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## **Beware of Dog: Restricting Dog Ownership in Federal Housing Assistance**

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## I. Introduction

Low-income families who receive federal housing aid should not own pets because those who cannot afford shelter for the people in their family cannot afford proper care for their pets. {Is this always true?] Proper care for a dog includes, but is not limited to, providing appropriate food, exercise, grooming, housing, and local licensing.<sup>1</sup> Though proper care can be expensive, proper care is necessary for a dog's health and safety and, more importantly, for the health and safety of the family and surrounding community.<sup>2</sup> Proper animal care is not monitored by federal housing aid, but private? adoption agencies require information like employment and housing in an effort to ensure that the adopted dog will receive proper care.<sup>3</sup> Federal housing assistance is not provided so that families can properly care for their pet dog. Rather, housing assistance serves the family's specific need for shelter in a safe and clean environment.<sup>4</sup> The rules that regulate housing assistance eligibility should evaluate the applicant's spending for their personal needs in addition to their spending on their pet dog or cat? because federal housing assistance is provided for people in need, and not for dogs/pets? in need.

A family participating in federal housing assistance pays approximately 30 percent of their income towards rent, and the federal government pays the remaining balance directly to the landlord.<sup>5</sup> The money provided through housing assistance is used solely to shelter low-income

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<sup>1</sup> *General Dog Care*, ASPCA (2016), <http://www.aspc.org/pet-care/dog-care/general-dog-care> (last visited Apr 28, 2016).

<sup>2</sup> *See, Animal Control*, NJDOH, State.nj.us (2016), <http://www.state.nj.us/health/animalwelfare/> (last visited May 2, 2016).

<sup>3</sup> *See, Public Housing*, Portal.hud.gov (2016), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph) (last visited May 2, 2016).

<sup>4</sup> *See, Housing Choice Voucher Program Section 8*, Portal.hud.gov (2016), [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (last visited Apr 21, 2016); *HUD's Public Housing Program*, Portal.hud.gov (2016), [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog) (last visited Apr 21, 2016); *Project Based Vouchers*, (2016), [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9157.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9157.pdf) (last visited Apr 21, 2016).

<sup>5</sup> *Id.*

families.<sup>6</sup> To receive federal housing assistance an individual's income and income-producing assets are counted, but the family's use of discretionary funds are not monitored.<sup>7</sup> A factor in determining eligibility for housing benefits should be how responsibly a family uses in their discretionary budget, including the money spent on pet ownership.

Four million eight hundred thousand homes in America, approximately 3 percent of the population, were served by the federal housing assistance in 2014.<sup>8</sup> In 2014, the federal government spent \$50 billion on housing assistance.<sup>9</sup> Although federal housing assistance is a means-tested program, currently only a quarter of those eligible for housing aid are receiving housing aid. While 75 percent of the people who are eligible for housing assistance cannot be served due to lack of funding.<sup>10</sup> [not a sentence!] The federal government should not validate participant's pet expenses because the laws protect unnecessary spending.

In 2015, Americans spent an estimated \$60.28 billion on the pet industry, and 54.4 million homes owned at least one dog.<sup>11</sup> As such, dog ownership is an expensive personal endeavor. According to a 2015 survey, a person or family spends \$1,641.00 on average for their dog services or supplies in a year, including, surgical and routine veterinary visits, food and treats, kennel boarding, vitamins, grooming or grooming aids, and toys.<sup>12</sup> Surveying consumer expenditures, Bureau of Labor and Statistics found that in 2011 households spent less on alcohol, [isn't that a good thing?] residential landline phone bills and men's or boy's clothing than was

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Federal Housing Assistance for Low-Income Households*, Congressional Budget Office (2015), <https://www.cbo.gov/publication/50782> (last visited Apr 21, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Pet Industry Market Size and Ownership Statistics*, Americanpetproducts.org (2016), [http://www.americanpetproducts.org/press\\_industrytrends.asp](http://www.americanpetproducts.org/press_industrytrends.asp) (last visited April 21, 2016).

<sup>12</sup> *Id.* (This average monthly value was determined not by asking the question of how much is spent on a dog in a household, but evaluating individual dog needs like veterinary care, food, toys, etc. individually and adding the averaged values together.)

spent on their pet supplies including pet medicine, pet services and veterinarian services.<sup>13</sup> The same survey considered also comparisons of human food and pet food. The average spending on pet food each year was more than the average amount of money spent on candy, bread, chicken or cereal.<sup>14</sup> This survey shows that a family could have a year's supply of chicken or, alternatively, a family could pay for pet food. Pet dogs are a major expense in American homes.

[sometimes you use only dogs, sometimes pets (including cats). Shouldn't the discussion be by either one or the other [preferably pets (i.e., dogs *and* cats)?]

Consequently (it is useful to have transitional words or phrases to make your paper run smoother)]Families eligible for federal housing assistance should not have dog companion animals, because dogs and pets in general are a major family expense. This paper will address dog ownership in families eligible for public housing assistance by (1) defining companion animal; (2) considering legislative history about pets in federally assisted housing; (3) describing three of the federal housing assistance programs; (4) evaluating the current operational rule,"The Pet Ownership in Public Housing Act;" (5) discussing why dog ownership should not be permitted for participants of federal housing assistance; and (6) addressing how to implement this change federally. <sup>15</sup>

## II. Companion Animal

In the context of law, dogs perform a range of functions and are therefore categorized differently, depending upon the circumstance?. When a dog serves the specific needs of a

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<sup>13</sup> Steve Henderson, *Spending on pets: "Tails" from the Consumer Expenditure Survey: Beyond the Numbers: U.S. Bureau of Labor Statistics* Bls.gov (2016), <http://www.bls.gov/opub/btn/volume-2/spending-on-pets.htm> (last visited Apr 21, 2016).

<sup>14</sup> *Id.*

<sup>15</sup> This paper will not address pet ownership when people are using government aid when they are blind, disabled or over 6r Xyears old collecting Supplemental Security Income. WHY? *Understanding Supplemental Security Income*, Ssa.gov (2016), <https://www.ssa.gov/ssi/text-over-ussi.htm> (last visited Apr 21, 2016); *Senior Housing*, Portal.hud.gov (2016), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/seniors](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/seniors) (last visited Apr 21, 2016).

disabled owner, the dog may qualify as an assistance animal rather than a companion animal. A Seeing Eye dog that assists a blind individual is a service animal.<sup>16</sup> Assistance animals include service animals, but also include emotional support animals, which are prescribed by a mental health professional and provide comfort to an individual who is suffering from a mental health ailment.<sup>17</sup> Additionally war veterans can rely on emotional support animals to help with Post Traumatic Stress Disorder.<sup>18</sup> This paper discusses specifically canines (and cats) when acting as “common household pets” instead of dogs being used as assistance animals. As such, it is important to know what role the dog has in the home, especially a household receiving federal housing assistance, and how that role relates to the owner or handler.

In contrast, companion animals are animals whose main function is to provide companionship.<sup>19</sup> They provide “faithful, intimate companionship that is unconditional and nonjudgmental.”<sup>20</sup> Companion animals *do not* perform tasks to help their owners manage with physical or mental disabilities.<sup>21</sup> Although many would count their pet as a “member” of the family, companion animals are not afforded the same protection in housing as service or assistance animals.<sup>22</sup>

Current law protects dog owners who want to rent and live with their service animal or assistance animal. The Americans with Disabilities Act (“ADA”) requires landlords to allow a

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<sup>16</sup> *Service Animals and Assistance Animals for People with Disabilities in housing and HUD-Funded Programs*, <http://portal.hud.gov/hudportal/HUD> (2013), [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf) (last visited Apr 27, 2016).

<sup>17</sup> *Dogs and PTSD*, Ptsd.va.gov (2016), [http://www.ptsd.va.gov/public/treatment/cope/dogs\\_and\\_ptsd.asp](http://www.ptsd.va.gov/public/treatment/cope/dogs_and_ptsd.asp) (last visited Apr 28, 2016).

<sup>18</sup> *Id.*

<sup>19</sup> *Service Animals and Assistance Animals for People with Disabilities in housing and HUD-Funded Programs*, *supra* note 16.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See, Susan J. Hankin, *Not a Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 Rutgers J.L. & Pub. Pol'y 314, 316 (2007).

handler and service dog to live together.<sup>23</sup> Assistance animal, defined in the Fair Housing Act (“FHA”), is any animal that provides assistance for the benefit of an individual with a disability or provides emotional support that alleviates a symptom of an individual’s disability.<sup>24</sup> Even if a “no pet” policy is in place, private landlords must make reasonable accommodations for individuals who have an assistance animal.<sup>25</sup> A disabled individual’s use of a service dog or an assistance animal is protected as a civil right under the ADA and FHA respectively<sup>26</sup>

Congress has chosen to protect disabled individuals who wish to have a service or assistance animal in public and private housing through the ADA and the FHA.<sup>27</sup> Although there is no current law to protect *all* people who wish to live with their companion animal, federal law protects companion animal ownership for elderly and handicapped people participating in federal housing assistance and for families participating in the Public Housing program.<sup>fn</sup> [I assume—as in class, you will further explain the difference between housing assistance vs. Public Housing at some point in the paper. The distinction is important. It is also important to consider whether such “discrimination” should be permitted.]

i. Congressional Findings

Companion animal ownership for all people in public and private housing is not a civil right—at least under federal law--because private landlords are not required to allow companion animals within their rental properties.<sup>28</sup> Nevertheless, In 1983, the United States Senate

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<sup>23</sup> 42 U.S.C.S. § 12182(a) (2016).

<sup>24</sup> *Service Animals and Assistance Animals for People with Disabilities in housing and HUD-Funded Programs*, *supra* note 16.

<sup>25</sup> *See*, 42 U.S.C. § 3601 et seq. (2016).

<sup>26</sup> *A Guide to Disability Rights Laws*, Ada.gov (2016), <http://www.ada.gov/cguide.htm#anchor63409> (last visited Apr 26, 2016).

<sup>27</sup> Housing and Urban-Rural Recovery Act of 1983, 12 U.S.C. § 1701n-1.

<sup>28</sup> 42 U.S.C. § 1437(f) (2016); *See*, Rebecca Huss, *supra* note 28, at 96. How can the Huss article be fn 28 (unless you are just copying this from another article?)

Committee on Banking, Housing and Urban Affairs stated the following in support of pet ownership in elderly and handicapped housing:

Evidence from numerous studies show that pets provide substantial physical and mental benefits to older persons particularly those who live independently. It is the Committee's view that these benefits warrant Congressional action to prevent arbitrary rulemaking in Federally-assisted projects.<sup>29</sup>

Although this statement pertains to older persons, its broader conclusions are used as the basis for rulemaking in all Public Housing, and not just the federal housing assistance for the elderly. This Congressional finding does not address young people or families; however, the findings about independent elderly companion pet ownership are used universally to justify family ownership of pets in low-income housing.

### III. Pet Ownership and Housing Laws History

#### i. Pet Ownership Assisted Rental Housing for Elderly or Handicapped

The disallowance of companion dogs for families receiving federal housing assistance had been predominant until 1983 when Congress passed The Pet Ownership Assisted Rental Housing for Elderly or Handicapped Act? ("POEH").<sup>30</sup> As the title states, this law is about pet ownership, not about service or assistance animals, and is for handicapped and elderly individuals.<sup>31</sup> Handicapped individual are those with a physical mental or emotional impairment that is expected to have an extended duration, which "impedes on his or her ability to live independently", and that living "independently could be improved by more suitable housing

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<sup>29</sup> Sen. Rpt. 98-142 at 41 (May 23, 1983) (reprinted in 1983 U.S.C.C.A.N. 1770, 1812); *See*, Rebecca Huss, *supra* note 28, at 91. Do you bother to check to see if Huss fn 28 is correct?

<sup>30</sup> *See*, Rebecca Huss, *supra* note 28, at 74-75; 12 U.S.C. § 1701r-1 (2000) (the law specifically states that it does not apply to any animal that provides aid to a disabled individual or family like a service animal or assistance animal, but addresses a common household pets, or companion animal).?

<sup>31</sup> 24 C.F.R. § 5.303 (2016).

conditions”.<sup>32</sup> Elderly individuals are those who are at least 62 years of age.<sup>33</sup> This law protects companion animal ownership for two classes of people participating in housing assistance, elderly and handicapped.

The U.S. Department of Housing and Urban Development (“HUD”) administers federal housing assistance, and works with a local Public Housing Agency (“PHA”) to administer the assisted housing programs locally.<sup>34</sup> Within housing assistance, the Public Housing program offers rental units, which are owned and operated by the local PHA.<sup>35</sup> In addition to Public Housing, federal housing assistance provides for Project Based Housing Assistance where a private landlord, also called “project owner,” owns and operates the rental units.<sup>36</sup> POEH creates different rules for Public Housing and for Project Based Housing Assistance regarding elderly or handicapped family pet ownership. Public Housing is responsible to create and administer local pet policies while Project Based Housing Assistance holds the private project owner to very specific requirements for administration of pet policies.<sup>37</sup> The open-ended rules for Public Housing allow local PHAs to set unique local rules about companion animal or “common household pet” ownership in Public Housing, while the specific rules govern the pet policies for private landlords.<sup>38</sup>

After Congress enacted POEH, it authorized HUD to provide further regulations for administrative purposes?<sup>39</sup> Private landlords or project owners are required to adhere? to 24 C.F.R. §5.306, which defines common household animal, allows for a pet deposit, makes

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<sup>32</sup> 24 C.F.R. § 5.403 (2016).

<sup>33</sup> *Id.*

<sup>34</sup> *See, HUD's Public Housing Program, supra* note 4.

<sup>35</sup> *Federal Housing Assistance for Low-Income Households, supra* note 8.

<sup>36</sup> 24 C.F.R. § 5.306 (2016).

<sup>37</sup> *Federal Housing Assistance for Low-Income Households, supra* note 8; 24 C.F.R. §5.306 (2016).

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

<sup>39</sup> 81 Fed. Reg. 12354, 12355 (2016).

provisions for the health and safety of residents and requires a registration process.<sup>40</sup> According to 24 C.F.R. §5.306, a common household pet is defined for Project Based Assistance as: “a dog, cat, bird, rodent (including a rabbit), fish, or turtle” and does “not include reptiles (except turtles)”.<sup>41</sup> Project owners may require a pet deposit paid over several months, and HUD regulates the maximum amount allowed for pet deposits, currently set at \$300.00.<sup>42</sup> Project owners also are required to enforce pet rules which include sanitary standards for the discarding of pet waste [break up long sentences!]. This is in addition to requiring pet restraint, meaning that dogs are “under control of a responsible individual” when in “common areas.” Lastly, residents are required to register their pets with the project owner.<sup>43</sup> Registration of a resident’s pet requires a certificate from a veterinarian attesting that the pet has received the vaccinations required by state law, sufficient descriptive information to be able to identify the specific pet, and a guardian for the pet in case the tenant is no longer able to care for their pet.<sup>44</sup>

Although project owners are held to such rules, they are given some discretion to determine if a common household pet is appropriate for their rental unit. A project owner can refuse pet registration for four reasons. The first three reasons are (1) if the owner failed to provide sufficient information required for registration; (2) the pet is not a common household pet; and (3) keeping the pet would violate the house pet rules.<sup>45</sup> The fourth reason a project owner can refuse pet registration is that:

The project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as

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<sup>40</sup> 24 C.F.R. §5.306 (2016); *see, HUD's Public Housing Program, supra* note 4.

<sup>41</sup> *Id.*

<sup>42</sup> *See*, HUD, No. 4350.3 REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs (2009) at 6-24.

<sup>43</sup> 24 C.F.R. § 5.350 (2016).

<sup>44</sup> *Id.*

<sup>45</sup> 24 C.F.R. § 5.350 (d)(iii)(3) (2016).

a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations.<sup>46</sup>

In contrast to the first three reasons for refusal, which are based upon the tenant's failure to follow instructions, the fourth reason allows the project owner to make an objective decision about whether the applicant is able to care for the pet. Although an individual's habits and practices may be a reason for a project owner to refuse registration of a pet, this decision cannot be made on solely financial grounds. The same regulation, 24 C.F.R. § 5.350, describing POEH pet registration states the following:

The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants.<sup>47</sup>

This language makes explicit that a private project owner cannot disallow an elderly or handicapped person from keeping a pet even due to financial limitations even if the pet owner cannot provide their pet proper care. The above provision makes clear that POEH regulations were not put in place to ensure proper pet care, but instead to protect the health and safety of pet owners and other residents. If an individual cannot afford care for their pet, project owners cannot express an interest in the welfare of the pet beyond the minimum requirements of state or local law.

POEH outlines the legislative history behind Pet Ownership in Public Housing ("POPH"), although the laws have developed in different ways. For instance, POEH encompasses both Public Housing and Project Based Assistance.<sup>48</sup> The specific rules for private landlords denoted in POEH shed light onto how PHAs should administer both POEH and POPH.

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<sup>46</sup> 24 C.F.R. § 5.350 (d)(iii)(3)(iv) (2016).

<sup>47</sup> 24 C.F.R. § 5.350 (d)(iii)(4) (2016).

<sup>48</sup> *See*, 24 § C.F.R. 5.306 (2016).

HUD gives local PHAs great deference in setting the standards for Public Housing. Each PHA defines “common household pet” and determines local sanitary requirements, pet restraint rules, and registration. Consider the specific rules that apply to project owners while considering the minimal regulations in POPH.

ii. Pet Ownership in Public Housing

Pet Ownership in Public Housing allows residents of Public Housing to own common household pets.<sup>49</sup> POPH is similar to POEH in that each PHA makes local rules, but POPH provides PHAs with restrictions for these? rules. Returning to the specifics of POPH below, consider federal housing assistance purpose, eligibility, and its? three different forms of assistance programs. Those being? Public Housing, Housing Choice Vouchers and Project Based Assisted Housing.

No big gaps between sections

IV. Federal Housing Aid

The federal low-income housing programs are administered by (“HUD”).<sup>50</sup> In 2014, the federal government spent \$50 billion dollars on federal assistance housing, and the majority of spending was? within three programs which all function with a similar premise, providing families with affordable, safe and clean dwellings.<sup>51</sup>

The definition of family is broad, and provide for a single person or a group of related people.<sup>52</sup> As such, a “family” who utilizes public housing generally pays 30 percent of their

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<sup>49</sup> 42 U.S.C. § 1437z-3 (2016).

<sup>50</sup> See, *HUD's Public Housing Program*, *supra* note 4; 45 Fed. Reg. 55086, 14.146.

<sup>51</sup> *Federal Housing Assistance for Low-Income Households*, *supra* note 8.

<sup>52</sup> See 42 U.S.C. § 1437a(b)(3) (2016); 24 C.F.R. § 5.403 (2016).

cumulative income towards rent and utilities and the federal government pays the remaining balance of rent directly to the landlord.<sup>53</sup> If a participating family makes variable income month to month, then the family pays less for rent that month and the federal housing aid program covers the difference.<sup>54</sup> Due to the large sum of federal government spending on housing assistance, there is a relatively complex? process for determining a family's eligibility.

Initial eligibility for federal low-income housing assistance is limited to families who have income of 50 percent or less than the local area median income.<sup>55</sup> More than 75 percent of the families served by federal low-income housing programs have income of less than 30 percent of the local area median income.<sup>56</sup> Half of the people served by these programs are not elderly or disabled.<sup>57</sup> Unfortunately, eligibility does not guarantee aid, 75 percent of those currently eligible are on a waiting list to receive housing assistance.<sup>58</sup> [Is it prioritized based on need or disability?]

Eligibility for public housing is determined by the following three requirements: (1) a certain annual gross income (counting income generating assets); (2) whether the applicant is elderly, disabled or a family; and (3) citizenship or eligible immigration status.<sup>59</sup>

If an individual is eligible within the above requirements, the local housing authority checks with their provided references and may visit the family's current dwelling to determine if the applicant would also make a good tenant.<sup>60</sup> "Housing Authorities will deny admission to any applicant whose habits and practices may be expected to have a detrimental effect on other

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<sup>53</sup> *Id.*

<sup>54</sup> *Federal Housing Assistance for Low-Income Households, supra note 8.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* Are there more details about who these people are? Are most on the waiting list elderly or disabled?

<sup>59</sup> 42 U.S.C.S. § 1436a (2016); *Federal Housing Assistance for Low-Income Households, supra note 8.*

<sup>60</sup> *Federal Housing Assistance for Low-Income Households, supra note 8.*

tenants or on the project’s environment.”<sup>61</sup> Recall that POEH specified that a private project owner could refuse to register an animal because of an individual’s habit or practice that causes them unable to keep a pet according to the rules.<sup>62</sup> To elaborate, the POEH surmises that any tenant whose habits and practices show a future lack of compliance with the pet rules may be denied pet registration. In contrast, federal housing aid allows the habits and practices to inform decisions for a family’s housing eligibility, and not just eligibility for pet ownership. Though somewhat? comparing apples and oranges, there is a shared concern of “habits and practices” which informs both groups about eligibility, either for federal housing aid or pet ownership for private project owners.

i. Public Housing

Public Housing is a federal low-income housing program, which provides rental units owned and operated by local PHAs for eligible low-income families.<sup>63</sup> In 2014 the federal government spend \$7 billion on this program.<sup>64</sup> Public Housing serves 1.2 million people, approximately half of whom are not elderly or disabled.<sup>65</sup> The federal government established Public Housing during the New Deal to offer safe and decent rental housing for certain eligible low-income families, because many Americans were homeless during the Great Depression.<sup>66</sup> The above sentence is better in a fn. It’s merely a historical reference.

Public Housing determines the amount of rent paid by the Total Tenant Payment (TTP).<sup>67</sup> TTP establishes the rent paid by the tenant, by using the highest of the following: (1) 30 percent

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<sup>61</sup> *Id.*

<sup>62</sup> 24 C.F.R. § 5.350 (d)(iii)(3)(iv)(2016).

<sup>63</sup> *Federal Housing Assistance for Low-Income Households, supra* note 8.

<sup>64</sup> *Id.*

<sup>65</sup> *Public Housing, supra* note 3.

<sup>66</sup> United States Housing Act of 1937, ch. 896, 50 Stat. 888 (codified as amended at 42 U.S.C. 1437 to 1437j (1988)).

<sup>67</sup> *Federal Housing Assistance for Low-Income Households, supra* note 8.

of the monthly income adjusted for dependent(s), elderly, disabled and or medical allowances; (2) 10 percent of monthly income; (3) welfare rent (which is provided from a different social welfare program); or (4) a minimum amount set by the local PHA ranging between \$25 and \$50.<sup>68</sup> Because of the range of income and varied sources, TTP addresses all possible rents.

In addition to the TTP approved rent, the Public Housing upkeep is also particularly expensive to operate? and, as a result, the federal government continues to consider other options in lieu of owning rental units.<sup>69</sup> Due to the expense of owning and operating Public Housing, the program results in a concentration of low-income people living in the same area, which makes the locale less desirable, especially because of typically higher crime rates.<sup>70</sup> POPH protects pet ownership only for families participating in Public Housing; [WHY?] however other program allow for varied housing locations.

#### ii. Housing Choice Vouchers

The Housing Choice Voucher program provides rental help for people who rent from private landlords. Participating individuals must find eligible housing in the private market in conjunction with a landlord's agreement to participate in the program. Further, the rental unit must also comply with local PHA requirements.<sup>71</sup> In 2014, the federal government spent \$18 billion dollars on this program.<sup>72</sup> This is the federal governments' largest program "for assisting

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<sup>68</sup> *Id.*

<sup>69</sup> *Federal Housing Assistance for Low-Income Households, supra* note 8.

<sup>70</sup> *See generally*, Jeffrey Fagan, Garth Davies, and Jan Holland, *The Paradox of the Drug Elimination Program in New York City Public Housing*, 13 *Geo. J. Poverty Law & Pol'y* 415, 415-417.

<sup>71</sup> *Project Based Vouchers*, (2016), [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9157.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9157.pdf) (last visited Apr 21, 2016).

<sup>72</sup> *Federal Housing Assistance for Low-Income Households, supra* note 8.

low income families, elderly and disabled to afford decent, safe, and sanitary housing in the private market.”<sup>73</sup>

When an eligible family is selected from the waiting list to receive a Housing Choice Voucher, the PHA provides information about what type of dwelling is approved for the family’s size and needs.<sup>74</sup> The participant then must search and find appropriate housing within the parameters determined by the PHA.<sup>75</sup> Once the lease terms are agreed upon between the landlord and the tenant, the PHA inspects the dwelling to determine if it meets safety and health standards, and to determine if the rent requested is reasonable.<sup>76</sup> When the participant signs a lease, the landlord and the PHA sign a housing assistance payment contract that runs concurrent with the lease. This means the tenant, the PHA, and the private landlord all have obligations when participating in the Housing Choice Voucher Program.<sup>77</sup> Because Housing Choice Vouchers require cooperation between participants and private landlords, the landlord chooses whether to allow dogs in their rental units.<sup>78</sup> [Is this really a reason, since the Feds could simply require that--for a landlord to qualify—landlord must allow pets. It might reduce the number of landlords, but the feds could certainly require it as a condition.]

### iii. Project Based Housing Assistance

Project Based Rental Assistance consists of privately owned buildings that are contracted to the federal government to provide housing for low-income families.<sup>79</sup> In 2014 the federal

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<sup>73</sup>*Housing Choice Vouchers Fact Sheet*, Portal.hud.gov (2016), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet) (last visited Apr 21, 2016).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Rebecca Huss, *supra* note 28, at 97.

<sup>79</sup> *Project Based Vouchers*, *supra* note 73.

government spent \$12 billion on this program.<sup>80</sup> For this program, local public housing authorities and landlords enter into a contract where the owner commits to build or rehabilitate the rental units.<sup>81</sup>

When the rental units are rehabilitated to the local PHA's standards of health and safety, the PHA contracts with the owner to establish the rehabilitated units as low-income housing unit. Unlike Housing Choice Vouchers where a family is eligible to find a private rental unit, here the rental unit is provided, and the local PHA refers families on the waiting list to fill vacancies.<sup>82</sup> The low-income assistance here is tied to the unit, and therefore when a family moves out of the unit, their individual eligibility may not have changed, but they must wait until an alternative housing assistance program is available.<sup>83</sup> Similar to the Housing Choice Voucher program, the rental units are not public housing, but are owned and operated by private landlords. Low-income families who participate in Project Based Housing Assistance do not fall under POPH and, as such, their private landlord chooses whether or not to allow residents pet ownership.<sup>84</sup>

#### V. Pet Ownership in Public Housing Revisited

Having now reviewed the three federal governmental low-income housing programs currently available, it is important to consider the Pet Ownership for Public Housing Act. POPH text found at 42 U.S.C. 1437z-3, which provides for the following ownership conditions:

A resident of a dwelling unit in public housing ... own 1 or more common household pets or have 1 or more common household pets present in the dwelling unit of such resident, subject to the *reasonable requirements* of the public housing agency, if the resident maintains each pet responsibly and in accordance with applicable State and local public health, animal control, and animal anti-

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Rebecca Huss, *supra* note 28, at 97. Again, the Huss article is not fn 28. And how much of your article is dependent on her prior research?.

cruelty laws and regulations and with the policies established in the public housing agency plan for the agency.<sup>85</sup>

This section provides the governmental minimum allowance permitting? at least one common household pet per unit, subject to local requirements.<sup>86</sup> The pet owner is required to follow the state or local laws pertaining to pet ownership, which may include but is not limited to vaccinations, registration and licensing, and the laws about animal control and animal anti-cruelty.<sup>87</sup> Secondly, the participant and tenant must? then further comply with the local public housing requirements determined by each PHA.<sup>88</sup>

The law provides examples of what reasonable restrictions may be put on pet ownership at 2 U.S.C. §1437z-3(b)(iv) stating the following:

The reasonable requirements referred to in subsection (a) of this section may include—

(1) requiring payment of a *nominal fee*, a pet deposit, or both, by residents owning or having pets present, to cover the reasonable operating costs to the project relating to the presence of pets and to establish an escrow account for additional costs not otherwise covered, respectively;

(2) limitations on the *number of animals* in a unit, based on unit size;

(3) prohibitions on—

(A) *types of animals* that are classified as dangerous; and

(B) individual animals, based on certain factors, including the *size and weight of the animal*; and

(4) restrictions or prohibitions based on *size and type of building or project, or other relevant conditions*.<sup>89</sup>

(emphasis added).put this next to (4) above. Unlike POEH, the pet deposit amount is not limited by HUD, but can be determined by each PHA. This provision allows the PHAs to claim that funds necessary for future pet related repairs not regulated by HUD. Not a sentence.For

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<sup>85</sup> 42 U.S.C. §1437z-3 (2016).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

example, Hawaii's current pet deposit is \$75.<sup>90</sup> While a pet deposit fee in North Carolina started at \$1,500 and later was lowered to \$600 in 2001 and now ranges between \$100 and \$300.<sup>91</sup> Not a sentence! Write in sentences! Each state's local landlord tenant laws apply to the PHAs when setting the pet deposit fee.<sup>92</sup> Though many local PHAs do not track how many families have gotten pets since POPH, other PHAs report that a year after POPH was passed; no resident families have gotten pets.<sup>93</sup> This shows that the government has erroneously regulated pet deposit fees when pet ownership is something that Public Housing residents cannot afford.

Three of the four restrictions included in the aforementioned law are specific restrictions, such as allowing for a pet deposit, limiting the number of pets, and prohibiting large or dangerous pets.<sup>94</sup> However, the final restriction does not have a limitation about specific animals; instead it is based on the size, location and relevant conditions of the federally owned building or project.<sup>95</sup> This open-ended restriction has nothing to do with the individual resident, but rather pertains to the location of the housing unit. This final restriction has been interpreted to prohibit cats and dogs in high-rise or mid-rise buildings that contain multiple-family units.<sup>96</sup>

Paragraph (b)(4) provides deference to a local PHA in setting restrictions and rules for pets in Public Housing, but provides guidelines to show what restrictions on companion animals could be proper.<sup>97</sup> These restrictions can account for public policy issues like [not "like", such as] health concerns resulting in the requirement of spaying and neutering dogs and cats, safety

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<sup>90</sup>Hawaii Public Housing Authority, *Pet Ownership Policy for Federal Public Housing Projects*, (2016), [http://www.hpha.hawaii.gov/procurement/RFP-PMB-2012-08/documents/rfp\\_pmb\\_2012\\_08\\_attach8\\_11.pdf](http://www.hpha.hawaii.gov/procurement/RFP-PMB-2012-08/documents/rfp_pmb_2012_08_attach8_11.pdf) (last visited Apr 28, 2016).

<sup>91</sup> Rebecca Huss, *supra* note 28, at n. 222; *A Closer Look at Housing Choices*, The Arc of North Carolina (2008), <https://www.arcnc.org/file/HousingCloserLook.pdf> (last visited May 3, 2016).

<sup>92</sup> *Id.* at 95.

<sup>93</sup> *Id.* at n. 222.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Rebecca Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 *Animal L.* 95 (2005)

<sup>97</sup> 42 U.S.C. §1437z-3 (2016).

concerns requiring pet registrations, but cannot require that a pet's vocal cords be removed no matter the PHAs interest.<sup>98</sup>

POPH disallows the complete prohibition of companion pets in Public Housing, but paradoxically lists all of the possible restrictions a local PHA is permitted to enact like the nominal fee, the restriction of size or weight, and the limitation due to the type of housing unit.<sup>99</sup> Although, not addressed specifically, other allowable restrictions include but are not limited to defining household companion animals narrowly, imposing breed restrictions, requiring a local guardian for the pet, and requiring that the pet be spayed or neutered.<sup>100</sup> POPH allows for the ability to restrict pet ownership in federally assisted housing units, which gives the PHAs great discretion to determine what type of pets are kept.

POPH allows the PHAs to make local rules because a POPH only applies to the Public Housing program, which are owned and operated by the PHAs. Remember that Public Housing is not the only program in federal housing assistance. Individuals receiving low-income federal housing aid from the Housing Choice Voucher have the option of finding a private landlord who allows for animals and accepts the Housing Choice Vouchers.<sup>101</sup> Even if POPH was eliminated, there are other avenues to be on federal housing aid and be a dog owner.

#### VI. Those Receiving Federal Housing Assistance Should not be Dog Owners.

The people receiving federal housing aid from any of the federal housing aid programs like Public Housing, Housing Choice Voucher or Project Based Housing Assistance should not own dogs. Because Federal housing assistance serves only a quarter of the people eligible, and

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<sup>98</sup> Rebecca Huss, *supra* note 28, at 95.X as said before, fn 28 refers you to something else! If you checked, you see this too.!

<sup>99</sup> 42 U.S.C. §1437z-3 (2016).

<sup>100</sup> Rebecca Huss, *supra* note 28, at 95X put periods in at end of fn.

<sup>101</sup> *Federal Housing Assistance for Low-Income Households*, *supra* note 8; *see*, Rebecca Huss, *supra* note 28, at 96-97.X

Public Housing serves a quarter of those on assistance, therefore POPH provides for only 12.5 percent of the people who are eligible for federal housing assistance.<sup>102</sup> Further, only half of the people utilizing Public Housing are not handicapped or elderly, resulting in POPH serving only approximately 6.75 percent of those eligible for federal housing assistance.<sup>103</sup> POPH does not protect those who are elderly or handicapped; and may not protect those who live in multiple family units, including but not limited to mid-rise or high-rise buildings.<sup>104</sup> POPH protects only Public Housing; a fraction of those participating in federally assisted housing, thus creating a double standard for pet ownership among participants of federally assisted housing.

This paper asserts that not? All tenants of low-income federally assisted housing should have pets. This restriction is in accordance with? the limited scope of POPH, which attests to? the federal government's interest in low-income pet ownership, but only for a small fraction of those on federal housing assistance. Because eligibility among the programs is the same, the law should not discriminate according to the non-elderly and non-disabled participant's housing program. [So, you also could end discrimination by allowing all tenants to have pets, right?] Not?Allowing pet ownership in federally assisted housing is supported by the non-specific Congressional findings referenced in POPH's legislative history, by the process of dog adoption, by the high cost of proper dog care. POPH already considers the government's health and safety interests by allowing that PHAs require that dogs are spayed or neutered, and limiting breed, size or weight. This paper will not evaluate these concerns. [In fn tell why] While the human health and safety interests may be addressed in POPH, it fails to address the financial requirements for proper care and treatment of a pet dog.

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<sup>102</sup> *Public Housing*, *supra* note 3.

<sup>103</sup> *Id.*

<sup>104</sup> Rebecca Huss, *supra* note 28, at 95.

i. Congressional Findings

Legislative history shows that the Congressional findings supporting POEH highlighted the importance of a pet for an elderly individual (particularly those living independently).<sup>105</sup> There were no separate Congressional findings to support pet ownership for families per se or for other? individuals.<sup>106</sup> The Congressional findings supporting elderly pet ownership do not reflect the same need for pets' ownership in families. [you just said this in the last sentence!] The legislative history concerning both POEH and POPH states, "...particularly with respect to the elderly, that pet ownership can add to the quality of life of individuals, families, and communities."<sup>107</sup> Whereas there is an abundance of research supporting companion pets' beneficial effects on the elderly, the research about companion pet ownership in a family setting is not as prevalent.<sup>108</sup> [It didn't say there were *no benefits*]

Further, the Congressional findings and legislative history considered the elderly as a class yet specified that pet ownership was beneficial particularly only? for the elderly living independently.<sup>109</sup> Though dogs may have a beneficial effect on people's health, this does not mean that federal aid should support the family's spending in order to provide discretionary funds to spend on their dog. Though dog ownership may be a civil right for those who are

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<sup>105</sup> Sen. Rpt. 98-142 *supra* note 19, at 41.

<sup>106</sup> *The Public Housing Reform and Responsibility Act of 1997*, Sen. Rpt. 105-21 at 32 (May 23, 1997) (available at 1997 WL 282462); Rebecca Huss, *supra* note 28, at 93-94 X("The legislative history discussing POPH references POEH and states, "[it] has been demonstrated, particularly with respect to the elderly, that pet ownership can add to the quality of life of individuals, families, and communities.""). Why does most of the paper seem to be the thoughts of Ms. Huss?

<sup>107</sup> ??????????????

<sup>108</sup> "However, research on the health benefits of child and animal interaction is still limited. Further research is needed on how pets influence child development and specific health outcomes." Dana Casciotti and Diana Zuckerman, *The Benefits of Pet for Human Health*, National Center For Health Research (2016), <http://center4research.org/healthy-living-prevention/pets-and-health-the-impact-of-companion-animals/> (last visited May 2, 2016). But this was not a Congressional finding, if the study came out in 2016.

<sup>109</sup> See, Sen. Rpt. 98-142 *supra* note 19, at 41; *The Public Housing Reform and Responsibility Act of 1997*, *supra* note 110, at 32.

disabled, protected by ADA and FHA, dog ownership is not a civil right for everyone. This is evidenced by the application of POPH only to Public Housing and evidenced by the restrictions that PHAs can put on pet owners in Public Housing.<sup>110</sup>

No gaps between sections

## ii. Dog Adoption Applications

Pet ownership is a choice, and people who choose to take on this responsibility are liable to pay and care for this choice. When people are interested in adopting a dog, often the adoption agencies require an in depth application process. The application shows that they and their family are able to care for a dog, have thought about what caring for a dog entails, live in a location that is able to provide a healthy environment for the dog, have stable employment, and that there is veterinary care in place.<sup>111</sup> This effort is the adoption agency's attempt to understand the individual's habits and practices. Adoption agencies request a lot of detailed information from an application for dog adoption, such as name, address, contact phone number(s) and email addresses, along with asking for age and an identification number or driver license number.<sup>112</sup> This requires that a person have a phone number as well a verifiable form of identification. Therefore, this process by nature tends to be discriminatory against those of low income.<sup>113</sup>

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<sup>110</sup> See, 42 U.S.C. §1437z-3 (2016).

<sup>111</sup> See, *Dog and Puppy Application Form*, Animalrescueproject.org (2016), <http://www.animalrescueproject.org/adopt/dog-application.html> (last visited Apr 22, 2016); *PAW Adoption Application*, Paw-rescue.org (2016), [http://www.paw-rescue.org/how\\_app.php](http://www.paw-rescue.org/how_app.php) (last visited Apr 27, 2016); *Dog Adoption Application*, Adopt Pet Shelter (2016), <http://www.adoptpetshelter.org/adoptions/Dog%20Adoption%20Application%2001-20-16.pdf> (last visited Apr 27, 2016).

<sup>112</sup> *Id.*

<sup>113</sup> See generally, *Thornburg v. Gingles*, 478 U.S. 30, 47 (1985) (requiring state identification is discriminatory for voting).

[But they are not rejected *because* of low income, are they?] As the writing proceeds, it seems to get more careless and sloppier.

Adoption agencies may also request employment status and employment information.<sup>114</sup> Requesting the name of the employer, the type of work, and the length of time at the same employer are questions that the adoption agency deems relevant.<sup>115</sup> Such disclosure provides evidence of steady income and job hours. Abstractly it offers agencies information about an individual's responsibility and dependence. Further, this disclosure can show whether an individual is working in an industry that hurts animals. [Are these practices OK?]

Adoptions agencies also inquire about housing for the family and the pet. For instance, whether a person rents owns, if they live in a house or condo, mobile home or apartment.<sup>116</sup> Not a sentence! The agency seeks to know whether the address is permanent, and if the applicant is a tenant it seeks to confirm that the lease allows for pets in addition to the landlord's name.<sup>117</sup> The adoption agencies thus? want to be sure that the housing can accommodate a pet and that owning a pet does not violate the lease. The adoption agencies want to be sure that this pet is in their "forever home," and that the applying individual will not return the pet for subsequent housing issues. [Not all agencies have such review—especially ones in low-income urban areas where the need for adoption is greater than in the more affluent suburbs. {

An application for adoption may also request an additional form estimating the annual veterinary expenses and care and ask what the applicant understands routine veterinary care to entail.<sup>118</sup> The form asks if the adoption agency can contact the individual's current veterinarian

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<sup>114</sup> See, *Dog and Puppy Application Form*, *supra* 114; *PAW Adoption Application*, *supra* note 114, *Dog Adoption Application*, *supra* note 114. PAW does not speak for, nor is it necessarily similar to *all adoption agencies* in the US]

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

to obtain the health status of any current pets.<sup>119</sup> This is a tactic of the agency's to verify that the applicant has the means to care for the pet, as proper care is expensive.

According to POEH, a project owner cannot refuse to register an animal because the individual is unable to care for the animal financially, but can refuse to register an animal due to their owner's habits and practices. In reality,? Most Habits and practices do not usually? differ from financial choices. The restriction on the landlord to overlook the individual's financial ability to care for a pet is in direct conflict with the aims and intentions of animal adoption centers. The project owner's interest is to create a safe living environment, and by rule their interest cannot extend to the care of the household pet unless protected by state and local law. Private project owners should be able to consider a resident's financial restraints to dog ownership. If participants in federal housing programs applied to adopt a dog, the information required on the application may prohibit the adoption agency from completing a dog adoption. Although POPH does not govern private project owners such as POEH, POPH does address allowable restrictions to household pet ownership including a pet deposit, restriction on pet type, limit of number of animal and location conditions, but nothing about proper care for pets (beyond state or local law).

The federal assisted housing needs to align their [who is "their"? Be precise you're your language] interests in companion animal care with the adoption agencies. POEH does not protect dogs because project owners cannot rightfully refuse to register a pet on the grounds that the landlord believes the resident is? unable to provide for the pet. For POPH the only financial limitation enacted is the owner's ability to pay the pet deposit. As such, the PHAs should evaluate a resident's overall ability to financially provide for their pet dog to protect the dog's

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<sup>119</sup> *Id.*

welfare, which in turn may provide for the welfare of the entire community. [Have you considered that dogs may be good for the community—alerting for crime, etc.?.]

iii. Cost

Can a dog be cared for financially? The adoption application seeks to answer this question by asking about employment, type of work, and duration in positions. These questions are remarkably similar to those asked when an individual is applying for federal housing aid. But in the application for federal housing aid, the questions pertain only to human housing rather than evaluating an individual's ability to provide care. PHAs should be concerned with the inflated cost of proper care because spending on pet care may detract from spending on care for the low-income family.

As stated in the introduction, the average amount an American spends on their dog in one year is approximately \$1,641.00.<sup>120</sup> [Don't repeat statistics]The survey breaks down the costs including surgical and routine veterinary visits (\$551 and \$235 respectively), food and treats (\$269 and \$61 respectively), kennel boarding (\$333), vitamins (\$62), grooming or grooming aids (\$83), and toys (\$47).<sup>121</sup> These values are the average amount people spent when asked about each category individually. Even when we take only the average amounts for routine vet visits, food, and groomer/grooming aids the average amount spent is \$587.00 a year or \$48.91 per month.<sup>122</sup> Compare this monthly spending to the participant's TTP, the calculation of the monthly amount for rent. The minimum rent is set between \$25 and \$50 a month, and considering an average monthly amount spent on dogs, an individual could spend less on rent than on their pet, yet the federal government makes laws to protect individual pet ownership.

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<sup>120</sup> *Pet Industry Market Size and Ownership Statistics*, *supra* note 11.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

Though the monthly minimum is a set amount, according to TTP, when an individual has income and pays 30 percent of income, there is an exempt amount of income for each child or elderly person in the household. As such, the \$48.91 average monthly amount spent on dogs at routine vet visits, food and grooming is more than the government allows as exempt for a child or elderly person.<sup>123</sup> Keep in mind that this monthly payment is low because it only addresses care and food and not the required, nonrefundable pet deposit, permitted by POPH.

When a family who participates in federal housing assistance spends exempt income allocated for dependents or elderly instead on their dog, it defeats the intent of exempt money. The family needs food, water and clothing in addition to shelter and healthcare. However, a dog is not included in the list of things necessary to live and dog ownership is not a civil right afforded to all people.

Pet ownership for families in federal low-income housing assistance is not a civil right [you don't have to say things twice in a row] and does not need protection. The cost of owning a dog is high, particularly when eligibility income is limited to 30 to 50 percent of the area median income. Further, the federal government should align its interest with those of adoption agencies who have an extensive screening process to verify that an individual has the resources to properly care for a dog.

## VII. How to Implement Change

### i. Disallowance

Repealing POPH could bring about a resurgence of the prevalent 'no pet' policy in Public Housing from the 1980s, even though there was never a law that prevented pet ownership in

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<sup>123</sup> The exemption amount for an elderly individual is \$400 a year (or \$33.33 a month) and the exemption amount for a child is \$480 a year (or \$40.00 a month) while the monthly average spent on minimal dog care is \$48.91 a month. See, *HUD's Public Housing Program*, *supra* note 4.

Public Housing. Further, repealing the law would only address the Public Housing Programs and not Housing Choice Vouchers or Project Based Assistance. Instead, a prohibition of all dogs in federally assisted housing could be effectively established? by including questions about dog ownership in the application. Thus if a family had a dog, their eligibility for housing assistance would be denied. But denial of federal aid solely on the use of discretionary funds for dog ownership would likely bring about 14<sup>th</sup> Amendment substantive due process issues. Evaluating substantive due process rights is not in the purview of this paper. [Last sentence should be in footnote] Instead of disallowing pet ownership by asking whether the family has a dog, there are other ways in the eligibility process that would indirectly? dissuade dog ownership. Primarily? individuals utilizing federal housing assistance could count a dog as an asset for income, additionally they could be required to prepare a budget outlining all discretionary spending including spending on pet ownership prior to aid approval.

ii. Dog as a Counted Asset

Under current guidelines,? A family's income is determined for federal housing aid eligibility by adding together their income and the income generating assets.<sup>124</sup> Typically counted assets include the amount currently accessible in a retirement accounts, [proofread] or rental property income.<sup>125</sup> Although a pet dog does not create income, a certain amount of income is required to properly maintain a dog, which means that the money used to care for the dog cannot alternatively? be used on human necessities. A dog could be counted as an asset of each applicant for housing aid eligibility.

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<sup>124</sup> *Fact Sheet for HUD Assisted Residents*, (2016), <http://www.hud.gov/offices/fheo/promotingfh/11-Fact-Sheet-S-8-English.pdf> (last visited Apr 28, 2016).

<sup>125</sup> *Id.*

One reason for including a dog as an asset is that but for the dog, an individual could have accrued income generating assets. But for spending on a dog, the individual could have started a retirement account or purchased a rental property. It may seem backwards to add a portion of income due to expenditures, however the rationale is that an individual could have income creating assets but for the money allocated to be spent on the pet dog. Other income-using assets, or assets needing maintenance similarly require money like X in dog ownership, but still are not counted as assets. For example, an asset example that requires maintenance is a car. Although a car is not a necessity like shelter and food, a car may allow an individual to travel to work and the earned income is important to the individual and to the housing aid programs. Because this would discriminate against those with a pet and not those with a car, this approach creates a similar 14<sup>th</sup> Amendment issue to the general disallowance by singling out dog owners from other applicants. So it may not be the best remedy to the problem of asset availability?

In lieu of including dogs in the category of income creating assets, the entire eligibility system could be change to count all income and certain assets including pets. This change would consider income and assets including car, computer, clothing, purses, furniture, equipment or tools and the pet dog. This method could similarly count the dog and the computer and would therefore not directly discriminate against dog ownership. Though a dog is not worth as much money in market value as they require for proper care, this approach does count the individual's spending on the dog itself.

When eligibility is based on income and assets, an individual's discretionary spending is only partially considered. If a family spends on things, [what things/] then this method of counting income and assets would accurately address that family's use of money, but if a family spends on spa treatments, car washes, gym memberships, cable television or data on their cell

phone plan this is not counted in the income and asset evaluation. Instead of counting assets, a reasonable alternative to better monitor proper care for pet dogs in federally assisted low income housing is to monitor the applicant's discretionary spending.

### iii. Discretionary Spending Budget

Evaluating an applicant's discretionary spending is a non-discriminatory way to address the funds necessary for dog ownership. Requiring each applicant for federal housing assistance to complete a discretionary budget gives local PHAs insight as to how the applicant would use their discretionary budget and thus determines appropriate amounts to spend on things that are non-necessities.

Local PHAs should require that applicant provides [sloppy] a personal discretionary budget so that the PHA can approve of discretionary spending on an individual basis. To evaluate applicant's discretionary budgets, PHAs should create discretionary spending guidelines for each varying percentage of the local median income. The PHA could then use information for their specific locality to determine the appropriate amounts for housing, transportation and personal needs. These amounts could be based on a sliding scale depending on the individual's income and their relationship to the local median income.

Evaluating the individual budget would be beneficial to encourage individuals to more carefully consider their spending practices and change their discretionary choices to become eligible for housing aid. Because responsible discretionary spending may change a person's eligibility for housing aid, the discretionary budget of those who participate in federal housing assistance is a valid governmental interest.

[Create a transition for your analogy. "The reliance on discretionary budgets is not especially difficult and is often used in other legal matters. For example, the creation of a

family budget is a typical tool used in the practice of family law. A good illustration is found in New Jersey.<sup>126</sup> When filing for divorce in that state each spouse must complete a Case Information Sheet that outlines each individual's income and expenses both before and after the divorce.<sup>127</sup> There is a budget section that addresses three main expenses: shelter, transportation and personal.<sup>128</sup> Shelter includes all utility bills, parking, water costs, garbage removal, snow removal, and phone and Internet costs.<sup>129</sup> Transportation includes vehicle registration and license costs, maintenance costs, fuel, oil and insurance.<sup>130</sup> Personal spending includes food, household supplies, clothing, childcare, entertainment, salon costs, health insurance and pet expenses.<sup>131</sup> After completing the budget and signing it, the court determines what a reasonable amount for alimony or child support is by evaluating items on the budget.<sup>131</sup>

It is asserted that those applying for federal housing and aid should be held to the same budget standards as provided in the New Jersey Case Information Sheet. Applicants would have to show their [match noun and pronouns-singular or plural] income and spending choices before receiving housing aid as well as their income and spending choices after receiving aid. In determining eligibility, the local PHAs could then evaluate what portion of budget each family needs to alter to become eligible for federal housing aid.

The discretionary spending range for pet care would [it is better to phrase this as a possibility rather than a definite—as inferred verb “will?"] represent the minimum amount that the local agency deems possible to support a pet humanely, and the maximum amount reasonable within the individual's budget. When considering pet expenses in particular, the applicant must

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<sup>126</sup> NJ Court Rules, Appendix V (2013).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

also include in their post housing aid income the expense of the nonrefundable pet deposit. It is likely that this deposit will affect the individual's pet expenses and possibly be the reason why an applicant is no longer within the permitted budget range.

To guarantee due process, the applicant will have the ability to explain and dispute any expense the PHA dislikes and show how their budget items could shift to allow for that expense. The applicant will have the ability to appeal a decision to HUD to determine if the local Public Housing Agency is properly administering this portion of the application. Through evaluating low income federal assisted housing applicant's discretionary budget, the federal government could take all expenditures into consideration, this method<sup>X</sup> [proofread] would additionally not single out the cost of pet care. Budget requirements would be required for all applicants not only dog or pet owners. As such, including discretionary budgets in the application process addresses the cost concern and the requirement of human pet care.

Currently applicants could be granted preference in the wait list if (1) they are a veteran (2) they were displaced unwillingly (3) they spend more than 50 percent of their monthly income on rent. Additionally HUD could provide preference to those whose discretionary budgets reflect the government interest of providing the necessities for the participating individual.

To implement this program, HUD would have to move forward toward<sup>?</sup> proposing a rule that outlined the discretionary spending budget requirements for the local PHAs to follow.<sup>132</sup> To do this, HUD would have to publish a general notice of proposed rulemaking and then allow the public to comment on the rule.<sup>133</sup> After considering the public comment, HUD would then be able to adopt the rule and publish a general statement about the rule's basis and purpose. [Could

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<sup>132</sup> 5 U.S.C.S. § 553 (2016).

<sup>133</sup> *Id.*

you not just say that, in accordance with standard federal rulemaking, HUD would have to comply with the requirements of the Administrative Procedures Act.]

#### VIII. Conclusion

Although some people believe that dog ownership is a civil right, those same people would likely agree that dogs need proper care. Being a companion animal, a dog requires money, something that those who participate in federal housing aid do not have in excess. Dogs may provide health benefits for elderly individuals, but this does not mean that having a dog should then be afforded right for all people, especially those who cannot financially care for it. Having a dog is not a necessity.

Those on government aid need first to adequately provide for the people in their household before a dog joins the family. Requiring a discretionary budget in the application for federal housing aid eligibility would allow the federal government to monitor discretionary spending of the participating family. A discretionary budget evaluation does not disallow dog ownership for those participating in federal housing aid, but it does require that a family would have to budget money to properly care for the dog while simultaneously providing for each of the persons within that family. Federal housing assistance programs do have an interest in the habits and practices of a family applying for and participating in public housing, and that government interest should extend to the individual's discretionary budget to ensure proper dog care.