STEMMING THE TIDE:

A Handbook on Preserving Subsidized Multifamily Housing

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Local Initiatives Support Corporation

FannieMae FOUNDATION

LISC Affordable Housing Preservation Initiative

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A Handbook on Preserving Multifamily Subsidized Housing

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Published by the Knowledge Sharing Initiative
of the Local Initiatives Support Corporation

September 2002

This publication and related resources are available at: *www.liscnet.org/resources*.

LISC Online Resource Library

ACKNOWLEDGEMENTS

The principle author of this guidebook is Emily Achtenberg, Housing Policy and Development Consultant, Boston, Massachusetts.

Ann Norton, President of Housing Preservation Project, a public interest law firm in St. Paul, Minnesota, provided a portion of the content for Chapter 3.

Vincent F. O'Donnell, who directs LISC's Housing Preservation Initiative, served as advisor to the writer.

The work that provided the basis for this publication was supported by funding from the US Department of Housing and Urban Development, the Fannie Mae Foundation and the National Community Development Initiative. The substance and findings of this work are dedicated to the public. The authors and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the government, the Fannie Mae Foundation or the NCDI funders.

LISC wishes to thank the Fannie Mae Foundation for its generous support of the LISC Housing Preservation Initiative.

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INTRODUCTION

Over the past decade, at least 100,000 units of privately owned, federally subsidized housing have vanished from the nation's housing inventory. These losses have occurred not only in strong coastal markets like California and Massachusetts, but nearly everywhere—in almost every state, in small towns, in rural areas, and in big cities. In many parts of the country, a strong real estate market has placed thousands of additional affordable units at risk as owners consider converting to market rate housing or non-housing use. In weaker markets, subsidized housing is threatened by disinvestment, default, and foreclosure.

Community-based nonprofit development organizations often lead the fight to preserve subsidized affordable housing. Most community-based nonprofits have a social mission that includes protecting existing low- and moderate-income tenants from displacement. In many communities, federally subsidized projects are the sole remaining source of economic diversity—the only affordable housing left in the town or neighborhood for low-wage workers and municipal employees, single parents with children, elderly tenants, and minority households. As building costs rise and the federal government retreats from new housing production, existing units, once lost, will never be replaced.

Housing preservation represents both a development opportunity and a significant challenge for community-based and other nonprofits. While a preservation transaction may offer the chance to move to scale quickly with a high visibility project that has significant neighborhood impact, as this handbook details, these deals can be particularly intricate and involved. Community-based developers experienced only with small neighborhood revitalization projects will require specialized expertise to ensure a successful transaction that is sustainable and a good investment. The key is to match mission and capacity, and intermediaries such as LISC can assist with these issues when needed.

Projects that are at special risk, those that are located in a nonprofit's target area, or those that serve a nonprofit's constituency group may have special appeal. This handbook is intended as a guide to help community-based and other nonprofit development corporations create preservation strategies for federally subsidized housing projects in their communities. This handbook focuses specifically on HUD-assisted multifamily housing. However, much of the material in the chapters on strategies and property research will also be applicable to housing developed under the U.S. Department of Agriculture's Rural Development programs.

Chapter One traces the history of key federal housing subsidy programs and provides an overview of the subsidized housing preservation problem. It addresses the two major threats to preservation: expiring use restrictions (or subsidized mortgage prepayments) and expiring subsidy contracts (Section 8 housing).

Chapter Two outlines the tools that are currently available to preservation advocates under federal laws and programs.

Chapter Three explores preservation tools and strategies developed by advocates and practitioners at the state and local level.

Chapter Four explains how to research properties in order to build the foundation for a preservation strategy.

CHAPTER ONE

Subsidized Housing Preservation: An Historical Perspective[1]

This chapter provides community development practitioners with the historical background necessary to understand the nature and scope of the subsidized housing preservation problem. It reviews the origins of key federal subsidy programs, outlines the evolution of federal laws and regulations affecting preservation, and highlights recent policies that influence housing preservation strategies. It focuses on two aspects of the preservation problem:

1. Expiring use restrictions—prepayment of mortgages subsidized under the Section 221(d)(3) and Section 236 programs. These programs offer reduced mortgage payments in exchange for long-term affordability.

2. Expiring subsidy contracts in Section 8 housing. This program provides deep rental subsidies to enable projects to serve very low income tenants.

The historical discussion in this chapter shows a dramatically changing federal role in subsidized housing preservation, from an aggressive posture in the early 1990s to a significantly reduced level of activity today. As the federal government has retreated from housing preservation, advocates are struggling to preserve at-risk subsidized housing at anywhere near the levels achieved five years ago, especially in strong market areas.

Recently developed federal preservation tools are playing a significant, if diminished, role in housing preservation. The challenge for today is how to use these new tools, however limited, in combination with local and state resources to facilitate preservation sales and other transactions that preserve long-term affordability.

1. EXPIRING USE RESTRICTIONS—SUBSIDIZED MORTGAGE PREPAYMENT UNDER THE SECTION 221(d)(3) AND SECTION 236 PROGRAMS

1960s and 1970s: Origins of the Problem

The problem of expiring use restrictions is the legacy of the federal government's first attempt to stimulate private sector production of low- and moderate-income housing under Section 221(d)(3) and Section 236 of the National Housing Act. Conceived in the Kennedy and Johnson eras, these programs created mortgage subsidies for private low- and moderate-income housing construction.

Under the Section 221(d)(3) program, the federal government offered below-market interest rate (BMIR) direct loans at three percent. For Section 236 projects, the government provided lenders with a monthly interest reduction payment (IRP) subsidy, which effectively reduced the interest rate to one percent. The "basic rent" payable by tenants was set at the amount required to cover project operating expenses and mortgage debt service at one percent. The difference between the actual debt service—at, say, seven percent—and the tenants' one percent payment was covered by the monthly IRP subsidy paid directly to the lender. This new approach enabled private lenders, as well as private owners, to participate in the program and spread the federal government's financial obligation over a 40-year term.

In addition to mortgage subsidies, the federal government also provided Federal Housing Administration (FHA) mortgage insurance, a guarantee to lenders that the federal government would pay the outstanding loan in the event of default. Owners also received substantial tax incentives in the form of accelerated depreciation and mortgage interest deductions that could be used to offset their income tax liabilities. Owner and lender risk in most of these projects was negligible to non-existent.

In exchange for mortgage subsidies, tax breaks, and limited risk, developers were required to restrict occupancy to low- and moderate-income households at controlled, budget-based rents, which included a limited dividend for the owner. As an added incentive, while the subsidized mortgages were typically written for a 40-year term, in most cases owners were permitted to prepay the note, terminate the low- and moderate-income use restrictions, and convert the property to its highest and best use after just 20 years. In the late 1960s and early 1970s, these incentives induced the construction of some 560,000 units of prepayment-eligible housing with so-called "expiring use restrictions."[2]

A quarter-century later, as housing markets heated up, owners began to realize that, by invoking their right to prepay and convert their properties to market-rate housing, they could achieve substantial equity gains. For example, if a typical project cost $20,000 per unit to build, 20 years later it might have an outstanding mortgage debt of $15,000 and a market value of $40,000, leaving the owner with a residual equity value of $25,000.

At the same time, with depleted depreciation and mortgage interest deductions no longer offsetting taxable income, the typical prepayment-eligible project had also become a tax liability for its owner. As mortgage principal payments—which constitute taxable income—increased, many owners found themselves paying taxes in excess of actual cash received from the allowable limited dividend. This so-called "phantom income" problem created an additional incentive to prepay, refinance, and convert the properties to market-rate housing.

The first wave of prepayments galvanized tenants and housing advocates across the country and sparked a heated national debate over the future of privately owned, subsidized housing with expiring use restrictions. Owners asserted their contractual rights to prepay and opposed any federal restrictions as an unconstitutional taking of private property. Preservation advocates argued that the original social purpose of the housing should take precedence over the owners' windfall profits, which were never anticipated in the first place.

1980s: Housing Preservation Programs—ELIHPA and LIHPRHA

The debate over expiring use restrictions led to two new federal preservation programs: the Low Income Housing Preservation Act of 1987 (ELIHPA) and the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). These statutes effectively prohibited subsidized mortgage prepayments but gave owners fair-market-value incentives to keep the housing affordable for another 20 to 50 years, at the federal government's expense.

Initially, HUD provided additional mortgage insurance and project-based Section 8 subsidies to support financing for the owners' equity takeout ($25,000 in the single-unit example above). Owners could either retain ownership or sell to priority purchasers—tenants, nonprofits, or state or local government agencies who would agree to the same use restrictions. In later stages, advocates and nonprofits shifted the programs' focus almost exclusively to priority purchaser sales through direct capital grants—a highly successful and cost-effective approach to preservation.

In total, approximately 100,000 units were preserved under these programs, including 33,000 units that were transferred primarily to nonprofits with an average capital grant of $36,000 per unit.

1990s: Restoration of Prepayment Rights

In 1996, Congress restored owners' prepayment rights and terminated all federal preservation funding. (While the preservation programs remain on the books even today, they are no longer operational.) The goal of federal policy shifted dramatically from preserving the housing to protecting existing residents from displacement.

A new statutory notice provision, the Wellstone Notice, required owners to inform tenants, HUD, and the CEO of state or local government not less than 150 days, but not more than 270 days, prior to mortgage prepayment. Sales to priority purchasers were exempt, as were prepayments where the project would continue to operate under the same terms and conditions for at least the original mortgage term.

Meanwhile, Enhanced Vouchers became the cornerstone of the new federal preservation policy. Enhanced Vouchers were provided to eligible low-income tenants—and in some cases to moderate-income tenants—at the point of prepayment.[3] Unlike regular vouchers, which are limited by the public housing authority's payment standard, Enhanced Vouchers are provided at the comparable market rent (as determined by the public housing authority) if the tenant chooses to stay in the housing.

Over the past few years, the tenant protection features of this program have improved considerably. Originally, the market rent was guaranteed for just for one year, but now rents are adjusted to market annually. This has the effect of increasing owner acceptance and protects tenants from future rent increases. Additionally, tenants have a right to remain in the housing, unless the approved rent is not acceptable to the owner or the housing is converted to non-rental use. On the other hand, Enhanced Vouchers are subject to annual appropriations, and they do not preserve subsidized housing. Once the original voucher recipients move, the units are permanently lost from the affordable housing stock.

Based on the most recent data, approximately 60,000 units in 580 projects have been lost through mortgage prepayment since the demise of the federal preservation programs. The average rent increase is 57 percent.[4]

Recent Federal Initiatives

In the past couple of years, some modest new federal tools are helping to create a preservation alternative at least for a portion of the expiring use housing stock.[5] IRP Decoupling allows owners and purchasers of Section 236 projects to secure new or additional rehab or acquisition financing for their projects while retaining the IRP subsidy contract, thus helping to keep rents affordable and extending the Section 236 use restrictions. The IRP Rehab Grants program authorizes HUD to pool IRP subsidies that are recaptured when Section 236 mortgages are prepaid, foreclosed, or otherwise terminated, and to recycle them in the form of rehab grants or loans to eligible owners and purchasers of other assisted properties. (Although this program was authorized by statute in 1997, as of May 2002, it had not been implemented.)

2. EXPIRING SUBSIDY CONTRACTS—SECTION 8 HOUSING

1970s and 1980s: Section 8 Housing Stock—Older Assisted and Newer Assisted

In 1974, the federal government created a new incentive for private developers: the Section 8 program, a rent subsidy paid directly to the property owner on top of the tenant's rent share, which is currently limited to 30 percent the tenant's adjusted income. These Section 8 subsidy contracts were either project-based (tied to the unit) or tenant-based (mobile subsidies, now called vouchers, which moved with the individual tenant).

For tenants, Section 8 provided a deeper subsidy than the shallow mortgage subsidy programs, with income-based rents (similar to public housing) rather than budget-based rents. For private owners and lenders, the Section 8 subsidy effectively guaranteed the rent needed to cover the cost of development and operations, including the owner's profit. Compared to Section 221(d)(3) and Section 236, Section 8 is a more flexible operating subsidy mechanism that can be, and has been, combined with many types of public and private financing.

Today, the Section 8 project-based inventory comprises approximately 1.5 million units, 60 percent of which also have HUD-insured mortgages. This inventory divides into two stocks: *older assisted* and *newer assisted* housing.

The older assisted Section 8 inventory consists primarily of projects financed under Section 221(d)(3) and Section 236, including properties with expiring use restrictions. Section 8 contracts were added on top of the existing mortgage subsidies for two reasons: to protect very-low-income families who could not afford the budget-based rents and to rescue failing projects from foreclosure. The contracts were funded under the Loan Management Set Aside (LMSA) program. Older assisted projects typically have below-market rents due to their subsidized mortgages and ongoing rent regulation. Older assisted contracts were typically short-term, with an initial five-year contract and two renewals for a total of 15 years.

Newer assisted projects were originally developed with Section 8 in the late 1970s and 1980s, under the Section 8 New Construction/Substantial Rehabilitation programs. Newer assisted rents tended to be high, and were frequently above-market, for several reasons. HUD set the original rents to cover the initial cost of the development, financed at market (10-15 percent) interest rates. Many of these developments were located in weak markets where private developers would not build because costs exceeded the attainable rent. Subsequent automatic annual rent adjustments also helped to keep rents high. These Section 8 New Construction/Substantial Rehab projects typically were 100 percent assisted and had long-term subsidy contracts: 20 years if HUD-insured, and 30-40 years if financed with state or local tax-exempt bonds.

1990s: The Section 8 Fiscal Crisis

In the mid-1990s, HUD faced a looming fiscal crisis as both short-term and long-term Section 8 contracts began to expire simultaneously. In its dual role as subsidy provider and mortgage insurer, HUD was truly in a bind. On one hand, the cost of renewing all the Section 8 contracts at current—often above-market—rents threatened to consume the entire HUD budget. On the other hand, if HUD declined to renew Section 8 contracts on HUD-insured properties, it could trigger a wave of mortgage defaults and foreclosures, resulting in staggering claims against the HUD mortgage insurance fund.

At same time, HUD was struggling to avoid extinction at the hands of a conservative Congress. In 1995, HUD issued a bold blueprint for reinventing itself. Instead of renewing expiring Section 8 project-based contracts, HUD proposed to "voucher out" existing tenants, mark rents either down or up to true market rates, auction the project mortgages to the highest bidder, and completely deregulate the assisted housing stock. The private sector would restore market discipline and restructure the projects. In effect, HUD sought to completely privatize the federally-assisted stock and end the government's long-standing involvement with housing.

ECONOMICS OF DEBT RESTRUCTURING

The following table illustrates the economics of Mark-to-Market debt restructuring for a single, above-market rental housing unit. Before debt restructuring, the above-market rent is $800 and the net operating income, after operating expenses, is $400, which includes $360 available to service the original mortgage of $40,000 at 10 percent for 40 years. To date, the cumulative amortization of the mortgage has reduced the outstanding balance to $35,000.

After debt restructuring, the rent is reduced to the market rate, or $600, with a net operating income of $200 and $180 for debt service. Accordingly, the outstanding mortgage of $35,000 is bifurcated into a supportable first mortgage of $25,000 and a deferred second mortgage of $10,000.

The $10,000 restructuring cost is absorbed by the mortgage insurance fund. The Section 8 contract continues at the reduced monthly rent.

	Before	After
Rent	$ 800	$ 600
Less: Op. Exp.	- 400	- 400
Net Op. Income	400	200
Avail. for Debt Service (90 percent)	360	180
Cash Flow	40	20
1st Mtge.	10 percent, 40 yrs 40,000	8 percent, 25 yrs 25,000
2nd Mtge. (Deferred)	N/A	10,000
Total Debt	40,000	35,000
Outstanding Debt	35,000	35,000

The reaction to HUD's proposal was almost uniformly negative. Advocates feared the potential loss of affordable units. Owners, investors, and bondholders worried that withdrawal of long-standing federal supports and uncontrolled mortgage sales or debt reduction would spur massive foreclosures and create huge owner tax liabilities due to relief from mortgage indebtedness.

Above-Market Properties: Mark-to-Market
In 1997, Congress adopted the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) to address the problem of expiring Section 8 contracts in HUD-insured properties with above-market rents. MAHRA established a Mark-to-Market program with a decidedly more preservation-oriented flavor.

In general, HUD was mandated to reduce above-market rents when the contracts expired, to restructure the underlying debt, and to renew project-based subsidies in most cases. The HUD-insured mortgage would be bifurcated into supportable and unsupportable debt, with HUD retaining a deferred second mortgage in the amount of the restructured, unsupportable debt.

In exchange for debt restructuring, owners were required to renew their Section 8 contracts, subject to appropriations, for 30 years. The program also created adjunct long-term use restrictions in case subsidies became unavailable.

HUD was directed to designate Participating Administrative Entities (PAEs) to execute the debt restructuring, with state and local public agencies receiving preference over private agencies. The PAEs were accountable to the Office of Multifamily Housing Assistance Restructuring (OMHAR), a quasi-independent office within HUD. PAEs were charged with creating a process that minimized costs to the mortgage insurance fund while ensuring long-term preservation of affordable housing properties.

The most innovative feature of the Mark-to-Market program—the bifurcated mortgage structure—addressed a number of stakeholder concerns. Since the unsupportable debt was neither relieved nor forgiven, the IRS was able to issue a favorable ruling to owners, which minimized the risk of adverse tax consequences from restructuring. HUD's continuing role as second mortgage holder facilitated the accountability and long-term public control desired by preservation advocates. The overall structure provided a mechanism to secure a direct federal capital subsidy for the housing, which would reduce annual Section 8 obligations and be cost-effective over time—similar, ironically, to the discarded preservation capital grant program.

Implementation of the Mark-to-Market program has been slow. PAEs received their first assignments as late as July 1999. Due to rising rents and the generally robust housing market nationwide, the number of properties eligible for debt restructuring is much smaller than originally anticipated. Many properties can absorb the relatively small rent decreases necessary to bring rents down to market without reducing their existing debt. Owners typically prefer this "OMHAR Lite" option, which involves less oversight and no use restrictions.

OMHAR's relationship with the public sector PAEs has been a challenge. More private PAEs have been selected to administer Mark-to-Market than was originally anticipated, and many public PAEs have left the program over time. Of the 42 state housing finance agencies that were originally approved as PAEs, only 22 remain in the program today.

Over 2,102 properties were in the Mark-to-Market pipeline, with 1,461 transactions completed as of April 9, 2002.[6] Of these, only 627 are full debt restructurings, while 571 are "lites." Non-renewal of Section 8 has been recommended in only 16 properties to date. The pipeline is heavily concentrated in the heartland—Ohio, Pennsylvania, and Kentucky—although nearly every state has eligible properties.

Although some owners have been willing to cooperate in the restructuring process, recent OMHAR initiatives have provided incentives to encourage owner participation, and in particular, to facilitate sales to nonprofit purchasers. These new policies identify the allowable fees and transaction costs that HUD will underwrite as part of the restructuring package, outline the conditions under which HUD will forgive the deferred second mortgage (for qualified nonprofit purchasers), and give qualified nonprofits a three-year window after debt restructuring to purchase the property and secure second mortgage forgiveness.

Recent legislation extends OMHAR until October 1, 2004, extends the Mark-to-Market program with certain amendments until October 1, 2006, and brings OMHAR under the authority of the FHA Commissioner.

Below-Market Section 8 Properties: Mark-Up-to-Market

While the MAHRA statute focuses primarily on above-market Section 8 properties, it also permits HUD to renew project-based Section 8 contracts in below-market properties—but only at the owner's option. And to facilitate budgetary management, all expiring Section 8 contracts were initially subject to annual renewals (as well as annual appropriations), giving owners frequent opportunity to reconsider their participation.

As rents escalated throughout the late 1990s, many owners of below-market Section 8 housing began opting out of their contracts. Between October 1996 and April 1999, the nation lost almost 40,000 Section 8 units as owners left the program.[7] This process culminated in a series of well-publicized opt-outs in rural Iowa, where elderly Section 8 tenants in the district of an influential congressman were displaced from the only affordable housing in their communities.

After renewed protests from housing advocates, HUD acknowledged that its own policies were contributing to tenant displacement and creating record levels of worst case housing needs. In a landmark 1999 report entitled "Opting In: Renewing America's Commitment to Affordable Housing," HUD conceded that the best affordable housing in the country, located in good neighborhoods with good schools and economic opportunities, was being lost due to federal housing policy. This report laid the groundwork for a new Mark-Up-to-Market program, which began as an emergency initiative but was enacted into law in October 1999.

Under this program, owners of eligible properties are permitted to renew their expiring project-based Section 8 contracts at the prevailing market comparable rents for a minimum of five years (although payments are still subject to annual appropriations). For properties with expiring use restrictions, mortgage prepayment is prohibited during the mark-up term.

Recent policy changes have relaxed the eligibility requirements for Mark-Up-to-Market , extended the contract renewal term to any length agreed to by the owner and HUD, and modified or eliminated the original limited dividend restrictions for participating owners. Many owners appear to be choosing this incentive as an alternative to opting out of their contracts. Additionally, a variation of Mark-Up-to-Market —called Mark-Up-to-Budget—has been extended to nonprofit owners who can justify market comparable rents based on the project's budget. Mark-Up-to-Budget can either facilitate a purchase transaction or finance needed repairs.[8]

Section 8 Contract Renewal Options

HUD now offers a variety of renewal options for owners with expiring Section 8 contracts, including the following:

1. Mark-Up-to-Market/Budget.
2. Regular Renewal for below-market properties, with rents adjusted by an Operating Cost Adjustment Factor (OCAF) or on a budget basis.
3. Mark-to-Market, for above-market insured properties.
4. For certain "Exception Projects," the lesser of existing OCAF-adjusted rents or budget-based rents, with no market cap.

In addition, there are special rules for projects that participated in the federal preservation programs or the Portfolio Reengineering Demonstration Program, a predecessor of Mark-to-Market. Special rules also apply to properties with Section 8 Moderate Rehabilitation contracts: renewal rents are the lesser of existing rents adjusted by OCAF, the Section 8 Fair Market Rent or the market comparable rent.

Enhanced Vouchers

Where owners choose not to renew a Section 8 contract, but to "opt out" instead, MAHRA provides that eligible tenants will receive Enhanced Vouchers at the prevailing market rent. Voucher eligibility in opt-outs is limited to low-income tenants with incomes at or below 80 percent of area median; otherwise, the same basic rules apply as in the prepayment program. Enhanced Vouchers are now available to eligible tenants in any property where an opt-out occurred after FY1994.

Tenant Notice

Owners must give tenants notice at least one year prior to the opt-out date. If proper notice is not given, the owner may not evict the tenant or increase the tenant's rent share until the one-year notice requirement is met. (HUD will generally provide an interim contract extension to cover the notice period.)

Pending Legislation: Federal Matching Grants

In recent years, preservation advocates have focused their legislative efforts on a campaign to secure federal matching grants for state and local preservation programs. While not yet successful, these efforts are gaining momentum each year. In 1999, a preservation matching grant bill passed both the House and Senate with 50 co-sponsors. In 2001, the bill was reintroduced as (HR 425 and S 2733) along with other bills proposing a broader affordable housing trust fund with potential preservation as well as production uses. Advocates anticipate a renewed effort to secure passage of these initiatives in 2002.[9]

CHAPTER TWO
Federal Preservation Tools

	Program	Goal	Structure	Utility for Preservation	Market Applicability
Section 8 Preservation Tools	1. Mark-Up to-Market	Provides incentives to for-profit owners with below-market rents to remain in Section 8 program upon contract expiration.	At least a 5-year contract, subject to annual appropriations in which HUD subsidizes market-rate rents in exchange for affordability.	Provides owners with increased cash flow for distributions or refinancing, as alternative to opt-out; can also facilitate preservation sales.	Strong markets.
	2. Mark-Up-to-Budget	Permits nonprofit owners to mark up below-market rents to acquire new property or to make capital repairs.	20-year minimum contract term and use agreement. Budget-based rents. Capital repairs may require owner contribution. Fewer eligibility restrictions but more requirements than Mark Up to Market.	Allows nonprofit owners/purchasers to support new debt for acquisition or rehab, while preserving existing Section 8 units.	Strong markets.
Section 236 Preservation Tools	3. Interest Reduction Payment (IRP) Retention/ Decoupling	Allows Section 236 projects to retain IRP subsidy when new or additional financing is secured.	Refinancing of original HUD-insured mortgage, while continuing existing IRP payments in exchange for extended affordability.	Reuse of existing subsidy source not requiring new budget authority.	Strong or weak markets.
	4. IRP Pooled Grants/ Loans	Recaptures IRP subsidies from Section 236 prepayments, and recycles them into rehab grants and loans for eligible projects.	To be determined by HUD and OMB. (Note: program is not yet operational, and HUD has proposed eliminating the loan mechanism.) Potentially available to any project with a HUD-insured mortgage or Section 8 contract on date of enactment (not just S. 236).	Provides funds for rehab, replacement reserves, and debt service on non-federal rehab loans.	Strong or weak markets.
Tenant-Based Tools	5. Enhanced Vouchers	Tenant-based assistance to prevent displacement when owner prepays a subsidized mortgage or opts out of subsidy contract.	Voucher pays full market rent, as long as tenant stays in the property. Screening and income criteria apply in many cases.	May be aggregated to support new financing in a preservation transaction. Difficult to retain affordability when tenants leave, taking vouchers with them.	Primarily strong markets.
Debt Restructuring Tools	6. Mark-to-Market Incentives	Incentives to facilitate debt restructuring and nonprofit purchases.	Allowable costs and fees for for-profit and nonprofit owners; mortgage forgiveness for qualified nonprofit purchasers.	Increases attractiveness of Mark-to-Market programs and facilitates nonprofit transfers.	Weak markets.
Technical Assistance Tools	7. ITAG and OTAG	Grants to nonprofits and public agencies to facilitate preservation and acquisition of federally subsidized housing.	Grants cover advocacy, technical assistance, predevelopment, legal services, etc.	Offers resources for due diligence, transaction costs, training and capacity-building by nonprofits and public agencies.	Strong or weak markets.

Over the past few years, new federal tools and programs have emerged to help advocates preserve HUD-subsidized properties. These include:

- Mark-Up-to-Market
- Mark-Up-to-Budget
- IRP Decoupling
- IRP Pooled Loans and Grants
- Enhanced Vouchers
- Mark to Market Incentives; and
- Technical Assistance Grants (ITAG and OTAG)

These tools are designed to address different aspects of the preservation problem and are tailored to different market circumstances. They may have overlapping applications, as well as conflicting regulatory requirements. The preceding chart outlines each program's goal, its programmatic and regulatory structure, its utility for housing preservation, and its suitability to market conditions.

This chapter will discuss the structure and requirements of each program and outline the associated transaction issues.[10] Proforma examples illustrate how the tools can be used to facilitate a preservation purchase transaction.

1. MARK-UP-TO-MARKET: FOR-PROFIT AND LIMITED DIVIDEND OWNERS[11]

This program provides incentives to for-profit owners with below-market rents to remain in the Section 8 program. It is a preservation tool for properties in strong or rising markets. Under the terms of the Mark-Up-to-Market program, rents may be marked up to comparable market rents, which are capped at 150 percent of the Section 8 Fair Market Rent (FMR) but can be higher with a HUD waiver.

Mark-Up-to-Market is available only *after* the project's original pre-MAHRA subsidy contract has expired.[12] Once the owner has renewed under MAHRA, the owner may seek to mark up rents at any time, even during the term of the new post-MAHRA contract. If a pre-MAHRA contract is still in effect, the owner must wait until the end of the contract term. Mark-Up-to-Market is one of six options available to owners of projects with expiring Section 8 contracts, as described in Chapter 3 of HUD's "Section 8 Renewal Policy" guidebook.[13]

Eligibility

A project is **automatically eligible** for Mark-Up-to-Market if it meets all of the following conditions:

- It has comparable market rents at or above 100 percent of FMR;
- It has a HUD REAC[14] score of at least 60, with no urgent health and safety violations; and
- It has no low- or moderate-income use restrictions that cannot be unilaterally terminated by the owner. Examples include HUD Flexible Subsidy[15] restrictions, ELIHPA or LIHPRHA use restrictions, and local zoning or urban renewal restrictions. The owner must certify that no such restrictions exist.

A property that does not qualify automatically, or needs rents beyond the 150 percent FMR cap, may be eligible for Mark-Up-to-Market on a **discretionary basis**, with approval from HUD headquarters. The property may qualify if it meets any one of the following conditions:

- It has a vulnerable tenant population—at least 50 percent elderly, disabled, or large (five-plus person) families;
- It is located in an area with a vacancy rate below three percent, where vouchers are difficult to use; or
- It constitutes a high priority for the local community, as demonstrated by a contribution of state or local funds, such as tax abatements or rehab grants.

For projects with low- or moderate-income use restrictions, HUD will permit rents to be marked up only to the use-restricted level and will typically renew the contract for the remaining term of the use restriction. In a Section 236 project with Flexible Subsidy, for example, the maximum rents would be 30 percent of 80 percent of the area median income, adjusted for family size.

If a Section 236 or 221(d)(3) BMIR project is not eligible for prepayment, then it is not eligible for Mark-Up-to-Market. Ineligible projects include properties with original nonprofit owners and some Flexible Subsidy projects which require HUD consent to prepay. Some projects in this category may be eligible for Mark-Up-to-Budget, a parallel program for nonprofit owners and purchasers (see below). In all other cases, a waiver from HUD headquarters is required.

Rents, Contract Terms, and Distributions
HUD determines the initial rents based on market studies completed by the owner and HUD. In addition to the rent cap of 150 percent of FMR, rents for Section 236 and Section 221(d)(3) BMIR projects will generally be reduced by the value of the actual or imputed mortgage subsidy, with some exceptions (see IRP Retention/Decoupling below). For Section 236 properties, the market rent is reduced by the IRP subsidy, typically worth $75-$100 per month.[16]

The minimum contract term is five years. The maximum term can be any length—in practice, up to 20 years. Prepayment of the Section 236 or BMIR mortgage is prohibited during the contract term, except as part of a transaction to preserve affordability. Importantly, owners do not have to renew their contracts once the initial term expires—which effectively limits the value of Mark-Up-to-Market as a preservation tool to five years.

During the contract term, rents will be adjusted by the Operating Cost Adjustment Factor (OCAF), as published by HUD, up to the market rent cap, which is also OCAF-adjusted. Rents will be readjusted to market (up or down) every five years based on new market comparability studies prepared by the owner and HUD. While these policies may put Mark-Up-to-Market owners at a disadvantage between the five-year readjustment intervals, the project-based contract compensates by reducing risk.

In a Section 236 or 221(d)(3) BMIR project that is only partially Section 8-assisted, owners are permitted to take the increase in Section 8 rents as a distribution in addition to the original allowable dividend. In all other Section 8 projects, owners participating in Mark-Up-to-Market receive unlimited distributions. Any state or local restrictions on owner distributions in units subject to mark-up are preempted, except in projects financed by a state housing finance agency (HFA).

Non-Section 8 Units
In a partially-assisted Section 8 project, rents are marked up only for those units covered by the expiring Section 8 contract(s). Rents in any non-Section 8 units, units occupied by Section 8 voucher-holders, or units covered by a non-expiring contract remain unchanged. From an advocacy perspective, this rent skewing feature of Mark-Up-to-Market offers the double benefit of holding harmless tenants in existing affordable non-Section 8 units while preserving the Section 8 units as well. However, the lower the percentage of Section 8 units, the less attractive this option is likely to be to an owner who is considering opting out.

2. MARK-UP-TO-BUDGET: NONPROFIT OWNERS AND PURCHASERS[17]

Under the Mark-Up-to-Budget program, which is similar to Mark-Up-to-Market , nonprofits can mark Section 8 rents up to market rates (capped at 150 percent of FMR, or higher with a HUD waiver), if justified by documented project needs (budget-based rents). Mark-Up-to-Budget can be used under two circumstances: for *acquisition of the property* (if a nonprofit is the purchaser), or for *capital repairs* (if a nonprofit is the current or prospective owner).

Mark-Up-to-Budget enables nonprofit owners and purchasers to support additional debt for acquisition or rehab while preserving the Section 8 units. Like Mark-Up-to-Market, this program is available only when the existing pre-MAHRA contract expires, or anytime thereafter. HUD has published "safe harbor" rules for Mark-Up-to-Budget in Chapter 15 of its "Section 8 Renewal Policy Guidebook."[18] Transactions complying with these rules can be approved by the HUD field office. All other cases require a waiver from HUD headquarters.

Eligibility
Eligibility criteria for Mark Up-to-Budget are much less restrictive than the criteria for Mark-Up-to-Market. Projects can have comparable market rents that are less than 100 percent of FMRs, and they can mark up despite low- and moderate-income use or prepayment restric-

tions. However, the nonprofit purchaser/owner, or its controlling general partner, must meet the following criteria:

- It must be organized as a nonprofit under state law.
- It must have 501(c) tax-exempt status, except for limited-equity coops or projects where such status was not previously required to participate in the HUD program.
- It must be in good standing with HUD, with no unresolved audit findings.

A nonprofit *purchaser* must meet the following additional requirements:

- It must have previous ownership or management experience with affordable multifamily housing.
- It must have community ties, although a national or regional nonprofit may form a joint venture with a local nonprofit.
- It may not have an identity of interest relationship with the current owner.

PROFORMA 1: NONPROFIT PURCHASE WITH MARK-UP-TO-MARKET/BUDGET

Proforma 1 illustrates how Mark-Up-to-Market or Mark-Up-to-Budget can be used to facilitate a preservation transaction under certain circumstances. Fifty percent of the units in the hypothetical 100-unit project are Section 8-assisted.

In this example, the Section 8 rents are marked up by 50 percent while the non-Section 8 rents increase by 10 percent. As a result, the project can support new debt of approximately $26,400 per unit, which is slightly more than half of the total development cost of $50,000 (including $30,000 for acquisition, $15,000 for rehab, and $5,000 for transaction costs). Another $23,500 per unit (47 percent) must be raised from gap financing sources.

As this example indicates, Mark-Up-To-Market/Budget, while making a significant contribution to the preservation transaction, is only a partial solution, leaving considerable gaps to be filled by other sources.

PROFORMA 1: NONPROFIT PURCHASE WITH MARK-UP-TO-MARKET

	Units	Current Rent	Underwriting Rent	Basis	Rent Increase	Total	Per Unit
Income/ Expenses							
Non - Section 8 Units	50	$500	$550	LIHTC	10%	$330,000	
Section 8 Units	50	500	750	Market	50%	450,000	
Gross Potential Inc.	100					780,000	
Vacancy: (Non S8)	5%					(16,500)	
Vacancy: (S8)	3%					(13,500)	
Effective Gross Inc.						750,000	
Operating Expenses						500,000	5,000
Net Operating Income						250,000	
Debt Service						227,273	
Cash Flow						22,727	
Debt Coverage						1.10	
Sources of Funds	Rate	Term (Years)			Constant		
New Mortgage	7.75%	30			0.08597	2,643,645	26,436
Gap Financing						2,356,355	23,564
Total Sources						5,000,000	50,000
Uses of Funds							
Acquisition						3,000,000	30,000
Rehab + Contingency						1,500,000	15,000
Transaction Costs	11% of acquisition & rehab					500,000	5,000
Total Uses						5,000,000	50,000

Nonprofits participating in the *capital needs program* must also meet the following requirements:

- The property must have a minimum REAC score of 30. No minimum REAC score is required for the nonprofit transfer program.
- Limited partnerships controlled by a nonprofit must contribute at least 10 percent of first year rehab costs from non-project sources. No contribution is required from entities organized strictly as nonprofits.

Nonprofits seeking market-comparable rents in excess of the 150 FMR cap must meet one of the three criteria required for discretionary participation in the regular Mark-Up-to-Market program (see above), with HUD headquarters approval.

Rents, Contract Terms, and Distributions
Provisions for initial rents and rental adjustments are the same as in the Mark-Up-to-Market program. The minimum contract term, however, is 20 years under Mark Up-to-Budget. HUD also requires a use agreement that extends existing federal affordability restrictions for 20 years.

Pending a HUD regulatory change, owners or purchasers of Section 8 New Construction/Substantial Rehab and Section 236 projects[19] (either HUD-insured or HFA-financed) that are organized as nonprofit entities must apply for a regulatory waiver to receive a cash flow distribution equal to six percent on initial equity.[20] This requirement does not apply to limited partnerships controlled by nonprofits, to nonprofit purchasers that are paying off the Section 236 mortgage (unless the IRP is retained through decoupling; see below), or to nonprofit owners of preservation projects with use agreements that permit distributions. Owners may use distributions to benefit the project, for debt service on secondary financing, or for other purposes consistent with the nonprofit's organizational charter.

Non-Section 8 Units
For nonprofit transfers, rents for any non-Section 8 units may not be increased, except to cover operating costs. For capital repair transactions, rents may be increased up to 10 percent.

3. IRP RETENTION/DECOUPLING: SECTION 236(b) AND 236(e)

IRP Retention/Decoupling enables Section 236 projects to retain their interest reduction payment (IRP) subsidy—the monthly payment that covers the difference between the actual mortgage debt service and the hypothetical debt service with a one percent interest rate—when the project secures new or additional financing. The project can support additional debt without losing this important subsidy resource, which is already contractually committed to the property.

IRP Retention/Decoupling is primarily a tool for strong markets, but it can also be used to support projects in weak markets, including Mark-to-Market projects subject to debt restructuring. HUD rules for IRP Retention/Decoupling provide a safe harbor for transactions that can be approved at the field office level.[21] Transactions departing from these rules must secure approval from HUD headquarters.

There are two circumstances under which a Section 236 project can retain its IRP subsidy in conjunction with new or additional financing:

1. *236(b)*: when the 236 mortgage is **purchased** by an approved state or local agency, such as a housing finance agency. The public lender terminates the HUD mortgage insurance and typically provides a new note for additional financing, which is also secured by the mortgage on the original 236 note.

   While this decoupling structure was commonly used prior to the enactment of 236(e), it requires the original 236 note-holder to give his/her consent—a process that may be difficult, costly, and, in some cases, impossible. A few years ago, Fannie Mae, the largest 236 note holder, closed the window on 236 note sales after some bulk transactions with state housing finance agencies. The future use of 236(b) is uncertain and will likely be limited to situations where 236(e) is unworkable.

2. *236(e)*: when the 236 mortgage is **prepaid and refinanced**. The IRP assistance is decoupled from the original 236 mortgage and transferred to the new financing. No lender consent is required. This approach is generally more useful than 236(b) and is designed to provide greater flexibility for lenders, owners, and purchasers. At least 30 transactions have closed to date.

236(e) may be difficult to use in cases where the mortgage cannot be prepaid without HUD consent (e.g., in insured Rent Supplement projects and projects with original nonprofit sponsors). Where Low Income Housing Tax Credits (LIHTC) are used, current IRS rules may deem the IRP in a 236(e) transaction to be a federal loan or grant which must be excluded from basis. In these cases, 236(b) may be a preferable approach, since the IRS

PROFORMA 2: NONPROFIT PURCHASE WITH MARK-UP-TO-MARKET AND IRP RETENTION/DECOUPLING

Proforma 2 illustrates how Mark Up-to-Market /Budget can be combined with IRP retention/decoupling to facilitate a preservation purchase, using the same project discussed in the previous example.

Assuming the same rent structure and rent increases, this project can support additional debt of $36,400 per unit—an increase of $10,000 per unit. This represents the additional debt supportable by the IRP subsidy stream over its remaining 15-year contract term. As a result of combining these two federal preservation tools, the gap financing need is reduced from $23,500 to $13,500 per unit, or 27 percent.

PROFORMA 2: NONPROFIT PURCHASE WITH MARK-UP-TO-MARKET & IRP DECOUPLING

	Units	Current Rent	Underwriting Rent	Basis	Rent Increase	Total	Per Unit
Income/ Expenses							
Non - Section 8 Units	50	$500	$550	LIHTC	10%	$330,000	
Section 8/236 Units	50	500	750	Market *	50%	450,000	
Gross Potential Inc.	100					780,000	
Vacancy: (Non S8)	5%					(16,500)	
Vacancy: (S8)	3%					(13,500)	
Effective Gross Inc.						750,000	
Operating Expenses						500,000	5,000
Net Operating Income						250,000	
Debt Service						227,273	
Cash Flow						22,727	
Debt Coverage (w/o IRP)						1.10	
Debt Service - IRP	$90 per unit per month					108,000	1,080
Sources of Funds	Rate	Term (Years)			Constant		
New Mortgage	7.75%	30			0.08597	2,643,645	26,436
IRP Mortgage	7.00%	15			0.10786	1,001,304	10,013
Gap Financing						1,355,052	13,551
Total Sources						5,000,000	50,000
Uses of Funds							
Acquisition						3,000,000	30,000
Rehab + Contingency						1,500,000	15,000
Transaction Costs	11 % of acquisition & rehab					500,000	5,000
Total Uses						5,000,000	50,000

* Assumes no deduction for IRP.

may construe the IRP as an "old and cold" subsidy if it continues to be linked to the original financing.

Eligibility
Eligible *projects* must be assisted under Section 236 with insured, HUD-held, or non-insured (HFA) mortgages. Eligible *mortgagors* include nonprofit, limited dividend, and public entities. Under 236(b), *eligible lenders* are limited to state or local public agencies approved by HUD. Under 236(e), eligible lenders may be public or private, but a state or local public agency must provide regulatory oversight (e.g., IRP subsidy administration, rent increase processing, inspections, owner compliance monitoring). Alternately, the lender must be an FHA-approved mortgagee, the mortgage must be HUD-insured, and HUD must perform regulatory oversight functions.

Rents, Contract Terms, and Distributions
The IRP assistance continues as a monthly subsidy stream for the remaining term of the 236 mortgage, in accordance with the original subsidy contract. The monthly IRP subsidy may also be reduced and stretched over an extended contract term, but the monthly and aggregate total IRP cannot be increased. The 236 regime—including budget-based rents, tenant income eligibility limits, and other regulatory oversight—continues for the original mortgage term, plus five years, pursuant to a new HUD Use Agreement. The owner must also commit to renew any Section 8 contract throughout the extended use period if HUD offers a renewal contract.

Rents can be increased on a budget basis to cover debt service on any new financing for acquisition, rehab, or equity takeout. Upon prepayment of the mortgage (under 236(e)) or termination of the HUD mortgage insurance (under 236(b)), Enhanced Vouchers are generally provided for existing eligible tenants who are not covered by a project-based Section 8 contract.[22] Rents are capped at the new budget-based 236 Basic Rent. Tenants may not be displaced in conjunction with the 236(b) or 236(e) transaction.

In general, the new Section 236 Basic Rent cannot exceed the market-comparable rent minus the IRP subsidy. Additionally, the Basic Rent for non-Section 8 units may not be increased by more than 10 percent. For preservation projects (financed under LIHPRHA or ELIHPA), the Basic Rent for non-Section 8 units may not be increased in conjunction with the transaction, except for operating cost increases.

Any Section 8 units in the project may be marked up to comparable market rents, if they are eligible under either Mark-Up-to-Market or Mark-Up-to-Budget. Again, the maximum Section 8 rent is generally the market comparable rent less IRP.

In the past, these rent restrictions created a disincentive to use decoupling. From a preservation perspective, this result is undesirable since IRP retention offers the benefit of continued budget-based rents and income restrictions for an extended period. The alternatives provide less long term affordability: Mark-Up-to-Market without IRP retention requires only five years of mandatory affordability, and Section 8 opt-out offers no affordability benefits beyond current residents' tenure.

Importantly, HUD now will consider waiving the IRP deduction for certain sales transactions where the project needs significant repairs or is located in an area with lower market rents, as long as rents are computed on a budget basis. This waiver is not available for transactions involving equity takeout without a transfer of ownership.

In strong markets, this policy change has enabled nonprofits to combine IRP decoupling with Mark-Up-to-Market/Budget and to maximize Section 8 rents at full-market—while keeping non-Section 8 rents as low as possible. Additionally, it has extended the benefits of IRP decoupling to projects in weaker market areas.

Limitations on owner distributions and the allowable return on equity that can be included in the budget-based rent are less clear. HUD has recently clarified that reasonable debt service coverage can be included in the budget-based rent. Based on past experience, reasonable debt service coverage will generally become the allowable distribution for rent-setting purposes.

If feasible, outstanding HUD loans are supposed to be repaid in conjunction with the decoupling transaction. The HUD field office now has authority to approve deferral of Flexible Subsidy, Section 241, and other loans if repayment is inconsistent with preservation goals.

4. IRP POOLED GRANTS/LOANS (SECTION 236(s))

The Section 236(s) program was authorized by MAHRA in 1997 but is not yet operational. It permits HUD to recapture and pool IRP subsidies from Section 236 mortgage prepayments, foreclosures, and insurance terminations—and then to recycle them as rehab grants and loans to eligible projects. Eligible properties are broadly defined as any project—including but not limited to Section 236 projects—that had a HUD-insured mortgage and a Section 8 project-based contract on October 27, 1997. Funds may be used for rehabilitation, replacement reserve contributions, and debt service payments on non-federal rehabilitation loans. HUD will determine applicable use restrictions. This is a significant potential resource because no new appropriations are required: the budget authority already exists through re-programming of existing IRP funds.

Despite the program's promise, its current status is uncertain. HUD has recently proposed eliminating the loan mechanism. If implemented, the program will likely be limited to grants. Further, in the FY2002 HUD-VA Supplemental Appropriations Act, Congress rescinded virtually the entire IRP pool.

5. ENHANCED VOUCHERS

This program provides tenant-based assistance to eligible tenants when an owner prepays a subsidized mortgage, terminates the HUD mortgage insurance, or opts out of a Section 8 subsidy contract.[23] The purpose is to enable tenants to remain in the housing. Enhanced Vouchers are also available to tenants in Flexible Subsidy projects in conjunction with approved preservation transactions.

The Enhanced Voucher payment standard is set at the market rent for the property, subject to rent reasonableness as determined by the local public housing authority (PHA), which administers the program for HUD. Rents are adjusted annually to reflect changes in the market. The regular voucher payment standard is reinstated when the tenant moves.

Enhanced Voucher tenants have a right to remain in the property as long as it is available for rental use and the owner agrees to the PHA-approved rent. If tenants exercise their right to remain, the owner may not terminate the tenancy except for cause under federal, state, or local law.

The Enhanced Voucher program is described in Chapter 11 of HUD's "Section 8 Renewal Policy Guidebook." Detailed program rules are promulgated by the Office of Public and Indian Housing.[24]

Eligibility
To qualify for Enhanced Vouchers in a Section 8 opt-out, low-income tenants must have incomes at or below 80 percent of median, and they must be covered by the Section 8 contract at the opt-out date. In the case of subsidized mortgage prepayments or insurance terminations, eligible tenants—including tenants covered by a Section 8 contract—are low-income households who reside in the housing on the prepayment or insurance termination date. Moderate-income tenants—those with incomes at or below 95 percent of median—may also qualify if they are elderly/disabled or if the project is located in a low-vacancy area. Tenants in Flexible Subsidy projects are subject to the same eligibility criteria.

Limitations
While Enhanced Vouchers provide more tenant protections now than in the past, they do not hold existing tenants entirely harmless. If the

owner converts to non-rental use or refuses to accept the rent approved by the PHA as reasonable, the tenant's right to remain is not guaranteed. Since HUD has refused to enforce this provision, enforcement remedies depend entirely on state and local law. Likewise, the public housing authority's eligibility and screening criteria, which treat existing tenants in good standing as new applicants, may preclude some tenants from receiving vouchers.

For over-housed tenants, the Enhanced Voucher payment standard is based on the appropriately sized unit. Over-housed tenants must move to a smaller unit within the project (or elsewhere) after one year or pay the rent difference out-of-pocket. Before conversion, over-housed tenants were required to move only when an appropriately-sized unit became available within the development.

Additionally, Enhanced Voucher tenants must pay a minimum rent equal to the dollar amount (or percent of income, in hardship cases) paid at the point of prepayment or opt-out. (Under the regular voucher and project-based programs, there is no minimum rent.)

Enhanced Vouchers have limited value as a preservation tool, but they may be used when other resources are unavailable or unworkable. Because the subsidy is tenant-based and subject to annual contract authority and appropriations, the amount of funds available from debt and equity sources for a voucher-based preservation transaction will be more limited. Most funders will anticipate voucher attrition over time and will underwrite the project at the underlying "default" rents (e.g., maximum LIHTC rents, if applicable to the transaction) when voucher tenants move. Additional reserves may be required to address the costs associated with Enhanced Voucher attrition.

PROFORMA 3: NONPROFIT PURCHASE WITH ENHANCED VOUCHERS

Proforma 3 shows how the same 100 unit project might be purchased by a nonprofit with Enhanced Vouchers for 100 percent of the units at comparable market rents ($750). The proforma assumes voucher attrition at the rate of 10 percent per year (10 years), with 90 percent of the voucher holders replaced by households paying Tax Credit rents ($550) and 10 percent replaced by regular voucher holders at the regular PHA payment standard ($650). The transaction is underwritten in year 11, at the point when the lowest net operating income is achieved.

Consequently, the project can carry only $17,840 per unit in new debt. The needed gap financing increases to $32,160 per unit, or 64 percent of total development cost. Affordability is also reduced over time, since 90 percent of the units will rise to Tax Credit levels without rental subsidy. In the previous examples, 50 percent of the units maintained deep affordability through project-based rental subsidies.

This scenario also creates excess cash flow in the early years of the project, since a substantial fraction of the initial NOI is not used for debt service. These funds can be used for additional rehabilitation, tenant services, or other project needs. Overall, Enhanced Vouchers are a less desirable approach than the two scenarios previously considered but may be workable if sufficient gap financing is available.

Proforma 3: NONPROFIT PURCHASE WITH ENHANCED VOUCHERS

	Units	Current Rent	New Rent	Rent Increase	Total	Per Unit
Income/ Expenses						
S8 Enhanced Vouchers	100	$500	$750	50%	900,000	
S8 Regular Vouchers	10% over time		$650		0	
Tax Credit Rents	90% over time		$550		0	
Gross Potential Income					900,000	
Vacancy	5%				(45,000)	
Effective Gross Income					855,000	
Operating Expenses					500,000	5,000
Net Operating Income					355,000	
Debt Service	Minimum NOI/1.10 (Year 11)				153,372	
Cash Flow					201,628	
Debt Coverage					2.31	
Sources of Funds	Rate	Term (years)		Constant		
New Mortgage	7.75%	30		0.08597	1,784,025	17,840
Gap Financing					3,215,975	32,160
Total Sources					5,000,000	50,000
Uses of Funds						
Acquisition					3,000,000	30,000
Rehab + Contingency					1,500,000	15,000
Transaction Costs	11% of acquisition & rehab				500,000	5,000
Total Uses					5,000,000	50,000

Year		**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
EVs		100	90	80	70	60	50	40	30	20	10	0	0
Reg. Vs		0	1	2	3	4	5	6	7	8	9	10	10
LIHTC		0	9	18	27	36	45	54	63	72	81	90	90
	Trend												
S8 EV	1.02	900,000	826,200	749,088	668,561	584,513	496,836	405,418	310,145	210,899	107,558	0	0
Reg. V	1.02		7,956	16,230	24,832	33,772	43,059	52,704	62,718	73,112	83,895	95,082	96,983
LIHTC	1.02		60,588	123,600	189,107	257,186	327,912	401,364	477,624	556,773	638,896	724,083	738,564
GPI		900,000	894,744	888,918	882,501	875,471	867,808	859,487	850,487	840,783	830,350	819,164	835,548
Vac.		(45,000)	(44,737)	(44,446)	(44,125)	(43,774)	(43,390)	(42,974)	(42,524)	(42,039)	(41,518)	(40,958)	(41,777)
EGI		855,000	850,007	844,472	838,376	831,698	824,417	816,513	807,963	798,744	788,833	778,206	793,770
Op. Exp.	1.020	500,000	510,000	520,200	530,604	541,216	552,040	563,081	574,343	585,830	597,546	609,497	621,687
NOI		355,000	340,007	324,272	307,772	290,481	272,377	253,432	233,620	212,914	191,287	**168,709**	172,083
DS		153,372	153,372	153,372	153,372	153,372	153,372	153,372	153,372	153,372	153,372	**153,372**	153,372
CF		201,628	186,635	170,900	154,400	137,110	119,005	100,060	80,248	59,542	37,915	**15,337**	18,711
DCR		2.31	2.22	2.11	2.01	1.89	1.78	1.65	1.52	1.39	1.25	**1.10**	1.12

6. MARK-TO-MARKET INCENTIVES

HUD/OMHAR has recently developed a package of incentives for owners and purchasers to facilitate Mark-to-Market debt restructuring transactions. These incentives clarify allowable costs and fees that OMHAR will finance or recognize, in whole or in part, through the debt restructuring process, reducing the need for other capital subsidies. For qualified nonprofit purchasers, additional incentives establish policies and procedures to forgive deferred HUD debt resulting from the restructuring process, thus facilitating nonprofit transfers. These policies are described in OMHAR's "Initiatives for Mark-to-Market Owners and Purchasers" and in the "Operating Procedures Guide" which governs the Mark-to-Market program.[25]

Allowable Restructuring Costs and Fees
The following is an annotated list of costs and fees supported by HUD/OMHAR in the debt restructuring process:

Rehabilitation. HUD will pay for 80 percent of approved rehabilitation costs.

Transaction Costs. HUD will pay for 80 percent of reasonable and customary transaction costs for acquisition and restructuring—legal, title and recording, survey, architectural/engineering, environmental, etc.

Initial Reserve Deposit. HUD will pay 100 percent of any required initial deposit to Replacement Reserves (net of outstanding reserve balances carried forward).

Developer Fee. HUD will pay for 100 percent of the allowable developer fee, for purchasers only. The allowable developer fee is 3 percent of total uses, with a minimum of $40,000 and a maximum of $80,000. Purchasers who bring other resources to the transaction may qualify for a higher developer fee, with the balance payable from other sources.

Capital Recovery Payment (CRP). The balance of the owner's or purchaser's required contribution—20 percent of allowable rehabilitation and transaction costs, plus any portion of allowable developer fee not covered by HUD—may be recovered out of operating revenues over a 7-10 year period. This fee is underwritten above the line like any operating expense, as a series of payments, including an imputed interest rate. This should permit the owner/purchaser to borrow the funds from a third party source (such as LISC, in the case of a nonprofit owner), then repay the loan from the CRP.

Incentive Performance Fee (IPF). Owners and purchasers are also entitled to a fee of up to three percent of effective gross income, with a minimum of $100 per unit and a maximum of $200 per unit. The project pays this annual fee to the owner as a priority distribution from cash flow before any payment to HUD on the second mortgage (a minimum of 75 percent of cash flow remaining *after* payment of the IPF). The owner must either be in good standing with a minimum REAC score of 60 or have an approved plan to correct any deficiencies.

Additional Funds
OMHAR has recently indicated that any additional capital resources brought to the transaction by the owner or purchaser—e.g., tax-exempt bond financing, tax credits, public sector grants or soft debt—will not decrease the amount of HUD's insurance claim or capital subsidy to the project (the baseline claim) as long as the additional resources are invested in the property.[26]

Second Mortgage Forgiveness
For qualified nonprofit purchasers only, HUD will forgive part or all of the deferred second (and third) mortgages incurred by restructuring. Mortgage forgiveness frees up cash that would otherwise (at least 75 percent) revert to HUD for payment of deferred loans and generally puts the property on more stable financial footing.

To qualify for second mortgage forgiveness, the purchaser entity (or its sole general partner) must meet the following criteria:

- It must be a nonprofit entity organized under state law, but 501(c)(3) status is not required.
- It must be community-based, usually with one-third of the board members consisting of project tenants or low-income community residents.

- It must be endorsed by a majority of residents.
- It must be financially and legally independent.

In exchange for mortgage forgiveness, the nonprofit purchaser must agree to the following conditions:

- A 50-year use agreement.
- A 10-year resale restriction.
- A reinvestment obligation, which may require that a portion of the cash flow must be used for the benefit of the property/residents. Under current HUD policy, there is no formal reinvestment obligation.

Qualified purchasers can acquire Mark-to-Market properties up to three years after the restructuring date and still qualify for second mortgage forgiveness.

Congress also recently amended MAHRA to permit assignment of the second mortgage, as an alternative to mortgage forgiveness. This may be a preferable option in cases where there are limited dividend restrictions associated with the original mortgage or Section 8 contract. While these restrictions are superceded as long as the HUD second mortgage is outstanding, they are reinstated if the HUD debt is forgiven. If the HUD mortgage is assigned to an affiliate of the nonprofit purchaser instead of being forgiven, this problem can be overcome. HUD recently revised Appendix C of the OPG to implement mortgage assignment.

PROFORMA 4: NONPROFIT PURCHASE WITH MARK-TO-MARKET DEBT RESTRUCTURING

Proforma 4 illustrates how the Mark-to-Market incentives can be used to facilitate a nonprofit purchase in conjunction with Mark-to-Market debt restructuring.

In this hypothetical 100-unit HUD-insured Section 8 project, the restructured rents are reduced by 20 percent, from $750 to $600. After deducting operating expenses and the allowable Capital Recovery Payment of $16,721 (based on the purchaser's total contribution of $110,000), approximately $127,400 is available for mortgage debt service, leaving a cash flow of $25,480.

From this cash flow, the purchaser will receive $20,000 as a priority distribution for the Incentive Performance Fee, capped at $200 per unit. Since the second mortgage is forgiven (see below), there is no additional debt service. The balance of the cash flow is available to the purchaser (subject to any limitations on owner distributions associated with the original mortgage or Section 8 contract).

In total, the purchaser will receive approximately $42,000 in operating revenues from the CRP, the IPF, and the owner's share of remaining cash flow (from which any amounts borrowed to finance the purchaser's $110,000 contribution will need to be repaid).

The total development cost of $2.63 million includes $1.8 million for repayment of the outstanding HUD mortgage balance, $500,000 for rehab and contingency, $250,000 for reserves and transaction costs, and $76,500 in developer fee (2.9 percent of total uses). The sources of funds include $1.28 million in new debt supportable by the restructured rents, $100,000 in existing reserve balances carried forward, and a $110,000 purchaser contribution (20 percent of rehab and transaction costs).

The balance of $1.1 million is the HUD contribution or mortgage insurance claim, consisting of a $500,000 second mortgage and a $600,000 third mortgage.[27] The HUD contribution is equal to the reduction in first mortgage debt, plus 80 percent of rehab and transaction costs, plus 100 percent of the initial reserve deposit and developer fee, minus the existing reserve balance carried forward.

Assuming that the purchaser is a qualified nonprofit, the second and third mortgages are forgiven. Any additional buyer costs (acquisition, rehab, transaction) would have to be paid by the purchaser from other additional sources, with no effect on HUD's $1.1 million contribution, the baseline claim.

PROFORMA 4: NONPROFIT PURCHASE WITH MARK-TO-MARKET DEBT RESTRUCTURING

	Units	Current Rent	Underwriting Rent	Basis	Rent Increase	Total	Per Unit
Income/Expenses							
Section 8 Units	100	$750	$600	Market	-20%	$720,000	
Vacancy & Bad Debt	7%					(50,400)	
Effective Gross Inc.						669,600	
Operating Expenses	Rate	Term (years)			Constant	500,000	5,000
Capital Recovery Pmt	9%	10			0.15201	16,721	
Net Operating Income						152,879	
Debt Service						127,399	
Cash Flow						25,480	
Debt Coverage						1.20	
Distribution of Cash Flow:							
Incentive Perf. Fee	3.0%EGI (up to 3%; $100 - $200 / unit)					20,000	
Debt Serv. - 2nd Mtge	(forgiven)					0	
Share to Buyer						5,480	
Total Cash Flow						25,480	
Cash Available to Buyer:							
Capital Recovery Payment (CRP)						16,721	
Incentive Performance Fee (IPF)						20,000	
Cash Flow Share						5,480	
Total Cash Flow to Buyer						42,201	
Sources of Funds*	Rate	Term (yrs)	MIP **		Constant		
New HUD Mortgage	8.25%	25	0.5%		0.09961	1,278,928	12,789
Existing Reserve Balance						100,000	1,000
Owner Contribution	20%	rehab +	transaction costs			110,000	1,100
HUD 2nd Mortgage					FORGIVEN	521,072	5,211
HUD 3rd Mortgage					FORGIVEN	616,500	6,165
Total Sources						2,626,500	26,265
Uses of Funds*							
Repay Existing HUD Mortgage						1,800,000	18,000
Rehab + Contingency						500,000	5,000
Initial Reserve Deposit						200,000	2,000
Transaction Costs						50,000	500
Developer Fee	2.9%x uses (up to 3%; $40,000 - $80,000)					76,500	765
Total Uses						2,626,500	26,265
HUD Contribution:		HUD Share:					
Reduction in 1st Mortgage						521,072	5,211
Repairs		80%				400,000	4,000
Transaction Costs		80%				40,000	400
Initial Reserve Deposit		100%				200,000	2,000
Developer Fee		100%				76,500	765
Less: Existing Reserve Balance						(100,000)	(1,000)
Total						1,137,572	11,376
	2nd Mtge	3rd Mtge					
Restructuring Pmt.	521,072	616,500				1,137,572	11,376

* Not including additional buyer costs (acquisition, rehab, transaction) which must be paid from other sources.
** Mortgage Insurance Premium

7. PREDEVELOPMENT AND OUTREACH/TRAINING GRANTS

The 1997 MAHRA legislation authorized $10 million in annual funding for grants to help resident organizations, nonprofits, and public agencies acquire and preserve federally subsidized developments. Administered by OMHAR, the grants provide critical predevelopment and technical assistance funding for preservation transactions and related activities.

There are two types of grants: Intermediary Technical Assistance Grants (ITAG) and Outreach and Training Grants (OTAG). Eligible properties include Mark-to-Market properties and other subsidized developments that are at risk of mortgage prepayment, opt-out, or subsidy contract expiration/termination, or that offer a potential opportunity for nonprofit acquisition.

Intermediary Technical Assistance Grants (ITAG)
In recent years, ITAG grants have been administered by three regional intermediaries under contract to HUD/OMHAR.[28] Applications have been accepted on a rolling basis. There are three specific types of ITAG grants:

Resident Capacity (RC) Grants. RC grants are for project-specific advocacy, technical assistance, and training activities. Eligible applicants are resident groups, resident councils, and community-based development organizations. In 2001, the maximum grant was $20,000.

Predevelopment (PD) Grants. PD grants are for project-specific transaction costs related to a preservation purchase. Eligible applicants are resident councils and community-based development organizations that are seeking to purchase the property and have a binding commitment from the seller. In 2001, the maximum grant was $70,000.

Public Entity Grants (PEG). PEGs are for all eligible RC or PD activities, either project-specific or community-wide. Eligible applicants include public agencies, community action agencies, legal services organizations, and fair-housing agencies. In 2001, the maximum grant amount was $20,000.

Outreach & Training Grants (OTAG)
OTAG grants have been provided to local and statewide organizing and technical assistance organizations on a multi-year basis.[29] Potential preservation purchasers will want to work closely with OTAG grantees to identify at-risk properties and establish contacts with resident groups.

Legislation passed in 2001 reauthorizes ITAG and OTAG funding at $10 million per year. A total of $11.3 million has been appropriated for the 2002 fiscal year, including $1.3 million earmarked for outstanding obligations to existing grantees. In the fall of 2001, HUD suspended technical assistance grants pending a review of alleged deficiencies in its program administration. Although the funds technically exist, unresolved issues relating to these claims and other constraints imposed by the appropriations act have cast doubt on HUD's ability to make new funds available during the 2002 fiscal year.

CHAPTER THREE
State and Local Preservation Tools and Strategies

Since the termination of the LIHPRHA and ELIHPA programs, responsibility for preserving HUD-assisted housing has increasingly devolved to the state and local level. Today's federal preservation tools—including Enhanced Vouchers, Mark-Up-to-Market/Budget, IRP Decoupling, and Mark-to-Market incentives—are not adequately designed or funded to preserve all of the units that remain at-risk. Not surprisingly, mortgage prepayments and opt-outs continue to erode the assisted housing stock.

In recent years, however, a variety of innovative preservation tools and strategies have emerged at the state and local level to supplement, and extend the reach of, existing federal programs. This chapter will review the laws, programs, and policies that have been developed by preservation advocates, practitioners, and government officials to preserve subsidized housing in their communities. Both regulatory and incentive approaches ("carrots and sticks") will be addressed. Case studies will illustrate how different communities have combined these tools to develop successful preservation strategies.[30]

1. REGULATORY AND INCENTIVE APPROACHES

Regulatory/Enforcement Tools

Crafting effective state or local regulatory approaches to preservation can be difficult. Efforts to restrict property rights must be carefully designed to avoid legal challenge. In the absence of funding or other incentives, permanent preservation can rarely be accomplished by state or local regulation alone. Nevertheless, a variety of regulatory and enforcement tools have been utilized to bring owners to the negotiating table or otherwise facilitate preservation outcomes.

Rent and Eviction Controls

Some localities have existing rent control laws (San Francisco, Los Angeles, New York City) or proposed initiatives (Massachusetts) that can help to preserve at-risk properties. These laws typically extend coverage to federally-assisted housing when the HUD subsidy expires through mortgage prepayment or opt-out. Eviction controls usually provide that tenancies in controlled properties can be terminated only for good cause.

Where the regulatory scheme keeps rents below market, incentives for conversion may be significantly reduced. In San Francisco, for example, advocates attribute the virtual absence of prepayments and opt-outs to the city's strong rent control system. A weaker or more transitory regulatory scheme may have less of an impact. At the same time, rent controls that depress property values below the level required to cover the seller's exit taxes[31] may discourage ownership transfers, including sales to nonprofit purchasers. For this reason, some preservation advocates have sought to exempt properties sold to nonprofits from rent control coverage.

Existing Use Restrictions

Some properties may have use restrictions imposed by a state or local agency that date back to their original development. These restrictions often limit a property's use beyond the expiration of federal regulatory agreements. Local restrictions commonly arise from urban renewal plans, land disposition agreements, zoning or parking relief, tax relief, or public financing.

Often these covenants are buried in long-forgotten legal documents, and identifying, excavating, and interpreting them in a way that is meaningful to current circumstances can be a formidable challenge. But the rewards can be significant: in Massachusetts, enforcement of existing restrictions by state and local agencies has resulted in significant preservation benefits (see below).

Notice Requirements

A number of states (California, Minnesota, Maryland) and cities (Portland, Oregon; San Francisco, California; Denver, Colorado) have laws that supplement existing federal notice requirements—for example, by requiring longer notice periods, more detailed information, or broader distribution of information. In some cases, local notice requirements cover additional types of at-risk properties. These laws seek to provide more time and local leverage to ensure that tenants are adequately protected and, if possible, to facilitate a preservation alternative.

For example, California requires a 12-month notice for subsidized mortgage prepayments, opt-outs, and termination of use restrictions in Tax Credit projects. A second notice at six months must include specific information regarding the owner's plans, timetables, and reasons for termination. The second notice must be sent to interested preservation purchasers listed on the state's preservation web site, among other parties. Prospective purchasers are also entitled to certain financial information.

Minnesota and Maryland notice laws also require owners to file a detailed tenant impact statement. The Rhode Island law requires two years' notice.

Fees

Some state notice laws also require owners to pay compensatory or mitigation fees in conjunction with prepayments or opt-outs. For example, San Francisco and Seattle require relocation fees. Rhode Island and Maryland require owners to pay tenants' moving costs.

The Portland ordinance formerly required a replacement housing payment of $30,000 per unit if an owner rejected the city's offer to purchase at the appraised fair market value, to be paid into an affordable housing fund. This provision was preempted by the state in exchange for a longer notice requirement and authorization of local eminent domain powers (see below).

Right of First Refusal

Some state notice laws also give the local government, or its nonprofit assignee, the right to match a private offer to purchase where the owner is seeking to sell. Typically, the right of first refusal is triggered only if the owner tries to sell during the notice period, prior to conversion. It does not prevent the owner from converting during the notice period and then selling. Nonprofits, which are heavily dependent upon public funding, often have difficulty matching the timeframe of private buyers that have cash on hand for due diligence and ready access to financing.

Preemptive Purchase Rights

This approach gives prospective preservation purchasers an exclusive window of opportunity to make an offer. For example, the new California law gives prospective purchasers listed on the state's preservation website an exclusive right to make an offer during the first six months of the conversion notice period, whether or not the owner intends to sell.[32] During the next six months, preservation purchasers have a right of first refusal to match any private offer. Although the owner is not required to accept a preservation purchase offer—except when it is made pursuant to the right of first refusal—this provision at least gives nonprofits a timing advantage.

The San Francisco ordinance provides an exclusive negotiation period during which the city can offer the owner a fair return price, which is tied to the property's rent-controlled value. This tool has been used in conjunction with rent control to facilitate several transfers to nonprofits with substantial city funding. In general, however, preemptive purchaser rights cannot force an unwilling owner to sell.

Eminent Domain

Some localities have used eminent domain powers as a last resort to mandate a sale for the public purpose of preserving affordable housing. The housing must be purchased for its appraised fair market value. Usually this tactic involves threatened or actual litigation, followed by a settlement that includes a preservation sale.

For example, the City of Pacifica, California sued under its eminent domain powers to acquire Oceanview Apartments, a 100-unit project. The owner had cancelled Section 8 voucher leases after refusing to accept the housing authority's payment standard as the maximum rent. The city negotiated a settlement in which it acquired the property with state and local funds. Ownership was eventually transferred to a national nonprofit organization.

In Denver, Colorado, after the owner of East Village Apartments opted out of a 160-unit project-based Section 8 contract, the city and the project's tenants sued to acquire the property under eminent domain. A purchase, which included substantial state and local funding, was ultimately negotiated with the Denver Housing Authority. Tenants are negotiating further with the housing authority to ensure that the Section 8 contract is renewed on a long-term basis.

Both Denver and Portland now have ordinances that explicitly authorize the locality to use eminent domain to preserve affordable housing.

Other Legal Claims

A variety of other legal claims have been used by residents and advocates to challenge conversions of federally subsidized housing.[33] For example, the conversion may constitute a breach of existing local use restrictions (see above). The owner may have violated federal, state, or local notice requirements. Or there may be a basis for fair-housing claims if the conversion will adversely or disproportionately affect members of minority groups, perpetuate racial segregation, or if HUD has failed to promote other fair-housing opportunities.

Federal Preemption

Many state and local preservation initiatives have been subject to legal challenge based on federal preemption claims. Specifically, Section 232 of LIHPRHA preempts state and local laws to the extent that they restrict the owner's ability to prepay, are incompatible with LIHPRHA, or are otherwise targeted exclusively to Section 236 and Section 221(d)(3) BMIR projects that are eligible to prepay. At the same time, laws of "general applicability," which also include prepayment-eligible housing, are not preempted. Accordingly, state and local ordinances should be drafted broadly enough to fall under the protection of the general applicability exception.

2. FINANCIAL/ TAX INCENTIVES

State and local governments have developed an array of financial and tax incentives to help preserve the subsidized housing stock. In designing such programs, especially in view of the scarcity of state and local funds, a primary consideration is how to target incentives to achieve the highest impact. For example:

Eligible Property. Should incentives be targeted to properties with the highest and most immediate risk, or should they be more generally available? Should incentives be limited to properties at risk of market-rate conversion, or should they also be available to properties at risk of disinvestment, default, and foreclosure?

Eligible Recipients. Should incentives be available only to nonprofit purchasers, or also to existing owners and/or for-profit purchasers? Broadening the scope of potential beneficiaries may be necessary to garner political support, or to ensure that the maximum number of properties can be preserved. A possible compromise could require any existing owner to provide a right of first refusal and/or option to a qualified nonprofit with respect to any future sale.

Long-Term Affordability. What type of use restriction should be imposed? How long should it last—20, 30, or 50 years? The remaining useful life of the housing?

These issues are subject to tradeoffs which each jurisdiction will value differently. Finding the appropriate balance—for example, whether to curtail the number of eligible recipients and properties in order to boost long-term affordability—is part of the challenge of developing a successful preservation strategy.

Preservation Housing Element

In California, localities are required to prepare a 10-year analysis of their at-risk subsidized inventories as a component of their local Housing Element and General Plan. The locality must state its preservation goals and objectives and provide a five-year action program that identifies available financing and subsidies for preservation. This requirement fosters local responsibility for the development of preservation strategies and commits local resources to support those efforts.

Targeting Federal Resources

Each state is required to establish a Qualified Allocation Plan (QAP) for distribution of competitive Low- Income Housing Tax Credits (LIHTC). Many states have established set-asides, priorities, or bonus points for project categories that include preservation of at-risk federally subsidized housing. The categories may be broadly or narrowly defined. For example, Massachusetts has a 40 percent set-aside for preservation, a broadly-defined category that includes existing unsubsidized properties as well as HUD-subsidized housing. California has a 10 percent set-aside specifically for at-risk federal projects whose subsidies are set to expire within two years. Similar targeting may extend to tax-exempt bonds, HOME, and other funds subject to competitive allocation, in states where these resources are scarce.

Dedicated State/Local Revenues

Several states and localities have earmarked resources exclusively for preservation. Adding new funds to the existing pie helps to relieve competition between production and preservation uses. Minnesota, for example, has appropriated a total of $30 million for preservation capital funding over the past three years. Massachusetts has established a preservation bond program financed by state revenues. Seattle supports preservation activities with funds appropriated from its general revenues ($1 million in 1999). San Francisco uses tax increment financing for preservation. To the extent that advocates are successful in developing a federal matching grant program for preservation, states and localities that are devoting their own resources to preservation stand to gain considerably.[34]

Refinancing Programs

Many state housing finance agencies have special loan programs to refinance at-risk federally subsidized properties. These programs typically cover acquisition, rehab, and/or equity takeout by existing owners. Some programs include a capital or debt subsidy component—for example, low- or zero-interest loans for preservation purchases funded internally by the housing finance authority or by the state. Currently, Vermont, Pennsylvania, Maine, and Missouri all have such subsidy programs.

Property Tax Exemption

The State of Washington has enacted local option legislation that authorizes localities to adopt property tax exemptions for affordable low-income housing projects funded with state resources.

Charitable Contribution Program

The State of Missouri allows sellers facing high exit taxes to take a state tax credit if they donate an affordable housing property to a non-profit purchaser. Donor/sellers may deduct from their taxes a sum equal to 55 percent of the donated value. This tool was recently used to facilitate a large portfolio sale of subsidized properties by a private owner to a national non-profit entity, and it is currently being used in conjunction with the transfer of several Mark-to-Market projects.

CASE STUDIES

1. STRATEGIC INTERVENTIONS: MINNESOTA[35]

In Minnesota, attorneys from the Minnesota Preservation Project have collaborated with residents, advocates, community groups, and state and local officials to develop multifaceted strategies for affordable housing preservation. The strategies typically use financial incentives as well as legal and regulatory pressure. A typical protocol for a particular project includes the following steps:

Investigation. Review of tenant notices, project files (at HUD and other agencies), land or deed records, and tenant and community demographics.

Resident Organizing. Contact with project residents, followed up with education and organizing.

Owner Assessments. Assessment of the owner's intentions and needs, and the capacity and interest of potential nonprofit purchasers.

Legal Analysis. Analysis of potential legal claims: notice requirements, existing use restrictions, HUD prepayment approval requirements, HUD-held or HUD-sold mortgage status, Enhanced Voucher legal requirements, and fair-housing issues. Minnesota law requires a one-year notice, including a Tenant Impact Statement for all subsidized mortgage prepayments and subsidy contract opt-outs.[36] Because HUD-subsidized projects are disproportionately occupied by minority residents, owners' actions are often subject to fair-housing claims.

Financial Analysis. Analysis of the feasibility of retaining affordability under existing ownership arrangements or through a sale to a nonprofit purchaser. Each year, Minnesota appropriates state funds for preservation which are available for both existing owners and new purchasers.

Publicity. Contacts with media, elected representatives, and government agencies focus public attention on the project.

Resolution. Wherever possible, development of a preservation-oriented alternative through negotiation. Litigation is a last resort, although the threat of litigation is often necessary and helpful. In most cases, threatened litigation has resulted in a favorable settlement.

Case Study #1: Franklin Lane Apartments

This 66-unit project financed under Section 236 is located in an integrated suburb outside Minneapolis and is occupied primarily by elderly and disabled residents. Historically, the Section 236 rents have been substantially below market. A few years ago, the owner sold to a private purchaser who intended to prepay the subsidized mortgage and convert the property to market-rate.

Strategies

Preservation advocates and attorneys initially pressured HUD to deny the Transfer of Physical Assets application, but this tactic failed. With strong political support from community groups and local officials, tenants then launched a year-long media and advocacy campaign. Tenants threatened litigation based on fair-housing claims and potential violations of federal and state notice laws, and prepared to picket the owner's new restaurants downtown.

Outcome

These actions brought the new owner to the negotiating table and ultimately resulted in the transfer of ownership to a community-based nonprofit purchaser. Resources for the transaction included federal Low Income Housing Tax Credits, state preservation funds, county HOME funds, retained IRP subsidy, and project-based certificates through the PHA for all of the units. No tenants were displaced and long-term affordability was secured.

Case Study #2: Hopkins Village

This 161-unit Section 236 project located in another integrated suburb of Minneapolis is occupied primarily by elderly and disabled persons as well as some families of color. The project is partially-assisted with a Section 8 LMSA contract covering 64 units. The owner notified the tenants of his intention to prepay the mortgage and opt out.

Strategies

Initial negotiations with HUD, the local housing finance agency, and the tenants were unsuccessful. After the owner rejected the housing finance agency's offer of state preservation funds, as well as a purchase offer from a nonprofit, residents and advocates sued the owner and HUD for failing to comply with fair-housing and federal and state notice laws.[37] The preservation campaign received widespread publicity and community support.

Outcome

Almost immediately, HUD called a settlement conference, and the owner ultimately agreed to sell to a nonprofit. Resources for the transaction included federal Low Income Housing Tax Credits, state preservation funds, retained IRP subsidy and project-based Section 8 subsidies.

Case Study #3: Selby Dayton Apartments
This 93-unit Section 236 project is located in a gentrifying inner-city St. Paul neighborhood. The residents are predominantly minority families, and 100 percent of the units are Section 8-assisted. The property was in poor condition due to the owner's neglect, and when HUD notified the owner of its intent to terminate the Section 8 contract, the owner found a buyer who planned to undertake a market-rate conversion.

Strategies
After residents and advocates failed to block the proposed sale and conversion, they filed a lawsuit against HUD and the owner. Since HUD held the mortgage, litigants claimed it had a statutory obligation to maintain existing restrictions through the end of the original mortgage term. The litigation and related preservation activity received widespread local support and publicity.

Outcome
Once again, HUD called for a settlement meeting immediately after the litigation was filed. The city secured a purchase agreement and transferred ownership to a nonprofit developer. Resources for the transaction included Historical and Low Income Housing Tax Credits, state preservation funds, city CDBG funds, retained IRP subsidy, and Section 8 project-based subsidies.

2. ENFORCEMENT OF EXISTING USE RESTRICTIONS: MASSACHUSETTS

In Massachusetts, coalitions of residents, advocates, and government officials have developed successful preservation strategies around the enforcement of existing state and local use restrictions. These restrictions are derived from the following sources:

Tax Relief (Chapter 121A). Under this state program, many developers of federally-assisted housing pay a formula-based excise tax in lieu of regularly assessed property taxes. In exchange for tax relief and predictability, the developers agree to provide public benefits, such as low- and moderate-income housing, for the term of the 121A contract, typically 40 years. While most 121A contracts do not include an explicit use restriction, promises made by the developers in their original applications have been construed as legally binding.

Zoning. Many federally subsidized projects received some type of local zoning relief at the time of original construction based on their low- and moderate-income status. A common example is a parking variance granted on the grounds that low-income elderly tenants need fewer cars. Unless stated otherwise, the obligations imposed by zoning relief are permanent. In some cases, the zoning approval explicitly stipulates that parking requirements revert to the original standard if the use and occupancy of the project changes.

Urban Renewal. In projects that were built on urban renewal land, deed covenants often restrict the parcel's use to low- or moderate-income housing for the term of urban renewal plan. Even if a parcel has no specific restrictions, if the property is located in an urban renewal area it is often subject to the low- and moderate-income housing goals of the urban renewal plan.

Case Study #4: Fresh Pond Apartments (Chapter 121A)
This 500-unit property was developed 30 years ago under the Section 221(d)(3) BMIR program in what is now a prime location in the City of Cambridge. Approximately two-thirds (338) of the units were assisted under a project-based Section 8 LMSA contract—but only 250 units were actually receiving Section 8 subsidies, due to what advocates perceived as the owner's deliberate underutilization of the contract in anticipation of market-rate conversion. Both the Section 8 and the non-Section 8 BMIR units were viewed as critical housing resources, with market units in the neighborhood renting for twice the BMIR rents.

In 1998, the owner sent tenants an opt-out notice and announced his intention to prepay the BMIR mortgage. The city's Community Development Department played a lead role by organizing residents, retaining its own consultants, and engaging the owner and HUD in negotiations.

Strategies

Advocates brought the owner to the negotiating table on the basis of HUD's existing Flexible Subsidy contract and Use Agreement, which required the owner to operate the project as 221(d)(3) housing through the original mortgage term and to secure HUD's consent to prepayment. HUD refused to approve the prepayment unless the project remained affordable to low-income families through 2010, the mortgage maturity date.[38] However, HUD stated that there were no federal rules preventing the owner from opting out of the Section 8 contract.

The city then asserted claims under the project's Chapter 121A contract, which referenced the owner's promise in the original application to construct and maintain a Section 221(d)(3) project with Section 8 assistance for 40 years. Based on these documents, the City argued that the owner could neither prepay nor opt out through 2010.

The owner agreed to explore HUD's new Mark-Up-to-Market initiative as an alternative but quickly discovered two hurdles. First, because the Section 8 contract was underutilized, the financial benefits available from Mark-Up-to-Market were limited. Second, the existing low- and moderate-income use restrictions associated with the City's 121A contract, and with HUD's Flexible Subsidy loan, constituted an eligibility barrier. HUD would have to provide a waiver allowing the owner to participate in the Mark-Up-to-Market program.[39] The same restrictions would effectively cap the market rents, thus reducing the level of benefits available from this program. Just how the city interpreted its 121A use restriction to HUD thus became critical to the owner's ability to take advantage of Mark-Up-to-Market incentives.

Outcome

Ultimately, the City succeeded in using its 121A restrictions to extend affordability. The final package included the following provisions:

- All units covered by the Section 8 contract (338), to the extent actually occupied by subsidy-eligible households, were marked up to the effective BMIR limit (rents deemed affordable at 30 percent of the maximum BMIR income level, or 95 percent of the Area Median Income (AMI)). Underutilized Section 8 slots will be marked-up upon turnover, when the units are reoccupied by Section 8-eligible households. The owner is obligated to renew and fully utilize the Section 8 contract throughout the term of the new use agreement.
- If project-based Section 8 is discontinued, the owner must accept vouchers at the maximum PHA payment standard. Upon turnover, the units will be rented at a stricter affordability standard, 30 percent of 80 percent of AMI.
- While prepayment is permitted by the settlement, all 166 non-Section 8 units must be held harmless at the OCAF-adjusted BMIR rents (for current and future tenants). Future occupancy will be restricted to households with incomes at or below 80 percent of AMI, vs. the current limit of 95 percent of AMI.
- The owner must complete capital improvements according to an agreed-upon schedule.
- The term of the new use agreement is 20 years, through 2020.
- The city is a party to the new use agreement and has enforcement powers, along with HUD and the project residents.

Following this precedent, Chapter 121A contract requirements have been used by the Boston Redevelopment Authority to maintain affordability in at least a half dozen projects. In Boston, every 121A project that seeks to participate in the discretionary Mark-Up-to-Market program is required by the BRA to execute a long-term Section 8 contract that is at least coterminous with the 121A term, providing up to 20 additional years of affordability.

Case Study #5: Salem Heights (Chapter 121A, Zoning)

Salem Heights is a Section 236 project containing 284 units, built 27 years ago in a community north of Boston. The tenancy is primarily elderly, with rents approximately half of current market levels. The property was formerly 20 percent Section 8-assisted, but the owner opted out of the Section 8 contract several years ago and, more recently, sought to prepay the HUD-assisted mortgage.

Strategies

The tenants and the city went to court and enjoined the prepayment based on two claims. First, they argued that the 121A tax contract restricts the property's use to "moderate-income housing" for 40 years, through 2013, as stated in the owner's application. They also asserted that zoning variances for parking, access, and density were granted because Salem Heights was a publicly-financed project for the elderly—and if public financing were to be terminated, the basis for these variances would no longer exist.

The state's Attorney General filed an *amicus curiae* brief in support of the city's position, based on the state's 121A contract with the owner, which was independent of the city's contract. Subsequently, the state's Department of Housing and Community Development (DHCD) issued a ruling to clarify that the owner could not prepay without DHCD's prior consent, because prepayment would constitute a fundamental change in use of the project, which, under the 121A statute, requires DHCD approval. This ruling has major implications for at-risk 121A projects statewide.

Outcome

While there has been no final ruling on the merits, to date all of the owner's legal appeals have been unsuccessful, and the court has ruled that the City is entitled to summary judgment on several of its most important claims. The owner is enjoined from prepayment, and the original Wellstone Notice[40] has expired. With tenant support, a local CDC is seeking to negotiate the purchase of the property. Most recently, the owner has opened settlement discussions with the City aimed at preserving affordability.

Case Study #6: New Falls Apartments (121A, Zoning, Urban Renewal)

This 60-unit partially-assisted project, which includes 41 project-based Section 8 units, is located in a highly desirable suburban community west of Boston. When the 20-year Section 8 New Construction/ Substantial Rehab contract expired last year, the owner notified tenants of his intention to opt out.

Strategies

After researching the project, the city discovered that it had three forms of leverage. First, the owner in his original 121A application promised that all 60 units would be occupied by Section 8-eligible households for 40 years, through 2018 (although the documents also acknowledge the 20-year subsidy contract term). Additionally, zoning variances granted by the city required "up to" 41 Section 8 units, either project-based or tenant-based, arguably on a permanent basis. Finally, the land disposition agreement associated with the urban renewal parcel upon which the housing was constructed required 41 units of low- and moderate-income housing through 2009.

The 121A contract also provided for a significant deferral of tax liability while the property was subject to HUD-restricted Section 8 rents, with interest accruing at 14 percent. The deferred taxes are due and payable in 2020 or upon refinancing. By the end of 1999, the tax debt on the property had accrued to $1.5 million. Not surprisingly, the owner was seeking to renegotiate the tax liability formula.

The city notified HUD of its restrictions, hired a consultant, began working with the residents, and eventually forced the owner to the negotiating table. The city threatened to litigate, but also offered to support the owner's participation in the discretionary Mark-Up-to-Market program—by interpreting all three local use restrictions in a way that facilitated the owner receiving full market rent. In exchange, the city would require a long-term contract renewal through 2018, the full 121A term.

The city also offered to consider modifying the 121A contract to continue the tax deferral even with the Section 8 rents at market levels and to further defer payment of the tax debt if the owner wants to refinance. In exchange, the city demanded a right of first refusal and an option to purchase the property at the end of the 121A term, with the ability to apply the future tax debt against the purchase price.

Outcome

Pending the final outcome of these negotiations, the owner has continued to renew the Section 8 contract on a year-to-year basis. The city and the tenants hope that their creative enforcement of local restrictions will ultimately lead to a long-term preservation solution for the property.

3. STATE AND LOCAL FUNDING INITIATIVES: MASSACHUSETTS, WASHINGTON

In direct response to local advocacy and demonstration of need, both the Commonwealth of Massachusetts and the State of Washington have developed a set of flexible funding mechanisms for preservation, ranging from technical assistance and predevelopment funding through permanent financing.

Case Study #7: Massachusetts Funding Tools

The Commonwealth of Massachusetts has developed a broad array of financial tools to assist in the preservation of federally subsidized housing. These include:

Community Economic Development Assistance Corporation (CEDAC)

CEDAC is a quasi-public intermediary established by the state legislature for the general purpose of furthering community economic development. Over the years, CEDAC has played a unique role in the preservation field, providing predevelopment loans and technical assistance to community-based nonprofit purchasers of at-risk, federally subsidized housing. CEDAC also advocates on preservation issues at the state and local government level. This advocacy is informed by the organization's detailed involvement in, and sophisticated understanding of, transactional issues.

Capital Improvement and Preservation Fund (CIPF)

The CIPF provides direct capital funding for preservation transactions. Under this program, the commonwealth floats general obligation bonds, which are repaid later from state appropriations. Unlike revenue bonds, which are paid from the projects themselves, this mechanism provides projects with deferred loans or grants. The Massachusetts Department of Housing and Community Development administers the program, accepting rolling applications. The annual amount of CIPF funding is subject to an administrative cap on the state's total bond issuance.

CIPF funds are targeted specifically to federally and state-subsidized projects with expiring use restrictions or subsidy contracts. A portion of the funds may be used as predevelopment grants or loans to nonprofit purchasers. Pending legislation will increase the original $20 million capitalization for the fund by an additional $35 million.

LIHTC Qualified Allocation Plan Set-Aside

The Commonwealth's Qualified Allocation Plan (QAP) for competitively allocated Low Income Housing Tax Credits includes a 40 percent set-aside for preservation. This category includes both federally and state-assisted housing and other existing multifamily housing, as well as HOPE VI public housing projects. For subsidized developments, only at-risk projects with expiring use restrictions or subsidy contracts are targeted for funding.

Massachusetts Housing Partnership Fund (MHP)

The Massachusetts Housing Partnership Fund (MHP), another quasi-public lender, is capitalized by fees generated from state bank mergers with out-of-state banks. This source of funding permits considerable lending flexibility and enables MHP to make primary mortgage loans with no additional credit enhancement. MHP has financed a number of preservation transactions.

MassHousing

MassHousing (formerly the Massachusetts Housing Finance Agency) provides both taxable and tax-exempt bond financing for preservation transactions. Under the Friendly Prepayment Program, the agency will also refinance existing HUD-subsidized mortgages with a minimum affordability commitment: 20 percent of the units must remain affordable to households earning less than 80 percent of AMI, or less than 50 percent of AMI if the HUD Risk Sharing mortgage insurance program is utilized for credit enhancement.

Case Study #8: Washington State Section 8 Local Response Project

The State of Washington provides some useful models of community collaboration to develop innovative preservation financing strategies. These include the following:

Project-Based Section 8 Risk Assessment
This initiative was sponsored by the Washington Low Income Housing Network in July 1998. Drawing on a broad-based community advisory board that included representatives from local government, the private sector, nonprofits, tenants, and community representatives, the network's goal was to identify and test new policy and financing tools to preserve federally-assisted housing in Washington State.

The group looked at seven different financing tools, including property tax exemption, utility rate reduction, subordinate debt, additional operating subsidy, and low-cost credit enhancement. Based on the study, the state legislature authorized a property tax relief program for state-assisted affordable housing developments which could be adopted on a local option basis. Several localities have adopted this provision. Since the State of Washington has no income tax, property taxes often impose a considerable burden on real estate operating budgets.

Washington Community Investment Fund (WCIF)
A second outcome of the risk assessment study was the Washington Community Investment Fund, sponsored by the Puget Sound Local Initiatives Support Corporation (LISC) Advisory Board and the Washington Community Development Loan Fund (WCDLF). The fund is capitalized with debt and equity contributions from both the public and private sectors.

WCIF provides a broad range of loan products for affordable housing developers and CDCs in Washington State, which they may use for both production and preservation transactions. For preservation projects, the primary types of financing include the following:

- Predevelopment loans for third-party expenses and some staff costs, on a case-by-case basis.
- Acquisition bridge loans to enable purchasers to accommodate seller and tax credit closing timelines.
- Subordinated loans to cover required owner contributions for rehab and transaction costs in Mark-to-Market transactions, which are serviced by the allowable Capital Recovery Payment fee.[41]
- Section 8 reserve guarantees to satisfy primary lender underwriting requirements with short-term project-based subsidies or transitional Enhanced Vouchers.

CHAPTER FOUR
Researching the Property: Towards a Preservation Strategy

This chapter discusses the kinds of information that can be collected about a particular project, how to use it, and where to find it. The following types of information will be addressed:

1. Regulatory
2. Market
3. Ownership
4. Financial
5. Property Condition
6. Residents

In most cases, the first two issues—regulatory and market—will determine what strategies are even possible, but the status and motivations of the existing ownership entity are also important. Project finances, property conditions, and residents will also influence the preservation strategy.

Research into these six areas should be the foundation of any preservation strategy. Research will help determine whether or not a property is at risk of conversion or restructuring and may suggest what the owner is likely to do. Research can help preservation advocates evaluate potential purchase opportunities and develop a preservation plan. The more an organization learns about the property, the better its negotiating strategy or purchase plan will be. Research also focuses community attention on the project. Project research can be an important organizing tool, and effective advocates know that knowledge is power.

This chapter explains how to research each of the six issues. Each section begins with a quick-reference chart that summarizes key elements of the issue area and their implications for developing a preservation strategy, and each section concludes with a list of information sources and where to find them.[42]

1. REGULATORY

The property's existing regulatory framework is fundamental to determining both the constraints and opportunities facing owners and prospective preservation purchasers. Many purchase efforts have stalled because the parties failed to assess what was possible, or precluded, given the property's existing contractual and regulatory obligations.

REGULATORY ISSUES AT A GLANCE

Issue	Implications for Preservation Strategy
Rental Subsidy Contract Status	Determines eligibility for opt-out, owner/ purchaser opportunity to increase project income (or obligation to reduce it). Key timing and compliance issues.
Mortgage Status	Indicates prepayment/ preservation status and eligibility; basis for determining owner compliance.
Limited Dividend	Indicates potential conversion risk (or incentive to Mark-Up-To-Market).
Residual Receipts	Indicates potential conversion risk.
Bond-Financed Projects	Potential additional restrictions.

Rental Subsidy Contract Status
Knowing the status of a project's rental subsidy contract will help to determine whether the owner might have a chance to opt-out, whether there is an opportunity to increase project income, or whether there is an obligation to reduce rents—and when these changes are likely to occur. These variables will also frame the opportunities available to a preservation purchaser. Understanding the contract can also provide a basis for assessing the owner's compliance with applicable requirements.

Type/Date. Does the property have one or more rental subsidy contracts and, if so, what type—Section 8 Loan Management Set-Aside, Section 8 New Construction/Substantial Rehab, Section 8 Mod Rehab, Rental Assistance Program or Rent[43] Supplement? Is it an original pre-MAHRA contract or a post-MAHRA contract renewal (i.e., executed after October 27, 1997)? The type of contract and its execution date will determine the available renewal and rent increase options. Only projects with post-MAHRA contract renewals, for example, are eligible for Mark-Up-to-Market.

Expiration. What is the contract expiration date? If expiration is imminent, the property is more likely to be at-risk. Conversely, there may be greater opportunities for preservation (for example, Mark-Up-to-Market) at the point of contract expiration.

Coverage. What percentage of the units is covered—partial or 100 percent? This will determine the value of any incentives that involve only the Section 8 units (for example, Mark-Up-To-Market).

Renewal Request. If the contract is expiring soon, has the owner filed a request to renew or opt out? HUD requires this notice be filed at least four months prior to the contract expiration date.

Opt-Out Notice. Has as an opt-out notice been sent to the tenants? HUD requires this notice at least one year prior to date of contract termination.

Mark-to-Market Status. If the contract is expiring, is the project in the Mark-to-Market pipeline? If so, what is its status?

Mortgage Status
The nature of the property's first mortgage may affect a wide range of variables including the owner's right to prepay, continuation of use restrictions, eligibility for programs such as Mark-to-Market, notice requirements, dividend restrictions, and Residual Receipts status. These factors will influence the owner's decisions as well as opportunities for a preservation transaction.

Lender Type. Is the mortgage insured or held by HUD? Financed by a state or local agency? By a private lender? This could affect eligibility for certain types of programs (e.g. only projects with HUD-insured or HUD-held mortgages are eligible for Mark-to-Market). Also, if the mortgage is, or was once, held by HUD, the owner may be obligated to maintain the original affordability for the full mortgage term.

Program. If the mortgage is insured or subsidized by HUD, what is the applicable program? If it is a Section 221(d)(3) BMIR or 236 project, mortgage prepayment may be a concern. Section 221(d)(4) and Section 220 are common types of financing for Section 8 New Construction/Substantial Rehab projects. Section 202 projects are nonprofit-owned and typically have no conversion risk.

Prepayment Eligibility. If the mortgage is subsidized under Section 221(d)(3) BMIR or 236, is it an expiring use project that is eligible to prepay? Does it have any characteristics that might prohibit or complicate prepayment?

For example, if the original owner/mortgagor was a nonprofit, or if the project is HUD-insured with a Rent Supplement contract, prepayment is prohibited without HUD consent. If the project received Flexible Subsidy assistance, it should have a 40-year use agreement and may also have a prepayment restriction.

If the project is eligible to prepay, when is the prepayment eligibility date? For eligible HUD-insured projects, this date is 20 years from the date of final endorsement of the HUD mortgage insurance.

Prepayment Notice. If the project is eligible to prepay, has a prepayment notice (Wellstone Notice) been filed with tenants, HUD, and the CEO of the state or local government? If so, the mortgage may be prepaid within 150 days, but no later than 270 days, from the notice date.

Prepayment/Preservation Status. Has the mortgage already been prepaid, foreclosed, or otherwise terminated? Has the property already been preserved under ELIHPA or LIHPRHA?[44] If so, there should be a preservation use agreement with rent and income restrictions that will affect the future use of the property during its term. For ELIHPA properties, this is the remaining term of the original mortgage. For LIHPRHA projects, use restrictions last for the remaining useful life of the property, or at least 50 years. In most cases, the Section 8 contract must be retained for the term of the preservation use agreement.

Maturity Date. If the mortgage is subsidized, when does it mature? At maturity, all of the restrictions associated with the mortgage (or with any ELIHPA use agreement, if applicable) will terminate. For early 221(d)(3) BMIR projects built in the mid-1960s, this date may be just around the corner.

Limited Dividend

Is the owner's cash flow distribution restricted? If so, there may be a greater conversion incentive and risk. HUD restricts owner dividends in all 221(d)(3) BMIR and 236 projects, and in Section 8 New Construction/Substantial Rehab projects with contracts executed by HUD after the applicable cut-off date (November 5, 1979 for New Construction; February 20, 1980 for Substantial Rehab; and February 29, 1980 for HFA-financed projects). However, if the owner executes a Mark-Up-to-Market contract, the dividend restriction will be eliminated or significantly increased.

Residual Receipts

If there is a limited dividend restriction, who owns the Residual Receipts—the annual cash flow generated in excess of the allowable dividend? In Section 8 New Construction/Substantial Rehab projects with contracts executed by HUD before the cut-off date, Residual Receipts belong to the owner when the Section 8 contract is terminated. This gives owners substantial incentives to opt out or convert.

Bond-Financed Projects

State or local bond financing may impose an additional set of dividend restrictions and rules governing the disposition of Residual Receipts. There may also be use restrictions tied to the mortgage financing and sometimes even running with land which could affect the future use of the property (see Market, below).

REGULATORY INFORMATION SOURCES

Project Documents. The most important sources of regulatory information are the project documents themselves—the mortgage, note, regulatory agreement, rental subsidy contract, Flexible Subsidy contract, ELIHPA or LIHPRHA use agreement, and any amendments. These can usually be obtained through a Freedom of Information Act (FOIA) request to HUD and/or the HFA, if applicable. Many of these documents are recorded in the local Registry of Deeds.

Agency Filings. For agency filings, such as Section 8 contract renewal requests or Wellstone Notices, contact HUD or the applicable public agency that received the filing. Third-party Section 8 contract administrators, usually the state HFA, now handle most filings.

Mark-to-Market. HUD/OMHAR provides a frequently updated status report on all Mark-to-Market properties assigned to PAEs, organized by state (Exhibit 4). See http://www.hud.gov/offices/omhar/readingrm/reports.cfm, Click on "PAE & Assigned Properties Report" link (PDF or MS Excel).

Section 8 Expiring Contracts. HUD maintains a database for all properties with Section 8 contracts, including contract, property, and owner information. The "Multifamily Assistance and Section 8 Contracts Database," which is updated monthly, can be downloaded from http://www.hud.gov/offices/hsg/mfh/exp/mfhdiscl.cfm. (See Exhibit 5 in Exhibits.), which illustrates some of the basic information that can be extracted from this database.

HUD Mortgages—Insured or Terminated. HUD maintains separate databases for currently and formerly insured multifamily mortgages, updated quarterly. See www.hud.gov/offices/hsg/mfh/mfdata.cfm. Databases on "Mortgages Currently Insured" or "Terminated Mortgages Database" may be downloaded from this page. (See Exhibit 6 in Exhibits.), which illustrates some of the basic information that can be extracted from this database.

Prepayments and Opt-outs. The National Housing Trust maintains data on subsidized mortgage prepayments and opt-outs for each state, including individual project summaries (See Exhibits 7 and 8 in Exhibits). See http://www.nhtinc.org/data.asp for the following databases: "Search Prepayment Statistics By State" or "Search Opt-Out Statistics by State."

2. MARKET

Ultimately, the conversion risk of the property depends on the relationship between its current use and its maximum market potential. Preservation opportunities, including the availability of federal subsidies, are also closely tied to how the property is positioned in the marketplace.

MARKET ISSUES AT A GLANCE

Issue Rents(Below or Above market)	**Implications for Preservation Strategy** Indicates conversion/ foreclosure risk and nature of preservation opportunity (through increased Section 8 rents or mortgage restructuring).
Location	Affects appraisal value/ conversion potential.
Market Characteristics	Affects appraisal and preservation options.
Market Value	Highest and best use determines ultimate value.
Use and Regulatory Restrictions(Urban Renewal, Zoning Relief, Tax Relief, Public Financing, Rent Control	May limit appraisal value and conversion potential.

Rents
How do the project rents compare with rents of other properties that are similar in age, location, and amenities? This is a critical variable for determining the degree of risk to affordable units and the opportunity for preservation.

Below Market. If the project rents are *below market*, the risk of conversion is greater. But if there are Section 8 units, there may also be a preservation opportunity through Mark-Up-to-Market and other federal programs.

Above Market. If the project rents are *above market*, there may be a risk of foreclosure—or the potential for Mark-to-Market debt restructuring to preserve long-term affordability.

Location
Location plays a significant role in determining a property's current and prospective value. Some important issues include the following: Is the project site and general location desirable or undesirable? What is located next door? Across the street? Are the surrounding uses compatible? Are transportation, jobs, shopping, and schools nearby? Are they accessible? What is the general neighborhood quality? Are there signs of gentrification or disinvestment?

Market Characteristics
Beyond location, other key market indicators include: vacancy rates for affordable and market-rate housing (especially rental); housing demand vs. housing supply; and turn-back rates for Section 8 housing (i.e., the percentage of vouchers returned because recipients were unable to locate housing within the allowable time period). Some market indicators may have specific relevance to a particular program. For example, if the area vacancy rate is below 3 percent, the owner of a below-market Section 8 project may be eligible for Mark-Up-to-Market on a discretionary basis.

Market Value
What is the highest and best use of the property that is legally permissible, physically possible, and financially feasible on this site? What could this property be in five years? In ten years? Questions to ask include the following: Is the site zoned for office or retail use? Is there vacant land on the site that could be developed? Are there pending development plans for this neighborhood (e.g., a new transit stop, or a hotel across the street)?

Local Use and Regulatory Restrictions
Are there any local or state restrictions associated with the property that would limit its use after federal restrictions expire? If so, the property's market value and conversion potential—as well as its ability to Mark-Up-to-Market[45] —could be affected. Common types of state/local use restrictions include:

Urban Renewal. For properties located in an urban renewal area, there may be deed covenants or affordable housing requirements associated with the parcel or with the renewal plan in general.

Zoning Relief. Variances, special permits, or other forms of zoning relief may have been granted for the original construction or substantial rehabilitation that require continued use of the property as affordable housing.

Tax Relief. The property may have received property tax relief or other favorable tax treatment in exchange for its use as affordable housing.

Public Financing. The property may have received state or local financing or subsidies in exchange for its use as affordable housing.

Rent Control. The property may be subject to rent or condominium conversion controls.

MARKET INFORMATION SOURCES

Rent Comparability Studies. For almost all Section 8 properties, HUD requires owners to submit a rent comparability study when the original Section 8 contract expires, upon contract renewal under MAHRA—and every five years thereafter. Section 8 projects whose contracts have not yet expired, but which are subject to AAF rent adjustments, must submit an annual market study if the owner wants to increase rents. Rent comparability studies are not available from HUD under FOIA but can sometimes be obtained directly from the owner, or through a friendly state or local public agency.

Market Data. Brokers, realtors, assessors, and other knowledgeable local sources can provide a good sense of the local housing market. The local housing authority should have data on Section 8 voucher utilization.

Local Use Restrictions. Local planning, redevelopment, and housing agencies are good sources for neighborhood planning information and documents pertaining to state or local restrictions. Recorded restrictions can be found at the Registry of Deeds.

Appraisals. The owner may be willing to share a property appraisal. Prospective purchasers of subsidized properties may want to commission an independent appraisal before making a purchase offer.

3. OWNERSHIP

The owner of a HUD-assisted property is typically a complex entity representing divergent interests that must be reconciled before any decision to convert, sell, or otherwise preserve the property can be made. Tax considerations, estate planning, and a variety of other issues in addition to property economics can influence the decision of the ownership entity.

OWNERSHIP ISSUES AT A GLANCE

Issue	Implications for Preservation Strategy
Legal Structure	Defines participants in ownership entity and their relationships.
Management Structure	Defines respective rights and interests of participants in ownership entity.
Owner Motivation	May be influenced by purpose of owner's original investment in the housing.
Tax Considerations	Taxes due on sale or under continued ownership can affect owner decisions; may require mitigation strategies.
Regulatory Status	"HUD fatigue" or regulatory compliance issues can affect owner motivation.
Business Plan	Useful information for predicting owner behavior.
Personal Factors	Useful information for predicting owner behavior.
Local Leverage	Useful information for influencing owner behavior.

Legal Structure

What is the legal form of ownership? Most subsidized properties are owned by limited partnerships consisting of one or more *general partners* (GPs) and any number of *limited partners* (LPs). The GPs are the principals who put the deal together and control most of the decisions; typically one is designated as the *managing general partner* (MGP). The LPs are investors who bought equity shares and contributed capital (syndication proceeds) to the partnership in exchange for tax benefits. These parties have different and often conflicting interests that must be reconciled in any transaction.

A common ownership arrangement for subsidized properties developed or transferred during the past 20 years is the *two-tiered limited partnership*. The *upper tier* is an investment partnership formed by a syndicator in order to raise pooled equity capital for multiple projects. This may be a public fund involving thousands of individual investors, or a private syndication. The *lower tier* is the project partnership involving one or more local GPs. The upper tier investment partnership is the LP of the lower tier project partnership. An affiliate of the syndicator may serve as a GP in the lower tier as well.

While the partnership entity typically has title to just the single asset, the principals may or may not have additional holdings. Subsidized housing property owners range from actual single-project owners, to regional companies with a dozen projects, to large national real estate operators with tens of thousands of units.

Management Structure

Contractual Authority. Who makes decisions for the property? In most cases, prospective buyers will work with the MGP, who controls the day-to-day business operations of the partnership. But even in partnerships where the GPs have substantial contractual authority, they are constrained by their fiduciary duty to the LPs (consistent with the partnership purpose and applicable laws), so it's important to know something about the LPs as well.

Typically, the consent of a majority of LP interests is required for significant decisions, such as sale or refinancing. In a two-tiered partnership, that means consent of the upper tier partnership, which is the limited partner. A simple market rate conversion with no refinancing typically requires no investor consent.

Economic Benefits. Who gets what if the property is converted or sold? In a typical partnership, the GPs get 50 percent or more of the residuals from sale or refinancing—but the LPs pay most of the exit taxes due on sale (see below) since they have received most of the tax benefits. And the LPs may get 50-90 percent of the cash flow after the 20th year, which could be significant if the property converts to market rate. Thus, the GPs and LPs may have conflicting interests regarding the disposition of the property. In a two-tiered partnership, this web of interests is even more complex since profits and losses are pooled across all the projects in the fund—which means the fate of one project may be determined, in part, by available options for the others.

Owner Motivation

What are the owners looking for? If they are willing to sell, do they expect significant equity returns or just enough cash to cover their exit taxes? What is the timing of their cash needs? Are they in a hurry or can they wait? If the GP has a significant development deal pending, or the LP is driven by year-end tax considerations, the seller may need to close before a nonprofit purchaser can raise the necessary funds.

Even if detailed information is lacking, a few key facts about the ownership history and principals can provide important clues. In terms of motivation, most subsidized housing owners fall into one or more of the following categories:

Original Owners. These properties are still held by their original owner, typically an aging local builder or developer who was involved with the original construction. Often these owners have bought out, or are in the process of buying out, their limited partners, and partnership decision-making is now relatively simple. The family business may be passing on to a new generation. After 20-plus years, these owners may have nostalgic attachments to their properties as well as a sense of economic entitlement that must be addressed. Personal and political considerations for this group tend to be important.

Tax-Motivated Purchasers. These properties were bought and resyndicated prior to federal tax reform in 1986. The owners' anticipated tax benefits never materialized, and the properties typically suffer from deferred maintenance due to a lack of ongoing investment. The owners tend to be large national operators. These owners are often eager to sell, but their exit taxes may exceed the available cash proceeds, especially if there are secondary note holders. (See Financial.)

Conversion-Motivated Purchasers. These properties were purchased more recently in anticipation of prepayment and/or market-rate conversion. The owners may have invested substantial cash in anticipation of future equity gains. They may have little interest or experience in subsidized housing or in the housing business generally. Some recent large-scale transactions in which entire subsidized housing portfolios involving thousands of units were bought out by large non-housing conglomerates and then quickly put on the auction block for resale may fall into this category.

Affiliated Management Companies. In addition to other motivations, many owners who also manage their properties value their management fee interests beyond the dollar amount of the contract, especially if it is a family business or an extensive operation. Where there is identity of interest management, owners are often reluctant to sell—unless they can keep management as part of the transaction.

Tax Considerations

An owner's decision to prepay, convert, refinance, or sell may be driven by tax considerations as much as cash benefits. The major tax issues affecting subsidized properties are as follows:

Phantom Income. If the property is experiencing "phantom income," there can be a substantial incentive to convert to market, refinance, or sell. The problem occurs in an aging property when mortgage interest and depreciation deductions are no longer sufficient to offset mortgage principal payments. If cash flow is limited, the owner must pay taxes on "phantom income"—money the owner never received. As noted above, the burden of phantom income is primarily borne by the property's limited partners.

Exit Taxes. Taxes due on sale can deter ownership transfers unless the cash proceeds generated are sufficient to cover it. Sale of the property triggers a tax on the owner's capital gain, which consists of the cash proceeds realized on sale minus the owner's capital account. The capital account is the original cash investment adjusted by cumulative profits and tax losses to date. After 20 years, properties that have provided generous depreciation and interest deductions but limited dividends will typically have a *negative* capital account. In these cases, owners will owe taxes even if they realize *no* cash proceeds from the sale.

Tax Mitigation. Nonprofit purchasers may be able to assist the seller in developing tax mitigation or tax deferral strategies using one of the following measures:

- *Like-Kind Exchange*. This is a three-way property swap which enables the seller to defer the exit taxes for a period of time.
- *Bargain Sale*. If the property is sold at a below-market price, the seller may be able to take the difference between the market value and the sales price as a charitable donation to offset the seller's tax liability.
- *Affordable Housing UPREIT*.[46] The sale can be structured to involve an entity like the Community Development Trust, a LISC-affiliated affordable housing UPREIT which can provide continued tax deferrals for investors.
- *Stepped Up Basis/Passive Losses*. To the extent that the LPs are not tax-sensitive, exit taxes will be less of a problem. For example, any second generation LPs who have inherited their interests are likely to have a "stepped up" tax basis, which wipes out the original owner's negative capital account. Some LPs may have suspended passive losses from other investments that can also be used to offset exit tax liability.

Relationship to Regulatory Agencies

After 20 or more years of operations in a highly regulated environment, the cumulative experience with HUD can be a significant factor affecting the owner's decision-making process and in determining the available options. Factors to consider include:

HUD Watch List. Is the owner in trouble with HUD? under pressure to complete major repairs? Owners on HUD's Watch List—those with significant regulatory or contract violations—can be barred from participating in HUD programs, including Section 8 contract renewal. Unless they can opt out, these owners may be motivated to sell. If they do sell, they are required to sell to a tenant-endorsed, community-based nonprofit purchaser on a preferential basis. Once the sale is completed, the new owner would then be eligible to renew the Section 8 contract.

Owner Attitude. What is the owner's general attitude towards HUD? Even owners in good standing may no longer be willing to work within the HUD system. As HUD regulatory requirements become more complex, less sophisticated owners may be inclined to sell if they cannot opt out. This is especially true in the case of low-value Mark-to-Market properties now that mechanisms to facilitate sales are in place.

Business Plan

What course of action has the owner followed with its other subsidized properties in the city or region, or in other states? An owner with a large inventory may have an overall business plan for its portfolio which will be known to national advocacy groups. A local or regional developer may be in the process of getting out of the subsidized housing business and repositioning its portfolio for market conversion.

Personal Factors
Have there been any newsworthy personal or family events involving the owner? The death of the original developer/owner who was intimately involved with the property, or the bankruptcy of a family business, may be a harbinger of changes to come.

Local Leverage
Does the owner have any new development deals pending with the city or state? a history of code violations, discrimination complaints, or tax delinquency? A local owner who wants to maintain a favorable public image may be vulnerable to negative publicity and community pressure.

OWNERSHIP INFORMATION SOURCES

HUD Section 8 Expiring Contracts Database. This database includes useful basic ownership and management information for Section 8 properties. See http://www.hud.gov/offices/hsg/mfh/mfhsec8.cfm. Click on "Multifamily Assistance and Section 8 Contracts Database" link. Click on "Download." The database can be downloaded from this site. (See Exhibit 9 in Exhibits, which illustrates some of the information that can be extracted from the database.)

Partnership Documents. These documents describe the structure of the ownership entity and any changes that have occurred over time. They are generally found in the Secretary of State's office in the state where the partnership was formed.

HUD Documents. The most recent management contract and management certification will indicate any owner/management affiliation. If the property has ever been sold subject to a HUD mortgage, there should be a Transfer of Physical Assets application and related documentation of the transaction in HUD's files.

SEC Documents Online. The Securities and Exchange Commission (SEC) has recent documents for partnerships that are registered as public securities, including annual and quarterly reports, partnership agreements, and syndication prospectuses. See www.sec.gov. Click on "Search EDGAR" link. At "Search the EDGAR Database," click on "EDGAR CIK Lookup" to locate the CIK (Central Index Key/search string) for a specific partnership. Return to "Search the EDGAR Database" and click on "Search the EDGAR Archives" link. Enter the CIK/search string to generate a list of available documents for the partnership. (See Exhibit 10 in Exhibits, for a sample report of available documents.)

Owner Documents. The owner's most recent audited financial statement may be helpful in ballparking the extent of phantom income and exit tax liability problems, but the partnership's tax returns (K-1s) present the most accurate picture. A potential nonprofit purchaser who has a good relationship with the seller may be able to obtain this information. The general ownership history should indicate what the tax issues will be.

Other. For information about national owners, contact the National Housing Trust or the LISC Preservation Initiative. For information about local owners, keep abreast of local news, including the obituaries.

4. FINANCIAL

Project finances will affect the economics of prepayment or refinancing as well as the feasibility of acquisition by a preservation purchaser.

FINANCIAL ISSUES AT A GLANCE

Issue	**Implications for Preservation Strategy**
Primary Debt	Affects conversion/ preservation feasibility. Potential for assuming, restructuring, selling, or refinancing existing debt.
Secondary Financing	Secondary noteholder interests may be key in preservation/ conversion process.
Cash Flow	Indicates bottom-line performance and potential conversion risk.
Reserve Balances (Residual Receipts and Replacement Reserves)	Indicates potential conversion risk; affects price negotiations.
Operating Costs	Affects appraised value/ conversion potential, purchase feasibility, management planning.

Primary Debt
The property's primary debt is typically its largest current financial obligation, which must be dealt with in any conversion or preservation transaction.

Amount. What is the current outstanding balance of the primary loan?

Terms. What is the interest rate and term of the loan? When does it mature? Can it be assumed by a buyer? Is there a prepayment penalty?

Holder. Who holds the mortgage? Most HUD-insured and HUD-held subsidized mortgages are now held by secondary lenders or large national companies, such as Fannie Mae (for Section 236 projects). Non-insured mortgages may be held by housing finance agencies, other state or local agencies, or conventional lenders. Lender consent may be required to prepay/refinance, assume, sell, or restructure the existing debt, which may be critical to the proposed transaction. The lender may charge a fee or penalty which must be taken into account or renegotiated.

Secondary Financing
At some time in their history, many assisted properties went through transactions that resulted in additional debt beyond the HUD-insured or HFA-issued first mortgage. The most common reason for secondary financing was to enable a previous owner to receive more consideration for a sale, on paper, than was available from the project's cash resources. Also, some projects received additional capital resources to stabilize operations. Because of HUD's mortgage insurance policies (and similar HFA restrictions), such secondary debt typically is not required to be serviced currently out of rental income—unlike a first mortgage.

Terms. These "soft" loans have deferred payment terms and do not amortize on a current basis. Typically, they are held by a former owner or a public agency. Secondary debt may be secured by a mortgage or, more commonly, by the partnership interests.

Repayment. Secondary debt is usually payable only out of cash flow, upon sale or refinancing, or at a date certain in the future. Often, it is due around the date when the subsidized mortgage is eligible for prepayment, with interest compounded and accruing. In many cases these notes will consume a substantial portion of the cash proceeds realized on sale, reducing the amount available to cover the seller's exit tax liability. The amount due may even exceed the residual equity value of the property.

Transaction Impact. In cases with substantial secondary debt, the note holder (though not usually present at the negotiating table) may be the party actually driving the conversion, sale, or refinancing transaction. The note holder may be able to force a market-rate conversion to satisfy the value of the note, or block the transaction by threatening foreclosure. At same time, an owner whose equity is substantially wiped out by secondary financing obligations has little incentive to move the transaction forward. Often transactions involving large amounts of secondary debt become paralyzed until the interests can be renegotiated.

Public Note Holders. A public agency that holds secondary debt on a subsidized property may be in a position to help facilitate a preservation transaction. For example, the public lender may be willing to forego or defer repayment if the project continues as affordable housing, or to recycle the funds back into the deal for a preservation purchaser.

Cash Flow

Cash flow—the bottom line—is an important indicator of the overall health of the property and may provide clues to the owner's motivations. How has the property performed historically—i.e., over the past three years? Has cash flow been distributed to investors? Has cash flow exceeded the applicable dividend restrictions, leading to the accumulation of Residual Receipts? (See Regulatory.)

Reserve Balances

These highly regulated, sometimes large, cash accounts can affect an owner's motivation to convert or sell and can be an important factor in price negotiations.

Residual Receipts. What is the account balance, and who gets the funds if the property is refinanced and/or the subsidy contract terminates? (see Regulatory) If Residual Receipts in a subsidized property are substantial and will belong to the owner, there could be a high conversion risk. If Residual Receipts are low or if they will revert to HUD or the HFA, there is usually less incentive to convert.

Replacement Reserves. What is the account balance? These funds ultimately belong to the owner, so if they are substantial, there could be a higher conversion risk. If the property is sold, the buyer should probably expect to purchase the Replacement Reserves, unless the seller is unsophisticated or unusually cooperative.

Operating Costs

A good understanding of project operating costs (historical and projected) is necessary for estimating the value of the property, assessing the feasibility of a purchase, and anticipating future operating requirements.

Historical. How much has it cost to operate the property over the past 3 years? How do these costs compare with the expenses of similar properties?

Projected. How much will it cost to operate the property under new, preservation-oriented ownership? Which budget line-items can be trended from actual operating experience? Which line-items are likely to change? For example:

- Utilities should be adjusted for proposed energy efficiency improvements and/or conversion of systems.
- Maintenance costs should reflect any operating efficiencies associated with proposed renovations, as well changes in on-site staffing and contracting arrangements due to new ownership and management.
- Taxes and insurance may need to be adjusted based on the new purchase price.
- Management fee may be different under a new management company.
- Services like security or tenant services may be increased, decreased, or provided differently under new ownership.

FINANCIAL INFORMATION SOURCES

Project Documents. Project documents are the best source of detailed financing information on. The mortgage, note, and any assignments of record can be secured via FOIA request to HUD (if the mortgage is HUD-insured), to the HFA (if HFA-financed), or from the Registry of Deeds.

On-Line Databases. The HUD online databases include summary financing information for currently and formerly insured properties. See www.hud.gov/offices/hsg/mfh/mfdata.cfm. The databases for "Mortgages Currently Insured" and "Terminated Mortgages" may be downloaded from this page. Exhibit 11 illustrates some of the information that can be extracted for sample properties.

Secondary Financing. Secondary financing documents will be recorded at the registry of deeds only if the debt is secured by a mortgage on the property. In other cases, Uniform Commercial Code (UCC) filings in state offices should be checked. Public agencies should have documentation for any secondary financing that they provide.

Audited Financial Statements. Historical information on project income and expenses, including the owner's audited financials and profit and loss statement (HUD Form 92410), usually must be obtained from the owner. This information is available from HUD only when a rent increase is pending. A management company or consultant should develop projected budgets based on actual and comparable property experience.

5. PROPERTY CONDITION

The property's physical condition, including capital needs and deferred maintenance, will affect its market value and conversion potential as well as the feasibility of a preservation transaction.

PROPERTY CONDITION ISSUES AT A GLANCE

Issue	Implications for Preservation Strategy
Windshield Survey	Provides valuable overview of property maintenance, design, site and neighborhood issues. May provide clues to predict owner behavior.
Capital Needs Assessment	Needed for property appraisal, assessment of purchase feasibility, rehab planning.

Windshield Survey
A review of the property's exterior, while superficial and incomplete, can provide a valuable overview of the project's design, overall upkeep, and surrounding neighborhood. It may also offer clues about the owner's intentions. Without a direct view from the street, the reality behind the written reports may be obscured.

Building Style. Is the property a mid-rise, low-rise, townhouse, or garden-style development? Single or scattered site? Are there private entries or hallways? These features may affect operating costs as well as marketability.

Curb Appeal. Is the property attractive? How does it compare with the competition?

Site. Does the site have, or lack, any notable amenities—community room, playground, parking, laundry?

Units. What is the mix and distribution of unit types and bedroom sizes? Are all family units located together? What amenities are included in the units (e.g., dishwasher, AC, cable TV access, updated appliances)?

Accessibility. Is the site handicap-accessible? Are there accessible units?

Deficiencies. Are there obvious maintenance issues? Evidence of potential structural or environmental problems?

Fix-Up. Are there obvious signs of fix-up? If so, the owner may be preparing the property for sale or conversion.

Overall Condition. What is the property's overall condition in relation to the neighborhood? A bad property in a good neighborhood may be a higher conversion risk than a good property in bad neighborhood.

Improvement Potential. What is the potential for improvement? Is there space to add a community center or additional parking? What would it take to match the condition of comparable market properties?

Capital Needs
Every property has building systems with finite useful lives, necessitating repair and replacement over time. Changing code requirements and livability standards also require periodic upgrades and capital improvements. Capital needs may reduce the value of the property and affect its conversion potential as well as the feasibility of a preservation transaction.

Most HUD-subsidized properties have had a capital needs assessment (CNA) completed within the past five years. These assessments vary widely in quality but can provide a useful point of departure for further investigation.

Groups considering a preservation purchase, participating in Mark-to-Market, or negotiating with owners and/or HUD over rehab plans usually find that it is worthwhile to commission an independent rehab study by a qualified architect or capital needs assessor. This will provide an assessment of rehab needs and costs based on the nonprofit's goals for the property and long-term preservation objectives. The rehab study can be useful in identifying the following categories of necessary repairs:

Immediate Repairs. These repairs are needed now for:

- Compliance with health, safety, and building codes—including retrofits for fire safety, handicap access, seismic code, and other applicable regulations (which may have changed since the property was built or rehabilitated).
- Environmental remediation—lead paint, asbestos, underground tanks, radon, and toxic soil conditions.
- Energy efficiency—new boilers, new windows, conversion of electric heat to gas, and individual metering.
- Enhanced marketability—landscaping, painting, new kitchens and baths, and upgraded electrical service.
- Long-term preservation—replacement of outmoded or inefficient systems whose useful life will soon expire.

Future Replacement Needs. These repairs will be needed over time to repair and replace aging building systems and equipment. They should be reflected in a Replacement Reserve schedule, which includes provisions for an adequate initial deposit and annual reserve contribution.

Value-Impairing Improvements. Prospective purchasers should also identify any repairs that would need to be performed by a market-rate buyer in order to receive the market rents. The cost of these repairs should be deducted from the proposed purchase price. This scope of renovations may differ from the work proposed to be completed by the buyer in order to preserve the property as affordable housing. This information should be communicated to the purchaser's appraiser.

PROPERTY CONDITION INFORMATION SOURCES

HUD Capital Needs Assessments (CNAs). CNAs are performed every 5 years for most assisted properties and can be obtained by FOIA request to HUD.

HUD REAC Scores. HUD's Real Estate Assessment Center (REAC) performs inspections annually for subsidized properties. REAC scores may be obtained from HUD through a FOIA request. The REAC score may affect the property's preservation options. For example, if the REAC score is less than 60, the property is not eligible for Mark-Up-to-Market without a HUD waiver—although it may be eligible for Mark-Up-to-Budget. If the property also has above-market rents, it will be required to go through Mark-to-Market debt restructuring and will not be eligible for OMHAR Lite.

Owner Records. The management company's maintenance logs should reveal any significant problems or complaint patterns that could be addressed by renovations (e.g. repeated sewer backups). Management should also provide records of recent capital improvements and appliance replacements.

Code Violations. These should be verified from city records.

Zoning. Local records should also be checked to determine compliance with local zoning.

Environmental. A review of environmental records should reveal any historical problems and known risks associated with the site or immediate neighborhood.

Other. Other state and local records should be reviewed to determine whether the property is in a flood plain, seismic zone, historic district, or other similar area. This could affect renovations and/or property insurance requirements.

6. RESIDENTS

Prospective purchasers need to know who lives in the development in order to determine eligibility for applicable subsidy programs, to plan tenant services, and to develop rehab programs that address tenant needs.

Resident profile information may affect the proposed development strategy. For example, a high proportion of elderly/disabled or large family households may qualify an otherwise ineligible property for Mark-Up-to-Market on a discretionary basis.

Resident profile information may also inform the overall preservation strategy. For example, there may be grounds for litigation based on fair housing claims if a significant portion of the population consists of minority households. Also, knowing who lives in the development can help to build community support by putting a human face on the preservation problem.

RESIDENT ISSUES AT A GLANCE

Issue	Implications for Preservation Strategy
Resident Profile	Needed to determine subsidy eligibility; relocation & social service needs; fair housing claims.
Resident Interests	Potential for resident participation.
Social Issues	Social service needs and management planning.
Perception	Potential community and political support for preservation.

Resident Profile
What percentage of households are vulnerable population groups, such as elderly/disabled, families with children, single-parent families, households with special needs? What is the income and subsidy mix? What are the primary sources of income? How many households receive public assistance? Have one or more wage earners?

What is the ethnic and racial mix? How many adults and children are in each household? What percentage of residents is over- or under-housed?

What percentage of households has lived at the development for five years? Ten years? Since original occupancy?

What are current rents relative to tenant incomes? How many households can afford to pay more? How many need additional subsidy?

Resident Goals and Interests
What do residents want—in the short-term? Long-term? How do residents view the development in five years? Ten years?

Are residents organized, informed, and effectively represented? If not, is there a potential for resident organization? What resources exist to assist tenants?

Would the residents support a preservation purchase or advocacy effort?

Social Issues
What is the nature and extent of social problems onsite—crime, drugs, gangs, alcohol/drug abuse? Are there available services to address these problems onsite or in the community?

Perception
How is the project viewed by residents, neighbors, and state or local officials? Is it perceived as a community resource or a liability?

Would the city or town support owner efforts to Mark-Up-to-Market? (If financial support is provided, the project may qualify for Mark-Up-to-Market on a discretionary basis.) Would state or local funds likely be available for a preservation purchase?

RESIDENT INFORMATION SOURCES

Owner Information. A cooperative owner should be willing to provide the monthly rent roll and TRACS occupancy reports, including individual household income, household size, rent, and subsidy data. Once a prospective purchaser obtains site control, the tenant recertification forms should also be requested for verification.

Tenant Surveys. Additional information, including tenant incomes, can be obtained informally through tenant surveys.

HUD PD&R Data. HUD's Office of Policy Development and Research provides detailed demographic information online for each subsidized project, including household income and age distributions, family characteristics, average length of residence, and sources of income. This information also includes the project's congressional district, which may come in handy. See http://www.huduser.org/datasets/assthsg.html. Click on "A Picture of Subsidized Households, 1998" link. Click on the applicable state link (map). Click on "Project, Agency, and State Summaries/View." (The publication, "A Picture of Subsidized Households, 1998" can also be ordered from HUD.)

EXHIBITS

EXHIBITS

EXHIBIT 1
PREPAYMENT SUMMARY

STATE	PROPERTIES	UNITS
California	118	9,070
Washington	34	1,653
Texas	33	5,322
Oregon	30	1,296
Virginia	26	4,166
Colorado	22	2,310
New Mexico	22	2,210
Florida	21	2,565
Maryland	21	3,197
Indiana	19	2,713
Massachusetts	18	3,301
Georgia	17	1,805
South Carolina	16	1,519
Illinois	14	2,482
Ohio	13	1,163
Michigan	12	1,759
Minnesota	12	1,264
Wisconsin	12	837
Utah	11	479
Arizona	8	834
Connecticut	8	877
Iowa	8	718
North Carolina	8	928
Kentucky	7	492
Louisiana	7	566
Idaho	6	216
Nevada	6	698
Montana	5	252
New York	5	1,247
Pennsylvania	5	695
South Dakota	5	127
North Dakota	4	103
Tennessee	4	478
Missouri	3	166
Alaska	2	88
Arkansas	2	148
District of Columbia	2	121
Hawaii	2	736
Maine	2	304
Nebraska	2	224
New Jersey	2	239
Delaware	1	22
Mississippi	1	100
New Hampshire	1	24
Oklahoma	1	80
West Virginia	1	64
Wyoming	1	12
Totals	**580**	**59,670**

SUMMARY OF PREPAYMENTS

Units	59,670
Properties	580
Average Rent Increase(%)	57%

Source: National Housing Trust Data Clearinghouse

EXHIBIT 2
Office of Multifamily Housing Assistance Restructuring
Mark to Market Pipeline Summary

M2M PIPELINE SUMMARY

As of 4/9/2002:	Received	OMHAR Processing Completed*	Active Pipeline
Comp Reviews	10	105	1
Rent Restructurings	666	571	95
Full Mortgage Restructurings	1330	627	625
Totals	**2,102**	**1,303**	**721**

SUMMARY BY M2M TRANSACTION TYPE

	Running Totals
Comp Reviews	
Completed	105
Rents Determined Above Market	73
Rents Determined Below Market	32
Rent Restructuring	
Received	666
Converted from Full Restructuring	*110*
Completed	571
Above Market - Rents Reduced due to Successful Lite	*384*
Above Market - Rents Reduced due to Watch List	*84*
Below Market	*61*
Determined Ineligible	*15*
Recommended Not to Renew/Vouchers	*16*
Opt Out	*11*
Full Mortgage Restructurings	
Received	1,330
Converted from Rent Restructuring	*239*
Restructuring Plans Approved by OMHAR	625
Closed M2M Deals	435
Completed Other than Closing	192
Ineligible	*28*
Discontinued	*164*
Completed Other than Closing – Below Market	78

* Completed = Closed, Ineligible and Discontinued Full Mortgage Restructurings, Approved Rent Restructurings and Approved Comp Reviews

Source: HUD Office of Multifamily Housing Assistance Restructuring

EXHIBIT 3
OPT OUT SUMMARY

STATE	PROPERTIES	UNITS
Texas	53	8,671
Ohio	35	2,086
Illinois	19	1,654
California	18	1,922
Missouri	17	812
New York	17	1,952
Michigan	16	3,132
Washington	14	1,232
Colorado	13	1,141
North Carolina	11	1,109
Connecticut	10	1,030
Indiana	9	639
Arkansas	8	490
Florida	7	1,282
Maryland	7	1,267
Tennessee	7	655
Massachusetts	6	693
Oregon	6	244
Arizona	5	729
District of Columbia	5	507
Kentucky	5	270
Louisiana	5	878
Georgia	4	367
Idaho	4	277
Mississippi	4	360
Oklahoma	4	230
Alabama	3	490
Kansas	3	451
Nevada	3	740
South Carolina	3	272
South Dakota	3	120
Wyoming	3	211
Minnesota	2	95
Montana	2	82
Nebraska	2	55
New Jersey	2	80
North Dakota	2	35
Pennsylvania	2	621
Virginia	2	350
Wisconsin	2	52
Iowa	1	100
New Hampshire	1	20
New Mexico	1	120
Utah	1	172
Vermont	1	60
West Virginia	1	143
Totals	**349**	**37,898**

SUMMARY OF OPT-OUTS	
Units	37,898
Properties	349
Average Rent Increase(%)	44%

Source: National Housing Trust Data Clearinghouse

EXHIBIT 4
OMHAR PAE and Assigned Properties Report: Excerpt

AK	ONTRA, Inc.	Bethel	Ayalpik Apartments	17635019	Mrtg Rstr
AK	ONTRA, Inc.	Kodiak	Bayview Terrace	17635012	Mrtg Rstr
AK	ONTRA, Inc.	Wrangell	Etolin Heights	17655002	Rent Rdct
AK	ONTRA, Inc.	Fairbanks	Executive Estates	17635014	Mrtg Rstr
AK	ONTRA, Inc.	Juneau	Gastineau Apartments	17644015	Rent Rdct
AK	ONTRA, Inc.	Anchorage	KBL Apts	17635015	Rent Rdct
AK	ONTRA, Inc.	Fairbanks	Parkwest Apartments	17635013	Mrtg Rstr
AL	First Housing Development Corporation	Scottsboro	River Grove II Apartments	06235282	Mrtg Rstr
AL	First Housing Development Corporation	Northport	McDaniel Arms Apts	06235348	Mrtg Rstr
AL	First Housing Development Corporation	Boaz	Meadowood Apartments	06235346	Mrtg Rstr
AL	First Housing Development Corporation	Northport	Fieldcrest Apts	06235343	Mrtg Rstr
AL	First Housing Development Corporation	Mobile	Oak Ridge Apartments	06235331	Mrtg Rstr
AL	First Housing Development Corporation	Oakman	Oakman Terrace Apartments	06235372	Mrtg Rstr
AL	First Housing Development Corporation	Theodore	Pearson Park Apartments	06235366	Mrtg Rstr
AL	First Housing Development Corporation	Decatur	Lakeview Apartments	06235347	Mrtg Rstr
AL	First Housing Development Corporation	Scottsboro	River Grove I Apartments	06235264	Mrtg Rstr
AL	First Housing Development Corporation	Alexander City	Robinwood Apartments	06235280	Mrtg Rstr
AL	First Housing Development Corporation	Camden	Pinewood Apartments	06235216	Mrtg Rstr
AL	First Housing Development Corporation	Florence	Heatherwood Apartments	06235351	Mrtg Rstr
AL	First Housing Development Corporation	Birmingham	Deer Park Apartments	06235258	Mrtg Rstr
AL	First Housing Development Corporation	Birmingham	Southampton Apartments	06235281	Mrtg Rstr
AL	First Housing Development Corporation	Talladega	City Court I Apartments	06235243	Mrtg Rstr
AL	First Housing Development Corporation	Florence	Weeden Heights Apartments	06235385	Mrtg Rstr
AL	First Housing Development Corporation	Huntsville	Cherokee Bend Apartments	06235259	Mrtg Rstr
AL	First Housing Development Corporation	Albertville	Brookwood Park	06235313	Mrtg Rstr
AL	First Housing Development Corporation	Greensboro	Eastridge Apartments	06235262	Mrtg Rstr
AL	First Housing Development Corporation	Mobile	Brent Hill Apartments	06235379	Mrtg Rstr

Source: HUD Office of Multifamily Housing Assistance Restructuring

EXHIBIT 4

OMHAR PAE and Assigned Properties Report: Excerpt

Accept	1st Tenant	PCA Complete	Appraisal Complete	2nd Tenant Mtg	Plan Submitted	Owner Executes Plan	Completed	Below Market	Ineligibility Under Review
1-May-00	Y	Y	Y	Y	Y	Y	Y		
20-Jul-00	Y	Y	Y	Y	Y		Y		
3-Aug-99					Y		Y		
20-Jun-00	Y	Y	Y	Y	Y	Y	Y		
5-Oct-99					Y		Y		
3-Aug-99					Y		Y		
30-Mar-00	Y	Y	Y	Y	Y		Y		
28-Feb-00	Y	Y	Y	Y	Y	Y	Y		
4-Jun-01	Y	Y	Y	Y	Y	Y			
25-Jun-01	Y	Y	Y	Y	Y	Y			
25-Jun-01	Y	Y	Y	Y	Y		Y	Y	
4-Jun-01	Y	Y	Y	Y	Y				
25-Jun-01	Y	Y	Y	Y	Y	Y	Y		
25-Jun-01	Y	Y	Y	Y	Y	Y	Y		
4-Jun-01	Y	Y	Y	Y	Y	Y			
28-Feb-00	Y	Y	Y	Y	Y	Y	Y		
31-Mar-00	Y	Y	Y	Y	Y	Y	Y		
12-May-00	Y	Y	Y	Y	Y	Y	Y		
4-Jun-01	Y	Y	Y	Y	Y	Y	Y		
12-May-00	Y	Y	Y	Y	Y	Y	Y		
12-May-00	Y	Y	Y		Y		Y	Y	
31-Mar-00	Y	Y	Y	Y	Y	Y	Y		
25-Jun-01	Y	Y	Y	Y	Y	Y	Y		
21-Jun-00	Y	Y	Y	Y	Y	Y	Y		
4-Jun-01	Y	Y	Y	Y	Y	Y	Y		
28-Feb-00	Y	Y	Y	Y	Y	Y	Y		
25-Jun-01	Y	Y	Y	Y	Y				

EXHIBIT 5
HUD SECTION 8 DATABASE: SAMPLE EXPIRING CONTRACT DATA

State	City	Property Name	Street Address
MA	Adams	Adams Housing	3 Myrtle St.
MA	Adams	Barrett House	17 Pleasant St.
MA	Adams	Millhouses of Adam	75 Commercial St
MA	Agawam	Hale Meekins Residence	203 School St.
MA	Amherst	Puffton Village IV	1040 N Pleasant St.
MA	Amherst	Village Park 1	Village Park Rd.
MA	Amherst	Village Park 1	Village Park Rd.
MA	Andover	Andover Commons	30 Railroad Ave.
MA	Arlington	Broadwal Homes	110-112 Broadway
MA	Arlington	Millbrook Square Apts.	17 Mill St.
MA	Ashland	Ashland Commons	101 Presidents Row

Source: HUD Section 8 Database

EXHIBIT 6
HUD SECTION 8 DATABASE: SAMPLE INSURED MULTIFAMILY MORTGAGE DATA

State	Property City	Propert Bane	Units
MA	Adams Town	Adams Housing	60
MA	Adams Town	The Millhouses	99
MA	Allston	Charlesville Incorporated	210
MA	Allston	Glenville Apts	117
MA	Allston	Governor Apts	87
MA	Amerst	Brandywine Apts	180
MA	Amherst	New Puffton Village I and II	314
MA	Amherst	Village Park Apts	200
MA	Amherst Town	Village Park	200
MA	Andover	Andover Commons	167
MA	Arlington	Millbrook Square Apts	146
MA	Ashland	Ashland Commons	96
MA	Ashland	Chestnut Apts	207
MA	Auburn	Kittyhawk Highlands	216

Source: HUD Section 8 Database

Total Units	Assisted Units	Program Type	Expiration Date	Cong. District
60	35	LMSA	31-Mar-00	1
40	40	202/8 SR	21-Dec-99	1
99	98	Sec 8 SR	13-Jun-03	1
15	15	PRAC/ 811	31-Aug-16	2
64	9	LMSA	30-Sep-00	1
200	127	Preservation	30-Sep-00	1
200	127	Preservation	30-Sep-00	1
167	167	Sec 8 SR	01-Oct-01	5
11	11	PRAC/ 811	30-Sep-17	7
146	145	Sec 8 NC	09-Feb-02	01,03,04,05,06
96	96	Sec 8 NC	12-Dec-03	5

Sections (of the Act)	Initial Endorsement Date	Final Endorsement Date	Maturity Date
236(j)(1)/ Lower Income Families	14-Sep-71	24-Jun-77	01-Sep-12
221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	30-Sep-82	22-Mar-84	01-Nov-24
221(d)(3) BMIR Urban Renewal/ Coop Hsg	07-Nov-69	21-Dec-71	01-Feb-11
236(j)(1)/ Lower Income Families	06-Oct-70	15-Dec-71	01-Nov-11
221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	30-Sep-80	30-Apr-82	01-Aug-22
207/ 223(f) - Delegated	26-Apr-94	26-Apr-94	01-May-29
207/ 223(f) Pur/ Refin Hsg.	31-Mar-97	31-Mar-97	01-Apr-32
241(f)/ 236 Equity Loan	30-Sep-94	30-Sep-94	01-Oct-23
236(j)(1)/ Lower Income Families	24-Mar-71	18-Oct-73	01-Nov-13
221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	03-Mar-81	13-Jul-83	01-Apr-23
221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	12-Sep-80	13-Jun-83	01-Jul-22
221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	30-Sep-82	18-Sep-86	01-May-24
207/ 223(f) Pur/ Refin Hsg.	30-May-96	30-May-96	01-Jun-31
207/ 223(f) Pur/ Refin Hsg.	29-May-98	29-May-98	01-Jun-33

EXHIBIT 7
PREPAYMENT STATISTICS BY STATE (EXCERPT)

Beaver Brook Apartments

FHA Number: 01755095
435 Beaver St
Ansonia, Connecticut
Total Units: 171
FY of Prepayment: 97
Rent Before: $525
Rent After: $716
FMR:
120% FMR Proxy:
Percent Change: 36%
Monthly Cost: $32,661
Annual Cost: $391,932

East Wintonbury Hills

FHA Number: 01744201
East Wintonbury Ave
Bloomfield, Connecticut
Total Units: 110
FY of Prepayment: 98
Rent Before: $518
Rent After: $830
FMR: 692
120% FMR Proxy: *
Percent Change: 60%
Monthly Cost: $34,320
Annual Cost: $411,840

200 York Street Apartments

FHA Number: 01744068
200 York St
New Haven, Connecticut
Total Units: 22
FY of Prepayment: 96
Rent Before: $
Rent After: $
FMR:
120% FMR Proxy:
Percent Change:
Monthly Cost:
Annual Cost:

Highridge Homes

FHA Number: 01744111
29 Knapp St
Stamford, Connecticut
Total Units: 84
FY of Prepayment: 96
Rent Before: $380
Rent After: $483
FMR:
120% FMR Proxy:
Percent Change: 27%
Monthly Cost: $8,652
Annual Cost: $103,824

Scott Gardens I

FHA Number: 01755050
55050 Scott Rd
Waterbury, Connecticut
Total Units: 100
FY of Prepayment: 98
Rent Before: $
Rent After: $
FMR:
120% FMR Proxy:
Percent Change:
Monthly Cost:
Annual Cost:

Scott Gardens II

FHA Number: 01755130
55050 Scott Rd
Waterbury, Connecticut
Total Units: 176
FY of Prepayment: 98
Rent Before: $
Rent After: $
FMR:
120% FMR Proxy:
Percent Change:
Monthly Cost:
Annual Cost:

Piper Brook Apartments

FHA Number: 01744150
119 Hillcrest Ave
West Hartford, Connecticut
Total Units: 95
FY of Prepayment: 98
Rent Before: $400
Rent After: $666
FMR:
120% FMR Proxy:
Percent Change: 67%
Monthly Cost: $25,270
Annual Cost: $303,240

Litchfield Gardens

FHA Number: 01744073
115 Nanni Drive
Winstead, Connecticut
Total Units: 119
FY of Prepayment: 98
Rent Before: $506
Rent After: $830
FMR: 692
120% FMR Proxy: *
Percent Change: 68%
Montly Cost: $38,556
Annual Cost: $462,672

Source: National Housing Trust

Data compiled from several HUD sources. Not independently verified. * 120% of FMR for a 2-Bedroom Unit was used as a proxy for "Rent After" where actual "Rent After" was not available. ** Owners have filed a Notice to Prepay Copyright NHT, 1999.

Other Notes:
Where the Trust was able to secure the actual "Rent After," the actual post prepayment rent was used. Where the precise "Rent After" wasn't available, the Trust used 120% of FMR as a proxy for "Rent After." Additional information was provided by Emily Achtenberg, CEDAC, CHPC, CASH (Minnesota), and the Texas Tenant's Union.

EXHIBIT 8

OPT OUT STATISTICS BY STATE (EXCERPT)

Jones Walker Palm Gardens

FHA Number: 06635038
2909 Blount St
Fort Myers, Florida
Expiration Date: 9/30/98
Total Units: 80

Funds Type: T
Rent Before: $565
Rent After: $694
Percent Change: 23%
Monthly Cost: $10,320
Annual Cost: $123,840

Cambridge Square of Hialeah

FHA Number:
1815 W 56th St
Hialeah, Florida
Expiration Date: 11/30/98
Total Units: 280

Funds Type: R
Rent Before: $471
Rent After: $842
Percent Change: 79%
Monthly Cost: $103,880
Annual Cost: $1,246,560

The Birches

FHA Number: 06644013
131 SW 6th St
Homestead, Florida
Expiration Date: 6/30/97
Total Units: 50

Funds Type: R
Rent Before:
Rent After:
Percent Change:
Monthly Cost:
Annual Cost:

Dorchester Apartments

FHA Number:
400 Dorchester Sq
Lake Mary, Florida
Expiration Date: 7/13/03
Total Units: 16

Funds Type: T
Rent Before: $472
Rent After: $814
Percent Change: 72%
Monthly Cost: $5,472
Annual Cost: $65,664

Sabal Palm Villas Apartments

FHA Number: 06611013
5364 NE 3rd Ave
Miami, Florida
Expiration Date: 9/30/97
Total Units: 512

Funds Type: R
Rent Before:
Rent After:
Percent Change:
Monthly Cost:
Annual Cost:

Sand Lake Village Apartments

FHA Number: 06744148
700 Ridenhour Cir
Orlando, Florida
Expiration Date: 9/30/97
Total Units: 144

Funds Type: R
Rent Before: $465
Rent After: $814
Percent Change: 75%
Monthly Cost: $50,256
Annual Cost: $603,072

Escambia Arms

FHA Number: 06335026
200 Hickory St
Pensacola, Florida
Expiration Date: 4/30/00
Total Units: 200 Funds

Funds Type: R
Rent Before:
Rent After:
Percent Change:
Monthly Cost:
Annual Cost:

Source: National Housing Trust

Data compiled from several HUD sources. Not independently verified. Please note that for "Funds Type": R=Voluntary Opt Out; T=Termination; D=Property Disposition Copyright NHT, 1999.

Other Notes:
Please note that the data does not include properties where available HUD data indicates owners prepaid HUD insurance and received enhanced vouchers. Those properties are included in NHT's Prepayment Data. Approximately 37% of these properties were vouchered out due to termination of Section 8 or property disposition.
Where the trust was able to secure the actual "Rent After," the actual post prepayment or opt out rent was used. Where the precise "Rent After" wasn't available, the Trust used 120% of FMR as a proxy for "Rent After."
Additional information was provided by Emily Achtenberg, CEDAC, CHPC, CASH (Minnesota), and the Texas Tenant's Union.

EXHIBIT 9
HUD SECTION 8 DATABASE: SAMPLE OWNERSHIP INFORMATION

State	City	Property Name	Owner Name	Owner Address	Owner City	Owner Zip
MA	Adams	Adams Housing	Landover Associates.	PO Box 107	Adams, MA	01220
MA	Adams	Barret Housing	Barrett Housing Corp.	74 North St.	Pittsfield, MA	01201
MA	Adams	Millhouses of Adams	Millhouses of Adams % Wingate Management Co.	1 Charles River Pl.	Needham, MA	02494
MA	Agawam	Hale Meekins Residence	Hale Meekins Residence, Inc.	110 Maple St.	Springfield, MA	01105
MA	Amherst	Puffton Village IV	Puffton Village IV	1040 N. Pleasant St	Amherst, MA	01002
MA	Amherst	Village Park	Village Park Associates	101 Arch St.	Boston, MA	02110
MA	Andover	Andover Commons	Andover Commons Associates	100 Grandview Rd.	Braintree, MA	02184
MA	Arlington	Broadwal Homes	Broadwal, Inc.	300 Somerville Ave.	Somerville, MA	02143
MA	Arlington	Millbrook Square Apts	Millbrook Square Apts Company	150 Mt. Vernon St., Suite 520	Boston, MA	02125
MA	Ashland	Ashland Commons	Ashland Commons Associates	500 W. Cummings Park	Woburn, MA	01801

Source: HUD Section 8 Database

EXHIBIT 10
SAMPLE PARTNERSHIP INFORMATION AVAILABLE ON SEC WEBSITE

Form	Description
10KSB	Optional form for annual and transition reports of small business issuers [Section 13 or 15(d), not S-B Item 405]
10QSB	Optional form for quarterly and transition reports of small business issuers
10QSB	Optional form for quarterly and transition reports of small business issuers
SC TO-T/A	[Amend]Tender offer statement by Third Party
SC TO-T/A	[Amend]Tender offer statement by Third Party
SC TO-C	Written communication relating to an issuer or third party
10QSB	Optional form for quarterly and transition reports of small business issuers
SC TO-T	Tender offer statement by Third Party
NT 10-K	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405
8-K/A	[Amend]Current report
8-K	Current report
8-K	Current report
SC 13D/A	[Amend]General statement of acquisition of beneficial ownership
10QSB	Optional form for quarterly and transition reports of small business issuers
NT 10-K	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405
SC TO-I/A	[Amend]Tender offer statement by Issuer
10QSB	Optional form for quarterly and transition reports of small business issuers
SC TO-I	Tender offer statement by Issuer
SC TO-T/A	[Amend]Tender offer statement by Third Party
SC TO-C	Written communication relating to an issuer or third party
SC TO-T	Tender offer statement by Third Party
SC 13D/A	[Amend]General statement of acquisition of beneficial ownership
10QSB	Optional form for quarterly and transition reports of small business issuers
10-K	Annual report [Section 13 and 15(d), not S-K Item 405]
NT 10-K	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405
10-Q	Quarterly report [Sections 13 or 15(d)]
10-Q	Quarterly report [Sections 13 or 15(d)]
10-K/A	[Amend]Annual report [Section 13 and 15(d), not S-K Item 405]

Source: http://www.sec.gov/cgi-bin/browse-edgar

Owner Phone	Agent Name	Agent Address	Agent City	Agent Zip	Agent Phone
(413) 743-9301	Greylock Housing Mgmt & Maintenance Co. Inc.		Adams MA	01220	(413) 743-9301
(413) 499-1630	Berkshire Housing Services, Inc.	74 North St.	Pittsfield, MA	01201	(413) 499-1630
(781) 707-9000	Wingate Management Co., Inc.	1 Charles River Pl.	Needham, MA	02494	(781) 707-9000
	Mental Health Assoc. of Greater Springfield	146 Chestnut St.	Springfield, MA	01103	(413) 734-5376
(413) 549-0145	Kelloggs Management Corp.	1040 N. Pleasant St	Amherst, MA	01002	(413) 549-3808
(617) 439-3911	Boston Financial Property Mgmt	101 Arch St	Boston, MA	02110	(617) 439-3911
(781) 849-0014	Corcoran Management	100 Grandview Rd	Braintree, MA	02184	(781) 849-0011
(617) 776-1448	Walnut Street Center, Inc.	300 Somerville Ave.	Somerville, MA	02143	(617) 776-1448
(617) 822-7300	CMJ Management Co.	150 Mount Vernon St	Boston, MA	02125	(617) 822-7300
(781) 935-4200	APT Management, Inc.	500 W. Cummings Park	Woburn, MA	01801	(781) 935-4200

Form	Description
10-Q	Quarterly report [Sections 13 or 15(d)]
PRES14A	Preliminary proxy statements, special meeting
10-K	Annual report [Section 13 and 15(d), not S-K Item 405]
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
NT 10-K	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405
10-Q	Quarterly report [Sections 13 or 15(d)]
10-K	Annual report [Section 13 and 15(d), not S-K Item 405]
10-Q	Quarterly report [Sections 13 or 15(d)]
10-Q	Quarterly report [Sections 13 or 15(d)]
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
NT 10-K	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405
10-Q	Quarterly report [Sections 13 or 15(d)]
10-K	Annual report [Section 13 and 15(d), not S-K Item 405]
10-Q	Quarterly report [Sections 13 or 15(d)]
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
NT 10-K	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
10-Q	Quarterly report [Sections 13 or 15(d)]
SC 13D	General statement of acquisition of beneficial ownership
10-K	Annual report [Section 13 and 15(d), not S-K Item 405]
10-Q	Quarterly report [Sections 13 or 15(d)]
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
NT 10-Q	Notification of inability to timely file Form 10-Q or 10-QSB
DEFS14A	Definitive proxy statement for special meeting
10-Q/A	[Amend]Quarterly report [Sections 13 or 15(d)]
NTN 10K	
10-Q	Quarterly report [Sections 13 or 15(d)]

EXHIBIT 11

HUD SECTION 8 DATABASE: FINANCIAL INFORMATION FROM INSURED MULTIFAMILY MORTGAGE DATABASE

State	City	Property Name	Units	Section (of the Act)	Original Mortgage Amount	Current Principal and Interest (Monthly)
MA	Adams Town	Adams Town	60	236(j)(1)/ Lower Income Families	1,486,700	11,074.54
MA	Adams Town	The Millhouses	99	221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	5,074,300	33,392.49
MA	Allston	Charlesview Inc.	210	221(d)(3) BMIR Urban Renewal/ Coop Hsg	5,089,100	18,419.34
MA	Allston	Glenville Apts.	117	236(j)(1)/ Lower Income Families	1,923,000	14,656.76
MA	Allston	Governor Apts	87	221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	3,817,400	25,121.20
MA	Amherst	Brandywine Apts.	180	207/ 223(f) - Delegated	3,825,000	27,167.48
MA	Amherst	New Puffton Vllage I and II	314	207/ 223(f) Pur/ Refin Hsg.	10,423,400	73,088.87
MA	Amherst	Village Park Apts.	200	241(f)/ 236 Equity Loan	3,886,600	31,487.59
MA	Amherst Town	Village Park	200	236(j)(1)/ Lower Income Families	3,658,700	26,821.72
MA	Andover	Andover Commons	167	221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	8,179,400	53,826.24
MA	Arlington	Millbrok Sq. Apts.	146	221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	7,325,500	48,388.61
MA	Ashland	Ashland Commons	96	221(d)(4) Mkt. Rate Mod Inc/ Disp Fams	4,893,880	48,282.75
MA	Ashland	Chestnut Apts.	207	207/ 223(f) Pur/ Refin Hsg.	7,650,000	56,852.95
MA	Auburn	Kittyhawk Highlands	216	207/ 223(f) Pur/ Refin Hsg.	6,187,400	39,528.60

Source: HUD Section 8 Database

Amortized Principal Balance (Unpaid)	Interest Rate	Holder Name	Holder City	Servicer Name	Servicer City
1,100,900	8.5	Beal Bank SSB	Dallas, TX	GMAC Commercial Mortgage Corp.	Horsham, PA
4,449,124	7.5	USGI INC	Darien, CT	Huntoon Hastings Capital Corp.	Darien, CT
1,934,736	3	Corestates Bank NA	Philadelphia, PA	Midland Loan Services Inc.	Kansas City, MO
352,293	8.5	Federal National Mortgage Assn	Atlanta, GA	FNMA-GMAC Commercial Mortgage	Washington, DC
3,223,909	7.5	Bank of America NA	Cypress, CA	Dovenmuehle Mortgage Inc	Schaumburg, IL
3,652,335	8	Heartland Bank	Chesterfield, MO	Heartland Bank	Chesterfield, MO
10,185,298	7.875	Capstone Realty Advisors LLC	Cleveland, OH	Capstone Realty Advisors LLC	Cleveland, OH
3,656,427	9	Continental Wingage Assoc Inc	Needham, MA	Continental Wingage Assoc Inc	Needham, MA
2,518,610	8.5	GMAC Commercial Mortgage Corp	Horsham, PA	GMAC Commercial Mortgage Corp	Horsham, PA
6,990,630	7.5	Riggs Bank NA	Riverdale, MD	Reilly Mortgage Group	Mclean, VA
6,200,342	7.5	Riggs Bank NA	Riverdale, MD	Reilly Mortgage Group	Mclean, VA
4,619,013	11.728	Massachusetts Hsg Fin Agency	Boston, MA	Massachusetts Hsg Fin Agency	Boston, MA
7,454,758	8.45	Centennial Mortgage Inc Inc	South Bend, IN	Centennial Mortgage Inc	South Bend, IN
6,075,126	7	Prudential Huntoon Paige Assc	Edison, NJ	Prudential Huntoon Paige Assc	Edison, NJ

AFFORDABLE HOUSING PRESERVATION GLOSSARY

Annual Adjustment Factor. Mechanism for adjusting rents in certain types of Section 8-assisted properties, including Section 8 New Construction/Substantial Rehab. HUD publishes annual percentage factors by unit type and region.

Bargain Sale. A tax deferral mechanism involving a sale of the property to a charitable organization for an amount that is less than its appraised fair market value. The seller takes a charitable contribution deduction for the difference between the fair market value and the reduced sales price. The deduction may be used to offset the tax liability resulting from the sale.

Basic Rent. The rent required to operate a Section 236 project, including debt service on the subsidized mortgage at 1% interest. This is the minimum rent payable by tenants (absent any additional rental subsidy).

Below Market Interest Rate (BMIR). See Section 221(d)(3) BMIR.

Capital Account. The owner's original cash investment in the property plus cumulative profits and tax losses over the life of the investment. Subsidized properties that have provided generous depreciation and interest deductions with limited or negligible cash flow will have a negative capital account after twenty years. Taxes will be owed on the negative capital account even if no cash proceeds are realized from the sale.

Capital Gain. Cash proceeds realized upon sale of the property, if any, minus the owner's capital account (see Capital Account). Capital gain is subject to federal and state tax when the property is sold.

Decoupling. A program to permit owners or purchasers of Section 236 housing to retain the Interest Reduction Payments (IRP) contract and subsidy after refinancing or adding new debt to the existing Section 236 mortgage. The existing use restrictions must be extended for five years beyond the outstanding mortgage term. Authorized by Section 236(b) and (e)(2) of the National Housing Act. See also: IRP.

Emergency Low Income Housing Preservation Act (ELIHPA). 1987 statute authorizing the original federal preservation program. Program active 1987 - 1992.

Eminent Domain. Authority of a government entity to forcibly acquire real estate for a public purpose, with compensation at Fair Market Value.

Enhanced Vouchers. Tenant-based Section 8 assistance provided to eligible residents when owners prepay their subsidized mortgages or opt out of project-based Section 8 contracts. Rents are set at market comparable levels, instead of the regular voucher payment standard, as long as the tenant elects to remain in the housing.

Exit Tax. Tax due on the owner's capital gain when a property is sold. See Capital Account and Capital Gain.

Expiring Use Restrictions (EUR). Low- and moderate-income affordability requirements associated with subsidized mortgages under Section 221(d)(3) BMIR and Section 236, which terminate when the mortgage is prepaid.

Flexible Subsidy. A direct HUD loan or grant for rehabilitation or operating losses, available to eligible owners of certain HUD-subsidized properties. Owners must continue to operate the project as low- and moderate-income housing for the original mortgage term. Not currently active.

Freedom of Information Act (FOIA). Generally refers to the process of securing available documents from HUD or other federal agencies in accordance with required procedures. Certain types of documents, including owner financial statements, are considered privileged and not are not disclosable to the public under FOIA.

Full/Full Restructuring. A transaction carried out under Mark-to-Market involving both rent reduction and bifurcation of the HUD-insured debt into performing and deferred loans.

Interest Reduction Payment (IRP). In a Section 236 project, the Interest Reduction Payment or interest subsidy provided by HUD on a monthly basis, which makes up the difference between the mortgage debt service actually paid and the debt service that would have been paid at an interest rate of 1%.

Intermediary Technical Assistance Grant (ITAG). HUD funds available to resident groups, community-based non-profit developers, and public agencies seeking to preserve or purchase federally subsidized housing. Includes Resident Capacity Grants ($20,000), Predevelopment Grants ($70,000), and Public Entity Grants ($20,000). Except for Public Entity Grants, these are for project-specific activities.

ITAG Intermediary. Organizations responsible for disbursing and monitoring ITAG funds in a geographic region, under contract to HUD.

Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA). 1990 statute authorizing the "permanent" federal preservation program. Program active 1990 - 1996.

Like Kind Exchange. A tax-deferral mechanism involving a "swap" of the project being sold with a replacement project. Capital gains tax is deferred until the replacement property is sold.

Lite/OMHAR Lite. A transaction carried out under the Mark-to-Market program, involving rent reduction but no debt restructuring. Lite transactions may or may not involve refinancing of the existing debt.

Loan Management Set-Aside (LMSA). A form of project-based Section 8 assistance used primarily for Section 221(d)(3)/ BMIR and Section 236 housing. These contracts were added after the housing was developed and were short-term, renewable.

Multifamily Assisted Housing Reform and Affordability Act (MAHRA). 1997 statute authorizing the Mark-to-Market program and renewals of expiring Section 8 contracts.

Mark-to-Market. A program enabling owners of above-market Section 8 properties with HUD-insured mortgages to reduce rents, restructure the existing debt, and generally renew project-based Section 8 subsidy contracts. Authorized by MAHRA and administered by PAEs under contract to HUD/OMHAR. Owners who participate in debt restructuring must agree to 30-year Section 8 renewals, and underlying use restrictions for a portion of the units. Tenants and state/local governments have an opportunity to participate in the restructuring plans.

Mark-Up-to-Market. A program enabling eligible owners of below-market Section 8 properties (insured and uninsured) to renew expiring subsidy contracts at comparable market rents. Contracts must be at least 5 years.

Mortgage Insurance Fund. The HUD reserves that are drawn upon in the event of mortgage foreclosure or assignment, to pay off the lender in response to an insurance claim.

New Construction/Substantial Rehab. A form of project-based Section 8 assistance used in the original development and financing of the housing. Projects are both insured and uninsured (with conventional or state/local bond financing). These contracts are long-term (20-40 years). Active 1976 - 1985.

Operating Cost Adjustment Factor (OCAF). Percentage factor used to adjust Section 8 project-based rents. Published by HUD on an annual basis. The OCAF percentage is applied to the Section 8 gross rents less debt service, i.e. to operating expenses plus cash flow.

OMHAR. Office of Multifamily Housing Assistance Restructuring, a special office within HUD established under MAHRA to oversee the Mark-to-Market Program. OMHAR has recently been brought under the authority of the FHA Commissioner/ Assistant Secretary for Housing.

Outreach and Training Grant (OTAG). HUD funds available to organizations working with residents and resident groups in federally-subsidized housing.

Participating Administrative Entity (PAE). The Participating Administrative Entity is responsible for structuring Mark-to-Market transactions at the local or state level, under contract to OMHAR. PAEs may be public or private entities or joint ventures.

Passive Losses. Losses or deductions generated by a property which exceed the amount needed to offset taxable income. Since the Tax Reform Act of 1986, passive losses can no longer be used to shelter ordinary income from taxation; however, they can be used to offset "phantom income" or capital gains tax liability when the property is sold.

Phantom Income. Income taxable to a property owner in an amount greater than the cash flow distributions actually received. Phantom income occurs in subsidized properties for two reasons: (1) as properties age, depreciation and mortgage interest deductions decrease while mortgage principal payments, which are taxable, increase; and (2) allowable cash flow distributions to owners are often limited by formula (the limited dividend). Phantom income creates an incentive for owners to refinance or sell.

Preemptive Purchase Rights. Right to make an offer to purchase, typically within a specified time frame, whether or not the property has been offered for sale. Owner may or may not be required to accept under specified conditions.

Priority Purchaser. As defined under LIHPRHA, a qualified resident organization, nonprofit entity, or state/local public agency purchaser of prepayment-eligible housing. Priority purchasers may also qualify for second mortgage forgiveness or assignment under Mark-to-Market if they meet certain additional criteria (including resident endorsement and one-third board membership by project residents or low-income neighborhood residents).

Project-Based Section 8. A program providing rental assistance on behalf of some or all of the units in a project occupied by eligible tenants for a specified contract term. Tenants pay 30% of adjusted income for gross rent including utilities. The subsidy is attached to the unit and stays with the housing after the tenant leaves.

Purchase Money Note. Obligation to pay the seller a portion of the purchase price on a deferred basis, either over time or at a future date. The Purchase Money Note may be secured by a mortgage or, more typically for subsidized properties, by a pledge of the partnership interests.

Real Estate Assessment Center (REAC). HUD Office responsible for monitoring how properties in HUD's real estate portfolio comply with regulatory requirements. Conducts annual physical inspections and reviews financial audits, tenant income verifications, management operations, and resident satisfaction in public and assisted housing.

Real Estate Investment Trust (REIT). A business trust or corporation that combines the capital of many investors to acquire or finance real estate, which may include assisted housing. Cash flow generated by the properties is distributed to investors in the form of stock dividends. The REIT can also provide an attractive tax deferral mechanism by enabling investors to exchange their partnership shares for interests in the REIT, a non-taxable transfer.

Rent Supplement. An older HUD project-based rental subsidy program used for some 221d3 and 236 properties. The subsidy contract is coterminous with the mortgage. Most rent supplement contracts in HUD-insured projects were converted to Section 8 in the 1970s.

Rental Assistance Program (RAP). A project-based rental assistance program that is authorized under Section 236 of the National Housing Act. Assisted rents are set at the Section 236 Basic Rent, and since the program is not authorized by Section 8, it is not subject to Mark-to-Market or Mark-Up-To-Market.

Residual Receipts. Cash account maintained under joint control of the owner and HUD (or HFA) into which is deposited all surplus cash generated over and above the allowable limited dividend. The disposition of residual receipts at the end of the Section 8 contract and/or mortgage is governed by the Regulatory Agreement.

Right of First Refusal. Right to match the terms and conditions of a third-party offer to purchase the property, within a specified time period. Holder must be notified of the third party offer and may be required to close by a designated date.

Section 221(d)(3) BMIR. A HUD program under which the federal government provided direct loans at a below-market interest rate (3%) and mortgage insurance to private developers of low- and moderate-income housing. Active 1963 - 1970.

Section 236. A program under which HUD provided interest subsidies (known as Interest Reduction Payments or IRP subsidies) and mortgage insurance to private developers of low- and moderate-income housing. The interest subsidy effectively reduced the interest rate on the loan to 1%. Active 1968 - 1975.

Tenant-Based Section 8. Rental assistance provided on behalf of eligible tenants, currently known as vouchers. The subsidy is attached to the tenant and moves when the tenant leaves (see also Enhanced Vouchers).

Transfer of Physical Assets (TPA). The sale of a property which is subject to a HUD-insured or HUD-held mortgage that will not be terminated in conjunction with the sale. The transfer must be approved by HUD and carried out in accordance with required HUD procedures.

Wellstone Notice. Notice required to be given by owners of prepayment-eligible projects, prior to prepaying the subsidized mortgage or terminating mortgage insurance. Must be given to tenants, HUD, and state/local government, at least 150 days but no more than 270 days prior to prepayment

ENDNOTES

CHAPTER 1

[1] This Chapter is drawn, in part, from Emily P. Achtenberg, "Federally-Assisted Housing: Privatization vs. Preservation," in Housing: Foundation of a New Social Agenda, Rachel Bratt et al., eds., Temple University Press (forthcoming).

[2] Not all Section 221(d)(3) and 236 projects have this automatic prepayment right and the opportunity to convert to market use. If the project's original sponsor was a nonprofit entity, or if the project has a federal rent supplement contract combined with HUD mortgage insurance, the owner cannot prepay without HUD consent. Some gray areas exist, especially for projects that received special federal rehabilitation loans or grants in the late 1970s and 1980s under HUD's Flexible Subsidy program. Some of these projects require HUD's consent to prepay and some do not, although all have use restrictions that limit rents through the original mortgage term.

[3] For a more detailed discussion of the Enhanced Voucher program, see Chapter 2, "Federal Preservation Tools."

[4] The National Housing Trust maintains summary prepayment data for each state (see Exhibit 1 in Exhibits). See *http://www.nhtinc.org/data.asp*; click on "Summary Table of Prepayments" link.

[5] For a more detailed discussion of these programs, see Chapter 2, "Federal Preservation Tools."

[6] The OMHAR website includes a weekly status report of pipeline activity (Exhibit 2 in Exhibits). Click on "M2M Status Report" at *http://www.hud.gov/offices/omhar/readingrm/reports.cfm*.

[7] The National Housing Trust also maintains opt-out data for each state (Exhibit 3 in Exhibits). See "Summary Table of Section 8 Opt Outs" link at *http://www.nhtinc.org/data.asp*. (This data does not include terminated Section 8 units in expiring use properties, where tenants received Enhanced Vouchers.)

[8] For a more detailed discussion of Mark-Up-To-Market and Mark-Up-To-Budget, see Chapter 2, "Federal Preservation Tools."

[9] To locate current legislation or pending bills, see *http://thomas.loc.gov*. Search by bill number (e.g., "HR 425"). Or, search by word/ phrase (e.g. "Preservation").

CHAPTER 2

[10] For the latest source documents, such as HUD Notices, handbooks, regulations, and policies, see *http://hudclips.org*.

[11] Including nonprofit controlled limited partnerships, which are also eligible for Mark-Up-to-Budget. Relative to Mark-Up-to-Budget, Mark-Up-to-Market has stricter eligibility rules but fewer requirements.

[12] Contracts executed on or before October 31, 1997 are pre-MAHRA contracts. Contracts executed on or after November 1, 1997 are post-MAHRA contracts.

[13] See *http://www.hud.gov/offices/hsg/mfh/exp/guide/s8guide.cfm*. This website also provides Section 8 Renewal Policy Guidebook updates and answers to Frequently Asked Questions (FAQs). See also "Renewal Options for Expiring Project-Based Section 8 Contracts" (May 1, 2001 REV 2) by Emily P. Achtenberg, available at *www.liscnet.org/resources/housing_preserv/*.

[14] HUD's Real Estate Assessment Center (REAC) monitors project conditions and regulatory compliance.

[15] Flexible Subsidy, no longer active, provided rehabilitation or operating loss loans and grants in exchange for additional use restrictions.

[16] For background on the IRP subsidy, see Chapter 1, "Subsidized Housing Preservation: An Historical Perspective."

[17] Including nonprofit controlled limited partnerships, which may also be eligible for Mark-Up-to-Market. Relative to Mark-Up-to-Market , Mark-Up-to-Budget has less restrictive eligibility criteria but more requirements.

[18] See *http://www.hud.gov/offices/hsg/mfh/exp/guide/s8guide.cfm*.

[19] The status of Section 221(d)(3) BMIR projects relative to nonprofit distributions is uncertain.

[20] It is not clear whether initial equity refers to the original owner's stated equity or the new owner's recognized equity.

[21] See *http://www.hudclips.org*. Click on "Library" link; click on "Handbooks & Notices." Select "Housing" and "Browse." Look for Housing Notice 00-8: "Guidelines for Continuation of Interest Reduction Payments After Refinancing." The expiration date on this notice has been extended to July 31, 2003 (Notice H 02-15).
See also Emily P. Achtenberg, "Retaining IRP Subsidy through Decoupling and Note Purchase" (May 1, 2001 REV 1), available at *www.liscnet.org/resources/housing_preserv/*.

[22] Under current law, Enhanced Vouchers are not available if the project is not eligible to prepay without HUD consent. See also Enhanced Vouchers, below.

[23] Under current law, Enhanced Vouchers are available for subsidized mortgage prepayments and insurance terminations only if the project is eligible to prepay without HUD consent.

[24] See *http://www.hudclips.org*. Click on "2001 PIH Notices." Click on Notice PIH 2001-41 (HA), "Section 8 Tenant Based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions." This Notice has been extended to January 31, 2003 (Notice PIH 2002-3).

[25] See *http://www.hud.gov/offices/omhar/index.cfm*. For the new owner and purchaser incentives, click on "Owners" link; click on "Owner and Purchaser Initiatives (September 2000)" link. A matrix and related memoranda describing the incentives can be downloaded from this page. For the "Operating Procedures Guide," return to the OMHAR home page (*http://www.hud.gov/offices/omhar/index.cfm*) and click on the "Operating Procedures Guide update" link. Appendix C to the OPG contains the policy on second mortgage forgiveness. These documents are also available at *www/liscnet.org/resources/housing_preserv/*.

[26] OMHAR is the process of developing a formal Additional Funds policy.

[27] The maximum amount of the second mortgage is the existing HUD mortgage balance minus the new supportable debt.

[28] See *http://www.hud.gov/offices/omhar/index.cfm*. Click on "Tenants" link. Click on "Technical Assistance Programs" link. Click on "Grant Numbers" link. A list of ITAG intermediaries and OTAG grantees including their geographic coverage can be downloaded from this page.

[29] Ibid.

CHAPTER 3

[30] Much of the information in this Chapter is drawn from Brian Galle, "Preserving Federally-Assisted Housing at the State and Local Level: A Legislative Tool Kit," Housing Law Bulletin, National Housing Law Project (October, 1999), with selective updates. Available at www.nhlp.org and also at *www.liscnet.org/resources/housing_preserv*.

[31] For a discussion of exit taxes, see Chapter 4, "Researching the Property: Towards a Preservation Strategy."

[32] See the California Department of Housing and Community Development's website at *http://www.hcd.ca.gov/hpd/hrc/tech/presrv* for the text of the law and related materials.

[33] See National Housing Law Project, "Challenging Conversions of Federally-Assisted Housing" and "Challenging Conversions of Federally-Assisted Housing in California," available from NHLP at *www.nhlp.org*.

[34] For a discussion of the proposed federal matching grant program, see Chapter 1, "Subsidized Housing Preservation: An Historical Perspective."

[35] Information in this section was provided by Ann M. Norton, attorney with the Minnesota Preservation Project.

[36] For copies of the Minnesota statute, see *www.mhponline.org*. Click on "Affordable Housing" link. Click on "Preservation." Click on "State laws."

[37] For the pleadings of this case and related legal documents, see *www.mhponline.org*. Click on "affordable housing" link. Click on "preservation." Click on "Hopkins Village."

[38] Pursuant to Section 250(a) of the National Housing Act, HUD may consent to a prepayment (where HUD's consent is required) only where there is no longer a need for lower income rental housing in the area.

[39] For a discussion of Mark-Up-to-Market eligibility requirements and the impact of low- and moderate-income use restrictions, see Chapter 2, "Federal Preservation Tools."

[40] For a discussion of the Wellstone Notice requirements, see Chapter 1, "Introduction to Preservation: An Historical Perspective."

[41] For a discussion of the CRP incentive, see Chapter 2, "Federal Preservation Tools."

CHAPTER 4

[42] For related resources, see Florida Housing Coalition, "FHC Risk Assessment" (undated), and National Housing Trust, "Considerations When Evaluating the Preservation/Development of Affordable Housing" (November 2000); available at *www.liscnet.org/resources/housing_preserv*.

[43] The Rental Assistance Program (RAP), authorized by Section 236, predates Section 8 but provides project-based rental assistance on similar terms.

[44] See Chapter 1 for a description of the ELIHPA and LIHPRHA programs.

[45] For a discussion of local use restrictions and Mark-Up-to-Market, see Chapter 2, "Federal Preservation Tools."

[46] An UPREIT is an Umbrella Partnership Real Estate Investment Trust. Under federal tax law, an owner can exchange ownership interests for interests in the UPREIT without triggering an immediate capital gain.

BIOGRAPHIES

Emily P. Achtenberg is a Boston-based housing consultant with more than 30 years of experience in affordable housing preservation transactions and related research, program design, and policy development. She has assisted non-profit, resident, and government organizations in acquiring or retaining over 2,900 affordable units threatened with expiring use restrictions and/or subsidy contracts. A nationally-recognized expert in subsidized housing preservation, she has been actively involved in the development of federal and state preservation policy and has published a comprehensive manual for preservation purchasers. She is a frequent speaker and panel participant at national and regional housing preservation conferences.

Ann Norton has worked with affordable housing and community development issues for almost 30 years. An attorney since 1977, Ann has practiced law in various capacities in the public and private sectors. She spent eight years in private practice where she specialized in community development issues and in 1990 she was appointed to be the first Housing Court Referee in Ramsey County. Currently, she is president of the Housing Preservation Project, a public interest law firm in St. Paul, MN, whose mission is to preserve federally assisted, privately owned affordable rental housing in Minnesota and across the country. Ann has written extensively and is a frequent speaker on a number of community development and affordable housing related issues.

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