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Closing the Door 2007:
The Shape of Subsidized Housing Loss in New York City

CSS Policy Brief **May 2007**

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The rapid loss of New York City's supply of subsidized, privately owned rental housing continued through 2006. This loss is now well-documented,[1] but no level of government has yet produced a coherent policy response to it.

This affordable housing stock provides important protections from the effects of a chronic housing shortage to low-income tenants who would be unable to afford adequate housing in the unassisted rental market. Unfortunately, the subsidized housing stock is itself rapidly dwindling, largely in response to the "hot" real estate market that results from the same shortage.

The housing being lost will be difficult to replace. It is affordable to families with much lower incomes than those to be served under Mayor Bloomberg's New Housing Marketplace Plan, and many of the developments are much more centrally located. Under the mayor's plan, we are seeing a shift to a less stringent definition of affordability as "below market," and to a greater degree of economic segregration, with the transformation of more and more of Manhattan into a "luxury product," unaffordable to most working people. This makes it all the more imperative to save the existing stock. Government at all levels must respond with stronger policy measures to preserve these costly-to-replace housing resources.

A large portion of this at-risk housing was originally developed with assistance from the city and the state of New York, often without federal aid. Yet, neither the city nor the state has come forward with a comprehensive response to these losses. Although the city has worked to preserve a few buildings in some instances, the losses outnumber them and continue to grow.

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[1] James DeFilippis, *Keeping the Doors Open: HUD-subsidized Housing in New York City.* CSS Policy Brief, May 2003. Tom Waters and Victor Bach, *Closing the Door: Accelerating Losses of New York City Subsidized Housing* CSS Policy Brief, May 2006. Office of the New York City Comptroller, *Affordable No More: An Update – New York City's Mitchell-Lama and Limited Dividend Housing Crisis Is Accelerating.* Policy Report, May 2006.

This paper updates the description of the crisis in subsidized housing contained in our previous paper. In addition, it includes an analysis of the pattern of loss in time and space. The analysis covers the major subsidy programs that developed rental housing for low-income families through the early 1980s – the federal mortgage subsidy programs, the federal rent-subsidy programs including project-based Section 8 (distinct from the tenant-based Section 8 voucher program), the city and state Mitchell-Lama rental programs, and the pre-Mitchell-Lama Limited Divided program. These programs were targeted to households with much lower incomes than later programs such as the Low Income Housing Tax Credit. Well over a third (41 percent) of households living in the stock we analyze have incomes below the federal poverty line, and two thirds (67 percent) are below 200 percent of poverty.

Accelerating losses to the subsidized stock: an update

As of the end of 2006, more than a quarter (27 percent) of the city's 119,785 apartments in these subsidy programs had been lost since 1990, and another 18 percent are now threatened with subsidy loss. Mitchell-Lama rentals have been hit hardest, losing 26,253 units, 41 percent of those that existed in 1990.

During calendar 2006, 3,691 Mitchell-Lama rental apartments were lost – somewhat less than in 2004 or 2005, but still a very rapid rate of loss within a shrinking supply. Loss rates may have started to plateau, but there is little reason to hope that any slowdown has begun. The city's speculative market in real estate continues to be very hot, and a number of transactions are being negotiated now that would likely result in the removal of buildings from subsidy programs – including the pending sale of Starrett City with its nearly 6,000 apartments. The greatest losses in 2006 were to federally subsidized Mitchell-Lama developments, but the highest rate of loss as a proportion of the remaining stock continued to occur in the non-federal Mitchell-Lama stock.

The form of subsidy continued to have a significant effect on whether subsidized housing was lost, threatened, or preserved. Project-based Section 8 developments were most likely to be preserved, followed by those with other rent subsidies, followed by those with only mortgage subsidies and/or tax abatements. The probable reason for this pattern, which now appears even stronger than it did a year ago, is the greater ability of rent subsidies to respond to changes in the housing market, together with the rich preservation incentives offered by the federal Mark Up to Market program, for which only project-based Section 8 buildings are eligible.

Table 1
Losses of affordable housing by category

	Apartments in 1990	Apartments in 2005	Apartments in 2006	Lost, 1990-2006	Lost, 2005-2006
Mitchell-Lama					
With federal subsidy	41,822	32,118	30,080	11,742 (28 %)	2,038 (6 %)
Without federal subsidy	23,823	10,965	9,312	14,511 (61 %)	1,653 (15 %)
Total Mitchell-Lama	65,645	43,083	39,392	26,253 (40 %)	3,691 (9 %)
Not Mitchell-Lama					
Project-based Section 8	52,578	47,000	46,665	5,913 (11 %)	335 (1 %)
Other federal subsidy	838	582	582	256 (31 %)	0
Total not Mitchell-Lama	53,416	47,582	47,247	6,169 (12 %)	335 (1 %)
TOTAL	119,061	90,665	86,639	32,422 (27 %)	4,026 (4 %)

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.

Table 2
Losses of affordable housing by form of subsidy

	Units in 1990	Units in 2006	Lost
Rent subsidies			
Project-based Section 8	56,438	50,386	6,052 (11 %)
Other rent subsidy	31,762	23,063	8,699 (27 %)
Total rent subsidies	89,021	74,270	14,751 (17 %)
Other subsidies			
Federal mortgage subsidy	7,038	3,878	3,160 (45 %)
Tax abatements only	23,823	9,312	14,511 (61 %)
Total other subsidies	30,861	13,190	17,671 (57 %)
TOTAL	119,061	86,639	32,422 (27 %)

Source: See Table 1.

Market threats and distress threats

The danger to the affordable housing stock is also illustrated by the large number of apartments that are still in the subsidy programs, but face two main threats to their continued affordability. The first threat is the danger that the building will be voluntarily removed from the subsidy program by its owner, seeking higher profits in the open market, which we term the "market threat." Second is the danger that negligent management will lead to poor building conditions, disqualifying the development from its subsidy program, which we term the "distress threat." Although the market threat is most pronounced in areas where market rents are high, and the distress threat where market rents are low, the fact is that both threats can affect the same neighborhood or even the same development.

More than 4,700 Mitchell-Lama rental units are now in the process of being bought out of the program as landlords seek larger returns from the unsubsidized market. If past patterns continue, most of these units will eventually be desubsidized as a result of market threats. It should be noted that the above figure does not include Starrett City in Brooklyn, a federally subsidized Mitchell-Lama rental development with 5,881 units. A pending sale there appears to set the stage for a Mitchell-Lama buyout, but since no notice has been filed, we do not include it in our estimate of market threat.

The market threat to the non-Mitchell-Lama stock is harder to quantify since most of this stock has project-based Section 8 contracts. When these contracts (with terms ranging from one to 20 years) expire, owners can opt out of the subsidy program. Owners routinely keep their options open by giving notice that they intend to opt out at expiration, but in most cases they ultimately renew the subsidy. In recent years, a federal incentive program known as Mark Up To Market, which increases subsidy levels to compete with the unsubsidized market, has been effective in preserving this stock. There is cause for concern that this program will eventually fall short, but, so far, Section 8 opt-out notices carry a far lower level of risk than a Mitchell-Lama buy-out notice. Therefore we do not quantify the market threat to the non-Mitchell-Lama stock.

The distress threat is the main threat to Section 8 housing. More than 6,700 project-based Section 8 apartments are now subject to this threat, as are more than 4,600 Mitchell-Lama apartments with federal subsidies. These buildings appear to have been neglected by their owners to the point of serious deterioration. In recent years, 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 inventory if it is not sold to an alternative "preserving" owner under a HUD agreement to sustain project-based subsidies. Because HUD's enforcement action can be triggered by two successive failed inspections by HUD's Real Estate Assessment Center (REAC), we treat the presence of two failed REACs as an indicator of a distress threat to the continuation of the subsidy. Only HUD-subsidized properties with federal mortgage insurance are subject to REAC inspection and HUD enforcement, so the distress risk is quantified only for those buildings.

Table 3
Threats to affordable housing by category

	Apartments remaining	Market threat	Distress threat
Mitchell-Lama			
With federal subsidy	30,080	3,599 (12 %)	4,606 (15 %)
Without federal subsidy	9,312	1,144 (12 %)	Not defined
Total Mitchell-Lama	39,392	4,743 (12 %)	4,606
Not Mitchell-Lama			
Project-based Section 8	46,665	Not defined	6,508 (14 %)
Other federal subsidy	582	Not defined	0
Total not Mitchell-Lama	47,247	Not defined	6,508 (14 %)
TOTAL	86,639	4,743	11,114

Source: Estimates of threatened stock are based on information from Mitchell-Lama Residents Coalition, New York State Tenants & Neighbors Coalition, and Urban Homesteading Assistance Board.

Speed of subsidy loss

The speed at which overt threats become actual losses depends on the nature of the threat – market threats move much more quickly than distress threats. Almost half of the apartments in buildings that received a buyout notice by January, 2006, were out of the subsidy program a year later. The other buyouts are still pending.

At two properties threatened with buyout – Tivoli Towers in Brooklyn and Park Lane Apartments in the Bronx – the New York City Department of Housing Preservation and Development (HPD) has ruled that buyouts were prohibited under land disposition agreements dating to the buildings' original development in the 1970s. The owners of Tivoli Towers have appealed a court decision backing HPD, so the threat to both developments continues. If the courts affirm HPD's power to deny a buyout because of a land disposition agreement, the agency will acquire a powerful tool to preserve subsidized housing, as will the state Division of Housing and Community Renewal, which reviews buyout applications for state Mitchell-Lama developments. Since many developments have such agreements, a policy of identifying and enforcing them could save much of the Mitchell-Lama stock. Unfortunately, some buildings have already been lost because agreements were not enforced.

Distress threats move much more slowly. Only 4 percent of the apartments in units with a failing REAC score in 2005 were lost,[2] but this does not mean that the remaining buildings are now safe. More than two thirds of the apartments with a distress threat in 2005 are still threatened now.[3] The Partnership to Preserve Affordable Housing, which includes the Community Service Society and five other advocacy and legal organizations, has been working with HPD and other agencies and organizations to preserve this stock. Although the group has succeeded in minimizing losses, there is still no system in place to protect the buildings for the long term.

Table 4
Change in threat status from 2005 to 2006

	Market threat in 2006	Distress threat in 2006	Lost	No longer threatened	Total
Market threat in 2005	4,289 (54 %)	0	3,691 (46 %)	0	7,980
Distress threat in 2005	0	6,259 (68 %)	335 (4 %)	2,692 (29 %)	9,286

Source: See Table 3.

[2] The two buildings lost to the distress threat in 2006 were not total losses. They no longer have project-based Section 8 contracts but remain affordable to extremely low-income households under new non-profit ownership, and the new owners are working to create new project-based subsidy arrangements to keep them that way.
[3] We don't have enough information to determine which buildings had consecutive failing REACs in 2005, so we use a single failure as the indicator of distress threat.

Patterns of subsidy loss and preservation

The geographic pattern of subsidized housing losses has changed over time. In recent years the crisis has not only expanded, it has widened across the map of the city, exposing even more neighborhoods and tenants to the risk of losing affordable housing.

In 2006, the Bronx was hit particularly hard, replacing Manhattan as the location of most Mitchell-Lama losses. Losses in the Bronx increased sharply, even as those in Manhattan began to slow, probably because the borough had already lost 61 percent of its Mitchell-Lama rental apartments. In coming years, it appears that the market threat is most acute in the Bronx, Manhattan, and Staten Island, while the distress threat is most acute in the Bronx and Brooklyn.

Table 5
Losses of affordable housing in 2006 by borough and category

	Mitchell-Lama non-federal	Mitchell-Lama federal	Non-ML Section 8	Total
Bronx	1,252	749	0	2,001
Brooklyn	153	0	104	257
Manhattan	248	373	231	852
Queens	0	916	0	916
TOTAL	1,653	2,038	335	4,026

Source: See Table 1.

Table 6
Threats to affordable housing by borough

	Apartments remaining	Market threat	Distress threat
Bronx	27,493	1,550 (6 %)	4,486 (16 %)
Brooklyn	25,064	662 (3 %)	4,675 (19 %)
Manhattan	24,331	1,699 (7 %)	1,463 (6 %)
Queens	6,242	378 (6 %)	391 (6 %)
Staten Island	3,509	454 (13 %)	99 (3 %)
TOTAL	86,639	4,743	11,114

Source: See Table 3.

The pattern over the entire period since 1990 is more complicated. Geography and the form of subsidy interact to account for the intricate pattern of losses over time. Through the 1990s, most of the losses were in Mitchell-Lama buildings with only mortgage subsidies and/or tax abatements, not the deeper rent subsidies (Section 8, Rental Assistance Payment, and Rent Supplement) that provide owners with a stronger motivation to stay in the subsidy program. The overwhelming majority were located in low and middle rental market areas of the city. [4] Later in the decade, losses increased, and project-based Section 8 buildings also began to be lost, also primarily in low and middle market areas. But, by 2001, the action shifted dramatically to high-market areas of the city, with Manhattan's Upper West Side leading the way. Mitchell-Lama buildings both with and without federal rent subsidies began to be lost rapidly. Then, in 2004, the losses began to swing back to expand in the low and middle market areas, still affecting Mitchell-Lama buildings both with and without federal rent subsidies. Meanwhile, the losses of Section 8 apartments continued on at the same rate as during the 1990s.

Underlying this pattern was a dramatically changing housing market. From 1990 to 1993, the median price per unit for a New York City apartment building fell from $48,000 to $33,000. From 1994 to 1996 it remained near that mark, but began to rise in the late 1990s, reaching $42,000 in 1999. Beginning in 2000, it rose faster, reaching $93,000 in 2005. It is not surprising that the fate of subsidized apartment buildings would be affected by these turns in the housing market.

But it is striking how differently the categories of subsidized housing reacted to these changes. Figures 1 through 3, Table 7, and Map 1 make clear the large differences in size, timing, and geographic distribution for the three categories. From this analysis we can extract four trends in the loss of subsidized housing, which together account for more than 90 percent of all of the apartments lost since 1990.

[4] This division of New York City into high and low-market areas is familiar and accurately reflects the state of the rental housing market in the period from 2001 to 2005: the low-market area consists of neighborhoods where the median rent paid in 2005 by people who moved into their apartments from 2001 to 2004 was less than $1,000, the middle-market area consists of neighborhoods where the median rent paid by such tenants was at least $1,000 but less than $1,350, and the high-market area consists of neighborhoods where the median rent paid by such tenants was at least $1,350.

Figure 1

Cumulative losses for buildings without rent subsidies

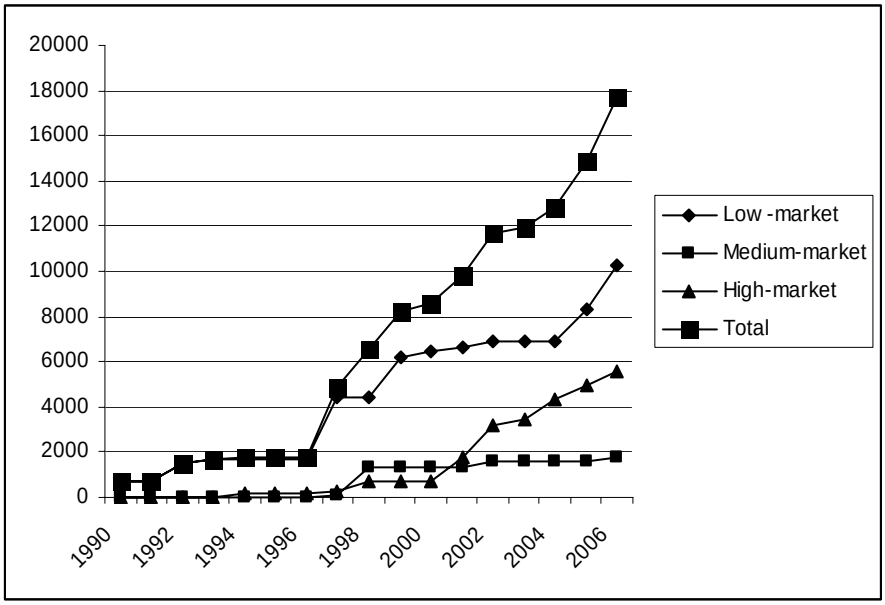


Figure 2

Cumulative losses for buildings with rent subsidies other than Section 8

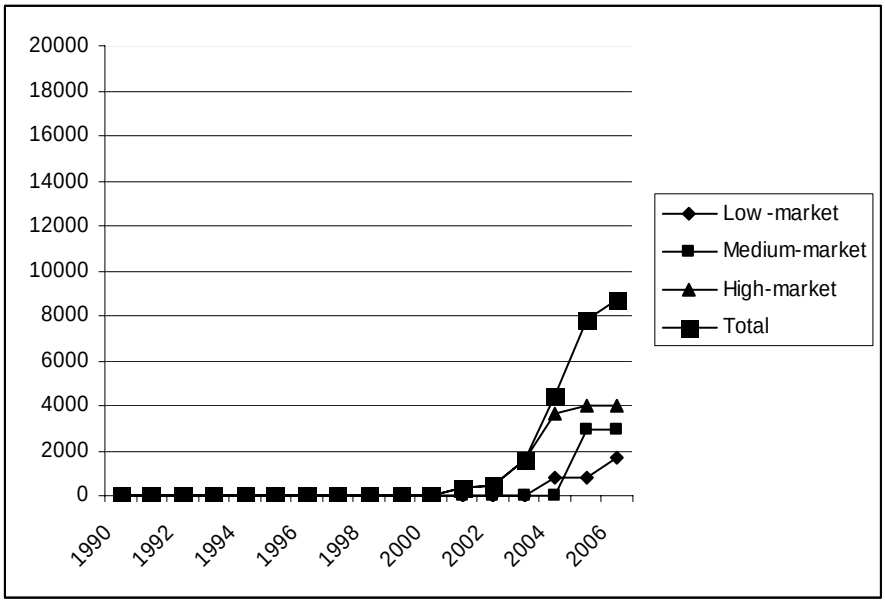


Figure 3
Cumulative losses for buildings with project-based Section 8

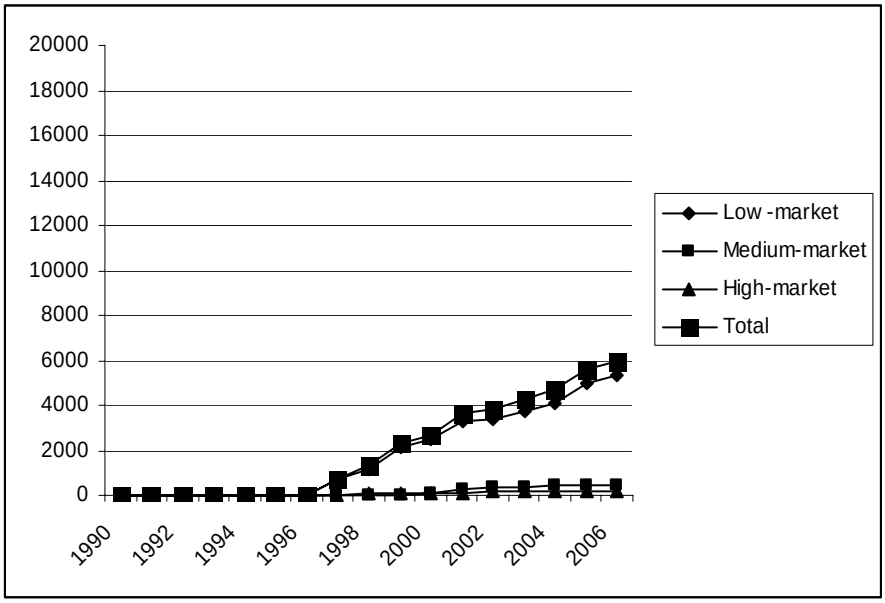


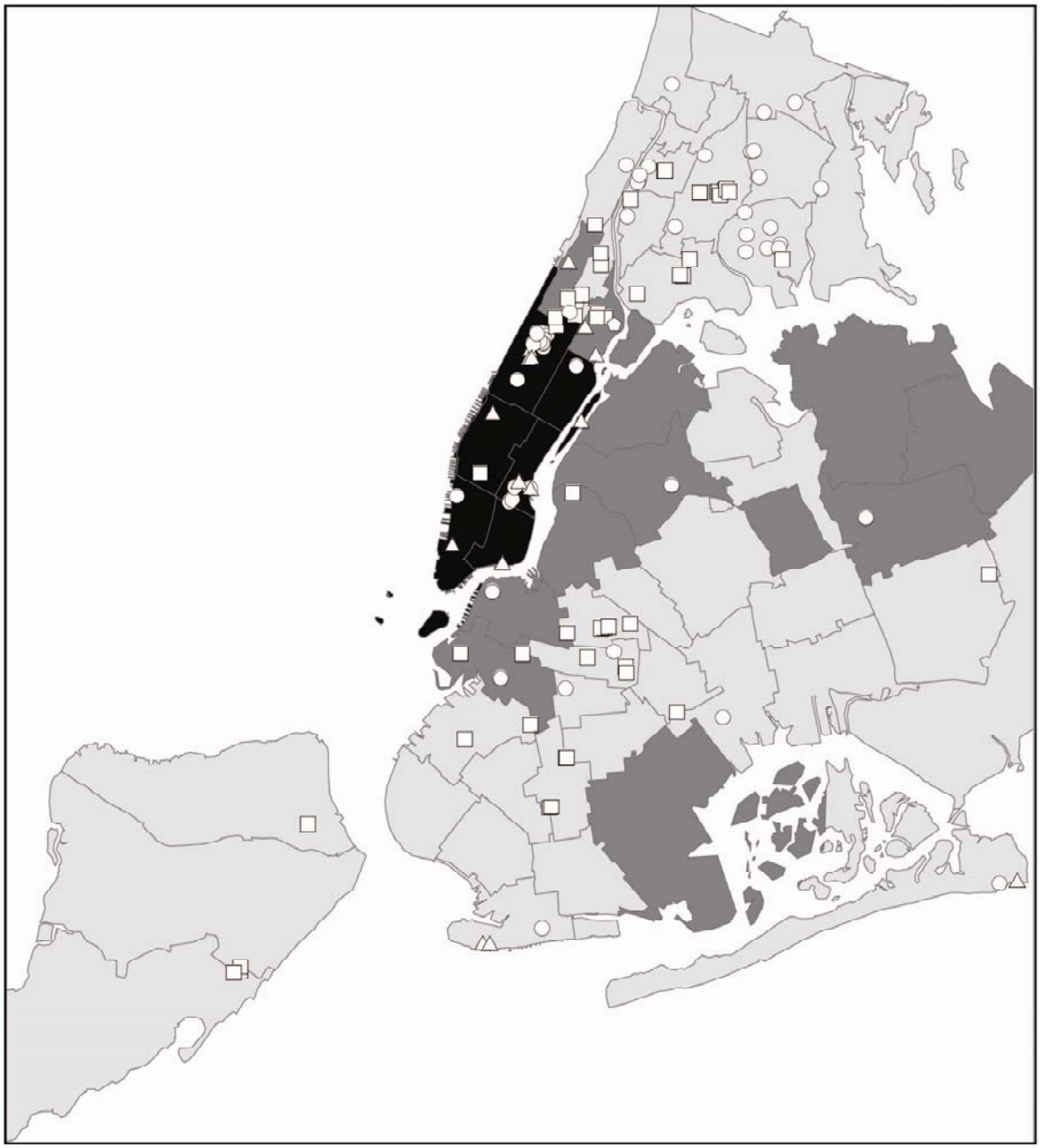
Table 7
Annualized rates of loss of subsidized housing

	Low-market areas	Middle-market areas	High-market areas
No rent subsidy			
1990 to 1996	1.2 %	0	0.2 %
1997 to 2000	6.9 %	13.1 %	1.6 %
2001 to 2006	5.0 %	5.8 %	9.7 %
Rent subsidy, not Section 8			
1990 to 1996	0	0	0
1997 to 2000	0	0	0.1 %
2001 to 2006	1.4 %	8.8 %	13.3 %
Section 8			
1990 to 1996	0	0	0
1997 to 2000	1.3 %	0.2 %	0.3 %
2001 to 2006	1.5 %	1.0 %	0.1 %

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.

Map 1

Subsidized developments lost since 1990



Housing market type 2001 to 2004 (monthly rent)

- Low market (Up to $1,000)
- Middle market ($1,001 to $1,350)
- High market (More than $1,350)

Lost developments

- ○ No rent subsidy
- △ Rent subsidy, not Section 8
- □ Project-based Section 8

The largest trend is the loss of apartments in buildings without rent subsidies in low-market areas, which accounted for 10,305 lost apartments, or 32 percent of the total losses to date. These losses did accelerate somewhat as the housing market strengthened in the late 1990s, but they were relatively high throughout the period since 1990, probably driven as much by the building's need for financing for capital improvements as by the housing market, at least before 2001. Mitchell-Lama rents in low-market areas were only 14 percent below rent-stabilized rents in postwar buildings, suggesting that the potential to collect higher rents to offset the loss of subsidies is not very strong.

The second largest, and fastest growing, trend is the loss of apartments in non-Section 8 buildings (primarily Mitchell-Lama) in high-market areas. Very few such units were lost before 2001, but since then 8,848 apartments have been lost, or 27 percent of the total losses since 1990. These losses are clearly driven by the over-heated nature of New York City's housing market. In these neighborhoods, rent-stabilized rents exceed Mitchell-Lama rents by 45 percent, and unregulated rents are even higher.[5]

Probably related to this trend is a third one: the loss of apartments in buildings with rent subsidies other than Section 8 (again, primarily Mitchell-Lama) in low- and middle-market areas. No such units were lost before 2001, but since then 4,689 apartments have been lost, or 15 percent of the total losses since 1990. These losses can be taken as a troubling sign that even buildings with fairly rich subsidies in unfashionable neighborhoods are vulnerable to what appears to be market-driven losses. The proposed sale of Starrett City in East New York for more than $220,000 per unit underscores this threat, as do numerous reports of unsubsidized buildings in low market areas, often located from the front lines of gentrification, for prices over $100,000 per unit.

The final trend is the loss of project-based Section 8 apartments in low-market areas, which began in 1997 and has continued at steady rate since then. Though far slower than the Mitchell-Lama losses, these are still enough to account for 5,331 lost apartments, or 15 percent of the total losses since 1990. These losses do not appear to be strongly market-driven, and about 40 percent of them from the beginning have been due to foreclosure on the properties by HUD. Many of the HUD foreclosures were due to findings of physical distress – inadequate building conditions – rather than financial default. This suggests that the buildings were affected by a

[5] Calculated from the 2005 New York City Housing and Vacancy Survey.

regrettably characteristic pattern in low-market areas – disinvestment, or the failure to adequately maintain buildings in order to extract a higher short-term rate of return at the expense of long-term value. Even where landlords did not disinvest intentionally, capital needs may have played a role for these buildings, as it did for the buildings without rent subsidies.[6]

These patterns have some important policy implications. First, and most dramatically, they show that buildings without project-based Section 8 (essentially, the Mitchell-Lama stock) are now acutely threatened in all neighborhoods of the city – high-, middle- and low-market.

Second, they show rent subsidies other than Section 8 are no longer an effective bulwark against desubsidization. Until 2001, these subsidies were apparently rich enough to motivate landlords to keep their buildings in the program, but then they suddenly began to seem inadequate for this purpose, almost as inadequate as tax abatements and mortgage subsidies. The strong, sudden onset of buy-outs in these buildings is particularly troubling. If the market reaches a point where even project-based Section 8 subsidies are no longer competitive, will that part of the affordable housing stock be lost just as quickly?

And finally, they underscore that the significant loss of project-based Section 8 is primarily a phenomenon of low-market areas, driven by factors other than the potential for profits in the unsubsidized market. Overall, the low- and middle-market buildings were six times as likely to be lost as those in high-market areas.

Recommendations

Preserve Mitchell-Lama: The greatest threat is to the Mitchell-Lama stock, with or without federal subsidies, which is now being lost at a rapid rate in high- and low-market areas of the city alike. Although the New York City Housing Development Corporation has succeeded in preserving some buildings as Mitchell-Lama through a favorable refinancing package, this preservation incentive is in effect a much smaller than HUD's Mark Up to Market program can

[6] Another possibility is that some of the Section 8 losses are being driven by landlord's preference not for market rents but for Section 8 voucher rents. When a project-based Section 8 building leaves the subsidy program, tenants normally receive Section 8 vouchers. (The Section 8 voucher program is distinct from the project-based Section 8 program.) Landlords are supposed to receive market rents, up to a ceiling,6 when renting to voucher tenants. In low-market areas, however, Section 8 rents tend to be somewhat higher than unsubsidized rents, perhaps because of voucher-distributing agencies' difficulty in negotiating effectively with voucher-holders' landlords.

provide. As a result, it has been far less effective in preventing desubsidization than the federal program.

New York City and New York State, rather than Washington, bear the primary responsibility for preventing further losses to the vulnerable Mitchell-Lama rental stock. They should offer larger incentive subsidies to preserve Mitchell-Lama. But it is reasonable to ask how much incentive these governments can afford to provide given the astronomical process that Mitchell-Lama and former Mitchell-Lama buildings can now command on the speculative market. To prevent the market from running away from government's capacity to provide incentives, there should be a regulatory or tax "stick" in addition to the subsidy "carrot." This could take the form of a higher real property transfer tax for Mitchell-Lama reorganizations that fail to preserve affordability. In addition, the system of incentives, regulations, and taxes should be design to encourage the transfer of buildings to owners with a mission to provide affordable housing, such as low-income cooperatives or local community development corporations and other nonprofit organizations.

Protect Mitchell-Lama tenants: Tenants in Mitchell-Lama buildings are vulnerable to displacement after the buildings leave their subsidy programs. Some, but not all, tenants are eligible for federal enhanced vouchers to help pay higher market rents for their apartments. Some, but not all, are covered by rent stabilization. And those that are protected by rent stabilization may be vulnerable to unaffordable rent increases under rent stabilization's "unique or peculiar circumstances" provision. The New York State Legislature should place all Mitchell-Lama apartments under the rent stabilization program in the even they leave the Mitchell-Lama program, and should mandate that the initial rent-stabilized rent on each apartment be the last Mitchell-Lama rent, without any increase under "unique or peculiar." Two pending bills (A. 795/S. 4250 and A. 352/S. 5245) would accomplish this.

Preserve Mark Up to Market: The Mark Up to Market program appears to be extremely effective in preserving subsidized housing, especially in high-market areas. Congress should ensure that the annual HUD appropriation for project-based Section 8 continues to be 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. The other federal rent

subsidies, Rent Supplement and Rental Assistance Program, should be converted to Section 8 and thus made eligible for Mark Up to Market.

Provide tools to New York City and nonprofit organizations to preserve distressed subsidized housing: The main threat to project-based Section 8 housing in New York City is physical distress, and some developments with other subsidies are also threatened. In recent years, the city government and nonprofit organizations have been effective in preserving buildings that face this threat on a case-by-case basis, but a systematic response is sorely needed. There should be a clear pathway for troubled buildings to be transferred, by foreclosure if necessary and possible, to responsible owners with a mission to preserve affordability. The new owners should then receive assistance, as needed, to rehabilitate the buildings. This will not only preserve the buildings that are transferred and rehabilitated, but also give HUD a more credible foreclosure threat with which to enforce its maintenance at all of the buildings that it subsidizes, because the agency will no longer have to worry about displacing tenants and losing affordable housing stock as a consequence of its enforcement action. This pathway to preservation will work best if it is managed locally by governments such as New York City. Accordingly, Congress should pass legislation enabling HUD to transfer its enforcement powers to local governments, and to transfer its assets (mortgages or buildings) at a reasonable price, taking rehabilitation needs into account. Congress should mandate that HUD continue its practice of offering project-based Section 8 contracts to preserving owners after a foreclosure or other transfer, and that HUD escrow Section 8 payments while rehabilitation is under way. Congress should also restore funding for rehabilitation work.

Give tenants and their chosen development partners a right to purchase: 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, has been struck down in New York State Supreme Court. New York City should appeal this decision, and the New York State legislature should pass, and the Governor sign, similar legislation to facilitate tenant and nonprofit purchases statewide. Both levels of government should appropriate funds to help tenants and community-based developers use a right to purchase effectively.