

Rural Voices

THE MAGAZINE OF THE HOUSING ASSISTANCE COUNCIL

Winter 2004-2005 • Volume 9 / Number 4



— PRESERVING —
RURAL RENTAL
HOUSING

MESSAGE TO OUR READERS

Dear Friends,

There are not enough affordable apartments for low-income renters in rural America. More than one-third of rural renters pay more than the federal standard of 30 percent of their income for their housing costs. Rural renters are twice as likely as homeowners to live in substandard homes, and minority renters are three times as likely. Yet every year rural property owners are prepaying the government mortgages that keep hundreds of apartments affordable for their tenants. Preserving these units for their low-income occupants has become an important cause. This issue of *Rural Voices* is an attempt to assist that cause.

The articles in this issue focus on the U.S. Department of Agriculture's Section 515 program, which has provided hundreds of thousands of affordable units over the last 40 years. Preserving rural rental housing is not limited to Section 515, however – it also means preserving units funded by the Department of Housing and Urban Development, as well as affordable apartments with other sources of financing. Some of the examples provided in these articles involve HUD-funded properties.

Both policy and practice are crucial for those involved in preservation issues, so this *Rural Voices* covers both. Contributors examine the issue from the perspectives of federal and state governments, property owners, tenants, and nonprofit organizations. They examine lawsuits, regulations, financing, tenant advocacy, and more. Importantly, they not only state the problem, but provide inspiration for those who want to be part of the solution.

It should be noted that many of the subjects addressed in this magazine are in flux; preservation is a moving target. In four recent months – August through November 2004 – preservation-related developments included a significant court decision, a major property assessment study, an agency notice on the process of transferring property ownership, and a new regulation governing the Section 515 program. HAC is committed to monitoring such developments and will continue to announce them on its website, www.ruralhome.org, and in the *HAC News* newsletter.

Sincerely,

Arturo Lopez, Chair

Moises Loza, Executive Director

David Lollis, President

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NOTES ABOUT SOME OF THE RECENT ACTIVITIES, LOANS, AND PUBLICATIONS OF THE HOUSING ASSISTANCE COUNCIL

Leadership Celebrated at HAC's 2004 National Rural Housing Conference

More than 700 registrants from 48 states (including Alaska and Hawaii), Puerto Rico, and the District of Columbia met recently at the Housing Assistance Council's 2004 National Rural Housing Conference, "Building Homes, Celebrating Leadership," in Washington, D.C., December 9-11.

From the opening plenary session through 36 workshops and other sessions, an awards banquet, and roundtable problem-solving discussions, attendees shared and learned tools, strategies, and ideas for improving local housing conditions while celebrating the importance of individual leaders. Photographic memories of the conference and a brief report are currently available on HAC's website at <http://www.ruralhome.org/conf2004/>. A more detailed report will be posted on the site soon.

The next National Rural Housing Conference is scheduled for December 7-9, 2006.

Thanks to The John D. and Catherine T. MacArthur Foundation

The John D. and Catherine T. MacArthur Foundation has provided a two-year grant to HAC and the National Housing Law Project as part of a larger preservation initiative called Window of Opportunity, a ten-year, \$50 million effort to preserve and improve affordable rental housing across the country. This grant funded the development and production of this issue of *Rural Voices*. It will also enable HAC and NHLP to develop materials useful for nonprofit organizations purchasing affordable apartments, to collect and disseminate information on the subject, and to convene a policy conference. A task force on rural rental housing preservation has been convened and will present recommendations at the national rural rental housing preservation conference in spring 2005. An article on the Foundation's comprehensive approach to rental preservation is included in this issue of *Rural Voices*.



Photo courtesy of Sean Bennett, Neighborhood Reinvestment Corp.

Winners of the 2004 Jason and Cochran awards posed with HAC officials. From left are Mario Villanueva, Jerome Little, Moises Loza (HAC Executive Director), Cushing Dolbear, David Arizmendi, Jack Rivel, and David Lollis (HAC President).

Jason and Cochran Award Winners Demonstrate Rural Housing Leadership

At a banquet during the National Rural Housing Conference, HAC presented awards to five distinguished individuals. In recognition of her outstanding and enduring service on the national level, Cushing N. Dolbear was honored with the Clay Cochran Award for Distinguished Service in Housing for the Rural Poor. When she received a standing ovation for her decades-long dedication to affordable housing, she laughingly remarked, "The amazing thing is that I have never produced one house in my 50 years of service."

Four local leaders in rural housing development received the Skip Jason Community Service Award: David Arizmendi, Executive Director, Proyecto Azteca and Azteca Community Loan Fund, San Juan, Texas; Jerome Little, Executive Director, Tallahatchie Housing, Inc., Webb, Miss.; John "Jack" Rivel, Special Project Director, Federation of Appalachian Housing Enterprises, Inc., Berea, Ky.; and Mario Villanueva, Executive Director, Diocese of Yakima Housing Services, Yakima, Wash.

HAC Convenes Preservation Task Force

HAC, with funding from the John D. and Catherine T. MacArthur Foundation, has convened a task force of experts on rural rental housing preservation to develop recommendations for policy-

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PRESERVING RURAL AMERICA'S AFFORDABLE RENTAL HOUSING: CURRENT ISSUES

by Robert A. Rapoza and Cornelia Tietke

The biggest problem that RHS faces in preserving the Section 515 portfolio is chronically inadequate program funding.

Editor's note: This View from Washington column, which provides an overview of Section 515 preservation issues, is the executive summary of a report prepared by the National Rural Housing Coalition with funding from the Fannie Mae Foundation.

The U.S. Department of Agriculture's (USDA's) Section 515 Rural Rental Housing Program provides safe and affordable homes to almost half a million of America's most vulnerable residents: elderly women, people with disabilities, and mothers with children, all of whom on average earn less than \$10,000 a year. At its peak in the early 1980s, the program created about 1,000 new properties a year. Since the mid-1900s however, the program has faced severe budget cutbacks, limiting USDA's ability to finance much-needed rehabilitation of existing properties and the construction of new properties to serve the 900,000 rural renter who live in substandard housing.

In the face of the shrinking 515 budget, USDA has undertaken creative measures to improve the efficiency of its program delivery and to facilitate the infusion of capital from state and private sources. However, while these third-party sources make a valuable contribution to the preservation of the 515 portfolio, they are not a substitute for federal funds— including 515 loans, rental assistance, and grants such as CDBG and HOME— which provide the deep and consistent subsidies necessary to house families with incomes below the poverty line.

The purpose of this report is to demonstrate the importance of the Section 515 program, explain the obstacles to preserving its

almost 16,400 properties, highlight local preservation efforts, and recommend changes to maintain America's rural rental housing supply.

Background

In 1962, Congress amended Title V of the Housing Act of 1949 to create the Section 515 Rural Rental Housing Program. Originally administered by the USDA Farmers Home Administration (FmHA), the program is run today by FmHA's successor, Rural Development (RD), through the Rural Housing Service (RHS). This agency delivers the program through its Washington, D.C.-based national office and RD's state-based field offices.

The Section 515 program makes subsidized loans — 1 percent interest rate, 30-year term, 50-year amortization — to developers to build, acquire, and rehabilitate rural rental housing. About 75 percent of these loans are further subsidized by RHS's Section 521 Rental Assistance (RA) program and the Department of Housing and Urban Development's (HUD's) Section 8 program of, both of which provide rent subsidies to ensure that tenants pay no more than 30 percent of their income toward rent. Fifty-seven percent of Section 515 households are elderly, handicapped, or disabled; 26 percent are headed by persons of color; and 73 percent are headed by women. The average annual household income is \$9,168.

Since its inception, the Section 515 program has financed more than 526,000 units and today serves almost 475,000 families.

During the program's peak years, 1979-1985, annual funding levels ranged between \$864 million and \$954 million, producing a total of 9,622 loans. Since 1995, however, annual funding levels have never exceeded \$184 million, and from 1999-2004 they have hovered between \$113 and \$119 million per year – far below a level that could meet demonstrated need. Demand for Section 515 loans and rental assistance funds consistently exceeds availability by wide margins.

Challenges

Recent administrations and Congress have not provided adequate Section 515 or rental assistance funds to rehabilitate the portfolio, deliver sufficient long-term preservation incentives, or protect tenants from rent overburden. As the Section 515 budget shrinks, RHS finds itself struggling with two major preservation challenges.

The first is the increasing number of owners who wish to prepay their loans, a trend that is occurring while the program has started to lose more units to prepayment than it produces. Congress created a loan prepayment regulation process between 1979 and 1992 – after RHS made the bulk of 515 loans – that introduced restrictions on the right to prepay. It also created prepayment prevention incentives for owners based on the amount of equity in their properties. Unfortunately, RHS has not had sufficient 515 or rental assistance funding to meet the demand for incentives. As a result, it currently faces numerous lawsuits brought by owners seeking the right to prepay and/or



RURAL VOICES

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The Housing Assistance Council (HAC) is a national nonprofit corporation founded in 1971 and dedicated to increasing the availability of decent housing for low-income people in rural areas. HAC strives to accomplish its goals through providing loans, technical assistance, training, research and information to local producers of affordable rural housing. HAC maintains a revolving fund providing vital loans at below-market interest rates to rural housing developers. Developers can use these funds for site acquisition, development, rehabilitation or new construction of rural, low- and very low-income housing. HAC has a highly qualified staff of housing specialists who provide valuable technical assistance and training, and research and information associates who provide program and policy analysis and evaluation plus research and information services to public, nonprofit, and private organizations. HAC is an equal opportunity lender.

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compensation for not being allowed to prepay. Recent rulings on two key cases, *Franconia Associates et al. v. United States* and *Kimberly Associates v. United States* may have significant consequences. The *Franconia* decision requires the government to pay damages for restricting the right to prepay. The *Kimberly* decision opens the way for owners in some states to use their state property laws to exit the Section 515 program. [Editor's note: An article by Timothy Thompson in this issue of *Rural Voices* discusses these court cases in more detail.]

The second problem arises from the aging and deterioration of the properties in the loan portfolio. Some 89 percent of these properties are at least 10 years old, and 64 percent are at least 15 years old. Their major infrastructure systems are at or near obsolescence and need rehabilitation or replacement.

The way to meet this challenge is through recapitalization – an injection of new debt or equity to finance repairs or upgrades. However, Section 515 and rental assistance funding limitations allow fewer than 3 percent of all Section 515 units to be recapitalized each year. Because RHS's recapitalization tools typically result in increased debt, they rely on rental assistance to protect tenants from rent overburden. Thus they do not lend themselves to the more than 4,000 properties that do not have full rental assistance coverage (they are said to have “partial rental assistance”) or to projects that cannot afford new debt. Consequently, such properties do not get recapitalized.



RHS has commissioned a study to quantify the recapitalization needs of the 515 portfolio as well as to recommend innovative preservation strategies. [Editor's note: The Comprehensive Property Assessment report is included in this issue of *Rural Voices*.] Creation of a comprehensive, fully funded recapitalization strategy is critical for both owners and tenants, and for the future of the Section 515 loan portfolio. Such a strategy must overcome five obstacles:

1. Lack of capital to rehabilitate the property: Project reserves at most properties are inadequate and the Section 515 program cannot meet the demand for rehab loans. Bonds, including tax-exempt bonds plus 4-percent Low Income Housing Tax Credits (LIHTCs), and private bank debt, while available, work best for properties larger than the typical Section 515 complex. Small and isolated properties need deep subsidies such as those provided by the 9-percent Low-Income Housing Tax Credit program and HUD's Community Development Block Grant (CDBG) and HOME programs. These three programs are vastly oversubscribed.

2. Limited revenue opportunities: Many developers and third-party funders find the opportunity costs of participating in 515 deals too high. The average property has 27 units, which does not allow for the economies of scale needed to create adequate profit for many potential participants. In addition, the 515 program allows developer fees only when a deal includes tax credits; it caps return on investment at 8 percent of original equity; and it does not allow nonprofits a return on equity. Finally, management fees vary widely by state.

3. Lack of adequate rental assistance and Section 8 subsidies: As discussed, rent subsidies ensure that eligible tenants spend no more than 30 percent of their income for rent. Recapitalization typically results in increased project debt and thus in increased rents. Without rental assistance, tenants must shoulder the full weight of a rent increase. More than 100,000 Section 515 units do not have rental assistance subsidies, making them extremely difficult to recapitalize without rent-overburdening their tenants.

4. Unsustainably low rents: The average Section 515 rent is \$314 per unit per month, including both the tenant's contribution and any rental assistance. This low rental income results in a lack of capital for rehabilitation and is an indicator of potentially large capital needs, particularly at properties lacking full rental assistance subsidy. Two factors have kept rents low: (1) some rural markets do not support higher rents; and (2) many RHS offices have denied rent increase requests, both to avoid increase in the per-unit cost of rental assistance and, at properties with partial RA, to protect tenants without rental assistance from rent overburden.

5. Phantom income and exit taxes: Many owners of older 515 properties must pay taxes on phantom income, and their



properties do not generate enough revenue to compensate for these tax payments. At the same time, owners' exit options are limited. If they try to sell their properties and take depreciation in excess of their original investments, they may face exit taxes greater than their equity. Thus they do not sell, nor do they have the financial wherewithal for recapitalization, and the properties deteriorate. The Tax Issues and Preservation Task Forces of the Millennial Housing Commission estimate that if a tax incentive were created to allow exit tax relief at time of sale to an affordable housing preservation owner, as many as 68,000 section 515 units could be preserved.

Recommendations

The biggest problem that RHS faces in preserving the Section 515 portfolio is chronically inadequate program funding. However, RHS could make its recapitalization processes more efficient and equitable, and it should also take steps to protect properties left out of its current recapitalization strategy. The following recommendations address the Section 515 portfolio's most pressing preservation needs:

1. RHS should create and Congress should fully fund a national preservation plan for the 515 portfolio that addresses prepayment, transfers, and rehabilitation of properties that do not change ownership. The plan should also address those properties currently not well served by RHS's recapitalization tools: small,

isolated properties; those in poor markets that cannot afford a rent increase; and those with partial rental assistance.

For several years, the National Rural Housing Coalition has recommended a minimum annual Section 515 funding level of \$250 million to address the recapitalization needs and to add enough new units to replace those lost to prepayment. In addition to this recommendation, the Coalition also advocates the provision of rental assistance to all rent-overburdened tenants; grant funding, such as CDBG or HOME set-asides, to recapitalize properties that cannot afford new debt; and budget-based rents for performing properties in markets where market-based rents are insufficient to cover operating costs.

2. Congress should provide rent vouchers for tenants displaced as a result of prepayment lawsuits. In one recent lawsuit, for example, tenants were displaced as RHS and the plaintiff worked through their settlement agreement. Tenants should be protected from rent overburden resulting from legal decisions.

3. Congress should provide exit tax relief for Section 515 owners who transfer their properties to purchasers who will preserve long-term affordability. As noted above, this step could preserve as many as 68,000 Section 515 units.

4. Congress should create a permanent set-aside of 9-percent Low Income Housing Tax Credits for Section 515 preservation. These LIHTCs provide the deep subsidy necessary to preserve properties that cannot afford rent increases, and they drive many Section 515 preservation transactions. However, they are oversubscribed and without a set-aside will not be available in numerous states that do not prioritize the housing needs of their rural residents through their tax credit qualified allocation plans. A 10-percent set-aside would be appropriate.

5. RHS should provide field staff with better guidance on how to protect minority residents from the adverse impacts of prepayment. While RHS has procedures to protect minority residents, many of RD's field staff are unfamiliar with them. They need additional training.

6. Congress should open the prepayment transfer process to low-income housing tax credit partnerships with nonprofit general partners. This change would allow tax credit funding for preservation transfers in cases where RHS mandates the sale of a property to a nonprofit to protect minority tenants.



The Section 515 Rural Rental Housing Program — the principal source of affordable housing for low-income rural renters — is a national asset. It deserves stronger support from Congress and more resourceful administration by the Department of Agriculture. The recommendations above, if promptly acted upon, will recapitalize the Section 515 loan portfolio, make the program more attractive to rural housing developers, and — most important — keep faith with the half-million rural Americans who rely on the Section 515 program to put a sound roof over their heads at an affordable cost. 🏠

Robert A. Rapoza is Executive Secretary of the National Rural Housing Coalition. Cornelia Tietke is a former consultant on housing and economic development issues. The full report, Preserving Rural America's Affordable Rental Housing: Current Issues, is available on NRHC's website at www.nrhcweb.org/news/515PreservationReport.pdf.

7. RHS should allow nonprofit purchasers to receive a return on any equity they bring to the property, including government funds that do not require repayment. This change would put nonprofit purchasers on an equal footing with for-profit purchasers that bring equity to a Section 515 transaction. It would also give nonprofits another tool to finance affordable housing.

8. RHS should streamline its transfer process and codify it in regulations. The more RHS can do to standardize and streamline the process, the more developers will be willing to participate in it. RHS could start by imposing uniform nationwide management fees and timelines for processing transfer requests. It should also replace the current Administrative Notices with comprehensive regulations. Finally, it should make regulatory and automation changes that facilitate the consolidation of loans and properties under one management structure, so that properties can benefit from economies of scale to minimize development and operating costs.

9. Fannie Mae and Freddie Mac should facilitate preservation of the Section 515 portfolio. To improve the process of purchasing 515 preservation loans, they should standardize paperwork; minimize participation fees; minimize loan interest rates and maximize loan terms; encourage their lenders to participate; and work with more nonprofit preservation organizations. They should also commit to purchasing Low Income Housing Tax Credits used to finance 515 preservation deals.

RURAL RENTAL HOUSING – COMPREHENSIVE PROPERTY ASSESSMENT AND PORTFOLIO ANALYSIS

prepared by ICF Consulting Team

Doing nothing is not an option ... unless the roofs never leak, the paint job lasts forever, no furnaces or air-conditioners ever need replacement, etc.



Editor's note: In November 2004 USDA Rural Development released a report on the Section 515 portfolio prepared by a team of consultants. The document reprinted below, along with a set of briefing slides, comprise the final report. This document, the slides, and an appendix consisting of a detailed Market Assessment Report are available on the Rural Housing Service's website at <http://www.rurdev.usda.gov/rhs/mfh/Property%20Assessment/Property%20Assessment.htm> or on HAC's website at http://www.ruralhome.org/info/Announcements_USDA.php.

USDA disclaimer: This report was prepared under a contract with USDA to analyze the Rural Development Multi-family Housing Program, identify problems, and provide recommendations for changes to address such problems. USDA is in the process of reviewing this report along with other internal reviews to determine what actions, if any, should be taken to modify the current Multi-family Housing Program. Any statements, recommendations, or conclusions made in this report do not represent the views of the Rural Development Mission Area, the Secretary of Agriculture, or the Administration. This is one of a number of options to be considered when contemplating changes to the program.

Origins of the Multifamily housing program: The Housing Act of 1949; Title V of P.L. 81-171 (October 25, 1949) authorized the USDA to make loans to farmers to construct, improve, repair, or replace dwellings and other farm buildings to provide decent, safe, and sanitary living conditions for themselves, their tenants, lessees, sharecroppers, and laborers. Over time, the Act has been amended to authorize housing loans and grants to rural residents in general. The USDA's Rural Development (RD) mission area administers these programs. The housing loan and grant programs included single and multi-family housing programs. This proposal deals specifically with the multi-family program covered under Section 515 of the Act whereby loans are made at a 1% rate for the development of rural rental housing.

Background to Comprehensive Property Assessment Study (CPA): After the Administration took office, the Department determined that the portfolio of Section 515 properties was in such condition and of such concern that an assessment of the situation was imperative. The study portfolio on November 1, 2003 encompassed 15,899 properties with a total of 434,296 units and excluded farm labor housing. These properties are

located across the country in areas defined rural. The CPA was initiated in September 2003 using outside consultants to do the following:

1. Review issues and develop solutions directly pertaining to the market demand for such housing.
2. Review and define potential approaches to address the increasing propensity for owners to prepay RD subsidized loans and thereby displace needy tenants.
3. Analyze and develop solutions for the increasing rehabilitation and recapitalization requirements of the aging existing properties.

This assessment, including 333 detailed field inspections and 32 market studies, has been completed and a revitalization proposal has been developed which has the support of Rural Development and has been reviewed by Office of General Counsel (OGC) and Office of Budget and Program Analysis (OBPA). This memorandum summarizes the findings and the potential implications of the proposal.

Study Results and Implications: The following is a summary of some of the facts gleaned from the study:

- 40% of the loans have been made on age-restricted properties; overall the existing tenant base is 58% elderly, handicapped and disabled, or both; the average property age is 23 years; the average annual adjusted household income is \$9,075.
- Based on a sample of properties, which the Department selected in order to be statistically valid, the following was determined.
 - While there are few immediate life & safety issues, *no property* has adequate reserves or sufficient cash flow to do needed repairs and for adequate maintenance over time.
 - *Doing nothing is not an option* ... unless the roofs never leak, the paint job lasts forever, no furnaces or air-conditioners ever need replacement, etc.
- *Several factors may contribute to owners lacking motivation to maintain, upgrade, or transfer their properties*, including tax consequences, lack of equity in the property, and the inability to receive a return on investment.



- The location, physical condition and tenant profile of the properties suggest that the *public interest is best-served by revitalizing most of this housing as affordable housing* for the long-term.
- Based on the data we reviewed and reasonable economic assumptions, a large majority of the owners do not have an economically attractive alternative to continuing in the program, and therefore we think prepayment is unlikely to occur at the rates previously assumed.

Using a combination of approaches and adopting market-based solutions with private sector resources, we believe, over time, that Rural Development can address the financial and physical deterioration issues. Under our suggested approach, costs to the Government will be significantly less than if these same issues are addressed using traditional approaches. However, it is clear that addressing these issues will cost more than the current budget “baseline” can support. In any event, continuing the status quo is an unattractive alternative; continued pressure on the Rental Assistance budget as costs go up and tenant incomes remain low; deterioration of the properties causing foreclosures and tense, unproductive relationships with private owners distracting attention from the future of the rural communities being served.

The Multifamily Revitalization Proposal: This proposal has three main components and must be viewed as a package – partial implementation, in our view, will only cause confusion and increase costs substantially:

- *Additional capital and a new bargain with the owners and tenants:* the capital would come primary from debt relief on the current RD loans with built-in recapture provisions and new private capital- including potential co-investment by the owners. The new bargain would be that owners must accept a regulatory and enforcement regime that would ensure affordability and accountability for performance, but also offer incentives for good ownership and good management. A minimum contribution for shelter would be expected from all tenants.
- *Market determines prepayment:* RD would protect current tenants for a finite period (as determined by Congress and the Administration) from the rent burden that would result from prepayment. For purposes of modeling the level of resources needed, we used a five-year period of protection for currently assisted tenants to be consistent with pre-2004 Rental Assistance Contract renewals (a 30-month protection period was used for non-assisted tenants). Allowing the market to determine prepayment avoids potential windfalls to owners, and goes beyond the current focus of preventing prepayment with limited resources.
- *Reorganize the multifamily program:* To meet the challenges of implementing the new functions under the Revitalization Initiative, we recommend expanding the Agency's technical expertise, and making organizational changes that provide the Agency the authority, flexibility, and accountability to succeed. We are proposing the establishment of an empowered Office of Portfolio Revitalization (OPR), which would be exclusively focused on the existing portfolio. We have broken the entire portfolio into five (5) transaction types and analyzed the resources necessary to address the long-term recapitalization needs. This program envisages a significant role for the State RD offices as well as outside experts.

Anticipated Budget Impact: After OBPA reviewed detailed assumptions provided by the consultants, the initial determination was that the budget impact of debt relief, tenant protection, capital advances and administrative costs over the seven

years would be approximately \$1.0 billion above the baseline. However, to accomplish the same result of preserving affordable housing for 20 years using Rental Assistance (currently the only real tool available) we estimate the cost to be as high as \$2.9 billion above current funding levels. We propose a staged approach with periodic check-points and accountability for the Multifamily Revitalization Strategy.

Conclusion: The Multi-Family Section 515 portfolio at USDA, representing a federal investment of nearly \$12 billion, was created over 30 years and serves some of the poorest and most underserved in rural communities. The essence of the Multifamily Revitalization Proposal is to comprehensively address all the issues facing the program and to provide all stakeholders with an equitable deal:

- Owners get a reasonable return for providing capital and good management
- Congress and the Administration know they are getting results for the dollars spent
- RD is perceived as providing leadership and focused management
- Local communities have an affordable housing asset in which they have pride and
- Above all, tenants are protected while Department's portfolio is revitalized. 🏡

This report was prepared by the ICF Consulting Team under contract to the U.S. Department of Agriculture Rural Development. The ICF Team included Shekar Narasimhan and Tom White of Beekman Advisors; Rick Samson of AEW Capital Management, L.P.; Charlie Wilkins of The Compass Group, LLC; Ned Daly and David Whiston of On-Site Insight; Patrick Carter of Carter & Associates; and Eric Oetjen and Kevin Blake of ICF Consulting. Questions or comments on this report should be directed to Eric Oetjen, Vice President, ICF Consulting, 703-934-3784, eoetjen@icfconsulting.com.

A RESPONSE TO THE COMPREHENSIVE PROPERTY ASSESSMENT

Why write off the very properties that can make the biggest positive impact in the lives of lower income rural residents?

Editor's Note:

This letter was sent on January 18, 2005 to:

Tom Dorr, *Senior Advisor to the Secretary, USDA*

Gilbert Gonzalez, *Acting Under Secretary for Rural Development*
and Russell T. Davis, *Administrator, Rural Housing Service*

Dear Gentlemen:

We represent a coalition of organizations interested in and involved with the preservation of the affordability and physical condition of properties within the § 515 program. We have a particular interest in minimizing the loss of such properties through the prepayment process. We have reviewed with great interest the work of ICF Consulting in its Portfolio Assessment/ Analysis, and we appreciate the opportunity to offer some comments.

We support the physical revitalization recommendations.

The bulk of the report, of course, concerns the increasingly urgent need to address the physical revitalization of § 515 properties. We support the idea that these needs must be addressed and for the most part we welcome the authors' recommendations on how to stabilize the condition of the portfolio. Our concerns lie in four areas: (1) the report's suggestion that attempts to minimize prepayments be abandoned; (2) the report's failure to properly emphasize the importance of promoting preservation transfers; (3) the report's consideration of some means of protecting tenants which we consider inadequate; and (4) the report's recommendation to impose minimum rents on the poorest tenants.

Current efforts to preserve properties threatening prepayment should not be abandoned.

Our biggest concern is with the report's view of the prepayment problem. We are not in a position to question the authors' estimation that no more than 10% of owners are likely to prepay, though we do note that the 10% estimate is based upon economic analysis, and there remains considerable evidence that many owners are prepaying for other than economic reasons. The report itself acknowledges at least 10 possible additional factors. Our real concern, however, is that the report suggests that allowing these properties to leave the program is an acceptable outcome.

The need to retain these properties within the program is no less compelling today than it was when Congress first enacted restrictions on prepayments. As ICF notes, those properties most likely to prepay are typically those within the strongest markets. Such housing developments are also among the most needed,

precisely because they are typically in markets with the best job opportunities but few affordable housing options. Why write off the very properties that can make the biggest positive impact in the lives of lower income rural residents?

We understand that the authors were limited in the data they had available, but it seems to us that as fundamental and far reaching a recommendation as one to abandon preservation efforts should not occur in the absence of critical information. The report undertook no analysis regarding who is housed in these units, what the consequences of prepayment would be for the community, what alternative affordable housing options exist, what the cost would be of creating such necessary alternatives, and whether the estimate that no more than 10% of properties would prepay was consistent with the program's history. It would appear that the recommendation was driven more by the need to redirect resources to revitalization than by a full consideration of the consequences of abandoning current preservation efforts.

Moreover, the report appears to overlook the potential for saving these critical resources within the program. The report criticizes the payment of incentives to owners to remain in the program, but when the cost of an equity loan to save a development is compared to the cost of having to build a new development to replace the one that is lost, there is no question that the expenditure is cost effective. Moreover, this strategy is having some success. We understand that 1700 units were preserved through equity and incentives last year.

Promoting preservation transfers should receive greater emphasis.

There is another way to keep these properties within the program, as well to assure recapitalization, of course: encourage transfers to mission-driven nonprofits. We regret that the report devoted so little attention to this highly promising strategy. As the consultants acknowledged, owners of all types of properties may have good reasons to sell. The Millennial Housing Commission's 2002 report recommended supporting preservation with a system of tools, including "preservation entities" that would acquire and commit to the preservation of affordability. Exit tax relief proposals in Congress are typically predicated on sales to such approved entities. In addition to promoting pres-

ervation, these mission-driven nonprofit purchasers (along with for profit owners and developers), bring new capital and good management to the RD portfolio

However, the various restructure transaction scenarios that ICF proposes for the most part do not contemplate transfers, and therefore do not consider the levels or types of resources that might be necessary to facilitate transfers. ICF acknowledges that debt relief alone might be insufficient to meet properties' needs even without a sale. Thus, in the case of a sale plus rehabilitation, even more resources are needed. Such resources certainly include Rental Assistance, which should be considered as a resource for other than "complex restructures" in certain circumstances. It has a cost, but can leverage new, non-RD resources that are often essential in sale transactions. And, as has been demonstrated in the case of the MAHRA legislation, the concept of "exception rents" can be used to provide guidance for when RA should be targeted to make transactions viable. Another resource which is not addressed by ICF is the interest credit subsidy that accompanies the existing 515 loans. In conjunction with debt relief, this revenue stream could be used in a number of ways to support a transfer transaction.

Also, while the categorization of properties into 5 categories of "preservation-worthy" transaction types is a useful analytic tool, it can create an inflexible approach to dealing with transfers. In any one owner's multiple-property portfolio, for example, there are likely to be several categories of transactions. It would be most valuable for RD to have flexibility to use a variety of tools to facilitate a portfolio transfer.

Finally, it's important to remember that these preservation entities cannot perform this valuable work without reasonable fees as compensation.

We know that the agency has devoted considerable effort toward moving in the direction of transfers. Given the growing signs that this can be a successful means of avoiding prepayment losses (955 units transferred last year), it seems to us that the focus should be turning to how to increase the scale of such preservation transfers to a greater level. If the policy goal of increasing the scale of such transfers were elevated to a level comparable with physical revitalization, much of this critical stock could be retained.

Tenant protections cannot be temporary.

The report acknowledges, rightfully so, the paramount importance of protecting tenants from the consequences of properties leaving the § 515 program. Section 8 vouchers could, in theory, be provided to tenants in prepaying properties in lieu of the current system of rent restrictions which protect tenants, though that would involve substantial additional Section 8 funding at a time when Congress is seeking to limit Section 8. Our real concern here, however, is the report's suggestion of time limited vouchers or a one time cash award. These forms of temporary assistance will inevitably leave some tenants destitute when assistance runs out.

Minimum rents create hardship for those least able to bear it.


Our final concern is with the proposal to mandate minimum rent payments by § 515 tenants. We understand that considering fresh approaches to maintaining the financial viability of these developments is necessary, but this particular recommendation is, in our view, ill conceived. The reason some tenants now pay zero rent is because they subsist at income levels so low that many of us cannot imagine surviving. Frequently such tenants have literally nothing to fall back on. It is hard to imagine that the revenue from the imposition of minimum rents would amount to enough to justify the substantial hardship such demands would create.

The report fails to assess the impact on minimum rents on those who would pay them. It borrows the concept of minimum rent from HUD programs without noting the limits there: minimum rents in the public housing and Section 8 voucher programs are discretionary, and even in the project-based Section 8 program, hardship exceptions are authorized. It is also worth noting that tenants left without personal resources in urban areas typically can turn to other public or private assistance that is rarely available in rural areas.

With those qualifications, we do want to reiterate our support for the essential focus of the report on the physical revitalization of the inventory. In addition, there are several other intriguing suggestions in the report that deserve further consideration, about which we hope to offer further thoughts in the future. We trust that the ideas in this report will spark an ongoing conversation among the agency and its stakeholders that will continue for some time.

Sincerely,

**Community Economic Development Assistance Corp.
Housing Assistance Council
Housing Preservation Project, Inc.
Local Initiatives Support Corporation
Mercy Housing, Inc.
National Housing Law Project
National Housing Trust**

cc: Jack Gleason, USDA Rural Housing Service
Laurence Anderson, USDA Rural Housing Service
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OWNER CONVERSION OF RURAL RENTAL PROPERTIES TO MARKET RENTS: BOTH TENANTS AND OWNERS TURN TO THE COURTS

by Timothy Thompson

It should not be surprising that the federal law that governs prepayment of these mortgages has generated litigation.

The existing supply of affordable rural rental housing is shrinking across the country as owners of projects in the federal Rural Housing Service's Section 515 program pay off their mortgages early, escape the program, and boost rents. It should not be surprising that the federal law that governs prepayment of these mortgages has generated litigation. The current law attempts to balance the competing interests of owners desiring to escape government regulation with the need to protect tenants from the resulting consequences. However, this balancing was one-sided against owners, said the federal Court of Claims in a recent ruling that could expose the government to millions of dollars in damages.

Tenants Seek to Enforce Protections

As described elsewhere in this issue of *Rural Voices*, federal law permits owners to prepay their Section 515 mortgages only in certain circumstances. Even then, prepayment is often supposed to be subject to restrictions that protect current tenants from escalating rents. On a number of occasions, including in Minnesota, Washington, Oregon, Idaho, and Michigan, tenants have gone to court to challenge improper owner prepayments, suing both the RHS for its misapplication of federal law and owners for sidestepping tenant protections. In most cases, tenants have achieved success in either preventing or effectively reversing the prepayment, through court orders restoring their projects to the Section 515 program or at least enforcing tenant protections.



In a recent Oregon case, because the owners of six RHS projects could not agree with RHS on property appraisals, the owners paid off two loans and threatened to pay off the rest, all without tenant protections. Tenants in several of the projects sued challenging a misapplication of federal law, and it now appears that prospects are bright for a settlement that would restore at least several of these projects to the Section 515 program.

Even where prepayments properly occurred, tenants have not always been protected as federal law requires. In a Minnesota case

where the owner illegally increased rents after a proper prepayment, tenants obtained a court order blocking the rent increase. The tenants were then able to negotiate a settlement resulting in a sale of the project to a nonprofit dedicated to keeping the building affordable.

In fact, tenant enforcement of their own rights has become a key facet of the prepayment structure. RHS has acknowledged that it lacks the resources to police owner compliance with these restrictions, and has inserted language in the restrictions providing that tenants themselves can seek to enforce these restrictions in court where necessary.

Not all tenant lawsuits have been successful, despite compelling claims. Tenants in Albany, Minnesota found themselves falling through a hole in the RHS safety net when their Section 515 landlord discovered an easier way to get out of the federal program. The owner defaulted on his loan to RHS and when the agency responded by accelerating payment on his loan, he paid off the loan free from the restrictions of the prepayment process. The tenants sued, asserting that this end run around the process was in fact a prepayment, which should have led to protections against excessive rents. But the court rejected the tenants' claim.

Despite several setbacks, the good news for rural tenants is that the courts have usually responded where tenant rights have been violated. The bad news is that most tenants cannot easily obtain a lawyer to challenge these system failures, assuming tenants even realize their rights have been infringed. The cases mentioned above probably represent a fraction of the cases around the country where federal protections are being disregarded. Housing advocates can play a valuable role by monitoring Section 515 prepayment activity and helping tenants find lawyers where necessary. In addition, the Housing Preservation Project (see contact information below) is available to assist local counsel with these cases on behalf of tenants.

Owners Challenge Restrictions

Owners turn to the courts for very different reasons, of course. Although owner representatives were involved in the drafting of the current federal law, many owners have long objected to the law. In their view, they entered the Section 515 program relying on the right to prepay their mortgages freely, and believe that Congress cannot later “change the rules of the game” by restricting those rights. Despite the fact that owners received significant

benefits by participating in the Section 515 program and knew they could be subject to changes in federal law, courts have been lending a sympathetic ear to owner arguments of this kind. That has led to three kinds of legal challenges.

In some cases owners have sought to nullify the restrictions altogether on constitutional grounds. The Eighth Circuit Court of Appeals in the *Parkridge* case rejected that claim, holding that the prepayment statute was constitutional because in the only situation where it prevents prepayment it also provides that the owner must sell but at fair market value. While the court suggested owners may be entitled to money damages, owners still have to follow the prepayment process required by the law.

A second approach by owners has been to bypass the RHS prepayment process and sue to eliminate any restrictions by asking the court to “quiet title” (remove encumbrances on the property such as rent restrictions), pursuant to state law procedures. Most notably, the Ninth Circuit Court of Appeals in *Kimberly Associates* has recently approved this strategy by owners. There the court rejected arguments by tenants that this was an improper way to challenge the statute, and rejected RHS's arguments that special defenses available to the federal government should defeat the owners' case. From the tenants' point of view, this approach is particularly alarming because it essentially nullifies the federal prepayment process.

The third approach consists of a half dozen lawsuits filed in the federal Court of Claims by groups of owners with hundreds of Section 515 projects across the country. In these cases owners are not attempting to escape the statutory restrictions, but seek money damages based upon losses they claim as a result of having to comply with the law. Their argument is that the after-the-fact imposition of restrictions on their right to prepay constitutes both an unconstitutional taking of their property and a breach of their contract by the government.

In a long awaited ruling at the end of August, the Court of Claims issued a 72-page decision following a trial in *Franconia Associates v. The United States*. This decision is a major victory for owners unhappy with prepayment restrictions, and could expose the federal government to millions of dollars in damages, in both this case and also those following on its heels.

The *Franconia* court's view of the federal prepayment law

becomes clear from the outset when the court quotes from the Eagles' song "Hotel California": "You can check out anytime you like, but you can never leave." The court first finds the government liable for breaking their contracts with these owners. In the court's view, the owners had an unfettered right to prepay their mortgages and escape the Section 515 program, and in passing laws in 1987 and 1992 restricting those rights, Congress welched on the deal.

In reaching these conclusions, the court rejected several arguments by the government. One was that the law in most cases did not prevent prepayment, but merely regulated it, offering owners several reasonable options. The other was that in legislating Congress is traditionally granted considerable leeway to change certain rules where necessary; the idea is that the sovereign power of the United States to change the law as it affects contracts remains intact unless surrendered by Congress in unmistakable terms. This "unmistakability doctrine" defense was rejected by the court, on the grounds that it does not apply where Congress is targeting pre-existing contract obligations in order to get itself a better deal. It did not matter to the court that Congress was doing so in order to pursue the unquestionably worthy public goal of protecting innocent tenants.

Having found the government liable for breach of contract, the court spent the bulk of its ruling on calculating the owners' damages for lost profits. The court again rejected most of the government's objections, including the argument that the court should consider the failure of most of the owners to take advantage of the reasonable options available to them under the prepayment law (in legal terms, a duty to "mitigate" or minimize damages). In a battle of the experts over which theoretical model for calculating lost profits was most fitting, the court generally sided with the owners' expert on most issues. Because of the complexity of these models, the court ended its long decision by directing the parties to submit their final calculations for each owner's damages before the court could issue final judgments.

Although a final judgment has not yet been issued, most of the damage calculations have now been completed. The average damages award per property exceeds \$400,000 and the total damages amount to over \$13 million. If this award ultimately stands, it is most likely to be paid out of Department of Justice funds rather than from the RHS budget.

It is too soon to know the full implications of the *Franconia* ruling, but they are likely to be profound. The government, of course, has the right to appeal, and with a decision of this complexity, there is no shortage of issues that might look different to a higher court. Still, this decision delivers a major body blow to Congress's approach to preserving Section 515 projects as affordable housing. It also raises tough policy questions about the wisdom of basing an affordable housing program on for-profit owners who have different long-term goals than has the program itself.

Conclusion

Those concerned about the future of the Section 515 program should pay close attention to the courts. Tenants and housing advocates will inevitably have to turn to the judiciary to protect their rights in some of these prepayment cases. More ominously, though, the *Franconia* decision, and the wake it will create, could unsettle federal preservation policy in the most fundamental ways. Owners, RHS officials, and Congress will all be studying the implications of *Franconia*, as well as other pronouncements from the bench on these issues. Others concerned about the continuation of Section 515 housing must do their legal homework as well. 🧐

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PRESERVATION AND THE AGING PORTFOLIO: THE OWNERS' PERSPECTIVE

by Colleen M. Fisher

CARH believes that streamlining current procedures and creating flexibility in existing programs are the best ways to address existing properties.

Council for Affordable and Rural Housing member owners and managers are on the front line of operating and preserving housing financed by one of the nation's most important sources of affordable housing for rural America: the Section 515 program, administered through the Rural Housing Service of the U.S. Department of Agriculture. Developed using private capital and government funds under Section 515 of the Housing Act of 1949, this housing has been created and operated through a successful public-private partnership. This portfolio is in jeopardy, however.

No one questions the need to preserve this housing for rural America, but the Section 515 portfolio of some 16,400 apartment complexes containing more than 400,000 units consists largely of aging properties facing rising operating costs and deferred maintenance. There are tried and true programs that have succeeded in preserving some of these properties, and these programs need some modification and money to continue this success. At the same time, it may be necessary to explore new approaches that may be outside the purview of the typical RHS programs.

Last year, CARH's owners committee formed a task force to explore the aging portfolio issue. Task force members spent several months defining the problem, examining how property needs and resources shape the discussion, and how owner goals shape the results. This article outlines some of the issues identified as well as recommendations subsequently adopted by CARH for preserving this important source of housing.

Real estate of all types is periodically updated and rehabilitated as an essential and typical part of property operation and maintenance. This is especially true of apartment complexes like those in the Section 515 inventory that are in constant use, successfully providing homes to hundreds of thousands of Americans.

Yet funding shortages and regulatory barriers threaten the ability to operate, maintain, and rehabilitate older buildings. In 2002, RHS itself estimated that 4,250 Section 515 properties with 85,000 units would "physically deteriorate to the point of being unsafe or unsanitary within the next 5 years," according to a USDA Office of Inspector General report. RHS estimates it will need \$850 million to maintain just this portion of the portfolio and as much as \$3.2 billion for portfolio-wide rehabilitation. Consequently CARH believes that streamlining current procedures and creating flexibility in existing programs are the best



Photo courtesy of CARH.

ways to address existing properties. We categorically believe that maintaining the existing housing stock is more cost effective, and less expensive, than allowing that stock to deteriorate and be replaced with new housing.

Prepayment and conversion to market-rate rents is a realistic option for only one-quarter of the Section 515 portfolio. The prepayment discussion often distracts attention from issues confronting the other three-quarters of the portfolio. Prepayment has been seen as a threat to the Section 515 portfolio.

Prepayment, coupled with preservation, also has been used as a tool both to rehabilitate affordable housing and to preserve low-income use restrictions. However, prepayment will reach only about 3,900 of the more than 16,000 properties in the total Section 515 portfolio. Only those properties have both enough equity to make prepayment feasible and also the original right to prepay, according to a 2002 GAO study.

CARH believes that any analysis of the Section 515 portfolio must be driven by the financial status of the properties themselves. The financial status of the property often drives the physical condition (owners can only repair what they can pay for). The financial status also dictates the options available to owners. Of course, assessing properties and their futures is complicated. Thus far, RHS has not articulated a uniform policy or position about additional funding for properties with prepayment restrictions in place. Currently, only those properties in litigation or engaging in lengthy preservation processing can plan for major rehabilitation efforts.

We suggest analyzing the portfolio by property condition and by owner goals. The property condition will generally dictate the range of options for a property and owner. However, the particular path an owner chooses will depend not only on property-specific factors, but also on the owner's goals, which can be highly individualistic, motivated as much by personal matters as by the positioning of a property.

Owners have faced shrinking options over the years. RHS has kept rents down and created processing barriers to rent increases. Rent processing problems have also resulted in owner returns not being paid or even budgeted. Owners have also found most of their originally anticipated tax benefits taken away through the Tax Reform Act of 1986. This has left longtime owners tired and interested in leaving the program, but at the same time has

created opportunities for a new generation of parties interested in buying many of these properties.

To encourage the rehabilitation and preservation of rental properties, CARH recommends several legislative and/or administrative actions. Some of these proposals could be implemented by RHS and USDA in the short term without the need for legislation.

Recommended Regulatory Changes

RHS should operate its programs under basic national standards rather than on a state-by-state basis, which creates a jumble of interpretations regarding what should be a uniform set of standards. The 2002 GAO study notes that many owners are so frustrated with RHS implementation of its programs that they may prepay to leave the program, even if prepayment is not economically advantageous. We recommend that the Under Secretary for Rural Development delegate to the RHS Administrator the ability and authority to review any prepayment-related decision by a USDA Rural Development state director and to hear any appeal by a USDA customer about state or district office processing.

Elevate RHS's preservation office to coordinate and process all preservation issues and to shape and implement policy directly. The Office of Rental Housing Preservation, as required by existing legislation, reviews and approves incentive offers processed by state offices. Whether and how processing occurs is generally up to the state offices, so the preservation office is unable to form, shape, or implement any preservation strategy. As part of the preservation office duties, the agency should adopt a recovery program that will expedite transfers, prepayments, and loan workouts, and provide a subsidy clearinghouse for owners willing to take on troubled properties.

RHS should adopt a national policy that allows cost-of-living increases based on general economic data. USDA Rural Development state offices review and set budgets and rents through a time-consuming process, no matter how small the request. In most areas, in most years, operating costs increase due to inflation and other general economic factors. Owners that have project-specific needs in excess of those cost-of-living increases can then request additional, project-specific increases where appropriate.

RHS should allow owners to advance funds to protect their properties' operations. Current RHS regulations at 7 C.F.R. Part 1930,

Subpart C, discourage owners from advancing funds to properties to meet short-term needs. With a limited return on equity, this limits the owner's ability to maintain the property sufficiently.

USDA's Office of General Counsel should participate actively in meetings with the public and USDA contractors, as is typical at other government agencies. Currently, servicing is made difficult because OGC typically refuses to talk to the public, let alone confer about differing legal interpretations. Those OGC attorneys who have conferred with USDA clients and customers are generally understaffed, causing significant time delays in the most basic processing issues.

Where it is impractical to obtain Section 515 funds, RHS should permit alternative funding for recapitalization. Current RHS policy effectively limits funding levels to those that would have been allowed through new Section 515 financings. New Section 515 loans are rare, however, as the program is at historically low funding levels. Where alternative new funding is provided through other federal or state agencies, the underwriting standards of those agencies should be used. This process works particularly well where RHS uses its existing authority to subordinate and reamortize existing Section 515 financing, thereby enticing new equity with a first lien position. We recommend that RHS formalize this process.

RHS should have a firm processing deadline and an informal right of appeal to the RHS National Office. At present, RHS transfer rules at 7 C.F.R. §1965.63 and §1965.65 provide enormous barriers to preserving housing within the Section 515 Program. Owners that seek to maintain properties but transfer them to new owners face a process that requires new borrower approvals and a virtual re-underwriting of the existing property.

CARH supports restoring owners' prepayment rights but, even if those rights are not restored, RHS should institute a streamlined prepayment process to avoid unnecessary waste and delay. This would aid preservation in situations where an owner agrees up-front to maintain low-income affordability. There has been significant confusion between prepayment and market-rate conversion, with a generalized fear that the former automatically leads to the latter, though CARH believes the impact of prepayment on the inventory is limited due to extended use provisions that are attached to projects from other sources of funding.

There is a need for more accurate reporting of the shortage in Section 521 Rental Assistance funding so that the issue can be appropriately addressed. Section 521 RA is the main rent subsidy program for the Section 515 portfolio. CARH members firmly believe that there is a significant shortage of Rental Assistance. As a result, many residents must pay rents at more than 30 percent of their adjusted gross income.

These regulatory changes, if enacted, would make strides in preserving the aging portfolio. Other recommendations, listed below, would require statutory amendment. Many of these recommendations would work in conjunction with one another and are needed to preserve properties that lack significant financial equity.

Recommended Statutory Changes

Section 515 production appropriations should be increased to the historical levels of the early 1990s, between \$500 and \$900 million. RHS's budget has been severely limited in recent years and the Section 515 multifamily housing production budget is a fraction of that appropriated by Congress in years past. Funds are currently split between new development and rehabilitation of existing Section 515 properties. As a result, relatively little new housing has been produced for rural America, and funding for existing Section 515 properties is insufficient. We expect that any funding increase would be modest in the current federal budget environment, but even a modest increase would be helpful. Additional revenue will provide not only for housing, but for services and service providers as well.

Congress should permit prepayment funds received by USDA to be used as funding for new projects. We recognize that prepayment may lead to the loss of some affordable housing in some cases, such as where there are no low-income restrictions. If USDA could recycle funds it could better help maintain affordable housing in needed areas.

RHS properties would benefit greatly from an allotment of Section 8 vouchers. Currently, rural properties cannot easily access HUD Section 8 vouchers. There is virtually no coordination between HUD and RHS on voucher allocation. Moreover, rural areas do not attract significant allotments of new vouchers and seem left out of this funding pipeline. Funding of rural Section 8 vouchers (like the rural housing set-aside for project-based Section 8) will make subsidy available to very low-income rural residents. We recommend the Section 8 voucher program include a set-aside for

RHS properties that prepay. The best way to encourage prepaying owners to maintain affordability is to allow owners to convert RA contracts to project-based Section 8 contracts. Presently, RA terminates when the Section 515 loan is prepaid, but Section 8 would continue after prepayment, assuring affordability.

Another option that should be explored is permitting owners to pay off their original Section 515 loans and replace the loans with FHA-insured financing or tax-exempt bonds in amounts sufficient to cover rehabilitation and other costs. In place of three subsidies a single subsidy of Section 8 project-based assistance would be provided. The elimination of the Section 515 subsidy would encourage owners to compete for 9 percent tax credits, thus increasing equity investment and decreasing debt financing. Developments would be required to serve low-income residents for the remainder of the terms of their original Section 515 loans.

In a similar vein, another proposal would institute a mark-to-market program for the Section 515 program, which would allow Section 8 project-based contracts to replace the Section 515 interest credits and Rental Assistance contracts. This program would be used where rents at market level cannot cover rehabilitation financing and operations without a debt service reduction.


The Low Income Housing Tax Credit rules should be clarified to permit the 9 percent credit to be used for developments receiving RHS Section 515 financing, in the same way it can be used with some HUD programs. Currently, RHS subsidies are regarded by the tax credit investment industry as below-market federal financing, for all practical purposes disqualifying RHS properties from the 9 percent tax credit. This change could even be targeted to very low-income populations (as is done in developments using HOME funding, where the 9 percent tax credit requires at least 40 percent of the units to be occupied by persons at no more than 50 percent of area median income).

Section 42 of the Internal Revenue Code should be amended to provide a small statutory set-aside for properties located in RHS-designated rural areas. Currently, RHS properties have trouble competing with urban properties for tax credits. RHS properties tend to be smaller and less visible than larger urban developments. A minimal set-aside of at least 10 percent would be consistent with past set-asides, such as that for nonprofit entities.



Photo courtesy of CARH

We also believe that the current rent limit rules need to be addressed. Apartments financed through tax credits can have rents at no more than 30 percent of 60 percent of the area median income. In many rural areas, the median income is simply too low to support the development of new multifamily complexes with tax credit financing. A change in the current rules would allow states to use the higher of the area median income or the statewide median income for the purpose of calculating application income limits.

CARH recommends elimination of exit taxes, and limiting taxation to actual cash distributions to owners. The typical Section 515 property includes Low Income Housing Tax Credit financing, and sale of the property – even for an amount not generally considered profitable – triggers tax liabilities for the tax credit investors. The only way for owners to avoid these “exit taxes” is to retain ownership, although that prevents transfer and refurbishment. This barrier is particularly intractable because many of these owners invested in these properties to obtain tax benefits that were eliminated by 1986 amendments to the Tax Code. Elimination of exit taxes could actually result in tax revenues because it would encourage sales with taxable distributions. 

Colleen M. Fisher is Executive Director of the Council for Rural and Affordable Housing. Formed in 1980, CARH is a national trade association with headquarters in Alexandria, Va. CARH represents the interests of over 350 private for-profit and nonprofit companies, as well as federal, state, and local housing finance agencies. Members of the association build, develop, finance, manage, own, and supply products and services to the affordable rural housing industry.

PRESERVING AND IMPROVING RURAL RENTAL HOUSING: PROMISING EFFORTS EMERGE

by Michael Bodaken and Kyra Brown

Recently, there have been a number of promising rural preservation efforts.

Rental housing plays a crucial role in rural areas, providing an alternative for the many families that are unable to afford or are uninterested in homeownership. Though housing costs are generally lower in rural areas than in cities, many households have difficulty affording rents. In recent years, the U.S. Department of Agriculture's Section 515 Rural Rental Housing program has seen a significant decrease in federal appropriations. In addition, many of the units produced under the Section 515 program are at risk of being lost from the affordable housing stock through prepayment of their loans and conversion to market rate housing. Under these circumstances, preserving this uniquely affordable housing stock is critical.

Preservation of rural rental housing is quite difficult. Typically, rural rental housing properties are smaller than their urban and suburban counterparts, with an average size of around 30 units. This presents financing challenges and may well result in higher per-unit costs to manage these properties, particularly in remote or sparsely populated rural areas.

This challenge is compounded by the fact that often there is a no match between nonprofit owners with the capacity to own and the location of much of the rural housing stock. Fewer nonprofit housing organizations exist in many rural counties and those that do may lack the capacity to preserve this stock, due to limited financial and staff resources. Groups in these areas generally have "more limited access to capital, skilled financial packagers, and other resources necessary to carry through complex preservation deals," according to a Housing Assistance Council report.



Photo courtesy of NHT.

Promising Efforts on the Horizon

Rural housing projects can often be saved, however. Recently, there have been a number of promising rural preservation efforts. The following summarizes some recent rural preservation transactions.

Cobble Knoll Portfolio: 501(c)(3) Bonds with Rental Assistance from USDA

In conjunction with its affiliate in Washington state, Mercy Housing, Inc. is purchasing and preserving 30 rural properties with a total of 926 units in 14 counties throughout the state of Washington, with a total development cost of approximately \$43 million. Averaging 32 units, the 30 properties were constructed under the Section 515 program between 1976 and 1987. Many of the properties have project-based rental assistance through USDA or the U.S. Department of Housing and Urban Development.

Mercy split the acquisition into two phases because of the number of assets. The first group of 17 properties with 507 units was acquired in September 2003 and the second group of 13 properties with 419 units was acquired in fall 2004.

Financing was structured to address the capital improvement needs of the properties and to ensure the long-term viability of the housing. The components of the financing included:

- The Washington State Housing Finance Commission issued about \$6.5 million in tax-exempt 501(c)(3) bonds for the first phase, which were purchased by a major bank.
- USDA's Rural Development originated approximately \$3.3 million in new Section 515 loans and subordinated the existing Section 515 debt on all of the properties.
- USDA provided additional units of Rental Assistance.
- USDA approved increases in rent subsidy and annual replacement reserve contributions to support additional debt and future capital improvements.
- The State of Washington's Department of Community, Trade, and Economic Development loaned a small amount of Housing Trust Fund money to the properties, making it possible to obtain property tax exemptions.

Financing for the second phase was similar. It included another \$3.7 million in tax-exempt 501(c)(3) bonds. In addition, MHI was awarded another \$1 million from the state Housing Trust Fund to help fill the financing gap and make these properties eligible for property tax exemption.

According to Mercy Housing, cooperation with the USDA RD office has been a critical part of the process of acquiring these properties. The office has proved to be very supportive in the complex acquisition process.

Brookside Village: Tax-exempt Financing and Low Income Housing Tax Credits Following Prepayment

In 1998, the owner of Brookside Village, a 16-unit rental property for low-income seniors in Freeport, Maine, inquired about prepaying the Section 515 loan on the property. Worried that this valuable housing resource would be lost from the affordable stock, the board of directors for Freeport Housing Trust began to work with the owner to purchase and improve this property. Though a relatively small organization with only one staff person, FHT had already purchased and preserved a Section 8 project-based elderly housing property.

Total development cost for purchase and modernization was estimated at approximately \$1 million, with repairs and renovations estimated at approximately \$15,000 per unit.

Early in the prepayment process, FHT and the project's owner worked with Maine's state USDA RD office to negotiate a non-profit transfer. They were unable to move through the RHS prepayment and preservation process expeditiously, so FHT began negotiating directly with the Maine State Housing Authority to save Brookside Village. The elements of the transaction, which occurred in 2001, were:

1. The owner prepaid the Section 515 loan.
2. FHT obtained tax-exempt bond financing and Low Income Housing Tax Credits to finance the acquisition.
3. The owner sold the property directly to FHT.

Adirondack Apartments: Use of New Fannie Mae Loan Product

In 2000, the Volunteers of America entered into an agreement to purchase and rehabilitate Adirondack Apartments, a 40-unit family complex in Saranac Lake in upstate New York financed under the Section 515 program. Initially, financing was going to involve the Low Income Housing Tax Credit program, but the timing was off and the tax credit application cycle had recently closed.

Instead, VOA looked to an alternative, then in the process of being developed, that would use Fannie Mae financing to help provide equity and rehabilitation funds for preserving rural properties financed by USDA. USDA and Fannie Mae's Office of Multifamily Lending and Investment, with the help of the National Affordable Housing Preservation Associates, agreed to a financing model in which RHS would subordinate its first security position to a loan made by a Fannie Mae Delegated Underwriting and Servicing lender.

After purchase by Fannie Mae, the loan will involve limited servicing from the DUS lender, relieving the DUS servicer from having to develop a servicing capacity for small, rural loans and reducing the servicing fees the property has to carry. RHS also used its ability to modify the interest credit plan the loan carried, reducing the interest rate on the RHS debt from 11 percent to 1 percent.

Capri Capital agreed to participate as the DUS lender for the Adirondack Apartments acquisition and negotiation of model documents between RHS, Fannie Mae, Capri Capital and VOA began. The transaction closed in December 2003.



Photo courtesy of NHT.



Photo courtesy of NHT.

The elements of the transaction were:

1. Capri Capital made a loan, purchased by Fannie Mae, for \$515,000, carrying a 6.9 percent interest rate with a 25-year term.
2. The term of the existing RHS debt was increased and RHS subordinated its position in its transferred loan of \$1 million to the loan made by Capri Capital.
3. Project-based Section 8 on the property was transferred to VOA.
4. VOA obtained an \$80,000 weatherization grant from the State of New York's Department of Housing and Community Development to improve the buildings' energy efficiency.

This loan can be used as a model for similar Section 515 preservation efforts in the future. Both Fannie Mae and Freddie Mac are exploring preservation transactions with RHS. Freddie Mac has a pilot project in Indiana and Ohio involving its purchase of rehabilitation loans where existing Section 515 RHS debt will be subordinated to the rehabilitation loan.

Strong Preservation Support from Competitive Low Income Housing Tax Credits

Transfers of Section 515 properties increased from 136 in 2001 to 188 in 2003, according to Laurence Anderson, then director of RHS's Office of Rental Housing Preservation, quoted in the *Housing and Development Reporter* on June 21, 2004. Anderson identified Illinois, Texas, and Michigan as the states with the greatest numbers of transfers.

Approximately half the money that went into transfers came from Low Income Housing Tax Credits, Anderson said. Tax credits provide an increasingly important source of funding to facilitate the preservation of rural properties over the long haul. According to research conducted by the National Housing Trust, more than 45 states prioritize or set aside tax credits for rural properties (see table).

State Priorities and Set-Asides for Rural Preservation


State	Preservation Priority in QAP	Rural Priority in QAP
Alabama	x	x
Alaska		x
Arkansas	x	x
Arizona		x
California	x	x
Colorado	x	x
Connecticut	x	
Delaware	x	x
District of Columbia	x	
Florida		x
Georgia	x	x
Hawaii		x
Idaho	x	x
Illinois	x	x
Indiana	x	x
Iowa	x	x
Kansas	x	x
Kentucky	x	x
Louisiana	x	x
Maine	x	x
Maryland		x
Massachusetts	x	
Michigan	x	x
Minnesota	x	x
Mississippi	x	x
Missouri	x	x
Montana	x	x
Nebraska		x
Nevada	x	x
New Hampshire	x	
New Jersey	x	x
New Mexico	x	x
New York	x	
North Carolina	x	x
North Dakota	x	x
Ohio	x	x
Oklahoma		x
Oregon	x	x
Pennsylvania	x	x
Rhode Island	x	x
South Carolina		x
South Dakota	x	x
Tennessee		x
Texas	x	x
Utah	x	x
Vermont	x	x
Virginia		x
Washington	x	x
West Virginia	x	x
Wisconsin	x	x
Wyoming		

RHS Increases Preservation Tools

Preserving Section 515 multifamily housing remains a top priority for RHS. According to testimony of Russell Davis, Administrator of the Rural Housing Service, before the House Subcommittee on Housing and Community Opportunity on July 20, 2004, RHS is taking a number of steps to resolve issues around prepayment and preservation of the Section 515 portfolio. Their efforts include:

- designating a state multifamily housing preservation coordinator to concentrate preservation efforts in each state;
- using subordination authorities to encourage and expand the use of third party funds;
- allowing for new asset management fees and increasing the advance available to nonprofit purchasers from \$10,000 to \$20,000 to encourage nonprofit participation;
- conducting a comprehensive program assessment, including an analysis of the Section 515 portfolio;
- developing a new Administrative Notice that provides guidance on streamlining the existing transfer process and suggesting methods for using existing program authorities to make preservation transactions work (editor's note: AN 4010 was issued on September 23, 2004);
- encouraging tenants to purchase Section 515 properties as co-operatives as a means of preserving affordable rental housing;
- working with Fannie Mae and Freddie Mac to establish a simplified process of securing secondary financing for rehabilitation and equity loans from third party lenders; and
- issuing Administrative Notice 3987, which provides that Rental Assistance from prepaid Section 515 or 514 properties may be transferred to properties that may need such assistance to facilitate their preservation and rehabilitation.

Conclusion

In spite of the obvious difficulties, nonprofit organizations are making headway in the preservation of at-risk rural properties. These efforts can provide examples to other organizations that seek to preserve and improve at-risk properties in their areas. 

Michael Bodaken is President and Kyra Brown is Public Policy and Outreach Director at the National Housing Trust. Based in Washington, D.C., NHT is a national nonprofit organization formed to preserve and improve affordable multifamily homes for low- and moderate-income use.



RURAL PRESERVATION AND RESIDENT-BASED ADVOCACY

by Dewey Bandy

Especially when a negotiated preservation purchase is not possible, resident-based advocacy may be the only way to preserve a property.

The devastation of the nation's affordable housing inventory through the conversion of subsidized rental units to market rate housing is one of the biggest challenges facing rural housing advocates. In responding to the current wave of prepayments and Section 8 opt-outs, it is critical that communities, advocates, and developers employ every tool available to preserve this critical local and national resource.

Advocates nationwide have worked to ensure that preservation is prioritized by federal and state funding programs and that dedicated short-term loan funds are available to purchase or “warehouse” at-risk projects until permanent funding can be secured. Other initiatives have supplemented the meager protections of federal law with state and local ordinances designed to strengthen notice requirements, notify potential preservation purchasers, and provide a brief period for preservation purchase offers before developments are sold or converted. Nonprofit technical assistance providers such as the California Housing Partnership Corporation have helped nonprofit developers and community organizations navigate the complex financing required to preserve properties that would otherwise prepay and opt out of restrictions.

These initiatives have contributed greatly to the preservation of at-risk housing. However, the emphasis on housing programs, legislation, and strengthening the capacity of nonprofits to undertake preservation purchases has tended to overlook an

important approach to preservation – resident-based advocacy. As the case study below demonstrates, residents themselves can constitute the driving force in preservation. Especially when a negotiated preservation purchase is not possible, resident-based advocacy may be the only way to preserve a property.

The Ellison Apartments were developed in the early 1970s in the small town of Red Bluff, Calif., with a HUD-assisted Section 236 mortgage. By 2000 the Ellison's 94 units, located in one of the poorest and least populated rural areas in California, constituted 12 percent of all the affordable units in Tehama County. The California Coalition for Rural Housing became involved in 1995 when the owners decided to sell the property under the Low Income Housing Preservation and Resident Homeownership Act. LIHPRHA granted qualified nonprofit housing organizations a strong right of first refusal before any prepayment could occur, funded the sale and rehabilitation of the property, and required resident endorsement of the buyer. Resident organizations and technical assistance intermediaries such as CCRH received grants to facilitate resident participation in the LIHPRHA process.

When CCRH began working with residents in late 1995, the Ellison was poorly managed, badly maintained, and a center for drug dealing in Red Bluff. Progress was not easy, but through persistent outreach, training, and technical assistance, the Ellison Residents Association was formed in early 1997. Aided by CCRH, the residents held regular meetings, elected a resident board, produced a resident newsletter, and received a HUD capacity development grant. Resident initiatives were undertaken to address drugs, crime, maintenance, and the lack of resident services. As a result of these organizing initiatives, the residents began working with a local nonprofit developer, Community Housing and Improvement Program, and endorsed CHIP's purchase of the property in 1996.

Unfortunately, when LIHPRHA was repealed in late 1996 and funding ended for HUD preservation sales the property went into a downward spiral of physical decay and financial collapse. The management presence on the property gradually disappeared. Massive electricity bills due to master-metered utilities rendered a market sale or conversion infeasible and created an operating deficit that eventually led the property into default.

Despite the end of LIHPRHA, the Ellison Residents Association

remained active and continued to pressure HUD to take action to preserve the property. These efforts bore fruit when HUD, in early 1999, agreed to hold off on foreclosure and allow CHIP to pursue a tax credit purchase of the property. HUD warned, however, that should CHIP not receive tax credits, the department would foreclose and auction off the property.

In the summer of 1999, the long odyssey to save the Ellison seemed finally to have ended when CHIP narrowly missed obtaining a tax credit award. By now the property had become virtually uninhabitable, overwhelmed with drug dealing and having almost no management presence. Many residents simply had enough of the social and physical blight and began to move out. To top things off, the project was approaching the realm of technical and financial infeasibility due to the massive amount of rehabilitation needed and a rapidly approaching deadline on the use of HOME funds committed by the city to CHIP for the tax credit deal. HUD was adamant that it would now sell the property in foreclosure auction. Since this meant simply selling the property to another absentee slumlord and effectively ending affordability restrictions, the end seemed near. But 2000 was to prove a new millennium for the Ellison and provide a lesson to HUD on grassroots power.

With support from CCRH organizers, the ERA launched an aggressive community-based advocacy campaign to save the Ellison. The strategy was to combine litigation with community/political pressure to force HUD to transfer ownership to CHIP. The legal part of this strategy demonstrated one of the most direct forms of resident preservation advocacy – plaintiffs in a lawsuit by Legal Services of Northern California.

Residents were essential for the legal strategy because, since they were directly affected, a judge was not likely to throw the case out of court as might happen if an outside organization or nonprofit developer sued. But serving as plaintiffs was much more than letting a lawyer represent them in court. It required enormous physical and moral courage. As plaintiffs, the ERA leaders and membership had to remain in miserable, unhealthy, and dangerous housing conditions. This group of poor, disabled, elderly, and working class leaders with meager financial resources had to resist the easy temptation of Section 8 vouchers offered by HUD, and instead challenge a powerful and seemingly omnipotent federal agency. While courage is not easily figured into a pro forma, it was one of the most essential ingredients in this

struggle and ultimately had to come from the residents.

We should not forget that as professionals, at worst, we usually risk bruised egos if a preservation deal or advocacy effort fails. For residents the risk is eviction, lack of physical safety, and homelessness. Rural housing advocates should remember that it is precisely this level of courage that in some cases can make the difference between preservation or prepayment.

Resident advocacy proved essential for winning community and political support in this politically conservative rural community. To lobby HUD successfully during the Clinton Administration, the support of California's two Democratic U.S. Senators was essential. But when contacted, their staffs made it clear that they would not be willing to intervene without strong local political support.

It was here that the stories, passion, and commitment of the residents won over the conservative city council, county board of supervisors, and local congressman. In public and private meetings, the presence and stories of residents moved the issues from simply abstract and technical arguments concerning affirmative fair housing duties, housing quality standards, and compliance with foreclosure procedures, and recast them in human terms. When a disabled Vietnam veteran, an elderly couple, or working parents spoke of their struggles to stop drug sales in the complex, the threats to their children, the need to protect a brain-damaged resident, or the basic sense of fair play in demanding that HUD clean up the mess it created in the community, they spoke in terms of values, images, and concerns that resonated with the local community.

By inserting a human dimension into the conflict, the residents blocked HUD's strategy to transform the struggle into bureaucratic haggling between professional advocates and HUD staff over interpretations of obscure regulations and technical processes. Instead, the residents enlisted strong local support that brought in the active intervention of both U.S. Senators.

Resident advocacy at the local level soon spread to the national level when the ERA enlisted the support of the National Alliance of HUD Tenants. NAHT resident leaders brought the situation to the personal attention of then HUD Secretary Andrew Cuomo at a meeting between NAHT and HUD. Cuomo, in turn, personally made inquiries about the Ellison




Photo courtesy of CCRH.

Tenants worked hard over many years to arrange for the rehabilitation and preservation of the former Ellison Apartments in Red Bluff, Calif., now renamed Brickyard Creek.

in a meeting with the director of the California Department of Housing and Community Development. From this chain of events, the Ellison gained support from both HCD and the California Tax Credit Allocation Committee. HCD was particularly helpful by extending the deadline for the HOME funds and committing additional funding to the project through the state Multifamily Housing Program.

Finally, with political pressure growing and a lawsuit imminent, HUD agreed to a foreclosure process that effectively transferred the property without cost to CHIP and also provided a \$1 million rehabilitation grant. Due to extensive rehabilitation that required relocation of the remaining residents and bureaucratic delays with the HUD grant, the preservation process was not completed until 2003. However, thanks to the determination of Ellison residents, the 94 units of the Ellison Apartments – now renamed Brickyard Creek – have been transformed from a source of physical, environmental, and social blight to an important resource for the community.

These benefits have been outlined in a recent 'best practices' guidebook on affordable housing and smart growth that features Brickyard Creek and is available for download at www.calruralhousing.org. A resident advocacy presentation, based on the Ellison and other resident initiatives, is also available on the same site. 

Dewey Bandy is Deputy Director of the California Rural Housing Coalition in Sacramento.



Photo courtesy of NCSHA.

THE STATE HFA RESPONSE TO THE AFFORDABLE HOUSING PRESERVATION CHALLENGE

by Garth Rieman

More than 40 states prioritize the use of housing credits for preservation. Twenty-two states currently have set-asides.

State housing finance agencies have long been leaders in the struggle to preserve affordable rental housing and secure its affordability for years to come. Through the Low Income Housing Tax Credit and other federal and state programs, in recent years HFAs have intensified their efforts to save as much affordable housing as possible from conversion to market use or loss to deterioration or abandonment.

One of the greatest affordable housing challenges HFAs face is that current production programs cannot keep pace with the loss of affordable apartments and the increase in lower-income families who need them. HUD's 2003 report on worst case housing needs found there were 1.6 million fewer apartments with rents affordable to extremely low-income families in 1999 than there had been in 1991. Since 1997, the nation's subsidized affordable housing stock has dropped by 10 percent -- nearly 200,000 apartments. Nearly two-thirds of all apartments are more than 25 years old and increasingly in need of reinvestment and repair. Meanwhile, nearly one-third of American families are paying more than 30 percent of their incomes in rent, according to Harvard University's Joint Center for Housing's *2004 State of the Nation's Housing*.

The housing credit is our nation's primary federal housing production program. Created by Congress in 1986 and administered by state HFAs, the housing credit finances the construction and rehabilitation of 125,000 affordable multifamily apartments and leverages over \$6 billion of private investment each year. According to the latest statistics collected by the National Council of State Housing Agencies, which represents all 53 housing credit allocating agencies, about one-fifth of housing credit properties are built in rural areas. However, even the robust production supported by the housing credit cannot alone satisfy the need for affordable apartments.

The shortage of affordable housing is further exacerbated by the conversion of apartments from affordable to market rents. Ten percent of apartments affordable to low-income renters are federally subsidized. Increasingly, many owners of these subsidized buildings are opting out of federal programs and selling their properties or increasing rents to market levels. Usually this occurs when long-term subsidy contracts or mortgage prepayment lock-out periods expire. By choosing not to renew expiring subsidies or prepaying their federally insured mortgages to eliminate the regulatory affordability restrictions connected to them, owners are free to increase rents to market levels and rent their apartments to higher-income families.

According to the National Housing Trust, to date, 150,000 HUD-assisted or HUD-insured apartments have moved to market rents. Rural housing has been particularly impacted by opt-outs. In fiscal year 2004, more than three times as many apartments in the Section 515 program were lost to prepayment as were produced. Overall, another 1.5 million federally insured apartments are at risk over the next five years.

Concerned by the ever-worsening affordable housing crunch and aware that it usually costs significantly less to preserve existing affordable apartments than to produce new ones, states are taking steps to prevent subsidized apartments from converting to market rents.

More than 40 states prioritize the use of housing credits for preservation. Twenty-two states currently have set-asides that designate either a percentage or a dollar amount of the state's annual credit allocation for preservation or rehabilitation. Many states have created preservation set-asides of 10 to 20 percent of their allocations. The Wisconsin Housing and Economic



Photo courtesy of NCSHA.

Development Authority currently designates 40 percent of its credit allocation for preservation. The Utah Housing Corporation designates 25 percent for rehabilitation and another 25 percent for preservation of HUD-subsidized properties, while the Kentucky Housing Corporation sets aside 15 percent of its allocation for preservation projects.

Thirty-three states, including some with preservation set-asides, use bonus points and other preferences in allocating their housing tax credits. At least eight states also have rural preferences. Bonus points enable preservation and rural projects to move higher up the allocation priority list and stand a better chance of receiving housing tax credits.

In addition to the housing credit program, states are also using other tools to preserve at-risk apartments. At least 12 states currently provide loans or grants for preservation.

For example, the Minnesota Housing Finance Agency receives a \$4 million appropriation to fund a state housing trust fund, \$9 million annually for its Preservation Affordable Rental Investment Fund Program, and \$37 million annually for the preservation of federally assisted housing. MHFA also spends about 40 percent of its HOME allocation on rural preservation each year.

The New Jersey Housing and Mortgage Finance Agency has a division devoted primarily to financing preservation and has allocated \$40 million of its reserves to provide below market rate financing. NJHMFA has also allocated \$20 million from its

general fund to capitalize its Small Rental Project Preservation Loan Program, which it uses to preserve rental projects consisting of five to 25 units.

The Washington State Housing Finance Commission created Impact Capital, a fund used by nonprofits to rehabilitate low-income rental properties, and provided \$5 million of its own earned income to the loan fund. Private banks, nonprofits, foundations, and local governments also have contributed to the pool, bringing the total funds available to \$23 million. Rural preservation projects are frequent recipients of Impact Capital funding.

When states bring all of their preservation resources to bear on a property, the impact, particularly in rural areas, is dramatic. Wisconsin, for example, routinely uses state, federal, and private resources to preserve its affordable rural apartments.

WHEDA's 2003 tax credit allocation plan targeted 35 percent of the available housing credits towards preserving federally assisted housing. One applicant, Marathon County Housing Associates, received credits and additional funding in 2003 to preserve two of its federally assisted apartment buildings: one with 20 units of project-based Section 8 elderly housing in Rothschild (population 4,900) and one with 16 units of project-based Section 8 elderly housing in Schofield (population 2,100). Built in 1986 and 1987, the properties needed renovation to remain habitable.

WHEDA put together a financing package totaling more than \$3 million to rehabilitate the two properties. The financing included almost \$1.5 million in housing credit equity, a \$1 million loan from WHEDA, \$125,000 in funding through the Affordable Housing Program of the Federal Home Loan Bank of Des Moines, \$140,000 in transferred residual receipts and reserves, and an additional \$350,000 in owner equity in the form of a subordinate mortgage. The resulting projects' solid financial structure and upgraded facilities will enable them to provide needed affordable senior housing in their small rural communities well into the future.

Iowa also has been an innovator in rural housing preservation. In 2002, the Iowa Finance Authority created its Multifamily Preservation Loan Program, a \$10 million effort to preserve projects at risk of losing their affordability. This program has helped save several developments, including a development in

Ottumwa (population 24,000) and Bloomfield (population 2,600), which served both the elderly and persons with mental disabilities. In these rural communities, finding or building alternative affordable housing for these special needs tenants would have been extremely difficult.

A high vacancy rate, cost overruns, and an extended construction period led to debt levels that the development's income was never able to service adequately. The development was also delinquent on its real estate taxes.

IFA restructured the debt, provided the first mortgage financing, and transferred the physical assets to a nonprofit. IFA also was able to help the new nonprofit owners obtain additional grant funding and a subordinated loan. The restructured development, which closed January 14, 2004, will now be maintained as affordable for years to come.

HFAs by themselves cannot solve the affordable housing crisis confronting rural communities across the country. But through their continued and creative efforts to preserve affordable housing in their states, HFAs are demonstrating what can be accomplished when resources and vision are brought to bear on the problem. 🏡

Garth Rieman is the Director of Policy and Government Affairs for the National Council of State Housing Agencies. For more information about preservation programs in a specific state, contact the state HFA. Contact information for all HFAs can be found at www.ncsha.org.



LESSONS FROM HUD'S PRESERVATION PROCESS

by Don Chase and Julie Graves

Congress realized that restructuring and preserving HUD-financed housing would be a huge undertaking, so it created an organization of experts specifically charged with this effort.

Editor's note: New Rural Housing Service regulations for multifamily housing, including prepayment and preservation, take effect on February 24, 2005, and Administrative Notice 4010, issued on September 23, 2004, altered the process for transferring ownership of multifamily properties (outside the prepayment context). New procedures may mitigate some of the problems described in this article.

Over 300,000 units of affordable housing were lost nationwide between 1995 and 2003 when many private property owners prepaid their government-restricted mortgages, redeveloped the land, or converted the apartments to market-rate housing.

The good news is that since 1999, the U.S. Department of Housing and Urban Development has been making significant headway in preserving many of these units through its Mark to Market program. But even as HUD-financed units are saved, each year scores of opportunities are lost to preserve thousands of units financed by the U.S. Department of Agriculture's Rural Housing Service.

Some USDA RHS-financed housing has been preserved, but it's an uphill battle because of what we believe are unwieldy rules and staff inexperience with mixed-finance deals. The preservation process for RHS properties takes at least two years, and in at least one case it took almost seven years from start to finish. In contrast, refinancing and transfer of HUD-financed housing through the Mark to Market program takes an average of one year.

Why the difference?

Congress realized that restructuring and preserving HUD-financed housing would be a huge undertaking, so it created an organization of experts specifically charged with this effort. The result was the Office of Multi-Family Housing Assistance Restructuring, recently wrapped into HUD as the Office of Housing Preservation. Staff at OMHAR are hired for and trained to have the specific financial and regulatory expertise to administer the program efficiently and effectively. In contrast, RHS staff have to juggle restructuring and preservation efforts with day-to-day loan servicing work.

OMHAR rules were developed to take financing and funding realities into account. In contrast, the RHS process seems cumbersome and not user-friendly. And while OMHAR's rules encourage maintenance of properties and realistic rental subsidies, RHS regulations do not.

Problems with the RHS Program

Following are some specific examples of the difficulties of RHS's program.

Rules vary by state

USDA Rural Development State Offices, which administer RHS programs including prepayment, have different rules than the National Office. This can be confusing, resulting in a lengthier and more costly process.

Outmoded regulations, lack of funding

RHS regulations prevent the proposed lender from ordering the property appraisal. RHS staff must order the appraisal, and the required format often does not meet the proposed lender's requirements. In the Windsong project, described below, the lender had to order an additional appraisal to meet its lending requirements.

These properties usually need a significant amount of rehabilitation due to deferred maintenance, but USDA's process does not take into account that the buyers of these properties need extra funding to make the deals work financially. RHS just doesn't have funds available for this purpose.

RHS also has strict regulations regarding project budgets. Basic rents for the project cannot exceed what is needed to pay for basic expenses and debt service. In many cases, RHS staff are reluctant to have the amount of debt against a project increased, as this will require a rent increase.

In addition, while HUD projects generally have project-based rental assistance for 100 percent of the units, many RHS Section 515 properties do not. This means that an increase in the property rents could result in the low-income tenants having to pay rents that are no longer affordable.

Unrealistic timelines, staff workload

RHS's Section 515 transfer and preservation process is so cumbersome that the timeline usually can't be met. And if the deal doesn't close within 12 months – for whatever reason – the entire process must start all over.

A case in point is the Windsong Apartments, a 36-unit preservation project in Poulsbo, Wash., which took our organization, the Kitsap County Consolidated Housing Authority, seven years to acquire. The delay meant more staff time, which not only cost the housing authority money, but also kept us from preserving other housing. And as the process dragged on, the buyer had to pay for new appraisals and other third party reports, including studies that had to be done to meet new, changing regulations.

Because the property was under a purchase and sale agreement, the owner had no incentive to address deferred maintenance issues, so roofs and decks continued to deteriorate.

One of the delays occurred because RHS required a unit-by-unit inspection. Due to workload issues, agency staff often delayed beginning the inspection process for 90 days. Frequently, after the inspection was made, another 90 days would pass before the inspection report was completed and sent out. In one case, over a year went by before the inspection report was sent to the owner and buyer.

Lack of experience with mixed or layered finance deals

Historically, Section 515 projects were financed entirely with RHS funds, so staff don't have enough experience to facilitate mixed finance deals. We've found the best way to preserve this housing is for a nonprofit to buy it and use 4 percent Low Income Housing Tax Credits. But RHS staff often don't have the experience or decision-making authority to allow this to happen.

Why HUD's OMHAR Program Works

In contrast, OMHAR has developed a track record of preserving and restructuring project-based Section 8 buildings. Because it is a single-purpose organization, its staff have the financial and regulatory expertise to administer the program efficiently and effectively.

OMHAR assigns specific properties to Participating Administrative Entities, which are public agencies, nonprofits, and private organizations chosen for their expertise in mixed use financing, as well as their track records in financing and preserving affordable housing. Kitsap County Consolidated Housing Authority is one of about 20 PAEs nationwide. PAEs order the appraisals, do the local market studies, and share this information with the owner in a timely manner, so he or she can begin to explore options.



PAEs also evaluate the physical condition of the property, a step that can take RHS staff up to a year to complete. We then make recommendations for any necessary rehabilitation, and work with the owner to develop a financial restructuring plan. Often, the private owners are elderly and want to sell their property, and in these cases, the PAE may help the owner find a nonprofit organization or housing authority to buy it, then put together the financing for the sale to ensure long-term viability of the apartments.

KCCHA and Signet Partners were assigned the restructure and transfer of the Bicentennial Apartments Village, a 100-unit property in Rock Springs, Wyo. The owner of 25 years wanted to sell and the Western Region Non Profit Housing Corporation, headquartered in Salt Lake City, wanted to buy. KCCHA, Signet, OMHAR, the owner, and the buyer worked together quickly and seamlessly, using a combination of Low Income Housing Tax Credits from the Wyoming Community Development Authority and a restructuring of the existing debt. Not only will 100 families continue to have affordable housing, but the building will be substantially rehabilitated.

There are several reasons HUD-financed housing preservation deals get done faster:

- OMHAR (now OHP) – which administers the agency's housing preservation effort – was created specifically to reduce the cost of project-based Section 8 housing, and to preserve and recapitalize existing properties. As a result, its staff were hired and trained to have the specific financial and regulatory expertise to administer the program efficiently and effectively.
- OMHAR outsources the actual financial restructuring, property transfer, and rehabilitation recommendations to the PAEs. These organizations have contractual obligations to complete the deals within a specified period.
- Staff at OMHAR are held to the same deadlines as the PAEs.
- OMHAR's rules were developed with the help of private and public organizations with real-world experience in this area. As a result, they take into account that many of these properties will be transferred to nonprofit owners, who need to be able to take advantage of additional funds in the form of tax credits, Federal Home Loan Bank grants, state housing trust funds, and HOME and Community Development Block Grant dollars.



It is vital to preserve as many Section 515 units as possible. To do this, RHS must revamp its process to ensure speed, certainty, and decisiveness. We believe it should take advantage of the lessons learned through OMHAR's Mark to Market program to:

- create a cadre of experts empowered to make decisions and grant waivers when necessary, with timelines and required deliverables;
- revise RHS rules to reflect real-world realities and streamline processes;
- allow staff to authorize restructuring of debt;
- empower the staff to set rents at realistic levels, which take rehabilitation and maintenance costs into account; and
- allow for second mortgage financing to take rehabilitation costs and rent subsidies into account. Empower staff to forgive debt when appropriate.

We believe the experience gained during the past five years by OMHAR and the PAE network is invaluable and – with the right legislation and with appropriations – can be adapted for RHS. The time to preserve and potentially transfer properties is now. It is imperative that these changes be made quickly to avoid any delays involved in setting up a new organization, and the extra time and expense of training staff. Thousands of low-income and disabled residents need safe, decent housing and are counting on us. 🏠

Don Chase is Director of Multi-Family Housing and Julie Graves is Director of Development at the Kitsap County Consolidated Housing Authority in Silverdale, Wash.

PRESERVING RHS RURAL RENTAL PROPERTIES – THE CHALLENGE AND THE OPPORTUNITY

by Patrick Sheridan

The challenge in acquiring RHS properties is finding a way to provide the owner a fair return, cover the purchaser's transaction costs, and have adequate funds remaining to carry out a moderate rehabilitation plan.

Volunteers of American recently acquired Adirondack Apartments in upstate New York, its first Section 515 rural rental preservation project.

Photo courtesy of Volunteers of America.



Housing opportunities have improved greatly for many Americans over the past few years. Affordable rental housing in rural areas has not seen significant growth in new units, however. Increasing affordable rental opportunities for rural Americans is particularly important for two groups: families just starting out who cannot take advantage of improved homeownership possibilities and elderly people who are no longer able to take care of their single-family homes.

Rural markets present significant underwriting challenges to lenders, secondary market participants, and equity investors. Limited employment and population bases often cause these parties to shy away from participating in rural deals. Small unit numbers limit the opportunities for profit by lenders and for-profit sponsors. Owners find that the small sizes and limited markets make operating efficiencies difficult to attain. When there is a choice between new construction of a larger development in a metropolitan area or a small project in a rural area, the large development wins nearly every time.

As new construction of affordable rural rental developments continues to be limited by a combination of economic pressures and reduced federal funding, preserving the affordability of existing rural housing is more important than ever. Most rural rental properties are financed under the Rural Housing Service Section 515 program. With high occupancy levels, low average incomes, and the typical resident being a single or widowed elderly woman, such affordable housing is critically needed.

In addition to the challenges presented in building new affordable rural projects, working under the Section 515 program presents additional issues. The ability to take a return on investment is tightly limited under the Section 515 program. Secondly, long processing times impede potential sponsors' acquisitions of properties. Lastly, lack of federal direct loan funds for rehabilitation or seller equity requires buyers to spend time shopping the market for third party funding.

Opportunities to preserve Section 515 properties can take two forms. The first preservation need is an election by the current owner to prepay the loan, either to take advantage of favorable market conditions that would support an increase in rents, or to eliminate the requirement to comply with burdensome federal regulations. The other is the need to recapitalize older properties that have reached points in their life cycles when major system

components require replacing. Both situations present challenges to owners and purchasers to find exit strategies or funds to retain the apartments as affordable.

The number of sponsors willing to undertake the acquisition and rehabilitation of older Section 515 projects is limited. Few for-profit sponsors are able to do volume acquisitions of RHS projects; therefore the bulk of the job of preserving the rural properties falls on the nonprofit sector. Nonprofits often look upon such acquisitions as part of their mission. Long-term ownership goals and the ability to accept use restrictions and limited returns make nonprofits the likely answer to volume preservation.

Volunteers of America has committed itself to acquiring properties in need of preservation as one way of ensuring the nation has adequate affordable housing for seniors, families, and people with disabilities. As a national, nonprofit, spiritually based organization in existence for more than 108 years, Volunteers of America has a long history of providing services to individuals, families, and communities, including the ownership and management of affordable housing. Nationally, Volunteers of America and its affiliates own and operate more than 250 affordable housing communities in 31 states that are home to more than 25,000 people. The organization has recognized the specific need to preserve rural properties, an area that many of the larger organizations and firms active in preservation activities have shied away from. With the recent acquisition of its first Section 515 property, Adirondack Apartments in Saranac Lake, N.Y., Volunteers of America saw an opportunity to help meet the goal of helping to preserve rural affordable housing. (Another article in this issue of *Rural Voices* describes the Adirondack Apartments acquisition.)

It is vitally important that successful models for preserving Section 515 projects be developed. The challenge in acquiring RHS properties is finding a way to provide the owner a fair return, cover the purchaser's transaction costs, and have adequate funds remaining to carry out a moderate rehabilitation plan. Paying an owner the full value of a property provides no room within the appraised value to finance transaction costs. Additionally, improvements made to the buildings seldom increase property value dollar for dollar. If owner concessions are unavailable, debt-free or low-cost funds are critical to finance the transaction.

There are several models that do work. Each has its advantages

and disadvantages. The best model, from both the economic and experience standpoints, is use of the Low Income Housing Tax Credit for acquisition and rehabilitation. Another model is the acquisition of partnership interests, allowing a new sponsor to step into the shoes of an existing partner in an ownership entity. Finally, a third model uses servicing tools RHS has available, such as subordinating its mortgage, along with new third party loan funds.

Low Income Housing Tax Credit Model

Using the LIHTC in acquisition and rehabilitation provides debt-free capital to accomplish many of the goals of a successful transaction. After negotiating a sales price with the existing owner, the proposed buyer simultaneously applies for tax credits with the state credit agency and a transfer of the debt with the applicable servicing office of RHS, using either 4 percent or 9 percent credits. If 9 percent credits were applied for, the acquisition piece of the transaction would be eligible for 4 percent credits while the rehabilitation piece would qualify for 9 percent credits. The RHS debt must not be restructured or the entire transaction is categorized as a 4 percent transaction. However, there may be deals where it is more important to restructure the RHS debt to a lower interest rate or a longer term. Pro formas should be developed using both scenarios to determine which would provide the greatest benefit to the transaction.

Using tax credits allows several needs to be met. The typical RHS LIHTC transfer involves the RHS debt being transferred to the purchaser, and the tax credit equity being used for three primary purposes – paying some if not all of the seller's exit taxes, the buyer's transaction costs and developer fee, and rehabilitation costs if only light rehabilitation is needed. If a larger rehabilitation is needed, new loan funds can often be included in the pro forma. If those new funds do not come from RHS, obtaining them from a third party usually involves an agreement by RHS to subordinate its debt to the new lender.

Acquisition of Partnership Model

The second acquisition scenario involves parties who are part of an ownership entity where it does not make sense to extinguish the entity through an outright sale of the property. Such deals may involve a partnership that is only partway through its tax credit compliance period. If a general partner wishes to exit, an opportunity exists for a nonprofit sponsor to step into the shoes of the exiting partner.

These transactions require a different type of evaluation. There is often little annual distribution in existing partnerships. There would be no opportunity to earn developer fees as no real estate sale takes place. The economic benefit to a buyer is primarily the right to select the property manager – assuming that a related party will become the manager – and whatever residual equity may result from a future sale. For these reasons, nonprofit sponsors with long-term ownership and preservation as a mission are the most logical parties to take on such transactions.

Conducting due diligence of an acquisition of a partnership interest requires a market study, an environmental review, and a real estate appraisal. In addition, a determination of the value of the partnership interest itself is invaluable. An accounting firm or real estate counsel familiar with affordable housing partnership documents and operations can complete a valuation. The valuation provides an estimate of the present value of the flow of possible incomes from the partnership interest, including factoring in future liabilities the interest may have agreed to in the syndication.

Volunteers of America's experience in ordering partnership valuations has helped us make informed decisions not to take on some transactions, while showing us the value in others. In one recent deal, the partnership interest appeared to have significant value on the surface. Our analysis, however, revealed that the selling partner had made commitments to the partnership for future payment of a deferred developer fee, which eliminated completely any value to the partnership interest.

RHS Servicing Tools Model

Lastly, the use of third party funding sources not in conjunction with LIHTCs presents an opportunity for acquisition of rural properties with minimal rehabilitation needs in stable markets. Several different sources are available for third party funds, from HOME funds to state agency direct loan funds, or from tax-exempt private activity or 501(c)(3) bonds to private lender loans, most recently being purchased by secondary market sources. RHS will routinely subordinate its interests to those of reasonable third party funding sources. The challenge is to obtain loans with the longest term and lowest cost, allowing basic rents to remain at or below area market rents. Underwriting by third party lenders often still presents problems, as most lenders are not yet comfortable with rural properties. To provide a level of assurance to the lender, it is important to make sure the lender

understands that with RHS in the second mortgage position, an extra layer of protection is provided should there be a default. In addition, the loan-to-value ratio of the first position loan is often less than 50 percent.

Other models should be explored for preserving rural properties, including standardizing the concept of portfolio transfers. There is much work remaining, but the good news is that RHS, HUD, and many in Congress, along with lenders, secondary market participants, and foundations recognize this need. If all parties work together, it is possible to preserve the rural portfolio of affordable properties. 🏡

Patrick Sheridan is Vice President, Real Estate Development, for Volunteers of America and former Assistant Deputy Administrator, Multifamily Housing, at the Rural Housing Service, U.S. Department of Agriculture.



WINDOW OF OPPORTUNITY: PRESERVING AFFORDABLE RENTAL HOUSING

The public sector, foundations, financial institutions, and other investors must work together to support nonprofit and for-profit owners committed to maintaining long-term affordability.

The John D. and Catherine T. MacArthur Foundation is investing \$50 million to preserve and improve affordable rental housing across the country. Its immediate goal is to help large nonprofit housing organizations purchase and maintain 100,000 units of existing, affordable rental housing that might otherwise deteriorate or become too expensive for low- and moderate-income households. Its larger objectives are to:

- demonstrate that preserving affordable rental housing offers cost-effective benefits for families, communities, and regional economies;
- encourage additional public and private investment to preserve affordable rental housing; and
- stimulate public policies that enable a new generation of owners to preserve at least one million units of affordable rental housing in the decade ahead.

This 10-year effort is part of a larger Foundation program focused on stable, affordable housing with a special emphasis on rental housing.

Rental Housing: A Historic National Investment and An Enduring Need

The United States made a historic investment during the second half of the 20th century. Responding to widespread housing shortages and safety hazards in existing buildings, Congress created financial incentives for the private sector to develop rental housing. From the mid-1960s through the mid-1980s, these policies stimulated the construction of nearly 10 million new multifamily rental units.

This building boom benefited millions of Americans. Investments in rental housing also contributed to the economic vitality of urban, suburban, and rural communities. Jobs were created to build and maintain new rental properties. Communities could accommodate a wider range of residents. In some cases, newly built rental properties were poorly financed or maintained, or were concentrated in a manner that diminished opportunities for their low-income residents. But successes, on balance, have outweighed failures. Overall, this historic investment improved the quantity and quality of rental housing. Although challenges remain, the nation is better housed today than ever before.

Rental housing is needed as much today as in the past. The number of renter households has grown to more than 35 million – one-third of all U.S. households – and is projected to rise by another two million or more households in the next 10 years. Affordable rental housing is a particularly pressing need. Only 15 percent of the nation's renters earn more than \$60,000 a year. Nineteen million renter households live on annual incomes of \$30,000 or less, which qualifies most of them for various government housing programs. However, because federal housing programs are not an entitlement and funding has remained limited, only five million low-income renter households actually receive direct housing assistance.

Sharply rising rents in many areas of the country are taking a toll on unsubsidized, low-income renters. Today, 12 million households spend more than 35 percent of their income on rent. Affordability and housing challenges vary from region to region, but there are many signs of a widespread problem, including long waiting lists for government housing assistance and a growing incidence of homelessness, especially among families.



At the same time that an increasing number of families are unable to afford their rent, many factors are eroding the stock of affordable housing. The average rent of newly built units is out of reach for most renters, and current funding from all available sources – public, private, and philanthropic – supports the construction of no more than 100,000 new affordable units each year. Meanwhile, thousands of older and typically more affordable rental units are being lost.

The advancing age of rental housing is a major part of this problem. Nearly two-thirds of all rental units are more than 25 years old and increasingly need reinvestment and repair. The affordable rental housing stock also is under pressure because:

- Demand in hot markets is driving rents up.
- Deferred maintenance in weak markets is running properties down.
- Property owners are aging.
- And affordability requirements are expiring. Since 1997 nearly 200,000 government-subsidized units were lost as owners “opted out,” causing the stock of the country’s most affordable units to drop by 10 percent.

Preserving Affordable Rental Housing: A New Priority

Many of the affordable units at risk of being lost over the next decade can be preserved. They can be acquired, refinanced, and improved to provide stable, affordable housing for years to come. Across the country, nonprofit owners and other private developers are working in partnership with public agencies, foundations, and financial institutions to do just that. In a time of scarce resources, they are preserving both subsidized and unsubsidized affordable rental properties. Preservation is cost-effective, maintains a mix of housing options in strong markets, and helps revitalize struggling neighborhoods.

There is a compelling case to preserve the existing supply of affordable rental housing. However, a number of policy, tax, regulatory, and financial barriers hinder preservation transactions and keep potential buyers on the sidelines. Overcoming these hurdles demands significant public policy attention.

To seize the opportunity to preserve affordable rental housing, the public sector, foundations, financial institutions, and other investors must work together to support nonprofit and for-profit owners committed to maintaining long-term affordability. These investors also can help stimulate more favorable public policies at local, state, and federal levels.

MacArthur's Commitment

The MacArthur Foundation is working to help preserve and improve the nation's stock of affordable rental housing. The Foundation's efforts include:


- low-cost, long-term loans to 10 to 15 large nonprofit owners to help them purchase and preserve 100,000 units over the next decade;
- low-cost loans to four to six specialized lending intermediaries to help attract additional investment and provide flexible, high-risk capital for preservation transactions;
- grants and loans to nonprofit owners to help them strengthen and expand their operations;
- grants to national policy organizations with a special focus on housing preservation and to networks of nonprofit housing owners working to educate government officials, housing owners, investors, and community leaders about favorable preservation policies; and
- grants to researchers to identify better and more consistent methods for analyzing the rental housing supply and to study the long-term progress and impact of preservation.

The Foundation also is funding research on rental housing more generally. This research includes examination of rental housing's relationship to community and regional economic development and the ways in which stable, affordable housing may provide a "platform" for more successful individual and family outcomes.

Addressing the Housing Challenge:

A Work in Progress

The housing challenges facing this nation are complex, and solutions to them are constantly evolving. The MacArthur Foundation's investment in preserving affordable rental housing is just one of many efforts. As thousands of owners demonstrate daily, well-managed and properly maintained rental properties are a vital asset for both residents and communities. A growing number of foundations and others are increasing their support for rental housing and its preservation. Forty states, for instance, have adopted new preservation priorities for the allocation of housing funds – most within the past three years. The early return on this effort has been promising, and future benefits are anticipated as lessons learned help shape preservation policies and practices.

The MacArthur Foundation welcomes inquiries about its support for stable, affordable housing, including the Window of Opportunity: Preserving Affordable Rental Housing initiative. For additional information, please visit the Foundation on the Web at http://www.macfound.org/programs/pri/affordable_housing.htm or contact the John D. and Catherine T. MacArthur Foundation, 140 S. Dearborn Street, Chicago, IL 60603-5285. Phone: 312-726-8000, fax: 312-920-6258, TDD: 312-920-6285. E-mail: preservation@macfound.org 



HAC loaned funds to Citizens for Affordable Homes to develop the infrastructure for this self-help subdivision in Dayton, Nev.

continued from page 1

makers and others. Task force members represent owners, tenant advocates, financing sources, government agencies, and nonprofit organizations that purchase properties to preserve their affordability. At a series of meetings and conference calls, the group has reviewed the current prepayment situation, identified issues, and drafted recommendations. A final report is now being developed.

As described elsewhere in this issue of *Rural Voices*, HAC and the National Housing Law Project are undertaking a number of other rural rental housing preservation activities with MacArthur Foundation support, including holding a national rural housing preservation conference April 6-7, 2005. Watch the *HAC News* newsletter and HAC's website, www.ruralhome.org, for further details.

Citizens for Affordable Homes and HAC are Building Communities in Nevada

A nonprofit self-help housing development organization based in Carson City, Nev. – Citizens for Affordable Homes, Inc. – is tremendously busy these days. CAHI currently has 28 homes under construction in Dayton, Nev. The development, called Dayton 8, is split into four family building groups of seven homes each. Dayton, a rural community of about 12,000 residents, is located approximately 16 miles east of Carson City – Nevada's capital. CAHI, Nevada's leading developer of self-help homes, has been working in conjunction with HAC and USDA Rural Development to assist families in building their homes. HAC provided partial funding for the Dayton 8 development infrastructure. Through HAC's Self-Help Homeownership Opportunities Program CAHI has been able to increase its production greatly over the last two years. In addition to Dayton 8, CAHI is building 24 homes in Gold Country Estates 1 and an additional 32 homes in Gold Country Estates 2.

HAC Report Connects Race, Place, and Housing

Counties with consistently high concentrations of racial or ethnic minorities are the last bastions of poor quality housing in this nation, according to a new HAC report released in December at the National Rural Housing Conference. The geographic isolation and relative segregation of rural minorities living in counties with high minority populations combine with history and economics to increase abusive credit practices, increase substandard housing, and lower home values, HAC found. *Race, Place, and Housing: Housing Conditions in Rural Minority Counties* is available free at HAC's website, www.ruralhome.org, or for \$15 (including shipping and handling) from Luz Rosas at HAC, 202-842-8600, luz@ruralhome.org.

Each issue of *Rural Voices* profiles members of the Housing Assistance Council's board of directors. A diverse and skilled group of people, HAC's board members provide invaluable guidance to the organization. We would like our readers to know them better.



IRENE SIKELIANOS

Irene Sikelianos has been a member of HAC's board of directors for more than 22 years. She attended her first board meeting in 1982. She has served as on the Executive Committee as Treasurer and Chair and has been recently elected to a seat on the Loan Committee.

A consultant through SIA Services, Inc., Sikelianos is currently working for J-K Development, Inc. a commercial construction company and custom homebuilder. In addition, she is working with a company that is providing vertical axis wind turbines for transmission of electricity in rural New Mexico. She has been the Deputy Director of the New Mexico Housing Authority, headed the Bernalillo County Housing Department, and served as a staff member of New Mexico's CDBG Rural Set-Aside Program.

Sikelianos says she is "very, very proud to serve on the board." She says it has been one of the "highlights of my life."

"It is an honor to be involved with HAC," expresses Sikelianos. "My connection with HAC has been truly a learning experience. It has been very satisfying to see what gets done by a board, staff, and volunteers who truly believe in the work. HAC is willing to do what needs to be done."

A 35-year resident of Albuquerque, N.M., Sikelianos is devoted to Egyptology. She has visited Egypt where she has seen the ancient adobe houses. (They are much older than the adobes in North America!) She has been to most of the major Egyptian exhibits in the United States including the collection at the Metropolitan Museum of Art in New York City, which is her favorite.

"Once you begin studying ancient civilizations," Sikelianos affirms, "you come to realize that there is truly nothing new under the sun."



CUSHING N. DOLBEARE

Cushing Dolbeare has served on HAC's board from 1980 to 1995 and from 1997 to the present. She is currently HAC's Vice President.

Dolbeare got her start in low-income housing advocacy in 1952 in Baltimore and then worked for what is now the Housing Association of Delaware Valley. In 1974, Clay Cochran invited her to be a freelance policy advisor for the Rural Housing Alliance. Her monitoring of congressional mark-up sessions and the advocacy of RHA and other allies led to the inclusion of effective low-income targeting in the Section 8 housing program.

The alliance of these groups led directly to the formation of what is now the National Low Income Housing Coalition, known first as the no-name housing coalition, then the Ad Hoc Low Income Housing Coalition, and incorporated as NLIHC in 1978. Dolbeare now carries the titles of Founder and Chair Emeritus of NLIHC.

Dolbeare, who now works as a housing policy consultant, is known for her ability to analyze housing data and to turn it into cogent policy arguments. Awards from many organizations, including HAC, have recognized her advocacy for low-income housing. In 2000 she was appointed to the Millennial Housing Commission created by Congress.

"HAC has been an integral part of low-income housing advocacy," notes Dolbeare. "Rural housing is a very important part of the low-income housing issue. I have long believed that rural and inner city housing problems have a lot in common. But this is often unrecognized because they are separated by the suburbs."

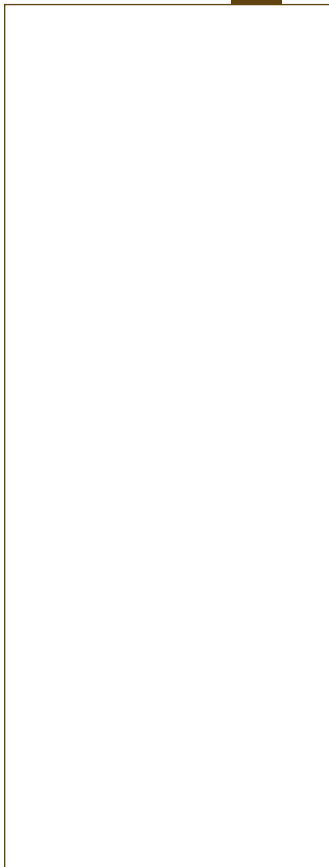
Dolbeare says that "HAC has bettered housing in rural America. The staff and board keep their priorities straight. They make it very clear that they want to work on the hardest issues first while resisting the temptation to work on the easy things."

Cushing and her husband, Louis, currently reside in Mitchellville, Md. They have two children and four grandchildren.



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