S. HRG. 107–1014

# AFFORDABLE HOUSING PRESERVATION

## HEARING

BEFORE THE

## SUBCOMMITTEE ON HOUSING AND TRANSPORTATION

OF THE

## COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

PRESERVING THE EXISTING PRIVATELY-OWNED AFFORDABLE HOUSING STOCK CURRENTLY SUPPORTED WITH PUBLIC FUNDS UNDER A VARIETY OF FEDERAL HOUSING INSURANCE, SUBSIDY, AND ASSISTANCE PROGRAMS

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and may update or alter handbook policy via memorandum to meet changes in the state of the art of asset management and servicing.

In Chapter 10 of this Handbook, HUD states its intent in dealing with properties where HUD is the mortgagee as a result of a default and a FHA mortgage insurance claim. HUD-held mortgages are serviced until the note is sold or the mortgage is foreclosed.

The objectives of servicing HUD-held mortgages are: (A) Curing financial defaults and physical deficiencies after assignment by working with the mortgagor to maximize monthly remittance of payments and, if necessary, by providing mortgage relief consistent with the long-term viability of the project and the financial interests of the Government. (B) Encouraging the mortgagor to infuse funds, when necessary. (C) Ensuring that the mortgagor provides adequate management. (D) Preventing foreclosure where possible, thus, reducing the potential for further operating outlays from the insurance fund and the need for additional rent subsidies.

In Chapter 11 of the Handbook, the Department states its objectives for pursuing workouts on the defaulted HUD-held property. HUD's basic objective for projects with HUD-held mortgages is to develop a workable plan to stabilize the property, both financially and physically, and to minimize losses to the Department. The tools available to deal with a HUD-held property are identical to the Department's arsenal for at-risk Section 202's. These include refinancing, mortgage modifications, workout arrangements, transfer of ownership, release of funds from residual receipts or reserves, and when there are project-based Section 8 contracts, HUD can also consider debt restructuring through the OMHAR Mark-to-Market (M2M) Program, etc.

**Q.4.b.** Please provide data on how many properties and units have been foreclosed upon, how many of those properties have been transferred to nonprofits or for-profits, how many were sold with affordability restrictions, and what those restrictions are? Please include: How many times in the past 2 fiscal years has HUD decided that properties being sold through foreclosure or from the HUD-owned inventory would receive no subsidy, and that tenant-based vouchers for eligible tenants would be made available through the local housing authority?

**A.4.b.** For subsidized projects sold through either foreclosure or from the HUD-owned inventory, it has been the Department's policy since 1996 to provide tenant-based vouchers for eligible tenants in lieu of project-based Section 8 assistance. See attached 2001 and 2002 foreclosure charts (Exhibit #2).

**Q.5.a.** We are concerned by a number of instances where residents were not given proper notice of what was happening to their housing. In Texas, a property was sold at foreclosure sale with minimal affordability requirements despite the fact that notice was not adequate, and in Los Angeles, the city had to go to court to stop an owner from opting-out of Section 8 because proper notice was not given to the residents. In this instance, as we understand it, HUD approved this opt-out even though HUD requires that proper notification be given to residents. In a news article about this particular issue, advocates are quoted as blaming the problem on "a shift in Federal policy that favors giving tenants vouchers rather than re-

serving buildings for low-income residents." We are concerned that this shift in policy is leading HUD to ignore violations of its own requirements. Can you assure us that HUD is enforcing notice requirements before owners are permitted to opt-out of the Section 8 program? Please provide information an how HUD is enforcing these requirements.

**A.5.a.** The Section 8 Housing Assistance Payments (HAP) contracts between HUD and project owners, which provide for the project-based rental assistance, expire by their own terms. HUD does not have the legal authority to compel an unwilling owner to execute new project-based assistance contracts or to unilaterally prevent the contract from expiring. The Multifamily Assisted Housing Reform and Affordability Act (MAHRAA), 111 Stat. 1384 *et seq.,* provides tools to HUD to use in the event that an owner fails to provide adequate notice under the Federal statutes. For example, Section 514(d) of MAHRAA entitled "Tenant Rent Protections" authorizes HUD to offer to extend an expiring project-based rental assistance contract in order to give an owner sufficient time to provide the statutorily required 12-month notice to residents of their intent not to renew their project-based Section 8 contract. If an owner is unwilling to give adequate Federal notice, MAHRAA prohibits the project owners from increasing the resident's portion of the rent or evicting the residents for a period of 1-year. This, in effect, gives the residents benefit of the official notice required: It puts residents on notice that their subsidy situation may change in 1-year and it gives the residents 1-year to make alternate housing arrangements, if necessary.

In addition to the above protections, MAHRAA also provides that when a project-based rental assistance contract expires and the owner declines to renew or otherwise extend the contract, the Secretary must issue enhanced vouchers to eligible residents residing in the property at the date the project-based contract expired. The language of the statute is mandatory. The Secretary must issue the vouchers.

HUD has issued instructions to its Field Offices and Contract Administrators outlining the tenant notification requirements, and has provided specific instructions for proceeding when an owner has failed to provide proper notice. In addition to requiring that owners satisfy all statutory and programmatic notice requirements, Chapter 11, Section 11–4, of the Guide requires that owners who wish to opt-out provide HUD with a completed "Contract Renewal Request Form" not less than 120 days prior to contract expiration, confirming the decision to opt-out and certifying that the statutory notification requirements have been met (see Guide, Chapter 11, Section 11–4(F), and Attachment 3A–2 (Contract Renewal Request Form)). Upon receipt of this form, and if proper tenant notice was provided, HUD begins the process of making enhanced voucher assistance available to all eligible tenants residing in an assisted unit on the date of contract expiration or termination.

Additionally, individual tenants and tenant organizations are involved in the notification process from the outset. HUD has also published the Tenant Rights and Responsibilities Brochure, which provides a tenant with information regarding the tenant notification process.

In instances where faulty notice has been issued, HUD provides the owner with the option of a short-term contract, which will have a term sufficient to meet a full 1-year notice period. Owners who decline to enter into the short-term contract must permit the tenants to remain in their units without an increase in the amount of rent that the tenant must pay.

Enforcement Examples: Between fiscal year 2000 and 2002, there were approximately 74 projects, comprising 3,399 units, where HUD offered and the owner accepted an extension of the terminating contract in order to meet the required tenant notification.

**Q.5.b.** Where improper notice has been given to the residents HUD does not have to pay the owner the higher rents under enhanced vouchers. Has HUD used this tool to force compliance with notice requirements? Please provide information on when HUD has taken these actions and in how many cases.

**A.5.b.** The statute requires that HUD issue enhanced vouchers to eligible tenants residing in the property at the date the project-based Section 8 contract expires. To date, this tool has not been used by the Department to force compliance with the tenant notice requirements. However, significant revisions to the Section 8 Guide are currently under development and the revised guidance will address this matter. The revisions include guidance on how to address an owner who fails to issue proper 1-year notification to HUD/CA and the tenants. Legally, the owner must permit the tenants to remain in their units without increasing their portion of the rent for whatever period of time is necessary to meet all of the notification requirements.

In cases where improper notice has been provided, eligible families residing in the property will still be issued enhanced vouchers when the contract expires. The family may use the voucher to remain in their current unit or they may elect to use the voucher to move to another property. Should the family elect to remain in their current unit, the voucher housing assistance payments contract may not commence until the full 1-year notice has been met. The effect of this action is that the owner will not receive any voucher assistance payments until proper notice has been provided to the tenants.

**Q.5.c.** Your statement indicates that this issue will be clarified when HUD issues revisions to the Section 8 Renewal Guide "within the next few months." When does HUD plan to issue the revision? Please provide us with a copy of these revisions.

**A.5.c.** HUD is in the process of finalizing significant revisions to the Section 8 Guide and submitting the revisions through the Department's internal clearance process. Upon completion of the clearance process, the revisions will be made available and HUD anticipates issuing the revised Section 8 Guidebook during the second quarter of fiscal year 2003. In the area of tenant notification, the revisions will include guidance that will require HUD's offices to review all tenant notification letters within 30 days of receipt. If the owner does not comply with the statutory requirements, the owner will be advised that a new notification letter must be issued. If a faulty notice was provided, the statute requires that the owner must permit the tenants to remain in their units without an in-

crease in the portion of rent the tenant pays until a full 1-year notice period has elapsed.

**Q.6.a.** Under Section 250 of the National Housing Act, HUD may only allow prepayment in those situations where HUD finds that "the project is no longer meeting a need for rental housing for low-income families." How many prepayments has HUD allowed under Section 250?

**A.6.a.** Section 250(a) applies only to projects that receive some form of subsidy under or in connection with a mortgage (i.e., Sections 236 and 221(d)(3) BMIR projects and also projects receiving Rent Supplement payments). Accordingly, where only the Section 8 assistance or no assistance is provided, Section 250(a) is not applicable. The 128th *Congressional Record* S. 4078 supports this interpretation.

HUD has not approved any prepayments based on determination under Section 250(a); rather, HUD has made a determination that all projects that fall under this requirement are serving a low-income housing need. Based on that determination and recognizing the need for capital infusion into this type of housing in order to preserve the affordable resource, HUD has allowed prepayments only in those cases where the owner has agreed to ensure the property remains available to low-income families in the area. This has been accomplished by placing a Deed Use Restriction on these properties that restricts the use of the property to the same conditions required under the mortgage insurance program.

**Q.6.b.** Where prepayments have been allowed, how has HUD made the determination that the housing was no longer needed? Please provide the written guidelines that HUD uses to make these determinations.

**A.6.b.** As stated above, HUD has decided that any property subject to Section 250(a) is to be kept affordable and has used use restrictions to maintain affordability.

**Q.6.c.** Please provide information and data on each prepayment allowed under Section 250 in the last 2 years.

**A.6.c.** As stated above, HUD has not approved any prepayments under Section 250.

**Q.7.** Last year, we passed the "Mark-to-Market Extension Act," which the President signed into law in January of this year. Section 613 of the law requires HUD to ensure that rent levels offered to owners through the project-based program are the same as the rent levels offered through enhanced vouchers. We included this provision because we heard numerous reports, from both owners and residents, that owners were getting higher rents through the enhanced voucher program, thereby giving them an incentive to opt-out of their long-term affordability commitments. What steps has HUD taken to implement Section 613 of the law, and what have the results been? Please provide data and specific examples.

**A.7.** Section 613 required HUD to ensure rent levels are "reasonably consistent and reflect rents for comparable unassisted units." The three types of Section 8 assistance affected are project-based Mark-to-Market renewals with market rents set by the OMHAR, project-based renewals with rents determined by the Multifamily