This topic has particular significance for us now, because we are at war. With hundreds of thousands of men and women in arms, it is especially appropriate for us to consider what we offer to the survivors of those who are killed overseas and to those who will return, whole and well or damaged in body or mind.
When I began work on this topic, more than a year ago, there was no reason to believe that we would be in this situation. I was drawn to the subject because, as I studied the housing programs offered by various federal agencies, I was struck by the fact that in many respects the programs for veterans were the least generous of all. Although most people think of HUD -- the Department of Housing and Urban Development -- as the agency that handles housing programs, such programs also are offered by the Departments of Agriculture, Treasury, and Defense. Indeed, our largest housing programs are operated by Treasury, which oversees both the homeownership deductions and the Low Income Housing Tax Credit program, which is the largest subsidized housing production program in the United States. I was surprised by the fact that all of these programs are more generous, in important ways, than the housing programs for veterans offered by the Department of Veterans' Affairs. The differences were partly in the legislation creating the programs, but also in the ways in which the courts interpreted the statutes and the agencies administered them.
Seeing this against the frequently cited statistic that at least half a million veterans experience homelessness in any given year set me on a quest to understand why the veterans' housing programs are not more adequate, to expose the explanation to a general audience, and to try to improve the situation. This lecture is the first step in that effort.

I have been assisted by many people. I'm grateful to our dean, Tony Tarr, our Associate Dean for Academic Affairs, Susanah Mead, our former dean, Norm Lefstein, and to the faculty, staff, and students here -- for a Research Fellowship last Summer that enabled me to devote serious time to this inquiry, and for a collegial, intellectually challenging, and personally supportive environment in the six years I've been here. I'm grateful to Mary Ruth Deer, the faculty assistant who makes everything work for me; to librarians Richard Humphrey and Michelle Birdsall, who keep me supplied with arcane materials; and to a series of research assistants -- Paul Jefferson, Major Victoria Deak, who's now on active duty in Germany, Marissa Florio, and, most particularly, Janis Sims, who's ably borne the brunt of this year's
burdens. I owe profound thanks to my family -- my sister, Martha Healy, and my children, one of whom, BJ Roisman, is here with us tonight. And now to our topic.

With respect to housing -- as with respect to many other things -- we in the United States indulge a sharp contrast between rhetoric and reality, as is indicated in the document you have before you. In 1948, "inspired in part by Franklin Roosevelt's famous 'four freedoms' -- freedom of speech and belief, freedom from fear and from want,"\(^2\) -- the United States, largely through the agency of Eleanor Roosevelt, was instrumental in creating and itself became a signatory of the Universal Declaration of Human Rights, which states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing . . ." and, as you see, many other things.\(^3\) The Universal Declaration proclaims this "a

\(^2\)Glendon at xviii

\(^3\)Universal Declaration of Human Rights, G.A. Res. 71, U.N. GABOR, 3d Sess., U.N. Doc. A/810 (1948), art. 25, which reads in full:"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of
common standard of achievement for all peoples and all nations" and says that "every organ of society" should "strive . . . to secure [its] . . . universal and effective recognition and observance . . . ." In 1949, the Congress of the United States adopted the National Housing Act, declaring the national housing policy to be "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family" -- a goal that Congress re-affirmed in

4 The full text of the conclusion to the preamble to the Universal Declaration reads: "Now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and ever organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

5 42 U.S.C. § 1441.

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Eleanor Roosevelt was the Chair of the U.N. Commission on Human Rights (and of the committee that recommended the creation of the Commission.) She was one of four who played crucial roles in the development and adoption of the Declaration, the other three being Peng-chun Chang of China, Rene Cassin of France, and Charles Malik of Lebanon. See Mary Ann Glendon, A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights xx, 31, 33 (2001).
1968. And the United States has signed (though not ratified) the International Covenant on Economic, Social, and Cultural Rights, which also recognizes the human right of everyone to "an adequate standard of living," including housing.

With respect to veterans in particular, the United States long has expressed a rhetorical commitment to assuring decent provision. President Lincoln concluded his Second Inaugural address with the exhortation that now is engraved over the entrance to the building that houses the Department of Veterans' Affairs: "to care for him who has borne the battle, and for his widow and his orphan." In 1943, President Franklin Delano Roosevelt justified a commitment to aid all of the veterans who would return from World War II. Describing legislation he would propose, he said: “The members of the armed forces have been compelled to make greater economic sacrifices, and every other kind of sacrifice, than the rest of us, and are entitled to definite action to take
care of their special problems.”

One of the “special problems” veterans would face on their return to the United States was that of securing housing, and the legislation of which Roosevelt spoke – legislation that became the G. I. Bill of Rights – offered to veterans, among many other things, housing assistance. The G.I. Bill, in popular expression, “stood for a soldier’s right to fair treatment from a grateful nation.”

Despite these rhetorical commitments to assuring decent housing to everyone, and certainly to veterans, and despite the enactment of the G.I. Bill and other housing programs for veterans, the performance of the United States government has fallen far short of according veterans “fair treatment from a grateful nation.” The veterans' housing programs have excluded many people, and even those veterans who are served by the housing programs find their assistance grudging, partial, and inadequate -- in many respects less generous than are other federal housing programs. Perhaps the most dramatic indication of the

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*I’ll Buy That at $74?*
inadequacies of these programs is the fact that well over half a million
veterans -- men and women, including women with children --
experience homelessness each year.\textsuperscript{9}  \textsuperscript{10}  \textsuperscript{11} Indeed, it appears that

\textsuperscript{9} See "VA has largest Homeless Services Network, Works with HUD, Nonprofits to
 Expand Housing,"\textsuperscript{30} Housing & Dev. Rptr. CD-16 at 501 (Dec. 9, 2002) (reporting
 that a spokesperson for DVA estimated that 200,000 veterans are homeless on any given night and
 400,000 experience homelessness during a year and that 45 percent of homeless veterans suffer
 mental illness, 68 percent suffer from drug or alcohol abuse, and 33 percent suffer both mental
 illness and substance abuse. He also estimated that one-third of adult homeless men and 23
 percent of all homeless adults are veterans.) Report from the Department of Veterans' Affairs that,
on any given night, some 200,000 veterans are so far from enjoying the right to decent housing
 that they are literally homeless.

An earlier DVA estimate had been larger. See www.nchv.org/background.cfm
(5/17/02) (The National Coalition for Homeless Veterans reporting that “the VA estimates
 that more than 275,000 veterans are homeless on any given night [and] more than half-a
million experience homelessness over the course of a year.”). The Department of Veterans
Affairs (and others) consistently estimate that approximately one-third of the adult
homeless population are veterans. See, e.g., NSHAPC at 11-2; National Coalition for
Homeless Veterans, www.nchv.org/background.cfm (May 17, 2002) (“at least one of every
three homeless males who is sleeping in a doorway, alley, [shelter,] or box in our cities and
rural communities has put on a uniform and served our country.... now they need
America to remember them.”)

\textsuperscript{10} A Preliminary Evaluation of the Effects of a Veterans Hospital Domiciliary Program for
Homeless Persons, 5/30/93 Homeless Persons, 5/30/93 The figure usually cited is from a
1993 study -- ten years old -- reports that approximately 250,000 veterans live on the streets or in
shelters on any given night, and at least twice that number experience homelessness during
the course of a year. Citing Rosenheck & Koegel 1993). NCHV says VA estimates more than
275,000 on any given night and more than half a million over the course of a year.

www.nchv.org/background.cfm (10/4/02). VA Fact Sheet: 1999 VA Programs for Homeless
Veterans, www.va.gov/pressrel/99624hmls.htm (250,000 on any given night, twice as many over
the course of a year; 45% mentally ill; 70% abuse; 55% African-American or Hispanic.)

\textsuperscript{11} nchv.org/background.cfm says that the Urban Institute projects that in a year, 2.3 to 3.5
million people will be homeless; 23% of that would mean that there are between 529,000 and
840,000 homeless veterans in the course of a year. But the Urban Institute estimates veterans at
23% of all homeless adults in the US and 33% of homeless men; children would have to be taken

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people are homeless while they are serving in the military!  

There are so many problems with the programs that a thorough discussion would require several hours, but I won't ask you to endure that. I propose to begin with a brief overview of the development of assistance for veterans, and then to address what I think is the most grievous problem: the exclusion of many veterans (and servicepeople) from the housing programs. I'll conclude with some proposals, and expect to leave time for any questions or comments you may have. Some of the principal books and other materials to which I refer are identified on the handout you all have. I should say also that I expect that a more fully developed version of this lecture will be published by our Indiana Law Review, probably some time early in 2004.

\[12\] See NSHAPC at 11-2 ("4 percent say that they were in the military at the time they were interviewed for” the study). For a discussion of the egregious inadequacy of housing for people on active military duty, see Pamela C. Twiss & James A. Martin, Conventional and Military Public Housing for Families, Social Service Rev. 240 (June 1999); see also Chester Hartman, Military Family Housing: The Other Public Housing Program, in Chester Hartman, Between Eminence & Notoriety: Four Decades of Radical Urban Planning 233 (2002).
I. Overview of the Development of Programs for Veterans.

Some students of the subject maintain that nations traditionally are ungrateful to their veterans. One scholar, Davis R.B. Ross, sees the origin of this reaction in The Odyssey, which, he writes, "may be said to be a classic description of how societies treat their war veterans." After victory, he suggests, those at home "discard rapidly (if ever they held them) feelings of obligation and gratitude to veterans." Richard Severo and Lewis Milford see this pattern in the United States, writing that "Throughout American history, even after 'popular' wars, veterans have had to struggle against a Government that has mostly sought to limit its financial liability, more like a slippery insurance company than a polity rooted in the idea of justice and fair reward." "There were times in American history, including recent history," they wrote in 1989, "when


14Ross at 2.

such soldiers were lured into service with offers of generous pay, bonuses, and benefits, only to be scorned as mercenaries and social parasites when they tried to collect their due."16 These authors and others have discussed such national ingratitude after the American revolution, the War of 1812, the Mexican War, the Civil War, the Spanish-American War and Philippine Insurrection, and World War I.17

The disregard of the United States for its veterans at the end of World War I was particularly striking because of its sharp contrast to the policies of Great Britain. In 1918, British Prime Minister Lloyd George famously "pledged himself to secure ‘habitations fit for the heroes who have won the war’."18 “After the Armistice, the ‘homes fit for

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16Severeo & milford at 16.

17See, in addition to Ross and Severo & Milford, Theda Skocpol, Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States 533 (1992) (“Civil War benefits left behind among U.S. reformers a permanent legacy of worry about open-ended public spending, especially for military veterans but also for other social groups.”)

heroes’ campaign was adopted as the major weapon of the state....”

Thereafter, between World Wars I and II “local authorities in England and Wales built about three-quarters of a million houses...” for returning veterans and their families.

The United States, by contrast, after the First World War as before it, took no steps to meet the housing needs of its veterans, except for those who suffered service connected disabilities. Indeed, Professor Ross writes, after the first World War, “The Keys to the City had turned out to be only a pass to the flophouse’ for some veterans.” As a 1956 presidential commission reported, “For all wars prior to World War II, . .

19 Mark Swenarton, Homes Fit for Heroes: The Politics and Architecture of Early State Housing in Britain 67 (1981).

20 Swenarton at 1.

21 In 1918, Lloyd George ‘pledged himself to secure ‘habitations fit for the heroes who have won the war’.’ Mark Swenarton, Homes Fit for Heroes: The Politics and Architecture of Early State Housing in Britain 79 (1981), quoting The Times, 13 November 1918, quoted in B.B. Gilbert, British Social Policy 1914-1939 (1970) at 19. See id. at 67 (“In the wake of the Armistice, the ‘homes fit for heroes’ campaign was adopted as the major weapon the state....”); Laurence F. Orbach, Homes for Heroes: A Study of the Evolution of British Public Housing, 1915-1921 (1977).

22 Preparing for Ulysses at 13, quoting Dixon Wecter, When Johnny Comes Marching Home 345 (1944).
veterans without service-connected disabilities were left to their own devices in the matter of their readjustment to civilian life."\(^{23}\)

During the campaign that made Franklin Roosevelt president of the United States, veterans' benefits were very much a topic of dispute. In May of 1932, between 20,000 and 40,000 veterans arrived in Washington, D.C. to urge Congress to provide an immediate cash bonus for veterans.\(^{24}\) This was the BEF -- the Bonus Expeditionary Force.\(^{25}\) In July of 1932, Army Chief of Staff General Douglas MacArthur led 600 troops, including mounted cavalry and tanks, to drive the veterans out of their nation's capital.\(^{27}\) What has been called "the grotesque spectacle ________________________

\(^{23}\)See Historical Development at 51 ("For all wars prior to World War II, provision was made to care for the disabled and to care for the dependents of the dead. For all of these wars, veterans without service-connected disabilities were left to their own devices in the matter of their readjustment to civilian life."). For the proposition that

\(^{24}\)Ross says 20,000 at 16; Donald J. Lisio, The President and Protest: Hoover, MacArthur, and the Bonus Riot at x (1994), more than 20,200; Severo & Say between 25 and 40,000 at 269.

\(^{25}\)Severo 269

\(^{26}\)Severo at 274 (President Hoover later said that he had intended only that the veterans be removed from the business district of Washington back to their encampment in Anacostia.).

\(^{27}\)Severo at 275 -- 67% of whom, the VA later reported, had served overseas and 20% of whom suffered some disability; Lisio at x (MacArthur "deliberately disobeyed Hoover's written order limiting the scope of the Army's assistance, and he later ignored the President's repeated
of the rousting of ex-servicemen . . .' contributed to the defeat of Herbert Hoover four months later.28

When Franklin Roosevelt became President, he dealt with the veterans in a much more politic way. (For example, when a second bonus march developed, he had his Veterans' Administration establish a camp for the veterans at Fort Hunt, fifteen miles from the city).29 But Roosevelt shared with Hoover the view that, while veterans with service-related disabilities might be entitled to special attention from the federal government, other veterans should be assisted only in their status as members of the general population.30 Addressing the American Legion in 1933, FDR embraced two principles. The first was the nation’s obligation

 oral messages to stop all operations.").

28Severo at 276 ("grotesque spectacle", 278 ("Hoover's (really MacArthur's) folly cost Hoover the November election."); Lisio at x ("The expulsion of the bonus marchers delivered an irreparable blow to Hoover's reputation, as most people assumed that he had ordered the brutal dispersal.").

29Severo, 278

30 With respect to the United States after World War I, see Ulysses at 12-29 (discussing, inter alia, the removal of the Bonus Expeditionary Force from Washington, D.C. in 1932); id. at 24 (President Hoover referred to “professional money-hunting veterans”; id. at 18 (Treasury Secretary Morgenthau said that veterans, “a special-interest group,” “had no special claim on the government”).
to care for servicepeople who died or were wounded, and for the dependents of the dead. But FDR’s second principle was “that no person, because he wore a uniform, must thereafter be placed in a special class of beneficiaries over and above all other citizens. The fact of wearing a uniform does not mean that he can demand and receive from his government a benefit which no other citizen receives.” FDR’s second principle conflicted with the perspective of the veterans’ groups, which were determined to advance veterans’ exclusiveness.

A decade later, planning for reconstruction after the second World War, President Roosevelt -- as I said earlier -- became disposed to offer some benefits specifically to non-disabled veterans. The president, his advisers, and the nation in general were very much concerned that demobilization and "removal of the war-created federal fiscal activity

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31FDR, quoted in Seelye Jones at 18.

32See Ross at 18 (President Roosevelt said that “Able-bodied veterans should be accorded no treatment different from that accorded to other citizens who did not wear a uniform during the World War....”); id. at 49-50 (discussing the conflict).
when peace came would lead to widespread unemployment...."\(^{33}\) They were faced with something like the concerns that had affected the British cabinet after World War I. In a fireside chat in July 1943, FDR said that veterans "must not be demobilized into an environment of inflation and unemployment, to a place on the bread line or on a corner selling apples."\(^{34}\) When the public responded well to this suggestion, the Administration proposed legislation that would provide educational benefits for veterans.\(^{35}\) While FDR spoke of the "the moral obligation of the Nation to provide for its veterans," he emphasized that "education would not only benefit the country by providing enlightened leadership . . ., but also it would cushion the impact of possible unemployment on the returning heroes."\(^{36}\) The remaining elements of FDR's proposals were mustering-out pay, a uniform system of federal unemployment benefits,

\(^{33}\)Ross at 34.

\(^{34}\)Ross at 64, quoting FDR papers vol. Xii, 326-36.

\(^{35}\)Ross at 82; on oct. 27, 1943.

\(^{36}\)Ross at 93, 29; quotes are from Ross, not FDR.
and credit for social security for the time spent in the service.\textsuperscript{37}

Note well that the Administration’s proposals for the returning veterans did not include provisions for housing.\textsuperscript{38} Indeed, the National Housing Agency opposed the creation of special housing programs for veterans.\textsuperscript{39}-\textsuperscript{41},\textsuperscript{42} Its Administrator expressing concern that a special program for veterans might "obstruct or complicate" more general programs.

The proposal for housing assistance for veterans came not from the

\textsuperscript{37}Ross at 93.

\textsuperscript{38}Ross at 52-62 (noting, however, id. at 62, that the National Resources Planning Board had recommended “disposal of lands acquired by the Federal Government during the war to deserving and apt veterans.”) id. at 89-93 (identifying elements of the President’s proposals, beginning with education). Note also, however, that HHFA had not been represented in the Postwar Manpower Conference that met regularly during 1942 and early 1943. Ross at 55 and note 73.

\textsuperscript{39}Ross at 244.

\textsuperscript{40}Ross at 72. Indeed, when, in October 1943, former Supreme Court Justice James F. Byrnes, now head of the Office of War Mobilization, requested “more detailed information concerning what the departments had been doing in planning for veterans, and what they recommended for future action,”

\textsuperscript{41}Ross at 72-3. The National Housing Administrator, John Blandford, Jr., replied that current programs would be adequate for the veterans who returned during the war; in addition, he advised against a special program just to meet the postwar needs of veterans alone. He thought a broad policy benefiting all citizens would be more desirable.”

\textsuperscript{42}Ross at 244. He said that a special program for veterans might “obstruct or complicate” more general programs.
Roosevelt Administration but from the American Legion, which developed the omnibus veterans’ program that became known as the G.I. Bill of Rights. The GI Bill, as a presidential commission later wrote, "was based upon the idea that the country owes an obligation to the veteran to restore him to the civilian status and opportunities he would have enjoyed had there not been a war. The restoration was planned in terms of job or business, education, and home ownership." As drafted by the American Legion, the bill proposed that the programs be established by the states, with funding from both the state and federal governments.

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43 Ross at 99-100; Raymond Moley, Jr., The American Legion Story 270 (1966)(“The broad concept [of the GI Bill] originated in The American legion, a member of the Legion wrote the bill, an employee of the Legion suggested its meaningful name, Legionnaires promoted it and handled its legal presentation, and a former Commander secured its unanimous approval in the Senate.”).


45 Ross at 101. (proposal was that “states should establish these programs subject to the approval of the Veterans Administrator. .... The Federal Government would provide $4 for each $1 donated by the state; the maximum allowable interest rate could be 1 per cent on the former and 5 per cent on the latter. To insure that a state’s inability to participate would not deprive benefits for needy veterans, the bill allowed the Veterans Administrator to advance the entire
The final enactment of the GI Bill represented the convergence of seven politically potent ideologies. First was the concern that the demobilized veterans not be discharged into circumstances that would make them angry at the government -- onto breadlines or selling apples. Second was the concern that the post-war economy not slip back into recession or depression. Housing construction is a good source of employment and economic pump-priming. Third was the desire of the real estate and lending industries for programs that promoted private, singlefamily homeownership, so that lenders and real estate brokers would enjoy the additional business. Fourth, fiscal conservatives wanted to spend as little government money as possible, which is one of the advantages of a homeownership program. Fifth, social conservatives preferred homeownership to other housing programs which seemed "Communistic." Sixth, the veterans' groups were committed to veterans' amount..."
exclusiveness: they wanted programs that were administered by the VA and served veterans only, rather than programs that were administered by agencies that served the public at large and treated veterans as part of that general public. Seventh, and finally, some people and some organizations wanted to help some veterans obtain housing. Not all organizations agreed on this goal -- for example, the DAV did not agree that VA resources should be devoted to non-disabled veterans.

It would be a serious mistake to think that the GI Bill of Rights was adopted simply because of a desire to be fair to veterans. Had it not been for the conjunction of these interests, it is unlikely that any program would have been enacted. Indeed, the program that was enacted -- with direct loans replaced by guaranteed loans -- was a victory for the conservatives, as was the refusal of Congress to enact the subsidized rental housing program that the Administration sought as a companion to the VA homeownership program.
As John Doling writes in his thoughtful book, *Comparative Housing Policy* 46, “the view that the welfare needs of the citizens...are an automatic trigger for the introduction of social policies is contestable. The belief that humanitarian concerns constitute the sole, or even partial, basis or trigger for housing policy, overlooks other possibilities, for example that policy may fulfil a function in stabilizing the economic and political system as a whole. Governments may intervene, in other words, in ways that improve the lot of those who would not otherwise be able to consume housing of a reasonable size and quality, but such an outcome is a consequence of an underlying motivation to preserve the social order. ”47

The motivations for the enactment of the GI Bill were much like the considerations that underlay the "homes fit for heroes" campaign in Great Britain to calm industrial and social unrest.


47Doling at 10.
President Roosevelt signed the bill into law on June 22, 1944.\textsuperscript{48} The veterans' housing program created in 1944 was essentially the same as the Federal Housing Administration program created in 1934.\textsuperscript{49} This is not surprising since; as an historian of the Legion writes, the GI Bill had benefited by Legion conferences "with real estate, building and loan and financial associations and the FHA...."\textsuperscript{50} The VA and FHA programs helped the lending and real estate industries by encouraging the construction and financing of new singlefamily housing and assuring the builders and financiers that a federal agency would make up losses caused by borrower defaults. Both the VA and FHA programs minimized the federal contribution and offered housing benefits only to those who could afford homeownership. The fundamental difference between the VA and FHA programs was that the veterans' program was run by the Veterans' Administration, not by FHA.

\textsuperscript{48} Ross at 118.

\textsuperscript{49} Crabgrass Frontier

\textsuperscript{50} Moley, American Legion Story, at 273.
The GI Bill, as was intended, "provided an immediate boost to the private housing industry [and] . . . fueled the rapid resumption of large-scale suburban construction for home ownership."\(^{52}\)

Indeed, "it has been said that the landscape architect of post-war America has been the VA loan-guarantee officer."\(^{53}\)

The VA home loan guaranty program was so successful that it was extended several times and then made permanent. \(^{54}\) **DVA now also has**
small direct and insured home loan programs, a manufactured home loan guaranty program, and grants for specially adapted housing for veterans with service-connected disabilities.

The VA was authorized to make direct loans where satisfactory home loans were not available. These direct loans were primarily intended...for thinly settled regions, small towns, etc.” Douglas Cmsn Report at 103; Historical Development at 63.

To the end of 1967, 274,000 direct loans had been made, for $2.5 billion. Douglas Cmsn Report at 103.

See HDR RF-551 11:0014. a number of times . . . .” and then, in 1970, the home loan program was “made a permanent benefits program.” Neither the direct nor the insured home loan program is as active as the guaranteed home loan program. HDR RF-551 11:0011 (2/20/95). There also is a tax exempt bond program for purchase, rehabilitation, or improvement of homes owned by veterans, but this is limited to five states — Alaska, California, Oregon, Texas, and Wisconsin. See HDR 50:0012, pp14.1

The insured loan program is rarely used.

The direct loan program is used primarily in rural and other areas that the VA has denoted “credit short areas.”

The maximum amount available is $33,000, except that eligible Native American veterans may secure direct loans of up to $80,000 for a home on federal trust land.

In addition, “veterans with service-connected disabilities” may secure VA grants to purchase specially adapted housing.


Congress later created a small direct loan program and a Native American Veterans Housing Loan Program, which provides direct loans to Native American Veterans to purchase, construct or improve homes on trust lands.

Moley, American Legion, at 282. “Of 5,268,000 loans made up to 1964, 4,966,000 were for homes. One-fifth of all single-family residences built since the end of World War II has
Today, "Almost anyone who has served on active duty" is entitled to a guarantee.\textsuperscript{63}

After World War II, approximately one-quarter of the veterans who returned to civilian life used the VA home loan program.\textsuperscript{64} Today, the percentage of veterans who use the program is about 1\%.\textsuperscript{65} The program is better for some people than others; because its principal advantage is that it "reduces or eliminates the down payment," it's "most advantageous to first-

\textsuperscript{63} Capt. Gerald A. Williams, A Primer on Veterans' benefits for Legal Assistance Attorneys, 47 A.F.L. Rev. 163 (1999) [w/ individual cites] including those currently on active duty if they've served for 181 days, veterans who have served at least 90 days on active duty during a war, and other veterans who have either been on active duty for 181 days or have been discharged for a service-connected disability. The National Guard or Reservists count only if the active duty was in federal service. "Surviving spouses of members who either died on active duty or from a service-connected disability also qualify." Veterans who served 6 years in the Selected Reserve or were discharged short of 6 years for a service-connected disability are eligible.

\textsuperscript{64} Ross at 272. \textbf{[pls ck orig to see if it says civilian or civil]} Approximately 3,782,000 World War II veterans, 26 per cent of those in civilian life at the end of 1955, used the home-loan benefits of the GI Bill of Rights.

\textsuperscript{65} Encyclopedia at 116. In 1993, the population of veterans was about 27 million; the Encyclopedia of Housing, published in 1998, reports that "about 1\% of veterans hold VA loans."
time homebuyers, for whom it also holds particular pitfalls.

One of the most serious problems with the VA program is the failure to offer foreclosure avoidance assistance when the homeowner goes into default, even when the default is not at all the fault of the homeowner.

It long has been understood that the principal hazard in home ownership is loss of income by the homeowner — whether because of unemployment, illness, spousal abandonment, or other cause. Charles Abrams reported that a 1962 study said that unemployment or curtailment of income “was the given reason for defaults for . . . about 40 per cent of VA borrows. The second reason was ‘death or illness in family.’” The VA found that 2/3 of the defaults were due to “curtailment of income.”

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66 Encyclopedia at 116. as the average age of veterans increases and as the number of veterans declines, fewer veterans are first-time buyers."

67 Abrams, The City is the Frontier (1965) at 262. As early as 1965, Charles Abrams wrote that “the principal hazard in homeownership is unemployment or ‘curtailment of income.’”

68 Abrams, The City is the Frontier (1965) at 262.
income,” “death or illness, or “marital difficulties.”

Subsequent studies have produced similar results: unemployment, death, illness, and spousal abandonment are a major cause of homeowners’ losing their homes through default and foreclosure. These losses can be devastating to the homeowners both financially, psychologically, and socially; they also are expensive to the federal agency that has insured or guaranteed the mortgage loan. But despite the human, personal, societal, and financial costs, government agencies have been slow to adopt any form of foreclosure avoidance program — and the VA (and DVA) has been most reluctant of all.

Abrams had made two suggestions in the 1960's — a fund from which owners could borrow, and the establishment of equity insurance.

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69 Abrams at 262, citing VA Report of Loan Service and Claims Study, April 30, 1962. The precise percentages were: Curtailment of income, 39%; Death or illness, 16%; Marital difficulties, 9%. The other causes were “Improper regard for obligations, 26%; Extensive obligations, 7%; and All other reasons, 3%. Id. at 262. Abrams writes that “if the reasons as given by the owners were credited, a good part of the 26 per cent of defaults for ‘improper regard for obligations’ would be added to the 55 per cent.” Abrams at 263.

70 Abrams, The City is the Frontier, at 263.
Abrams’ suggestions were rejected.\(^7\)

Since the 1960's, both HUD and the Department of Agriculture have instituted some form of foreclosure avoidance program. The VA is authorized by statute to provide such assistance, but the VA never has voluntarily used that authority and litigation to compel it to do so has been unsuccessful.\(^7\) Thus, today, while HUD and Agriculture borrowers enjoy some protection from foreclosures because of temporary financial problems for which they are not to blame, veterans who suffer temporary loss or reduction of income, for reasons for which they are not to blame, have no protection from loss of their families’ home.\(^7\)

This is a serious problem, for a substantial number of VA financed homes go into default. “VA’s fiscal year 1999 budget submission projects

\(^7\) Abrams at 264-265.


\(^7\) For FHA borrowers, the current protections are from the FHA Loss Mitigation Program. See 24 CFR Part 203 and Mortgagee Letter 2000-05 (January 19, 2000), available at www.hudclips.org.
that VA will acquire 26,475 properties over the course of the year....

Report at 133. The Commission’s concern in this area is that the VA should not be burdened with responsibility for managing and selling these homes. The Commission therefore recommended that Congress establish a 2-year pilot program whereby some new loans would obligate the VA only to paying the lender’s claims, but not obligating the VA to allow reconveyance of the property. The Commission does not address the question how lenders are to be persuaded to make loans when they may also have to manage and dispose of the property. Report at 132-3. My suggestion is that a better solution to the problem of how to deal with the 26,475 properties would be to encourage the VA to assist those homeowners in maintaining their interest in the homes.

38 U.S.C. 3720(a)(2) The VA unquestionably has the authority to prevent foreclosures. The statute provides that the Secretary may “consent to the modification, with respect to rate of interest, time of payment of principal or interest or any portion thereof, security or other provisions of any note, contract, mortgage or other instrument securing a loan which has been guaranteed, insured, made or acquired under this chapter.” In situations of major disaster as determined under the Disaster Relief and Emergency Assistance Act, the act provides that the Secretary “shall...pursuant to subsection 9a)(2)..., extend on an individual case basis such forbearance or indulgence to such owner as the Secretary determines to be warranted by the facts of the case and the circumstances of such owner.” 38 U.S.C. 3720(f).

Ingold, DVA Home Loan Guaranty Program, supra note *, at 241, footnotes omitted. The lender is required to give notice to the VA. “After receipt of the notice, the VA has the right to either pay on its guarantee and be subrogated to the rights of the lender to that amount or pay the unpaid balance of the loan and receive an assignment of the loan and security interest. These discretionary provisions are designed for the benefit of the VA, not the veteran, and are not subject to judicial review. Accordingly, the veteran cannot compel the VA to pay the mortgagee the unpaid balance and take assignment.”

Ingold, supra note *, at 242, footnotes omitted. The VA also has the alternative of what is known as ‘refunding.’ Under this program, the VA, prior to commencement of foreclosure proceedings, pays the lender the unpaid portion of the veteran’s loan and the lender assigns its interest and security in the loan to the VA. The veteran then makes monthly payments directly to the VA until the loan is satisfied. The veteran must be able to establish an ability to repay the loan and a decision by the VA not to refund a loan is not judicially reviewable.”

Buzinski v. Brown, 6 Vet. App. 360, 369 (CVA 1994). But the VA has chosen not to use this authority, and, as the Court of Veterans Appeals in its 1994 decision in Buzinski v. Brown:
The fact that veterans are treated less well than non-veterans is illuminated also in Wells v. U.S. Administrator of Veterans Affairs, 537 F.Supp. 473 (E.D.N.Y. 1982). Plaintiffs there were all former owners of homes subject to VA loan guarantees. Plaintiffs had defaulted and the mortgages had been foreclosed. Plaintiffs argued that they had a constitutionally protected property interest in continued occupancy -- as tenants. They relied on authority established in cases involving homes with FHA-insured mortgages, authority establishing that, after foreclosure,

79 38 usc 3720(a)(5), 38 cfr 36.4318, 36.4322; va manual M26-4, change 11, ch. 2, p. 2.06c(2) (1995); VA Manual M26-4, ch. 2, P2.12.A veteran who cannot make his mortgage payments has a series of unattractive options. He can offer a deed in lieu of foreclosure. VA has the option for

80 47 afl rev. 163, 187 n. 132.The VA also has the authority to cojpromise, waive, or relase any right or claim. 38 usc 3720. See 38 cfr 36.4323(e)(1) - (4)
non-owner occupants had a “protectable interest in continued occupancy.”81

In Wells, the court held that occupants of VA-financed homes were not entitled to the protections available to occupants of FHA-financed homes. The difference, the court held, was that the VA legislation had no intent to aid tenants as well as homeowners. “Rental housing is nowhere mentioned in the statute,” the court said. “Its only purpose is to aid the returning veteran in purchasing a home. In no way can such a narrow goal be reasonably stretched to imply an intent to provide subsidized federal rental housing.”82 Thus, the court said, the plaintiffs “have already received the intended benefit -- assistance in purchasing a home. The relief they request, that is, to be allowed to remain as tenants, does not fall within the scope of the statute.”83

[ Congress created "a new two year trial program requiring the

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81Caramico v. Secretary of HUD, 509 F.2d 694, (2d Cir. 1974); Manners v. Secretary of HUD, 71 CV 550 (E.D.NY 1973).


83Wells at 477.
VA to provide financial counseling assistance to the veteran."\(^{84}\) It obviously wasn't very effective, since in 1999 the IG reported that "prepurchase counseling would benefit active duty service members who are first-time homebuyers and may help to reduce VA home loan defaults."\(^{85}\) "The Deputy Under Secretary for Management agreed that a more formal counseling program will benefit many veteran-homebuyers, especially first-time homebuyers, and proposed establishing a prepurchase counseling requirement for all first-time homebuyers." This requirement may require a regulatory change."\(^{86}\)

Oig says that since '90 VA requires lenders to have signed form re: counseling! It's done at closing. No borrower oig interviewed could remember getting counseling or signing the form.\(^{87}\)

48.3% of the defaults for service members' loans occurred in the first

\(^{84}\)Army Lawyer, Mary 1988.

\(^{85}\)Attributes of Defaulted VA Home Loans, R5-B10-047, March 25, 1999

\(^{86}\)Attributes, Oig 3/99, iii

\(^{87}\)Oig attributes at 4.
5 years, as compared to 31.7% for borrowers not on active duty.\textsuperscript{88}

Reasons for default given by \textit{va} are seriously wrong -- understating marital problems, illness, death, curtailment of income, and exaggerating "improper regard for obligations."\textsuperscript{89}

\section*{II. EXCLUSION FROM THE VETERANS' HOUSING PROGRAMS.}

This brief history of the development of the veterans' housing program in 1944 and 1945 provides the basis for considering one of the major problems with the program: that it excluded certain groups of veterans. Two very large groups of people have been excluded from the veterans' housing programs -- one for several decades, the other for the

\textsuperscript{88}Attributes, oil, 3/99, p. 2.

\textsuperscript{89}Attributes at 9.
entire duration of the programs, continuing to this date.

The first group is African-Americans and other people of color. From the time the veterans' housing programs were created, in 1944, for more than twenty years -- well into the 1960's -- VA housing benefits were, on the whole, available only to whites. VA-financed housing was strictly segregated on the basis of race, and all but a very few of the home mortgages financed by the VA were for whites. "[L]ess than 2 percent of the housing financed with federal mortgage assistance from 1946 to 1959 was available to Negroes." This insistence on racial segregation, and almost universal service of whites, characterized both the VA and the FHA homeownership programs. VA and FHA required racial covenants until 1950, and allowed developers to use them thereafter. Since veterans originally were required to use their guarantee within 2 years of separation

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90 See Hays at 85-86 ("those aided [by the FHA and VA programs] were largely white middle or working class families with enough income to purchase the new suburban tract housing springing/up around U.S. cities."); see also David H. Onkst, "First a Negro...incidentally a veteran": Black World War Two Veterans and the G.I. Bill of Rights in the Deep South, 1944-1948, J. Social History (Spring 1998)(Black veterans in Georgia, Alabama, and Mississippi rarely were able to secure VA-guaranteed loans).

91 Gelfand at 221.
from service or from the ending date of WWII, whichever was later,\textsuperscript{92} the African-American veterans had a very small opportunity.

The discrimination ended, as least theoretically, with President Kennedy's Executive Order No. 11063 in 1962 and the enactment of the Civil Rights Act of 1968.\textsuperscript{93} But it has had continuing effects, on people and places. For example, in 1997, on the 50\textsuperscript{th} anniversary of the creation of the Levittown on Long Island, New York, the New York Times reported the reaction of Mr. Eugene Burnett, a retired Suffolk county police sergeant "who was among thousands of military veterans who" sought housing in Levittown "[b]ut . . . was turned away because he is black."

\textsuperscript{94} Despite the fact that Levittown was, as William Levitt testified, "100

\begin{flushright}
\textsuperscript{92}1999 Servicemembers Cmsn at 131.
\end{flushright}
percent dependent on Government."\textsuperscript{95} Mr. Burnett said "he still stings from 'the feeling of rejection on that long ride back to Harlem.'"\textsuperscript{96} The communities themselves continue to be racially separate: by the late 1990's, the black population of Levittown, N.Y. had not come close to one percent.\textsuperscript{97}

The exclusion of non-whites from the VA and FHA homeownership programs is significant because those programs laid the basis for significant wealth accumulation and class mobility among those who were able to use it. Even for those few non-whites who were able to secure VA and FHA loans, their homes were in predominantly minority communities where property values were lower and appreciated more slowly than in comparable white neighborhoods. Discrimination against non-whites in the VA and FHA homeownership programs served, as Melvin Oliver and

\textsuperscript{95}Levitt and Sons v. Div. Against Discrimination, 158 A.2d 177, 181 (N.


\textsuperscript{97}Paula Span, Mr. Levitt's Neighborhood: After 50 Years, It Still Offers the Good Life -- for Some, Wash. Post, May 27, 1997, C1.
Thomas Shapiro wrote in their important book, Black Wealth/White Wealth, to create a situation in which veterans of color were almost entirely "[l]ocked out of the greatest mass-based opportunity for wealth accumulation in American history." 98

99 B. Exclusion of Lower Income Households

The second group of veterans excluded from assistance was veterans whose incomes were too low to enable them to buy homes. These were the veterans in greatest need, and these were most of the veterans.

At the end of the Second World War, the United States faced “an unprecedented housing shortage”100; for all Americans, "Tales of extreme hardship during 1945 to 1947 abounded."101 102 Many veterans were

98Oliver & Shapiro at 18.

99Hays at 85/86 (“those aided [by the FHA and VA programs] were largely white middle or working class families with enough income to purchase the new suburban tract housing springing/up around U.S. cities.”); Davis at 117 (FHA program “supposedly helped families with incomes in the upper-most third to purchase houses.”); see also David H. Onkst, “First a Negro...incidentally a veteran”: Black World War Two Veterans and the G.I. Bill of Rights in the Deep South, 1944-1948, J. Social History (Spring 1998)(Black veterans in Georgia, Alabama, and Mississippi rarely were able to secure VA-guaranteed loans).

100Davies, 40-41.

101Ross at 238; id. at 239 (in 1940, “approximately 1,700,000 families [were] ‘doubled up,’ that is, without separate domiciles.”). Among the factors that contributed to the shortage
homeless; other, with their families, “lived in attics, basements, chicken
coops, and boxcars.”

“A critical housing shortage existed in the United States at the end of
World War II. .... The National Housing Agency published on January 1,
1946, estimates that (a) 1,200,000 American nonfarm married couples were
already living ‘doubled up’ with others in October, 1945, while (b)

were the decrease in housing production occasioned by the Depression, movements from rural to
urban areas that “accelerated as a result of the war” (Ross at 239), an increase in marriages and
birth rates (Ross at 240-1), shortages of construction material (often secured by speculative.builders for purposes other than housing construction), labor difficulties, and resulting inflation
(Ross at 241-2).

Ross at 189.

Davies, 40-41. See also Freedman, Public Housing at 101: “Chicago reported over
100,000 homeless veterans. In Los Angeles in December 1945, the city council appropriated
$100,000 to construct temporary shelters, and one councilman complained that this was
insufficient: ‘By Christmas you will see veterans by the hundreds bivouacked in Pershing
Square.’ While this dire prediction did not materialize, the situation in Los Angeles as well as in
other cities remained critical. A general condition of scarcity persisted, affecting many from the
middle class. At the beginning of 1947 an opinion poll revealed that housing was one of the top
issues in the public mind. All over the country the problem was front-page news.”); David
McCullough, Truman 470 (1992) (“By October [1945], the country was facing the biggest
housing shortage in history. In Chicago alone, reportedly, there were 100,000 homeless veterans.
(The city of Chicago would shortly offer old streetcars for sale, for conversion into homes.)”).

Ross at 247(In November, 1945, John Blandford characterized “‘the housing of
veterans as the primary emergency housing task in this country....’”).

Ross at 232 ( “In January, 1946, ... [General Lewis B.] Hershey [of the Selective
Service System] charged that the Federal Government currently was not meeting its
responsibilities to veterans” with respect to housing and other matters).
1,600,000 married veterans would be discharged by January 1, 1946, and (c) 1,300,000 single veterans would marry by the end of 1946.”106

[Quote from Davies p. 41]

Recognizing that the FHA and VA homeownership programs would not be adequate to meet this need, the Administration "responded . . . with a twofold program"107 - involving the Veterans' Emergency Housing Program (VEHP) and the Wagner-Ellender-Taft bill.

The VEHP, headed by the Housing Expediter, was to facilitate short-term construction of low-cost housing for veterans.108 Aspects of the VEHP legislation, however, were powerfully opposed by the “‘real estate’

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106Wendt at 163.
107Davies at 41.
108Davies at 41-2.
Despite President Truman's urging the Congress "to make up their minds whether they are for the veterans’ rights, or whether they are going to bow to the real estate lobby!"," VEHP passed only with significant restrictions, and the program lasted for one year.

Part of the VEHP legislation transformed the Section 608 program of

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109 Ross at 255-6 ("The Democratic leadership complained about the immense pressure being put on Congress by the ‘real estate’ lobby.") certainly including the National Association of Real Estate Boards (NAREB), which conducted a campaign to defeat it.

110 Ross at 256 note 69 ("Act now if you want to save your business," he advised them.) Herbert U. Nelson, NAREB’s Executive Director, urged all Realtors to contact their Congresspersons urging defeat of the Patman bill.

111 Ross at 257. After the House of Representatives passed a bill that lacked provisions that the Administration considered essential,

112 Ross at 258.

113 Keith at 66-67. On January 11, 1947, the President signed an executive order terminating most aspects of the program. . . . The Veterans’ Emergency Housing Program was dead.”

114 Keith at 68. ("[T]he Housing and Rent Act of 1947, enacted on June 30, which officially repealed the Veterans’ Emergency Housing Act.") See also Harloe, PH, at 270 ("...in 1946 the same [conservative] opposition managed to cripple a Truman proposal to use the apparatus of wartime controls to build 2.7 million units in a two-year veterans’ emergency housing programme."). [FWR: re-read Harloe 270 to compare w/ Keith.]
rental assistance to serve “veterans” for “war workers.” Over 400,000 units were built between 1946 and 1950, when the program ended. A 1954 investigation "found striking patterns of abuse and corruption...." It may be of interest that the Committee, which also investigated the Title I home improvement program, was chaired by Indiana Republican Homer Capehart.

The VEHP did make short-term contributions; nonetheless, as Nathaniel Keith has written, "it was true that the houses and apartments produced were primarily priced at levels suitable only for middle-income and at best lower-middle-income veterans. There was no production for low-income

115 Welfeld at 6. Section 608 of the National Housing Act was enacted in 1942 (56 Stat. 303) and amended in 1945 (59 Stat. 47) and 1946 (60 Stat. 214).

116 Encyclopedia at 519. The program was terminated in 1950.

117 Encyclopedia at 519.465,683 units in more than 7,045 developments were built.... "Between 1942 and the termination of the program in 1950,"

118 Welfeld at 6. Most of these were produced after 1946 -- over 425,000 units in a grand total of 7065 projects

119 Veterans' Emergency Housing Act, P.L. 79-388, 60 Stat. 207, 214. Welfeld at 6. This was part of the Veterans' Emergency Housing Act of 1946.

120 Encyclopedia at 519.
veterans or other families requiring housing subsidy for the simple reason that there was no financing program to accomplish this result.”

President Truman and Wilson W. Wyatt, the Housing Expediter, were well aware of the need to provide housing assistance for the lower-income veterans. Returning to the universalist principle of the New Deal, their proposed solution to this problem was enactment of the Wagner-Ellender-Taft ("WET") bill, which would have authorized vast enlargement of the public housing program that had been created in 1937. "By urging its passage, Wyatt dutifully reflected the continuing view of the Administration that the pressing requirements of the veteran should not obscure the nation’s overall housing needs. Perhaps hoping for support for a long-term housing plan by associating the needs of veterans with it, Wyatt included reference to W.E.T. in the veterans’ program. .... The tactical position adopted by the Administration leaders concerning W.E.T., however, forced them to neglect one major need of the veterans:

121Keith at 64.

122Davies at 42 (Truman “endorsed and actively supported” WET.).
construction of low-rent housing, since that belonged to the province of the W.E.T. Bill.\textsuperscript{123} Wyatt believed WET it would ‘fill in the gaps in the Veterans’ Emergency Housing Program.’\textsuperscript{124}

WET's low-rent public housing provisions were “a be’te noire for many conservatives of both political parties.”\textsuperscript{125} It was opposed on ideological and financial grounds. The industries that benefited from homeownership had an interest in preventing rental programs, as the lack of rental opportunities drove people to homeownership, whether they would have preferred that or not.\textsuperscript{126} the Home Building Industry Committee, the National Association of Real Estate Boards, the National Association of Home Builders, and the United States Chamber of Commerce among others approved the numerous aids to the private housing industry that the W-E-T


\textsuperscript{124}Davies at 49.

\textsuperscript{125}Ross at 252; see Huthmacher, supra note - , at 301 (on opposition to public housing).

\textsuperscript{126}See Harloe ph at 180 ("Bowley (1944:86) saw this development [of increasing homeownership in the 1930's] as driven by a lack of investment in rental housing, which led many to home ownership "because it was the only way of satisfying a particular need."\)
bill included, but they were even willing to forego them in order to kill the moderate public housing feature of the bill."\(^{127}\) Industry spokesmen referred to public housing as ":Europana socialism in its most insidious form' and 'the cutting edge of the Communist front.'\(^{128}\) When Congress rejected the legislation, “the rental provisions that Wyatt counted on to supplement the veterans’ program met a similar fate.”\(^{129}\) The real estate industry had played a crucial role in defeating WET. The national commander of AmVets wrote to President Truman about "the real estate lobby, many of whose members seem to be primarily interested in constructing conventional houses, by handcraft methods at high prices.”\(^{130}\)

Wagner said: “Domestic treason is being perpetrated on the American

\(^{127}\)Huthmacher, supra note -, at 323; see also Gelfand at 144-147(discussing WET); id. at 147 (“Lined up on one side were NAREB, the United States Savings and Loan League, the American Bankers Association, and other business groups, each of which would have liked to get urban redevelopment started, but not at the price of more public housing. .... Ranged against them were the liberal-welfare groups, many veterans organizations, the big-city mayors, and the Executive Branch.”)(footnote omitted).

\(^{128}\)Davies at 18, quoting Cong. Rec. 1950.

\(^{129}\)Ross at 252.

\(^{130}\)Ross at 269-70.
Veteran and their fellow citizens by the money-mad real estate lobby and their unholy representatives in Congresss.” \[131\]

A small but telling point is that opposition to W-E-T was provided by Senator Joseph McCarthy, who " received financial support from William Leavitt [sic; Levitt], one of the most prominent suburban speculative builders of the post-war period.” \[132\]

With the death of VEHP and the WET bill, "the Administration’s 1947 program signified the end of veterans’ housing per se; in its place increasingly the orientation would be on public low-rent housing for all who needed it. [This] . . . meant that (in the words of a contemporary observer): ‘The problems of providing urgently needed dwellings for

\[131\] Davies at 68.

\[132\] Harloe, PH, 270. See Keith at 68-72: id. at 68 ( “The brash young Senator had hit upon housing as the best issue by which he could quickly gain national prominence for himself.”); id. at 69( “McCarthy worked hard to find a way to end public housing. He frequently belabored witnesses with his idea of providing state-controlled cash subsidies to low-income families as a substitute for public housing”) – an idea, as Harloe points out, that the Nixon Administration favored (see harloe, ph, at 362 n. 22) and Congress later adopted as Section 8. Harloe’s assertion about the connection with Levitt apaprently is based on a memographed, undated paper, but Keith provides evidence of McCarthy’s involvement with another builder (Keither at 72) and reports the comment of liberal Repiublican Senator Charles Tobey, who attacked McCarthy and referred to following instructions from the real estate lobby (Keith at 69).
homeless veterans and their families ceased this week to be a responsibility of the Government and became a responsibility of free enterprise.” “The only continuing element of veterans’ housing could be found, ironically, in ... the mortgage insurance system provided under the GI Bill of Rights....”

When an expanded public housing program finally was created in the Housing Act of 1949, it fell far short of showing a nation's gratitude to its veterans, for various reasons. First, because public housing had maximum as well as minimum income requirements, non-white veterans who could afford homeownership but were barred from the VA and FHA programs because of their race or ethnicity would also be barred from public housing if their incomes were above the maximum allowed.

Second, because this was a rental program, it did not offer homeownership's opportunities for wealth accumulation and appreciation and it was, moreover, a stigmatized, financially starved program.. The

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133Ross at 271.
industry and the conservatives had constrained both the 1937 and 1949 housing acts in ways that made public housing, in historian Gail Radford's words, means-tested, stingy and alienating. For non-white veterans who could afford homeownership, being remitted to rented public housing was a significant disadvantage.¹³⁴

Third, adding insult to insult, public housing was racially segregated, de jure, from its inception in 1937 well into the 1960's (and, in most cases, continues to be de facto racially segregated today). Black veterans were subjected to horrendous, violent treatment when they tried to access public housing in "white" neighborhoods.

Finally, there simply was not enough public housing to meet the needs.: The 1949 and 1954 acts tied public housing very closely to urban renewal, so that most of the units were available only to families displaced by urban renewal. And when the authorizing legislation finally did pass, in its greatly constrained form, the industry and the conservatives then

³³⁴38% of all public housing units were occupied by Negores. Davies 124.
restricted the appropriations for public housing.\textsuperscript{135} And discouraged many local communities -- especially suburban communities -- from participating in the public housing program at all. What public housing was created has been starved for maintenance and capital repair funding and now is being demolished -- without equivalent replacement -- at the rate of hundreds of thousands of units each year.

The VA, FHA, and VEHP programs met the needs of the economy, the real estate and lending industries, the fiscal and social conservatives, and the most politically potent group of veterans -- white veterans with incomes or family support adequate to enable the veterans to embark on homeownership. That removed the political pressure to provide housing assistance for veterans and, as a contemporary observer said, "The problems of providing urgently needed dwellings for homeless veterans and their families ceased ... to be a responsibility of the Government and became a

\textsuperscript{135}Davies at 125. “by the expiration of the Administration’s term of office, forty-three months after the comprehensive bill became law, fewer than 60,000 of the authorized 810,000 units of public housing had been constructed and only twenty-six slum clearance projects had been started.” Having gotten title I, realtors mounted local campaigns against public housing
responsibility of free enterprise."

In the 50 years since then, there's been no significant political impetus for the federal government to keep the rhetorical promise of the GI Bill of Rights -- to enable every veteran to secure decent housing. **The one situation that has provoked discussion and at least some action has been the recognition that the problem of homelessness that the U.S. has experienced since the 1980's includes a very large number of veterans; indeed, the Department of Veterans Affairs (and others) estimate that approximately one-third of the adult homeless population are veterans.**

As the National Coalition for Homeless Veterans says: at least one of every three "homeless males who is sleeping in a doorway,________________________


There is debate about whether all homeless veterans would benefit from independent housing (as distinguished from transitional housing or emergency shelter). See, e.g., GAO Report, supra note * at [6] (asserting that independent housing is a reasonable goal only for some homeless veterans, while others may require transitional housing, group homes, or emergency shelter). It is undisputed, however, that at least some, if not all, homeless veterans would benefit from access to housing.
alley, [shelter,] or box in our cities and rural communities has put on a uniform and served our country . . . .”

There is a direct connection between the government's policies of the 1940's and the fact that hundreds of thousands of veterans are homeless today. The exclusion of Black and other non-white veterans from the FHA and VA homeownership programs meant that those veterans were excluded from significant wealth appreciation opportunities and from the suburbs, where superior educational and employment opportunities flourished. Exacerbating that exclusion, the urban renewal and interstate highway programs then displaced

137 138 139

Www.nchv.org/background.cfm

138 139

Www.nchv.org/background.cfm (5/17/02). The National Coalition for Homeless Veterans says that “the VA estimates that more than 275,000 veterans are homeless on any given night and more than half-a million experience homelessness over the course of a year.”

139 See "VA has largest Homeless Services Network, Works with HUD, Nonprofits to Expand Housing."30 Housing & Dev. Rptr. CD-16 at 501 (Dec. 9, 2002) (reporting that a spokesperson for DVA estimated that 200,000 veterans are homeless on any given night and 400,000 experience homelessness during a year and that 45 percent of homeless veterans suffer mental illness, 68 percent suffer from drug or alcohol abuse, and 33 percent suffer both mental illness and substance abuse. He also estimated that one-third of adult homeless men and 23 percent of all homeless adults are veterans.) A more recent VA estimate is that 200,000 veterans may be homeless on any given night, with 400,000 or more experiencing homelessness during the course of a year.
millions of people, many of them non-white, without providing replacement housing. And the federal government's failure to provide a subsidized rental assistance program for veterans meant that the veterans excluded from the homeownership programs got no housing help from the VA. Even after VA and FHA-financed homes were available to non-white veterans, VA provided nothing for the veterans who could not afford homeownership. Their only recourse was to compete with others for the very limited subsidized housing available to the public in general. 140 This is particularly a problem because, as one spokesperson for veterans' needs in MN reported, others concerned with meeting the needs of homeless people "did not want the veteran population to . . . 'cut into their funding pie.' They expected the Department of Veterans Affairs to take care of the veterans in the community."141

140 Then we have some HUD programs for which vets can compete along w/ the rest of the homeless people -- Section 8 SRO, Supportive Housing, Shelter Plus Care grants. (Cdbg, Home, hopwa & esg. -- only esg is focused on homeless) And LIHTC.

141 A Place at the Table: Homeless Veterans and Local Homeless Assistance Planning Networks (Feb. 2002) at 28.
While I hate playing the numbers game with respect to homeless people -- since even one homeless person, especially a homeless veteran, is one too many -- I do have to note that all the published estimates -- including the VA's estimate that 400,000 or 500,000 veterans may experience homelessness during a year -- are out-of-date and undoubtedly understate the numbers of homeless people in general and homeless veterans in particular. The most authoritative recent survey of homeless people was undertaken in 1996 -- 7 years ago -- at a time when the economy was in much better condition than it is now. Using that 1996 data, the most careful and respected study estimated that the number of people who may have experienced homelessness during a year beginning in February 1996 was 3.5 million. Since about 33 % of the homeless people are in families, that means that more than 2 million (2.32 million) single people may have experienced homelessness in that

142 This is the National Survey of Homeless Assistance Providers and Clients (NSHAPC). Se Burt, Aron & Lee, Helping America's Homeless (2001)at 16.

143 Burt et al., Helping America's Homeless, At 49-50.
Using the standard estimate that 1/3 of the homeless adults are veterans, that means that some 770,000 veterans may have experienced homelessness in that year. This does not include veterans who are in families (which is the case for many women veterans), and it does not take into account the virtual certainty that many more people are homeless in 2003 than were homeless in 1996. This means that the usual estimates of 400,000 or 500,000 veterans homeless during a year substantially understates the reality, and that the real numbers may be twice that amount -- 800,000 to a million.

Many of these veterans -- the VA says 1/3 to ½ -- suffer disabilities, and therefore are veterans to whom the federal government owes a special responsibility. These veterans suffer mental illness, substance abuse, and physical problems, the most common of which " reported by homeless veterans are arthritis, rheumatism or other joint problems

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144 (The U.S. Conference of Mayors estimated that there has been a 19% increase in requests for emergency food assistance in 2002 over 2001. It also estimates that 10% of the homeless people in the surveyed city are veterans.)
...[, and high blood pressure...."\textsuperscript{145} While we do not know how many of these are service-connected disabilities, it is reasonable to assume that a substantial number are.

The VA has some programs to serve these homeless veterans. In addition to a few very small, limited programs, like the "VA's Shelter for Homeless Veterans Through Acquired Property Sales Program\textsuperscript{146} \textsuperscript{147}, the VA's "Two major VA homeless programs . . . [:] Health Care for Homeless Veterans (HCHV) and Domiciliary Care for Homeless Veterans

\textsuperscript{145} NSHAPC at 11-6.

\textsuperscript{146} Gao 2/23/94, demand for services, p. 6.? A very limited program"VA's Shelter for Homeless Veterans Through Acquired Property Sales Program was authorized in 1987 under section 9 of the Veterans' Home Loan Program Imkprovemnts and Property RhabilitationIn Act. This program allows organizations working on behalf of the homeless to purchase VA-acquired property. The law was extended by th4 Homeless Veterans Comprehensive Service Programs Act of 1992, which allows VA to lease, lease with an option to purchase, or donate VA-acquired properties to nonprofit organizations, veterans' organizations, and others for the purpose of sheltering homeless veterans and their families. VA medical centers can also obtain VA-acquired properties for specially funded homeless veterans treatment programs, including the CWT/TR and HCMI programs."

\textsuperscript{147} Gao 2/23/94, demand for services, p. 6?From July 1988 to CDecember 1993, only 49 properties had been purchased from VA by homeless assistance organizations. In March 1993, VA initiated a 3 year test of leasing properties to eligible organizations. No more than 50 properties will be placed in this program nationwide."
Veterans (DCHV)...."148 149 In general, HCHV (formerly called HCMI) relies on "community-based residential treatment facilities...."150 that are time limited, "usually for less than 6 months."151152 153

At a few HCHV sites, VA provides, itself or by contract, a limited number of beds -- about 525 beds in 2002 -- for a Homeless Compensated Work Therapy/Transitional Residence program. 154

And VA also has the Homeless Providers Grant and Per Diem

148GAO HV at 4.

149GAO HV n. 4 at 4. HCHV initially was called the Homeless Chronically Mentally Ill (HCMI) program; the VA uses the term HCHV to "avoid use of the term 'chronically mentally ill.'" See also id. at 6, describing HCMI as "the core homeless program under the HCHV umbrella." Mental illness in this context includes substance abuse. GAO HV at 5.

150GAO HV at 6.

151GAO HV at 5.

152Bascetta at 5. “Through VA’s Homeless Chronically Mentally Ill (HCMI) program, 62 VA medical facilities contract with existing community-based providers to provide time-limited residential treatment to mentally ill or substance abusing homeless people.”

153Gao report 2/23/94 (Demand for services, etc.)Under HCMI, as described in 1994, "outreach staff and case managers work with community providers on the streets, in soup kitchens, and in shelters to locate homeless mentally ill veterans who need care. . . . [S]ome veterans are placed in community-based residential treatment programs. . . . These placements are made through contracts funded by VA."

154“VA Has Largest," etc., HDR, 12/9/02 at 501. In 2002, DVA reported that CWT/TR operated at 54 community-based group homes with more than 425 beds and, in addition, more than 100 such programs were connected to VA medical centers.
(GPD) program, which is designed to foster the creation of new facilities.\textsuperscript{155} DVA has said that this provided "1,700 long-term transitional or permanent housing beds and case management . . . to homeless veterans . . . in 2001."\textsuperscript{156} The maximum number of beds VA has attributed to GPD is 5700/. VA’s other major program for homeless veterans is Domiciliary Care for Homeless Veterans (DCHV), “in which homeless veterans receive rehabilitative services while occupying dedicated beds at VA medical centers.”\textsuperscript{157} "Over the past 15 years, VA has established 35 DCHV programs with a total of 1873 beds."\textsuperscript{158}

It is clear, and the"VA acknowledges that it alone cannot meet all the [homeless veterans'] ...needs. These programs are not available in all locations and, where available, capacity for residential treatment is

\textsuperscript{155}Bascetta at 5.

\textsuperscript{156}"VA Has Largest Homeless Services, etc." HDR 12/5/02 at 501.

\textsuperscript{157}Bascetta at 6,7; GAO HV at 6.

\textsuperscript{158}Principi 9/12/02 p. 6.
limited." The VA reports that it secured "more than 7,000 transitional and permanent beds for homeless veterans using its own resources and in partnership with others." This means that DVA is providing beds for 1.75 percent of the veterans it says are homeless during the year!

And when veterans are discharged from these programs, most of them are not housed. While some -- though by no means all -- of these homeless veterans were housed at discharge: VA said that “57 percent of DCHV veterans were housed at discharge” and that “39 percent of HCMI veterans reported having their own apartment, room, or house at discharge.....”

Reported results for GPD were less favorable than those for DCHV and HCMI. (but note that GAO and VA observed that at the time of this report, the program was relatively new and “early data may not provide a clear basis for evaluation.”)

VA boasted in 1999 that "through a series of bold and innovative housing ventures, VA has secured more than 7,000 transitional and permanent beds for homeless veterans throughout the nation."
need physical or mental health or substance abuse services, employment counseling or retraining, and assistance with insurance and benefit programs, what they all need is a place to live: housing.  

Some veterans need "some form of transitional housing before a more permanent housing arrangement can be achieved." Some may need group homes. Thus, what's needed is "a range of housing options (including emergency shelter as well as transitional and permanent housing"....

Mental illness and substance abuse do not cause homelessness: I suspect that everyone in this room knows several people who are substance abusers, or mentally ill, or both, who are perfectly well

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165 See Rosenheck, Bassuk & Salomon, Practical Lessons at 3 ("A study of housing vouchers and intensive case management for homeless people with chronic mental illness found that vouchers, but not intensive case management, improved housing outcomes...."; "An evaluation of a nine-city services-enriched housing program for homeless families with multiple problems . . . found that the vast majority of these families were still in Section 8 housing at an 128 month follow-up. The authors conluded 'that it may be an investment in helping families to regain their stability and ultimately perhaps, their footing in the workforce.'" pp 3-4.

166 Homeless vets gao 1999 at 3.

167 Gao 1999 p. 4.
housed. What causes homelessness, among veterans and other people, is poverty. As a recent HUD/HHS investigation concluded: "Every study that has looked as found that affordable, usually subsidized, housing prevents homelessness more effectively than anything else. This is true for all groups of poor people, including those with persistent and severe mental illness and/or substance abuse."¹⁶⁸

The only rental assistance program for veterans is the HUD-VA Supportive Housing (HUD-VASH) program for homeless veterans who have severe psychiatric or substance abuse disorders. HUD-VASH provides HUD Section 8 rental vouchers and ongoing VA case management, health, and other supportive services, which are to be made available for the term of the Section 8 assistance.¹⁶⁹ This program has a total of about 1800 Section 8 vouchers.

In addition, the Veterans Programs Enhancement Act of 1998 authorized VA to guarantee up to $100 million in loans to construct,

¹⁶⁹ HUD RF-551 11:0014
rehabilitate, or acquire land for multifamily transitional housing projects for homeless veterans."\(^{170}\) VA estimates that this would create 5000 units. But DVA is in no hurry to use this authority. In September 2002, DVA Secretary said that he thought he might be able to offer the first loan guarantees by the beginning of FY 2004, "or perhaps sooner."\(^{171}\)

It's obvious that what the VA is doing is egregiously inadequate to meet the needs of homeless veterans -- not to mention the veterans who are not homeless but are living in overcrowded, substandard, unaffordable, dangerous, and otherwise inadequate housing. **We are not with Lloyd George, providing "homes fit for heroes."** We are in the situation Franklin Roosevelt abjured us to avoid, when he said that veterans "must not be demobilized . . . to a place on the bread line or on a corner selling apples."\(^{172}\) We are where Professor Ross described, after the

\(^{170}\) Bascetta at 6.

\(^{171}\) Principi 9/12/02 testimony.

\(^{172}\) Ross at 64, quoting FDR papers vol. Xii, 326-36.
first World War, when “‘The Keys to the City had turned out to be only a pass to the flophouse’ for some veterans.”\textsuperscript{173} \textbf{But now that is the case for many veterans.}

CONCLUSION - PROPOSALS

I close with some thoughts about how this disgraceful neglect of veterans' housing needs might be remedied. Especially now, as we send hundreds of thousands of men and women into harm's way, one of the very least things we should do is make our rhetorical guarantee of decent housing a reality for veterans and their survivors.

It's not hard to know what ought to be done. What's hard is to figure out how to make it happen.

Four things ought to be done.

First, the federal government should assure immediate housing assistance to every veteran within DVA's Priorities 1-4. (These are veterans with substantially disabling service-connected disabilities, former POWs, former MIAs, and those with service-connected disabilities who are above a certain income threshold.)

\textsuperscript{173}Preparing for Ulysses at 13, quoting Dixon Wecter, When Johnny Comes Marching Home 345 (1944).
and others with catastrophic disabilities.\textsuperscript{174} The most effective way to do this would be by using Section 8 vouchers, with the resident contribution limited to 20\% of household income, no 120 day limitation, and a federal prohibition against discrimination on the basis of having such a veterans' voucher. There is, after all, no reason why a landlord should be permitted to refuse to accept as a tenant a person who's served his country, or the survivor of one who died in the service.

2. A deeply subsidized homeownership program should be introduced. The Department of Agriculture operated such a program years ago; its design should be adapted for veterans.

3. A subsidized rental program for veterans should be created.

4. The veterans' homeownership program should be improved so that it is at least as generous as the homeownership- programs operated by HUD

\textsuperscript{174}DVA, 2001 National Survey of Veterans (NSV): Final Report at 5-1 to 5-2. (That is: every veteran with service-connected conditions rated 50 percent or more disabled; veterans with service-connected conditions rate 30 to 40 percent disabling; former POWs, veterans with service-connected conditions rated 10 to 20 percent disabling, and certain other disabled veterans (Priority 3); veterans who receive increased pensions based on use of regular aid and attendance or by reason of being permanently house-bound, and other veterans who are catastrophically disabled (priority 4).
and the Department of Agriculture.

5. Compensation -- reparation -- should be made available to the Black veterans who were denied participation in the VA and FHA homeownership programs after World War II. These are identifiable people who were the victims of government discrimination on the basis of race; the gov't should redress those injuries.

The great challenge, however, is to discern how to make this happen. As John Doling writes in his thoughtful book, *Comparative Housing Policy* 175, “the view that the welfare needs of the citizens...are an automatic trigger for the introduction of social policies is contestable. The belief that humanitarian concerns constitute the sole, or even partial, basis or trigger for housing policy, overlooks other possibilities, for example that policy may fulfil a function ins stabilizing the economic and political system as a whole. Governments may intervene, in other words, in ways that improve the lot of those who would not otherwise

175 John Doling, Comparative Housing Policy: Government and Housing in Advanced Industrialized Countries (St. Martin’s Press 1997).
be able to consume housing of a reasonable size and quality, but such an outcome is a consequence of an underlying motivation to preserve the social order. There may be a distinction, therefore, between what policies achieve in improving the housing system and what they are intended to achieve in providing a wider stability.”  

The history of the development of the veterans' housing programs in the US after World War II and in Great Britain after World War I provides helpful clues as to what would be necessary to expand and improve the veterans' housing programs here. Some politically potent power would be required. Vigorous advocacy from all of the veterans' organizations and their grass roots members certainly would be important, and the veterans' organizations should seek support from the "natural" public interest lobby for housing, including labor and faith groups. But the support that would be crucial would be from the housing industries -- builders, realtors, and lenders. The FHA program

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176Doling at 10.
and the original VA program and virtually every other major housing program in the US has been created primarily to serve the industries.

If, but only if, the industries support the development of housing programs for veterans, those programs may have a chance of enactment.

Finally, given the current state of the federal budget, a program that relied heavily on direct expenditures would be unlikely to succeed. The major housing programs in the US -- the homeownership deductions and the Low Income Housing Tax Credit program -- operate with indirect financing through the tax code, and I think that is the most likely way to provide significant additional housing assistance to veterans or anyone else.  

In England in 1919 and the US in 1945, government was interested in homebuilding as a counter to unemployment and social unrest. What

\footnote{Doling at 10. “...whereas in all countries there are, or have been, circumstances that can be described in terms of need and disequilibria, and at the same time all industrialized countries have enacted housing policies, the two cannot necessarily be seen as part of a stimulus response system.”}
really drove the housing program of 1919 is, as Swenarton says, was a desire for "insurance against revolution: its purpose was to ensure the survival of the status quo." To a considerable extent, that was the force behind the veterans programs here after World War II. It will be instructive to see if anything short of that kind of fear will produce adequate housing assistance for veterans in the US now.