which includes thirty-one persons in the "foreclosed" category, and forty persons each in the other five categories. Although fairly small, this sample is statistically sound. Indeed, some of the more general findings which are reported here have appeared in other reports.<sup>45</sup> In any event, given the resources and time at the authors' disposal, an attempt was made to interview as many people as possible. Of the total number of section 235 purchasers in Hamilton County, more than thirteen percent were interviewed and approximately twenty percent of the entire number were either contacted or sought to be contacted. The actual interview consisted of approximately one hundred questions and lasted from twenty-five to forty-five minutes each. They were conducted during the summer of 1972.

### III. WHO IS SECTION 235 HELPING?

#### A. *Is It Reaching Those for Whom It Was Primarily Intended?*

As already suggested, one of the primary purposes of section 235, and indeed of the entire Housing Act of 1968, was to give low-income families a "stake in the community."<sup>46</sup> In light of the tenor of the times in which the Act was passed, manifested in part by mounting tensions in the ghetto areas, it is also likely that blacks

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<sup>45</sup>For replication of some, but not all, of the data, see *Columbia Study*, *supra* note 41. See also U.S. COMM'N ON CIVIL RIGHTS, HOMEOWNERSHIP FOR LOWER-INCOME FAMILIES (1971). Similar surveys of section 235 purchasers nationwide have been done by HUD itself. One survey done of buyers in the third quarter of fiscal 1969 revealed that the typical section 235 purchaser had a family of five members, made an annual income of \$5,685, and bought a house for \$15,000. R. TAGGART, *LOW-INCOME HOUSING: A CRITIQUE OF FEDERAL AID* 78 (1970). Another study done in the first quarter of 1971 showed an average family whose head of household was twenty-nine years old, earned an annual income of \$6,150, and bought a house for \$17,808. It revealed an average family size of four in new housing and six in older housing. Of these buyers seventy-eight percent were married couples, with twenty-one percent described at "other types." EDSON & LANE, *supra* note 4, at 5:9. The data in the Cincinnati Study is generally comparable in all areas to the earlier studies, except that annual salaries of section 235 purchasers in Cincinnati were found to be slightly higher than the above reports indicated for their subjects.

<sup>46</sup>*Hearings on H.R. 15624, H.R. 15625 and Related Bills Before the Subcomm. on Housing of the House Comm. on Banking and Currency, 90th Cong., 2d Sess., pt. 1, at 77 (1968).*

were intended to be primary beneficiaries. To determine whether the program was reaching the people it sought to reach, the authors investigated the income and occupation of both the experimental and control groups, as well as the homeownership history, both immediate and distant past, of the purchasers involved. The racial makeup of the sample will be considered in the next subsection.

The findings on income levels were striking. There was a marked difference, on the average approximately \$5,000 annually, between the incomes of the experimental 235 groups and the incomes of their respective controls. Between the two sets of comparable control and experimental groups, the difference was especially noteworthy. While the average weekly income of the section 235 purchaser of existing housing was \$152, that of the control purchaser of existing housing was \$242, a difference of \$4,600 per year. The statistics indicate a difference of over \$3,700 per year between control and section 235 purchasers of new homes. Those purchasers whose experience went sour, either through foreclosure or significant repairs, were substantially poorer than those in any of the other groups. This is made clear by examining in Table I the average weekly per capita incomes of these groups, which ranged from \$17 per person per week in section 104 houses to \$78 per person per week in new control purchases.

One significant factor which may account for much of the difference in income between existing section 235 purchasers and existing control purchasers is that the controls tended to be families in which both spouses were employed, while the section 235 families were not. While only three families in the existing section 235 sample reported that both spouses worked, sixty-three percent of the existing controls had income from two working spouses. In addition, a much larger percentage of section 235 houses were purchased by single women whose earnings tended to be lower than those of their male counterparts. In new section 235 housing, ten percent of the families had two working spouses, while both spouses were employed in twenty-eight percent of the new controls.<sup>47</sup>

*Table I: Income*

	<i>Weekly income (\$)</i>	<i>Annual income (\$)</i>	<i>Per capita income/week (\$)</i>
<i>Section 235 purchasers</i>			
New .....	162	8,424	40
Existing .....	152	7,904	25
§ 104's .....	125	6,500	17

<sup>47</sup>The income of minors is not included in the section 235 subsidy formula and so this study has not examined this possible source of additional income.

Foreclosed .....	136	7,072	19
<i>Control purchasers</i>			
New .....	234	12,168	78
Existing .....	242	12,584	60

While needy families in the Cincinnati area are being helped by section 235, it is immediately clear from Table I that the Cincinnati sample has a much higher average income than a comparable sample obtained in other areas of the country.<sup>48</sup> These high average incomes may indicate that the program is not reaching as many hard-core poor as Congress had intended.

Nevertheless, other data indicates unequivocally that the program is giving a "stake in the community" to those who did not have such a stake prior to their involvement in the program. For example, Table II shows that virtually none of the section 235 purchasers in any group had lived in his own home prior to his section 235 purchase, while a substantial number of control purchasers and owned previous homes. Further data in this table reaffirms what the income analysis indicated, namely, that even though average incomes of people helped by section 235 may not be as low as Congress might have wished, low-income recipients are indeed benefiting from it. Between eight to twenty-five percent of the section 235 purchasers, depending upon the group, had been living in public housing prior to their purchase. Only a negligible number of control purchasers had done so.

*Table II: Prior Homeowning Experience*

<i>Section 235 purchasers</i>	<i>Percent owning at least one set prior of homeowning houses</i>		<i>Percent having Immediately prior home (%)</i>			
	<i>prior houses</i>	<i>of homeowning parents</i>	<i>Public housing</i>	<i>Private apartment</i>	<i>Rent home</i>	<i>Own home</i>
New .....	10	95	8	70	18	5
Existing .....	20	50	25	50	23	0
§ 104's .....	10	58	15	45	35	5
Foreclosed ....	16	83	16	55	26	3

<sup>48</sup>A second empirical study was funded by the American Bar Foundation in the summer of 1972. See *Columbia Study*, *supra* note 41. Although it is not clear whether the Columbia Study's sample of 400 new house buyers and 100 existing house buyers was representative of the actual Columbia, South Carolina, section 235 population, that study showed that seventy-three percent of those respondents had incomes from \$3,000 to \$7,000, while only sixteen percent earned over \$7,000 per year. *Id.* at 106. This is in marked contrast to the Cincinnati income levels even though Columbia, South Carolina, is a Southern city and would be expected to have a somewhat lower average income. See also U.S. COMM'N ON CIVIL RIGHTS, HOMEOWNERSHIP FOR LOWER INCOME FAMILIES 29 (1971), which included new and existing housing and reported a 1969 average income of \$5,579 in four cities—Denver, St. Louis, Little Rock, and Philadelphia.

*Control purchasers*

New .....	15	95	2	63	15	15
Existing .....	30	80	5	57	25	13

The figures on parents' homeownership experiences further differentiate section 235 purchasers from control purchasers, at least in the category of existing housing. Although Table II indicates that a majority of all purchasers interviewed had at least one set of parents who owned a house at one time in their lives, the figures for the control purchasers are generally higher than those for the section 235 purchasers. If the purchasers of new section 235 housing, who are white, young married couples, and almost indistinguishable from their control counterparts, are removed from the survey, the impact is more apparent: section 235 is reaching almost double the number of persons whose parents did not own a house at any time in their lives. This must affirm the view that the program is bringing a new dimension to the lives of these purchasers.

*B. General Description of the Section 235 Sample*

The data which is reported in Table III following this summary supports the following conclusions about the sex, race, age, and educational levels of each of the four kinds of section 235 purchasers:

1. *Purchasers of existing 235 housing.*—Although statistically a majority of these purchasers are married couples, a startlingly high percentage are single women. The purchasers in this sample tend to be black, older than the average homeowner, with a weaker educational background.

2. *Purchasers of housing which required repairs under section 104.*—This group is similar to that described above except that it tends to be even more nonwhite and somewhat younger.

3. *Purchasers of housing which was foreclosed.*—This group, again, is highly female, predominantly black, with a marginal educational background, and middle aged.

4. *Purchasers of new housing under section 235.*—These purchasers stand out in striking contrast to the other three groups. They are white, young married couples with a substantially higher degree of education.

Table III: *The Purchasers*

<i>Section 235 purchasers</i>	<i>Percent female</i>	<i>Percent nonwhite</i>	<i>Average age</i>	<i>Educational level (average highest grade completed)</i>	<i>Average family size</i>
New .....	5	5	21-30	12	4



Existing .....	48	65	41-50	10	6
§ 104's .....	45	73	31-40	10	7
Foreclosed ....	39	52	31-40	10	7
<i>Control</i>					
<i>purchasers</i>					
New .....	0	2	21-30	some college	3
Existing .....	5	53	31-40	12	4

In comparing the section 235 purchaser to the control purchaser, the following generalizations seem warranted: control purchasers both in existing and new housing, but particularly in the latter category, are better educated, younger, almost all married couples, in smaller family units, and more likely to be white than their section 235 counterparts. In dealing with each of the characteristics separately, the authors conclude the following:

1. *Sex.*—Section 235 has allowed a substantial number of women to purchase homes, possibly many with large families.

2. *Race.*—Section 235 has substantially helped blacks move into existing housing, but when new housing is concerned, whites have taken advantage of the program to the virtual exclusion of blacks.

The FHA has been criticized for its role in creating racially isolated inner cities or, on the other hand, for moving racially isolated groups from the inner city to a similar "suburban ghetto."<sup>49</sup> The section 235 program appears to be continuing the disturbing pattern, although there was less segregation in new section 235 housing than in new control housing. In fact, in the new developments which housed predominantly section 235 buyers, the sight of black and white children playing together was fairly common. Nevertheless, the data points to a significant level of isolation of the races.

Pinpointing the reasons for this isolation is difficult. No overt discrimination was apparent. Most likely, it resulted simply from the higher income requirement which was a prerequisite to buying the more expensive new houses, a requirement which most blacks probably could not meet. Other reasons may include a lack of awareness in the black community that new housing is available, as well as a reluctance of blacks to leave familiar neighborhoods and venture into areas where they may feel unwelcome. But whatever the cause, the result is clear and lamentable.

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<sup>49</sup>U.S. COMM'N ON CIVIL RIGHTS, HOMEOWNERSHIP FOR LOWER INCOME FAMILIES (1971).

These findings on racial patterns in subsidized homes are analagous to those made in June, 1971, by the United States Commission on Civil Rights,<sup>50</sup> except that the Cincinnati Study found no new subdivisions that are predominantly black as reported there.<sup>51</sup>

3. *Age.*—New home purchasers, both in the control and the section 235 groups, fell into the twenty-one to thirty age bracket.<sup>52</sup> Combined with the data from the racial composition column of Table III, this data shows that most purchasers of new homes in Cincinnati were young, white married couples, whether assisted by the FHA program or not.

It may be doubted by some that Congress intended section 235 subsidies to benefit the young couple which is not entrenched in poverty but is moving up the economic ladder and would one day own a house even without any government aid. Although these couples were likely not its primary target, congressional intent generally was that stable families in the \$3,000-\$8,000 income level be assisted.<sup>53</sup> If such families happen to be college students or other young couples with temporarily low incomes, they should be equally eligible. In fact, for those who believe that one of the strengths of section 235 is the economic integration it promotes, such a mixed clientele within the program is a great advantage.

4. *Educational Level.*—Not surprisingly, the average educational level of the control group was higher than any of the section 235 groups except purchasers of new homes, who, as already shown, were like the average new control buyer, namely, white and young. The tenth grade was the median educational level of the head of household<sup>54</sup> for section 235 purchasers of existing housing, as it was for the section 104 and foreclosure groups.

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<sup>50</sup>*Id.*

<sup>51</sup>New black subdivisions were also found in Columbia, South Carolina. *Columbia Study*, *supra* note 41, at 111. The majority of purchasers in that study were black. *Id.* at 107.

<sup>52</sup>In the Columbia, South Carolina, study the average age was also "young," *i.e.*, 30. *Id.* at 107. Since three-fourths of the respondents in that study were in new housing, this data corresponds well with this study's new housing data.

<sup>53</sup>R. TAGGERT, *LOW-INCOME HOUSING: A CRITIQUE OF FEDERAL AID* 14 (1970).

<sup>54</sup>In this study, "head of household" was defined as the primary breadwinner of a family. Although this person was usually male, some females were "household heads."

These statistics, however, represent only an average. The variation was wide with twenty-five percent of the existing group graduating from high school with twenty percent having received no more than a sixth grade education. In the existing control group, however, the average achievement was a high school diploma. A high school diploma was even more likely to be found among the new control purchasers; although one such buyer had only completed the eighth grade, thirty-five had completed "some college." The median level of this group was "some college," with twenty-eight percent reporting that they were college graduates. Thus, the purchasers of existing housing appear to be comparatively handicapped by limited educational achievement, whereas those in new section 235 housing, while somewhat behind their respective controls, are substantially better off in terms of education than their counterparts in existing housing.

5. *Family Size.*—As is evident from Table III, existing section 235 housing has helped much larger families than has new section 235 housing or either set of control housing. The largest family in new section 235 housing had eight members, while in existing section 235 housing the average family had six members with twenty-three percent having nine or more members. Only fifteen percent of the new section 235 housing and five percent of the new control housing sheltered families with as many as six members. Thus, older housing appears to attract and best fill the needs of larger families who cannot be comfortably accommodated in the smaller new housing.<sup>55</sup> Use of older housing also permits subsidized buyers greater freedom of choice of location. For both of these reasons, it is important that it not be phased out of the program.<sup>56</sup>

6. *Occupational Status.*—The data shown in Table IV is consistent with other information that purchasers of new housing under section 235 are similar in many respects to purchasers of new control housing and differ significantly from all other purchasers of section 235 housing. If these purchasers are omitted, it is clear that section 235 has aided to an important extent those

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<sup>55</sup>Evidence strongly suggests that housing for the large, poor family is "one of the most desperate urban needs in the Country." P. MARTIN, *THE ILL-HOUSED* 1002 (1971).

<sup>56</sup>Betty Frieden relies on this factor in recommending that greater use of existing housing be allowed. B. Frieden, *Improving Federal Housing Subsidies* 17 (Working Paper #1 for The Joint Center for Urban Studies of M.I.T. and Harvard University, 1971) [hereinafter cited as B. Frieden].

lower occupational groups which might not otherwise have been able to obtain houses.

To ascertain the occupational status of the samples, the authors utilized a socio-economic status score based on a table employed by the United States Census Bureau.<sup>57</sup> This table ranks professions with a score from one to ninety-nine, based upon earnings and educational requirements. Physicians rank highest with a score of ninety-nine while domestic day workers have a score of seven, and construction workers are scored at sixteen. The authors assigned persons on welfare a status score of zero although it was not included in the Census Table.

Because a substantial number of families in the section 235 groups were on welfare—a constant twenty-five percent except in the new housing group in which there were no families on welfare—the authors calculated both the overall average status number and the average, excluding persons on welfare. Clearly the section 235 program has, to some extent, broken class barriers and permitted those of a lower socio-economic status to live close to those with more prestigious occupations.<sup>58</sup> A definite class distinction remains, however, between section 235 purchasers of new and existing housing.

*Table IV: Occupational Status*

<i>Section 235 purchasers</i>	<i>Average score</i>	<i>Average score excluding welfare</i>	<i>Percent on welfare</i>
New .....	59	59	0
Existing .....	28	38	25
§ 104's .....	33	44	25
Foreclosed .....	28	41	25

<sup>57</sup>U.S. CENSUS BUREAU, UNITED STATES CENSUS OF POPULATION: 1960: SUBJECT REPORTS: SOCIO-ECONOMIC STATUS, Appendix I at 264-67 (1967).

<sup>58</sup>See Krooth & Sprogens, *Housing Problems*, *supra* note 10, at 815, for the recommendation that even greater economic integration should be encouraged through affirmative action by the FHA. The authors suggest that up to twenty-six percent of appropriations for housing subsidies should be set aside for families in any income range and that their housing purchases in what are presently section 235 "communities" should be subsidized up to two percent of their interest rate. Such subsidy would encourage wealthier families to move into lower income areas and so would avoid creation of stigmatized and isolated lower-income developments. It would also be likely to forward racial integration. *Id.* at 816.

HUD also has suggested that a greater economic mixture should be promoted by prohibiting exclusive sales in new developments to section 235 buyers and perhaps by limiting their number to fifty percent in any given development. AUDIT REVIEW, *supra* note 23, at 35.

*Control purchasers*

New .....	72	72	0
Existing .....	55	55	0

7. *Stability*.—Although “stability” and “maturity” may not be measurable, the authors had hypothesized that the factors of transiency, length of time in present job, and prior evictions for nonpayment of rent or other misconduct on rental premises might be relevant to this inquiry. Instead the Cincinnati Study discovered the following:

(a) Section 235 purchasers are not noticeably more transient than control purchasers, when measured by duration of their housing residence immediately prior to the purchase of their present house.<sup>59</sup>

(b) Job tenure data reveals no trends within the various groups and this factor appears to be irrelevant in predicting success or failure among homebuyers.<sup>60</sup>

<sup>59</sup>Data collected is shown here:

*Length of Time in Prior Residence*

	<i>Percent living there more than six years</i>	<i>Percent living there less than three years</i>
<i>Section 235 purchasers</i>		
New .....	5	78
Existing .....	33	25
§ 104's .....	23	50
Foreclosed .....	13	68
<i>Control purchasers</i>		
New .....	..	78
Existing .....	20	58

This data is predictable if one realizes that younger families, those primarily in new housing, are the most likely to be improving themselves financially and so are the most likely to be mobile. In contrast, the least mobile, so-called “most stable” group was in existing housing. These are primarily the older families who would be less likely to be moving up the income ladder and more likely to have ties in one neighborhood. Also, because they are generally poorer, they are less likely to have the money to move often.

<sup>60</sup>This data is charted below:

*Job Tenure*

	<i>Percent on job five years or more</i>	<i>Percent on job two years or less</i>
<i>Section 235 purchasers</i>		
New .....	25	35
Existing .....	38	8
§ 104's .....	43	15
Foreclosed .....	22	12
<i>Control purchasers</i>		
New .....	35	23
Existing .....	50	18

(c) Neither the section 235 purchasers nor the control purchasers had been overtly unstable enough in their prior residential experiences to require eviction for late payments or other such misconduct.<sup>61</sup>

#### IV. ASSESSING THE ALLEGATIONS OF ABUSE

Having delineated the basic characteristics of the groups of section 235 purchasers, and having discovered that, except for buyers of new houses, the buyers tended to be those most intended to be benefitted by the legislation, one must turn to the heart of this inquiry, namely, the true extent of abuse under the section 235 program. The Cincinnati Study set out to answer this problem by focusing on three questions. (1) Were the houses purchased in Cincinnati under the program as inadequate as the reports given during the 1970 congressional hearings would indicate? (2) Even if they were inadequate, was this inadequacy the cause of higher foreclosure and repair rates among section 235 purchasers? (3) Finally, despite the hypothesized greater rate of failure among section 235 purchasers, did the social benefits obtained by the preponderance of buyers outweigh this higher rate of failure in the program?

##### A. *The Kinds of Homes Purchased*

###### 1. *Existing vs. New Homes*

As already indicated,<sup>62</sup> section 235 provides for the purchase of existing, rehabilitated, or new housing. In Cincinnati, however, there are no formal rehabilitation projects for single-family dwell-

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<sup>61</sup>Interviewees were asked if they had ever been requested to leave a previous residence. The great majority had not. Percentages of negative replies were: existing section 235, sixty-five percent; existing controls, seventy percent; new section 235, ninety-three percent; new controls, seventy-five percent; section 104's, sixty-eight percent; and foreclosures, seventy-one percent. Of those asked to move, most were not asked for fault-related reasons. Urban renewal or apartment rehabilitation had caused the eviction of thirteen percent of the existing section 235 and section 104 groups and ten percent of the foreclosed group, while only five percent of existing controls and only one person in new housing were forced to move for this reason. A few persons were "evicted" from houses which they had been renting and told that the landlord would sell them that house with the help of section 235 money. Certain other families were evicted from public housing because their income exceeded the income limits permissible in such housing. Eviction for nonpayment of rent was reported by only three persons in this study. Additionally, most interviewees had had no problems with their landlords other than the landlord's failure to make repairs.

<sup>62</sup>See note 43 *supra* & accompanying text.

ings, and therefore only existing and new housing projects were considered.

New housing generally presents administrative advantages to the FHA. It allows the FHA to work with developers with whom the insuring office is familiar through previous transactions. Generally, a number of nearly identical homes, varying only in floor plan, are built in a single area where inspections can be carried out on a continuing basis with minimal wasted travel time. For the buyer, in addition to the FHA "safeguards," there are county or city building inspections which tend to insure that the new building complies with the applicable codes. The most important advantage to the buyer, however, is the guarantee which the seller must give by the terms of the FHA financing. Under such a guarantee, most buyers of new homes would have only to call their sellers or secure a needed repair during the one-year warranty period. Additionally, all new equipment in the house is guaranteed, so that the buyer is protected by manufacturer warranties on such costly items as water heaters and furnaces. There are, however, pitfalls in this system of separate warranties by individual manufacturers. If the builder himself cannot be held responsible, it may be difficult for the buyer to find out who is. There is also the disturbing possibility that the responsible party has gone out of business, as occurred with one buyer in the control sample in whose home air conditioning had been installed without air vents. She had no recourse, and the system was useless.

All of the safeguards which help to insure that new houses will be reasonably free of problems are absent in existing housing. This deficiency could be partially remedied by requiring a prior inspection by a professional inspector or a city code inspection. This precaution is rarely taken voluntarily by buyers, whether or not the purchase is by means of section 235 assistance.

## 2. *Size of Homes*

Not surprisingly, the survey indicated that existing homes in the price range available under the section 235 program and equivalent homes within the control group were larger and more spacious than any of the new housing. Again, not surprisingly in light of the finding that larger families could be found in the existing section 235 group, these houses generally had more bedrooms. Somewhat smaller houses were found in the existing control group. In new section 235 housing, the homes were more

uniform and even smaller.<sup>63</sup> But these figures do not reflect the great disparity in overall size between new and existing homes. Many of the older homes were truly spacious but no new homes could properly be described in this way.

### 3. *Price of House and Size of Payments*

The median price for all section 235 homes in the Cincinnati Study was between \$15,000 and \$15,999. In the new housing category it was \$20,675 and in existing housing it was \$14,950. As indicated by Table V both sets of controls were within \$1,000 of these figures, demonstrating that they were well chosen, suitable controls. The new control housing was of identical construction to the section 235 housing. The small difference in average price was a result of optional extras chosen by the control families who were not limited by statutory maximum costs.

The overwhelming majority of section 235 purchasers in all groups reported that they paid the statutory minimum of \$200 as a down payment.<sup>64</sup> When the controls are compared to this statistic, one of the outstanding benefits of section 235 becomes immediately apparent. Among the existing control purchasers twenty-eight percent reported a downpayment in excess of \$1,000, and another sixty percent reported down payments of more than \$500; in new control housing, more than sixty percent reported downpayments of more than \$1000. Clearly the federal program enables people who cannot accumulate large savings the means by which to buy a home of their own.

*Table V: Price and Size of Payments*

<i>Section 235 purchasers</i>	<i>Average price</i>	<i>Average monthly payment<sup>65</sup></i>	<i>Average monthly payment before buying present house</i>
New .....	20,675	111	107
Existing .....	14,950	91	80

<sup>63</sup>Fifteen percent of the existing section 235 housing contained two bedrooms, thirty-three percent had three, thirty-three percent had four, and fifteen percent had five or more. Forty percent of the existing control housing had two bedrooms, thirty-eight percent had three, twenty percent had four, and none had more than four bedrooms. In the new section 235 housing category, eighty-eight percent of the homes had three bedrooms and twelve percent had four.

<sup>64</sup>In existing housing, twenty-five percent reported paying more than \$200. In section 104 housing, eighteen percent reported a larger down payment, and in foreclosures, nineteen percent reported paying more. In new section 235 housing, however, there were only three deviations from the uniform \$200 down payment.

<sup>65</sup>The Columbia, South Carolina, study found an average monthly payment of \$86. Since three-fourths of the sample were new homeowners, this



§ 104's .....	15,385	98	82
Foreclosed .....	14,793	82	79
<i>Control purchasers</i>			
New .....	21,425	176	119
Existing .....	15,873	137	83

A comparison of the amount which section 235 purchasers paid in rent for their previous residences with the amount of their current mortgage payments shows that the subsidy enables homeownership at only a slightly elevated cost. Interviewees were asked whether their present monthly payments imposed too great a burden on them. Twenty-two percent of existing section 235 purchasers said that they did, and twenty-eight percent of existing control purchasers agreed. Only five percent of the new section 235 purchasers felt pressured by the payments, however, while a similar eight percent of the new control purchasers felt such pressure. Of the section 104 buyers, eighteen percent said that the payments were too high, and thirty-nine percent of the foreclosed group agreed that their payments had been too high.

However, only fifteen percent of the existing section 235 owners had ever missed a monthly payment, as had eight percent of the existing controls. Remarkably, no new section 235 owner reported missing any payments, compared to five percent of the new control owners who reported that they had. Among the section 104 owners twenty-three percent had missed payments and sixty-four percent of the foreclosed group said that they had done so.

Reasons for the missed payments were not necessarily economic inability to pay but a feeling of helplessness, especially in the section 104 group, when purchasers found their houses falling apart. Often, they stated that they sought to bring pressure for repairs on the mortgage company by withholding money owed. Some in the foreclosed group reported making full payments on their houses until they deliberately decided to move out, again, because of the uninhabitable condition of the house. Reasons for missed payments in other groups were purely economic, such as layoff or illness.

#### 4. *Physical Problems with the Homes Purchased*

Purchasers were asked to describe all of the problems that they had had with the homes they purchased. The types of problems which were found to be most significant in this study should

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figure is lower than that reported here, but this would be expected in a Southern city where the cost of living generally should be less. *Columbia Study, supra* note 41, at 118.

provide some guideline for the FHA, for homeownership counselors, and ultimately for home buyers in determining in what aspects of a section 235 transaction particular caution should be exercised. Any single problem that would require the ordinary homeowner<sup>66</sup> to hire a repair person was recorded as a problem for the purposes of this study. Since the interviewers were not professional home consultants, no attempt was made to further classify the problems.

The patterns of problems found in existing section 235 and existing control houses, summarized in Table VI, were similar.<sup>67</sup> In both, plumbing was the most frequently encountered problem. It affected fifty-three percent of the existing section 235 houses and fifty-five percent of existing control houses. Interior problems such as cracked or crumbling walls, ceilings, stairs, and floors ranked second in the problem list. There was a significant number of other problems, such as rotten windows, fallen porches, heating systems, roofs, electrical systems, and yards. Yard problems included dead trees that required removal, sidewalks and driveways which were cracked and deteriorated, retaining walls needing repairs, and yard areas which needed to be cleared of junk. Vermin infestation was also a problem for some of the owners of existing homes.<sup>68</sup>

Table VI: Defects in Existing Homes

Type of defect	Section			
	235 existing	518's	Foreclosures	Existing controls
Interior				
Plumbing . . . . .	53%	85%	71%	55%
Walls, ceilings, etc. . .	53%	62%	67%	23%
Heating . . . . .	45%	60%	61%	30%
Electrical . . . . .	35%	74%	74%	30%
Exterior				
Windows, porches, etc. .	48%	58%	70%	23%
Yards . . . . .	28%	42%	32%	18%
Vermin . . . . .	20%	35%	61%	25%
Roof . . . . .	40%	68%	68%	30%

<sup>66</sup>For the purposes of this study, an "ordinary homeowner" can be defined as one who has no special skills or training in any construction trade such as plumbing, roofing, or electrical work.

<sup>67</sup>For data on repairs needed on section 235 homes in Columbia, South Carolina, see *Columbia Study*, *supra* note 41, at 123.

<sup>68</sup>The most severe case of vermin infestation encountered was in one house near the Ohio River where not only were crawling insects visible but the owner stated that she saw snakes in her basement and did not know whether they were poisonous.

In new section 235 housing and new controls, the most frequently mentioned problems concerned the yard. Sixty-seven percent of new section 235 housing and fifty-three percent of new controls had problems with their yards. In contrast to the existing housing, these problems generally were relatively minor, such as getting grass and shrubs to grow, but more serious problems with topography were also included. Many houses were placed in such a way that back yards were virtually nonexistent, since the lot sloped off steeply into a ravine. Roof problems were mentioned by a few interviewees. Vermin infestation was not a problem in the new housing.

Ceiling-wall type problems were frequently mentioned by new homeowners. Generally these problems were inconsequential when compared to the serious problems found in existing housing, but a few serious problems were found. For example, one buyer found, when winter came, that his house had absolutely no insulation. Plumbing and heating problems were also not uncommon. Most notable were a group of houses erected by one builder, who had installed furnaces too small to adequately heat the homes in winter. Although the buyers were sure a larger furnace had been in the model home which they had seen, the model was no longer standing, and they were unable to prove their allegations.

While most of the problems mentioned were fixed by the builder following scheduled six- and twelve-month inspections made under the warranty, numerous interviewees felt frustrated and angry that their complaints had been handled so slowly. They were also angry about problems which recurred which the builder seemed unwilling or unable to fix permanently. Most notable among these complaints were those of dying shrubs which were replaced, by new ones which also later died. The problem seemed to stem from substandard rocky topsoil which had been laid originally.

*Table VII: Defects in New Houses*

<i>Type of defect</i>	<i>Section 235 houses</i>	<i>New control houses</i>
Exterior		
Yards .....	67%	53%
Roofs .....	18%	10%
Interior		
Plumbing .....	20%	28%
Heating .....	20%	23%
Electrical .....	5%	13%

The section 104 group by definition experienced problems with their homes, but foreclosures were found to have had problems

similar in type and quality to the section 104's.<sup>69</sup> To find out how well section 104 had done its job, inquiry was made of these purchasers to determine whether the requested repairs were done, and, if so, how satisfactorily. In the group of forty surveyed, the FHA corrected an average of 3.4 problems per house, at a cost, according to FHA records, of \$1,800 per house. However, despite this large outlay, section 104 was not without its problems. Many of the repairs which apparently should have been made were not in fact corrected. Only sixty-eight percent of the plumbing problems in the section 104 group received corrective governmental assistance. Likewise, only seventy-two percent of the electrical problems, seventy-four percent of roof problems, seventy percent of exterior problems, fifty-six percent of ceiling-wall type problems, seventy-one percent of heating problems, forty-three percent of vermin problems, and twenty-four percent of yard problems were, according to the respondents, corrected by means of section 104 aid.<sup>70</sup>

Since members of the foreclosed group were, by definition, no longer in their houses, systematic observations of them were not possible. However, visits to a few of these homes revealed that many were merely shacks. Others had been razed and still others were in areas where the entire neighborhood had been virtually abandoned. There is no doubt that many of the homes lost by foreclosure were among the worst in the Cincinnati area. It must be added, however, to complete the picture, that other foreclosed houses appeared neat and maintained from the outside and that these owners had been far better off in them than they were when interviewed in new surroundings, which most often were rat-infested public housing.

A minority of houses in any category were completely free from problems requiring major or minor repairs during the home-owning experience of the interviewee. The total average number

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<sup>69</sup>This data can be found in Table VI.

<sup>70</sup>12 U.S.C. § 1735b(b) (1970). One other problem which frustrated the purpose of section 104 was the failure of the FHA to notify home buyers of their rights under the section. Only twenty-eight percent of existing purchasers could remember receiving notice that FHA repairs were available. Of the group which received section 104 repairs, thirty-three percent reported that they did not receive a notice that the FHA would make repairs, but had managed to obtain such repairs because they had initiated persistent complaints to the FHA.

A copy of the letter sent to homeowners notifying them of their rights to have section 104 repairs performed can be found in EDSON & LANE, *supra* note 4, at 5:126.

of problems per house gives a more accurate indication of the condition of the house and the frustrations of homeownership. As summarized in Table VIII, those in the foreclosed group had the most difficulty, with an average of seven problems per house, while the new control houses experienced the fewest problems with approximately three each.

*Table VIII: Number of Problems Per House*

<i>Section 235 purchasers</i>	<i>Average number of problems</i>	<i>Percent of homes with no problem</i>
New .....	3.5	15
Existing .....	4.6	18
§ 104's .....	6.3	0 (by definition)
Foreclosed .....	7.0	6
<i>Control purchasers</i>		
New .....	3.2	25
Existing .....	3.8	30

While the section 235 purchasers had more problems in every case than their control counterparts, this data demonstrates the misleading character of one of the major criticisms of the program voiced during the 1970 congressional hearings, namely, that purchasers were bilked by buying inferior houses from unscrupulous realtors. Many of the houses sold to section 235 purchasers were, indeed, in need of repair. But these problems were not at all the exclusive province of section 235 homes. In each category of repair, both groups experienced significant hardship. The greatest difference between the two groups was in the "ceiling-wall" category which is likely to be most easily cosmetized. The fault appears to lie not in the program, but in the kinds of homes which are available to any purchaser in this price range. If the Cincinnati Study shows nothing more than this, it is significant, for it focuses the spotlight on the real source of the problem, namely, insufficient funds to purchase adequate housing and lack of sufficient policing of FHA inspections to screen out the bad houses. The data which shows that control groups had numbers of problems similar to the section 235 groups also disproves the thesis of some that people who buy section 235 houses will not take care of them and hence are the real "villains".<sup>71</sup>

##### *5. Reactions of Purchasers*

While it is possible to label specific defects as "problems," the critical question is whether the purchasers saw these problems

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<sup>71</sup>1970 HEARINGS, *supra* note 22, at 4; Comment, *Exploiting the Home-buying Poor: A Case Study of Abuse of the National Housing Act*, 17 ST. LOUIS U.L.J. 525, 530, 540 (1973).

as significant. In five of the six groups interviewed a majority of purchasers expressed satisfaction with the homes they had purchased, while only in the foreclosed group were a majority dissatisfied. Specifically, seventy-three percent of existing section 235 owners were satisfied, and eighty percent of existing control owners also were satisfied. In both new section 235 and new control housing, eighty-five percent were satisfied. But in houses requiring section 104 repairs the number dropped to fifty-three percent, and of the foreclosed owners, a mere twenty-six percent expressed satisfaction with the homes they had lost.

The most prevalent cause of dissatisfaction was the high number of repairs required. Dissatisfaction with "neighborhood" was mentioned in only five instances in all of the groups combined. Another factor which frequently influenced negative responses to this question was costly utility bills, especially in the larger, more poorly insulated older houses.<sup>72</sup>

Answers to the question "If you had it to do over again, would you buy the same house?" revealed significant dissatisfaction in all groups. Predictably, the majority of section 104 buyers, sixty-five percent, and foreclosures, sixty-one percent, answered in the negative. In thirty-six percent of existing section 235 housing and forty-three percent of existing control housing, the buyers would not buy the same house again. In new section 235 housing, twenty-three percent replied that they would not do so, while in new controls thirty-six percent replied in the negative. It is noteworthy that the control groups in both instances showed greater dissatisfaction than did the section 235 purchasers. Hence, the seemingly high percentages are no indication of weakness in the section 235 program.

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<sup>72</sup>Utility bills can indeed add substantial unexpected amounts to the price of home upkeep. Purchasers should be warned about this and an additional subsidy should be given when they are especially burdensome. This suggestion is made notwithstanding the fact that the amount of subsidy was originally set after considering utility expenses. The portion of income which a buyer must contribute toward house payments was set at twenty percent instead of twenty-five percent for the reason that utility bills can be expensive. *Hearings on H.R. 15624, H.R. 15625 and Related Bills Before the Subcomm. of the House Comm. on Banking and Currency, 90th Cong., 2d Sess., pt. 1, at 77 (1968).*

Utility bills have also been credited with causing discrimination against those living in colder parts of the nation, in that the subsidy formula is not adjusted to account for the fact that persons living in warmer climates pay much less in total housing costs, since their utility bills are much lower. See B. Frieden, *supra* note 56, at 9.

Home buyers reacted to the need for repairs in diverse ways. In existing section 235 housing, while only seven persons responded that their houses were free from problems throughout their home-owning experience, twenty-nine had spent nothing on repairs. Those who made repairs spent an average of \$418 during the period of ownership. Additionally, six of the purchasers of existing section 235 houses reported that they had spent some money on home improvements, averaging \$1,790 per house. In existing control housing, twelve purchasers reported their houses free of problems, while twenty-four spent no money on repairs. The average repair cost in this group was \$500. Fourteen families in existing control housing, however, contrasted with six in the existing section 235 housing, had made home improvements which averaged \$1,130.

In the section 104 group, although no house was without problems, eighteen interviewees reported spending nothing of their own on repairs, while the average spent was \$198. Finally, in the foreclosed group, only two reported having no problems, but ten spent nothing on repairs, and the average amount spent was \$248. Clearly, a number of persons in each group of existing housing made substantial efforts toward the maintenance of their houses, just as many did or could make no effort at all.

The new houses were all under warranty from the builder throughout most of the interviewees' ownership, and these purchasers had, for the most part, not yet had to face this type of maintenance cost. Thus, in eighty-eight percent of new section 235 housing and ninety percent of new control housing, purchasers had so far spent nothing on repairs. Substantial amounts had been invested, however, in home improvements in each of the new housing groups. Forty-five percent of those in new section 235 houses had made improvements at an average cost of \$275. In new control housing, fifty-three percent had made substantial improvements averaging \$520.

#### *B. The Sales Transaction*

Among the charges leveled at section 235 during the 1970 hearings were high pricing and unethical conduct allegedly engaged in by many of the persons involved in the sale transaction. Implicit in these charges was the suggestion that the purchaser of a section 235 house was especially vulnerable to harmful influences or was ignorant of important aspects of home buying, including the law regarding the sale and the need for professional assistance such as that of an attorney and house inspector. The Cincinnati Study sought to ascertain the extent of the naïvete among the

purchasers. The findings, detailed below, lend little, if any, support to the view that section 235 purchasers are particularly ignorant of the law. Home buyers in all six groups lacked such knowledge and failed to avail themselves of various types of protection such as might be afforded by an attorney's or house inspector's services.

### 1. *Reasons for Desiring to Buy a House*

An important consideration in determining whether section 235 purchasers were less adequate home buyers must be their reasons for the purchase. As Table IX indicates, a substantial number of these purchasers had been or were about to be forced to move. Whatever this may say about their economic or residential stability,<sup>73</sup> such an impetus to buying a house must work to the disadvantage of any purchaser who knows that within days, or weeks at most, a new home must be found.

*Table IX: Most Usual Reasons for Purchasing a House*

	<i>Percent forced to move</i>	<i>Percent desiring a house</i>	<i>Percent needing space</i>
<i>Section 235 purchasers</i>			
New .....	3	48	23
Existing .....	33	20	18
§ 104's .....	28	28	20
Foreclosed .....	19	39	16
<i>Control purchasers</i>			
Existing .....	25	40	10
New .....	5	48	18

In any event, there is no clear distinction between 235 purchasers, as a group, and control purchasers on the forced-to-move criterion. However, it may be that section 235 purchasers who were forced to move just prior to their purchases, experienced a greater degree of desperation than control purchasers. The very fact that they qualified for section 235 assistance means that they probably had no money to utilize while they took time to search for decent accommodations. In fact, several interviewees specifically mentioned that they were caught in this situation and so were easily pressured by real estate agents into buying the first house which they saw. Some of the worst houses were bought under these circumstances.

It is also noteworthy that a substantial number of persons moved from prior residences simply because they preferred living in a house of their own.<sup>74</sup> Such data lends support to the thesis

<sup>73</sup>See note 61 *supra* & accompanying text.

<sup>74</sup>Other researchers have collected similar convincing data on this point. For a discussion of such studies, see Sengstock & Sengstock, *Homeownership*:



underlying the section 235 program that homeownership is a widespread desire among lower-income persons as well as the rich.

## 2. *The Search for Housing*

Buying a house is no easy task. There are many factors in selecting a house, whether new or old, and many reasons for finally settling upon the one purchased. A second inquiry, then, was to determine whether there was a difference between section 235 purchasers and control purchasers in the extent of exploration or the final reason for selecting the residence purchased. It was hypothesized that the more deliberate the buyer was in selecting a house, the better house he would obtain.

Table X indicates that this may be so. Although there were more significant differences between purchasers of new homes, whether section 235 or control, on the one hand, and purchasers of existing homes, whether section 235 or control, on the other, the data demonstrates that here, in contrast to other areas, there seemed to be significant differences between the existing section 235 purchasers and the existing control purchasers. Fifty percent more of existing section 235 buyers looked at the final house only once before purchase than did their control counterparts. More startling is the figure on bargaining. Fifty percent of the existing control purchasers bargained significantly over price, while a very small percentage of all three groups of the nonnew section 235 housing did so.<sup>75</sup> Also, the control purchasers tended to look at more houses than did the section 235 purchasers of similar houses.

Table X: *Home Investigation*

Section 235 purchasers	Percent who saw only house they bought		Percent who did not see whole house	Number of times house seen before contract signed			Percent who bargained over price
	Average number of homes seen	once		twice	more		
				(%)	(%)	(%)	
New . . . . .	10	5	13	30	18	52	N.A.
Existing . . . . .	28	5 or less	0	32	33	35	13
§ 104's . . . . .	35	5 or less	13	40	18	42	20
Foreclosed . . . . .	35	5 or less	6	38	16	46	3

*A Goal for All Americans*, 46 J. URBAN L. 313, 318 (1969). The authors also made their own study. *Id.* at 320.

<sup>75</sup>New housing prices were found to be inflexible shortly after the study was begun, and thus the bargaining question was soon dropped.

*Control  
purchasers*

New . . . . .	5	more than 10	13	23	18	59	N.A. <sup>76</sup>
Existing ..	13	more than 5	5	23	35	42	50

The contrast which these figures reveal between section 235 purchasers and their control counterparts can best be explained by two factors. (1) The desperation factor, as discussed above,<sup>77</sup> which probably causes many low-income persons to be unable to make a carefully calculated decision. Any house will relieve the pressure of the momentary homelessness, so a quick and impulsive decision is made to buy. (2) The syndrome of the poverty-stricken, alluded to by sociologists,<sup>78</sup> which consists of feelings of helplessness, insecurity, and alienation, may also have some impact here. The authors sensed such feelings on the part of many interviewees signified by their resigned acceptance of their plight when faced with hopelessly expensive utility bills, repair bills, and the imminent loss of their homes. Indeed, the bureaucracy which surrounds a home purchase is complex, consisting of a real estate agent, a lending bank, and the FHA. When trouble arises, city building inspectors, social workers, and housing specialists may become involved. Thus, the poor may have difficulty communicating their problems to the proper agency and are constantly awed by the complexity of both the initial sale and the later repair channels. In the purchase transaction, however, the poverty syndrome may have led many poor buyers to feel that they could not insist on seeing more than one house, or at most, a few houses. To ask for such a service would be "ungrateful" or "more than they deserved." Unfortunately, as the figures show, those purchasers who looked at fewer houses, for whatever reasons, were more likely to experience greater problems, signified by foreclosures and section 104 repairs.

Although not included in Table X, the data showed no significant difference among the groups based upon the time spent in weighing the decision to buy. In all groups, one-fourth to one-third of the purchasers decided to buy their homes the same day they first saw them, and a majority of all groups except the foreclosures made the decision to buy within one week of seeing the houses. In conjunction with the finding that existing 235 purchasers tended to look at fewer houses than other home buyers, these figures indicate that one cause of later dissatisfaction may have

<sup>76</sup>It appeared that prices on new homes were not open to negotiation.

<sup>77</sup>See note 73 *supra* & accompanying text.

<sup>78</sup>See, e.g., HEW, *LOW INCOME LIFE STYLES 2* (1971).

been the buyers' carelessness in selecting houses. Even if hurried decisions were unavoidable for those who were forced to leave prior homes and there may have been only a limited selection of housing available within the buyers' price range, a basic education in comparison shopping could have greatly benefited purchasers with no homeownership experience.

A surprising number of persons indicated that they had not even had the temerity to look at the entire house they bought before they signed the sales contract. One buyer related that she was not shown the second floor of the house because children were asleep when she came to look at it. She later discovered major problems with a leaky roof. Another buyer had lived in her house for several months when she accidentally noticed a stairway leading to an undiscovered third floor. Both stories illustrate the carelessness with which section 235 homes are often shown.

Interviewees were also asked why they chose the house which they finally bought. Space for children was the most frequent response from existing section 235 purchasers, but not nearly so important for existing control or new housing purchasers. Neighborhood was the second most frequently mentioned consideration for existing section 235 purchasers, while it was the most important reason among existing control purchasers. Neighborhood, however, was not important to new home owners. Price and floor plan, more than other factors, seemed to influence new home buyers, both section 235 and control purchasers. Generally, the economic situation of the purchasers influenced what they looked for in a home. Groups having greater economic freedom, as did the existing control, new section 235 and new control purchasers, were more concerned with amenities and prices, whereas those purchasers in more difficult economic situations were most concerned with space and neighborhood.

Table XI: *Prime Reasons for Selecting the House Bought*<sup>79</sup>

	<i>Only one they saw</i>	<i>Neighborhood</i>	<i>Space for children</i>	<i>Price</i>	<i>Floor plan</i>	<i>Other</i>
<i>Section 235 purchasers</i>						
New .....	2%	5%	20%	25%	22%	27%
Existing .....	13%	18%	40%	5%	8%	30%
§ 104's .....	18%	20%	23%	8%	15%	35%
Foreclosed .....	3%	23%	10%	19%	5%	43%
<i>Control purchasers</i>						
New .....	3%	8%	18%	30%	33%	14%
Existing .....	3%	33%	10%	25%	23%	10%

<sup>79</sup>In the Columbia, South Carolina, study "quality or early availability date" was the most frequent response to a comparable question. "Neighborhood" and "location" were next. See *Columbia Study*, *supra* note 41, at 130.

Other data, summarized in Table XII, demonstrates that all of the purchasers in the Cincinnati Study were unsophisticated about the use of professional home inspection services, although as suggested below, this may be due to a misconception of the FHA's role in the transaction.<sup>80</sup>

Table XII: Professional Assistance

	Percent who used their own professional inspectors	Percent who hired their own attorneys
<i>Section 235 purchasers</i>		
New .....	N.A.	5
Existing .....	13	8
§ 104's .....	8	2
Foreclosed .....	6	2
<i>Control purchasers</i>		
New .....	N.A.	8
Existing .....	10	10

Few in any of the groups used the services of an attorney in their purchases.<sup>81</sup> Attorneys could have provided guidance by requiring greater care in the prepurchase inspections and might, by their presence alone, have elicited greater cooperation from the sellers. Need for attorney services can be dramatically demonstrated by the fact that a significant number of buyers relied on the promises of sellers or real estate agent to make repairs, without demanding that these promises be placed in the contracts of sale.<sup>82</sup> At least some standard form sales contracts used by new housing sellers provide additional evidence that an attorney's services are vital. These contracts provided virtually no protection for buyers, who usually bought unconstructed houses on the promise that their houses

<sup>80</sup>See note 86 *infra* & accompanying text.

<sup>81</sup>James Condit, who was director of Cincinnati's Lawyers for Housing before it went out of business for lack of funds, has deplored the fact that so few Cincinnatians purchasing section 235 homes had private attorneys. Condit, *Cincinnati Director's Report*, 4 URBAN LAW. 326, 329 (1972) [hereinafter cited as J. Condit]. He cites as reasons for this situation that (1) many poor families view even a slight additional expense for a lawyer as too much, and (2) a misunderstanding by low-income purchasers that someone else, such as lending institutions and the FHA, is looking out after their interests by searching titles and inspecting the houses. They are thus led into a false sense of security. Condit believes that abuses in the section 235 program would "never have developed to the proportions they did if low-income families had been represented with the benefits of even minimal scrutiny by an attorney." *Id.* at 329. He recommends that HUD allow attorney fees to be included in closing costs.

<sup>82</sup>When questioned about their satisfaction with the services of real estate agents, the most significant recurrent complaint concerned the unfulfilled promises of sellers and agents to make repairs.

would conform to the models which they saw. Yet there was no description of the model in the contract, and often buyers believed they were buying a fully equipped home as earlier viewed by them, when many of the features were options which could be obtained only at additional cost. One section 235 purchaser believed he was buying a finished family room with his house and did not discover that he had barren basement walls until he moved in. Still another group of buyers found out too late that the furnaces they had bought were too small to properly heat their houses. Although they were sure that the model which they had seen had contained a larger furnace, the models had since been torn down, and their sales contract provided them with no proof of their allegations.

Even if one were to think that any reasonable purchaser would understand that finished family rooms cost extra money, it is not nearly so evident that anyone would stop to question whether a back door was optional at extra cost. Yet this was the situation in several of the developments in the Cincinnati Study. Many families in new housing angrily denounced the fact that this was not pointed out to them at the time they purchased the house. They felt that it was not only inconvenient but dangerous not to have a back door. Presumably the back door option was not pointed out to section 235 purchasers since this "extra" would have raised the cost above the statutory limit, and so it remained in fact an option closed to them. Nevertheless, they should have understood what they were buying.

Additionally, the standard form contract which the authors observed being used by new housing developers provides that the seller may substitute comparable materials if he is unable to procure those seen in the model. This vague phrase seems open to abuse, although one seller assured the authors that such substitutions are in fact submitted to the buyer for approval. But what if such approval is not sought or obtained? The buyer has no written protection. Surely an attorney would warn a client of the dangers of signing such a vague and unsatisfactory document.

Finally this study examined the understanding of section 235 purchasers of the legal aspects of the transaction. While virtually no section 235 purchaser understood that mortgage payments might be increased by any one of three occurrences,<sup>83</sup> a large percentage were aware that income changes would affect payments.

In light of the purchasers' lack of awareness on many issues, the authors were surprised to find that high percentages of buyers

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<sup>83</sup>These are an increase in property taxes, an increase in insurance costs, or a change in family size. See 12 U.S.C. § 1715z(c)(1) (1970).

in all six groups knew that they could deduct the interest paid on their mortgages on their federal income tax returns. Sixty percent of those in existing section 235 housing knew that they could, compared with eight-eight percent of those in existing control housing. In new section 235 housing, seventy-five percent of the purchasers knew that they could deduct interest, as did eight-five percent of new control purchasers. In section 104 housing and foreclosures, a lesser number, but still substantial, forty-five percent and thirty-nine percent respectively, knew that they could deduct the interest. The Internal Revenue Service has ruled that recipients of section 235 subsidies need not report the subsidy as income but that they can nevertheless deduct the full interest payment from their taxes.<sup>84</sup>

Most important in the section 235 buyer's understanding of the transaction is an awareness of the FHA's role.<sup>85</sup> This is crucially important, for unless it is properly understood, the buyer will place undue reliance on the FHA inspection. While the FHA has never guaranteed anything to the home buyer, more than fifty percent of each section 235 group relied on the FHA inspection to find serious defects in the house.<sup>86</sup> Although the FHA will disclose to the buyer defects found by appraisers which must be corrected before the transaction will be approved, the FHA inspection is not primarily intended to protect the buyer, but rather to assure that the value of the house is equal to the amount of the mortgage insured by the FHA.

## V. CONCLUSION

Despite the adverse publicity which the section 235 program has received, the Cincinnati Study found much to recommend its continuation. The high degree of satisfaction of the homeowners themselves supports this assessment.<sup>87</sup> Owners of both new and existing section 235 homes expressed satisfaction

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<sup>84</sup>The service has taken this position in a letter ruling made public. 2 P-H 1974 FED. TAXES ¶ 13,040(10).

<sup>85</sup>This problem is also noted in AUDIT REVIEW, *supra* note 23, at 55.

<sup>86</sup>Seventy-seven percent in existing section 235 housing relied on the FHA; in existing controls, sixty-eight percent were purchased under conventional FHA-insured mortgages and sixty-four percent of these relied on the FHA inspection. In new section 235 housing, sixty-three percent relied on the FHA, as did seventy-three percent of the twenty-two new controls purchased under conventional FHA mortgages. Among section 104 purchasers, seventy-three percent relied on the FHA, while among foreclosed purchasers, sixty-eight percent relied. Additionally, nearly fifty percent of each group thought that the FHA guaranteed the quality of the house to some extent.

<sup>87</sup>See p. 777 *supra*.

nearly equal to that of similarly situated control homeowners. Additionally, most appeared to be living in better circumstances than they were before their home purchases. While most had previously rented apartments or occupied public housing, they were at the time of this study situated in their own homes which more adequately fulfilled their needs at little increased cost. Generally, these families had more room, a yard, greater privacy, and a better neighborhood. For many large families the section 235 program provided the *only* opportunity for comfortable living. Furthermore, these authors found that, contrary to the impression created by the storm of adverse publicity, both new and existing section 235 homes tended to be only slightly more problem-plagued than those in the control groups. Finally, in contrast to rent subsidy or public housing provisions, the section 235 program allowed families complete freedom in choosing housing locations, limited only by their incomes. Although new section 235 housing tended to be clustered in suburbs chosen by developers, the older housing was scattered throughout Hamilton County.

Although congressional intent was originally to phase out subsidies for existing housing, these authors conclude that existing housing is a valuable and an important part of the program. Since only the more moderate income participants within the group qualifying for section 235 aid can afford the new housing, elimination of the existing housing subsidies would screen out many whom the program was meant to serve and those in greatest need of its benefits.<sup>88</sup> More compelling is the fact that in cities where the cost of living is greater than in Cincinnati, elimination of existing housing would effectively terminate the entire program. In some northeastern cities new housing cannot be built for prices within the statutory limits because of high land values and construction costs. Finally, if only new housing were subsidized, the purchasers would probably tend to be young, white married couples. The large, often black ghetto family, for whom the income floor for federally subsidized housing was lowered by amendments prior to section 235's original enactment,<sup>89</sup> would remain trapped in rental housing.

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<sup>88</sup>Arguing that the emphasis on new construction is to a great extent in open conflict with the benefits of low-income homeownership, V. Bach agrees with this conclusion. V. Bach, *Subsidizing Homeownership Through the 235 Program: The Wrong Instrument for the Right Purpose* 5 (Working Paper #2 of the Joint Center for Urban Studies of M.I.T. and Harvard University, 1971) [hereinafter cited as V. Bach].

<sup>89</sup>Act of Sept. 23, 1959, Pub. L. No. 86-372 § 503(a), 73 Stat. 680; Act of July 12, 1957, Pub. L. No. 85-104 § 401(a), 71 Stat. 301. Both amend-

In addition to the poor physical condition of many huoses, one criterion of failure which opponents of the program cite is a high foreclosure rate. The Cincinnati Study revealed a foreclosure rate among section 235 buyers of approximately five percent, a rate somewhat higher than that of their control counterpart. However, it is not clear that this elevated foreclosure rate justifies labeling the program a failure. First, the benefits of the program seem to outweigh the slightly higher risk assumed when dealing with low-income buyers. Such risk must be considered as inherent and "acceptable," even though it is slightly higher than normal. Second, it is possible that when a payment is missed, low-income purchasers are treated more harshly by mortgagees than are middle-income buyers,<sup>90</sup> so the comparison of foreclosure rates is not a valid measure of the success of the program. And third, if the foreclosure rate appears threatening, corrective measures would not be difficult to establish.<sup>91</sup>

However, the Cincinnati Study found that most of the adverse publicity directed toward the section 235 program is not without foundation. Many of the existing homes were dilapidated and a few were uninhabitable. The FHA should have refused to insure mortgages on them and warned buyers to stay clear of them. The FHA appraisal was often inadequate to protect the buyers' or even the government's interest. Houses were insured that should not have passed the most rudimentary inspection, and many buyers did not have the necessary skills or experience to recognize defects in them. Even if they possessed these skills, many low-income buyers were desperate for housing and eager to buy the first house shown to them.

In addition to the problems which should have been obvious at the time of sale, many purchasers were without the necessary financial resources, or the necessary understanding of the need for repairs and upkeep. The data collected clearly shows that these purchasers did not make repairs as they were needed. Although financial difficulties were not widespread among section 235 purchasers generally, a significant number of foreclosures were occasioned by inevitable or unforeseeable crises, such as strikes and illnesses of short duration. However, this type of temporary

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ments have since been superceded. See 42 U.S.C. § 1402(1) (1970), as amended, 42 U.S.C. § 1402(1) (Supp. I, 1971).

<sup>90</sup>See note 97 *infra*.

<sup>91</sup>See *Forebearance Agreements* p. 815 *infra*.



problem is not difficult to remedy through corrective legislation.<sup>92</sup> Indeed the lack of provisions to cover these types of emergencies constitutes a glaring omission in the original act, particularly considering that the purpose of section 235 is to aid low-income purchasers who are the very persons most subject to financial collapse during temporary crises.

Despite the problems evident in the section 235 program, it seems undebatable that not only is homeownership traditionally a favored form of housing, but that it may be so with good reason. Offering more space and privacy, a house constitutes a very different type of physical accommodation than does a rented apartment. Indeed for the large family, there may be few, if any, viable alternatives. It would be a gross misjudgment by Congress to fail to recognize the benefits which the section 235 program offers.<sup>93</sup> Although reforms are needed, the Cincinnati Study demonstrates that at least in one geographic area the section 235 program is a highly beneficial and reasonably successful one.

## VI. RECOMMENDATIONS FOR REMEDIAL LEGISLATION

The section 235 program should not be abandoned since its benefits appear to be great and its problems controllable. Recommendations for remedial legislation follow. Naturally, not all need be adopted, but adoption of at least some of them should be forthcoming to improve the program's success.

1. *Existing Housing.*—Funding for existing housing should be continued and should be increased. Existing housing meets the needs of large families and poorer families, neither of which are adequately served by other government-sponsored housing programs or by new section 235 housing. Such existing housing, if adequately inspected and repaired prior to sale under section 235, may also slow the decay of inner cities.

2. *Price Ceilings.*—Limitations on prices of houses that can be purchased under the program should be substantially raised to reflect increasing construction costs. Statutory limits should be flexible to allow for inflation and for varying construction costs around the country.<sup>94</sup> For example, families should not have to

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<sup>92</sup>*Id.*

<sup>93</sup>It is beyond the scope of this Article to compare the advantages of direct subsidies, as recently proposed by the President, note 34 *supra*, with the advantages of section 235.

<sup>94</sup>This suggestion has been made by other authors. See, e.g., Krooth & Sprogens, *The Interests Assistance Programs—A Successful Approach to Housing Problems*, 39 GEO. WASH. L. REV. 789, 813-14 (1971).

purchase houses without back doors because the slight additional cost would put them over the legislative cost limit. Such arbitrary restrictions tend to defeat, rather than promote, the goal of "a decent home for every American."

3. *Counselling.*—Home ownership counselling should be provided by the FHA to educate buyers concerning the buying process and normal home maintenance expenses.<sup>95</sup> As an adjunct to this counselling, the FHA should draw up a pamphlet explaining the basics of the real estate transaction, such as possible real estate tax increases, home upkeep, and the role which the FHA plays. Finally, the mortgagor should be informed in writing concerning the repairs which the FHA has required on the purchaser's house prior to its approval of insurance on that house. Such a requirement would put the homeowner more completely in control of repair problems which may arise later and would automatically create a check on the repairing contractor, since no one but the homeowner will be in a position to report such problems as they arise.

The counselling program would either be paid for completely by the federal government or charged to the buyer and prorated over his mortgage term. If as little as twenty-five cents were added to each payment over a thirty-year period, discounting interest, one purchaser would be supporting the counselling service to the extent of ninety dollars.

4. *Racial Integration.*—The FHA should act affirmatively to further racial integration in new housing sold under section 235 by means of an advertising campaign. This campaign could

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<sup>95</sup>Potential counselling services are already provided for. 12 U.S.C. § 1701y (1970). This provision creates the National Homeownership Foundation to carry out programs which would encourage public and private organizations to provide increased housing opportunities for low-income families, including programs of counselling. *Id.* §§ 1701y(a)(1)(B), (c)(1)(G). However, little if any counselling has flowed from this provision, at least in Cincinnati. The only counselling available in Cincinnati, on a very limited basis, is provided by the Better Housing League of Greater Cincinnati, 2400 Reading Road, Cincinnati, Ohio.

Section 237 of the 1968 Act also provides for the counselling of low-income families with poor credit histories in order to qualify them for section 235 purchases. *Id.* § 1715z(2). Unfortunately, this program has not been funded in most areas of the country, including Hamilton County, Ohio.

Counselling is recommended in virtually every report written on section 235. See, e.g., Note, *Abuses in the Low Income Homeownership Programs—The Need for a Consumer Protection Response by the FHA*, 45 *TEMPLE L.Q.* 461, 478 (1972); V. Bach, *supra* note 88, at 15; *AUDIT REVIEW*, *supra* note 23, at 56.

sponsor advertisements in black publications and could feature pictures of blacks living in new housing communities.

5. *Attorneys.*—Attorneys should be required to represent the buyer in all section 235 purchase transactions. A reasonable fee could be prorated over the term of the mortgage and would add only a minimal amount to each mortgage payment. Based on the customary attorney's fee for home purchase transactions in some sections of the country, one percent of the purchase price of the house, purchase of a \$20,000 house would incur a \$200 legal fee. If this were paid initially by the FHA and the buyer allowed to repay it over the term of his thirty-year mortgage, discounting interest, fifty-five cents would be added to each payment. For a less expensive house, the amount would be less. This additional cost is well justified since it will help to assure better inspections and more equitable sales contracts,<sup>96</sup> as well as better understanding on the part of the buyer.

6. *Forebearance Agreements.*—Mortgage contracts should contain an agreement by the mortgagee to forebear from foreclosing on the mortgaged house and to extend the mortgage term in the event payments are missed due to a temporary emergency, which could be statutorily defined and limited. Such a forbearance agreement would eliminate the possibility that a buyer would lose a home because of a temporary and unavoidable emergency, such as a layoff or strike.<sup>97</sup>

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<sup>96</sup>HUD reports that the problem of the vague sales contract is widespread and suggests that the FHA could provide additional protection for the buyer by drawing up a sales contract to be used in all section 235 transactions. AUDIT REVIEW, *supra* note 23, at 53-57.

<sup>97</sup>It has been recommended that forbearance be readily available to the low-income purchaser in trouble, consistent with the intent that in the case of low-income families foreclosure be only a last resort. See J. Condit, *supra* note 81, at 330. Condit believes that the low-income family is held to a higher standard of performance than more affluent families who would not lose their houses in the event they were beset by a temporary economic emergency. Usually, when the low-income family finds itself in trouble, all the money due is demanded from it each month, along with late charges, and partial payments will not be accepted. Naturally, beginning in the second month, such family finds it impossible to catch up, and foreclosure becomes imminent.

In reality, as Condit reports, FHA regulations allow mortgagees to forebear up to eighteen months without notifying the FHA. *Id.* at 331. In addition, there are several forbearance options as alternatives to foreclosure, including acceptance of partial payments or allowing the FHA to take over the mortgage and pay it off while the family is disabled. However, these alternatives are ignored by most mortgagees. In fact, one study reports that refusal to forebear is used by mortgagees for the purpose of forcing fore-

7. *Unexpected Repairs—Savings Provisions.*—There are several possible ways to help the homeowner handle unforeseen and necessary repairs so that they do not create bills impossible to meet. An escrow account could be set up into which the buyer would pay a certain minimal amount each month, perhaps two dollars, along with his mortgage payment. This money would be accumulated and, along with the interest it earns, would be payable to the buyer for necessary home repairs. Such a provision could probably only accumulate funds sufficient for minor problems, since a buyer could not reasonably be expected to pay much additional each month. Some may argue that even two dollars a month would be excessively burdensome. In the alternative, or in addition, the seller could be required to place some amount in an escrow account for repairs needed during the first year of ownership for defects existing at the time of sale. Still another alternative to protect the home buyer against excessive expenses emanating from defects in the house would be to require the mortgagee to give a limited guarantee on its fitness.<sup>98</sup>

8. *The FHA's Role.*—A basic reappraisal of the FHA's role in the section 235 program is necessary. That agency must view itself in part as a social welfare agency and broaden its restricted role of mortgage insurer.<sup>99</sup> In such a role, it would assume more responsibility for the condition of houses sold through the section 235 program. Consonant with this role, it could also, for example, run counselling programs as suggested above.<sup>100</sup>

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closure and that this occurs frequently among disadvantaged purchasers. Comment, *Exploiting the Home-buying Poor: A Case Study of Abuse of the National Housing Act*, 17 ST. LOUIS U.L.J. 525, 557-58 (1973).

<sup>98</sup>See Note, *Abuses in the Low Income Homeownership Programs—The Need for a Consumer Protection Response by the FHA*, 45 TEMPLE L.Q. 461, 474 (1972); Note, *Liability of the Institutional Lender for Structural Defects in New Housing*, 35 U. CHI. L. REV. 739 (1968).

<sup>99</sup>As reported in the 1970 congressional hearings investigating section 235 purchases, the "FHA views itself solely as a mortgage insurer whose interest is in the adequacy of the security for the loan rather decent safe and sanitary housing for people." 1970 HEARINGS, *supra* note 22, at 4-5. This caveat emptor attitude was characterized as "unrealistic." *Id.* at 5. See also LeClerq, *Entitlement Under Section 235*, 25 S.C.L. REV. 1, 50 (1973).

The recommended change in FHA attitude is deemed essential by the author in Note, *Abuses in the Low Income Homeownership Programs—The Need for a Consumer Protection Response by the FHA*, 45 TEMPLE L.Q. 461, 469-75 (1968). HUD appropriately describes the FHA as not consumer-oriented. AUDIT REVIEW, *supra* note 23, at 6.

<sup>100</sup>See note 95 *supra* & accompanying text.

9. *Fee Appraisers.*—To insure that houses are properly appraised, fee appraisers must not be used and the appraisers who are employed directly by the FHA must be trained and adequately supervised.<sup>101</sup> In addition, pressure on appraisers to do an unrealistic volume of work must be eliminated.<sup>102</sup>

10. *Regressive Subsidy Scale.*—The regressive features of the subsidy scale should be eliminated.<sup>103</sup> Poorer persons should receive greater subsidies than those who are able to afford the more expensive homes under the program. Presently, the amount of subsidy can be all but one percent of the interest. Naturally, the more expensive the home, the more interest is involved, and therefore the greater the subsidy. Since only the least needy families can qualify to buy the more expensive homes, they receive more assistance than do poorer purchasers. If this subsidy feature were reversed, poorer families could buy better houses and be less plagued by the faulty conditions prevalent in the cheaper homes.

Additionally, the subsidy scale should be adjusted so that utility costs become an element in the subsidy determination. Presently, people in northern and southern climates bear unequal burdens in this regard since colder climates necessitate higher utility costs.

11. *Enforcement Powers of the FHA.*—Legislation should be enacted empowering the FHA to protect home purchasers under its programs. These powers should include those of investigation, including subpoena power, litigation in the buyer's behalf, and criminal and civil sanctions against fraudulent representations which lead to the conveyance of a section 235 home.

12. *Home Inspection Standards.*—Not only should the standards under which the FHA insures homes be more strictly administered, but the standards themselves should be raised. The

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<sup>101</sup>Presently, many inspectors performing section 235 appraisals are inadequately trained. See 1970 HEARINGS, *supra* note 22, at 6. HUD has recognized that it has these problems with appraisers who often do inadequate inspections and are not subject to proper supervision by superiors. See generally AUDIT REVIEW, *supra* note 23. See also EDSON & LANE, *supra* note 4, at 5:14. Training and performance of FHA appraisers were at the heart of the complaint in Davis v. Romney, 355 F. Supp. 29, 35 (E.D. Pa. 1973), *aff'd*, 490 F.2d 1360 (3d Cir. 1974).

<sup>102</sup>See AUDIT REVIEW, *supra* note 23, at 8, for a thorough discussion of the appraisal problem.

<sup>103</sup>These features are discussed elsewhere. See R. TAGGART, LOW-INCOME HOUSING: A CRITIQUE OF FEDERAL AID 80 (1970); V. Bach, *supra* note 88, at 14; B. Frieden, *supra* note 56, at 9.

attitude should not be allowed to prevail in FHA ranks that "anything most poor purchasers buy is probably better than what they had."<sup>104</sup>

With these changes, a more successful program is possible. Section 235 clearly has benefits to bestow. And the costs of prevention outlined above should be less than those which the FHA has incurred in the past in its administration of the "curative" section 104 and of foreclosed properties, repossessed when purchasers were forced out of their homes by economic necessity or physical uninhabitability.

## APPENDIX

### QUESTIONNAIRE FOR FHA 235 PROJECT

1. Case Number: . . . . . Survey Number: . . . . .
2. Date of First Payment
 

Month: . . . . .	
Year:	1969
	1970
	1971
	1972
3. How long in house (in months):
4. Price of Home (Loan Amount + \$200 rounded to nearest thousand):
5. Type of Home:
 

	New
	Existing
6. Type of Seller:
 

	Real Estate Speculator
	Private Owner
	Developer
	Other

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<sup>104</sup>In *Northwest Residents Ass'n v. HUD*, 325 F. Supp. 65 (E.D. Wis. 1971), the district court held that property owners have standing to challenge the FHA's standards for real estate appraisals and mortgage approval done under section 235 auspices, and that the federal district court has jurisdiction to review FHA action in this regard. In this case, plaintiffs, in a class action, alleged that the FHA's permissive standards violated the stated statutory purpose of the National Housing Act of "a decent home and suitable living environment for every American family." See note 6 *supra*. The recent case of *Davis v. Romney*, 490 F.2d 1360 (3d Cir. 1974), reached the same result.

HUD itself recognizes that the "physical environmental standards required for properties to meet minimum acceptability requirements need to be reconsidered, upgraded or emphasized." *AUDIT REVIEW*, *supra* note 23, at 4.

## 7. Category of purchaser:

Male  
 Female  
 Husband and Wife  
 Co-mortgagors  
 Other

## 8. Age of purchaser: By impression: . . . . Asked: . . . .

Under 20  
 21-30  
 31-40  
 41-50  
 51+

## 9. Race of purchaser:

Caucasian  
 Afro-American  
 Other

I. *Information on the House Purchased*

## 10. How many bedrooms does this house have?

1  
 2  
 3  
 4  
 4+

## 11. How many bathrooms does it have?

1  
 2  
 2+

## 12. How much did you pay for this house? . . . . .

## 13. How much was the down payment? . . . . .

## 14. Monthly payments (from FHA): . . . . .

## 15. How much do you now pay in monthly payments for your house? . . . . .

## 16. Subsidy: . . . . .

II. *Questions on the Purchase Process*

## 17. How many homes did you look at before you purchased this home? . . . . .

## 18. How long after seeing the house did it take you to make up your mind to buy the house?

1 day or less  
 2 days—1 week  
 8 days—2 weeks

15 days—1 month  
1 month +

19. Did you see the whole house (or the whole model) before you decided to buy it?

Yes  
No

Why not?

20. Was this house inhabited when you came to see it? (existing house only)

Yes  
No  
DK

21. How many times did you examine this house (or the model)?

1  
2  
3  
3+

22. At what times of the day were you shown this house?  
Was that before or after dark?

Before dark  
After dark

23. Did you ask a professional building inspector to evaluate this house before you bought it?

Yes  
No  
DK

24. Did you rely on the FHA inspection to find anything that was wrong with the house?

Yes  
No  
Didn't know FHA inspected

25. What factor most influenced you to buy this house?

- (1) Good floor plan
- (2) Enough space for children
- (3) This was the only house we saw
- (4) Neighborhood or location
- (5) The price was right
- (6) Nice yard
- (7) Other

26. Why generally did you move?

- (1) Wanted a house instead of an apartment
- (2) Needed more space for children



- (3) Racial makeup of the new neighborhood is better than that of the old
- (4) Other reasons relating to neighborhood
- (5) Had to leave old residence
- (6) Other

27. Did you pay the price that the seller (real estate agent) asked or did you attempt to bargain for a lower price? For more features?

Did not bargain  
Bargained price  
Bargained features

28. Who was the real estate agent for this house?

29. How did you select the real estate agent with whom you dealt?

- (1) Friend recommended
- (2) Newspaper ad
- (3) Saw sign on property
- (4) Other

30. Were you satisfied with the services of the real estate agent with whom you dealt?

Yes  
No

31. If not, why not?

- (1) He promised to make repairs and didn't make them
- (2) He rushed us through homes
- (3) He didn't answer questions we asked
- (4) He didn't mention major problems
- (5) Other
- (6) Don't know

32. Did the real estate agent make any claims as to repairs for which FHA would be responsible?

Yes  
No

Comments:

33. Did anyone tell you that your choice of homes was limited if you bought under the 235 program?

Yes  
No

34. If yes, who told you that?

Real estate agent  
Seller  
Other

35. How did you first hear about the 235 program?
- (1) Social worker
  - (2) Legal Aid
  - (3) Real estate agent
  - (4) Loan company
  - (5) Friend
  - (6) Seller
  - (7) Newspaper
  - (8) Other
  - (9) Don't remember
36. Are you satisfied with the home that you bought?

Yes  
No

37. If not, why not?
- (1) Too many repairs
  - (2) Too costly to maintain
  - (3) Burden of home ownership greater than expected
  - (4) Don't like the neighborhood
  - (5) Other

### III. *Willingness to Make Repairs*

38. Have you ever employed a repairman?
- Yes  
No
39. If your house needed minor repairs (such as a leaky faucet, changing a fuse, or changing a furnace filter), would you either make the repairs yourself or hire a repairman?
- (1) Do it ourselves
  - (2) Hire a repairman
  - (3) Do it ourselves or hire a repairman, depending on the repairs
  - (4) Can't afford minor repairs
  - (5) Not willing to make minor repairs
  - (6) Don't know
40. If your house needed major repairs (such as rewiring, a new furnace, or a new roof), would you either make the repairs or hire a repairman?
- (1) Do it ourselves
  - (2) Hire a repairman
  - (3) Do it ourselves or hire a repairman, depending on the repairs
  - (4) Can't afford major repairs
  - (5) Not willing to make major repairs
  - (6) Don't know

IV. *Knowledge of Mortgage Contract  
and Legal Relationships*

41. Can your monthly payments go up?  
Yes  
No  
DK
42. If yes, for what reasons can they go up?  
(1) Increased income  
(2) Increased insurance  
(3) Increased taxes  
(4) Insurance and taxes  
(5) Insurance and income  
(6) Taxes and income  
(7) Insurance, income, and taxes  
(8) Don't know
43. Is the interest you pay on your mortgage loan deductible from your incomes taxes?  
Yes  
No  
DK
44. Did you know that FHA (Federal Housing Administration) played a part in your home purchase transaction?  
Yes  
No
45. Did you think that FHA was making any guarantees to you about the quality of the house?  
Yes  
No
46. Did you have an attorney's help when you bought your house?  
Yes  
No

V. *Problems with the House and Repairs*

47. Have you had any trouble with your house?

I. *Roof*

- a. No problem  
b. It existed when bought house  
c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair  
b. Other professional repair  
c. Self-repaired

- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

In Hundreds:

## II. *Plumbing*

- a. No problem
- b. It existed when bought house
- c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair
- b. Other professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

## III. *Heating*

- a. No problem
- b. It existed when bought house
- c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair
- b. Other professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

## IV. *Electrical*

- a. No problems
- b. It existed when bought house
- c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair
- b. Other professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

## V. *Vermin (Pests)*

- a. No problems
- b. It existed when bought house

c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair
- b. Other Professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

VI. *Inside of House*

- a. No problem
- b. It existed when bought house
- c. It developed after I bought house

Who repaired it?

- a. F.H.A. Repair
- b. Other professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

VII. *Outside of House*

- a. No problem
- b. It existed when bought house
- c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair
- b. Other professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

VIII. *Yard, driveway, etc.*

- a. No problem
- b. It existed when bought house
- c. It developed after I bought house

Who repaired it?

- a. F.H.A. repair
- b. Other Professional repair
- c. Self-repaired
- d. Seller repaired
- e. Other
- f. Still needs repair

Approximate cost of repair

- 48. Estimate the amount of money you have spent on repairs in the last year.
  - (1) 0
  - (2) 1-100
  - (3) 101-300
  - (4) 301-500
  - (5) 500+ (Exact amount . . . . .)
  
- 49. What repairs will you do yourself?
- 50. What repairs will require hiring help?
- 51. Which of these repairs would you make right now if it weren't for the lack of money?
- 52. Have you been cited (since you lived in this house) for a building code violation?
  - Yes
  - No
  
- 53. Who requested the city code inspection?
  - Don't know
  - Self
  - Neighbor
  - Other
  
- 54. What were the code violations?
  - (1) Plumbing
  - (2) Heating
  - (3) Electrical
  - (4) Vermin
  - (5) Plaster
  - (6) Sidewalks
  - (7) Gutters
  
- 55. Did you receive notice from your loan company that FHA would make certain repairs for you?
  - Yes
  - No
  
- 56. Approximately when were you notified of F.H.A. responsibility?
  - Month
  - Year
  - 1971
  - 1972
  
- 57. Did you file a claim for F.H.A. repairs?
  - Yes
  - No

58. If you filed a claim with F.H.A., has your house been repaired?

Yes  
No

59. If yes, were you satisfied with the repairs made?

Not satisfied  
Satisfied

60. If not satisfied, why not?

Not properly completed  
Insufficient

Comments on F.H.A. Repairs and Claims process:

VI. *Purchaser's Last Home.*

61. Was your last home a house or an apartment?

Apartment  
House

62. If an apartment, was it in public housing?

Yes  
No

63. If a house, did you own or rent it?

Rented  
Owned

64. If you rented, did you experience any problems with your landlord?

Yes  
No

65. If yes, what were those problems?

- a. Non-payment of rent
- b. Lack or repairs by landlord
- c. Complaints about my children
- d. Others
- e. Multiple answers.

66. If you rented, were you ever asked to move out?

Yes  
No

67. If yes, why?

- a. Non-payment of rent
- b. Damage to apartment
- c. Too many children
- d. Apartment rehabilitated
- e. Urban renewal
- f. Other

68. How much was your rent or payments in your last home?
69. Did that amount include utilities?  
Yes  
No
70. Have you ever owned a home before you purchased this house?  
Yes  
No
71. If you have, why did you leave it?  
a. Moved for job  
b. Moved because house was taken  
c. Couldn't keep up expensive payments  
d. Wanted a better house  
e. Wanted a better neighborhood  
f. Other
72. How long did you live in your last home or apartment?  
Under 1 year  
1-3-years  
4-6 years  
6+ years
73. If less than 1 year, how many times did you move in the two years before you bought your house?  
2 times  
3 to 5 times  
6 or more times
74. Have your parents ever owned their own home?  
Yes  
No
75. Do you feel that your house payments place too great a financial burden on you?  
Yes  
No
76. Have you ever missed any house payments?  
Yes  
No
77. If yes, for what reasons?  
a. Illness  
b. Laid off  
c. Strike  
d. Other



VII. *Personal Information*

78. Which members of the household are employed full time?

Head of Household	Yes
	No
Spouse	Yes
	No

79. Which members of the household are presently employed part time?

HOH  
Spouse  
Child  
HOH & Spouse  
HOH & Child  
Spouse & Child  
All three  
None

80. Present occupation of Head of Household? .....

81. Present occupation of spouse? .....

82. How long has the head of household been on his present job?

More than 5 years  
More than 2 Years  
More than 1 year  
Less than 1 year

83. How long was he on his last job?

(Only if on present job less than 1 year)

More than 5 years  
More than 2 Years  
More than 1 year  
Less than 1 year

84. How long has the spouse been on his present job?

More than 5 years  
More than 2 years  
More than 1 year  
Less than 1 year

85. How long was the spouse on his last job?

(Only if on present job less than 1 year)

More than 5 years  
More than 2 years  
More than 1 year  
Less than 1 year

86. What job did you hold when you bought this house?

Same  
Other  
Classification

87. How far have you gone in school?

Head of household

- (1) 1—6
- (2) 7
- (3) 8
- (4) 9
- (5) 10
- (6) 11
- (7) 12
- (8) Technical school
- (9) Some college
- (0) College graduate

Spouse

- (1) 1—6
- (2) 7
- (3) 8
- (4) 9
- (5) 10
- (6) 11
- (7) 12
- (8) Technical school
- (9) Some college
- (0) College graduate

88. How much is the gross salary/week of the head of household?

25 -50  
51 -75  
76 -100  
101-125  
126-150  
151-175  
176-200

89. How much is the spouse's gross salary/week?

25 -50  
51 -75  
76 -100  
101-125  
126-150  
151-175  
176-200

90. Do you have any other sources of income?

No  
Alimony or  
child support  
Welfare  
Other

91. If yes, how much is it per week?

25 -50  
51 -75  
76 -100  
100 +

92. Has there been any change in your family size since you bought your house?

No  
Additional child,  
children  
Loss of child  
Added spouse  
Loss of spouse  
Other addition  
Other loss

93. How many people now live in this house?

94. Does a husband live in this house? .....

Yes  
No

95. Who are the people living in the house?

Husband  
Wife  
Children  
Other family  
Non-relatives

96. If you had it to do over again, would you buy this house?

Yes  
No

Comments:

97. This house appears to the interviewer as follows:

- (1) Clean, well maintained.
- (2) Exterior dilapidated
- (3) Interior dilapidated
- (4) Interior in need of paint
- (5) Trash in yard
- (6) Broken windows

- (7) Yard needs to be mowed
- (8) Other conditions:
- (9) More than one bad condition

VIII. *Questions for Purchasers No Longer  
Living in Their 235 Houses*

98. How long did you live in your house bought under the 235 program? In months:

99. Why did you leave?

- a. Didn't like owning my own home
- b. House was in bad condition
- c. Change of job to a different geographical area
- d. Financial reasons
- e. Unemployment
- f. Illness in family
- g. High repair costs
- h. Other

100. Describe where you are living now:

- a. House
- b. Apartment
- c. With relatives
- d. Public Housing
- e. Other

Comments: