



Affordable Housing
Preservation Initiative

Glossary of Affordable Housing Preservation Terms

Additional Funds Policy: Allows owners and purchasers to bring additional resources such as tax credits, tax-exempt bond financing, HOME/CDBG funds, or other state or local resources to a HUD Mark to Market transaction without decreasing HUD's contribution to restructuring. The transaction must result in significant benefits to residents and the property, and must be able to close in a timely manner consistent with the debt restructuring schedule.

Administrative Notice (AN) No. 4010: Issued by USDA's Rural Housing Service on September 23, 2004, AN 4010 provides guidance on preserving housing using improved procedures for property transfers.

Affordable Housing Program (AHP): A program of the Federal Home Loan Bank system, AHP provides subsidized cash advances to member institutions, to permit them to make below-market loans for eligible housing activities.

Annual Adjustment Factor: Mechanism for adjusting rents in certain types of Section 8-assisted properties, including Section 8 New Construction/ Substantial Rehab. HUD publishes annual percentage factors by unit type and region.

Bargain Sale: A tax deferral mechanism involving a sale of the property to a charitable organization for an amount that is less than its appraised fair market value. The seller takes a charitable contribution deduction for the difference between the fair market value and the reduced sales price. The deduction may be used to offset the tax liability resulting from the sale.

Basic Rent: The rent required to operate a Section 236 project, including debt service on the subsidized mortgage at 1 percent interest. This is the minimum rent payable by tenants (absent any additional rental subsidy).

Below Market Interest Rate (BMIR): See Section 221(d)(3) BMIR.

Bridge Financing or Bridge Loan: Short-term mortgage financing between the end of one loan or financing instrument and the beginning of another.

Capital Account: The owner's original cash investment in the property plus cumulative profits and tax losses over the life of the investment. Subsidized properties that have provided generous depreciation and interest deductions with limited or negligible cash flow will have a negative capital account after twenty years. Taxes will be owed on the difference between the capital account and the gross sale price.

Capital Gain: Cash proceeds realized upon sale of the property, if any, minus the owner's capital account (see Capital Account). Capital gain is subject to federal and state tax when the property is sold.

Capital Needs Assessment: A report on a property which estimates its repair and replacement needs over an extended period of time, often analyzing the way in which resources need to be accumulated to pay for these needs (reserve analysis). Also known as Physical Needs Assessments (PNA), Physical Condition Assessments (PCA), reserve studies, HUD Comprehensive Needs Assessments (CNA) or capital plans.

Community Development Block Grant (CDBG): Annual grants administered by HUD on a formula basis to cities and other units of government for community development activities. The CDBG program is authorized by Title I of the Housing and Community Development Act of 1974.

Community Development Financial Institutions Fund (CDFI Fund): A federal agency in the U.S. Department of Treasury that certifies Community Development Financial Institutions (CDFIs), administers grants, and also administers the New Markets Tax Credits program.

Community Reinvestment Act (CRA): Requires periodic evaluations of insured depository institutions and their efforts in helping meet the credit needs of its entire community.

Decoupling: A program to permit owners or purchasers of HUD Section 236-financed housing to retain the Interest Reduction Payments (IRP) contract and subsidy after refinancing or adding new debt to an existing Section 236 mortgage. The existing use restrictions must be extended for five years beyond the outstanding mortgage term. Authorized by Section 236(b) and (e)(2) of the National Housing Act. See also: IRP.

Delegated Underwriting and Servicing Program (DUS): Fannie Mae's program under which participating lenders are authorized to underwrite, close and sell loans to Fannie Mae.

Emergency Low Income Housing Preservation Act (ELIHPA): 1987 statute authorizing the original federal preservation program. Program active 1987 - 1992.

Eminent Domain: Authority of a government entity to forcibly acquire real estate for a public purpose, with compensation at Fair Market Value.

Enhanced Vouchers: Tenant-based Section 8 assistance provided to eligible residents when owners prepay their subsidized mortgages or opt out of project-based Section 8 contracts. Rents are set at market comparable levels, instead of the regular voucher payment standard, as long as the tenant elects to remain in the housing.

Exit Tax: Taxes paid on the recapture of depreciation and other deductions, experienced upon sale of a property. In some affordable housing transactions, sellers may face a significant exit tax even when they do not receive net cash at sale.

Expiring Use Restrictions (EUR): Low and moderate income affordability requirements associated with subsidized mortgages under Section 221(d)3 BMIR and Section 236, which terminate when the mortgage is prepaid.

Fair Market Rent (FMR): HUD-determined benchmark rent level, used to establish regional payment standards for the Section 8 program.

Fannie Mae (Federal National Mortgage Association, or FNMA): A government sponsored enterprise providing financial products and services, including purchase of mortgages from originators in order to facilitate new mortgage lending.

Farmers Home Administration (FmHA): former name of the Rural Housing Service. See RHS.

Federal Housing Administration (FHA): A wholly owned government corporation established under the National Housing Act of 1934 to improve housing standards and conditions. Its goal is to provide an adequate home financing system through insurance of mortgages, and to stabilize the mortgage market.

Flexible Subsidy: A direct HUD loan or grant for rehabilitation or operating losses, available to eligible owners of certain HUD-subsidized properties. Owners must continue to operate the project as low and moderate income housing for the original mortgage term. Not currently active.

Freddie Mac (Federal Home Loan Mortgage Corporation, or FHLMC): A government sponsored enterprise providing financial products and services, including purchase of mortgages from originators in order to facilitate new mortgage lending.

Freedom of Information Act (FOIA): Generally refers to the process of securing available documents from HUD or other federal agencies in accordance with required procedures. Certain types of documents, including owner financial statements, are considered privileged and not are not disclosable to the public under FOIA.

Full/Full Restructuring. A transaction carried out under Mark to Market involving both rent reduction and bifurcation of the HUD-insured debt into performing and deferred loans.

Government Accountability Office (GAO): Formerly known as the General Accounting Office, a Congressional agency that monitors the programs and expenditures of the federal government.

HOME Investment Partnerships Program: The HOME program, administered by HUD's Office of Community Planning and Development, provides formula grants to states and localities (See Participating Jurisdictions) to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income people. The HOME program is authorized by Title II of the 1990 Cranston-Gonzalez national Affordable Housing Act.

Incentive Performance Fee: An annual distribution to the owner of a Mark to Market property subject to satisfactory project operation and management and equal to 3 percent of Effective Gross Income. The amount is subordinate to regular operating expenses, replacement reserves, debt service and Capital Recovery Payments with a minimum of \$100 a unit and a maximum of \$200 a unit.

Interest Reduction Payment (IRP). In a Section 236 project, the Interest Reduction Payment or interest subsidy provided by HUD on a monthly basis, which makes up the difference between the mortgage debt service actually paid and the debt service that would have been paid at an interest rate of 1 percent.

Like Kind Exchange: A tax-deferral mechanism involving a "swap" of the project being sold with a replacement project. Capital gains tax is deferred until the replacement property is sold.

Limited Partnership (LP): A partnership in which some of the partners have a limited liability to the firm's creditors.

Lite/ OMHAR Lite: A transaction carried out under the rubric of Mark to Market involving rent reduction but no debt restructuring. Lite transactions may or may not involve refinancing of the existing debt.

Loan Management Set-Aside (LMSA). A form of project-based Section 8 assistance used primarily for Section 221(d)(3)/ BMIR and Section 236 housing. These short-term, renewable contracts were added after the housing was developed.

Low Income: Between 50 and 80 percent of area median income, as defined by HUD.

Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA): 1990 statute authorizing the "permanent" federal preservation program. Program active 1990 - 1996.

Low Income Housing Tax Credits (LIHTC): Tax Credits are allocated to states on a per-capita basis and allocated by the states to affordable rental housing development and rehabilitation projects. Tax Credits are authorized pursuant to Section 42 of the Internal Revenue Code.

Mark to Market: A program enabling owners of above-market Section 8 properties with HUD-insured mortgages to reduce rents, restructure the existing debt, and generally renew project-based Section 8 subsidy contracts. Authorized by MAHRA and administered by PAEs under contract to HUD/OMHAR. Owners who participate in debt restructuring must agree to 30-year Section 8 renewals, and underlying use restrictions for a portion of the units. Tenants and state/local governments have an opportunity to participate in the restructuring plans.

Mark Up to Market. A program enabling eligible owners of below-market Section 8 properties (insured and uninsured) to renew expiring subsidy contracts at comparable market rents. Contracts must be at least 5 years.

Millennial Housing Commission: Established by an Act of Congress in December 2000, the Commission developed recommendations that highlight the importance of housing and recommended possible legislative and regulatory initiatives. The Commission issued its final report on May 30, 2002.

Mortgage Insurance Fund: The HUD reserves that are drawn upon in the event of mortgage foreclosure or assignment, to pay off the lender in response to an insurance claim.

Multifamily Assisted Housing Reform and Affordability Act (MAHRA). 1997 statute authorizing the Mark to Market program and renewals of expiring Section 8 contracts.

New Construction/ Substantial Rehab. A form of project-based Section 8 assistance used in the original development and financing of the housing. Projects are both insured and uninsured (with conventional or state/local bond financing). These contracts are long-term (20-40 years). Active 1976 - 1985.

Office of Affordable Housing Preservation: Formerly, the Office of Multifamily Housing Assistance Restructuring (OMHAR), HUD established this office to oversee the continuation of the Mark to Market program and provide assistance in the oversight and preservation of a wide spectrum of affordable housing programs.

Office of Multifamily Housing Assistance Restructuring (OMHAR): a special office within HUD established under MAHRA to oversee the Mark to Market Program. OHMAR was absorbed into the multifamily housing program at HUD on October 1, 2004 (see Office of Affordable Housing Preservation).

Office of Rural Housing Preservation (ORHP): Processes applications to prepay RHS multifamily housing loans and preserve housing as affordable low- and very low-income housing.

Operating Cost Adjustment Factor (OCAF): Percentage factor used to adjust Section 8 project-based rents. Published by HUD on an annual basis. The OCAF percentage is applied to the Section 8 gross rents less debt service, i.e. to operating expenses plus cash flow.

Participating Administrative Entity (PAE): The Participating Administrative Entity is responsible for structuring Mark to Market transactions at the local or state level, under contract with HUD. PAEs may be public or private entities or joint ventures.

Participating Jurisdiction (PJ): A HUD-recognized entity that is an eligible recipient of HOME funding.

Passive Losses: Losses or deductions generated by a property which exceed the amount needed to offset taxable income. Since the Tax Reform Act of 1986, passive losses can no longer be used to shelter ordinary income from taxation; however, they can be used to offset "phantom income" or capital gains tax liability when the property is sold.

Phantom Income: Income taxable to a property owner in an amount greater than the cash flow distributions actually received. Phantom income creates an incentive for owners to refinance or sell.

Preemptive Purchase Rights: Right to make an offer to purchase, typically within a specified time frame, whether or not the property has been offered for sale. Owner may or may not be required to accept under specified conditions.

Priority Purchaser: As defined under LIHPRHA, a qualified resident organization, non-profit entity, or state/ local public agency purchaser of prepayment-eligible housing. Priority purchasers may also qualify for second mortgage forgiveness under Mark to Market if they meet certain additional criteria (including resident endorsement and one-third board membership by project residents or low income neighborhood residents).

Purchase Money Note: Obligation to pay the seller a portion of the purchase price on a deferred basis, either over time or at a future date certain. The Purchase Money Note may be secured by a mortgage or, more typically for subsidized properties, by a pledge of the partnership interests.

Real Estate Assessment Center (REAC): Office within HUD responsible for tracking, monitoring and enforcing the regulatory agreements of multifamily housing projects with FHA insurance or project-based assistance, including regular property inspections.

Real Estate Investment Trust (REIT): A business trust or corporation that combines the capital of many investors to acquire or finance real estate, which may include assisted housing. Cash flow generated by the properties is distributed to investors in the form of stock dividends. The

REIT can also provide an attractive tax deferral mechanism by enabling investors to exchange their partnership shares for interests in the REIT, a non-taxable transfer.

Rental Assistance (RA): also known as Section 521 of the Housing Act of 1949, provides a direct subsidy for tenant in RHS Section 515- or 514/516- financed rental housing.

Rent Supplement: An older HUD project-based rental subsidy program used for some 221(d)3 and 236 properties. The subsidy contract is coterminous with the mortgage. Most rent supplement contracts in HUD-insured projects were converted to Section 8 in the 1970s.

Residual Receipts: Cash account maintained under joint control of the owner and HUD (or Housing Finance Agency) into which is deposited all surplus cash generated over and above the allowable limited dividend. The disposition of residual receipts at the end of the Section 8 contract and/or mortgage is governed by the Regulatory Agreement.

RHS Letters of Priority Entitlement (LOPE): A letter issued to tenants displaced by rent increases as a result of prepayment, natural disaster or uninhabitable situation that allows them priority placement on the waiting list of USDA or HUD-sponsored rental housing.

Right of First Refusal: Right to match the terms and conditions of a third-party offer to purchase the property, within a specified time period. Holder must be notified of the third party offer and may be required to close by a designated date.

Rural Development (RD): Part of the U.S. Department of Agriculture, RD administers grant and loan programs to promote and support housing and essential community facilities development in rural communities.

Rural Housing Service (RHS): Part of the Department of Agriculture's Rural Development division, RHS is responsible for administering a number of rural housing programs.

Section 8 Vouchers: Administered by HUD's Office of Public and Indian Housing and local housing authorities, portable vouchers are allocated to individual households and provide a rental subsidy, limiting the tenant contribution to 30 – 40 percent of the household's adjusted income.

Section 8 Project-Based Contracts: Administered by HUD's Office of Multifamily Housing, Section 8 Project-Based Assistance takes the form of a contract between HUD and building owners, who agree to provide housing to eligible tenants in exchange for long-term tenant rental subsidies. Project-Based Assistance limits tenant contributions to 30 percent of the household's adjusted income. Assistance may be provided to some or all of the units in a project occupied by eligible tenants and is attached to the unit and stays with the housing after the tenant leaves.

Section 8 Project-Based Vouchers: Administered by HUD's Office of Public and Indian Housing and local housing authorities, the Section 8 Project-Based Voucher program allows local housing authorities to contract with property owners to ensure that Section 8 voucher holders will occupy up to 25 percent of a building's units. When assisted tenants move and take their vouchers with them, new voucher holders replace them.

Section 202: A HUD program created in 1959 that provided direct government loans or grants to non-profits to develop housing for the elderly and handicapped. Currently, the program provides capital grants and project rental assistance contracts.

Section 221(d)(3) BMIR: A HUD program under which the federal government provided direct loans at a below-market interest rate (3 percent) and mortgage insurance to private developers of low and moderate income housing. Active 1963 - 1970.

Section 236: A program under which HUD provided interest subsidies (known as Interest Reduction Payments or IRP subsidies) and mortgage insurance to private developers of low and moderate income housing. The interest subsidy effectively reduced the interest rate on the loan to 1 percent. Active 1968 - 1975.

Section 514 Loans and Section 516 Grants: RHS programs authorized by Sections 514 and 516 of the Housing Act of 1949. May be used to buy, build, improve or repair housing for farm laborers.

Section 515 Rural Rental Housing Program: Authorized by Section 515 of the Housing Act of 1949. Provides funds for loans made by RHS to nonprofit, for profit, cooperatives and public entities for the construction of rental or cooperative housing in rural areas for families, elderly persons, persons with disabilities or for congregate living facilities.

Section 533 Housing Preservation Grant Program (HPG): Authorized by Section 533 of the Housing Act of 1949. Grant funds are available from RHS to promote preservation of Section 515 properties.

Section 538 Rental Housing Loan Guarantees: Authorized by Section 538 of the Housing Act of 1949. Enables RHS to guarantee loans made by private lenders for the development of affordable rural rental housing. This program serves a higher income population than that served by the Section 515 program.

Section 811: of the American Homeownership and Economic Opportunity (AHEO) Act of 2000. Permits a prepayment and refinancing of a HUD Section 202 or 202/8 Direct Loan under certain circumstances.

Tax-Exempt Multifamily Housing Bonds: For certain qualified multifamily housing projects, Section 142 of the Internal Revenue Code authorizes tax-exempt Exempt Facility Bonds that provide access to Low Income Housing Tax Credits, and Section 145 authorizes so-called 501(c)(3) bonds for nonprofit owners.

Transfer of Physical Assets (TPA): A procedure in which a property is transferred to a new owner, subject to approval by HUD or RHS, depending on the pre-existing financing.

Umbrella Partnership Real Estate Investment Trust (UPREIT): A limited partnership in which the General Partner is a Real Estate Investment Trust, and which has the ability to exchange partnership interests as an alternative to a cash transaction, resulting in deferral of tax consequences.

Very-Low Income: Defined by HUD as households below 50 percent of area median income.

Wellstone Notice: Notice required to be given by owners of prepayment-eligible projects, prior to prepaying the subsidized mortgage or terminating mortgage insurance. Must be given to tenants, HUD, and state/local government, at least 150 days but no more than 270 days prior to prepayment.