

Section 8 Project-Based Rental Assistance: The Potential Loss of Affordable Federally Subsidized Housing Stock

Executive Summary

Background

Using Section 8 project-based rental assistance contracts, HUD contracts with for-profit owners of private multifamily housing, who in turn make specific rental properties available to qualified low-income households. Typically, the subsidy will pay the difference between 30 percent of the household's income and the contract rent; this subsidy is paid by HUD to the landlord. Approximately 1.2 million renter households of all ages benefit from this type of rental subsidy, including 500,000 older households. Most Section 8 contracts have expired or will expire soon, and the property owners must now decide whether to renew their contract or leave the program ("opt out"). The problem is concentrated among those projects for which the rent levels set by the Section 8 contract are below the prevailing market rents for comparable units. Owners thus have an incentive to leave the program and convert their property to private market rentals.

Purpose and Methodology

The objective of this paper is to highlight how the expiration of Section 8 project-based housing assistance contracts has led to losses from the affordable housing stock and represents a continuing problem for the remaining stock. By presenting information from published HUD reports and other sources, including a special analysis performed by the National Housing Trust for AARP's Public Policy Institute, this paper identifies specific problems and risks.

Principal Findings

- According to the National Housing Trust, approximately 38,000 subsidized units were lost between 1996 and 1998 because of opt-out.
- In 1999 HUD estimated that approximately one million subsidized units would be subject to contract expiration in the next 5 years, about half of which have contract rents below prevailing market rental rates for comparable units.
- Older Americans are found throughout the program and reside in approximately 40 percent of at-risk units, both in seniors and mixed-age Section 8 housing.

This issue is particularly acute because the amount of private market rental housing available to low-income households has also been shrinking. HUD estimates that between 1991 and 1997, there was a decline of more than 370,000 rental units affordable to extremely low-income households. Older Americans are particularly likely to have both low incomes and a higher incidence of frailty than other age groups. Thus it is particularly problematic for them to find alternative affordable housing.

Current Policy

For those projects with Section 8 project-based rental assistance contracts renting below the market rate for comparable non-subsidized housing, Federal policy provides for three major approaches to maintaining affordable housing for tenants when the contract expires. Unfortunately, none offers the same level of security for the residents or

for the stock of assisted housing as the expiring rental agreements.

- 1) *Renew under the Mark-Up-To-Market Initiative.* For qualified projects, rents may be renewed at the lesser of comparable market rents or 150 percent of HUD's Fair Market Rent standard. Although this initiative is still very young, it seems to have met with some success. But federal appropriations are too limited to cover all properties with below market rents, and the strategy is less effective in markets with very low vacancy rates and rapidly increasing local rents.
- 2) *Request renewal of rents that are at or below comparable rents.* Owners may choose to remain in the program even without a rent markup if they view the contract as a stable source of residents or for other reasons. However, the new contracts have much shorter terms and are subject to annual appropriation by Congress. Therefore, many property owners consider the contracts to be riskier than previous commitments.
- 3) *"Opt out" of the Section 8 contract and raise rents to the prevailing market level.* If the owner opts out, current residents may qualify for an "enhanced" housing voucher. Unlike a conventional voucher which only provides a subsidy up to the local Fair Market Rent standard, an enhanced voucher offers a subsidy up to the new rent level (but if the resident moves, it reverts to conventional voucher). Since owners are not required to

lease units to households with vouchers, the transition from project-based assistance to tenant-based vouchers may mean a reduction in available affordable housing as current residents eventually move out – a problem which is particularly acute in areas with low vacancies and rising rents. And for those who remain in their unit with an enhanced voucher, there is no guarantee that it will provide for future rent increases if Congress does not appropriate the needed funds each year.

Policy Options

There is no comprehensive solution to the problem of expiring Section 8 rental assistance contracts. However, several approaches may offer increased protections to current residents of subsidized housing with expiring contracts. These could include an expanded budget to offer competitive subsidies to owners, matching funds to encourage states to identify and preserve assisted-housing projects, a guarantee of funding to owners for duration of renewal (i.e., not subject to annual appropriations), etc. Although many owners will exit the program for reasons unrelated to rent levels, these and other innovative options may help minimize the loss of assisted housing in the project-based Section 8 program, and provide stable long term housing for older persons with low incomes.

I. Introduction

Federally subsidized housing projects enable many older persons to live in affordable housing that provides a sense of security and community. One remarkably effective program has been Section 8 project-based rental assistance. About 1.2 million renter households of all ages benefit from this type of rental subsidy, including 500,000 older households.¹ Under this program, HUD has contracts with *for-profit* owners of private multifamily housing, who in turn make specific rental properties available to qualified low-income households. Section 8 project-based assistance provides more housing for older persons than even the better known Section 202 program, which is designed specifically for seniors² and provides project-based assistance to more than 300,000 older households living in properties owned by *nonprofit* sponsors.

Despite its success, the Section 8 project-based rental assistance program is now in danger of losing a large portion of its inventory. The problem is occurring because most of the Section 8 contracts have expired or will expire soon, and these owners must decide whether or not to renew their contract and remain in the program. Many choose not to renew, and instead convert their property to private market rentals; that is, they “opt out” of the program. Approximately 38,000 subsidized apartments were lost between 1996 and 1998 for this reason³, and in 1999 HUD estimated that approximately one million subsidized units would be subject to contract expiration in the next 5 years (nearly all of the remaining stock).⁴ If past trends continue, between 10 and 15 percent of those will exit the program.⁵ Although HUD does not specifically track how many of these projects are intended for seniors, a review of HUD data sponsored by AARP’s Public Policy Institute in 1999 estimated that 152,000 units located in *seniors properties* were at particular risk of leaving the

program through the end of 2004 because the owners might enjoy higher rents by converting to market rental.⁶ And while it is not known how many other older households are at risk in *mixed-age* communities in the program, it is worth noting that about 40 percent of all units receiving Section 8 project-based subsidies are occupied by older Americans.⁷

Section 8 project-based rental assistance contracts serve housing needs differently from the companion Section 8 tenant-based program [see sidebar], and these contracts have grown in importance due to an affordable housing crunch. The number of affordable units available to renters of all ages with low incomes shrank during the 1990s as property owners raised the rent of much of the nation’s privately-owned rental stock. Between 1991 and 1997, HUD estimates there was a decline of more than 370,000 rental units (subsidized and non-subsidized) affordable to extremely low-income households.⁸ In addition, the annual number of new federal commitments to expand both project and tenant-based rental assistance has declined dramatically since peak levels in the late 1970s.

Two Basic Types of Section 8 Rental Assistance:

Tenant-based – Using housing Section 8 vouchers and certificates, local housing agencies confer assistance through the household. Typically, the subsidy will pay the difference between 30 percent of the household’s income and some predefined limit based on the size of the unit. (HUD publishes this rent standard as a “Fair Market Rent,” further detailed below.) Renters take the voucher with them when choosing a property, thereby giving them the ability to move and select suitable housing for themselves. When the lease is signed, the landlord enters into a contract with the local public housing authority (PHA)⁹ for the duration of the lease, and must meet

certain program requirements such as minimum quality standards. In return, the local housing authority will pay the subsidized portion of the rent directly to the landlord. However, some landlords choose not to accept tenants with vouchers or certificates.¹⁰

Project-based – With a Section 8 project-based rental assistance contract, the subsidy is tied to a specific property. The owner enters into a contract to offer units to households who are assigned by the local housing authority, and in return receives rental support for those households. The housing authority pays the subsidy directly to the landlord, generally the difference between 30 percent of household income and the Fair Market Rent standard. Project-based assistance guarantees that some number of units are held in a given property for persons needing housing assistance. This paper is primarily concerned with this type of Section 8 subsidy, and references in this paper to Section 8 rental assistance are always to project-based rental assistance unless otherwise noted.

Fair Market Rent

HUD establishes a Fair Market Rent (FMR) for metropolitan areas and nonmetropolitan counties. Public housing authorities have some flexibility to vary the payment standard from 90 to 110 percent of the FMR. Generally, the FMR is based on the 40th percentile of the rental cost of conventional, standard quality rental units occupied by households that have recently moved. A recent HUD interim regulation may raise this to the 50th percentile for certain high cost markets. Public housing units, new units, and substandard units are excluded when computing FMR. The calculations are based on random digit dialing surveys, the most recent decennial census, and the HUD/Census Bureau American Housing Survey (where available). A separate FMR is calculated for each unit size (efficiency, one bedroom, etc).

A metropolitan area is defined by the Office of Management and Budget, and is generally a collection of counties with economic ties around an urban center. Actual market rents are known to vary considerably within a metropolitan area.

Because many frail older renters with limited incomes and/or physical disabilities are unable to locate affordable housing suitable to their needs, these renters are particularly sensitive to the decline in affordable housing. Forty percent of all renter households age 75 and older had household incomes under \$10,000 in 1997. Sixty-four percent of all renter households age 75 and older had household incomes less than \$15,000 in 1997.¹¹ Furthermore, 22 percent of *renters* age 62 and older reported difficulty with one or more physical activities in 1995, compared to only 16 percent of *owners* in that age group and 6 percent of persons in *all age groups*.¹² Frailty combined with limited financial resources makes searching for suitable housing extremely difficult for many seniors.

The potential loss of subsidized housing places many older residents in danger of losing their current homes and in competition with other renters to locate suitable housing within a dwindling supply of housing affordable to persons with low incomes. Older residents in formerly subsidized housing located in either rural areas or large metropolitan areas with a high demand for affordable housing are especially vulnerable to finding themselves with few or no alternatives.

The following sections of this issue brief will consider in detail the problems associated with potential displacement due to “opt-outs.” But first, to understand the current situation, it is necessary to summarize briefly the history of subsidized housing and the role Section 8 assistance has

played in ensuring the security of the stock up to this time.

II. History of Subsidized Private Project-Based Housing

From the 1950's to the 1970's, Congress enacted housing legislation designed to promote the involvement of the private sector in the construction and rehabilitation of affordable rental housing for persons with low incomes. Programs were commonly named for the section of the various Congressional acts that authorized their activity. Section 221(d)(3), Section 236 and Section 515 programs offered subsidized mortgages to owners for the construction of multifamily rental properties, which reduced operating costs and resulted in more affordable rental housing. Over time, many of these projects also received Section 8 rental assistance to help further ensure continued provision of affordable housing. Section 8 rental assistance is also found in projects built under the related Section 8 Construction/Rehab program. Each of these programs sets terms and conditions that are now affecting whether or not owners continue to offer housing affordable to older persons with low incomes. Although this section serves as an overview of various housing programs under which Section 8 project-based assistance was offered to for-profit owners, an important point is that the expiration of loans under old programs, or the ability to prepay those loans, means that the owners are no longer required to offer subsidized housing under the terms of the loan. This gives those owners who have Section 8 project-based rental assistance contracts the freedom to convert to non-subsidized housing, should they choose, when those contracts expire.

Section 221(d)(3)

Under the National Housing Act of 1959, Congress authorized Federal Housing Administration (FHA) insurance for the construction of multifamily housing. The

Section 221(d)(3) program had two parts – 1) a project-based subsidy program providing loans at below market interest rates (BMIR) to eligible projects; and 2) a market rate insurance program.

Below Market Interest Rate Program (BMIR)

Section 221(d)(3) BMIR insured and subsidized *low-interest* rate loans to private developers, both for-profit and nonprofit, in order to promote the construction of affordable housing. Loans insured under the BMIR program provided for forty-year mortgages with a prohibition on prepayment or terminating use restrictions for the first twenty years. Most regulatory agreements under the program permitted for-profit owners to prepay the remaining balance on their mortgages after an initial 20-year period during which properties had to serve qualified persons with low incomes. Since the BMIR program ended in 1967, the loans issued are now beyond the 20-year prepayment restriction, and whatever 40 year loans remain will expire soon.

Market Rate Program

The Section 221(d)(3) market-rate component remains in operation¹³ and insures loans with *market-bearing* interest rates to private developers, both for-profit and nonprofit. Market rate projects have no use or prepayment restrictions as long as they do not receive other subsidies. In the early years of the program, however, many of these projects received rent supplements to subsidize the rents for households with low incomes.¹⁴ Those section 221(d)(3) projects receiving rent supplements are under the same prepayment and use restrictions as the BMIR projects.

Section 236

The Section 236 program was enacted as part of the 1968 Housing Act as a replacement for the Section 221(d)(3) BMIR program, and it offered prepayment

provisions and use restrictions similar to the Section 221(d)(3) BMIR program. Section 236 mortgages, however, typically had a lower interest rate. This program was discontinued in 1973.

Section 515

Authorized in 1962, Section 515 is a direct loan program under which private sponsors receive a low-interest rate loan from the Rural Housing Service of the US Department of Agriculture in return for renting to persons with low and moderate incomes. Unlike the Section 221(d)(3) BMIR and Section 236 programs, Section 515 is still financing the construction of affordable housing though funding cuts in recent years have substantially reduced the number of new units constructed.

Many Section 515 projects receive rental assistance under the RHS Section 521 program, whose terms and conditions are very similar to Section 8. But approximately 10 percent of Section 515 units receive Section 8 project-based rental assistance, because HUD extended Section 8 rental assistance contracts to some 515 projects during the late 1970s and early 1980s when the RHS Section 521 program was underfunded.¹⁵ No Section 515 projects whose contracts were signed on or after December 15, 1989 have the option to prepay their mortgages. Projects whose contracts were signed before that time generally may prepay their mortgages after twenty years and end the low-income use restrictions.

Section 8 Rental Assistance

In 1974, Congress further encouraged the private development of affordable housing by enacting the Section 8 rental assistance program. Section 8, as established by Congress, is actually a broad name for several different types of rental assistance, including tenant-based vouchers, construction/rehab loans, and project-based rent subsidies. Tenant-based vouchers were

explained in the first sidebar; Section V of this issue brief discusses the appropriateness of vouchers for older households. As previously noted, this paper is primarily concerned with Section 8 *project-based* assistance in the form of a direct subsidy of rents, through a contract between the owner and the local housing authority which administers the HUD program. Most of these contracts originally had 20-year terms, but may have been renewed for a shorter term. There are two main ways that projects originally qualified to receive this Section 8 project-based rental assistance – either they were built under the Construction/Rehab component of the Section 8 program, or they were built under an earlier housing program but required Section 8 rental assistance for financial reasons.

Project-based Construction and Rehabilitation

The Section 8 project-based construction and rehabilitation component was authorized specifically to help finance the construction and rehabilitation of multifamily projects serving renters with low incomes. Section 8 project-based housing construction and rehabilitation component operated between 1974 and 1983.¹⁶ *This construction assistance was combined with long term project-based rental assistance.*

Loan Management Set Aside

As mentioned earlier, many properties built under Section 221(d)(3) and Section 236 receive project-based Section 8 assistance, even though those programs predate Section 8. Many of those properties were having difficulty paying their mortgage, even with the subsidized mortgage terms, because the rents payable by the low income residents were insufficient to meet loan obligations. When Section 8 project-based assistance was established, it was extended to those properties to supplement the rents paid by residents, which saved the Federal Housing Administration the cost of loan defaults.

Table 1
Privately Owned Federally Subsidized Housing with Section 8 Project-based Assistance

	Occupied Units		Units w/ Head Age 62+	
	All	w/ S8 project-based rental assistance	All	w/ S8 project-based rental assistance
Section 8 Projects (Section 8 New Construction/Substantial Rehab and Section 8 Moderate Rehab; excludes Section 202)	744,889	744,889	343,673	343,673
Section 236	429,567	375,468	146,053	127,659
Section 221(d)3 BMIR	109,861	56,376	21,437	11,275
Section 515	450,000	45,000	184,500	18,450
Total	1,734,317	1,221,733	695,663	501,057

Source: AARP, PPI calculation using data from HUD's *A Picture of Subsidized Households - 1998* (<http://www.huduser.org/datasets/assthsq/statedata98/>) and the Rural Housing Service (RHS). PPI calculated the number of older households occupying Section 8 project-based housing (including Section 8 New Construction/Substantial Rehabilitation and Section 8 Moderate Rehabilitation), Section 236 projects, and Section 221(d)(3) BMIR projects from HUD data. PPI added to this figure an RHS estimate of the total number of older households occupying Section 515 projects (184,500) to derive an estimate of 695,663 units for older persons. These units are in mixed-age projects and projects for older persons; data on the number of projects that are senior-specific are not available.

This program is called Loan Management Set Aside (LMSA).

As a result of construction under the Section 8 program or Loan Management Set Asides, project-based Section 8 rental assistance contracts are quite often present in housing built under different programs.

III. Older Persons Served by Private Project-Based Subsidized Housing

Combined, privately owned rental projects with project-based Section 8 housing rental assistance provide approximately 501,000 affordable rental units to older persons [Table 1]. Excluding projects funded under the Section 202 Supportive Housing for the Elderly program, approximately 344,000 units constructed under Section 8¹⁷ rent to persons age 62 and older with low incomes, and these units also receive Section 8 project-based rental assistance.¹⁸ An

additional 157,000 older households live in housing provided under Sections 221(d)(3), 236, or 515 with Section 8 project-based rental assistance.

Note that the above numbers include, but do not break out, “elderly projects” with Section 8 assistance. That is, some projects that receive Section 8 project-based rental assistance are occupied by a majority of residents age 62 and older, either by design or because the community aged over time. Many residents in these elderly projects are frail and would face substantial difficulties in today’s housing market. Due to their limited incomes and incidence of disability, locating alternative affordable housing suitable to their needs would be difficult if owners were to convert their projects to market rate housing. Projects built for older persons may have special design features (such as grab bars and elevators), special

services (such as meals or housekeeping), and special staffing (such as service coordinators). Even without such specialized features and services, older persons may benefit from informal support they have developed over time with their neighbors. This support may be difficult to re-establish when older residents lose their homes in subsidized projects.

IV. Expiration of Section 8 Rental Assistance Contracts

Section 8 rental assistance contracts attached to privately owned subsidized housing projects began expiring in 1996. Each year since then, a growing number of for-profit owners of federally subsidized housing projects have had the option to terminate their agreements with HUD. Congress responded to concerns about preserving the affordable housing stock with the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). Some additional modifications to Section 8 renewal policies were made in the Preserving Affordable Housing for Senior Citizens and Families Into the 21st Century Act of 1999.¹⁹

For those projects with Section 8 Fair Market Rents *below* the market rate for similar non-subsidized housing, guidelines and procedures are established for owners who might opt out of the program. For projects with Section 8 rents *above* market, MAHRA transfers processing and oversight to the newly created Office of Multifamily Housing Assistance Restructuring (OMHAR). Largely because the overall Fair Market Rent did not reflect more localized market conditions for those properties, approximately half of all project-based Section 8 properties have rents above actual market rates, and half below market.²⁰

Properties Renting Below Market

The most likely properties to opt out of Section 8 assistance are those located in

good neighborhoods where local rents are well above the FMR. HUD estimates that 90 percent of the subsidized units in which the landlord is likely to opt out are located in low-poverty neighborhoods.²¹ Because these neighborhoods generally offer the best economic opportunities and services for households receiving assistance, there is a strong incentive to keep them in the assisted stock. As indicated earlier, approximately 38,000 subsidized apartments opted out of the Section 8 project-based rental assistance program between 1996 and 1998.²² More than 2,800 units were in “elderly” properties (that is, properties serving primarily older persons), and the National Housing Trust estimates that another 152,000 units in elderly properties are at risk of opting out through 2004.²³ These properties are spread throughout the nation [Table 2].

Owners of properties with expiring contracts, whose rents fall below comparable market rents, have three options:

1) **Request renewal under the Mark-Up-To-Market procedure**

In an effort to keep subsidized housing in the stock, in FY 1999 HUD implemented the Emergency Mark-Up-To-Market Initiative. For qualified projects, rents may be renewed at the lesser of comparable market rents or 150 percent of the Fair Market Rent. Projects may qualify in one of two ways:

a. There is an automatic markup for properties located in areas where the local market rent is at least 110% of the published Fair Market Rent.²⁴

b. Property owners who do not qualify for the automatic markup may request an adjustment by “waiver.” The criteria by which HUD may grant a waiver are:

i. Significant difficulty in using tenant-based vouchers in the market

ii. No other comparable housing in the market (i.e., rural area)

iii. Significant number of older or disabled residents

Mark-Up-To-Market has been much less effective in markets with very low vacancy rates and rapidly increasing local rents. Many projects on the West Coast, Mid-Atlantic, and Northeast are located in neighborhoods where even 150% of FMR is significantly below the local market rate. Further, even with the possibility of a waiver, many properties with rents below market cannot be served by the program because funds are too limited.

The Mark-Up-To-Market program has been in place since May of 1999. According to a recent report from the HUD Office of Inspector General, owners with 296 contracts covering 23,193 units agreed to participate in the program by the end of June 2000.²⁵ HUD also reviewed a sample of 68 properties in 14 states, and concluded that 61 percent would have opted out without the program. Nonetheless, opt-outs in those 14 states continued to occur (around 1,500 of 85,000 units coming up for renewal).²⁶

2) **Request renewal of rents that are at or below comparable market rents**

This option is for owners who request renewal of their Section 8 contract, but who are not applying for Mark-Up-To-Market. Owners may choose to remain in the program even without a rent markup if they view the contract as a stable source of residents or for other reasons.

3) **Opt out of the Section 8 contract and raise the rents to prevailing market rates**

To do this, owners must notify HUD and give residents a stipulated advance notice of their decision to do so.

Properties Renting Above Market – The Mark-to-Market Program

Although the primary risk of lost subsidized housing is due to expiring Section 8 contracts in projects with below market rents, there are also projects with rents above the prevailing market level in their area. These projects are very expensive for HUD to support.²⁷ In October of 1997, Congress passed legislation permanently authorizing the Mark-to-Market program, which reduces and restructures debt for these projects and renews Section 8 assistance at lower rent levels. Although HUD takes a one-time capital loss from the debt restructuring, HUD subsequently saves money through the lower rent subsidy. But in the course of the mark-to-market program, some residents may be displaced if the landlord declines to participate in the restructured debt program with lower rents, or if HUD determines that the project's assistance should be discontinued due to financial problems or because of poor housing quality.

To be eligible for debt restructuring, a project must have an FHA-insured or HUD-held mortgage, receive project-based Section 8 rental assistance, and be subsidized at rents exceeding prevailing market levels. Essentially, first mortgages on eligible projects are reduced to levels that can be supported by rent subsidies that have been reduced to local market levels or, if such a determination cannot be made, 90% of Fair Market Rent.²⁸ The debt restructuring process also determines whether or not a project continues to receive Section 8 rental assistance through renewing the project-

based rental assistance contract or by converting the assistance to vouchers, which residents may use to remain in the project.²⁹

Some potentially eligible properties may be disqualified from the Mark-to-Market restructuring and renewal program. Disqualified projects include projects in very poor physical condition and projects run by owners who have repeatedly failed to make mortgage payments. HUD can refuse to renew the Section 8 rental assistance on disqualified properties, and residents in these properties are to be provided with vouchers that they can use to seek qualified affordable housing elsewhere.

Prepayments Compound Loss of Affordable Housing

In addition to the problem of expiring project-based rental assistance contracts, an additional risk to affordable housing comes from the prepayment of subsidized mortgages. These mortgages result in lower operating costs for owners, but require them to pass on the savings in the form of lower rents to income qualified households. For-profit owners of Section 236, Section 221(d)(3) BMIR, and Section 515 projects (built prior to 1989) have the option to prepay their mortgage, typically after 20 years. When this happens, the housing converts to unsubsidized apartments and rents are adjusted to reflect prevailing market rates. The conversion of subsidized housing to private market rates means that residents almost inevitably face increasing rents.

According to the National Housing Trust, an estimated 59,000 formerly subsidized apartments prepaid their mortgages between 1996 and 1998.³⁰ Approximately 5,000 of these units served older households, and 2,500 served disabled households. As in the case where owners opt-out of Section 8 project-based rental assistance, HUD policy is to provide enhanced vouchers to residents.

V. Vouchers for formerly project-based subsidy residents

Use of Vouchers When Project-based Subsidies Are Discontinued

Residents in properties for which project-based subsidies are discontinued may qualify for a housing voucher. A voucher may be used by residents to remain in their old unit, or go to another rental property. An ordinary voucher pays the difference between 30 percent of the resident's income and the Fair Market Rent.

Additionally, families who remain in their unit and meet certain eligibility requirements receive an *enhanced voucher*. The purpose of an enhanced voucher is to ease the transition when an owner converts the property to private rental, by helping the existing residents afford the new rent level. An enhanced voucher provides for rent between 30 percent of income and market rent, even if that market rent is above the HUD-established Fair Market Rent. But if the household later leaves the property, then the voucher is no longer "enhanced" and operates as any other conventional voucher.

In order to qualify for an enhanced voucher, a family must reside in a project at the time the owner either "opts out" of Section 8 assistance or prepays a HUD insured loan that provides for subsidized rents [see sidebar]. The resident is generally not eligible for an enhanced voucher if Section 8 assistance is discontinued as a result of HUD enforcement actions against the owner (e.g., the property is dilapidated). In addition, the family must have a low-income or very low-income to qualify. In the special case of prepayment, a family with a moderate income will also receive an enhanced voucher if it is classified elderly, disabled, or resides in a designated low-vacancy area (as determined by HUD).

Enhanced vouchers may provide for future rent increases, if Congress appropriates the

funds needed each year. However, the total rent may never exceed the prevailing local market rate for that type of unit. Further, if the assisted household later no longer qualifies for housing assistance, the enhanced voucher becomes a conventional voucher and can be given to another household on the local Public Housing Authority waiting list.

Appropriateness of Vouchers

The enhanced voucher is a useful device for enabling households to remain in their units even after the property has converted to private market rentals. But it does not provide the security of project-based assistance. Unlike a project-based contract, owners can refuse to renew a lease to households carrying vouchers. Property owners may choose to do so particularly if they view HUD's lease requirements as bureaucratic, and they are reasonably certain they can otherwise fill their rental units. For frail older persons dependent on the security and continuity derived from living in subsidized housing, receipt of a voucher presents a significant risk because the renters have no guarantee they will be able to remain where they are -- and if they move, they cannot be certain that landlords with vacancies nearby will accept their voucher.

Further, enhanced vouchers are only "enhanced" if the resident remains in the present property. If the resident moves, it becomes a normal voucher and no longer pays up to the market rental rate (if that exceeds the FMR standard). Such vouchers have limited effectiveness in markets with low rental vacancy rates.

The shift from project to tenant-based assistance also implies that the characteristics of the residential community will change over time to reflect the influx of private pay residents. Informal support among neighbors may become disrupted, and older residents may have to develop a

new way of life at a time when it is difficult to do so. Possibly, projects that offer supportive services (transportation for older persons, organized activities, service coordinators) may end these services with an influx of younger, more independent residents. Thus, older residents may find themselves searching for housing that serves their special needs, but without the cost advantages that an enhanced voucher confers.

VI. Appropriateness of Current Renewal Policy

Indeed, the risk of displacement is a continuing concern, even when the landlord chooses to renew the Section 8 contract. Until recently, contracts were renewed for only one year. So in subsequent years, HUD was left to cope with a growing pool of expiring one year contracts, as well as expiring long term contracts. Beginning in fiscal year (FY) 2000, contract renewals are for up to 5 years,³¹ which is an improvement insofar as residents are no longer served annual notice that their project-based housing subsidy may soon disappear. But there are two major drawbacks to the current system. First, unlike the old contracts, HUD makes its multi-year renewals *subject to annual Congressional appropriations*. Not surprisingly, property owners perceive these renewals to be riskier than the old long term contract. Second, a term of 5 years is far shorter than the 20-year terms of the past, and many (if not most) residents will again go through the uncertainty of the renewal process.

VII. Policy Options to Protect Residents of Subsidized Section 8 Housing

Several approaches may offer better protections to current residents in subsidized housing with expiring Section 8 rental assistance contracts.

1) HUD could be more effective in persuading property owners to remain in the

Section 8 project-based rental assistance program if it had an expanded budget to offer competitive subsidies based on prevailing market rents to owners of subsidized housing currently renting below market levels (Mark-Up-To-Market). Over the past year, limited budget authority has proved very successful in retaining at-risk properties. Increased funds to offer competitive subsidies would give additional owners an economic incentive to remain in the program.

2) To augment action from HUD, states might be given incentives to work to preserve their stock of subsidized housing with expiring Section 8 rental assistance contracts. This approach assumes that states are best able to judge local market conditions and make the best determinations as to which subsidized properties are most critical to preserve. One option is to leverage state resources by providing some matching federal funds for states to identify and preserve assisted-housing projects either by working with owners or acquiring the properties. Matching funds would bolster activities already being undertaken by some states.

3) Congress could plan for and set aside funds for those owners who do not wish to leave the program. The current system of offering five-year renewals, but making them subject to annual appropriations, is perceived by many property owners to be too risky to participate.

4) Congress could commit to some level of future rent increases for residents using enhanced vouchers. Current law allows HUD to meet rent increases, so long as the total rent still does not exceed market rents for comparable units. However, this action is subject to appropriations; there is currently no guarantee that Congress will provide these funds in the future.

5) One potential solution to the problem of expiring project-based *contracts* is the use of project-based *vouchers*. Under a proposal by the Center on Budget and Policy Priorities, public housing authorities would have the discretion to offer households a “Continued Assistance Option,” which ties the voucher to the property. When a household decides to move, it would qualify for the next available conventional voucher from the PHA. The original voucher remains with the unit and is filled with a household from the waiting list. Thus, communities that have developed to serve the needs of low-income older residents could be potentially stabilized, if the local public housing authority were to give priority to older households when filling spots in such communities.

It is unrealistic to suppose that all owners with expiring Section 8 contracts can be persuaded to remain in the program. Some will exit the program for reasons unrelated to rent levels. However, the options outlined above may help minimize the loss of stock, and provide stable long term housing for older persons with low incomes.

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Table 2: At Risk Elderly Properties by State (Through end of 2004)

State	Properties	Assisted Units
Alabama	18	1,091
Alaska	1	33
Arizona	11	958
Arkansas	12	566
California	258	26,294
Colorado	36	3,191
Connecticut	35	3,846
Delaware	3	408
District of Columbia	7	600
Florida	65	8,478
Georgia	34	4,249
Hawaii	7	1,002
Idaho	3	197
Illinois	36	3,878
Indiana	33	3,469
Iowa	48	2,293
Kansas	25	1,452
Kentucky	16	2,441
Louisiana	10	740
Maine	6	478
Maryland	36	3,490
Massachusetts	41	5,092
Michigan	76	7,991
Minnesota	49	3,065
Mississippi	22	1,379
Missouri	41	3,364
Montana	27	1,882
Nebraska	24	1,271
Nevada	6	677
New Hampshire	9	461
New Jersey	30	1,972
New Mexico	2	90
New York	63	7,184
North Carolina	49	2,942
North Dakota	27	1,004
Ohio	97	10,884
Oklahoma	7	620
Oregon	27	1,435
Pennsylvania	72	7,354
Puerto Rico	9	799
Rhode Island	15	1,312
South Carolina	7	946
South Dakota	18	546
Tennessee	34	4,037
Texas	36	3,104
Utah	13	633
Vermont	5	156
Virginia	16	2,049
Washington	88	4,891
West Virginia	7	635
Wisconsin	89	5,244
Wyoming	5	151
TOTAL	1,711	152,324

Source: National Housing Trust estimates from analysis of HUD data.

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- ¹ AARP, PPI estimate based on HUD and Rural Housing Service data. In this report, an older household is one headed by a person age 62 or older.
- ² AARP, PPI estimate based on HUD data. Until 1990, Section 202 also served disabled households, regardless of age. Disabled households are now served under the Section 811 program.
- ³ Estimate by National Housing Trust based on HUD property data.
- ⁴ *Opting In: Renewing America's Commitment to Affordable Housing*. HUD, 1999.
- ⁵ Joint Center for Housing Studies, State of the Nation's Housing 2000.
- ⁶ These are properties in which more than half the residents were age 62 or older, and at risk of leaving the program at contract expiration because the market rate was estimated to be above the rate offered by the rental assistance contract. Hence, the owners have a financial incentive to convert to non-subsidized, market rents. The study was performed for AARP by the National Housing Trust.
- ⁷ AARP, PPI calculation using data from HUD's *A Picture of Subsidized Households - 1998* (<http://www.huduser.org/datasets/assths/statedata98/>) and the Rural Housing Service (RHS)
- ⁸ *Rental Housing Assistance – The Worsening Crisis*, HUD, March 2000.
- ⁹ HUD allocates vouchers to local public housing authorities (PHAs), which are responsible for maintaining waiting lists under the guidelines established by HUD. PHAs also serve as HUD's agent in evaluating local market rents and assuring that properties in which assisted households reside meet minimum quality standards.
- ¹⁰ The difference between a voucher and a certificate is that the voucher may be used for units that cost more than the fair market rent. This does not increase the subsidy; tenants are responsible for the extra rent beyond the fair market rent. Certificates may not be used for units with rents greater than the Fair Market Rent. Although HUD shifted to vouchers in the 1980s, many households still receive certificates.
- ¹¹ Unpublished AARP PPI calculation based on data from the 1998 Current Population Survey March Supplement, US Bureau of the Census.
- ¹² Unpublished AARP analysis of the 1995 American Housing Survey (HUD/Census Bureau).
- ¹³ The program insured nearly \$1 billion in loans in 1996.
- ¹⁴ These rent supplements predate Section 8, but were later rolled into the Section 8 rental assistance program.
- ¹⁵ PPI estimate based on Rural Housing Service data and HUD's Section 8 Expiring Contracts Database.
- ¹⁶ No new construction has been funded under Section 8 since 1983. The tenant-based component of Section 8 is still in operation.
- ¹⁷ AARP, PPI calculation of data from US Department of Housing and Urban Development's (HUD) *A Picture of Subsidized Households - 1998*. PPI calculated the number of project-based Section 8 units (excluding Section 202 Supportive Housing for the Elderly with Section 8 rental subsidies) occupied by an older household by multiplying the total number of occupied units by the percent of householders in these units age 62 and older. These units include both Section 8 New Construction and Substantial Rehabilitation units and Section 8 Moderate Rehabilitation units.
- ¹⁸ HUD defines older persons as individuals age 62 or older.
- ¹⁹ Many of these policies are summarized and clarified through HUD Directive 99-36, "Project-based Section 8 Contracts Expiring in Fiscal Year 2000".
- ²⁰ *Ibid. Opting In: Renewing America's Commitment to Affordable Housing*.
- ²¹ *Opting In: Renewing America's Commitment to Affordable Housing*. HUD, 1999.
- ²² *Ibid.* National Housing Trust
- ²³ *Ibid.*
- ²⁴ At the National Leased Housing Association Conference held October, 2000, Acting General Deputy Assistant Secretary for Housing Shaun Donovan indicated that guidelines may be revised to reduce this threshold from 110 percent to 100 percent.
- ²⁵ Audit Memorandum No: 00-BO-111-0802, Office of Inspector General, HUD, September 2000.
- ²⁶ *Ibid.*
- ²⁷ Excessive rent subsidy payments are a result of how the subsidies were devised. Rents on some Section 8 projects were set above FMR levels when rental assistance contracts were originated, and rents on many Section 8 projects were adjusted annually by an annual adjustment factor, or a numeric formula applied to the previous year's rent. The annual adjustment factors applied to FMR levels were not originally tied to market forces, so many Section 8 projects have received substantial windfalls in operating income over the years and have taken excess profits. Some Section 8 projects with excess profits have not been maintained nor repaired to ensure structural upkeep and quality housing.
- ²⁸ The rent level is based on at least two comparable properties.

²⁹ In instances where subsidized projects with expiring Section 8 rental assistance contracts are eligible for and choose to have their debt restructured and rents marked down to market, a determination is made by OMHAR as to whether these projects will continue to receive project-based rental assistance or have the assistance converted to vouchers, or to tenant-based assistance. In instances where restructured properties convert to tenant-based assistance, residents are given vouchers with payment levels reflecting the new market rent (“enhanced vouchers”). Residents can use these vouchers to remain in the formerly subsidized project.

³⁰ National Housing Trust estimates from analyses of HUD data regarding prepayment activity through 1998.

³¹ The property owner may request a renewal for 5 years, but some have chosen to take a shorter term in order to align the expiration with their other contracts, after which they may return to the 5-year commitment. A property owner may also request a longer term than 5 years, but this must be reviewed by HUD on a case-by-case basis.