The Harvard Joint Center for Housing Studies advances understanding of housing issues and informs policy through research, education, and public outreach.

Working Paper, March 2016

JCHS

To Preserve Affordable Housing in the United States: A Policy History

Alexander von Hoffman
Sr. Research Fellow, JCHS

Abstract

Starting in the 1960s, the United States government embarked on a new approach to providing rental housing to low-income people. Federal policy shifted from public housing to public-private arrangements in which private companies, both nonprofit and for-profit enterprises, would build and manage social welfare housing. The public-private housing programs created in the 1960s and 1970s were highly productive but many of the housing projects, buffeted by bad underwriting, weak management, and economic hard times, deteriorated badly. In response housing advocates produced programs and procedures to rescue troubled projects by buttressing their finances or conveying them to responsible parties.

Then, in the 1980s, the subsidies of the housing programs began to expire, raising the prospect that the low-income residential stock would either deteriorate or be converted to expensive private-market housing. Housing advocates now threw themselves into stopping the new threats to subsidized housing. At first housing owners battled against housing advocates, but in the 1990s the two sides joined forces to maintain the subsidized housing for low-income households. The resulting programs to preserve affordable housing have become a key component of American low-income housing policy.

To Preserve Affordable Housing in the United States: A Policy History

Alexander von Hoffman, Senior Research Fellow

Joint Center for Housing Studies

Harvard University

To Preserve Affordable Housing in the United States: A Policy History

Chapter I. Introduction

Most Americans who have any idea about low-income housing policy in the United States think of it as composed of programs that either build and manage residences – such as public housing – or help pay the rent – such as rental vouchers. Few people realize that much, perhaps most, of the government's effort to house poor families and individuals is now devoted to supporting privately owned buildings that, courtesy of government subsidies, already provide low-income housing. Similarly, few know of the national movement to prevent these rental homes from being converted to market-rate housing or demolished and to keep them affordable and available to low-income households.

The problem of "preservation of affordable housing" generally refers to privately owned but government-subsidized dwellings developed under a particular set of federal subsidy programs. Although the first of these programs was enacted in 1959, their heyday – when they produced the bulk of government-subsidized low-income housing – lasted from the late 1960s until the mid-1980s. Before these programs were adopted, the government's chief low-income housing program had been public housing, in which government agencies funded, developed, owned, leased, and managed apartments for people of limited incomes on a permanent basis.

Starting about 1960, however, the government shifted to a new policy in which it provided subsidies limited to a specific length of time to private developers of low-income rental housing. These private developers could be nonprofit organizations or for-profit companies operating through entities that earned limited dividends. In the low-income rental programs of the 1960s the government subsidized the rents of poor tenants by providing low-interest mortgage loans (through mortgage insurance and/or direct payments) to the projects' developers. In 1974, Congress added another program, Section 8, in which the government signed a contract to pay a portion of the tenants' rents for up to twenty years, which was as long as the mortgage subsidies had been.

After the low-income rental projects were completed, a number of circumstances threatened to displace the projects' low-income occupants from their homes. In the early years especially, some owners faced financial difficulties, including foreclosures. Starting in the boom years of the 1980s, others desired to pay back their subsidized mortgages early (or "prepay") to rent or sell the apartments at lucrative market rates. And eventually all owners reached the end of the time limit of their original subsidies. To keep low-income tenants in the subsidized apartments, housing advocates fought to keep the subsidized projects livable and within the means of poor people. The cause they rallied to was the "preservation of affordable housing."

This first phase in the history of affordable housing preservation set the stage for the following phases. It introduced people in the housing field to particular issues – especially financial ones – that beset the subsidized housing projects. Those individuals – and the organizations with which they were affiliated – who had a stake in sustaining these properties and protecting their residents gained experience with the mechanics and regulations of the relevant housing programs. From among their ranks would emerge a core of leaders, who in the following decades would fight the threats posed by the prepayment of government-subsidized mortgages and the expiration of rental subsidy contracts.

Since the late 1980s a wide array of interests – including for-profit owners and investors, non-profit developers and managers, and tenants – have organized their interest-group associations and entered into coalitions with one another to shape government policies. They have worked with sympathetic members of Congress and their aides to preserve the subsidized housing stock for low-income Americans. The road has been rough at times. The Reagan administration was indifferent at best to the issue. Legislation in 1987 and 1990 for all practical purposes banned prepayments, angering the owners' representatives who opposed these laws. After prepayments were again allowed, advocates and owners joined together again to push for affordable housing preservation programs and procedures. The government programs that they attained in the 1990s became a major component of low-income housing policy in the United States.

Until relatively recently, the interest groups focused on shaping federal policy. They worked to pass – or repeal – national legislation and to influence program rules set by the Department of Housing and Urban Development (HUD). Although the federal government continues to be essential to housing policy, the growing political opposition to large federal spending programs has led advocates of affordable housing preservation to press state governments for financial support. At the same time, a new generation of sophisticated and financially hard-nosed nonprofit organizations has emerged to lead the mission-driven sector of housing preservation.

Definitions

In general, the reformers, practitioners, investors, and legislators interested in the issue of "preservation of affordable housing" define "affordable housing" as government-subsidized, privately owned rental apartments inhabited by low-income households. Since their development, such properties have been subject to a variety of circumstances – including the expiration of the government subsidy or the rise in land values of and potential market for the properties – that encourage their owners to convert them to unsubsidized properties. The term "preservation," as used by people in this field, refers to acting to ensure that such properties remain affordable to low-income households. The usual method for keeping the rents low enough that low-income families and individuals can comfortably pay them is to refinance the housing developments and replace or renew rental subsidies.

There are exceptions to these definitions. Many but not all practitioners define the target of preservation efforts as multifamily rental properties, not single-family homes, even though many housing reformers believe home ownership is a key to the well-being of low-income families. Occasionally some people will include public housing in the category of homes that are subject to preservation. Recently a few people in the field have begun to consider whether unsubsidized low-rent dwellings should also be protected. Furthermore, the terms "affordable" and "preservation" are vague and could easily refer to meanings other than those practitioners generally apply to them. Unless otherwise specified, however, this paper will follow the generally accepted definitions and boundaries of the housing preservation issue as one that concerns government-subsidized, privately owned, low-income rental housing.

<u>Chapter II. The Creation of Privately Owned Subsidized Low-income Rental Housing</u>

The Early History of the Federal Government Programs

The affordable housing that has been the object of preservation campaigns is privately owned but subsidized by the government. It was the product of a policy that combined the social welfare goals traditionally carried out by government with the means and methods of private enterprise. Since the 1930s the government had pursued two different approaches to helping Americans get homes. In one approach, aimed at supporting the private housing industry, the Federal Housing Administration (FHA) offered mortgage insurance to lenders, who lent money primarily to the purchasers of single-family houses, but also to developers of multifamily projects. In the other approach, supported by social reformers, federal and local public housing authorities built and managed apartment buildings for low-income citizens to rent. During the 1940s and 1950s, the supporters of each approach fought each other bitterly over whether to continue the public housing program and where to draw the income line between the ultimate consumers of each program, but both approaches survived.

At the same time, however, the nation's political leaders enacted a series of programs that combined the two approaches by providing government financial incentives to private developers – not public agencies – to house needy Americans. The principal, although not the only, method, was to extend the types of FHA mortgage insurance to housing deemed socially worthwhile. It was first tried in the housing emergencies that occurred during and immediately after World War II. To spur redevelopment of cities and to a certain extent find a replacement for the public housing program, in 1954 the Congress enacted experimental mortgage insurance programs for urban renewal sites and low-cost housing for people displaced by urban renewal or highway construction. These programs tended to be temporary or restricted in nature.

At the end of the Eisenhower administration, the federal government produced the next generation of hybrid housing programs – combining private industry methods with social welfare goals – that would produce the dwellings that years later became the targets of preservation efforts. The authors of the first hybrid housing programs intended them to help people whose income was low but still too high to qualify to live in public housing, which is perhaps why their authors thought it practical to rely upon private developers.

In 1959, Congress, buoyed by Democrats who had won healthy majorities in the previous year's election, passed an elderly housing program originally targeted at those who earned too much to qualify for public housing but not enough to pay for market-rate housing. Section 202 of the National Housing Act authorized the government to provide low-interest, long-term (forty or fifty years) loans to nonprofit organizations to develop homes for moderate-income elderly families and individuals.

Two years later, when the Democrats had captured the White House, the nation's top housing official, Robert Weaver, proposed a bill, titled Section 221 (d) (3) but sometimes known by its funding mechanism as the Below-Market Interest Rate program. Passed as part of the Housing Act of 1961, the provision allowed the government to lend money for up to forty years to private nonprofit, cooperative, and limited-dividend companies to develop rental structures for moderate-income families. Both the 1959 and 1961 programs used the mechanism of a low interest rate to enable developers to offer lower rents than they would have otherwise. In 1965, Weaver proposed a Rent Supplements bill using a different mechanism: government subsidized the difference between a rent based on the cost of operating a project and 20 percent of an eligible tenant's income. A brouhaha in Congress forced a change from the original legislation so that Rent Supplements helped not moderate-income people but rather those who earned at public housing levels.[1]

The following year, the United States adopted a program for low- and moderate-income rental housing in rural areas. The Senior Citizens Housing Act of 1962 established Section 515 of the National Housing Act to produce homes for the elderly. Although the Department of Agriculture, not HUD, had jurisdiction over the rural elderly housing program, in some ways Section 515 resembled the urban elderly housing program, Section 202. As in Section 202, the government made direct loans to developers of elderly housing and could only lend to nonprofit and cooperative developers. As in other HUD subsidy programs, the government provided a relatively inexpensive loan to developers so that they could offer lower rents than would be possible under conventional financing.

Section 515 had a restriction that the Section 202 elderly housing program did not: the government could only make loans to developers in places where credit on reasonable terms was not available. The rural rental housing program was set up like its predecessor, the farm housing provision of the Housing Act of 1949, which helped low-income people to purchase a house or farm when no other credit was available. In both the farm housing program and the rural rental housing act, the lack of credit in rural areas prompted legislative action, and the available credit provision reassured the private lending industry that the government would not

---

[1] Libby Perl, *Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents* (Washington, D.C.: Congressional Research Service, 2010); R. Allen Hays, *The Federal Government and Urban Housing: Ideology and Change in Public Policy,* 2nd ed. (Albany: State University of New York Press, 1995), 103-105.

encroach on its business. Both acts stipulated that should reasonable private financing become available, borrowers were to refinance with private lenders. In 1966 Section 515 diverged further from Section 202 when Congress broadened its reach to include development of rural housing for low- and moderate-income families as well as the elderly.[2]

These programs, all somewhat experimental in nature, started slowly, and it was not until the presidency of Lyndon Johnson that private development of low-cost rental housing expanded into a mass program aimed at low-income families, including those whose earnings qualified them for public housing. After Johnson's election in 1964, his Great Society and anti-poverty campaigns produced an unprecedented battery of civil rights laws and social programs. Every summer, nonetheless, increasingly severe riots broke out in the racial ghettos of cities across the country, creating a national sense of urban crisis. Then, in April 1968, the assassination of Martin Luther King, Jr. and the violence that followed left many feeling that the fabric of American society was being ripped asunder. In the midst of the national emergency, Johnson initiated two blue-ribbon committees to solve critical urban and housing issues. One of them, the President's Committee on Urban Housing (known as the Kaiser Committee after its chairman, the industrialist Edgar Kaiser) worked with the Congress, particularly John Sparkman, chairman of the Senate Subcommittee on Housing and Urban Affairs, and HUD to propose legislation that would completely rebuild America's slums.

The parties produced the Housing Act of 1968, which set a goal of producing 26 million dwellings in the United States in the following decade. Six million of these homes were to house

[2] Paul E. Grayson, "Farm Housing in the United States and Recent Farm Housing Legislation," *Journal of Farm Economics* 32: 4, part 1. (Nov. 1950): 595-97; Arthur M. Collings, Jr., "Rural Rental Housing Preservation: The FmHA Experience," *Housing Policy Debate* 2:2 (April 1991), 559.

low-income families and individuals. A primary means for generating these dwelling units was a rental program, Section 236 of the National Housing Act. Its authors intended it to replace the Section 221 (d) (3) Below-Market Interest Rate (BMIR) program with a high-volume scheme for multifamily rental units.[3]

Unlike the earlier Section 221 (d) (3) program, written by Robert Weaver's government staff, the representatives of the home building industry helped design the new rental program so as to make it enticing to private developers. As such it offered both mortgage insurance for forty-year loans and a subsidy for interest payments which in effect lowered the interest rate to one percent, which was below the market level. A further incentive was that owners were allowed to prepay their subsidized mortgages after twenty years in order to deregulate the properties and escape the requirement to rent to low-income households. The authors of this regulatory provision thought little of it – they did not foresee much demand for the properties – but years later it would vex housing reformers who led the effort to prevent owners from leaving the subsidy program. Thanks to the greater level of subsidy, Section 236 aimed to provide homes for lower-income groups than had the BMIR program. In addition, the 1968 law extended the same subsidy to the Section 515 rural housing administered by the Department of Agriculture.

The federal tax code provided other powerful incentives to investment in Section 236 housing. The law allowed owners to use accelerated depreciation schedules for new residential rental property and, after the Tax Reform Act of 1969, rehabilitated low-income rental housing.

[3] The other major provision for low-income housing in the 1968 act was a home ownership program, Section 235. It soon became bogged down in scandal, and thus was limited in scope until it was completely terminated in 1987. In any case, because it was a program encouraging low-income households to purchase homes, it falls outside the boundaries of this study of multifamily affordable housing.

By declaring the long-term depreciation of the property at the outset, owners could produce an income tax loss even as the property generated a positive cash flow from its rents. "Therefore," a tax lawyer cheerfully concluded in 1970, "the owner can receive 'tax free income' from the property plus a deduction against his personal income due to accelerated depreciation." Ownership of a Section 236 project, in other words, provided a valuable tax shelter.[4]

During the 1970s, the government revised the privately owned subsidized programs once again. President Richard Nixon's administration pursued different and somewhat contradictory housing policies. In the first few years, HUD Secretary George Romney energetically implemented the housing production goals and programs of the 1968 Act. But a rising chorus of bipartisan criticism of federal low-income housing programs – of fraud in the Section 235 home ownership program, mismanagement in public housing, and high rates of mortgage defaults in Section 236 – as well as the budget priorities of the Office of Management and Budget, led Nixon in 1973 to instruct Romney to impose a moratorium on new expenditures for subsidized low-income housing programs for the next eighteen months. During that time, the Nixon administration shifted its support to rental vouchers and block grants for community development and housing. But the private building industry and their supporters in Congress insisted upon production programs.

As a result, the omnibus Housing and Community Development Act of 1974 included, besides the landmark community development block grants and Section 8 existing housing rent supplements, a new low-income housing program. The Section 8 New Construction and Substantial Rehabilitation program was designed to replace and improve upon Section 236. In part because the interest rate subsidy in the earlier rental programs failed to reach the very low income population and was vulnerable to fluctuations in the economy, the subsidy in the

---

[4] Other tax incentives that investors in subsidized housing would enjoy included "liberal provisions for the recapture of accelerated depreciation in event of sale, 5-year write-off of rehabilitation costs, deferment of taxable gain when it is reinvested in other subsidized housing, and allowance of a fair market value rather than depreciated cost as a deductible item when housing is donated to qualified charitable organizations." United States Congress, Joint Economic Committee, Subcommittee on Priorities and Economy in Government, *Housing Subsidies and Housing Policies. Hearings*, 92nd Congress, 2nd Session. December 4, 5, and 7, 1972 (Washington,D.C.: U.S. Government Printing Office [hereafter GPO], 1973), 15; Michael J. Cenatiempo, "Tax Advantages under Section 236 of the National Housing Act," *Houston Law Review* 8 (1971): 911-28, quotation at 912; [Robert S. Venning], "Accelerated Depreciation for Housing Rehabilitation," *Yale Law Journal* 79: 5 (April 1970), 961-72.

Section 8 New Construction and Substantial Rehabilitation program took the form of a direct rent supplement. In this Section 8 program, owners received the difference between a "fair market rate" and 25 percent (later 30 percent) of a tenant's income. With a commitment from the government to cover a portion of the rents, the owners could obtain conventional or subsidized financing (increasingly available from state finance agencies) as well as take advantage of the same tax depreciation shelters that were allowed for Section 236. Although the owner could retain some units for market-rate rents, the deeper subsidy provided by Section 8 allowed it to target a low-income group that would not have otherwise been helped.[5]

With a clearer subsidy mechanism and simpler profit incentives for developers than those of Section 236, Section 8 New Construction and Substantial Rehabilitation for the most part would avoid the financial difficulties that plagued its predecessor. In fact, as we will see, Section 8 subsidies would be employed to stabilize the finances of financially troubled Section 221 (d) (3) and Section 236 properties. The main issues with Section 8 New Construction and Substantial Rehabilitation would be the expiration of its projects' subsidy contracts and the cost of the program as a whole.

The 1968 and 1974 housing programs broke the earlier logjams and set off a surge in production of rental apartments. From 1961 to 1968, the Section 221 (d) (3) program created at least 159,000 units, with more than 15,000 still covered by loans issued under the original program as of 2010. In contrast, its replacement, Section 236, which lasted from 1968 to 1974, generated about 544,000 units, of which about 150,000 were still subject to FHA-insured loans. The Section 8 New Construction and Substantial Rehabilitation program, which was started in 1974 and terminated officially in 1983, yielded even more dwellings: more than 850,000 units. Between 1959 and 1968, the elderly housing program, Section 202, produced only 45,250 dwellings, but between 1974 and 1988 developers used a combination of Section 202 construction loans and Section 8 project-based rental assistance to add about 129,000 more units.[6]

---

[5] Alex F. Schwartz, *Housing Policy in the United States* 2nd ed. (New York: Routledge, 2010), 161-62.

[6] Sources differ on the exact numbers produced by these programs. One reason is that because of the multitude of sponsors and dispersed projects, HUD apparently did not track the projects carefully. Another, as Olsen points out,

The First Threats

Despite the productivity of the Section 236 program, within a few years privately developed low-income housing was mired in controversy. Attacks, fair and unfair, came from all sides. A HUD-sponsored task force recounted the myriad complaints:

> FHA processing was too slow and project development was enmeshed in red tape. Even with FHA reviews, construction was shoddy and architectural designs were poor. Private enterprise was "getting rich" at the expense of low- and moderate-income families. Tax incentives did not work and offered too much gain for too little work in some cases, and too little gain for too much work in other cases. In some communities, the subsidized units were being placed in the least desirable areas. In others, they were being built in areas where poor families did not belong. In still other communities, too few of these units were being built in urban and rural poverty areas. The subsidies offered were not sufficient and did not aid the families who most needed them. Management was poor and there were no incentives to make it better. Meanwhile, federal

---

is because of the lag between the appropriations for projects and their completion, these programs continued to produce dwelling units long after they had ceased to receive new appropriations. Schwartz extrapolated from Henry J. Aaron's computation of HUD production records and estimates (for 1971 and 1972) that Section 221 (d) (3) BMIR produced about 184,000 units. Olsen relied on government budget figures and generally found higher production numbers. He found that Section 8 New Construction and Substantial Rehabilitation production, for example, peaked in 1996 at 907,000 units. The Congressional Research Service authors, Maggie McCarty and Libby Perl, relied on the National Low-Income Housing Preservation 1988 report for production numbers under the Section 221 (d) (3) and Section 236 programs. Schwartz, *Housing Policy*, 130-31, 133; Henry J. Aaron, *Federal Housing Subsidies: History, Problems, and Alternatives* (Washington, D.C.: Brookings Institution, 1973), 229; Perl, *Section 202 and Other HUD Rental Housing Programs*, 3, 5; Edgar O. Olsen, "Housing Programs for Low-income Households," National Bureau of Economic Research Working Paper 8208, 2001. http://www.nber.org/papers/w8208, 6, table 5: "Number of Units Eligible for Assisted Housing Payments by Program Type, End of Fiscal Year"; National Low-Income Housing Preservation Commission, *Preventing the Disappearance of Low-Income Housing*, A Report to the House Subcommittee on Housing and Community Development and the Senate Subcommittee on Housing and Urban Affairs (Washington, D.C.: National Corporation for Housing Partnerships, 1988), 17, 20, 77; Maggie McCarty and Libby Perl, *Preservation of HUD-Assisted Housing*, Congressional Research Service Report R41182 (Washington, D.C.: Congressional Research Service, 2010), 6-7.

obligations for future interest subsidy payments were being built up at a rapid pace.[7]

Federal officials were most concerned about the financial problems, and not only for reasons of economic efficiency. If projects were foreclosed, the government was on the hook for the properties and their mortgages. By late 1972, 10 percent of all the projects developed through the 221 (d) (3) program were in default. The rate for defaults in the Section 236 program was only 3 percent, but a task force for the National Corporation for Housing Partnerships estimated that it would eventually hit 10 percent. In the following years, as officials at HUD and in Congress feared, the problems spread even further throughout the inventory. By 1977, 1,211 projects or 18 percent of the Section 221 (d) (3) and Section 236 projects were in financial trouble. If left unchecked, a special HUD task force calculated, by 1982 the number of projects of which HUD had either become the owner or the mortgagee (taking assignment of delinquent loans as the mortgage insurer) could rise to more than 3,000 – two years' worth of government-subsidized housing production. The losses to the FHA insurance fund alone, the task force warned, could run over $3 billion![8]

Outside Washington, the troubles with the new subsidized housing stock provoked the greatest outcry in Boston, Massachusetts. Boston became a hot spot for a number of reasons. The city had a remarkable amount of subsidized housing: Boston's 11,300 units of new and rehabilitated subsidized housing equaled eight times the amount that one would expect if it were proportional to the city's population. Between 1960 and 1969, the development of privately owned subsidized housing accounted for 20 percent of the total of new residential construction in Boston, and by 1972 subsidized development had grown to 60 percent of new construction. Subsidized development ran rampant in part because the Boston Redevelopment

---

[7] Task Force on Improving the Operation of Federally Insured or Financed Housing Programs, *Report of the Task Force on Improving the Operation of Federally Insured or Financed Housing Programs*, vol. 3: Multifamily Housing, (Washington, D.C.: National Center for Housing Management, 1973), 60.

[8] Boston Redevelopment Authority (BRA) and Boston Urban Observatory (BUO), *Subsidized Multi-Family Rental Housing in the Boston Metropolitan Area: Analysis and Prognosis* (Boston: BUO, 1973), 4-5; Multifamily Property Utilization Task Force, *Final Report of the Multifamily Property Utilization Task Force* (Washington, D.C.: U.S. Dept. of Housing and Urban Development, Office of Housing-FHA, 1978), 1-2, 56-58.

Authority (BRA) used subsidized developers to replace the many dwellings it demolished for urban renewal and in part because HUD was running the Boston Rehabilitation Program (abbreviated for unknown reasons as BURP), a demonstration program to renovate apartment buildings for low-income tenants.[9]

Another reason for the unhappiness with subsidized housing in Boston was that a disproportionate number of its projects were in financial hot water. In 1972 nearly one third of all subsidized projects in the Boston metropolitan area were in either default, mortgage assignment to HUD, or foreclosure. Within Boston itself, 40 percent of all the housing developments – most located in the low-income racial minority neighborhoods of Roxbury, Dorchester, and the South End – were in such trouble. Five years later a staggering 63 percent of the city's 115 private subsidized properties had fallen into default or worse, threatening 7,000 families with either rent increases or loss of their apartments. Some large and highly visible projects were poorly designed and built – ironically using supposedly advanced precast concrete construction – and badly maintained.[10]

A plethora of political activists called Boston home, thanks to the city's large number of universities and its liberal political tradition and many of them now threw themselves into helping the hapless residents of these apartment buildings. Politically engaged urban planners, legal service lawyers, organizers, and tenants were upset that the troubled subsidized housing projects threatened the tenants' well-being. Stirring up the tenants' defenders further, the BRA and HUD carried out the housing programs with the city's largest apartment developers and landlords – owners such as Maurice Simon and Harold Brown – who some Boston residents considered to be unprincipled slumlords. The advocates helped the tenants organize unions to fight the buildings owners' rent hikes and poor maintenance and clamored for government to fix the problems in the subsidized housing stock. Fortunately for them, officials in Mayor Kevin White's administration and the Boston Redevelopment Authority also were concerned about

---

[9] BRA and BUO, *Subsidized Multi-Family Rental Housing*, 1-2.

[10] Boston Urban Observatory, *Reconnaissance Report of the Subsidized Housing Study*, draft (Boston: BRA, 1972), 43; BRA and BUO, *Subsidized Multi-Family Rental Housing*, 10; Multifamily Property Utilization Task Force, *Final Report*, 24.

problems in the new low-income housing projects and supported the advocates' calls for investigations and new policies.[11]

Programs Rife with Weaknesses

In the early 1970s, at least two congressional committees, the Comptroller General of the United States, and a blue-ribbon task force convened by HUD conducted full scale investigations of America's subsidized low-income housing programs. They diagnosed numerous weaknesses in the ways the rental programs were implemented. To some of the investigators, geographic location of subsidized housing was more important than others. The Comptroller, for example, felt the allocation of federal housing funds poorly served some regions of the country, and a congressional committee criticized the tendency of developers to situate their projects in inner-city areas. But if parties differed somewhat in the scope of their analyses, they all concurred that there were major problems with the development and management of the subsidized rental housing projects, many of which were ballooning the costs of the program.[12]

The process of obtaining land, one of the first steps in developing housing, contributed heavily to the projects' expense. The local HUD-FHA office appraised the site or buildings and used the resulting figure to calculate the total project cost and the size of the mortgage the developer was allowed to obtain. But whether out of sympathy for the sponsors or poor understanding of local market conditions, FHA offices often placed a considerably higher value on the properties than the price the sponsors eventually paid. FHA appraisers in Atlanta, Dallas,

[11] Urban Planning Aid, Inc. [Emily Achtenberg and Michael Stone], *Tenants First! A Research and Organizing Guide to FHA Housing* (Cambridge, Mass.: 1974); Langley C. Keyes, Jr., *The Boston Rehabilitation Program*: *An Independent Analysis* (Boston: Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, 1970), 99, 125-26; Vincent O'Donnell, telephone interview with author, Boston, March 14, 2011.

[12] These investigations also delved into the new low-income home ownership program, Section 235, which had generated a major scandal concerning fraud by FHA field offices and real estate brokers. Statement of Hon. Elmer B. Staats, Subcommittee on Priorities and Economy in Government, United States Congress Joint Economic Committee, *Housing Subsidies and Housing Policies. Hearings,* 13; Elmer B. Staats, Comptroller General of the United States, *Opportunities To Improve Effectiveness and Reduce Costs of Rental Assistance Housing Program*, report to the Congress, B-171630 (Washington, D.C.: Government Accountability Office, 1973), 9-15; Hays, *The Federal Government and Urban Housing*, 122-123.

and Los Angeles, the office of the Comptroller General discovered, had overvalued land in forty-seven out of sixty-eight projects. In Boston the practice was far worse: there a HUD audit of sample properties found that appraised values exceeded the eventual sales price in every case, including one in which the appraised value was seven times greater. The excessive appraisals led to higher mortgages, which allowed sponsors to reduce the size of their investments; induced the government to pay higher-interest subsidies (thereby raising the costs of the program); and enabled owners to justify charging higher rents to pay back the mortgages.[13]

Inflated Costs

The gap between projected and actual operating costs of the subsidized projects posed another great problem. The various Washington investigators agreed that housing sponsors overstated construction costs – thus protecting against unanticipated out-of-pocket building expenses – and understated projected operating costs in order to get the FHA to approve their projects as financially feasible. During the construction phase, the housing programs provided numerous incentives and opportunities for profits, thus driving up costs. Limited-dividend sponsors could earn above the 6 percent profit limit by forming a partnership with a contractor or architect and sharing in their profits, which were not capped at 6 percent. The contractors could tap additional revenue streams by taking on project subcontracting, bidding higher for this virtually guaranteed work than they would if they had been competing for a conventional job. The FHA generally approved these inflated construction budgets.[14]

After the projects were built, the actual operating costs escalated. External economic conditions such as high rates of inflation and spikes in the price of oil were partly to blame, but so also was the underwriting which underestimated the costs of maintaining the properties. The programs' financial incentives rewarded developers (or their consultants) for building the housing. This led developers, the author of a 1972 study of Boston properties recalled, "to

[13] Statement of Hon. Elmer B. Staats, *Housing Subsidies and Housing Policies,* 13; Staats, *Opportunities,* 17-21; Urban Planning Aid, Inc. [Emily Achtenberg and Michael Stone], *Tenants First!*, 17; Task Force on Housing Programs, *Report*, 115-116.

[14] In such partnerships, FHA would recognize an "identity of interest," which made the parties eligible for the Builder's and Sponsor's Profit and Risk Allowance (BSPRA) that was based on all costs, not only the construction cost. Task Force on Housing Programs, *Report*, 107-109, 117; Urban Planning Aid, Inc. [Emily Achtenberg and Michael Stone], *Tenants First!*, 16.

tinker with the pro forma numbers, so that if you just pretend that the operating costs are lower than they're actually going to be, then you can show enough net income to leverage enough debt to make the project … look feasible." In these cases, actual operating costs promptly rose above the amounts estimated by the project's underwriting, throwing the properties into ever-increasing operating deficit. The rises in operating costs translated into hikes in rent, deferred maintenance, or both. Meanwhile, HUD took a long time to process requests to increase subsidized rents based on rising operating costs, which exacerbated the existing financial difficulties.[15]

Worse yet, the investigators agreed, the government's system for production gave profit-oriented limited-dividend entities little reason to operate the properties well over the long term. Most of the economic benefits of the subsidized projects came in the development and early years of ownership. Initially, limited-dividend sponsors could earn cash returns by selling equity in the projects to passive investors, but after the tenth year of owning a project, the lucrative tax shelters diminished. From then on, owners had little motivation to maintain the properties either financially or physically, and might feel tempted to sell them to any parties who would buy them.[16]

Meanwhile, Back in Boston

While the Washington investigations were underway, Boston activists were delving deeply into the implementation of the Section 221 (d) (3) and 236 programs. With the financial backing of the Boston Redevelopment Authority and technical support in City Hall, they conducted a painstaking inventory of the history, finances, and status of every subsidized project in Boston. They found many of the same problems as the Washington officials had, but the activists brought both detailed local data and a sense of outrage that was missing from the government reports. Having become engaged in the housing issue on behalf of tenants, they were appalled by the seemingly unjustified rent hikes, treatment of project residents, and unreasonable profits of the limited-dividend sponsors and their contractors (who were

[15] O'Donnell, interview; Hays, *Federal Government and Urban Housing*, 122-25.

[16] Task Force on Housing Programs, *Report*, 102-3, 113; Statement of Hon. Elmer B. Staats, *Housing Subsidies and Housing Policies,* 14-15; Staats, *Opportunities*, 28-35, 36-37; Hays, *Federal Government and Urban Housing*, 124-125.

sometimes the same). The activists charged that tenants bore the brunt of the mismanagement, "equity fraud," and adverse government rules and administration. Even more than the government investigators, the Boston activists stressed the high costs of the construction and running of the subsidized projects, breaking down numerous factors that drove costs up. If anything, they were more critical than the Washington investigators of HUD red tape and sluggish processing.[17]

Despite their great suspicion of the profit-oriented, limited-dividend developers and owners of subsidized housing projects, the Boston activists had to admit that many nonprofit and cooperative sponsors ran projects that were just as bad or worse. Many nonprofit organizations, however idealistic, lacked experience in dealing with builders, architects, and lenders, which led to miserable financial and physical conditions in their projects. Unlike today's sophisticated community development corporations and housing developers, many of the nonprofit owners of Sections 221 (d) (3) BMIR and 236 properties in Boston were one-time single-purpose entities guided by consultants to develop properties in formulaic fashion. According to a housing activist at the time, the directors of some of the companies started by churches – including Charles St. AME Church, Bethel Tabernacle Church, and St. Mark's Congregational Church –would try to protect their low-income tenants by postponing rent increases, which left them to choose between curtailing maintenance or skipping mortgage payments.[18]

Furthermore, for financial reasons – such as nonprofits' use of private for-profit contractors and reliance on 100-percent financing which was repaid from rents – the rates at which nonprofits leased apartments were no lower than those charged by limited-dividend developers. By the mid-1970s, after FHA made it more difficult for them to get mortgages, some nonprofit community groups formed for-profit companies, which often joined with

[17] Urban Planning Aid, Inc. [Emily Achtenberg and Michael Stone], *Tenants First!*, 16-23; BRA and BUO, *Subsidized Multi-Family Rental Housing*, 7-12, 31-44.

[18] O'Donnell, interview; Vincent O'Donnell, written communication with author, July 8, 2012.

experienced developers and shared tax shelter and syndication revenue. As such, they were no better landlords than anyone else.[19]

In their efforts to shine a spotlight on the problem of the subsidized multifamily stock, the activists found an ally in the Boston office of HUD. Far from being submissive bureaucrats, the Boston HUD staff members, led by Marvin Siflinger, on their own initiative prepared a strategy paper for ways to deal with the financially distressed inventory. “We are faced with a housing crisis,” the report began boldly, “in the City of Boston.” Explaining that 7,000 poor tenants faced large rent increases or displacement from their homes, the authors blamed the shallow subsidies of the Section 221 (d) (3) and Section 236 programs, unanticipated escalation of operating expenses, and the inability of the tenants to pay enough rent to make the buildings’ finances work. The report helped keep Washington officials focused on the problem.[20]

First Wave of Government Remedies

As federal government officials became aware of the financial problems in privately owned subsidized housing and the threat they posed to the FHA’s insurance fund, they tried to stabilize the situation and deal with properties that were landing in HUD’s lap.

Although Democrats were loath to give her credit, Carla Hills, HUD Secretary under President Gerald Ford, in March 1976 took the first major step to right the listing projects without raising rents. HUD added the Loan Management Set Aside subsidy to its implementation of the Section 8 program, passed two years earlier. It offered owners of struggling FHA-insured projects (including those with Section 202 loans and Section 221 (d) (3) and Section 236 subsidies) payments that made up the difference between what the tenants were currently paying and a rent that would allow the owners to avoid a default. To keep the properties afloat, the Loan Management Set Aside program even provided for two months of 80 percent of the rent for vacant units. Under Hills, HUD ordered its regional field officers to

[19] Urban Planning Aid, Inc. [Emily Achtenberg and Michael Stone], *Tenants First!*, 23; BRA and BUO, *Subsidized Multi-Family Rental Housing*, 41, 50-55; Task Force on Housing Programs, *Report*, 101-2.

[20] U.S. Department of Housing and Urban Development Boston Area Office, “Assisted Multi-family Project – City of Boston: A Strategy Paper” (Boston: HUD, 1977).

allocate the supplemental cash from the Section 8 program to prevent defaults in those properties. The program would endure: in 1994 Congress would terminate new funding for this subsidy, but five years later Loan Management Set Aside payments were still assisting about 450,000 units of housing.[21]

Despite the Loan Management Set Aside, the financial condition of subsidized housing projects, particularly those developed under Section 236, continued to deteriorate during the late 1970s. In response, President Jimmy Carter's Secretary of HUD, Patricia Harris, organized a Multifamily Property Utilization Task Force to explore the causes and consequences of financial failure of Section 221 (d) (3) and Section 236 programs.

The task force was a creature of HUD; its members included HUD Assistant Secretary for Housing-Federal Housing Commissioner Lawrence Simons, HUD Assistant Secretary for Policy Development and Research Donna Shalala, and two dozen HUD staff members. Its chair, Marilyn Melkonian, the deputy assistant secretary for multifamily housing programs, formerly had worked as a legislative aide to Massachusetts Senator Edward Brooke. Besides drawing on recent congressional testimony and a report by the HUD Boston office on troubled properties there, the task force studied 338 projects – visiting 83 of them – located in thirteen different field offices.

Invoking the views of congressional supporters of new construction of low-income housing, the task force criticized the use of the Loan Management Set Aside for draining Section 8 funds that could be used to produce more low-income housing. It also dismissed a new operating subsidy funded from the excess rental revenue of Section 236 projects. The task force deemed the subsidy, passed as an amendment to the Housing and Community Development Act of 1977, insufficient because it applied only to Section 236 projects and covered only

---

[21] Carter McFarland, *Federal Government and Urban Problems - HUD: Successes, Failures, and the Fate of Our Cities* (Boulder, Colo.: Westview Press, 1978), 46-47; McCarty and Perl, *Preservation of HUD-Assisted Housing*, 11-12; Barry G. Jacobs, Kenneth R. Harney, Charles L. Edson, and Bruce S. Lane, *Guide to Federal Housing Programs* (Washington, D.C.: Bureau of National Affairs Inc., 1982), 46-47; Conrad Egan, telephone interview with author, Fairfax, Virginia, March 4, 2011; David A. Smith, "Mark-to-Market: A Fundamental Shift in Affordable Housing Policy," *Housing Policy Debate* 10:1 (1999), 145.

property tax and utility costs, which made up only about a quarter of projects' operating expenses.[22]

To improve upon the partial solutions, the task force urged a "comprehensive long term strategy" to meet financial needs of the subsidized stock, protect the projects' tenants from escalating rents, and save the FHA's insurance funds. A key component of the strategy was legislation, which was enacted the following year, to create a Flexible Subsidy that would cover project needs ranging from operating costs not covered by rental income to capital improvements such as maintenance and repairs. The new form of financial assistance was funded in part from the Section 236 rental receipts that exceeded the formula owners were allowed to earn. As its name implies, the new program was intended to fit the particular circumstances – including the amount of needed assistance – of the project and thereby remove the need to use previous subsidies from both Section 236 and Section 8 funds.[23]

In addition to the new subsidy, the task force strongly urged that HUD reform its practices in supervising and managing financially troubled subsidized housing and transferring such projects to new owners. Complaining of the poor oversight by HUD staff, the task force urged HUD to adopt and implement management performance standards and reviews that would monitor the four areas of concern: financial, physical, administrative, and social well-being of tenants. The committee also urged HUD to dispose of its foreclosed and assigned properties in a way that would protect the low-income tenants from rent hikes or eviction. The key change, which Senator Edward Brooke helped to enact in the Housing and Community Development Amendments of 1978, required HUD to choose buyers of foreclosed subsidized property not simply on the basis of the highest bid. Instead, the task force urged, HUD should consider the ability of the new owner to keep the projects financially viable but affordable to low-income tenants. (The legislation also reflected the community activists' priorities by protecting tenants' rights and abilities to voice their opinions about the plans for their buildings.)[24]

---

[22] Multifamily Property Utilization Task Force, *Final Report*, i, 20-23.

[23] The report asserted that the Flexible Subsidy would replace assistance from the Rent Supplement program and the Section 236 Deep Subsidy and Operating Subsidy. Multifamily Property Utilization Task Force, *Final Report*, 29-31.

[24] Multifamily Property Utilization Task Force, *Final Report*, 29-55; O'Donnell, interview.

Perhaps just as significant as the task force's proposals was the rationale that depended less on reasons of fiscal urgency than on the importance of preserving affordable housing. The guiding principle of the task force's recommendations was to ensure that the subsidized housing projects survived. It was essential, the task force report argued, that they "continue to serve the families they were built to house, and that they are maintained and managed as safe, sanitary, and decent properties." To fail "to *preserve* this inventory of HUD-owned properties for low-income families," it went on, would contradict HUD's statutory obligation, undermine its community development and urban revitalization efforts, and fail to meet HUD's obligation to increase the supply of low-income rental housing. In essence, the Melkonian task force first laid out the justification that would underpin preservation efforts in the decades to follow.

In 1979, Congress amended the Housing and Community Development Amendments of 1978 to ensure preservation. The 1979 amendments required that owners who accepted the Flexible Subsidy agreed to maintain rents affordable to low-income households for at least the term of the original forty-year project mortgage. Hence, in exchange for financial support, the federal government for the first time explicitly asked owners to waive their right to prepay mortgages.[25]

Building on the task force recommendations and legislation, Marilyn Melkonian then led the effort to develop tenant-friendly regulations when HUD transferred housing it had acquired through assignment or foreclosure. The Property Disposition Program was instituted in 1979 and later codified in law. Under the program, when HUD sold off its projects, HUD would provide (project-based) Section 8 subsidies for the units in formerly subsidized properties or even in un-subsidized properties that were now used to house low-income people.[26]

---

[25] For this last point, I am obliged to David A. Smith, interview with author, Boston, December 23, 2010. Multifamily Property Utilization Task Force, *Final Report*, 24. Section 211 (c) of the Housing and Community Development Amendments of 1979 allows HUD to provide flexible subsidy assistance to a project only if "the owner has agreed to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage." David R. Cooper to Waller Taylor, Esq., "Eligibility to Receive Incentives Under LIHPRHA," Legal Opinion GHM-0030, April 3, 1992.

[26] HUD began providing Section 8 funds for its property disposition after passage of the Housing and Community Development Amendments of 1978. The rules were inscribed in the Housing and Community Development Act of 1987 (Public Law 100-242, February 5, 1988). O'Donnell, interview; James R. Grow, "Comment on 'The Dilemma of the Disposition of Troubled FHA-Insured Multifamily Rental Property,'" *Housing Policy Debate* 5:1(1994), 41-42.

At the same time, HUD, with the help of the Ford Foundation and the Charles Stewart Mott Foundation, then funded three local demonstration programs to explore ways of implementing management and disposition reforms. To test ways that project residents could participate in the management and disposition of HUD-owned multifamily housing, the department turned to Boston, because of its "substantial inventory of acquired projects, its history of innovative field office property disposition activities, and its significant involvement of project residents, local advocacy groups, and professionals in the problems of distressed multifamily housing." In the Bay Area in California, HUD used the National Housing Law Project network of people interested in affordable housing to study the causes of troubled projects there. Another demonstration project in New York City looked at ways to restructure the finances and improve property management in subsidized projects. Finally, the following year, Congress authorized HUD to provide Flexible Subsidy assistance to a project only if owner agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage.[27]

The Legacies of Early Actions

The early phase of activism and investigation left a lasting imprint on the approach to what became known later as preservation of affordable housing. It is striking, for example, that the critics of the subsidized housing programs – whether in the halls of power in Washington or on the streets and rented storefronts around the country – wanted to reform, rather than do away with, the production programs that were in so much trouble. Even the caustic activists in Boston wanted to fix what they considered a broken and possibly corrupt system. Some argued for eliminating profit-oriented developers, while others wanted to tinker with the programs' financing mechanisms and implementation regulations, but all parties wanted to keep the programs. Similarly, even the tenant advocates did not urge demolition of the worst projects,

---

[27] O'Donnell, interview; James R. Grow, telephone interview with author, San Francisco, April 27, 2011; Vincent O'Donnell and Emily Achtenberg, *Resident Participation in the Management and Disposition of HUD-Owned Multifamily Housing-Final Report on Boston Area Office Demonstration Program* (Boston: Citizens Housing and Planning Association, Inc., 1982), I-3; *Housing and Community Development Amendments of 1979*, Public Law 96-153 (December 21, 1979).

but rather that HUD take them and make them sound. The activists' fundamental belief in saving the subsidized housing would be crucial in the future to making its preservation a priority in national policy.

The first efforts at diagnosing the ills of the subsidized housing programs also set a precedent for the technical methodology that would prevail in the later preservation efforts. The Boston activists as well as the Washington staff members showed a sophisticated understanding of the financing issues and practices in the subsidized deals and management. Furthermore, they emphasized the collection and analysis of data, which would serve as an effective tool to persuade government officials – in Congress, HUD, and state governments. Indeed, because of the thoroughness of the investigations by Boston area activists and officials, HUD would turn to Boston for analysis and further efforts – such as in the 1978 Management and Disposition of HUD-Owned Multifamily Housing demonstration program.

Creating a Cadre of Committed Specialists

The early activism on behalf of tenants of subsidized housing also created a cadre of experienced and knowledgeable individuals who would later shape policies and practices in the preservation field. Among those who cut their political teeth on housing issues in Boston were Vincent O'Donnell, the director of the BRA study of subsidized projects who later became the director of the Affordable Housing Preservation Initiative at the Local Initiative Support Corporation (LISC); Emily Achtenberg, a leading member of a militant community planning organization and author of studies of Boston housing who became a leading member of the Housing Preservation Working Group, a national advocacy organization; and Robert Kuehn, a young economist who became a socially committed real estate developer in the Boston area.[28]

Idealistic individuals, many of whom were lawyers, worked on behalf of tenants of government-subsidized housing projects in other parts of the country as well. Starting in the late 1960s, Legal Services attorneys worked with tenants to resolve complaints against their HUD- and Farmers Home Administration-supported landlords. In 1968, some of the Legal

[28] Others in Boston engaged in the subsidized housing struggle included Kent Colton, then a MIT assistant professor and consultant with the BRA who would later become the executive director of the National Association of Home Builders; and the architect Tunney Lee, who would help lead the Boston Chinatown community opposition to urban renewal and would serve as a long-time faculty member at MIT.

Services attorneys organized the National Housing Law Project (NHLP), with headquarters in Oakland, to specialize in housing cases. Dan Pearlman, a Legal Services lawyer who began his career in Stamford, Connecticut working on low-income housing issues, moved to California in 1973 to work for the NHLP, and a few years later played key roles in starting the California Housing Partnership Corporation, which has specialized in preserving subsidized housing in the Golden State. Another Legal Services attorney, James Grow, also joined the NHLP, where he has written numerous handbooks on tenants' rights and government housing programs and been a leading member of the Housing Preservation Working Group.[29]

In the 1970s, Sister Timothy Marie O'Roark, also a lawyer and executive director of the Legal Aid Society of Nebraska, spent a good deal of her time helping poor people fight evictions and bad living conditions in government-subsidized housing. In 1980 she convinced the Sisters of Mercy in Omaha, the order of nuns to which she then belonged, to take on housing as a sponsored ministry, as they had with health care and education. As a result, in late 1981 the order founded Mercy Housing, Inc. as a nonprofit, public-benefit corporation. A small band of Sisters began their work in Idaho by acquiring five housing properties whose federal subsidies were due to expire, and thus ensured that their low-income tenants could continue to live there. From that early preservation deal, the nuns would build what is today one of the largest nonprofit affordable housing developers in the United States.[30]

A number of government officials who in the 1970s became involved with subsidized housing issues would later shape housing preservation policies. From the Boston HUD office emerged Marvin Siflinger, who would later become the head of the Massachusetts Housing Finance Agency. In that capacity he would introduce innovative programs to save troubled HUD-assisted properties as well as become a respected voice in national policy discussions. As deputy assistant secretary at HUD, Marilyn Melkonian (yet another reform-minded attorney!) led the effort to create the Flexible Subsidy and other measures to support the subsidized

---

[29] National Housing Law Project, "About NHLP," accessed December 5, 2011, http://www.nhlp.org/aboutnhlp; "Founding CHPC Board Member Dan Pearlman Exits after 18 Years," *Housing Preservation News* 4 (2006): 2, http://www.chpc.net/dnld/Newsletter-2006-Vol4.pdf; Grow, interview.

[30] Patricia O'Roark, telephone interview with author, Denver, July 2, 2009; "A Salute to Visionaries," Nebraska State Bar Association Charitable Funds Incorporated News, *The Nebraska Lawyer* (April 2005): 33, accessed June 19, 2009, http://casemaker.nebar.com/pdfs/nelawyer/2005/APRIL/0405j.pdf.

housing stock. In the 1980s she would found the National Housing Trust, the first organization dedicated to affordable housing preservation, and help shape the Low-Income Housing Tax Credit and the housing preservation laws of 1987 and 1990.

Chapter III. The Dawning Prepayment Emergency

Rural Housing and the First Preservation Fights

These early efforts to solve the financial problems of HUD-assisted urban housing programs sowed the seeds of the housing preservation movement. Yet they did not confront the preservation issue as it is commonly understood today, that is, the threat to subsidized housing posed by the cessation of subsidies and their reduced rents for low-income households. That preservation issue first surfaced in rural projects outside of HUD's domain.

In the early 1970s, the Department of Agriculture's housing sub-agency, the Farmers Home Administration (FmHA, now called Rural Housing Services), significantly changed the rules pertaining to Section 515 projects to stimulate the private sector to participate. In 1972 FmHA for the first time made limited-profit sponsors of rural rental housing eligible for direct below-market loans, which had previously been restricted to nonprofit owners. Thus, as in the urban housing programs, rural housing developers could form various types of partnerships and corporations which would accept the limited-dividend provisions to obtain the tax-shelter benefits of accelerated depreciation accounting.

Furthermore, about the same time, the FmHA administrators began pressing its staff to enforce the oft-ignored provision of the rural housing law that borrowers revert to private lenders when possible. Nonprofit sponsors had little interest in "graduating" to private lenders. In contrast, the profit-oriented limited-dividend sponsors of Section 515 projects needed little prompting, especially once their tax benefits had expired, which usually occurred after ten years. Looking to convert their properties to market rents and unlimited profits, owners in increasing numbers began to prepay their loans – that is, pay them off before the original term date. As was the case with the tenants of the financially troubled urban properties, the tenants felt the blow of owners' prepaying of their loans.[31]

[31] Robert J. Wiener, "Privatizing Rural Rental Housing: The Prepayment Problem in RHS's Section 515 Program," in *Housing in Rural America: Building Affordable and Inclusive Communities*, ed. Joseph N. Belden and Robert J. Weiner (Thousand Oaks, California: Sage Publications, 1999), 114-17; Collings, Jr., "Rural Rental Housing Preservation," 559.

In 1978 matters came to a head when the owner of a small housing project in southern Ohio prepaid his loan and raised rents, which in effect threw out the elderly tenants. Legal advocates sued to stop the rent hikes, and when that failed began to press Congress. The agitation succeeded in convincing Congress to pass legislation restricting owners of subsidized rural rental housing from prepaying their government loans for twenty years. Furthermore, Congress imposed these restrictions on all projects developed before 1979. The private owners and developers angrily fought back, arguing that retroactive restrictions were unconstitutional. The following year Congress repealed the restrictions, once again allowing owners to prepay their loans. As real estate prices rose in the 1980s, so too did the number of rural housing owners who chose to prepay their government loans.[32]

The sequence of events in rural housing foreshadowed the history of the efforts to preserve HUD-subsidized urban housing. First, to capitalize on market conditions, subsidized housing owners would prepay government loans, which would spark protests and eventually legislation curtailing owners' rights to leave the subsidy programs. Owners and investors then would launch a campaign to win back their property rights, and ultimately would succeed. But the early rural housing episode also set the stage for a series of complex political actions and reactions over the conditions of the rural and urban housing programs. As that history unfolded, representatives of rural housing interests – residents and owners – would join their urban counterparts in the battles over the preservation of affordable housing.

HUD's Disposition Practices Galvanize the Housing Advocates

In the early 1980s housing reformers began to take up the idea of long-term preservation rather than simply stabilizing HUD's privately developed but financially troubled low-income housing. The expanded policy goal grew out of a dispute over property disposition between affordable housing advocates and Ronald Reagan's HUD. Reagan's election as president dramatically changed the political climate in Washington. Whereas the previous Republican presidents, Nixon and Ford, had held liberal and moderately conservative beliefs,

[32] Task Force on Rural Rental Preservation, "Final Report of the Task Force on Rural Rental Preservation" (Housing Assistance Council and the National Housing Law Project, 2005), 4.

Reagan was an ardent conservative committed to reducing the size of government, especially in the domestic realm, and to using "market solutions" such as vouchers whenever possible. As Reagan officials worked to shrink federal social programs, liberal Democrats – who tended to be suspicious of Republicans in general – easily swung into fervid opposition to the administration.

During Reagan's first year in office, HUD officials proposed legislation that would create uniform foreclosure procedures for the government-subsidized housing stock. They were written to allow the agency to bypass the tedious process – which could take a few years – of going to court to force foreclosure and acquisition by HUD. The Congress passed the Multifamily Mortgage Foreclosure Act in 1981 just as HUD had written it, but with one exception: an amendment which allowed HUD to require that any subsidized rental properties it had acquired through foreclosure would remain low- and moderate-income projects after foreclosure, and after any ensuing sale.[33]

But much to the frustration of congressional housing advocates, HUD did not implement this requirement. From his position as chairman of the Manpower and Housing Subcommittee of the Committee on Government Operations, a recently elected representative from Massachusetts, Barney Frank, held hearings to badger HUD officials into implementing the process called for in the Multifamily Mortgage Foreclosure Act. Because the Reagan administration showed no interest in building new low-income housing – it would push for a shift to rent vouchers – housing supporters argued that it was essential during a time of growing need for housing to protect the subsidized units overseen by HUD. In 1983, Frank's Committee on Government Operation published a combative report entitled "HUD Is Not Adequately Preserving Subsidized Multifamily Housing." Again and again in the report, the committee emphasized the connection between HUD's foreclosure practices and "the effect these have on preservation of housing for lower income people." Hence, the housing advocates

[33] The law is also known as the Federal Foreclosure Act. Committee on Government Operations, *HUD Is Not Adequately Preserving Subsidized Multifamily Housing*, Eleventh Report by the Committee on Government Operations, House Report no. 98-477, 98th Congress, 1st session (Washington, D.C.: GPO, 1983), 12.

in and out of Congress were no longer only trying to salvage financially troubled projects but instead were trying to preserve them.[34]

Soon the focus of these efforts shifted from HUD officials to the owners of the projects. More specifically, the housing advocates concentrated less on getting HUD officials to manage and dispose of the properties correctly and more on getting HUD officials to require owners to maintain the projects for low- and moderate-income people. HUD's policies helped convince the advocates to change their emphasis. HUD officials sold foreclosed projects to the highest bidders (whatever the bidders' intentions), allowed sales motivated principally by tax benefits, and allowed owners to sell their properties in order to form a new entity that could take advantage of new tax benefits enacted in a 1981 law. Yet HUD officials failed to impose conditions on owners that would maintain the properties as homes for low-income people.[35]

Besides HUD policies, there was another reason that in the early 1980s the advocates began to pay increasing attention to the behavior of owners. A few housing project owners paid off their government-subsidized mortgages, releasing themselves from the obligation to provide rental apartments that low-income people could afford. The Farmers Home Administration project in Ohio created a little stir in the late 1970s, but it fell outside HUD's jurisdiction. Then an elderly housing apartment building in Pasadena, California caused an even greater controversy.

A Shot Across the Bow: The Case of Concord Pasadena Apartments

In 1982 the nonprofit organization that owned the Concord Pasadena Apartments, which had been developed under the Section 202 program, petitioned the Reagan administration to allow it to prepay its government loan and to provide rental vouchers to residents who could not afford the new higher rents. The nonprofit group took this step at the behest of its controller, the pastor of the evangelical church that had started the organization, who wanted to recapitalize and take equity from the building. But news of effort to end the subsidy for the Concord Pasadena frightened and angered its elderly tenants, who had believed

---

[34] Committee on Government Operations, *HUD Is Not Adequately Preserving Subsidized Multifamily Housing*, 1, 3, 5, 13, and passim, quotation at 3.

[35] O'Donnell, interview; O'Donnell, written communication; Smith, interview, 2010.

that a government-supported elderly housing project was permanent. Their leader contacted the National Housing Law Project, which referred them to a pro bono law firm in Los Angeles, whose attorneys helped the tenants sue both HUD and the owner. In the end, the owner and tenants settled their lawsuit, HUD reinstated its original housing loan (and therefore its requirements), and the tenants were able to stay on at the Concord Pasadena.[36]

The Concord Pasadena case attracted national attention and prompted the government to act against the threat of prepayment on behalf of the low-income residents of subsidized elderly housing.[37] In 1982 the House of Representatives' Committee on Aging held hearings, which revealed a disagreement over policy between housing advocates and HUD officials in the Reagan administration. The spokesman for the National Housing Law Project believed rents for low-income elderly tenants should last for the entire term of the original Section 202 mortgage, but the deputy assistant secretary of HUD, Phillip Abrams, disagreed. The following year the Congress included in the Housing and Urban-Rural Recovery Act of 1983 a statute that restricted owners of elderly housing projects from prepaying their Section 202 loans. The law also addressed prepayments of other types of HUD-owned property, but not in a way that pleased housing advocates. The law prohibited HUD from allowing owners of subsidized properties to prepay their mortgages before the due date *unless* the projects were no longer providing housing for lower-income families or other forms of government assistance could meet the needs of such families "more efficiently and effectively." This administration-favored

---

[36] Subcommittee on Housing and Consumer Interests of the Select Committee on Aging, *Prepayment of Section 202 Loan: Concord-Pasadena Elderly Housing Project,* Hearing before the Subcommittee on Housing and Consumer Interests of the Select Committee on Aging, House of Representatives, 97th Congress, 2nd session, June 25, 1982, Pasadena, California (Washington, D.C.: GPO, 1984), parts I and II; Grow, interview.

[37] This was not the only case of prepayment, only the most infamous. The earliest case of disputed prepayment appears to have been the lawsuit *Korsko v. Harris*, filed in 1978 by tenants against the owner of their 221 (d) (3) family housing project in Fairfield, Connecticut. This resulted in a court-imposed settlement which gave tenants a temporary reprieve before the project was converted to condominiums. Johnson also recorded two other suits filed in 1984, after *Gordon v. HUD*, as the Concord case was known. One concerned a non-insured Section 236 development in Chicago; the other was in regard to a Section 515 Farmers Home Administration-assisted project in Rhode Island. Sara Elizabeth Johnson, *Preserving HUD-Assisted Housing for Use by Low-Income Tenants: An Advocate's Guide* (Berkeley: National Housing Law Project (NHLP) and National Clearinghouse for Legal Services, 1985), 45-55; National Clearinghouse for Legal Services, Inc., "Case Developments," *Clearinghouse Review* 18, no. 8 (December 1984): 912.

provision enabled HUD to replace the subsidized units with rental vouchers, a highly controversial idea at the time.[38]

Like a Dog with an Old Shoe

In the early and mid-1980s, housing advocates struggled with the Reagan administration over methods of property disposition and mortgage prepayment. Taking advantage of his chairmanship of the Manpower and Housing Subcommittee, Congressman Barney Frank led the charge against Reagan's HUD officials. As a member of the Massachusetts state legislature, Frank had worked with low-income Boston residents struggling to protect their homes in inner-city neighborhoods and he had learned and cared passionately about their housing. Observing Frank in Washington in the 1980s, Jim Grow of the NHLP was impressed by the extraordinary attention the new congressman paid to the issue. "It was like a dog with an old shoe," Grow recalls. "He wouldn't let anything drop. And he personally was so involved in the details of the issue that the HUD officials were really no match for him."[39]

To find ways to buttress low-income housing projects against financial distress and prepayments, Frank in 1984 had his staff draw up a draft bill and held hearings to discuss it. If Congress failed to act, Frank warned, "we will begin to lose from our stock of subsidized housing many units … for one reason or another." Frank proposed to "re-lend" to owners so that they could make capital improvements, meaning major repairs and replacements. The bill also would have amended the language of the 1978 provisions to ensure that HUD sought to maintain foreclosed properties as low-income housing.[40]

In contrast to the most ardent defenders of the tenants, Frank appreciated the role of the owners in providing affordable housing and did not wish to penalize them. He proposed

---

[38] Sandra Sugawara, "HUD Loan Prepayment Creates Concerns," *The Washington Post*, August 17, 1982; Philip Abrams, statement to the Housing and Consumer Subcommittee, *Prepayment of Section 202 Loan*, part II, 19; Chris N. Visher, Statement to the Housing and Consumer Subcommittee, *Prepayment of Section 202 Loan*, part II, 31; *Housing and Urban-Rural Recovery Act of 1983*, Public Law 98-181, effective November 30, 1983, adding Section 250 of the National Housing Act; Subcommittee on Manpower and Housing, *Preservation of Subsidized Housing and Capital Improvement Loans,* Hearing before the House of Representatives Subcommittee of the Committee on Government Operations, 98th Congress, 2nd session, March 29, 1984 (Washington, D.C.: GPO, 1984), 83-84.

[39] Grow, interview.

[40] Barney Frank, opening statement, in Subcommittee on Manpower and Housing, *Preservation of Subsidized Housing*, 2; Appendix, Additional Material Submitted for the Record, 98th Congress, 2nd Session, H.R. 5254: "A Bill to authorize…" (short title, "Multifamily Housing Preservation Act of 1984"), Title II, Section 202, ibid., 113, 124-27.

that the new loans to the owners of subsidized properties would run only as long as the remaining term of the project's original mortgage. G. Lindsay Crump, the chairman of the National Council of HUD Property Managers and a vice president of the National Corporation of Housing Partnerships, which owned nearly 70,000 subsidized units of low- and moderate-income housing, agreed. "If the owner borrows in good faith," he explained, "repays the loan on time, sticks by all the rules, and is required to prepay the loan in case of sale or refinancing, we believe that is enough." Given their design and location, he doubted very much that the properties would ever be anything but low- and moderate-income housing.[41]

First Steps toward Preservation

In the face of the Reagan administration's opposition to further production, housing advocates grew anxious in the mid-1980s that much of America's subsidized low-income housing might not survive. In 1984, NHLP attorney Sara Johnson, with assistance from Jim Grow and Emily Achtenberg, wrote a guide to the laws and policies that threatened HUD-subsidized low-income housing. In it she called on supporters of affordable housing to "rededicate themselves to the pressing task of preserving what little low and moderate income housing has been developed since the early 1960s. Given the virtual defunding of production programs by Congress in the 1980s and the current HUD administration's stewardship of low-income housing programs, this task is even more pressing."[42]

The advocates were particularly worried about prepayments that would come due in the late 1980s and 1990s and began to call for federal laws that would stop owners from prepaying. In her guide, Johnson sketched several bleak scenarios that ended with displacement of low-income residents from formerly subsidized properties, including the threat posed by owners' prepayment of FHA mortgages or the expiration of project-based Section 8 contracts. Going beyond mere description, Johnson discussed possible legislative methods of prohibiting prepayments. Legislation for a "prepayment lock-in," she acknowledged, might

[41] Frank, opening statement, in Subcommittee on Manpower and Housing, *Preservation of Subsidized Housing*, 2; Statement of G. Lindsay Crump, chairman, National Advisory Council of HUD Management Agents, ibid., 32-34, quotation at 34.

[42] Johnson and NHLP, *Preserving Affordable Housing*, 2.

cause owners to contest their interests in court. Despite the constitutional and political hurdles, Johnson argued that in 1979 Congress prohibited the FmHA from accepting prepayment for or refinancing rural housing loans, although it had been repealed before its constitutionality could be tested. Within a few years, Congress would enact such a law for the HUD properties, the Emergency Low Income Housing Preservation Act of 1987, and it would indeed, as Johnson had surmised it might, provoke litigation.[43]

On another front, affordable housing advocates began to seek ways to intervene in the subsidized housing market directly. After a hiatus in Hollywood as an attorney in the movie industry, Marilyn Melkonian, the former HUD official, returned to the housing field. In 1984 she founded a company in Washington, D.C., the Telesis Corporation, to redevelop existing affordable housing. Telesis began its work by taking on the renovation of a 672-unit HUD-assisted housing development, which a church organization had developed in the 1960s. In May 1985, Sara Johnson joined the company as vice president to work on syndication deals for existing affordable housing. (Telesis soon thereafter turned toward community planning and development work.)[44]

Not content with starting a housing company, Melkonian and Johnson conceived of a new national organization that would specialize in developing methods and policies that would preserve this housing stock. They initially proposed creating the National Housing Trust in 1985 – it was officially incorporated on the last day of 1986 – to acquire and syndicate existing HUD-assisted projects and analyze the effect of tax reform proposals on transactions regarding this affordable housing. The original plan, which LISC supported with an initial small grant, was to identify a few low- and moderate-income projects that owners were interested in donating to a nonprofit organization and re-syndicate them. From the beginning, they thought of the Trust as

[43] Johnson also suggested a way that HUD might use regulations to stop prepayments. Johnson and NHLP, *Preserving Affordable Housing*, 36-45, and in regard to the litigation, 37.

[44] National Housing Trust (NHT), "Resumes of the National Housing Trust Staff and Consultants," *Report to Board Members*, September 1988 (copy courtesy of Sara Johnson); Sara E. Johnson, telephone interview with author, Washington, D.C., May 9, 2011.

an institution that would "think and do," that is, actively transact refinancing deals and, based on those experiences, help shape government policy to facilitate further preservation work.[45]

The Arrival of the Low-Income Housing Tax Credit

But the passage of the 1986 tax reform bill changed all plans for developing or redeveloping low-income housing. By revising the Alternative Minimum Tax, it made bargain sales and donations of housing projects – by which the Trust had hoped to acquire properties – less financially appealing to their owners. Moreover, the new law decimated the financial incentives for housing investment in several different ways. By cutting the marginal rates for the highest earners from 50 percent to 28 percent, it drastically reduced the value of tax-deduction incentives. The reform act also taxed capital gains at the same rate as income, eliminating the ability to repay income tax deductions from depreciation upon the sale of the property at lower capital gains rates. In addition, the act removed the tax shelter structures that had made real estate investment, including more recently re-syndication, into a lucrative business. For the incentives that fed nonprofit affordable housing, observes Benson Roberts, who served as LISC's congressional legislative liaison in these years, it was "death by gunshot, strangulation, poisoning, and guillotine."[46]

Fortunately for the advocates of affordable housing, Roberts, Barry Zigas, the president of the National Low Income Housing Coalition, and F. Barton Harvey III, the deputy chairman of the Enterprise Foundation, interested certain influential senators – Robert Packwood of Oregon and George Mitchell of Maine, in particular – in devising a new tax credit that would stimulate investment in low- and moderate-income housing. After extensive urging by numerous housing advocates and negotiations among members of Congress, the Low-Income Housing Tax Credit (LIHTC) became part of the 1986 law. (The decision of Charles Edson, a housing attorney who represented subsidized housing owners and investors, to support the bill was critical to the

---

[45] NHT, "Organizational Background: History of the National Housing Trust," *Report to Board Members*; Marilyn Melkonian, phone conversation with author, April 17, 2012.

[46] NHT, *Report to Board Members*; Benson Roberts, interview with author, Washington, December 14, 2011; Andrew A. Samwick, "Tax Shelters and Passive Losses after the Tax Reform Act of 1986," in *Empirical Foundations of Household Taxation*, eds. Martin Feldstein and James Poterba (Chicago: University of Chicago Press, 1996), 193-94, 206-10, 214-15.

success of the effort.) The tax credit was originally passed as a three-year demonstration project, but a coalition of advocates and congressional supporters were able to convert it to a permanent program and fend off assaults on it from a variety of sources.[47]

Under the tax credit program, developers of low-income housing received the right to a tax credit, which they could sell to investors who became limited partners and provided equity capital to the project. As legal partners, investors could also take advantage of tax benefits of claiming passive losses on the project to offset other passive income. Under these conditions, the investors who could profit the most from the tax credit investment were large corporations. And soon LISC and the Enterprise Foundation – as well as for-profit companies – began a new type of syndication in which they combined tax credits from diverse housing projects into a pool and sold shares of the pool to corporate investors.[48]

Still, at first many housing advocates were skeptical that the tax credit could replace the powerful financing tools – accelerated depreciation, unlimited tax-exempt bonds issued by state and local agencies, and other tax benefits for investment in low-income housing – that the 1986 tax reform law had wiped out. Most people in the low-income housing field conceived of the tax credit at best as a way to finance construction of new housing. In time the LIHTC did become the primary program for low-income housing production, eventually replacing or, in the case of elderly and rural housing, supplementing the earlier rental production programs. Eventually, however, the tax credit program would serve as well as a tool for refinancing and redeveloping existing housing projects – that is, for the preservation of affordable housing. When it did, advocates would realize that it too had an expiration date, of fifteen years.[49]

---

[47] Barry Zigas, telephone interview with author, Washington, March 15, 2010; Roberts, interview; David J. Erickson, *The Housing Policy Revolution: Networks and Neighborhoods* (Washington, D.C.: Urban Institute Press, 2009) 87-98.

[48] Among the most important housing advocates in the tax credit negotiations were Barry Zigas, Bart Harvey, Benson F. Roberts, James Pickman (consultant to LISC and Roberts' employer at the time), Marilyn Melkonian, Paul Grogan, Robert O. Zdenek (president of National Congress for Community Economic Development (NCCED)), and Robert Rapoza (executive secretary of the National Rural Housing Coalition). Zigas, interview; Erickson, *Housing Policy Revolution*, 123; National Equity Fund Fact Sheet, accessed April 2, 2012, http://www.nefinc.org/section/aboutus/facts; Enterprise Low-Income Housing Tax Credits, accessed April 2, 2012, http://www.enterprisecommunity.com/financing-and-development/low-income-housing-tax-credits.

[49] The Tax Reform Act of 1986 placed a cap on the amount of private-activity bonds (which included housing bonds) that states and local governments could issue. Abt Associates, *HUD National Low Income Housing Tax*

Fears for a Vanishing Resource

While the housing advocates and their allies pressed for the low-income housing tax credits, a fear of "expiring subsidies" had begun to spread in housing policy circles. Because of the problem, a reporter for the *National Journal* announced, the United States faced a crisis. "Over the next decade," he avowed, "as many as 800,000 units of privately owned, federally subsidized rental housing could vanish, the result of a collision of forces that are bombarding the world of low and moderate-income real estate." Once the subsidized mortgages on their housing properties reached the twenty-year milestone, the writer explained, owners were free of their housing obligations. The properties "could then be converted into high-class condominiums or razed and the land used for shopping malls." Not only were the mortgages from the programs of the 1960s reaching their end dates, but also the rental subsidy contracts from the 1974 Section 8 program were beginning to expire.[50]

To focus attention on the problem, Congressman Henry B. Gonzalez, a Texas Democrat and the chairman of the House Subcommittee on Housing and Community Development, called a hearing in June 1986 on the impending "Loss of Subsidized Multifamily Housing Units." Barney Frank, a member of this subcommittee, declared at the outset of the hearing that preserving the existing federally subsidized rental stock "is the single most important housing issue we have." The committee then heard from six witnesses, all but one of whom supported countering the threat to the low-income dwellings.[51]

From Boston came Emily Achtenberg, brandishing a list of forty-seven Massachusetts housing projects that would be at risk of prepayment within the next seven years, as well as a set of proposals for how to keep them subsidized for needy families. The director of a neighborhood nonprofit housing advocate in Dallas told the tale of a 240-unit project that was sold to an owner who proposed to demolish it and build an office-retail center on the site.

Credit (LIHTC) Database: Projects Placed in Service through 2005 (Abt Associates/HUD, 2007), data tables, table 2; Schwartz, *Housing Policy*, 100.

[50] W. John Moore, "Reports - Expiring Subsidies," *National Journal*, August 2, 1986, 1184-88, quotation at 1184.

[51] Subcommittee on Housing and Community Development, Loss of Subsidized Multifamily Housing Units, Hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, 99th Congress, 2nd session, June 18, 1986 (Washington, D.C.: GPO, 1986), 3.

Although the tenants were able to wring some concessions from the developer, the man from Dallas reported that within four years the prepayment agreements for nineteen other subsidized projects holding nearly 4,000 dwellings would come due.[52]

Adding substantial political weight to the proceedings was the testimony of John J. Koelemij, the immediate past president of the influential National Association of Home Builders. The association's members were inclined ideologically to solve any housing problems by simply producing more homes in an "unfettered, private market." Koelemij, however, felt strongly that it was important to keep existing government-assisted private housing for low-income people, and indeed the NAHB had supported the passage of FHA-subsidy programs in 1968 and 1974.

As president of the NAHB, Koelemij had requested a report on low- and moderate-income housing, which devoted an entire chapter to the problem of saving the endangered subsidized housing. It indicated that although not all owners would want to prepay – some were nonprofits which had no interest in prepaying – many would.[53]

The tenant advocates were ready to invoke emergency powers to stop owners from prepaying, but most of those concerned with the issue were not ready to go that far. They agreed that the solution was to give the owners financial incentives. A preliminary NAHB field study of sixteen projects found that a majority of owners felt it would be difficult to carry on without renewed or expanded Section 8 assistance. Conrad Egan, the senior vice president of NCHP, explained to the *National Journal* that "the government will have to give some to get some." For the supporters of affordable housing, the conclusion seemed obvious.[54]

But the Reagan administration did not see it that way. R. Hunter Cushing, the deputy assistant secretary of HUD, downplayed the prepayment problem, telling the House housing subcommittee that he expected few owners to prepay their mortgages and change their subsidized units into market-rate rentals or condominiums. He pointed out that only a handful

---

[52] Emily Achtenberg, Statement, ibid., 52-57, 125-34; John Fullinwider, Statement, ibid., 45-52, 115-24.

[53] John J. Koelemij, Statement, ibid., 31-32, 74-93, quotation at 76; National Association of Home Builders, *Low and Moderate-Income Housing: Progress, Problems and Prospects* (Washington, D.C.: NAHB, 1986).

[54] Belinda Mayo, Statement, in Subcommittee on Housing and Community Development, *Loss of Subsidized Multifamily Housing Units*, 98; Koelemij, Statement, ibid., 31-33; Moore, "Reports - Expiring Subsidies," 1185, quotation of Egan at 1188.

of projects so far had left the HUD-subsidy programs. As to the future of the thousands of projects that would become eligible for prepayment, Cushing declared that local market conditions would discourage their owners from trying to convert them into higher-priced dwellings. Any other problems, the Reagan administration believed, could be solved through the remedy of rental vouchers.[55]

Once More, the Hub

As had been the case in the early rounds with the government-subsidized housing stock, Boston became the center of attempts to deal with the issue of prepayment, both locally and nationally. For some time, tenant activists around the country had called for measures that would prevent subsidized property owners from taking advantage of their right to prepay after their mortgages reached twenty years of age. In Massachusetts, well organized tenants of the subsidized housing projects began scrutinizing their owners' every move to see if it presaged a sale or conversion to condominiums. In reporting tenant nervousness, the *Boston Globe* perhaps heightened anxieties by printing the names and due dates for all the projects eligible for prepayment within the next five years. In July 1987, a state lawmaker sympathetic to the tenants introduced legislation that would have placed the properties of owners who prepaid their mortgages under the control of a state agency that could impose rent controls and prohibit condo conversions.[56]

The measure struck even some liberals in Massachusetts as extreme. The Massachusetts Housing Finance Agency, which was trying to encourage builders to develop low-income housing in Boston's suburbs, opposed this approach as unconstitutional. To forestall it, the agency's former general counsel, Howard Cohen, worked with a developer and official of the Boston Area Real Estate Board, Walter Winchester, and state officials to devise what became

---

[55] R. Hunter Cushing, Statement, Housing and Community Development Subcommittee, *Loss of Subsidized Multifamily Housing*, 6-28; Moore, "Reports - Expiring Subsidies," 1185-87.

[56] Vincent O'Donnell, then at the Community Economic Development Assistance Council, worked with Emily Achtenberg to create an inventory of the subsidized stock and an analysis of the projects whose owners were or soon would be eligible to prepay. To galvanize the federal government to take action, he then submitted the information to Amy Anthony, Massachusetts Secretary of Communities and Development, Congressman Barney Frank, and, apparently, newspaper reporters. Patricia Wen, "Subsidized Tenants Fear Condo Squeeze," *Boston Globe*, June 21, 1987, 1; Patricia Wen, "Bill Would Limit Conversion of Low-Income Housing," *Boston Globe*, July 9, 1987, 27; O'Donnell, interview.

known as the Massachusetts or Developer's Pledge. In September 1987, Governor Michael Dukakis, flanked by Massachusetts Congressmen Barney Frank and Joseph P. Kennedy II, announced the plan with some fanfare. In this voluntary program, the owners of the subsidized housing kept the right to prepay but agreed to work with the state's Executive Office of Communities and Development on a plan that would protect current tenants from eviction or undue rent hikes, maintain at least 60 percent of their units for low-income households, and to seek new federal funding to keep their dwellings as affordable. The Commonwealth in turn pledged to provide financial assistance that would fit individual circumstances, even if it meant facilitating the purchase of the property by a nonprofit entity.[57]

The leaders of the tenants' organizations, however, were none too happy about the pledge. Even when Amy Anthony, Massachusetts secretary of the Executive Office of Communities and Development, announced that owners of 90 percent of the state's subsidized units had agreed to the pledge, tenant group leaders denounced the deal for not legally binding the owners to keep their properties affordable to low-income people. The tenant leaders continued to agitate, pushing the Boston City Council to place any property removed from the obligations of the federal housing programs under rent control.[58]

Marshalling Evidence of a Crisis

In March 1987 the National Advisory Council of HUD Management Agents, the organization of the property managers for most of the HUD-subsidized housing projects, organized a National Housing Preservation Task Force to assess the depth of the problem and furnish policy solutions that the National Advisory Council could then present to Congress. Ten months and fourteen meetings after it began work, the task force in February 1988 produced its report, a relatively short document. Using "available data" and the personal experiences of

---

[57] Moore, "Reports - Expiring Subsidies," 1185; Smith, interview, 2010; Bonnie V. Winston, "Dukakis Pushes for Pledge on Housing," *Boston Globe*, September 30, 1987; Commonwealth of Massachusetts Executive Department, "The Massachusetts Plan and Property Owners' Pledge for the Preservation of Federal Low and Moderate-Income Housing," September 28, 1987.

[58] Peter B. Sleeper, "State Says its Program to Protect U.S. Low-Income Housing Is Working," *Boston Globe*, December 20, 1987; Peter S. Canellos, "City May Act on Bid To Protect 8,000 Low-Income Units," *Boston Globe*, September 28, 1988.

the members, the task force warned that a substantial portion of the nation's subsidized housing was in peril. The nation should reaffirm the original public-private partnership that spawned the projects, the committee urged, by giving owners direct financial and indirect tax incentives to keep low-income rentals in place or sell the buildings to a nonprofit organization that would do so. When owners did prepay their mortgages, they should be "encouraged" to keep tenants at low rents and the federal government should replace any units whose subsidies were terminated.[59]

In April 1987 the National Corporation of Housing Partnerships (NCHP) formed yet another group to investigate ways to keep the subsidized housing viable; this group attracted the most notice of any so far. The NCHP, a congressionally chartered but privately funded entity, had a great stake in housing preservation matters: it had been a general partner in close to 450 subsidized housing projects containing about 70,000 units. The tax reforms and low-income housing policies of the Reagan administration had shrunk the potential benefits of future real estate investments, taking its toll on NCHP's finances and making it more dependent on its existing portfolio. The NCHP coordinated its work on subsidized housing with members of Congress. Both the House and Senate housing subcommittees approved the formation of the National Low-Income Housing Preservation Commission, which was to submit its report to them to guide them in drafting future legislation. To maximize the commission's political influence, the NCHP named Carla Hills, the former secretary of HUD under the Republican president Gerald Ford, and Henry S. Reuss, the former Democratic congressman and chairman of the House Committee on Banking, Finance and Urban Affairs, to co-chair the commission.[60]

The National Low-Income Housing Preservation Commission

In order to speak with convincing authority, the National Low-Income Housing Preservation Commission produced a sophisticated economic model that predicted what the

---

[59] G. Lindsay Crump to Daniel C. Grady, cover letter for *Report of the National Housing Preservation Task Force*, February 15, 1988; National Housing Preservation Task Force Report, *The Preservation of Low and Moderate Income Housing in the United States of America: A Report* (Washington, D.C.: National Advisory Council of HUD Management Agents, 1988).

[60] Michael Abramowitz, "Hard Times for Subsidized Housing; Washington Firm Struggles to Fund Projects for Lower-Income Residents," *Washington Post*, March 24, 1986; National Corporation for Housing Partnerships, *Report to the President of the United States*, 1987, 2-4.

owners of subsidized properties would do with them, the effects these decisions would have on tenants, and the costs of possible actions to maintain the existing stock as subsidized low-income housing. To do this, the Hills-Reuss commission – which received funds from NCHP and the Ford Foundation – hired a consulting firm, which it guided via a "Technical Advisory Group" comprised primarily of NCHP executives and directors of housing agencies. The consultant, James E. Wallace of Abt Associates, assembled a Preservation Analysis Inventory, composed of approximately 645,000 privately-owned government-subsidized low-income dwellings, and devised a complex mathematical model to test this inventory's future. For a sample of 300 properties, Wallace gauged the available cash flow, need of repairs, reserves available for repairs, expected rents, operating expenses, allowable depreciation, and market value to determine the owners' likely actions, and the effect of those actions on tenants. When all was said and done, however, these sophisticated calculations led the commissioners to conclusions similar to those of the Preservation Task Force, whose members drew on personal experience.[61]

To understand the central message of the National Low-Income Housing Preservation Commission report, issued in 1988, a reader need have looked no further than the cover. There a three-color graph displaying a steep projected loss in the housing stock between 1988 and 2002 vividly conveyed the problem, and the title, *Preventing the Disappearance of Low-Income Housing*, boldly laid out the goal. In the body of their report, the commissioners drove the point home. Without further intervention, they asserted, financial and physical distress and the lure of mortgage prepayment would cause a large portion of the low-income housing to disappear. To prevent this looming disaster, the commissioners made only general recommendations, leaving the specifics for a later time.[62]

---

[61] National Low-Income Housing Preservation Commission, *Preventing the Disappearance of Low-Income Housing* (Washington, D.C.: National Corporation of Housing Partnerships, 1988), vi-vii, ix, xi, and Appendix III: "Technical Description of the Preservation Analysis Model," 93-115.

[62] According to the study, the principal problems facing the government-subsidized stock were the expiration of the Loan Management Set Aside rental assistance contracts, the maturation of second notes used in re-syndication, the loss of investor tax incentives (including accelerated depreciation, changes in the passive loss limitation rules, and the rise in the capital gains rates for sale of low-income housing) due to recent reforms, and the physical deterioration of the buildings. National Low-Income Housing Preservation Commission, *Preventing the*

Yet the Housing Preservation Commission's dramatic presentation and impressive statistics succeeded in drawing attention to the possible loss of hundreds of thousands of subsidized dwellings for low-income Americans. Newspapers around the country reported the findings with gloomy headlines: "Poor Face a Housing Shortage," reported the *Chicago Tribune*; "Big Losses of Housing for Poor Are Seen," declared the *Boston Globe*. With the help of the Hills-Reuss commission, preservation of affordable housing had become a national news story.[63]

The low-income housing preservation issue now took its place in a broad effort to create a new national housing policy. Many congressional and interest group supporters of low-income housing were up in arms over the Reagan administration's severe cutbacks of new expenditures for the construction of low-income housing. In the Senate, Alan Cranston, the Democratic chairman of the Subcommittee on Housing and Urban Affairs from California, and Alfonse D'Amato, the ranking member of the subcommittee from New York, worked with their counterpart in the House, Congressman Henry Gonzalez, to write a far-reaching new housing bill. The three men invited a wide range of organizations and individuals interested in housing to recommend new approaches to affordable housing programs. The resulting volume, issued in October 1987, covered a lot of territory, but one particularly prominent theme was the importance of maintaining the existing privately owned but government-subsidized projects. Authors who specialized in elderly or rural housing urged the preservation of projects developed under those programs, which faced threats similar to those of Sections 221 (d) (3) and 236 projects. Of course, the representatives of organizations such as the National Housing Law Project that devoted a lot of time to preservation issues made the case for keeping the

---

Disappearance, 20-30. To stem the financial defaults – still the largest risk to the housing stock – and future prepayments, the commission called for broad new programs. State and local governments, the commission urged, should study their local circumstances carefully and devise an appropriate plan, which HUD should support through subsidies and regulations. The commission urged that for its part, HUD should set up a special Low-Income Housing Preservation Office to research and coordinate future efforts. While respecting owners' rights, the commission, like the Preservation Task Force, urged protecting tenants by keeping their rents to less than 30 percent of their income. Ibid., 8-10, 81-83.

[63] George E. Curry, "Poor Face a Housing Shortage," *Chicago Tribune*, April 28, 1988, 10; "Big Losses of Housing for Poor Are Seen," *Boston Globe*, April 28, 1988, 9; Ann Mariano, "Low-Income Housing Seen In Jeopardy: Panel: 523,000 Units May Be Lost by 2002," *Washington Post,* May 9, 1988, 13.

government-assisted housing. So too, however, did long-time political stalwarts of housing reform – the U.S Conference of Mayors, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the American Planning Association – and relative newcomers to the cause such as the National Association of Counties.[64]

The Rouse-Maxwell Report

Even as this volume went to press, yet another commission, a high-profile private group, had begun meeting to conduct an ambitious review of national policy. Also inspired by the Cranston and D'Amato initiatives, James Rouse, a real estate developer and long-time leader in urban issues, and David Maxwell, the head of Fannie Mae, in September 1987 set up the National Housing Task Force, which became known as the Rouse-Maxwell Commission. An impressive array of twenty-six individuals prominent in the housing and community development fields comprised the members of the task force. Several of them, we have seen – former HUD official Lawrence Simons; Amy Anthony, Massachusetts secretary of communities and development; John Koelemij, former president of the NAHB; Marilyn Melkonian; and Barry Zigas, the president of the National Low Income Housing Coalition – had been active in efforts to preserve government-subsidized private housing.[65]

In March 1988 the National Housing Task Force published its report, which would become the basis for sweeping new housing legislation, the Cranston-Gonzalez National Affordable Housing Act of 1990. The Rouse-Maxwell Report on national housing policy proposed the Housing Opportunity Program, a broad housing block grant, to be matched by state and local governments, which was adopted as the HOME program. The report also pushed

---

[64] United States Congress, Joint Committee of Senate Committee on Banking, Housing, and Urban Affairs and House of Representatives Committee on Banking, Finance, and Urban Affairs, *A New National Housing Policy. Recommendations of Organizations and Individuals Concerned about Affordable Housing in America* (Washington, D.C.: GPO, 1987).

[65] Other members included Richard Ravitch, the prominent New York developer who had developed subsidized low-income housing, and Terrence Duvernay, who joined the Board of Directors of the NHT. National Housing Task Force, *A Decent Place to Live: The Report of the National Housing Task Force* (Washington, D.C.: National Housing Task Force, 1988), iii-iv, 58-65.

for nonprofit housing and community development organizations to become low-income housing developers.[66]

The Rouse-Maxwell task force devoted a section of its report to the topic of existing low-income housing. Reflecting the views of housing advocates and earlier reports, the task force members asserted that the combination of mortgage prepayments and expiration of subsidies, including the fifteen-year Section 8 commitments, posed a severe national problem. They called on the federal government to renew project-based and tenant-based subsidy contracts to avoid defaults and preserve low-income tenancies. The Rouse-Maxwell commissioners opposed abrogating owners' contractual rights to withdraw from the subsidy programs, but like others insisted that the federal government – with assistance and cooperation from state and local governments – should provide "both means and incentives for retaining the assisted stock."[67]

It is worth pausing to note that the Rouse-Maxwell Report differed from other commission reports and from contemporary policy debates by taking up the subject of privately owned unsubsidized low-income housing. Observing that this portion of the market provided the majority of homes for poor households, the task force members called for private as well as government funding to help the owners of these properties to renovate or otherwise maintain them. Wisely, they added that any programs must be kept simple, decentralized, "and free of red tape, or small landlords and homeowners will not participate." This is one of the few parts of the Rouse-Maxwell report, however, that has still not been adopted as policy.[68]

---

[66] Both Rouse and another task force member, Paul Grogan, headed national organizations – the Enterprise Foundation and LISC, respectively – dedicated to assisting nonprofit community development organizations.

[67] National Housing Task Force, *A Decent Place to Live*, 32-35, quotation at 34.

[68] National Housing Task Force, *A Decent Place to Live*, 35.

Chapter IV. Rental Housing Preservation Becomes National Policy

A Law for the Housing Emergency

In Washington, Barney Frank had been working on subsidized housing problems since he came to Congress in 1980, and now saw the opportunity to write a law that would deal with the prepayment issue. His approach was to find a way to balance the interests of the tenants and owners. Although he listened closely to the tenant advocates and greatly sympathized with the low-income residents of housing developments – indeed, sympathy with their plight is what motivated him – he also believed in the idea of "public-private partnerships," the collaborations between government and business people that had underlain the housing programs of the 1960s and 1970s. Along with other members of Congress, he sought ways to create incentives to keep the subsidized stock affordable.

For much of 1987, Congress debated what to do about the subsidized stock, but in the end it addressed the issue in a law named the Housing and Community Development Act of 1987, (though the president did not sign it into law until February 5, 1988). The new legislation followed closely the goals towards which Frank and the tenant advocates, in their reports and testimony, had been working. For years Frank had urged HUD to make preservation a principal goal when managing or disposing of its subsidized low-income properties. To that end, the bill included specific amendments to the 1978 legislation instructing HUD on how to manage or dispose of these properties. Frank also built on earlier legislative efforts to enable owners to maintain the low-income stock by authorizing a new flexible subsidy fund for capital improvement loans and providing purchasers of HUD-foreclosed projects with Section 8 contracts and other financial assistance so that they could keep the projects affordable to low- and moderate-income tenants.[69]

Besides tightening the restrictions on HUD's treatment of the properties that rebounded back into the government's possession, Title II of the law, known as the Emergency Low-income Housing Preservation Act of 1987 (ELIHPA) directly addressed the problems previously

---

[69] *Housing and Community Development Act of 1987*, Public Law 100-242, Subtitle C-Multifamily Housing Management and Preservation, (February 5, 1988), sections 181-86; Smith, interview, 2010.

proclaimed in the commission reports, especially subsidized mortgage payments. ELIHPA contained incentives specifically "to extend low income use." It allowed owners to increase returns on their project investment, obtain second mortgages, and increase rents under their Section 8 contracts. It also included a provision extending both Loan Management Set Aside and Property Disposition Section 8 contract terms to 180 months. Despite their intentions, however, such authorizing provisions would have limited effect until such time as Congress would actually appropriate the funds for the financial assistance schemes.[70]

Today ELIHPA is remembered for its most controversial provision, a last-minute insertion by Congressman Joseph Kennedy of language that for a time barred owners of subsidized properties from prepaying their mortgages. Opinions differ as to whether Kennedy was just being impulsive or was persuaded by the hard-core tenant activists in organizations such as the Massachusetts Tenants Organization. Whatever the case, sometime late in 1987, Kennedy succeeded in slipping into the bill an amendment that was far more radical than any of the earlier proposals, such as one that required owners to give one-year notice of their intent to prepay. Enacted on the premise that the nation faced a housing crisis from the expiration of the twenty-year mortgage terms, the law gave emergency powers to HUD to allow or prevent owners from paying the balance of their subsidized mortgages after reaching the twenty-year mark. The bill further required that HUD only approve prepayment if the owner submitted a plan for the property in question that protected current tenants, did not deplete the local supply of affordable housing, and was approved by the state housing agency. In the final bill, the legislators stipulated that after two years, these provisions would lapse, thus creating a moratorium on the prepayment of subsidized mortgages while they sought a permanent solution to the expiring use problem.[71]

---

[70] The statement of findings posed the problem of mortgage prepayments under sections 221 (d) (3) and 236 of the National Housing Act and under the Section 515 rural housing program and the expiring Section 8 rental assistance contracts. The provisions of ELIHPA, however, dealt with issues in the mortgage programs, with the exception of allowing landlords to raise rents under existing Section 8 contracts. *Housing and Community Development Act of 1987*, Title II, quotation at section 224; David A. Smith, "The Emergency Low-Income Housing Preservation Act: Good Intentions, Terrible Law," *Real Estate Review* 19: 1 (Spring 1989), 17.

[71] Kennedy had earlier proposed that owners be required to give one year's notice of intent to prepay mortgages on subsidized properties. John Robinson, "Mortgage Sale Delay Lauded by Legislators," *Boston Globe*, April 29, 1987, 3; Smith, interview, 2010; Peggy Hernandez, "Somerville Tenants, Fearful Complex Will Go Condo, Sign Option to Buy," *Boston Globe*, February 10, 1989, 154.

The Owners React

The moratorium on prepayment no doubt eased the minds of tenants, but this key provision in the ELIHPA infuriated owners and investors who believed it trampled on their rights. Leading the charge was David A. Smith, the head of investor services of Boston Financial Group. Smith knew well the HUD-assisted low-income housing stock and the problems associated with it. Early in his career he had been charged with working out deals for subsidized projects to keep them out of foreclosure and, if possible, eligible for their tax benefits. After the passage of the Economic Recovery Tax Act in 1981 shortened the period of property depreciation for tax calculations, Smith saw the potential for re-syndicating these properties and began to preach the financial benefits – as well as a new method for appraising their long-term value – to real estate investors.

But then tax reforms enacted in 1984 and 1986 killed the financial advantages of re-syndication deals. With the passage of the ELIHPA ban on mortgage prepayments, Smith's dismay turned to rage. Believing that nothing was more permanent than a temporary emergency, he concluded (correctly, it later turned out) that Congress would eventually extend the prepayment ban beyond its two-year limit. To prevent this, Smith recruited dozens of investor-owners to back a class-action suit against the government. In the fall of 1988, two companies, Thetford Properties and Baker Street Associates, sued in a United States district court in Raleigh, North Carolina, on the grounds that they would not have invested in the properties without such incentives as the ability to prepay, and that the suspension of the right to prepay was an unconstitutional taking of property without due process and compensation.[72]

The tenants also went to the ramparts over the prepayment issue. In Boston, the Massachusetts Tenants Organization demanded that Smith back out of the lawsuit. Members picketed with signs depicting Smith as Scrooge and flyers proclaiming that the Boston Financial

[72] Smith, interview, 2010; David A. Smith, "The Resyndication Opportunity for Subsidized Housing Partnerships," *Real Estate Review* 13 (Spring 1983), 40-51; David S. Kirk and David A. Smith, "Using the Reversion/Shelter Approach to Appraise Subsidized Housing," *The Appraisal Journal* (July 1983), 326-45; National Low-Income Housing Preservation Commission, *Preventing the Disappearance*, 28-30; Smith, "The Emergency Low-Income Housing Preservation Act," 16-19; Ann Mariano, "Apartment Owners Challenge '87 Law," *Washington Post*, November 5, 1988.

Group “bankrolls displacement and homelessness!” Smith responded that he would work for government funding of more housing but would not drop the lawsuit. In Chicago, Carmen Orrego and her fellow residents of a twenty-two-story building in Chicago’s Uptown neighborhood were shocked to receive notice of a 40 percent rent hike, effective in thirty days. With the assistance of idealistic volunteer lawyers, the tenants sued the owners for illegally prepaying their HUD Section 221 (d) (3) mortgage.[73]

The judges in both *Orrego v. HUD et al.* and the North Carolina class action suit found against the owners. They based their decisions on the grounds that HUD’s rules allowed owners to continue to make reasonable returns, and that owners could pursue administrative procedures to try to get relief. Smith was hardly mollified. It was as if he were walking down the street, Smith explained to anyone who would listen, minding his own business when HUD came up to him and broke his arm, and handed him a bottle labeled “aspirin.” He then asked a judge to tell HUD that it shouldn’t have broken his arm. But the judge said, “Take the aspirin first. Maybe you’ll feel better.” Nonetheless, Congress, as Smith feared it would, extended the ban on prepayments. But it did so only for nine months, which Smith attributed to the pressure of the owners’ lawsuit.[74]

Furthermore, although the court decisions let ELIHPA stand, the process of fighting the law had mobilized the owner-investors. The lawyer Smith had hired to carry out the owners’ suit was Charles Edson, a prominent figure in Washington on housing issues. Edson and his law partner, Bruce Lane, back in 1973 had started an industry newsletter, *Housing & Development Reporter*. Since then, Edson had helped found five national housing trade organizations. Over

[73] Peter Cannellos, “Tenants Give Landlord Bronx Cheer,” *Boston Globe*, December 21, 1988; Smith, interview, 2010; Dan Burke, telephone interview with author, Chicago, Illinois, May 10, 2011; Ben Joravsky, “Upscaling Uptown: Can Developers of Subsidized Housing Escape HUD Rules by Prepaying their Mortgages?” *Chicago Reader,* March 24, 1988; *Orrego v. 833 W. Buena Joint Venture*, 943 F.2d 730 (7th Cir. 1991).

[74] The Chicago case turned on the fact that the owners prepaid their mortgage during the interval between passage of the ELIHPA act and its signing by the president, but the judge ruled that a provision in ELIHPA made the ban on prepayments retroactive to November 1, which invalidated the owners’ prepayment. Ann Mariano, “Low-Income Housing Law Survives Court Challenge,” *Washington Post* , December 11, 1988; Randi Lyn Engel, “Critical Housing Needs and the Emergency Low Income Housing Preservation Act of 1987: A Short-Term Solution to a Long-Term Problem,” *Emory Law Journal* 40 (Winter 1991), 183-89; Smith, interview, 2010; Assisted Housing Legal Rights Fund, “Report 5,” April 1, 1989, 1; Assisted Housing Legal Rights Fund, “Report 6,” June 21, 1989, 1-3.

the course of 1989, Edson and Smith opened up new fronts in the battle over preservation policy. They formed a legislative committee to influence congressmen and HUD officials about a new housing law. With the help of Smith and Washington-area low-income housing developer Eugene Ford, Edson organized the owners and managers of Section 221 (d) (3) and Section 236 projects into a new national advocacy group, the Institute for Responsible Housing Preservation.[75]

Advocating Policy

While subsidized housing owners and investors were organizing, so too were the housing advocates, forming groups that would shape affordable housing preservation policies for decades thereafter. Among the most important was the National Housing Trust (NHT), but its debut was delayed by the Low-Income Housing Tax Credit. NHT's founders, Marilyn Melkonian and Sara Johnson of Telesis, had been diverted, first by working on Capitol Hill to shape the tax credit legislation and then by devising a new financial strategy that relied on the tax credit, instead of on syndication as Melkonian had originally planned. Finally, in October 1988, Sara Johnson, who was particularly interested in policy, left Telesis to get NHT up and running and become its first executive director. Melkonian and Johnson then recruited a board of directors made up of some of the most influential leaders in the housing field. In NHT's first years, Johnson emphasized consulting and proposing housing policy and HUD regulations; developing technical capacities and training others in the field; running educational conferences on preservation; and assisting nonprofit organizations, project residents, and a preservation consortium in North Carolina with preservation projects. NHT emerged out of the nonprofit and legal advocates' efforts to cope with the problems of subsidized housing to become in the 1990s the only national organization dedicated solely to housing preservation.[76]

---

[75] Smith, interview, 2010; Charles L. Edson, telephone interview with author, Washington, D.C., August 19, 2011; Eugene Ford, telephone interview with author, Washington, D.C., April 3, 2009; Andre Shashaty, "Retiring Lawyer Leaves Fingerprints All Over Federal Housing Programs," *Affordable Housing Finance* (March 2002); Assisted Housing Legal Rights Fund, "Report 4," January 1, 1989, 1.

[76] The members of the board included Paul Grogan, the executive director of LISC; F. Barton Harvey, III, the deputy chairman of the Enterprise Foundation; David Maxwell, the chairman and chief executive officer of the Federal

By the late 1980s the housing preservation movement also produced a new crop of state and local leaders and organizations. In Massachusetts, Vincent O'Donnell had become the director of development at the Community Economic Development Assistance Corporation (CEDAC), a quasi-public corporation providing technical assistance to nonprofit housing developers. Having investigated the problems of the troubled subsidized housing projects in the Boston area, O'Donnell threw himself into helping residents purchase their developments. As an expert and a practitioner, O'Donnell joined discussions about housing policy in Massachusetts and Washington.

In 1988, the activist lawyer Dan Pearlman helped start the California Housing Partnership, which the California legislature and governor had created to cope with the problem of expiring HUD subsidized housing. The following year, the organization hired Helen Dunlap, who had been directing a nonprofit housing group in Napa, California, to be its first executive officer. Dunlap opened the group's first office and began educating Sacramento and Washington officials. In Chicago another crusading lawyer, Dan Burke, who was representing Carmen Orrego in the tenants' lawsuit, in 1988 helped start the Chicago Community Development Corporation (CCDC) to preserve and develop subsidized multifamily housing. As vice president for development, Burke helped CCDC acquire and rehabilitate subsidized housing projects, and he too became involved in policy issues.[77]

To support these new efforts across the country to save affordable housing, advocates banded together to share technical information and coordinate with regard to federal legislation and policy. At first the facilitators, as they called themselves, met informally – so informally that participants are hard pressed to remember the time and location of the first gathering. In the early days the ad hoc group of facilitators included Sara Johnson, Vincent

National Mortgage Association (Fannie Mae); Barry Zigas, executive director of the National Low Income Housing Coalition; and former Assistant Secretary of HUD Lawrence Simons. National Housing Trust (NHT), "National Housing Trust Board of Directors, September 9, 1988," Report to Board Members; Johnson, interview; NHT, "Summary of National Housing Trust Activities, June 1990-June 1992," NHT records, NHT, Washington, D.C.

[77] Community Economic Development Assistance Corporation, *Annual Report* (2000), 15; O'Donnell, interview; "Preserving Affordable Housing: Looking Back, Moving Forward," *Housing Preservation News* 4 (2006), 1-2; Helen Dunlap, interview with author, Cambridge, Mass., March 22, 2011; Burke, interview; Chicago Community Development Corporation, Corporate Resume, accessed April 10, 2012, http://www.chicagocdc.com/corporate.php.

O'Donnell, Emily Achtenberg, Helen Dunlap, Jim Grow, Dan Burke, Mark Welch from Mercy Housing, Larry Yates, Barry Zigas of the National Low Income Housing Coalition, and Michael Kane, a leader of the Massachusetts Tenants Association who the next year helped found the National Alliance of HUD Tenants. At first they communicated through conference calls, faxes, and an early internet program called HandsNet. By 1990, the advocates began meeting regularly under the aegis of Sara Johnson and NHT as the National Preservation Working Group. The advocates used the Working Group principally to share methods and the arcane secrets of state and national housing laws and regulations, but also to hammer out positions and strategies for educating Congress, HUD, and state housing and finance agencies on preservation issues.[78]

Of course, the wave of activity on behalf of low-income housing did not occur unaided. Federal programs, even after the Reagan budget cuts, continued to help. Both the LIHTC and community development block grants were crucial, and after the passage of the Cranston-Gonzalez Act of 1990, so too was the HOME program. As we have seen, state governments encouraged or, in the case of California, directly carried out both preservation and new housing projects for economically disadvantaged Americans. Most states had housing finance agencies, which in the 1980s and '90s provided key financing for affordable housing preservation. Philanthropic foundations also supported affordable housing efforts, including preservation activity. The Ford Foundation, for example, gave grants to the National Low Income Housing Coalition, the National Housing Law Project, and NHT, as well as funding research that compiled data useful for addressing housing policy questions. The MacArthur Foundation provided grants and loans to an array of housing-related initiatives, particularly in Chicago, and funded at least one housing research project, a grant to Sara Johnson to measure the potential effect of the 1986 tax reform act on subsidized residential properties in Illinois[79]

[78] Johnson credits Helen Dunlap with thinking up the name, which she proposed because the term "working group" would not offend anyone. O'Donnell remembers that Nancy Libson, an affordable housing advocate based in Washington, D.C., also attended the early group. Dunlap recalls Tony Fusco, who with Burke founded the CCDC, being an early member. Johnson, interview; O'Donnell, interview, March 14, 2011; Burke, interview; Grow, interview; Sara Johnson to the Working Group of Regional and National Intermediaries, Technical Assistance Providers, memorandum (re: Summary of November 26, 1990 meeting), December 6, 1991, NHT records; NHT, "Summary of National Housing Trust Activities, June 1990-June 1992," NHT records.

[79] Nancy Andrews, telephone interview with author, San Francisco, California, May 4, 2011.

Let the Lobbying Begin

With the owners of and the advocates for subsidized housing organized in their respective trade associations, the temporary nature of the ELIHPA and the introduction in March 1989 of housing bills in both houses of Congress set off a furious round of lobbying to shape housing preservation legislation. Armed with the policy commissions' studies and their own analyses, the interested parties buttonholed officials and their staff members in the Capitol and the HUD building through late October 1990, when Congress passed the National Affordable Housing Act.

For the owners and investors of HUD-assisted low-income housing, the charge up Capitol Hill was led by Charles Edson, Tim Aluise, a Washington housing lawyer, Conrad Egan of NCHP, and the heads of the Institute for Responsible Housing Preservation and the National Leased Housing Association (both of which Edson had organized). Investor analyst David Smith, now at his own firm, Recapitalization Advisors, Inc., helped by churning out data based on the extensive NCHP holdings of subsidized housing, which they used to demonstrate with hard numbers what would happen to the housing stock under different program approaches. The owners' effort came to a climax in September 1990 when Edson and Denise Muha, the director of the National Leased Housing Association, personally visited the offices of all 435 House members.[80]

The representatives of the owners did not oppose the continuation of HUD's housing subsidy programs. Far from it, they favored the idea of low-income housing and wished no ill towards its residents. Edson, Egan, and Smith explicitly called for protections for low-income tenants of the subsidized housing. They believed that given reasonable financial support, most owners would maintain their apartment buildings for poor people. But owners' representatives were adamant that owners should have the right to pay off their mortgages and sell their property if they wished.

In Congress, the owners fared better in the House than in the Senate. In the upper chamber, they could muster support from Republicans and conservative Democrats such as Alabama's Howell Heflin, but were unable to overcome the liberals aligned with the advocates'

[80] Smith's firm was, and is, Recapitalization Advisors. He analyzed the NHP portfolio, which had been purchased by the Harvard Endowment Fund. David A. Smith, "Subsidized Housing Preservation: Where It Came From, Where It's Going," *Real Estate Finance* 7:3 (Fall 1990), 13-20; Smith, interview, 2010; Edson, interview.

point of view. Edson was dismayed in the spring of 1990 when the Senate reported a bill that imposed a severe haircut (or devaluation) on owners who accepted further financial assistance from the government. The owner representatives turned their attention to the House, which under Chairman Gonzalez had produced a bill that offered owners some limited incentives but no right to prepay. In the House, Texas Congressman Steven "Steve" Bartlett was the owners' hero, fighting to maintain their property rights in the new preservation law. Bartlett and Barney Frank negotiated a deal that restored the right to prepay and which was, according to NCHP director Conrad Egan, fair to both owners and tenants. In the fall of 1990 this bill, which was acceptable to the owners but opposed by the tenant advocates, went into the conference committee.[81]

In the campaign for a new preservation law, the advocates were led by Sara Johnson and Marilyn Melkonian, followed closely by National Housing Law Project lawyers such as Jim Grow; the National Council of State Housing Agencies represented by Marvin Siflinger, of the Massachusetts Housing Finance Agency; and a parade of tenant leaders and supporters. Johnson and Melkonian consulted frequently with the congressmen and their staff members, and Johnson even drafted legislative language for them. They believed that the ELIHPA framework was a good one, but that it needed funding and better breaks for nonprofits that wanted to buy the housing developments. Having wrestled with the financial problems of subsidized housing for years, the advocates wanted to be sure owners had subsidies that would allow them to refinance and rehabilitate their properties while maintaining them as residences for low-income people. Some, although not all, of the advocates were willing to grant owners a "fair return," but they all agreed with Melkonian, who told the congressmen that if they allowed prepayment of mortgages, "there's no question that you would precipitate a crisis."[82]

---

[81] Edson, interview; Egan, interview. For legislative history from the Library of Congress, see Bill Summary and Status, 101st Congress (1989-1990) S.566, http://thomas.loc.gov/cgi-bin/bdquery/D?d101:6:./temp/~bdUXyi::|/home/LegislativeData.php?n=BSS;c=101.

[82] Statement of Emily Achtenberg, House Subcommittee on Housing and Community Development, *Preservation and the Loss of Subsidized Housing Stock*, Hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, 101st Congress, 2nd session, February 28, 1990, vol. 4, 57-61; Statement of Marilyn Melkonian, ibid., 61-64, quotation at 67; Statement of Linda Parke Gallagher, ibid., 64-66. For support for a permanent ban on owner prepayment, see Statement of Larry Yates, ibid., 32; Kristin Siglin, telephone interview with author, Washington, D.C., September 20, 2011; NHT, "National Housing Trust Activities, June, 1990-June 1992," 2.

A prime reason for this sense of crisis was the perception that federal assistance for production of housing had sharply declined. The Section 8 program had replaced the older FHA-subsidy programs, but since the Reagan administration, appropriations for new Section 8 funding had fallen off precipitously. "When Reagan came in and pretty much shut down Section 8," a former top aide to Barney Frank recalls, preservation of subsidized housing "became even more critical, because we had to hold on to what we had." The Reagan budget cuts of the 1980s cast a long and dark shadow over the supporters of low-income housing programs.[83]

Among the elected representatives, the advocates' chief backers were liberals such as Frank and Gonzalez in the House and Alan Cranston and John Kerry of Massachusetts in the Senate. Cranston was the advocates' most powerful leader, not only because he was a senior member of the Senate and widely respected, but also because his chief aide, Bruce Katz, was highly effective at arguing the advocates' case. Nonetheless, at the crucial point, Johnson turned to moderate Democratic Congressmen Thomas Carper of Delaware and David Price of North Carolina to negotiate a final deal that would win enough support for passage. The advocates' pull was strong enough to defeat the right to prepay in the conference committee, but the legislators compensated the owners with generous incentives.[84]

Apex of Policy: The Low-Income Housing Preservation and Resident Homeownership Act of 1990

The new advocate-friendly preservation law was inscribed in the Cranston-Gonzalez Affordable Housing Act of 1990 as Title VI, the Low-Income Housing Preservation and Resident Homeownership Act of 1990, or LIHPRHA. As the housing advocates had wished, the authors of LIHPRHA retained elements of ELIHPA, making them permanent but refining them to make them more acceptable to the owners and investors.

[83] Almost all sources, both published documents of the time and interviews with those who were active, describe the dire prospects for future government-subsidized low-income housing created by the Reagan administration, and therefore the necessity of preservation. Richard Goldstein, telephone interview with author, Washington, D.C., April 2, 2012.

[84] Johnson, interview; Siglin, interview; Grow, interview; Egan, interview; Edson, interview.

To owners who wished to change their ownership in some way or whose financing and commitments had reached the end of their term, LIHPRHA offered three choices. The owners could apply to prepay their mortgage or otherwise terminate their commitments to low-income tenancy, extend the life of the regulated low-income rents, or transfer the property to a buyer in an approved category. But first the law required owners to file a notice of their intentions and then prepare a plan of action, which HUD had to approve, to carry them out.[85]

As with the earlier ELIHPA, however, LIHPRHA made it difficult, if not impossible, for owners to prepay their mortgages. HUD would not approve any prepayments that might cause tenants various forms of economic hardship: by raising rents by more than 10 percent, or above 30 percent of the tenant's income; by displacing tenants; by adversely affecting the supply of decent, safe, and sanitary housing affordable to low-income families, and near their jobs; or by interfering with the supply of local housing available to racial minorities. There were certain conditions – say, if HUD failed to provide the promised financial assistance within a given time, or if the market forced rents above federal guidelines – under which HUD could allow owners to prepay their mortgages. In such cases, the program gave displaced families Section 8 certificates or vouchers and assistance – including half the moving costs – of finding a new place to live.

Under most circumstances, it is safe to say, the law forced owners to keep their properties or sell them to a qualified purchaser (typically a nonprofit) which would maintain them as low-income housing. In either case, HUD would provide financial benefits. The kicker was that owners who accepted these had to commit to keeping the properties for low-income families, not for a mortgage term, but for the *useful life of the property*.[86]

LIHPRHA offered these owners remarkably generous terms. All the parties in the legislation negotiations had agreed that it was important to make it worth the owners' while to stay in the HUD-subsidized program. Congress accordingly widened the potential revenue streams. The lawmakers allowed owners to receive a healthy 8 percent annual return on their

[85] *Cranston-Gonzalez National Affordable Housing Act of 1990*, Public Law 101-625 (November 28 1990), Title VI. For a succinct summary, see Engel, "Critical Housing Needs," 196-200.
[86] Engel, "Critical Housing Needs," 199, 202.

equity, as determined by the appraised value of their property, as well as to pay debt service on the federally-assisted mortgage and any rehabilitation loan, and meet project operating expenses and establish adequate reserves.

To do so, owners could raise their rents (within limits), and/or HUD could provide them with additional Section 8 assistance, financing for capital improvements from the fund created by the 1978 Flexible Subsidy program, insurance for a second mortgage for capital improvements, and continuation of Section 236 Interest Reduction Payment subsidies to the original first mortgage. By increasing the number of units for Section 8 and allowing the rents in Section 8 units to rise above the usual limits, landlords could now earn the equivalent of actual market rents, as opposed to rents held down by the government's previous below-market formula. LIHPRHA also included this sweetener: even though the Section 8 contracts lasted five years, HUD would allow the owner, by insuring a second mortgage loan under Section 241(f), to take out a long-term loan based on the assumption that the Section 8 contracts would last for the length of the loan – up to forty years. Hence, owners could borrow on a portion of the project equity.[87]

If LIHPRHA bound the owners, it was, in Conrad Egan's words, with golden handcuffs.[88]

Aftermath

Despite the attempt to settle preservation policy once and for all, LIHPRHA left all the parties somewhat unsatisfied and the political struggles continued. Owners disliked the mandatory requirements placed on them and believed the required appraisal process understated the street value of their properties. On this last point, their lawyers filed suit in 1993 and today they are still in the courts with no resolution in sight. Nonetheless, the law escaped a full-fledged rebellion by the owners because most were satisfied with – and some

---

[87], *Cranston-Gonzalez National Affordable Housing Act*, Title VI, sections 214, 219,; Edson, interview; Paul Weech, telephone interview with author, Washington, D.C., September 7, 2011; Grow, interview; O'Donnell, interview.

[88] Vincent O'Donnell comments that LIHPRHA was "intended to compensate owners for the as-is equity in the properties, and also to provide a new long-term investment to improve the properties and keep them affordable. This latter half of the purpose did add cost, but that part of the cost was separable from the portion required as equivalent to [constitutionally required] compensation for a taking." O'Donnell, written communication; Egan, interview.

were even happily surprised by – the ample financial compensations. For their part, HUD officials felt burdened by deadlines for working out the numbers and processing deals. Tenant advocates were unhappy that the law did not sufficiently protect the low-income residents of subsidized housing and, according to Smith, was far too generous to owners.[89]

When it became clear to most of the parties that it would take technical amendments to fine-tune the program's mortgage insurance provisions for preservation, the two sides returned to the struggle. During the process of writing the amendments which were passed in 1992, the owners' representatives tried to add further protections for subsidized housing owners. At the behest of Michael Kane, the National Housing Trust successfully petitioned for government funds to help tenants organize and become full-fledged participants in the process of renewing or transferring ownership of the properties (Intermediary Technical Assistance Grants and Outreach and Training Assistance Grants).[90]

Meanwhile, despite a string of measures to prop up FHA-insured low-income multifamily projects, a great number of them were once again in critical condition. The numbers of such projects in financial trouble or in HUD's possession through foreclosure climbed steeply in the 1980s and early 1990s. Some of the problem was due to the collapse of a real estate bubble, cut short by the change in tax laws. Nonetheless, twenty years after the Congress started enacting programs to stabilize troubled properties, a disturbing proportion of these projects – between a quarter and a third – had faltered or failed financially. The issue became so pressing, and potentially expensive, that the administration and Congress enacted yet more legislation to buttress the finances of troubled properties and move the HUD-owned inventory into responsible hands. Decades after it was envisioned in the 1960s, the public-private policy for low-income housing had yet to operate smoothly.[91]

---

[89] Edson, interview; Smith, interview, 2010.

[90] Johnson, interview; *Housing and Community Development Act of 1992*, Title III,

[91] The Multifamily Property Disposition Reform Act of 1994 allowed HUD to tap FHA funds to pay for the rehabilitation of the properties and add project-based Section 8 subsidies, for example. About two thirds of the troubled multifamily projects were "assisted," but most of the remaining unsubsidized properties were insured under the Section 221 (d) (4) program for multifamily rental housing, and were home to families of low or very low incomes. James E. Wallace, "The Dilemma of the Disposition of Troubled FHA-Insured Multifamily Rental Property," *Housing Policy Debate* 5:1 (1994), 1-34; W. Donald Campbell, "Comment on James E. Wallace's 'The

Chapter V. The Splintering of Preservation Policy

The Waning of LIHPRHA

Beginning in the mid-1990s, the political pendulum began to swing away from LIHPRHA and a single preservation policy. From the beginning, the expense of the program made it vulnerable to criticism. LIHPRHA's defenders argued that the price of individual preservation projects was less costly than other ways of producing low-income housing, but were unable to shake LIHPRHA's image as a gold-plated program. Joseph Ventrone, a witty Republican staff member who specialized in housing issues, liked to describe the drain on the taxpayers' money as "LIHPRHA-suction." Other Republican staff members complained vociferously that subsidizing units in Honolulu valued at $90,000 was an outrage.[92]

The damage to the reputation of LIHPRHA occurred as events were shrinking the resources available to cabinet departments. Although the Democrats controlled the White House, President Bill Clinton wanted to balance the federal budget. The 1994 election, in which the Republicans seized control of both houses of Congress, and the subsequent arrival of congressmen who threatened to do away with HUD, turned up the political pressure on the housing agency. In drawing up the HUD budget, therefore, Secretary Henry Cisneros and FHA Commissioner Nicolas Retsinas were forced to choose between competing housing programs. Retsinas, who wanted to put FHA's insurance fund on a sound footing, supported an effective property disposition program that would deal with the large inventory of troubled HUD projects once and for all. Cisneros had thrown much of his energy into a campaign to rebuild the nation's worst public housing projects. In this context, HUD officials felt they could not support LIHPRHA.[93]

Dilemma of the Disposition of Troubled FHA-Insured Multifamily Rental Property,'" *Housing Policy Debate* 5:1 (1994), 55-71.

[92] David Cay Johnston, "A Shelter and a Storm; As Tax Breaks Change, the Working Poor Lose Out," *New York Times*, July 25, 1995, D1; Egan, interview; Siglin, interview; David A. Smith, interview with author, Boston, Mass., January 14, 2011; O'Donnell, interview; Grow, interview.

[93] National Housing Institute (NHI), "LIHPRHA," *Shelterforce* 19, no. 1 (July/August 1997), http://www.nhi.org/online/issues/94/lihprha.html; Dunlap, interview.

Seeing that LIHPRHA's funding was in jeopardy, the housing advocates jumped into action. In the summer of 1995, the members of the Housing Preservation Working Group conducted a sophisticated campaign to ensure funding for LIHPRHA. Led by a professional organizer, Buck Bagot, the campaign targeted supporters of endangered subsidized housing in the districts and states represented by influential Republican congressmen, who might otherwise not have supported affordable housing preservation. This effort succeeded not only in obtaining funding – in the face of conservative victories in the congressional election of 1994 – but also in winning valuable allies such as Senators Christopher Bond of Missouri and Robert Bennett of Utah. The campaign helped channel more than a billion dollars to the program in the mid-1990s.[94]

Although the LIHPRHA supporters won that battle, they eventually lost the war to keep the program. In 1996, Congress began to eviscerate LIHPRHA. In March, the President signed into law a bill that reinstated the rights of owners to prepay their mortgages or terminate the mortgage insurance. Then, Congress went after the lucrative incentives meant to induce owners to keep their projects subsidized for low-income families. In June, the House took up the HUD budget for fiscal year 1997 and appropriated no funds for affordable housing preservation. The following month, the Senate wrote in $350 million for LIHPRHA, which survived in the final bill. But the law also replaced the previous LIHPRHA incentives – increased Section 8 project-based rental subsidies and the FHA-insured Section 241 (f) loans for equity take-outs – with specified grants or loans. The small allotment for preservation – tiny compared to the billions spent on other housing programs – had to cover both these grants and loans and the cost of vouchers for those tenants displaced when their owners prepaid.[95]

---

[94] Vincent O'Donnell, telephone interview with author, Boston, Mass., April 4, 2011; Burke, interview; John Shaw, "Power Before Policy: Interview with Buck Bagot," *Real Change News*, August 22, 2012, http://www.realchangenews.org/old_site/2002/2002_08_22/features/power_before_policy.html; NHI, "LIHPRHA.".

[95] Alfred M. Clark, "Can America Afford to Abandon a National Housing Policy?" *Journal of Housing and Community Development Law* 6 (Spring 1997), 198-99; Government Accountability Office (GAO), "Housing Preservation: Policies and Administrative Problems Increase Costs and Hinder Program Operations," (Washington, D.C.: GAO, 1997), 4-5.

A caustic report published by the Government Accountability Office (GAO) in July 1997 delivered a final blow. The study of forty properties found that HUD's supplementary funds varied widely, from a quarter of the property's value to more than three times its value, and concluded that HUD was unable "to ensure that the program is being managed effectively and efficiently, that federal funds are being spent wisely, and that preservation operations are consistent with program requirements." After that, LIHPRHA remained on the federal books, but ceased to receive any meaningful funds from the Congress.[96]

The Preservationists' Struggle over Section 8 and Vouchers

While HUD and the Congress retreated from the previous preservation policy, the related issue of Section 8 contracts provoked a policy fight within the ranks of supporters of affordable housing. Because the Section 8 subsidy was created in 1974 after the programs of the 1960s, policy makers referred to housing with Section 8 subsidies as "newer assisted housing." The Section 8 program for new construction and substantial and moderate rehabilitation was the largest of the subsidized programs; it subsidized about three quarters of a million dwellings. But over time, the owners of housing developed under Sections 221 (d) (3), 236, or 515 (rural) programs depended on Section 8 Loan Management Set Aside for additional support. By 1998, 87 percent of the 430,000 units under Section 236, 51 percent of the 110,000 units under Section 221 (d) (3), and 10 percent of the 450,000 Section 515 units received Section 8 project-based rental assistance.[97]

The projected cost of Section 8 assistance contracts, a principle prop of the preservation actions, was astronomical, and even more so in relation to the deficit controls imposed by the Gramm-Rudman-Hollings Act of 1985. Furthermore, the program had created a glaring anomaly, one pointed out by newspaper articles during the mid-1990s. The Section 8 contract rents in many HUD-subsidized properties – especially those developed under the new construction and rehab programs – were higher than the rents in nearby buildings. Yet if the

[96] GAO, "Housing Preservation" 3.

[97] Andre Kochera, Don Redfoot, and Jeremy Citro, "Section 8 Project-Based Rental Assistance: The Potential Loss of Affordable Federally Subsidized Housing," (Washington, D.C.: AARP Public Policy Institute, 2001), 7, table 1.

government made landlords reduce the rents in these properties, it would make them financially infeasible, cause massive foreclosures, and drain the FHA insurance fund. This scenario, David Smith explained to shocked senators in February 1995, would cost the federal government between $8 and $12 billion.[98]

To escape such a dreadful fate, HUD officials proposed a "mark-to-market" program that would allow owners of subsidized Section 8 properties to adjust their rents to market levels but still escape foreclosure by refinancing with government mortgages that reduced their debt service expenses. HUD officials also proposed to make portable rental vouchers the pre-eminent program to help provide homes for low-income people. They believed that vouchers would give low-income tenants the ability to choose their preferred residences, thus penalizing owners who did not maintain their properties well.[99]

Advocates for the preservation of housing and all those who had a stake in the production and ownership of subsidized low-income housing not surprisingly felt that the proposal threatened the very cause of affordable housing. They fought back vigorously in the press and in the lobbies of Congress to defend project-based housing subsidies. The alignment of forces was ironic: the advocates and industry representatives joined together to fight Democratic HUD officials, including Helen Dunlap, the advocates' long-time friend and colleague who was now serving as deputy assistant secretary for multifamily housing. For decades, the supporters of building and maintaining physical dwellings for low-income people – be it public housing or privately owned subsidized housing in either new or rehabilitated structures – had rallied against portable rental supplements for tenants. The fight over the best approach to preservation policy now became a part of that larger battle.[100]

---

[98] Schwartz, *Housing Policy*, 168; Stephen Kohashi, "Housing Budgetary Analysis," discussion draft, typescript, November 29, 1994 (courtesy of David A. Smith); David A. Smith, Statement on behalf of the National Assisted Housing Management Association before the United States Senate Subcommittee on VA, HUD and Independent Agencies of the Committee on Appropriations, February 2, 1995 (courtesy of David A. Smith); Smith, interview, 2011. Because the Loan Management Set-Aside properties had budget-based rents, only about one quarter of them had rents above the fair market rent for their areas. Smith, Statement, 4-5.

[99] Dunlap, interview.

[100] Michael Bodaken, "We Must Preserve the Nation's Supply of Affordable Housing," *Shelterforce* 17:4 (July/August 1995); Helen Dunlap, "Mark to Market: A Strategy to Recapitalize HUD's Assisted Housing Inventory," *Shelterforce* 17:4 (July/August 1995); Michael Bodaken, telephone interview with author, March 9, 2011; Dunlap,

The policy struggle ended with a compromise, which allowed owners to remove their properties from the subsidized rolls but also offered protections to tenants and incentives for owners to stay in the subsidy programs. Recognizing that without the incentives of LIHPRHA some owners of subsidized properties would prepay their mortgages, in 1996 the Congress passed the Enhanced Voucher program, which provided tenants with a rent supplement to pay the increased rents in the prepaid buildings. Unlike HUD's portable voucher program, the enhanced vouchers could be issued to households above the low-income limits of the regular voucher program and used for dwellings whose rents exceeded HUD's fair market rents. Thus, as long as the tenants remained in their apartments, they were protected from rent hikes.

Section 8: Opt Out or Stay In?

Meanwhile, at the suggestion of Senate staff member Jon Kamarck, HUD instituted a demonstration program to see what would happen if, while lowering rents in Section 8 housing projects, the government gave owners financial incentives to keep their properties in the subsidized program. Analyses of the demonstrations indicated that a future without LIHPRHA incentives but with the possibility of restructuring project debt would not be as bleak as many advocates had feared. A small proportion of owners would likely "opt out" of the program, but most would use the opportunity to restructure their debt. Some would simply renew their Section 8 assistance for low-income tenants without restructuring their debt. Those owners who did not want to keep their properties for financial or for other reasons were often amenable to selling them to nonprofits who might make them work as affordable housing. The locations, local real estate values, and rental markets shaped the decisions, and the particular circumstances of a subsidized development required a tailored response. The demonstration also uncovered the disconcerting fact that in many places the Fair Market Rents, which HUD used to peg the rents for the Section 8 program, were 20 percent or more higher than the local

interview; Grow, interview; Louis Winnick, "The Triumph of Housing Allowance Programs: How a Fundamental Policy Conflict Was Resolved," *Cityscape* 1: 3 (September 1995), 95-121.

market rents. The heated arguments over policy, it seems, were based on beliefs and suppositions far more than on the reality in the streets.[101]

As often happens, Congress became impatient and did not wait for the results of the demonstration programs. In 1997, preservation proponents outside the government worked with a remarkable bipartisan coalition – led in the Senate by Republicans Connie Mack of Florida, Christopher Bond, and Alphonse D'Amato, and Democrats John Kerry and Paul Sarbanes of Maryland – to enact a version of the Mark-to-Market program that encouraged owners of virtually all project-based Section 8 properties to maintain them as low-income rental properties. The Multifamily Assisted Housing Restructuring and Affordability Act of 1997 made renewal of low-income housing subsidies voluntary; imposed a market rent cap if an owner chose to renew; and permitted debt restructuring if a property had an FHA-insured mortgage *and* had above-market rents. For owners who wished to renew their properties as low-income residences, the government would provide owners with loans to restructure their mortgages as well as grants for up to 80 percent of rehabilitation costs. To oversee the process and ensure that this time the subsidized projects would stand on solid financial ground, the act created a special office, which would farm out the actual negotiating of the financial deal with the owners to a housing finance agency or a nonprofit financial intermediary (named a Participating Administrative Entity).[102]

Thanks to the efforts of the advocates and supporters of the tenants, Mark-to-Market contained the kind of tenant protections that advocates liked: property owners who participated in the Mark-to-Market program had to agree to renew Section 8 contracts for thirty years (with the hope that Congress would continue to appropriate funds). Without a compulsory requirement to stay in the program, however, tenants feared that owners of

[101] David Smith, interview, January 19, 2011; Charlie Allen and Thomas A. Bledsoe, "Mark-To-Market and Nonprofits: Results from the Demonstration and Implications for the Permanent Program," National Association of Housing Partnerships and Recapitalization Advisors, Inc., white paper, March 1999 (revised version published in *Affordable Housing Finance* 7: 7 [July 1999], 38, 40-43); David A. Smith, "Renewed Affordability: A Paradigm for Existing Affordable Housing," Recapitalization Advisors, Inc. white paper, March 29, 1999.

[102] The special office is the Office of Multifamily Housing Assistance Restructuring. Schwartz, *Housing Policy*, 168-170; Discussion of Senate Conference Report on Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (H.R. 2158), *Congressional Record* (October 9, 1997), S10733-S10744; O'Donnell, written communication.

properties with reduced rent subsidies would "opt out" of the program and raise rents to market levels. "We've got to fund the Section 8," became a mantra for the advocates.

In their work to prevent a stampede of owners opting out, housing preservation supporters facilitated ways to keep owners in the subsidized programs. Within HUD in 1999, Shaun Donovan, the acting general deputy assistant secretary for housing, wrote sensible guidelines for the Multifamily Assisted Housing Restructuring Act and Mark-to-Market program, which were then published and distributed. These guidelines, according to the advocates, were crucial to making the preservation efforts succeed.

Outside the government, an alliance led by the advocates' National Housing Trust along with the owners' National Leased Housing Association pushed to solve a different problem affecting a sizeable minority of Section 8 properties. These were buildings in which the Section 8 contract rents fell *below* street rents, which often occurred in gentrifying sections of booming cities. In 1999 the alliance persuaded HUD (by interpreting the Mark-to-Market legislation) and then Congress (by language in an appropriations act) to set up the Mark-Up-to-Market program, in which owners of Section 8 properties could raise rents to nearby market levels. Such a prospect obviously made retaining the subsidies much more appealing to owners, and leaders such as Michael Bodaken, the executive director of the National Housing Trust, believe it saved thousands of units for use by low-income households.[103]

Assisting Older Assisted Housing

Besides protecting tenants of Section 8 properties, the advocates then turned to the issue of protections for residents of the homes developed under the Section 221 (d) (3) and Section 236 programs of the 1960s. They believed that the recent defunding of LIHPRHA and the restoration of owners' prepayment rights had rendered these properties vulnerable to conversion to market-rate housing. Led by Democratic Senator Paul Wellstone of Minnesota, supporters of housing preservation in Congress in 1998 passed the "Wellstone Notice" as part

---

[103] For Mark-Up-To-Market, see Section 531 of the FY 2000 HUD Appropriations Act. Michael Grunwald, "Fearful Seniors Watch a Housing Subsidy Drama Play Out," *Washington Post*, March 26, 1999, A3; Burke, interview; Bodaken, interview; Smith, interview, January 19, 2011.

of the fiscal year 1999 HUD appropriations. This required owners of "older assisted housing" to give five to nine months' notice before they prepaid their mortgages.[104]

In 2000 the preservation proponents took another step forward when Bill Apgar, the HUD Assistant Secretary for Housing/Federal Housing Commissioner, announced new guidelines for owners of Section 236 properties. The guidelines, which bore the arcane name of Interest Reduction Payment retention/decoupling, enabled owners to refinance their FHA-insured mortgages while continuing to receive government subsidies on their original mortgage. The subsidies lowered the interest payments on the original mortgage and lasted for the remaining term of that loan. As part of the deal, the Section 236 owners were required to keep the property affordable to low- and moderate-income households for another five years after the original mortgage term expired. The Institute for Responsible Housing Preservation, an owners' organization, took some credit for negotiating this policy, but so too did the advocates, who believed it to be "an important preservation tool for Section 236 projects."[105]

Guarding the Stock in the 2000s

Thus, even after LIHPRHA faded from sight, the numerous and well organized parties interested in the fate of the housing developments created by the HUD programs of the 1960s and 1970s had found numerous ways to preserve them. Their intense political struggles to determine federal policy had produced a new open-ended policy with an array of program tools and possible outcomes for properties whose subsidy terms expired or whose owners wanted to prepay. Even tenant and low-income housing advocates accepted that some units would lose their subsidy, but took some comfort in the availability of financial tools to keep that number low. The representatives of the owners and investors were mollified at winning the right to take

---

[104] National Housing Law Project, "Important New Laws for HUD Multifamily Housing," *Housing Law Bulletin* 28 (Oct. /Nov. 1998), 191; Schwartz, *Housing Policy*, 170-71.

[105] The guidelines for Interest Reduction Payment retention/decoupling were announced in the HUD notice 2000-08 (May 16, 2000), which implemented new statutory authority created by Section 531 of the FY 2000 HUD Appropriations Act. Emily P. Achtenberg, "Retaining IRP Subsidy through Decoupling and Note Purchase," analysis for Citizens Housing and Planning Association (CHAPA), (Massachusetts) Community Economic Development Assistance Corporation (CEDAC), and Local Initiatives Support Corporation (LISC), May 1, 2001, 1; Institute for Responsible Housing Preservation, "Housing Preservation History," accessed January 24, 2012, http://www.housingpreservation.org/history.php; "HUD Notices," *Housing Law Bulletin* 30 (June 2000): 88.

their properties out of the government programs and so joined the advocates in pushing for government funds to discourage owners from making that choice.

Nonetheless, the supporters of affordable housing preservation in the new century could not afford to relax their vigilance. Each year thousands of units reached the anniversaries that would end their status as low-income habitations if their subsidies were not renewed or replaced. The properties with their status as affordable housing now on the verge of potential expiration included not only those subsidized by the programs of the 1960s and 1970s, but also those financed with low-income housing tax credits that had reached their fifteen-year limit. In addition, a small proportion of the privately owned subsidized properties fell into financial trouble, especially after the collapse of the housing finance bubble in 2008.

The supporters' vigilance apparently paid off. Although some projects fell out of the subsidized and low-income category, most did not. A GAO study found that an overwhelming proportion of owners of properties with Section 8 rental assistance renewed, saving 95 percent of all units covered by such subsidy contracts. Relatively few owners left the program voluntarily. Those that did were in rising real estate markets and sought greater returns by converting to higher market rents or selling their units as condominiums. "The properties most likely to leave the program," the authors summarized, "were those with few Section 8 units, family-occupied units, those in poor physical condition, and those located in markets with rapidly escalating housing values."[106]

Still, housing preservation supporters felt obliged to monitor the owner incentives and tenant protections, lest Congress or an indifferent administration curtail them. In 2005 advocates beat back a move by Congress to limit the term of tenants' use of enhanced vouchers to just one year. After one year tenants would only receive standard portable vouchers, which have lower rent limits that might force tenants to leave their buildings. The following year, Congress threatened to terminate the Mark-to-Market program, but again the supporters of preservation prevailed. Even when the programs were not threatened by extinction, the advocates worked to adjust them to be more effective. The private developers who preserved

[106] GAO, *Project Based Rental-Assistance: HUD Should Update Its Policies and Procedures to Keep Pace with the Changing Housing Market*, GAO-07-290 report (Washington, D.C.: GAO, 2007), 3-5, 13-22, quotation in preamble

low-income housing increasingly looked to the low-income tax credit to refinance or restructure the debt in their projects. This meant that advocates worked to ensure the availability of the two types of tax credits (4 and 9 percent). The preservation tool box was filled with tools, but the tools had to be protected.[107]

Policy Makers, Old and New

As in years past, the proponents of housing preservation looked to Congressman Barney Frank, who remained the most informed and persistent voice for preservation policy on Capitol Hill. Not only did Frank hold hearings as chairman of the Committee on Financial Services, he also served as an ex officio member on other committees that were dealing with preservation matters. In the Senate, Republican Christopher Bond was a leading proponent, which was especially important in those years that Republicans held a majority. In the early 2000s, Democrats John Kerry and Jim Jeffords joined with Republicans Bond and Maine Senator Susan Collins to propose preservation legislation. Such coalitions brought about the passage, after repeated attempts, of the Housing and Economic Recovery Act of 2008, which allowed contracts under the Section 8 Project-Based Voucher program to last for fifteen years and set up the Affordable Housing Trust Fund. (Unfortunately, the collapse of the economy caused the funding source – a fee paid by the government-sponsored secondary mortgage firms – to disappear. Furthermore, the ranks of such political leaders have thinned recently – Bond retired in 2010, and Frank declined to run again in 2012.)[108]

As head of the National Housing Trust, Michael Bodaken continued to be a lead witness at congressional hearings on preservation issues, and Jim Grow of the National Housing Law Project testified regularly as well. They also discussed housing preservation legislation with

---

[107] Schwartz, *Housing Policy*, 170; Janet Golrick and Ted Toon, "The Path to Preserving HUD Housing," July 18, 2006, accessed October 15, 2010, http://www.knowledgeplex.org/showdoc.html?id=185700; Charles Wehrwein, Prepared Testimony before the Senate Subcommittee on Housing and Transportation, Committee on Banking, Housing, and Urban Affairs, Oversight Hearing on "The Multifamily Assisted Housing Reform and Affordability Act of 1997," June 19, 2001, http://banking.senate.gov/01_06hrg/061901a/wehrwein.htm.

[108] Committee on Financial Services, *Affordable Housing Preservation and Protection of Tenants,* Hearing before the Committee on Financial Services U.S. House of Representatives, 110th Congress, 2nd Session, June 19, 2008 (Washington, D.C.: GPO, 2008); Subcommittee on Housing and Community Opportunity, *Multifamily Housing: More Accessible HUD Data Could Help Efforts To Preserve Housing For Low Income Tenants*, Hearing before the Subcommittee on Housing and Community Opportunity of the Committee on Financial Services, U.S. House of Representatives, 108th Congress, 2nd Session, July 20, 2004 (Washington, D.C.: GPO, 2004).

senators, representatives, and congressional aides. So too did the officers of such familiar organizations as the National Alliance of HUD Tenants, the National Low Income Housing Coalition, Recapitalization Advisors, Inc. (the firm founded by David Smith), and the Institute for Responsible Housing Preservation.

New groups joined the cause as well. At a House hearing in 2004, for example, O. Angie Nwanodi, director of policy for the National Housing Development Corporation, a nonprofit company founded in California in 1999, proposed a new system for financing preservation projects. By 2011 the Housing Preservation Working Group, now called the National Preservation Working Group, had expanded to include thirty-six national and regional organizations, as well as long-time consultant and expert Emily Achtenberg. Alongside the veterans of the working group stood representatives of new entities such as the Stewards of Affordable Housing for the Future (started in 2003) and the Preservation Compact of Illinois (formed in 2007).

A Decentralized Preservation System

The increasing difficulty of obtaining appropriations for new programs through the federal government inspired the proponents of preservation policy to look for support outside Washington as well. The National Housing Trust, with the support of the MacArthur Foundation, led a major policy effort to persuade state and local governments to support subsidized housing properties through such means as refinancing loans and allocating Low-Income Housing Tax Credits. Trust officials built the campaign by cultivating relationships with directors of state housing finance agencies and meeting with them regularly. The campaign has achieved a number of significant successes. State housing finance agencies had long offered tax-exempt bonds for affordable housing projects, but now they began to focus on preservation. Forty-five state housing agencies, for example, have placed incentives for housing preservation in their 9-percent tax credit program, and thirty states have established trust funds to support affordable housing preservation.

Meanwhile, the nonprofit housing sector has grown and matured. In the early days of subsidized housing, nonprofits were considered ineffective. In the 1970s and 1980s, a number of community development corporations acquired real estate expertise, and by the turn of the century, there were several large and sophisticated development and management organizations led by experienced officers who combined a passion for social justice with a hard-nosed business sense. Although foundations have played a role in the housing preservation field since its inception, the MacArthur Foundation has since about 2000 made especially significant contributions to the growth of housing preservation organizations and associations.[109]

Some large-scale nonprofit organizations that worked extensively on preservation deals have grown to become the most active affordable housing developers and owners in the country. Led by experienced housing specialists, these groups made use of sophisticated financing techniques – often including low-income housing tax credits – to build up portfolios of previously subsidized housing projects. The National Housing Trust/Enterprise Preservation Corporation, a collaboration between the Trust and the Enterprise Community Partners (formerly Enterprise Foundation) begun in 1999, has preserved and improved by its own estimate nearly 5,000 affordable homes and owns and operates about 3,000 dwelling units in eleven states and the District of Columbia. In addition, this corporation has assisted other organizations in redeveloping about 3,000 other low-income apartments.[110]

Three large nonprofits, National Church Residences, Volunteers of America, and Mercy Housing, ranked among the nation's ten largest owners of subsidized low-income dwellings. Along with regional groups – such as The Community Builders (eastern United States), BRIDGE (California) and the Community Preservation and Development Corporation (Washington-Baltimore), such organizations redeveloped tens of thousands of units of affordable housing. In 2001 Amy Anthony founded a company, aptly named Preservation of Affordable Housing, which operates in the East, Midwest, and South and quickly gained a reputation in the field for

[109] The MacArthur Foundation's specific effort to preserve affordable housing took the form of the multi-faceted Window of Opportunity program, which received $150 million. See https://www.macfound.org/programs/preserving-affordable-rental-housing.

[110] http://www.nhtinc.org/state_and_local_preservation_resources.php; Bodaken, interview.

a business model that combined a sharp eye on the bottom line, a deep social commitment, and effective work on policy and regulatory reform.[111]

In addition, large housing organizations have banded together to form associations – most notably the Housing Partnership Network and the Stewards of Affordable Housing for the Future (SAHF) – to share business strategies, encourage the creation of more housing organizations and alliances, and influence public officials to adopt policies that support housing preservation. Crucial to the effectiveness of nonprofit low-income housing organizations has been the emergence of community development financial institutions – several of which are run by the housing partnerships and national intermediaries (LISC, Enterprise, and NeighborWorks) – that provide loans or in some cases grants to aid the acquisition and refinancing of subsidized housing.

Conclusion: The Growth of the Housing Preservation Issue

In the 1960s and 1970s the federal government embarked on a new direction in housing policy. In the past, local public housing authorities had built public housing for low-income people. Now private groups, including subsidiaries of for-profit businesses, would build and manage this kind of social welfare housing. The public-private housing programs created in the 1960s and 1970s were highly productive. Nonetheless, this approach to housing policy has brought a large share of headaches to the social reformers who believe in providing decent, safe, and sanitary housing for low- and moderate-income Americans. Poorly thought out programs encouraged bad underwriting and long-term management, and monetary inflation and rises in fuel oil prices raised the cost of operating the projects far above what anyone had expected. A large number of the projects developed under these programs ran into financial trouble, which often translated into physical and maintenance problems.

In response, reformers struggled to find ways to solve the problems with the new subsidized housing. Many of the reformers, especially in Boston where the issue reached critical proportions, became involved to protect the tenants of these new projects from rent hikes,

---

[111] *Affordable Housing Finance* compiles and publishes lists annually. See, for example, http://www.housingfinance.com/ahf/articles/2010/april-may/0410-specialfocus-top-50-ahf-owners-2009.htm.

displacement, and poor living conditions. HUD officials and members of Congress – notably Barney Frank – took notice. Working with the tenant advocates, they produced a series of programs and procedures to deal with the troubled housing projects by buttressing their finances or conveying them to responsible parties. Out of these experiences emerged a network of people in cities, state government, and Washington who were passionate about saving this stock and well versed in the technicalities of housing finance and government programs.

Although the subsidy mechanisms and procedures of the several housing programs differed somewhat, they all came with term limits of varying lengths that potentially allowed the owners of the projects to end their participation in low-income housing. Starting in the 1980s, both subsidies for low-income housing projects and restrictions on prepayment of their mortgages began to expire, threatening their continuing status as affordable low-income housing.

The committed specialists, inside and outside government, who had cut their teeth in dealing with the financially troubled projects now threw themselves into solving the problems of prepayment and expiring use. Gaining allies among the supporters of affordable housing, they obtained strong federal measures to protect the subsidized housing, but the banning of prepayments angered owners. After some struggle the Congress disallowed the ban on prepayments but established means to keep the subsidized housing projects afloat financially. Housing advocates and owners now joined together in support of preservation of government-assisted housing, even opposing the liberal Democratic administration's proposal to "voucher out" the existing housing stock. The new policy that emerged in the late 1990s relied on the availability of financing and subsidies to make renewing the low-income status of the projects feasible and at least somewhat remunerative.

By the 2000s, the major federal policy related to housing preservation appeared to be settled, although the funding of its programs was not secure over the long term. In contrast to the meager share of federal resources allotted to housing preservation fifteen years earlier, housing preservation now received, according to one expert in the field, about half the federal government's financial support for low-income housing. A panoply of organizations, associations, and companies exerted the major political force to make this possible. A cottage industry of activists and investors worked to keep funding available, and many government officials continued to actively encourage preservation of subsidized low-income housing.[112]

[112] Smith, interview, 2011.