Community Service Society | Fighting Poverty Strengthening New York

May 2006

POLICY BRIEF

Closing the Door: Accelerating Losses of New York City Subsidized Housing

By Tom Waters, Housing Policy Analyst,
and Victor Bach, Senior Housing Policy Analyst

New York City's stock of subsidized, privately owned rental housing provides low-income tenants and communities with important protections from the effects of a chronic housing shortage and a "hot" housing market. Unfortunately, the subsidized housing stock is itself rapidly disappearing, largely in response to the same market forces.

Nearly a quarter (23 percent) of the city's 120,917 apartments in the major subsidy programs were lost from 1990 to 2005, and another 13 percent are now threatened with the loss of their subsidies. Mitchell-Lama rentals have been hit hardest, losing 22,688 units, over a third (34 percent) of its stock. The rate of loss accelerated sharply in the late 1990s, with a record 5,518 apartments lost in 2005 alone. These losses outweigh the preservation and production efforts projected in Mayor Bloomberg's New Housing Marketplace Plan for 2004–2013. Government at all levels must respond with stronger policy measures to preserve these costly-to-replace housing resources.

The city's supply of subsidized rental housing available to low-income families is largely the legacy of a series of innovative programs that produced over 120,000 units of new and substantially rehabilitated housing from the 1960s to the 1980s. These programs include the state and city Mitchell-Lama programs, federal mortgage interest subsidy programs (Sections 221 and 236), and federal rent subsidy programs (project-based Section 8 and its predecessors).[1] While these programs now serve a mixed-income tenancy, almost a third (30 percent) of resident households have incomes below the federal poverty line.

None of these subsidy programs is producing new affordable apartments any longer. Almost all of the units are now eligible to be removed from their subsidy programs because the original subsidy commitments have expired. As a result, the size of this vital affordable housing stock has nowhere to go but down. Much of it is being lost as landlords exercise their option to remove buildings from subsidy programs. A significant portion is also being lost due to owner mismanagement and the consequent enforcement actions taken by the federal Department of Housing and Urban Development.

To assess and analyze the losses, this paper presents a systematic comparison of the present stock of rental apartments in the major subsidy programs with the inventory as it existed in 1990.

RENTAL HOUSING SUBSIDY PROGRAMS

The first subsidy programs to stimulate private development of affordable housing in New York City were the state and city Mitchell-Lama programs. Legislated in the mid–1950s, these programs used tax-exempt financing to create housing at below-market rents approved by the state or city, while ensuring the private owner a 6 percent return on equity. After 20 years, owners were permitted to leave the program and convert to privately set rents. Mitchell-Lama rentals began appearing in 1962, peaked in the middle 70s, and came to an end in 1981.

During the 1960 Great Society era, Mitchell-Lama became the model for new federal housing subsidy programs: first Section 221(d)(3) below market interest rate and then Section 236. Under these programs, mortgage

[1] Other programs are still producing subsidized apartments but are targeted to different populations. In 2005, New York City had more than 17,000 units subsidized under Section 202 and Section 811 (targeted to elderly and disabled housholds, respectively) and was adding about 2,000 units per year. The city also had more than 40,000 subsidized through Low Income Housing Tax Credits (targed to households with somewhat higher incomes than the HUD programs) and was adding about 1,100 units per year.

Community Service Society, 105 East 22nd Street, NY, NY 10010
telephone 212.254.8900 info@cssny.org www.cssny.org

interest subsidies lowered the financing costs to private developers. In return they accepted use restrictions limiting the rental of vacant units to eligible low-income families. Like Mitchell-Lama, for-profit owners were permitted to prepay subsidized mortgages after 20 years, nonprofits after 40 years. Buildings with these subsidies in New York City were completed between 1965 and 1978.

These interest subsidy programs were soon supplemented by the first federal rent subsidy programs, which increased the buildings' revenues by paying the difference between what tenants could afford (30 percent of income) and contract rents negotiated by HUD and building owners. The Rent Supplement and Rental Assistance Programs helped stabilize developments financially while enabling them to serve tenants with lower incomes. During the mid-1970s, the Nixon and Ford administrations replaced them with the project-based Section 8 rent subsidy program (distinct from the tenant-based Section 8 voucher program). Many of the older subsidized buildings were given Section 8 subsidies to help cover the growing gap between rents and operating costs, and a large number of new and newly rehabilitated buildings were also developed with Section 8 as the only federal subsidy. The latter buildings, the "new assisted stock," were completed in New York City from 1976 to 1989. As in the "older assisted stock" owners had to comply with use restrictions, and the subsidy was time-limited. The owner could "opt out" at time intervals, depending on the HAP (Housing Assistance Payment) agreement, usually after 20 years.

Many Mitchell-Lama developments built during this period also received federal subsidies, both interest and rent subsidies.[2]

WHO LIVES IN SUBSIDIZED HOUSING?

The tenants living in the city's subsidized rental housing are primarily households unable to afford adequate housing in the unassisted rental market. As Table 1 shows, they have far lower median income levels and a much higher proportion of poor households, when compared with the city as a whole. They also have a much higher minority population. HUD-regulated[3] households have a median income lower than to that for public housing ($14,840). Mitchell-Lama households have higher incomes than do those in HUD-regulated housing, but over a quarter (29 percent) are poor. The differences reflect the fact that more HUD-subsidized than Mitchell-Lama developments have the deeper subsidies that make apartments affordable to the poorest households.

TABLE 1
INCOME, POVERTY STATUS, AND RACE OF TENANT HOUSEHOLDS

	Mitchell-Lama	HUD-subsidized non-Mitchell-Lama	All NYC households
Median income	$22,500	$11,664	$42,000
Poverty rate	28.9%	54%	17.3%
White head of household	27.8%	17.9%	43.8%
Black head of household	39.5%	27.9%	22.8%
Latino head of household	26.4%	47.1%	23.3%
Asian head of household	5.3%	7.1%	9.5%

Source: U.S. Census Bureau, 2005 New York City Housing and Vacancy Survey.

Most subsidized tenants have incomes that would make it difficult to stay in their present neighborhoods without the subsidies. A Mitchell-Lama household making $26,000 a year can afford a monthly rent of $562. That is about the 20th percentile rent for all occupied apartments in the city, not a rent a tenant could realistically expect to pay when moving into a vacant apartment.

Subsidized housing benefits its largely poor and working tenant households in several distinct ways. It insulates them from the severe budget strain that the city's housing market imposes on so many other low-income households. It protects them from being forced to move due to rising rents or loss of income. And it provides an important locational benefit, maintaining a stock of affordable

[2] This study considers only the subsidy programs described here, exluding Section 202 and section 811 developments even if they also receive projects-based Section 8 subsidies, and also excluding those Mitchell-Lamas that were developed as institutional employee housing, or as hospital buildings.

[3] The U.S. Census Bureau's New York City Housing and Vancancy Survvey defines "HUD regulated" households as those in buildings with HUD rent, construction, and rehabilition subsidies, excluding those that are Mitchell-Lama as well. It includes tenants in elderly and disabled buildings that are not included in this study.

housing in relatively diverse, desirable locations. These locations have good access to transportation and jobs, and often are places where the unsubsidized stock is rapidly becoming less affordable as the neighborhoods change demographically.

HOW LOSSES OCCUR

Mortgage prepayment by the owner: All Mitchell-Lama, Section 221(d)(3), and Section 236 developments have already passed their twentieth anniversary. Owners can leave these subsidy programs by prepaying the mortgage. The building may be subject to rent stabilization if it was occupied before 1974, otherwise the landlord can charge market rent. The current real estate market obviously provides good incentives to do this.

Section 8 opt-out by the owner: Owners of project-based Section 8 buildings can opt out only at the expiration of a Section 8 contract. Most of the original twenty-year Section 8 contracts have expired, so the buildings are operating on renewed federal contracts—usually one-year renewals at the original subsidy level, or 5- to 20- year contracts with renegotiated rent subsidies.

HUD enforcement and foreclosure: A significant portion of buildings have experienced distress from an owner defaulting on mortgage debt, or neglecting the property to the point of serious deterioration. HUD has instituted a "get tough" enforcement policy under which it can place the property under a receiver, move to foreclosure, or both. A foreclosure sale can remove the property from the subsidized housing inventory if it is not sold to an alternative "preserving" owner under a HUD agreement to sustain project-based subsidies.

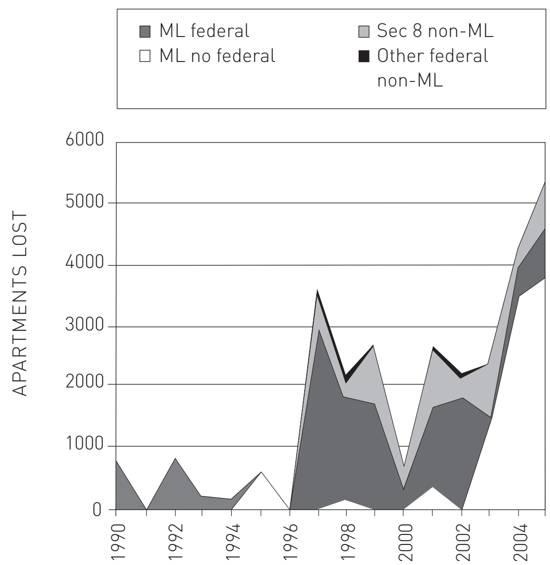
ACCELERATING LOSSES TO THE SUBSIDIZED STOCK

The number of apartments being de-subsidized has exploded over the past 15 years. Significant numbers are being converted and lost in all of the major subsidy categories available to low-income families. But some programs are losing ground at a much higher rate than others.

Figure 1 charts the annual losses from 1990 to the present.[4] The pattern is one of increase in the rate of loss, with a sharp acceleration in the late 1990s. Over the past decade, the losses in the HUD-subsidized Mitchell-Lama stock have begun to match those in the Mitchell-Lama stock without federal subsidies.

In all, 28,422 units of subsidized rental housing, representing 24 percent of the units that existed in 1990, already have been lost. Two advocacy organizations, the Mitchell-Lama Residents Coalition and the New York State Tenants & Neighbors Coalition, have obtained information that shows that another 15,757 units, or 13 percent of the stock, is in danger of being lost in the immediate future.

FIGURE 1



LOSSES OF AFFORDABLE HOUSING BY YEAR

Table 2 shows how these losses and threats are distributed among the major categories of subsidized housing. The Mitchell-Lama stock without federal assistance has been hit hardest, losing 53 percent of the stock that existed in 1990. It is also exposed to the greatest current threat, representing another 20 percent of the stock.[5]

Further analysis of the buildings that have lost or retained subsidies provides some valuable clues to the factors that influence loss or preservation. The form of subsidy seems to be an important factor. Table 3 shows that buildings with Section 8 (including those that are also Mitchell-Lama) were least likely to leave subsidy programs, followed by those with other forms of rent subsidy (federal Rent Supplement or Rental Assistance program). Buildings that only had mortgage subsidies or tax abatements were much more likely to convert to market rents.

[4] One lost building with 40 units is omitted from this chart because no year of loss could be obtained for it.

[5] Buildings are counted as threatened if they meet any of the following conditions: (1) landlords have provided one-year notice of intent to opt out of project-based Section 8 or "buy out" of Mitchell-Lama, (2) the New York City Housing Authority is processing enhanced vouchers, or (3) the building has failed an inspection by HUD's Real Estate Assessment Center in the past year.

These differences may reflect the fact that payments under Section 8 and other rent subsidies increase as market rents rise, but interest subsidies and tax breaks do not. This means that the former can respond to the same market forces that would be expected to prompt landlords to leave subsidy programs. Section 8 developments also benefit from HUD's Mark Up to Market program, which provides for extra subsidy increases for owners of project-based Section 8 buildings in high-rent neighborhoods.

TABLE 2

LOSSES OF AFFORDABLE HOUSING BY CATEGORY

	Units in 1990	Units in 2005	Lost	Threatened
Mitchell-Lama				
With federal subsidy	43,020	33,087	9,933 (23%)	4,631 (11%)
Without federal subsidy	23,930	11,175	12,755 (53%)	4,669 (20%)
Total Mitchell-Lama	66,950	44,262	22,688 (34%)	9,300 (14%)
Not Mitchell-Lama				
Project-based Section 8	52,502	47,112	5,390 (10%)	6,457 (12%)
Other federal subsidy	1,465	1,121	344 (24%)	0
Total not Mitchell-Lama	53,967	48,233	5,734 (11%)	6,457 (12%)
TOTAL	120,917	92,495	28,422 (23%)	15,757 (13%)

Source: Data compiled by the Community Service Society from records of the U.S. Department of Housing and Urban Development, New York State Division of Housing and Community Renewal, New York City Department of Housing Preservation and Development, and Office of the Comptroller of the City of New York. Estimates of threatened stock are based on information from Mitchell-Lama Residents Coalition and New York State Tenants & Neighbors Coalition.

TABLE 3

LOSSES OF AFFORDABLE HOUSING BY FORM OF SUBSIDY

	Units in 1990	Units in 2005	Lost
Rent subsidies			
Project-based Section 8	58,324	52,160	6,164 (11%)
Other rent subsidy	28,471	24,162	4,309 (15%)
Total rent subsidies	86,795	76,322	10,473 (12%)
Other subsidies			
Federal mortgage subsidy	10,095	4,998	5,097 (51%)
Tax abatements only	23,930	11,175	12,755 (53%)
Total other subsidies	34,025	16,173	17,852 (53%)
TOTAL	120,820	92,495	28,325 (23%)

Source: Data compiled by the Community Service Society from records of the U.S. Department of Housing and Urban Development, New York State division of Housing and Community Renewal, New York City Department of Housing Preservation and Development, and the Office of the Comptroller of the City of New York.

Within each subsidy type, older buildings are somewhat more likely to have left their subsidy programs than newer buildings. This may simply reflect the fact that the older buildings have had more time in which to leave their programs.

FORECLOSURES AND OTHER FEDERAL ENFORCEMENT

One factor in the loss of subsidized apartments is HUD foreclosure on owners who default financially or fail to meet building quality standards. From 1990 to 2006, HUD foreclosed on 14 of the city's subsidized housing developments with a total of 1,815 apartments. This represents a small proportion of the total 28,422 apartments lost during that period, but HUD lacks the power to foreclose on most of the lost subsidized developments. It can only foreclose on buildings with federally held or insured mortgages. The 1,815 apartments lost due to foreclosure represent 18.5 percent of all units lost where HUD had the power to foreclose. Table 4 shows how the different subsidy programs were affected by HUD foreclosure.[6]

This Table shows that HUD's enforcement actions are an important reason for subsidy losses in buildings where it has the power to foreclose—particularly the non-Mitchell-Lama ones. But HUD also has enforcement powers in buildings without any federal role in the financing. It can terminate Section 8 contracts or abate subsidy payments in buildings that fail inspections, which could lead directly or indirectly to loss of subsidy without foreclosure. The high rate of foreclosure among buildings that have lost federal subsidies suggests that enforcement actions may have played a role in some of the 18 buildings (6,902 units) that left the subsidy program where HUD had an enforcement role, but not the power to foreclose.

TABLE 4
LOSSES OF AFFORDABLE HOUSING BY REASON

	Total units lost	Units lost where HUD had power to foreclose	Units foreclosed
Mitchell-Lama			
With federal subsidy	9,933	3,297	0
Without federal subsidy	12,755	1,058	0
Total Mitchell-Lama	22,688	4,355	0
Not Mitchell-Lama			
Project-based Section 8	5,390	5,124	1,630 (32%)
Other federal subsidy	344	344	185 (54%)
Total not Mitchell-Lama	5,734	5,468	1,815 (33%)
TOTAL	28,422	9,823	1,815 (19%)

Source: Data compiled by the Community Service Society from reports of the U.S. Department of Housing and Urban Development, New York State Division of Housing and Community Renewal, New York City Department of Housing Preservation and Development, and Office of the Comptroller of the City of New York.

HUD foreclosures are not only a threat to the affordable housing supply, they also are also an important opportunity for new owners committed to working with tenants to preserve and improve the housing supply. HUD has foreclosed on three developments (449 units) that still have project-based subsidies after the buildings were transferred to new owners. In one case, HUD was able to create a new project-based subsidy for one half of the development's apartments. In two other buildings where foreclosures occurred during 2005, the developments are expected to receive new subsidies with a special allocation of project-based vouchers. In at least two other cases, HUD has used its enforcement powers short of foreclosure to transfer control of subsidized developments to preserving owner—once with preservation of the project-based subsidy and once without.

[6] One lost building with 97 unites is omitted from this table because the form of subsidy could not be determined for it.

POLICY IMPLICATIONS

An essential component of New York City's affordable housing stock is rapidly being lost, exposing low-income New Yorkers to the risk of greater rent burdens, displacement, and homelessness. It is incumbent on government to respond to this threat by adopting policy measures to preserve these difficult-to-replace housing resources.

The fact that some housing subsidy programs are being hit harder than others suggests that the subsidy package has an influence on the loss or preservation of the housing. Together with the factors that cause loss, the pattern suggests that preservation policies must be tailored to the subsidy program, to the market context, and to the condition in which owners have left buildings. The prevalence of HUD foreclosures suggests that building conditions and financial strain also are important parts of the picture of subsidized housing loss.

RECOMMENDATIONS

Preserve mark up to market: Rent subsidies, such as project-based Section 8, reduce the risk of loss, as compared to mortgage interest subsidies such as Section 236, due, in part, to the effectiveness of HUD's Mark Up to Market program. This program enables HUD to increase the amount of subsidy for developments in high-market areas. Its effectiveness depends on adequate funding in annual appropriations. Congress should ensure that the HUD appropriation is sufficient to fund all needed Mark Up to Market activity. Mark Up to Market should also be treated as a model for preserving other parts of the subsidized housing stock; for instance, Rent Supplement and Rental Assistance Program subsidies should be converted to Section 8 and thus made eligible for Mark Up to Market.

Develop New York City-HUD program to rescue distressed properties: A mechanism is needed to respond to poor conditions and financial default in subsidized buildings, especially project-based Section 8, so that the buildings remain affordable and the tenants in place are protected. The New York City Department of Housing Preservation and Development has been working with HUD and with several tenant advocacy organizations to develop such a mechanism, which would become part of the mayor's New Housing Marketplace Plan. The effort emphasizes the importance of tenant and neighborhood participation in preserving this housing. But despite the city's commitment, the program has not yet crystallized.

Provide preservation incentives And tenant protections for Mitchell-lama: The greatest threat is to the Mitchell-Lama stock. New solutions are needed to preserve this stock, such as improved incentives for landlords to keep their buildings in the program. And policies are needed to protect tenants in place when buildings leave the program. There are now two bills pending in the New York State legislature in Albany that would place all Mitchell-Lama rental buildings under rent stabilization in the event of a buy-out. One of the bills would alter the rules for setting rents in city-supervised Mitchell-Lama rentals, by removing the 6 percent ceiling on return on equity and limiting rent increases to the amounts set by the New York City Rent Guidelines Board for rent-stabilized apartments. This is intended to increase the financial reward for owners remaining in the Mitchell-Lama program.

Implement the Tenant Empowerment Act: In 2005, New York City passed legislation intended to facilitate tenant and nonprofit purchases of subsidized apartment buildings at risk of being de-subsidized. This legislation, Local Law 79 of 2005, is now the subject of litigation. New York City should vigorously defend the law in court, and it should also appropriate funds to help tenants and community-based developers use it effectively.

Under the Bloomberg Administration, the New York City government has recognized—for the first time—the importance of preserving its subsidized housing. The mayor's New Housing Marketplace Plan for the 2004–2013 decade proposes to refinance and modernize 13,000 units of Mitchell-Lama rental housing for owners who will stay in the program for an additional 15 years, and it will preserve 3,300 units of federally assisted housing, largely troubled developments with HUD-held mortgages. However, the preservation problem is much larger in scale. These initiatives span a small portion of the 92,000 assisted units, as of 2005, that are at risk over the coming decade. Even with the plan's envisioned creation of 24,000 new units of rental housing targeted to families below 80 percent of the HUD Area Median Income—currently $62,800 for a family of four—there is likely to be a net loss in the city's capacity to house its low-income, predominantly working families.

The city government is to be commended for its commitment to housing preservation. However, to address our preservation needs fully, both the city and the state need to press assertively for policies that encourage stable and preserving ownership of the stock and protect tenants of limited income who are at risk when their homes are threatened with conversion to market prices. Most importantly, Washington must be pressed to recommit itself to sustaining the affordable subsidized housing that federal funds created, at high public cost, over the past 4 decades, rather than stand by while these resources are converted to private assets.