Center for an Urban Future

FEBRUARY 2007

www.nycfuture.org

CAUSE FOR DISTRESS

How HUD is Letting a Legacy of Affordable Housing Disappear: A Study of the Thousands of Housing Units Across the Country that are Being Lost to Foreclosure and Disrepair

Number of buildings HUD foreclosed on, 1995 - 2005	900+
Number of units HUD foreclosed on, 1995 - 2005	120,676
Percentage of HUD's assisted stock in NYC that is distressed	20%
Decline in number of families assisted by housing vouchers, April 2004 - September 2005	60,000

THE DEMAND FOR AFFORDABLE HOUSING HAS REACHED A FEVER PITCH THROUGHOUT the United States. Over the past decade, cities all over the country have experienced a sharp decline in the supply of rental units that are affordable to low-income families. Even once-derelict neighborhoods like the South Bronx and East Los Angeles have seen rental prices jump beyond the reach of many longtime residents. At the same time, a meager number of new affordable housing developments are being built.

There is, however, an important remaining resource of reasonably priced housing in many communities across the country. In terms of sheer number of units available to low-income families, protecting the affordable housing stock that exists is more likely to have an impact than new construction projects, as important as it is to keep creating units. Cutting a ribbon at a new affordable housing development is a big news story, and once in a while, like with the recent sale of the massive Stuyvesant Town and Peter Cooper Village in New York City, the loss of affordable housing also makes the news. But most of the units lost to foreclosure and disrepair—more than 120,000 nationwide from 1995 to 2005— go quietly.

When it comes to protecting this stock of distressed housing, the nation's housing agency is a big part of the problem. The U.S. Department of Housing and Urban Development's (HUD) distressed inventory shows the failings of both landlords and the agency to carry out their mandate. However, when residents of these buildings are organized and given a say in the decisions that affect their housing, cities can succeed in preserving large numbers of affordable units.

In New York City alone, between June 2003 and June 2005, 14 buildings with more than 2,000 households were slated for public foreclosure auction and another 60 buildings serving 17,000 families were identified as potentially at risk due to failing physical conditions.

FEDERALLY SUPPORTED BUILDINGS

In the 1960s and 1970s, the U.S. Department of Housing and Urban Development (HUD) insured thousands of mortgages on rental property in communities around the country, providing subsidies to their owners in exchange for lower rents for the low-income tenants. Many of these buildings now have federal Section 8 contracts, which cap rent at 30 percent of a family's household income. These HUD-insured or -subsidized Section 8 properties are community resources, places that help prevent displacement of low-income neighborhood residents and retain economic diversity in changing neighborhoods.

But the programs aren't perfect. Despite government subsidies, many of these buildings eventually began to deteriorate due to mismanagement or age, and HUD has often been slow to intervene. In New York, for instance, roughly 20 percent of the agency's assisted stock, or 20,000 units, is either financially or physically distressed. In recent years, with many more Section 8 buildings becoming substandard and often dangerous places to live, tenants, advocates and politicians around the country began pressuring HUD to pay more attention to its troubled housing stock.

When a building's mortgage is HUD-insured, the agency can buy out the mortgage from the private lender, leaving the agency itself as the new mortgage holder. If the landlord can right the ship, the agency can allow the building to continue to be a project-based Section 8 property; the only difference is that the agency now holds the mortgage, not a private lender. However, buildings that are "HUD-held" can continue to spiral downward, leading to a foreclosure. And it's here that a troubled building often becomes lost as affordable housing.

This report details the rules for how HUD deals with multi-family buildings that are in physical and financial distress, which are complex and can be implemented in a variety of ways by the agency. Too often, however, the end result is the same: A building that had been protected as affordable housing, regardless of the residents, becomes just another apartment on the block, or worse. According to an attorney with the Community Justice Project in Pittsburgh, more than 30 percent of their distressed affordable housing stock has been demolished over the last several years. It can happen in many ways:

- Loss of government oversight: When a building is no longer owned or insured by HUD, the protection the agency provides to low-income tenants is removed.
- End of ongoing commitment to affordability: Buildings that are no longer in HUD's care are often not required to reserve units for low-income tenants.
- Speculative or inexperienced owners: Some new owners who buy HUD-held property at auction are looking to make money in the real estate market and/or have no experience in multi-unit building management.
- Continuing physical problems. If a new owner doesn't fix the code violations in a troubled building, the property can be forced out of the system—and left open to market rents.

AUCTIONS AND VOUCHERS

HUD has foreclosed on more than 900 buildings with a total of 120,676 units from 1995 to 2005, nearly all of which can no longer be considered HUD-assisted housing. Between June 2003 and June 2005, in New York City alone, 14 buildings with more than 2,000 households were slated for public foreclosure auction and another 60 buildings serving 17,000 families were identified as potentially at risk due to failing physical conditions.

Advocates say HUD's protocol is inherently flawed. Rather than transfer ownership to responsible owners, HUD routinely auctions off these properties on the steps of county courthouses. With an auction, HUD is rid of the responsibility to deal with a troubled building, but the new owner, possibly unfamiliar with the intricacies of running subsidized property, may just be looking for a quick profit. In New York, for example, HUD auctioned a low-income development to an owner with hundreds of open code violations, who has since traveled from state to state, plucking up other HUD properties.

HUD has put even more affordable housing units in jeopardy by switching from "project-based" Section 8 contracts, which subsidize entire buildings, to vouchers for individual households. While the voucher system has its benefits, individual apartments lose their Section 8 subsidy once a tenant moves out of the building. The result is a permanent loss of affordable units.

From the outside, the difference seems negligible. As long as the tenants are protected, what's the difference? But tenant advocates argue that vouchers are a poor replacement for project-based Section 8. For one thing, tenants are forced to reapply for the vouchers under new, stricter standards. For another, it can be hard for them to find landlords that will accept the vouchers. And the vouchers themselves are more dependent on the vagaries of annual funding. But switching to vouchers has another, broader impact: It means that the buildings themselves lose affordability. Once a tenant moves out, the apartment loses its Section 8 subsidy and the neighborhood loses one of its last shreds of permanently affordable housing.

FINDING THE RIGHT OWNER

Vouchers and a courthouse auction are not the inevitable conclusions when a HUD-subsidized property becomes troubled. In some cases, a strong-willed tenants association or active city housing department has been able to create enough pressure to force a commitment ensuring the building remains available and affordable for low-income residents.

More and more tenants and community groups are getting organized, determined to find ways to protect these troubled buildings. In New York City, the Partnership to Preserve Affordable Housing, a coalition of organizers, advocates, legal service providers and affordable housing developers, pressured the city's housing agency to take a more active role. As a result, New York's housing department has helped to acquire and transfer eight problem buildings, a total of 900 units, to new tenant-endorsed developers. The city recently offered to buy all HUD-held mortgages, identifying the distressed HUD stock as a key part of its preservation plan.

While New York's success and scale are unique, similar stories can be found in cities around the country, where strong local voices helped convince HUD to protect the investment in affordable housing and in many cases, to have the tenants help decide the fate of the property. At the same time, political and administrative allies in Washington, D.C. have begun to pressure the agency to do more to save project-based Section 8 housing.

In the end, though, the responsibility to monitor what happens to the distressed housing stock, the obligation to create sound preservation policy solutions and the logical wisdom of including tenants in making decisions about the future of their homes cannot fall solely at the feet of the under-funded, over-extended, affordable housing community. Community groups and city agencies can and should do more to ensure that when a Section 8 property is in trouble, it is saved, but HUD must certainly become a more consistent and supportive partner.

A DANGEROUS CURE?

For years, it seemed like nobody noticed Pueblo de Mayaguez, a 76-unit brick complex in the Melrose section of the Bronx. A series of hands-off owners and management companies had left the development in disrepair. Security was practically non-existent and paint flaked from the walls.

In 2000, HUD took control of the complex and installed new management. But HUD didn't want Pueblo on its books. In December 2002, it posted a notice in the lobby, announcing plans to auction the complex. What happened next demonstrates the dangers of a wide-open auction, where there is no restriction on how much a bidder can offer and no guarantees the new owner will provide any improvement at all.

From the start, the tenants were wary of the foreclosure process, particularly if the new owner intended to turn a profit with a building full of low-income renters. "They're putting dollar signs on our heads," said tenant Saudia Sinclair at a protest held to coincide with an open house for potential buyers. "They just don't see the families here."

The first auction, in December 2002, was a flop: The high bidder backed out after realizing he had overbid. At the tenants' urging, the New York City Department of Housing Preservation and Development (HPD) asked HUD not to reschedule the sale. "HPD has found that auction sales are not a good way to promote long-term affordable housing," wrote agency counsel Harold Shultz in a letter to HUD. "Those willing to pay the maximum price at an auction sale will have the least resources available for rehabilitation."

The tenants voted to work with the Urban Homesteading Assistance Board[1] (UHAB), a local housing group, for the planning to convert their building into a limited-equity cooperative. But despite their wishes and support from the city, HUD moved forward with a second auction. In July, on the steps of the Bronx courthouse, an astounding $4.8 million bid was submitted on behalf of Queens landlord Emmanuel Ku.

Tenant advocates from UHAB, local advocacy group Tenants and Neighbors, and the Legal Aid Society of New York quickly dug up records on Ku's history as a landlord. They were astonished to learn that he had more than 1,400 pending code violations spread among his 11 buildings. Complaints to HUD were turned away, and a lawsuit brought by the Legal Aid Society went nowhere. Now, four years later, Pueblo remains in disrepair. There are fewer code violations than before, but maintenance is lax and there are no longer any security guards. "He makes a lot of promises I haven't really see him keep," says resident Linda Hall. Ku declined to be interviewed for this report.

In response to similar incidents at auction around the country, Congress passed an amendment to the National Housing Act, known as Section 219, that bars owners with local housing code violations from buying HUD properties at auction. The problem with Section 219, however, is its limited scope. Since there is no national database of housing code violations, a landlord can bid on properties in other jurisdictions without any limitations. In fact, Ku himself has bid on HUD-insured properties in Ypsilanti, Michigan and Montgomery, Alabama since the amendment became law.

[1] *The Urban Homesteading Assistance Board (UHAB) has long had an association with the Center for an Urban Future. City Futures, the parent of the Center, currently sublets office space from UHAB and UHAB's Executive Director Andrew Reicher is the chair of City Futures' board.*

The bigger issue is that existing code violations are only the most obvious way to see that a potential landlord will be unable or unwilling to maintain a Section 8 property in a satisfactory manner. Management of a physically distressed multi-unit building populated with low-income tenants is not an easy task. But at an auction, there is no way to separate a responsible, prepared bidder from a speculator who simply sees a chance to own a property in a hot real estate market.

THE TROUBLE WITH VOUCHERS

Lynn Scott has lived in Lawndale Restoration, a massive, 100-building Chicago development, for 18 years. Once elegant, her 12-unit building slowly fell apart: Drug dealers took over the lobby, rats crept into the basement, and blown fuses would leave the 51-year-old school-bus driver and mother of three without electricity for days.

Unable or unwilling to improve the development, the owners of Lawndale Restoration defaulted on their HUD insured mortgages. In 2004, the agency finally moved to restore Lawndale by selling it in pieces to local developers. Scott and her neighbors were relieved at first but soon grew anxious. "HUD wasn't providing us with any information about what they were going to do with the building," Scott says.

When HUD did provide information, it announced plans to change the way Lawndale Restoration was subsidized. Rather than extend the buildings' "project-based" Section 8 contracts, which subsidize the buildings themselves, the agency opted to offer each household

HOW DID WE GET HERE?

Privately held and federally subsidized housing for low-income tenants began at the end of the Age of Aquarius. In 1968, the Kerner Commission found that a lack of affordable housing contributed to the urban riots that had been tearing apart cities across the country. That same year, the President's Committee on Urban Housing called for 26 million units of new housing, of which six million would be subsidized for low-income families. A range of programs were introduced to encourage the private sector to help build more affordable housing. Section 236, for example, offered developers below-market interest rates on 40-year loans in exchange for keeping rents affordable. Other programs provided interest rate or rent subsidies.

Yet even with built-in incentives, many of the new buildings struggled. Rising energy costs and struggling tenants caused some owners to default on their HUD-insured loans; others allowed their properties to slide into disrepair simply to save money on maintenance. In 1978, the Property Disposition Amendment gave the agency new authority to preserve and rehabilitate distressed properties, and HUD provided project-based Section 8 contracts whenever possible.

But when Ronald Reagan was elected in 1981, things began to shift. As part of a growing push away from public housing, the administration sought to loosen HUD's ties to distressed properties. The Multifamily Mortgage Foreclosure Act enabled HUD to seek non-judicial foreclosure, making it easier to rid itself of troubled housing stock but requiring continuing use restrictions. At a 1983 hearing before the House of Representatives, the Committee on Government blasted the agency for failing to preserve subsidized housing.

Part of the problem has always been balance between providing affordable housing and watching how public dollars were being spent on subsidies to private owners. "HUD admittedly is torn between two goals which may not always be reconcilable: maximizing the dollar return to the federal government and preserving the low-income nature of properties at some cost to the government," noted the Committee on Government in 1983. A 1993 study by Coopers & Lybrand found that roughly one-third of HUD-insured properties were in danger of default due to physical neglect or financial mismanagement, and taxpayers stood to lose an estimated $11.9 billion.

Subsidized projects were increasingly viewed as an albatross, and Republicans began to push hard for vouchers instead. Then-Senator Bob Dole went as far as to propose shutting HUD down and fully privatizing the system. "HUD has become a cash cow for big city mayors and the well-connected," he said during his 1996 run for president. "We should give housing vouchers to those who need them and get the government out of the landlord business altogether."

At roughly the same time, Congress gave HUD broad discretion over the future of distressed buildings in the hopes of saving money. The sweeping language grants the HUD secretary "flexible authority" over how to manage and dispose of HUD-owned properties and mortgages. That permission has wreaked havoc on preservation proponents attempting to influence HUD. With this broad discretion, the agency has been able to move quickly to dispose of properties without prioritizing preservation, a process that has only intensified under the administration of President George W. Bush.

Others in Congress have reached different conclusions. An overall restructuring process, known as Mark-to-Market program passed in 1997 under bipartisan housing leadership, designed to reduce HUD's rent payments on buildings and restructure the owner's loan to make them more sustainable. In 2000, Senator Kit Bond added a key provision that extended Section 8 contracts in buildings for seniors and disabled residents.

an individual voucher instead.

To help extricate itself and its tenants from substandard housing standard housing, HUD has a policy of switching from project-based subsidies to vouchers during foreclosure. HUD officials have argued that they lack the legal authority to extend a project-based contract beyond the first owner. Vouchers are heralded as a market-based alternative to unwieldy housing developments, a way of giving tenants more control over their own lives. Having a voucher allows tenants to leave their building for greener pastures, even out of state.

Yet a switch to vouchers can hurt tenants, notes Ellen Davidson, a staff attorney with the Bronx office of the Legal Aid Society. At Pueblo, for example, one of the tenants lost her rental subsidy when the strict voucher recertification process highlighted a petty larceny by her son three years earlier. The allowable rent jumped from $253, one-third of her monthly income, to $706. Those who do qualify for a voucher may still lose their apartments if the unit is determined to be too big or too small for the household. A family can also lose the unit if the new owner does not provide promised repairs and it fails a physical inspection—the local government will empty the building of voucher holders since vouchers aren't allowed to be used in a substandard building. In a high-rent market, that can reward a bad owner for his neglect.

Meanwhile, when a tenant does move out of the HUD-subsidized building with a voucher, they often have trouble finding a new home. Roughly 28 percent of vouchers are returned to the New York City Housing Authority each year because their holders couldn't find an eligible apartment and willing owner in time. "Whether the building is distressed or not, more and more landlords are choosing to refuse Section 8," says Davidson.

Even more worrisome to advocates, switching to vouchers changes a building from affordable housing to market-rate housing in just one generation of tenants—and thereby also changes a neighborhood's character.

FORECLOSURES BY STATE 1995 - 2005

State	Number of Buildings	Number of Apartments	State	Number of Buildings	Number of Apartments
Alaska	2	64	Mississippi	15	1,365
Alabama	26	2,935	Montana	3	68
Arkansas	11	928	North Carolina	14	2,603
Arizona	8	1,094	North Dakota	4	186
California	30	3,697	Nevada	n/a	n/a
Colorado	13	1,677	New Hampshire	4	58
Connecticut	25	2,572	New Jersey	9	2,066
District of Columbia	18	2,890	New Mexico	8	450
Delaware	1	41	New York	47	4,930
Florida	25	3,268	Ohio	70	6,929
Georgia	18	4,412	Oklahoma	32	3,637
Hawaii	1	6	Oregon	2	129
Iowa	9	757	Pennsylvania	30	3,722
Idaho	1	22	Puerto Rico	4	520
Illinois	31	3,906	Rhode Island	4	535
Indiana	30	3,672	South Carolina	10	910
Kansas	16	1,240	South Dakota	7	181
Kentucky	17	1,450	Tennessee	26	2,661
Louisiana	35	6,172	Texas	105	19,506
Massachusetts	31	3,617	Virginia	23	3,787
Maryland	30	6,195	Virgin Islands	2	200
Maine	2	76	Vermont	2	154
Michigan	23	2,867	Washington	9	653
Minnesota	13	1,259	Wisconsin	14	961
Missouri	71	8,540	West Virginia	2	189

Source: UHAB and the National Housing Trust

HUD's formula to determine how much it will pay the landlord for a Section 8 voucher can be low, especially in a hot real estate market, giving the landlord incentive to push voucher holders out and look for renters willing to pay more. Over the years, a building can go from being a haven for low-income renters to just another apartment building. And HUD no longer subsidizes or insures mortgages, so when a Section 8 building leaves the program, that community resource is lost.

Finally, there is always the threat that HUD won't fund enough vouchers. According to the Center on Budget and Policy Priorities, the number of families assisted by vouchers between April 2004 and September 2005 fell by approximately 60,000. This year, the administration requested $30 million less than last year for "tenant protection" vouchers, those designed for buildings leaving subsidy programs like Section 8. In the past, HUD offered vouchers for each unit, occupied or unoccupied. Now it will only provide vouchers equivalent to the number of occupied units, reducing a city's overall supply.

TENANTS TAKE ACTION

Tenants have played a pivotal role in many battles over distressed HUD-insured housing. With the help of organizers, they have improved conditions in their buildings, had a voice in the decision of who will own the building and ensured that ownership would remain responsive to their needs. The results aren't always as hoped, but as the residents of the Crest A Apartments in Dallas will attest, it can be done.

By May 1996, the conditions at the 200-unit complex located in the Oak Cliff section of Dallas had become intolerable. Peeling paint and leaky roofs seemed minor to residents after word got out that a garden snake had made its way into an apartment through a cracked window frame and bitten a toddler while sleeping in his crib. Two months later, a stray bullet ripped through an apartment wall, striking a resident in the stomach as she sat watching television in her living room. She survived, but the local violence and shoddy physical conditions in the complex propelled residents into action. With the assistance of the Texas Tenants' Union, a local organizing group, they embarked on a long battle for a change of ownership at Crest A.

The tenants pulled together an arsenal of community and political support, including their local Congress and City Council members. The pressure forced HUD to foreclose on the property in June 1997. At the residents' urging, HUD took over temporary management and ownership responsibility for the project and moved quickly to begin rehabilitating the buildings. The agency also committed substantial capital funds through its Up Front Grant program to assist with long-term renovations.

Most notably, however, HUD agreed to a stipulation that the final sale would mandate resident participation in the future governance of the property. Eventually, residents entered into a joint venture agreement with a reputable nonprofit housing developer, Dallas City Homes, and refocused their campaign on winning joint ownership of the property through HUD's disposition process. Even in a situation like this, the development did not retain its project-based Section 8 status—the tenants all were given vouchers—but with a responsive landlord and a strong, committed tenant organization, the problems that often come with vouchers were avoided.

According to Angela Williams, then president of the tenants association, the provision that the residents would have a say in who owned the building signaled the ultimate victory: A long-awaited recognition by HUD that sustainable affordable housing requires on-going participation from tenants. "We didn't always see eye to eye," she says, "but then we started working as a team. Together we created a community that anyone would be proud to live in."

WHEN HUD IS FICKLE

Unfortunately, other tenant activists have found HUD to be much less reasonable. Depending on whom you ask, HUD is either an overburdened bureaucracy or a heartless saboteur. "When they want to do something terrible they say they have blanket authority, when they don't want to do something they say their hands are tied," says Ed Josephson, staff attorney with South Brooklyn Legal Services.

For their part, HUD's representatives point out that these deals are often complex and usually unique. "I realize there is a lot of back and forth and complications in getting to those victories," says Deb VanAmerongen, former director of HUD's Multifamily HUB in New York City and now commissioner of the state Division of Housing and Community Renewal. "But in the end, HUD is at the table and is working to make these preservation deals happen."

It doesn't always work. Brick Towers was in bad shape in 1998, when Cory Booker, then a Newark City Council member and now mayor, moved into the 300-unit development "to help fight for change." Elevators were broken, garbage piled up and drug dealers had the run of the place.

In 2000, its owner, Meir Hertz, was convicted of tax evasion. And, as with Pueblo, HUD stepped in and foreclosed on the property. It gave the city of Newark a 90-day right of first refusal, during which time the city declined to act.

The tenants, meanwhile, took matters into their own hands. They began working with a private developer to create a plan that would help keep it affordable and allow them control over key management decisions. "The building was in structurally excellent shape," says Getz Obstfeld, president and CEO of Community Developers, Inc. "It was just being neglected. It needed a redesign to make it more defensible, secure. It needed the right kind of staffing and a significant infusion of cash."

But by the time they got their plan together, it was too late; HUD had already agreed to turn the building over to the Newark Housing Authority, which decided to take ownership and now plans to tear down the buildings. In meeting after meeting, HUD representatives told the tenants they had no choice but to go along with what the city wanted. Now only 35 families remain in Brick Towers, some with no hot water, thanks to the Housing Authority, which Booker describes as "the worst slumlord imaginable."

Diana Mells has lived in Brick Towers for 12 years. She says she's not about to leave the neighborhood now that it's on the mend. "We don't hear the stolen cars, we don't hear the shooting we used to," she says. "It's a perfectly good building, it just needs the proper management."

Across the Hudson, residents at Magnolia Plaza, a 102-unit complex in Bedford-Stuyvesant, Brooklyn, had a far different experience. With their development facing foreclosure, they took quick action, electing a new board of directors, replacing the property manager, and choosing a local developer—the Pratt Area Community Council (PACC)—to help them run the building. "Once [the tenants] were alerted to the problem, they realized they had to do something," recalls Deb Howard, executive director of PACC. "They've been hands-on since we started."

LOOKING AHEAD

A new plan in New York could become a model for preservation programs in cities across the country. With grassroots advocacy and engaged tenants, this template could prove to be a far-reaching solution to the HUD distressed housing crisis. "New York has changed the dynamic," says Michael Kane, executive director of the National Alliance of HUD Tenants. "It's taken 12 years to

FROM THE GROUND UP

In the fall of 2003, tenants in six separate apartment complexes scattered around New York City received notices from HUD that, as a result of mismanagement and neglect by the buildings respective owners, their homes were slated for foreclosure. The more than 500 low-income families residing in those buildings were thrown into a state of panic.

Fortunately, organizers from three nonprofit housing groups—New York State Tenants and Neighbors, the Urban Homesteading Assistance Board and the Pratt Area Community Council—had been tracking the problems associated with HUD foreclosures. With insight into where HUD would suggest foreclosure and suggestions for alternative options to an auction, these groups worked together to help the affected residents.

Residents quickly grasped that although there are risks associated with HUD foreclosures, the process also presented an opportunity. Through numerous meetings and the formation of tenant associations, each group of residents made a choice for the type of ownership model they would prefer. In Bedford Stuyvesant, the residents of the Gates Patchen units had a strong sense of ownership of the buildings, so they decided they wanted to convert to a limited equity cooperative. The Logan Garden Residents Alliance in Harlem enlisted a Mutual Housing Association, a joint venture between a local nonprofit and the residents of a number of nearby apartment buildings, to bring in knowledgeable partners. In the Ennis Francis Houses and Magnolia Plaza Apartments, the residents wanted to continue to rent, so each found a trusted local Community Development Corporation that was willing to purchase the building and serve as a fair landlord.

Once each group of tenants had a clear goal, they worked with the organizers to contact the city and representatives in Washington, D.C., to enlist their help in petitioning HUD. The process wasn't easy. Each building's tenant group had to negotiate, picket, write press releases—in some cases threaten to sue. But in all six cases, HUD agreed in the end.

In addition to choices about ownership, residents who wanted to continue to rent were adamant that their rental subsidies be preserved going forward, despite an ad-hoc HUD policy of terminating project subsidies at the time of foreclosure. Within weeks, phone calls started pouring into the offices of Senator Charles Schumer, Congressman Charles Rangel and other members of the New York congressional delegation.

"We realized that if hundreds of our constituents were suffering as a result of one HUD policy, then something is wrong with the policy," said Carmencita Whonder, a legislative assistant to Senator Schumer. "We realized that a legislative change could have a large impact on buildings across New York, as well as a substantial impact on preservation nationally."

As a result of the residents' advocacy, Senator Schumer and other allies in the Senate passed an amendment to the FY 2006 Appropriations Act which mandates the preservation of Section 8 contracts following foreclosure. Although the future of the amendment is currently being debated (see page 9 for more about the law), the fate of the HUD-subsidized buildings in New York and the Schumer amendment illustrate how tenant organizing can be the catalyst that changes affordable housing, both at a specific site and in policy.

get to this point."

The debate over distressed property was already raging when Shaun Donovan took the helm of New York City's Department of Housing Preservation and Development in March 2004. His credentials were impressive: As special assistant to Federal Housing Administration Commissioner William Apgar, he helped develop the Mark Up to Market program, designed to help keep owners from abandoning the Section 8 program by raising their reimbursable rent levels to market rate. Within two years, HUD had cut opt-outs in half.

Some hoped having a former HUD official as the city's housing commissioner would help ease friction with HUD. And, to some extent, that's happened. Donovan has publicly vowed to help preserve multifamily buildings. "Preservation is particularly important now," says Donovan. "I would say that there's never been a time with as significant a threat as there is today because the market is so strong."

HPD has already saved eight distressed properties in NYC from deregulation, he says, a total of 900 units. HPD's experience with moving distressed properties into the hands of responsible management—and an experienced and vocal affordable housing advocacy community—have been huge assets in this work.

The next step, however, is even more intriguing. Donovan is pushing a plan that would enable the city's Housing Development Corporation to purchase the entire HUD-held loan portfolio, using a combination of city and foundation funding to leverage other loans. Taking ownership of the portfolio of about 30 buildings—a combination of distressed and non-distressed properties—would be sustainable in part by having the mortgage payments from the more stable buildings help offset the costs of foreclosure of the troubled properties and a sale to a new, responsible owner who would keep the property affordable.

It isn't an entirely new concept: In Missouri in 1996, HUD agreed to sell its loan portfolio to the state's housing agency. But it is a bold move for both New York and HUD. The deal is still in negotiation, but Donovan thinks it will pass. "I do think the stars are aligned," he says.

Part of the slow movement is a delicate negotiation over price. "Many housing advocates tend to make HUD the bad guy for wanting maximum returns but, at the end of the day, they're running an insurance fund," says Donovan. "There are tangible benefits to affordable housing to doing that." Still, he adds, there has to be a balance. "There's a healthy tension between maximizing returns and meeting the mission, and I think they've gone too far toward maximizing the return."

GOING BEYOND THE EMERGENCY

Since cities currently have an automatic right of first refusal in taking over HUD foreclosed properties, Donovan's plan in New York is a possible blueprint for municipalities all over the country. But before they start taking notes, some advocates are calling for an improvement to the model.

Real preservation isn't just fixing leaks, explains Jim Grow, staff attorney with the National Housing Law Project. It's about trying to make housing a neighborhood asset, he says, and keep neighborhoods affordable to low- and moderate-income families. "Just selling the buildings doesn't resolve the problems," he says. "The cut-and-run strategy does not work."

The membership of the Partnership to Preserve Affordable Housing is a strong supporter of the proposed New York City mortgage buyout program, however they are pressing HPD to include a provision that would capture buildings that have not yet fallen into distress and become HUD-held. For this to work, both HUD and the City would have to agree on a mechanism or "trigger" that brings newly distressed buildings into the mortgage sale pipeline. Just as crucial, the Partnership wants the buildings in the program to maintain their long-term project-

MASS MOVEMENT

Amid all the back and forth regarding the fate of troubled properties, Congress initiated a noteworthy experiment in 1994.

Initially intended to fund four projects, the Demonstration Disposition program was ultimately scaled back to just Boston, where HUD foreclosed on 11 dilapidated properties—a total of 1,875 units—rife with asbestos and lead. After years of neglect they were turned over to the Massachusetts Housing Finance Agency.

The project was expensive—HUD spent close to $100,000 to renovate each unit—and took nearly a decade. But it is now viewed by many as a success. Some of the buildings were demolished, yet tenants stayed heavily involved in the planning for their homes, and many came back as resident owners. "Now they can deal with the management company as an owner rather than a supplicant and they have a stake in the building," says Robert Pyne, Mass Housing's director of rental development. "There are more services, computer centers. Things are going well."

And thanks to project-based Section 8, 87 percent of the new apartments were rented to households earning below 50 percent of the median income in Boston.

So how did Mass Housing convince HUD to extend the contracts? "We felt this was HUD's problem and HUD needed to deal with it," Pyne explains. "We were very firm about all that."

based subsidies. In other words, no vouchers.

Still, making these changes in New York, let alone as policy around the country, is a tall order. "Just dealing with it in any specific building crisis is an art form and a dance," says Pat Coleman, an organizer with Tenants and Neighbors in New York, and a member of the Partnership to Preserve Affordable Housing. "Looking at it in the superstructure of trying to create a more systematic policy across the board is even harder."

CHANGES TO HUD

All of the responsibility to make the system work better can't be laid at the feet of community organizers and local government. The Department of Housing and Urban Development needs to do a better job of managing the properties that it has insured or subsidized. HUD was created to provide decent, safe and sanitary housing to low- and moderate-income families, and as important as it is for the agency to watch its bottom-line, it must keep that mission at the forefront of its decisions.

"We are encouraged here, having seen HUD do the right thing on more than one occasion," says Coleman of Tenants and Neighbors. "It's great incentive to those of us in the field. We just have to get to a place where these outcomes don't require a knock-down, drag-out fight."

Congress plays an important role in providing guidance and regulation. For example, in a last-minute amendment to last year's HUD appropriations budget, Senator Charles Schumer proposed a small bit of language, extending protections for buildings that serve seniors and the disabled to regular Section 8 buildings as well. With strong, bipartisan support from HUD Appropriations Chair Christopher Bond and Minority Ranking Member Patty Murry, the amendment passed. Now, under the law, buildings in foreclosure will retain their project-based Section 8 contracts instead of automatically switching to vouchers. And so, for the first time in a decade, some buildings that HUD is selling will retain their Section 8 status, rather than giving all the tenants a voucher.

Yet many fear that the Schumer amendment won't protect all the properties now facing foreclosure, as its fate is uncertain. While the original language proposed to the Senate was strong, the final version was watered down, opening potential loopholes. In fact, HUD has already violated the amendment. In Syracuse, New York, the agency prematurely terminated a Section 8 contract. In Victoria, Texas, the agency had scheduled a foreclosure for the Fox Run Apartments and was insisting on switching to vouchers. On the other hand, at the end of 2006, HUD agreed to relent on their policy guidance on this point, and as this report went to press, a new, stronger version of the Schumer amendment is expected to move through Congress.

However, a new problem was created last year, when Congress de-funded the Up Front Grant program, which provided significant funding for rehabilitation. Sources in Washington say the Office of Management and Budget pressured HUD to cut mandatory expenses, leaving up-front grants on the line. But HUD shouldn't be let off the hook, housing advocates insist. Even with budgetary constraints, they say, the agency could and should do more to preserve units.

Certainly HUD has a responsibility to be fiscally prudent with taxpayer money. However, advocates say these new rules would have a devastating impact on low-income communities. In 2005, the Senate subcommittee on Transportation, Treasury and HUD chastised the agency: "The Committee also remains concerned that HUD is not committed to maintaining Section 8 project-based housing and may be encouraging owners to opt out of the program," it wrote. "This would be a tremendous mistake since affordable housing needs are growing while the stock of affordable low-income housing is shrinking."

The landscape for how HUD will approach its Section 8 project-based housing is in flux right now. A policy guidance written by the agency in July 2006 puts many of the strategies used to preserve project-based Section 8 housing at risk, including requiring rents to be capped, which will prevent new responsible owners from adequately financing the rehabilitation of these projects. Another mandate contained in the policy guidance will hinder units of local government from attempting to take temporary ownership of these buildings—a critical strategy for preservation of the distressed housing stock— because HUD will no longer consider the physical condition of the projects when determining their value. So a building with serious code violations and other physical problems would be valued at the same price as a similar but pristine building down the street.

HUD has asked for comments on these policies this fall from housing advocates and is now weighing those ideas before making a final determination on how it will proceed. At the same time, Congress is considering another round of legislation that would impact how the agency approaches Section 8 project-based housing. Community groups, housing advocates and tenant organizations, who have seen the federal procedures change over the years in many ways, hope that any changes will provide a more clear and improved atmosphere for HUD to work with tenant groups to preserve these important community resources.

RECOMMENDATIONS

1) For the Department of Housing and Urban Development

• Change the mindset. Before any technical changes can happen, HUD needs to alter its basic view of distressed buildings it has subsidized as problems to be auctioned off to recover its investment. The agency needs to understand that these distressed buildings represent opportunities to preserve affordable housing and increase tenant participation and home-ownership.

• Become a willing, strong and proactive partner. Once HUD recognizes the opportunity that distressed properties represent, they can work with local governments, active housing groups and tenants.

• Make data on failing buildings available and accessible Create locality friendly disposition rules when appraising/valuing the property.

• Create a more directed disposition mechanism than public auction, such as New York's program to move properties to local oversight.

• Be willing to take a reasonable below-market price for properties that will remain affordable.

• Recognize capital needs and the need to finance them.

• Provide flexibility on Section 8.

• Provide the financing to fix buildings. Cities and states cannot be expected to make up the grants for housing that fell into disrepair on HUD's watch. They can't afford it and won't do it. In the past, HUD has used a portion of the FHA insurance fund to help defray the cost of bringing a building back up to standard. The Upfront Grant program has been cut by Congress, but it should be reinstated.

2) For City Governments and Other Local Stakeholders

• Recognize this opportunity. In many cities, distressed HUD multi-family buildings are often the last troubled properties in neighborhoods where they have invested heavily in community development. Improving these buildings can engage residents and even create home ownership opportunities.

• Consider ownership. New York's pending ownership policy, where the city takes over the portfolio of HUD-held properties in collaboration with local tenant groups, is one model. When the city's housing agency can help midwife a property from HUD to local control, it provides a "safe haven" for properties as they change hands.

• Help those who want to preserve affordable housing. New York has a model that has worked over the years to streamline help to community groups, tenant associations and supportive owners. It prequalifies for-profit and not-for-profit developers based on experience, location, capacity or tenant choice and creates a tenant petition process that usually is honored as the primary choice. There are specific rules and processes to regularize what otherwise can be a series of one-off developments.

3) For Nonprofits/Foundations

• Engage and organize tenants. Nonprofit housing advocates need to help bring in this constituency as part of efforts to preserve affordable housing developments. In the past, HUD had funded tenant organizing, but the agency no longer does so. Foundations should pick up the task and do more to support tenant organizing, which also has the halo effect of lending legitimacy to the approach.

4) For All Levels of Government and the Nonprofit Sector

• Recognize tenant choice. In cases where all the official stakeholders have failed to manage, operate and oversee a building, the tenants have done their part of paying rent each month (or they would no longer be living there). Therefore, they have a right to play a role in determining the future of their housing as it goes through a disposition process. As important, tenants who are actively involved in saving their buildings are critical to gaining the support of local politicians to effectively pressure HUD and/or city housing officials.

CREDITS

This report was written by Carl Vogel and Cassi Feldman. The Center for an Urban Future is a New York City-based think tank dedicated to independent, fact-based research about critical issues affecting New York's future including economic development, workforce development, higher education & the arts. For more information or to sign up for our monthly e-mail bulletin, visit www.nycfuture.org.

This report was made possible by a grant from the John D. and Catherine T. MacArthur Foundation to the Urban Homesteading Assistance Board which contracted with the Center for an Urban Future. General operating support for City Futures has been provided by Bernard F. and Alva B. Gimbel Foundation, Booth Ferris Foundation, Deutsche Bank, The F.B. Heron Foundation, The M&T Charitable Foundation, The Rockefeller Foundation, Rockefeller Philanthropy Advisors, The Scherman Foundation, Inc., Taconic Foundation and Unitarian Universalist Veatch Program at Shelter Rock.