



## Danger of the Opt-Out: Strategies for Preserving Section 8 Project-Based Housing in Philadelphia

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## Executive Summary

Nine thousand Philadelphia families living in subsidized housing are at risk of losing their affordable housing. This is because the law allows owners of Section 8 project-based housing to opt out of preserving their properties as affordable housing for Philadelphians.<sup>1</sup> Like many components of affordable housing, this risk disproportionately affects Philadelphians who are low-income and African American.<sup>2</sup> This report addresses the risk of opt-out for Philadelphia families by presenting new data analysis and compiling best strategies from other jurisdictions. The report recommends strategies for advocates and policymakers to prevent opt-out, preserve housing, and pursue racial equity in Philadelphia housing.

HUD has recognized the problem of racial inequity in affordable housing by requiring public housing agencies to actively address barriers to fair housing through the 2015 Affirmatively Furthering Fair Housing (AFFH).<sup>3</sup> In October 2016, the Philadelphia Housing Authority released its draft Assessment of Fair Housing (AFH) plan.<sup>4</sup> Like this report, Philadelphia's draft AFH plan recognizes the serious challenges of racial justice and housing. In Philadelphia, African Americans live in project-based housing in disproportionately large numbers, 63% of residents compared with 44% of the city's population. Data show that African Americans in Philadelphia also are disproportionately likely to carry a "severe housing cost burden," a HUD measure based on a resident paying 50% or more of her income for housing costs. The loss of any affordable housing, and particularly the loss of Section 8 project-based housing, will be hardest felt by minority populations already facing severe housing challenges. Thus, the preservation of Section 8 project-based housing is a critical racial equity issue in Philadelphia.

Section 8 project-based housing is owned by private owners who have subsidies and contracts with HUD. As explained in the report, owners can opt out of these contracts in different ways, allowing them to turn the housing units into private, market rate apartments or to sell the properties. There can be powerful economic incentives for private owners to opt out and eliminate these affordable housing units. When this happens, tenants struggle to find affordable replacement housing because the overall number of affordable housing units, both public and private, in Philadelphia is much smaller than the number of people who need these units.

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1. See NATIONAL LOW INCOME HOUSING COALITION, PROJECT-BASED RENTAL ASSISTANCE, 2017 ADVOCATES' GUIDE 4-24, [http://nlihc.org/sites/default/files/2017\\_Advocates-Guide.pdf](http://nlihc.org/sites/default/files/2017_Advocates-Guide.pdf).

2. See *Types of Housing Programs*, MASS LEGAL HELP (Dec. 2009), <http://www.masslegalhelp.org/housing/housing-programs-types>.

3. U.S. Dep't of Housing & Urb. Dev., *Fact Sheet: The Duty to Affirmatively Further Fair Housing*, <https://www.hudexchange.info/resources/documents/AFFH-Fact-Sheet.pdf>.

4. Div. of Housing & Cmty. Dev. & Philadelphia Housing Auth., *Affirmatively Furthering Fair Housing*, <http://www.phila.gov/dhcd/affirmatively-furthering-fair-housing/> (last visited June 7, 2017).

This report collects and analyzes data about Section 8 project-based properties in Philadelphia. The report’s analysis and findings are based on research concerning the state of Section 8 project-based properties in Philadelphia and nationally, legislative and other protection among other cities and states, and conversations with local and national housing advocates. The report identifies characteristics of these properties, their owners, and their neighborhoods to estimate the risk that owners will opt out of keeping these properties as affordable housing. Based on this analysis the report identifies 19 properties at highest risk for opt-out. Among these properties, the report identifies properties with the largest number of units to be the focus of advocacy. The report also recommends advocacy priorities based on when HUD contracts are expiring with a focus on the next five years and roughly twenty years from now.

**The report analyzes the risk of op-out for 86 Section 8 project-based properties and finds:**

- 44 ARE OWNED BY FOR-PROFIT COMPANIES, which have increased incentives to opt out of Section 8 contracts if it is more profitable to do so.
- 18 ARE IN GENTRIFYING CENSUS TRACTS, which are at greater risk of opt-out due to changing neighborhood demographics.
- 24 HAVE AN INSPECTION SCORE OF 89 OR LOWER, which may increase the risk of opt-out because owners try to avoid a contract abatement of foreclosure from HUD if their scores continue to fall or alternatively are waiting to improve the building after they have opted out.

**3 properties meet all three heightened risk criteria, and 16 properties meet two of the three.**

The report also surveys best practices in advocacy to address the risk of opt-out across the country. While there is no single way to address the problems created by owners opting out of Section 8 project-based housing, there are common approaches that have been successful. These include increasing the amount of notice tenants receive; expanding the parties that receive this notice to include advocates, government agencies and other organizations; and creating a right of first refusal or first purchase for tenants and their advocates.

**RECOMMENDATIONS FOR PHILADELPHIA**

- Philadelphia should supplement federal law by requiring owners to provide 24 months’ notice of opt-out.
- PHA should create and maintain an online database of every pending contract termination or mortgage prepayment.
- Philadelphia should require owners to provide notice to housing advocates, tenant associations, and the City itself.
- PHA should assist displaced residents with controlled rent and requiring owners to help find replacement housing.

When an owner opts out of Section 8 project-based housing, the effects for tenants are long lasting for Philadelphia. Any loss of affordable housing unit is a painful loss in a city with an already insufficient supply of affordable housing, a closed waiting list for public housing, and insufficient funding for existing tenant protections. These losses exacerbate the racial and socioeconomic inequity in our city. This report recommends advocacy priorities and highlights strategies to preserve Section 8 project-based housing as one step in achieving racial justice and preserving affordable housing for Philadelphians.

While this report focuses on housing shortages and inequalities in Philadelphia, the methodologies, strategies, and recommendations identified here could translate to other cities throughout the country. The risk factors highlighted within this report could be applied to the Section 8 project-based properties of other cities to determine what properties may face heightened immediate- or long-term risk of owner opt-out. Further, this report analyzes the policies in place in other cities and states in determining recommendations for heightened tenant protections. This analysis could be applied to other localities based on the policies and needs of each city and/or state.

### **I. Introduction: Is Philadelphia Opting Out of Affordable Housing?**

Philadelphia is one of the poorest large cities in America and it is struggling with a national problem: an insufficient supply of subsidized housing. The Philadelphia Housing Authority's October 2016 Assessment of Fair Housing plan begins to recognize the challenges Philadelphia faces. This report addresses one key part of the challenge of preserving affordable housing: declining supplies of Section 8 project-based housing.

Section 8 project-based housing is at risk of disappearing because private owners can opt out of their contracts with HUD, displace tenants, and diminish the supply of affordable housing. For this report, "opting-out" refers to when an owner chooses not to renew an expiring contract or prepays a mortgage, ending the requirement to maintain the housing as subsidized. The phenomenon of owners opting out of subsidized housing is a crucial challenge for housing advocates in Philadelphia, where more than 9,000 units are at risk of loss. To complicate matters, there are financial incentives for private owners of subsidized housing to convert to non-affordable uses, such as high-rent units or condominiums. And these incentives often get stronger as properties age and neighborhoods gentrify. All of these challenges are intertwined with the core problem of racial inequity in affordable housing.

It is crucial for Philadelphians, the Philadelphia Housing Authority, and housing advocates to understand the risk factors for the loss of affordable housing from owners opting out of Section 8 project-based housing and to think strategically about how to protect tenants. This report begins with a brief explanation of the relevant HUD programs, how affordable

housing is at risk, and how tenants are currently protected. It then uses extensive data to analyze which Section 8 project-based units are at highest risk for loss in Philadelphia and suggests priorities among those units. It next discusses strategies that advocates in other states and cities have used to secure tenant rights and long-term affordability to address the risk of opt-out. It concludes with advocacy solutions for preserving affordable housing in Philadelphia.

## II. Racial and Socio-Economic Inequity in the Loss of Section 8 Project-Based Housing

Philadelphia's loss of subsidized housing would be hardest felt among minority populations who already face the worst housing cost burdens. There is clear racial disparity in project-based housing in Philadelphia, which is only one component of the larger issues of the long history of segregation in housing and the newer challenges of gentrification. Regardless of the particular framing, the preservation of Section 8 project-based housing is a critical racial equity issue.

As the chart below demonstrates, minority and ethnic residents of project-based Section 8 housing are disproportionately represented.<sup>5</sup> Cumulatively, they account for over 80% of residents of all project-based housing in Philadelphia but only 65.5% of the entire city population.<sup>6</sup> Therefore, the loss of Section 8 project-based housing disproportionately affects the housing security of minority populations. This is most acutely the case for those identifying themselves as black or African American, who are historically a very disenfranchised population within the city.

HUD data supports this perspective. HUD defines households facing "severe housing cost burden" as any household in which more than 50% of the total income is devoted to housing costs.<sup>7</sup> Non-Hispanic Whites face the lowest percentage of severe housing cost burden, while all other minority populations face a higher percentage. Accordingly, if project-based housing is lost, the populations that already face the highest housing burdens would further disproportionately face increased burdens within the private market.

Racial inequity is also tied to socioeconomic inequity in Philadelphia. Data shows the loss of project-based housing disproportionately targets low-income families and individuals. According to national data from the Harvard Joint Center for Housing Studies, 70% to 79% of renters in

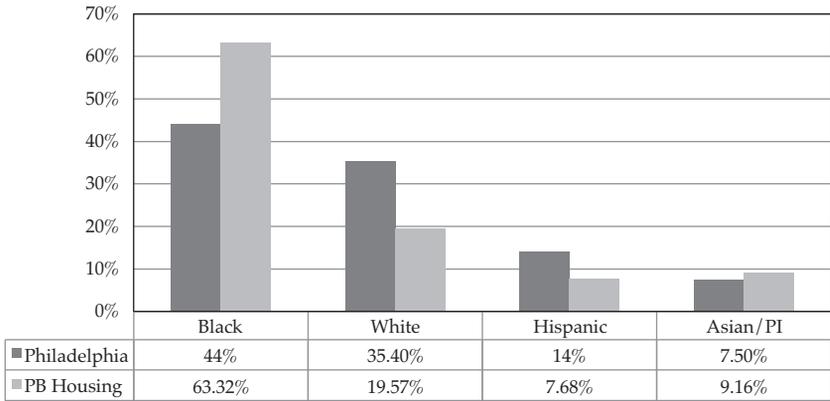
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5. For the percentages of race/ethnicity residents per project-based Section 8 property in Philadelphia, see U.S. Dep't of Housing & Urb. Dev., *AFFH Data for Map 5, AFFHT Map 5, Philadelphia, PA*, <https://www.hudexchange.info/resource/4845/affh-map-5-data/> (Apr. 2016).

6. *Quick Facts, Philadelphia County, Pennsylvania*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045216/42101> (last visited June 7, 2017).

7. U.S. Dep't of Housing & Urb. Dev., *CHAS: Background*, [https://www.huduser.gov/portal/datasets/cp/CHAS/bg\\_chas.html](https://www.huduser.gov/portal/datasets/cp/CHAS/bg_chas.html) (last visited June 7, 2017).

Racial Disparity in Philadelphia Project Based Housing



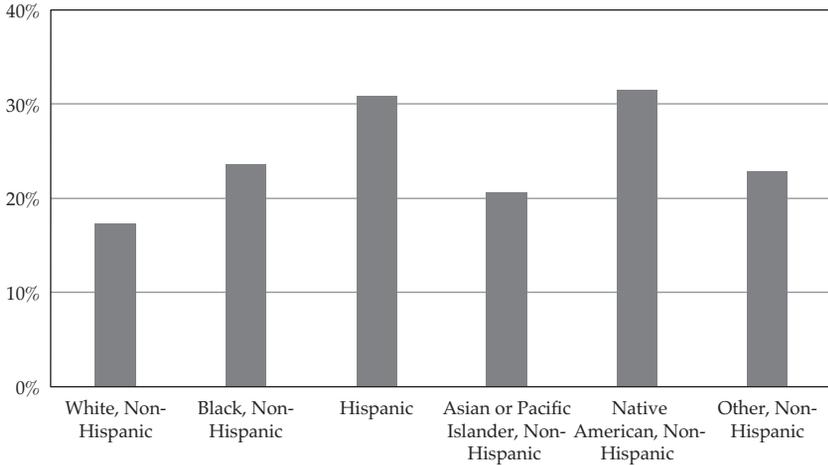
Philadelphia with income under \$15,000 face severe housing cost burdens.<sup>8</sup> Given Philadelphia’s poverty rate of 26% (defined as an income below \$12,082 for an individual and \$24,257 for a family of four) and a deep poverty rate of 12.9% (defined as an income below \$5,700 for an individual and \$11,700 for a family of four), an alarming number of Philadelphians are in this position.<sup>9</sup>

Clearly, any loss in subsidized housing directly impacts lower income individuals and families because they are, by definition, the tenants living in those units. However, the data shows that losing Section 8 project-based housing is exacerbating the inequity that already exists in Philadelphia housing. Our data analysis in the next section identifies the project-based housing that is at the highest risk for owners opting out. Although we were not able to explicitly include the race of housing residents as a variable in our analysis, the preservation of project-based housing by reducing owner opt-out is necessarily a racial justice issue. Our analysis of

8. *Low-Income Households Face Severe Housing Cost Burdens*, HARVARD JOINT CENTER FOR HOUSING STUDIES, <http://harvard-cga.maps.arcgis.com/apps/MapSeries/index.html?appid=9a24bdf3ae8c4272a58b0309890d5835> (last visited June 7, 2017).

9. For further information about poverty and deep poverty rates in Philadelphia, see Pew Charitable Trusts, *Philadelphia: The State of the City, a 2016 Update* (Mar. 2016), [http://www.pewtrusts.org/~media/assets/2016/03/philadelphia\\_the\\_state\\_of\\_the\\_city\\_2016.pdf](http://www.pewtrusts.org/~media/assets/2016/03/philadelphia_the_state_of_the_city_2016.pdf); Alfred Lubrano, *Of big cities, Phila. worst for people in deep poverty*, PHILLY.COM (Mar. 19, 2013, 3:01 AM), [http://www.philly.com/philly/news/20130319\\_Of\\_big\\_cities\\_\\_Phila\\_\\_worst\\_for\\_people\\_in\\_deep\\_poverty.html](http://www.philly.com/philly/news/20130319_Of_big_cities__Phila__worst_for_people_in_deep_poverty.html); Alfred Lubrano, *Philadelphia Has Worst Poverty Among Major Cities*, GOVERNING (Sept. 30, 2015), <http://www.governing.com/topics/health-human-services/philadelphia-has-worst-poverty-among-major-cities.html>.

Proportion with Severe Cost Burden (HUD data)



these issues allows activists to pursue racial equity in housing in a more focused way.

III. Background: Subsidized Housing Law in Philadelphia

Our data analysis begins with the history of subsidized housing law and particularly Section 8 housing. The looming crisis of affordable housing loss is a direct result of the expiration of contracts in created by the Section 8 program in the 1960s. Congress created this program, but did not plan for its evolution, causing the affordable housing problems the country now faces.

A. Section 8 Project-Based Developments

In the 1960s, Congress created several multifamily subsidized housing programs (MFH). In contrast to traditional public housing, in which a public housing agency owns and operates housing, private landlords or corporations own and operate multifamily subsidized housing.<sup>10</sup> In these programs, the private landlord receives a subsidy from HUD in exchange for providing affordable housing.<sup>11</sup> Typically, this entails renting to low-income or moderate-income tenants.<sup>12</sup> Subsidies can be in the form of rental assistance, also known as Section 8 project-based assistance,

10. See *Types of Housing Programs*, supra note 2.

11. See *Differences Between Public and Subsidized Housing*, MASS LEGAL HELP (Dec. 2009), <http://www.masslegalhelp.org/housing/public-subsidized-differences>.

12. *Id.*

or subsidized mortgages.<sup>13</sup> Some properties have both types of subsidies.<sup>14</sup> However, all multifamily subsidized housing have one thing in common: the subsidy stays with the private owner's property and not with a particular tenant.<sup>15</sup>

Section 8 programs are part of the historical evolution of federal affordable housing programs. The oldest program that subsidized financing to private developers was Section 221(d)(3). This program, also called below-market-interest-rate (BMIR), subsidized financing at 3 percent interest rates.<sup>16</sup> Rents to tenants were a flat HUD-approved rate.<sup>17</sup> However, the BMIR subsidized financing was not enough to keep rents affordable because it failed to consider the operating costs of the landlord.<sup>18</sup> This program was replaced with Section 236 in 1968 to provide multifamily housing for low-and moderate-income families.<sup>19</sup> Section 236 remedied this problem by providing market rate interest on mortgages coupled with "interest reduction payments" in order to lower the owner's operating costs.<sup>20</sup> In exchange for receiving subsidies on the mortgage, the owner is required to rent to eligible low-income tenants and charge HUD-approved rent.<sup>21</sup> Also, the owner signs a regulatory agreement and/or a "use and occupancy" restrictions with HUD for the life of the mortgage, typically 40 years, requiring compliance with HUD rules, regulations, and housing quality standards.<sup>22</sup> Both the Section 221(d)(3) and 236 programs are no longer offering new mortgages, but buildings already in the program keep their subsidies.<sup>23</sup>

The mortgage subsidies in these early programs were not sufficient to lower tenants' rents to traditional public housing rates of 30% of a tenant's income because the programs did not provide operating subsidies to offset operating costs.<sup>24</sup> Additionally, many owners encountered financial

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13. NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANT'S RIGHTS § 1.2.4 (4th ed. 2012).

14. *Id.*

15. See *What Types of Multifamily Subsidized Housing Programs Are There?*, MASS LEGAL HELP (Dec. 2009), <http://www.masslegalhelp.org/housing/multi-family-subsidized-housing>.

16. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, § 1.2.4.1.

17. See *What Types of Multifamily Subsidized Housing Programs Are There?*, *supra* note 15.

18. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, § 1.2.4.1.

19. *Id.*

20. *Id.*

21. See *What Types of Multifamily Subsidized Housing Programs Are There?*, *supra* note 15.

22. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, § 13.8.1.4.1.

23. See *What Types of Multifamily Subsidized Housing Programs Are There?*, *supra* note 15.

24. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, § 1.2.4.1.

trouble that resulted in mortgage default, HUD acquiring the property, foreclosing, and selling the property to pay off the debts. In response, Congress created such programs as property and utility subsidies and rental assistance. Early forms of rental subsidies that worked to keep mortgage subsidy programs viable include the Section 236 Rental Assistance Program (RAP) and the Rent Supplement Program. Both programs were developed prior to the Section 8 program and made payments on behalf of very low-income tenants unable to pay the standard rent contribution of 30% of their income.<sup>25</sup>

Because owners were struggling to keep their rents affordable and pay their mortgages, by the mid-1970s, HUD created a new program, project-based Section 8 assistance, to deal with this crisis.<sup>26</sup>

*B. Project-Based Rental Assistance*

In 1974, HUD created project-based Section 8 assistance for existing multifamily housing to remain affordable to extremely low or very low-income households. Some programs funded the rehabilitation of deteriorating physical conditions to preserve affordable housing.<sup>27</sup> We focus on rental assistance because it is the program in which the opt-out phenomenon occurs.

Many multifamily housing projects are unaffordable to very low-income households because the approved HUD rent is still too high. Project-based Section 8 rental assistance assists these families in obtaining adequate housing by supplementing their rent. This is typically done by providing a subsidy, which is tied to a specific development. Although several HUD programs qualify for project-based Section 8 rental assistance, we will narrow our focus to those programs that are active in Philadelphia.

**PROGRAMS RECEIVING PROJECT-BASED ASSISTANCE**

- Newly constructed buildings under Section 8
- Buildings that are substantially rehabilitated
- State agency set-aside
- Loan Management Additional Assistance
- Newly constructed buildings under Section 515 (rural rental housing)
- Property disposition programs
- Sections 202/811 Supportive Housing Programs for the elderly or disabled

25. See *What Types of Multifamily Subsidized Housing Programs Are There?*, *supra* note 15; see also 2017 ADVOCATES' GUIDE, *supra* note 1, at 11-9.

26. 2017 ADVOCATES' GUIDE, *supra* note 1, at 11-9.

27. See *What Types of Multifamily Subsidized Housing Programs Are There?*, *supra* note 15.

For owners seeking project-based assistance, the first step is a contract with HUD. HUD enters into a Housing Assistance Payment (HAP) contract with a private owner. Owners can be individuals, non-profit organizations, and/or profit-motivated corporations. Funding for the HAP program is provided annually, however, contracts may be renewed in one-, five-, or twenty-year increments. Typically, tenants pay 30% of their adjusted income for rent and utilities. HAP keeps units affordable by paying the owner the difference between the contract rent and the tenant's portion.<sup>28</sup>

An additional subset of project-based Section 8 rental assistance is allocated for housing for people with disabilities and seniors. Section 811 provides supportive housing for people with disabilities and Section 202 provides for the elderly. Rental assistance in these programs requires a Project Rental Assistance Contract (PRAC), instead of a HAP contract.<sup>29</sup>

In 1997, Congress stopped funding affordable housing programs and allowed owners to prepay their mortgages without restrictions. This exception applies to Section 8 project-based properties. When an owner prepays the mortgage or the property approaches the maturity of their mortgage, the regulatory and use restrictions expire, threatening displacement of tenants and a loss of affordable units.<sup>30</sup>

### C. Owners Can Opt Out of Subsidized Housing

For many Philadelphians, the loss of subsidized housing through the “opt-out” problem threatens a basic right to housing. Tenants are facing the possibility of displacement and even homelessness.<sup>31</sup> Property owners have several ways to take a property out of the affordable stock of multi-family subsidized housing. This report focuses on two ways an owner can “opt out” of affordable housing: choosing not to renew an expiring contract or prepaying a mortgage, ending the requirement to maintain the housing under HUD use restrictions. Both of these options share a common characteristic: the decision to effectively remove these properties from the affordable housing stock remains in the property owner's hands.

Owners face economic incentives to opt out and convert to non-affordable uses, such as higher market rent units or condominiums. Properties are aging, and maintaining subsidized housing to HUD standards is costly. Similarly, many of these properties increase in value due to gentrification of their surrounding neighborhoods. For many owners, “opting

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28. See 2017 ADVOCATES' GUIDE, *supra* note 1, at 4-23.

29. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, § 1.2.4.3.

30. *Id.*

31. See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & LOS ANGELES COMMUNITY ACTION NETWORK, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES: A REPORT TO THE U.N. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (July 3, 2014), [https://www.nlchp.org/CERD\\_Housing\\_Report\\_2014.pdf](https://www.nlchp.org/CERD_Housing_Report_2014.pdf).

out” is the more profitable choice.<sup>32</sup> Additionally, owners may opt out because they prefer the “flexibility of lesser-regulated market rate operation.”<sup>33</sup> Because no new units are being constructed, keeping this type of subsidized housing within the affordable stock is a challenge for housing advocates in Philadelphia and nationally.<sup>34</sup>

### 1. Contract Renewal

The affordability of subsidized housing is limited to the specific term of a contract or duration of a mortgage loan, typically 20 years. When a contract expires, private owners may opt out of the affordability stock by choosing not to renew the contract. Developments with a project-based Section 8 contract are obligated to rent to low-income tenants only for the term of the contract.<sup>35</sup> When an assistance contract expires, neither HUD nor the property owner has an obligation to renew. Owners face a choice to “opt in” by renewing the contract or “opt out” by not renewing an expiring contract.

### 2. Mortgage Maturity or Prepayment

Where the subsidy is in the form of a mortgage, use restrictions on rent levels and tenant eligibility are tied to the loan. The maturity of the loan or a prepayment triggers the end of the use restrictions.<sup>36</sup> As a result, rents are raised to market level and become unaffordable to most tenants. Both of these phenomena threaten displacement of tenants and the loss of affordable housing. Although most BMIR mortgages had an original 40-year term, HUD allows owners to prepay the mortgage after 20 years. Prepayment allows owners to terminate the income and rent restrictions and Section 8 subsidies. Like prepayment, when a HUD-subsidized mortgage matures, it brings the expiration of the regulatory and use restrictions.<sup>37</sup>

### 3. Other Renewal Options

There are options other than opting out or renewing under current Section 8 contract terms: mark-up-to-market or mark-to-market. Both of these programs provide incentives to owners to renew—with the goal of preserving affordable housing.

Some properties with both a subsidized mortgage and rental assistance have rents that exceed market rent. In this scenario, HUD is required to

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32. See POLICYLINK, *EQUITABLE DEVELOPMENT TOOLKIT: EXPIRING USE: RETENTION OF SUBSIDIZED HOUSING* 101 (Aug. 2002), <http://www.policylink.org/sites/default/files/expiring-use.pdf>.

33. See *id.*

34. See Staff of the National Housing Trust, *Project-Based Rental Assistance, 2016 Advocates' Guide, National Low Income Housing Coalition*, [http://nlihc.org/sites/default/files/2016AG\\_Chapter\\_4-6.pdf](http://nlihc.org/sites/default/files/2016AG_Chapter_4-6.pdf).

35. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, at § 1.2.5.5.

36. See *EQUITABLE DEVELOPMENT TOOLKIT*, *supra* note 32.

37. See HUD HOUSING PROGRAMS: TENANT'S RIGHTS, *supra* note 13, § 1.2.4.

reduce rents to market level upon renewal.<sup>38</sup> Because this puts FHA insured mortgages at risk of default, HUD created a mark-to-market program to discourage owners from opting out of contract renewals. Owners may apply for the mark-to-market program, but are not guaranteed acceptance. In this program, an owner can restructure a HUD mortgage to be able to afford operating a property with lower market rents. This option is conditioned on accepting subsidies for an additional 30-year term. The mark-to-market program also offers a short-term alternative: decline the mortgage restructuring and renew the contract for an additional year.<sup>39</sup> Additionally, participation in mortgage restructuring may require a conversion from a project-based subsidy that stays with the development to tenant based vouchers (TPVs), which are not connected to any specific property. The allocation of TPVs is further conditioned on HUD's determination of vacancy rates in the area.<sup>40</sup>

On the other hand, properties that have below market rents may be eligible to raise rents to market level through the mark-up-to-market program upon renewal. Owners of eligible properties may choose to participate in this program if their developments are in high-cost, gentrifying neighborhoods. This program provides an incentive to remain in the Section 8 program instead of opting out. Additionally, this raise in rents is conditioned on a renewal of the contract for a term of five years.<sup>41</sup>

There are several other ways for affordable housing units to disappear, but these are dependent on HUD action rather than owner opt-out. If renewal funding is inadequate, HUD may shortchange owners and require tenants to pay higher rents. HUD may even refuse to renew the Section 8 contract.<sup>42</sup> HUD may also terminate the contract and end the subsidy due to subpar physical condition of the property. Also, HUD may foreclose upon a BMIR mortgage. Lastly, HUD and the owner have the right to terminate the contract subject to the terms of the rental assistance contract.

#### *D. Existing Tenant Protections When an Owner Opt's Out*

There are some legal protections for tenants when an owner of a Section 8 property opts out of a contract or mortgage. We describe these existing protections because they are important context for the additional protections that we recommend Philadelphia housing advocates pursue.

##### 1. One-Year Notice of Non-Renewal

Federal law requires that all private owners of Section 8 properties provide both HUD and tenants with one-year notice prior to the termination

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38. *Id.*, § 1.2.4.1.

39. *Id.*

40. *See id.*, § 12.4.4.

41. *Id.*

42. *See id.*

or expiration of the contract.<sup>43</sup> This notice must provide the owner’s intentions to either renew or opt out of the contract.<sup>44</sup> It must also state that in the event of opt-out, HUD will provide tenant-based rental assistance to eligible tenants.<sup>45</sup> This notice must be hand delivered or mailed to each unit (taping on the door is not sufficient).<sup>46</sup> Owners are encouraged but not required to provide notice in the tenants’ language if they speak anything other than English.<sup>47</sup>

Owners may not evict tenants or increase rents until notice has been given and one year has passed.<sup>48</sup> HUD has the discretion to renew expiring contracts for whatever period of time is needed in order to ensure that tenants receive notice at least one full year in advance of opt-out.<sup>49</sup> If an owner initially intends to renew but later decides to opt-out, a new one-year notice must be provided.<sup>50</sup>

<p><b>REQUIREMENTS FOR ONE-YEAR NOTICE OF CONTRACT NON-RENEWAL</b></p> <ul style="list-style-type: none"> <li>• Specifies opt-out or renewal intention</li> <li>• States that HUD may provide tenant base vouchers</li> <li>• Service directly to each unit or mailed to each tenant</li> <li>• Language provided in HUD samples must be followed in notice</li> <li>• Statement that owner will honor tenants’ rights to remain if property continues to be offered for rental housing, the public housing authority finds the rent reasonable, and there is no cause for eviction</li> </ul> <p style="text-align: center;"><b>Encouraged but Not Required</b></p> <ul style="list-style-type: none"> <li>• In tenant’s language if other than English</li> <li>• That owner provides as much information as possible about opting out and reasoning for doing so</li> </ul>
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In contrast to contract non-renewal where tenants receive a year of advance notice, owners are required to give tenants only 150 days’ advance notice of their intention to prepay. However, upon prepayment, tenants are eligible for tenant protection vouchers (TPVs) or an enhanced voucher that allows a tenant to remain in the property or find new affordable housing. Unlike prepayment scenarios, tenants living in a development with

43. See 42 U.S.C. § 1437f(c)(8) (2012).

44. See U.S. HOUSING & URB. DEV. OFFICE OF HOUSING, SECTION 8 RENEWAL POLICY GUIDE BOOK, at App. 11-1 (Dec. 9, 2010), <http://www.hud.gov/offices/hsg/mfh/exp/guide/s8renew.pdf>.

45. *Id.*

46. See *id.* at 11-5.

47. See *id.*

48. *Id.* at 11-6.

49. *Id.*

50. See *id.*

affordability protections but without rental assistance do not qualify for enhanced vouchers when the mortgage expires.

## 2. Enhanced Vouchers

In certain circumstances, HUD may provide tenants with enhanced vouchers in the event of contract expiration or mortgage prepayment. This voucher is tied to the specific property, allows the tenants to remain there, and covers any increase in rent that may occur as long as the public housing authority determines that the rent is reasonable.<sup>51</sup> If a tenant with an enhanced voucher moves away from the property, the enhanced voucher is eliminated and that unit is removed from project-based housing stock.<sup>52</sup> The tenant still is eligible for a housing choice voucher at that point, but that is tenant-based and distinct from any property.<sup>53</sup> However, the availability of enhanced vouchers depends on HUD funding and is often limited to tenants who live in low-vacancy areas, which HUD defines as counties that have a moderate to tight rental market for low-income tenants.<sup>54</sup> For the year 2016, Philadelphia is not listed as a low-vacancy county, making it harder to obtain an enhanced voucher.<sup>55</sup>

## 3. Tenant Protection Vouchers

Regular tenant protection vouchers are similar to housing choice vouchers and do not provide the enhanced feature of covering increase rent that enhanced vouchers have.<sup>56</sup> Instead of allowing tenants to stay at a specific property, this voucher allows them to find other affordable housing.<sup>57</sup> Tenant protection vouchers are provided to residents to find other affordable housing in the following situations:

- When public housing is demolished, sold, or otherwise converted;
- When private project-based contracts are terminated or not renewed by HUD (as opposed to the owner) due to owner's breach of the contract or otherwise not fulfilling the requirements;
- When private housing with a HUD-subsidized mortgage forecloses;

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51. 2017 ADVOCATES' GUIDE, *supra* note 1, at 4-23.

52. *See id.*

53. *See id.*

54. *See* U.S. Dep't of Housing & Urb. Dev., Notice PIH 2016-12, 2-3 (Aug. 18, 2016), <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH-2016-12andH2016-07.pdf>.

55. *See id.* at 57-58 (of the Pennsylvania counties, Philadelphia is not listed).

56. *See* 2017 ADVOCATES' GUIDE, *supra* note 1, at 4-50.

57. *See id.*; *see also* U.S. Dep't of Housing & Urb. Dev. Office of Multifamily Housing Programs, *Tenant Protection Vouchers* (Aug. 26, 2015), <https://www.hudexchange.info/course-content/hud-multifamily-affordable-housing-preservation-clinics/Preservation-Clinic-Tenant-Protection-Vouchers.pdf>.

- When certain program (Rent Supplement Payments Program or Rental Assistance Payment Program) contracts expire, are terminated, or their underlying mortgages are prepaid;
- When certain Section 202 loans are prepaid.<sup>58</sup>

#### **IV. Data Analysis: The Risk of Losing Philadelphia's Section 8 Project-Based Contracts**

Because Section 8 project-based housing relies on private owners, it is crucial for housing advocates to predict when an owner might opt out of Section 8 by not continuing a contract or mortgage. One way to do this is to identify the properties that are most at risk for opt-out, so as to prioritize advocacy to preserve affordable, project-based housing in Philadelphia.

This section of the report analyzes HUD data to identify properties that are most in danger of opt-out. This analysis gives housing advocates the ability to prioritize advocacy based on the risk of opt-out and also the impact of preservation of units on the City. We considered variables including the expiration date of the contract, the profit status of the owner, the property's Census tract, the physical inspection score of the property, the length of the contract term, and the number of units in the property. By cross-referencing these factors among properties, we highlighted those that have the greatest risk of disappearing due to owner opt-out. Although we do not have specific racial or socioeconomic data for each property, our analysis shows that properties that are at high risk for opt-out are in areas that are either historically the object of underinvestment and high minority populations, or that are currently gentrifying and are at risk of exacerbating racial inequity in Philadelphia.

##### *A. Methodology*

Our analysis is based on a collection of data from disparate HUD and PHA sources. This is because neither HUD nor PHA maintains a comprehensive, unified source of information about Section 8 project-based properties. The HUD sources include the Multifamily Assistance and Section 8 Contracts Database<sup>59</sup> and Multifamily Portfolio Datasets—Contract Renewal Information—All Contracts.<sup>60</sup> The HUD datasets were last updated on September 29, 2016. We also cross-referenced our data with PHA's

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58. See 2017 ADVOCATES' GUIDE, *supra* note 1, at 4-50.

59. Download the Multifamily Assistance and Section 8 Contracts Database, U.S. DEP'T OF HOUSING & URB. DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/exp/mfhdiscl](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/exp/mfhdiscl) (updated as of Oct. 26, 2016).

60. Multifamily Portfolio Datasets, U.S. DEP'T OF HOUSING & URB. DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/presrv/mfhpreservation](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/mfhpreservation) (updated as of Oct. 26, 2016).

listing of HUD Section 8 subsidized units in Philadelphia.<sup>61</sup> PHA gives no indication of when its list was last updated but the URL to the list implies that it was posted on October 3, 2013, so we relied more heavily on the HUD datasets, using the PHA list only to provide additional information that was not provided on the HUD datasets. All of our gentrification data was pulled from *Governing's* Philadelphia Gentrification Maps and Data.<sup>62</sup> *Governing's* analysis is based on 2009–2013 American Community Survey<sup>63</sup> and US 2010 Longitudinal Tract Data Base.<sup>64</sup>

Our compiled data set from these sources resulted in a list of 151 properties in Philadelphia that HUD broadly determines are under Section 8 contracts. The contracts are largely identified as Housing Assistant Payments (HAP) contracts and Payment Rental Assistance Contracts (PRACs). PRACs concern capital advances and are granted by HUD only on a yearly basis, based on the availability of allocated funding. HUD did not include any PRAC analysis in its analysis of characteristics of contracts in which owners are more likely to opt in or out.<sup>65</sup> PRAC contracts are so dissimilar to multi-year HAP contracts that we have not included them in our analysis and have only focused on HAP contracts. HAP contracts represent 86 properties and 9,177 housing units in Philadelphia, while PRAC contracts represent 65 properties and 2,679 units. Thus, HAP contracts represent a larger share of housing stock in the city.

We made several assumptions in the analysis of our data. First, in determining the expiration date for HAP contracts, we operated under the assumption that the HUD field “tracs\_overall\_expiration\_date” represented the final expiration date of contracts in place for any particular property.<sup>66</sup> This is important because, although the data suggests it is the expiration date, it could signify a possible extension date or other interim step.

61. *HUD Section 8 Subsidized Units in Philadelphia*, PHILADELPHIA HOUSING AUTH., [http://www.pha.phila.gov/media/101285/hud\\_section\\_8\\_subsidized\\_units\\_in\\_philadelphia\\_10\\_3\\_13.pdf](http://www.pha.phila.gov/media/101285/hud_section_8_subsidized_units_in_philadelphia_10_3_13.pdf) (last visited June 7, 2017).

62. *Philadelphia Gentrification Maps and Data*, GOVERNING, <http://www.governing.com/gov-data/philadelphia-gentrification-maps-demographic-data.html> (last visited June 7, 2017).

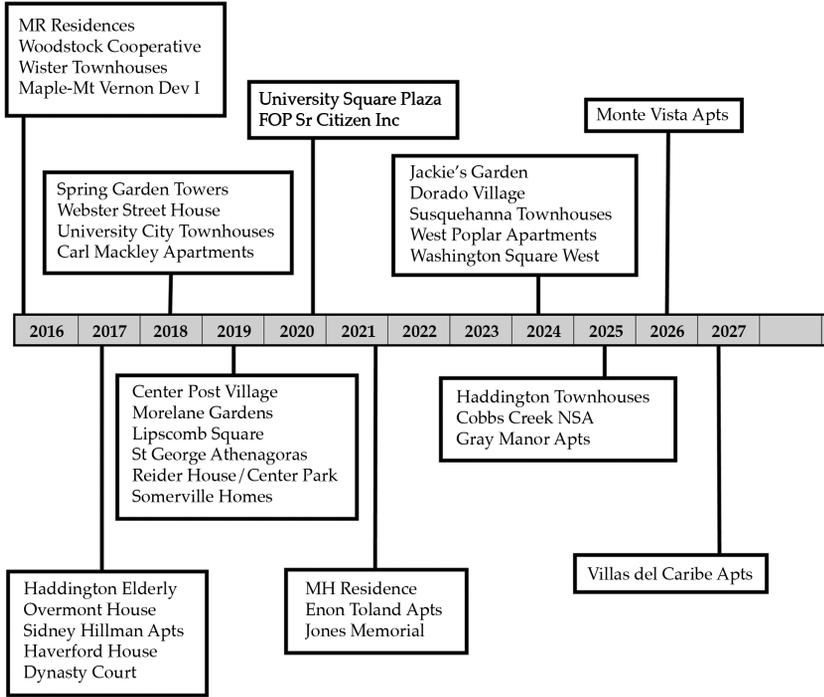
63. *American Community Survey 5-Year Data (2009–2014)*, U.S. CENSUS (Sept. 15, 2016), <http://www.census.gov/data/developers/data-sets/acs-5year.2013.html>.

64. John Logan et al., *Census geography: Bridging data for Census tracts across time*, DIVERSITY AND DISPARITIES (last visited June 7, 2017), <https://s4.ad.brown.edu/Projects/Diversity/Researcher/Bridging.htm>.

65. See U.S. DEP'T OF HOUSING & URB. DEV. OFFICE OF POLICY DEV. & RESEARCH, *MULTIFAMILY PROPERTIES: OPTING IN, OPTING OUT AND REMAINING AFFORDABLE* (2006), [https://www.huduser.gov/Publications/pdf/opting\\_in.pdf](https://www.huduser.gov/Publications/pdf/opting_in.pdf) [hereinafter HUD Study 1]; U.S. DEP'T OF HOUSING & URB. DEV. OFFICE OF POLICY DEV. & RESEARCH, *OPTING IN, OPTING OUT A DECADE LATER* (2015), [https://www.huduser.gov/portal/sites/default/files/pdf/508\\_MDRT\\_Opting%20In\\_Opting%20Out.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/508_MDRT_Opting%20In_Opting%20Out.pdf) [hereinafter HUD Study 2].

66. See *Multifamily Assistance and Section 8 Contracts Database*, *supra* note 59.

Timeline of Contract Expiration Dates

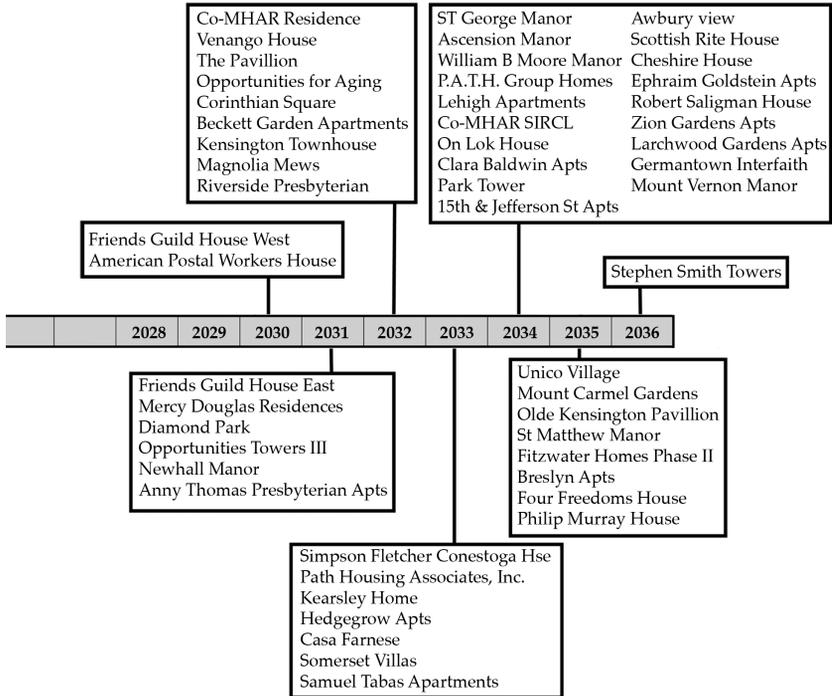


Nonetheless, we considered it a reasonable assumption that this date signifies when the loss of housing is likely to occur. Second, in determining the relevant contracted units per property, we used the HUD field "maximum\_contract\_unit\_count."<sup>67</sup> While this represents the maximum amount of units under contract, it does not necessarily mean that it is the number of units currently available or occupied through Section 8.

*B. Location of Public Housing in Philadelphia*

There are 86 properties in the City of Philadelphia that are under HAP contracts with HUD. These properties represent 9,177 housing units under Section 8 contracts. Eleven properties are in the Center City region of the city (the downtown business epicenter of Philadelphia). Forty-two properties are in the North and Northwest regions of the city, which include various low-income neighborhoods and some gentrifying sections. Twenty-five properties are scattered through West Philadelphia, a region separated

67. *Id.*



by the Schuylkill River and which includes major universities and a mix of high- to low-income neighborhoods. Finally, seven properties are in the Northeast region of the city, a more suburban area of the city that is not as easily accessible by public transportation as are other sections.

*C. Upcoming Contract Expirations*

Because the year these contracts expire dictates how immediate the danger of opt-out is, we looked at the range of contract expiration dates. The expiration dates of the HAP contracts for these properties span a range from 2016 to 2036. See above for a complete timeline of the expiration dates of all of the current HAP contracts in Philadelphia.

We then divided the expiration dates into five-year increments, 2016–2020, 2021–2025, 2026–2030, and 2031–2036. A pattern emerges in which a significant majority of contracts are expiring either in the earliest range, 2016 until 2020 (21 properties) or in the latest range, 2031 and beyond (50 properties). Eleven contracts are expiring between 2021 and 2025 and four between 2016 and 2030. This may be because of a cyclical effect starting with the boom in public housing in the 1960s, so many of

the contracts have followed the same twenty- to thirty-year cycle that has come to a peak again in this decade. As such, many contracts have been renewed for a new twenty-year cycle in the past few years, and those expiring in the shortest term are a part of that same expiration cycle. This pattern suggests that affordable housing advocates first face the challenge of preserving the most immediate housing set to expire in the next few years and then have the opportunity to create a long-term strategy for preserving contracts expiring beyond 2030, while working on targeted properties in the interim years.

#### D. Gentrifying Census Tracts

As we analyzed the location of Section 8 project-based properties, we wondered whether the properties were located in neighborhoods that are considered to be gentrifying within Philadelphia. This is an important question because affordable housing preservation and racial equity are inextricably linked, and the phenomenon of gentrification is intertwined with racial equity. Underscoring the importance of this question, Philadelphia's draft AFH—released shortly before publication of this report—demonstrates a clear concern about gentrification and its effects on low-income residents, who are largely people of color.<sup>68</sup>

While there have been various studies on the effects of gentrification for low-income residents, the results vary, most likely in part because gentrification is difficult to quantify.<sup>69</sup> Project-based Section 8 housing may be particularly sensitive to gentrification because it involves private owners participating in a government funded system that is contracted for twenty-year terms. Not only have neighborhoods experienced significant change in the last twenty years, owners also may be reluctant to renew for long periods of time as neighborhoods continue to change. The property location within a gentrifying tract can indicate whether it may be more profitable for the owner to enter the private market or alternatively harder to sustain affordable housing due to increased property taxes or external pressures. HUD studies also suggest that properties with a low rent compared to the surrounding fair market rent are more likely to opt out.

We used *Governing Magazine's* analysis of gentrification in Philadelphia as the basis of our own analysis. *Governing's* definition of gentrifying Census tracts are lower-income tracts that have showed substantial growth in

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68. CITY OF PHILADELPHIA & PHILADELPHIA HOUSING AUTH., ASSESSMENT OF FAIR HOUSING (Oct. 27, 2016), [http://www.pha.phila.gov/media/170834/assessment\\_of\\_fair\\_housing\\_2016-web.pdf](http://www.pha.phila.gov/media/170834/assessment_of_fair_housing_2016-web.pdf).

69. For a sample of gentrification studies, see Justin Feldman, *Gentrification, Urban Displacement and Affordable Housing: Overview and Research Roundup*, JOURNALIST'S RESOURCE (Aug. 15, 2014), <http://journalistsresource.org/studies/economics/real-estate/gentrification-urban-displacement-affordable-housing-overview-research-roundup>.

home values and adult residents with bachelor's degrees.<sup>70</sup> We believe these properties are at a higher risk of opt-out because owners will have an increased incentive to switch to the private market due to the increased property values and changing demographics in the area. This theory is comparable to a HUD study that has recommended looking into small area fair market rents by zip code in the future to accommodate fluctuating values.<sup>71</sup> We found that using Census tracts provides for even greater specificity.

**Our choice to use *Governing's* definition of gentrification:**

There is no universal measure of gentrification. Philadelphia and PHA's AFH uses Pew Charitable Trust's recent study, *Philadelphia's Changing Neighborhoods*. The Pew Charitable Trust uses an income-based model to define gentrification. As that study explains, this model does not capture the changing neighborhoods around universities in the city because students living in these areas report limited or no income. The Pew model rejects using property valuables in its definition of gentrification. Because our report is concerned with a property owner's choice to enter the private rental market, property values are highly relevant to our analysis. As a result, we have chosen to use *Governing's* measure of gentrification, which includes these values.

Based on the *Governing* model, 84 out of the 383 Census tracts in Philadelphia were gentrifying from 2000 to 2013. Of the 86 Section 8 project-based properties on our list, 18 properties fall within one of these gentrifying Census tracts. This equates to about 21% of the total properties and 26% of the total contracted units of housing.

Five of these properties are a few blocks from Temple University in North Philadelphia. An additional two properties are near the University of Pennsylvania/Drexel University. As such, seven out of the 18 properties are in university neighborhoods. The demand for both university-provided and private student housing may function differently than standard private housing in other neighborhoods so the future of these properties may diverge from the rest of the market and may require different advocacy strategies.

The rest of the properties in gentrifying Census tracts are generally in parts of northern Philadelphia, West Philadelphia, and Center City, with one property each in the farther northeast and southwest portions of the city.

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70. See *Philadelphia Gentrification Maps and Data*, *supra* note 62.

71. See HUD Study 2, *supra* note 65, at App. 3.

These properties located in gentrifying tracts present heightened challenges to affordable housing advocates because private (particularly, but not necessarily limited to, for-profit) owners have increased incentives to rent or sell on the private market.

#### *E. Nonprofit vs. For-Profit Status of Owners*

While the gentrifying nature of a Census tract suggests external profit motives for an owner, we were also interested in characteristics of owners that might provide insight into that owner's likelihood to opt out of a Section 8 project-based contract. According to a HUD study from 2005, properties owned by for-profit entities were six times more likely to opt out than nonprofit entities.<sup>72</sup> A 2015 HUD follow-up study found the same result, although to a lesser degree, finding that for-profit owners were twice as likely to opt out.<sup>73</sup> Based on this analysis, we used our data to identify the nonprofit or for-profit status of the owner of each property.

We found that 44 of our list of 86 HAP properties are owned by entities that are for profit in some way—labeled as either profit-motivated or limited dividend in HUD data. A total of 41 properties are owned by nonprofit entities. (We were unable to identify the status of the owner of one property on our list). Despite the relatively even split among properties, the for-profit properties represent 5,921 units while the nonprofit properties represent only 3,256 units. As the HUD study notes, this suggests that a majority of units in Philadelphia are at higher risk of opt-out due to the owner's for-profit status. This compounds our gentrification analysis because, in addition to a for-profit owner's general profit motivation, the external factor of gentrification increases the likelihood of an owner opting out of a Section 8 project-based contract. Profit-motivated owners are far more likely to opt out when they are able to obtain higher rents on the private market.

#### *F. Real Estate Assessment Center (REAC) Inspection Scores*

In addition to characteristics of the property owner and neighborhood, we also wondered whether characteristics of the property itself increased the risk of opt-out. HUD properties are inspected and receive a score based on the physical condition of the property. An inspection score could indicate that owners are having trouble affording the maintenance of a property or have chosen to let maintenance and repairs lapse because they already

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72. See HUD Study 1 and HUD Study 2, *supra* note 65. The HUD studies reference whether owner is for profit or nonprofit and inspection scores as contributing factors to owner opt-out probability. Other factors provided in the HUD studies were not included here due to limited available data. See HUD Study 2, *supra* note 65, at 25–26 (explaining the distinction between the original study and the follow-up study).

73. See HUD Study 1 and HUD Study 2, *supra* note 65.

intend to enter the private market. We analyzed these property inspection scores to determine which property owners may be more likely to opt out at the end of their contract terms.

The Real Estate Assessment Center (REAC) provides physical inspections of all HUD housing, whether owned, insured, or subsidized by HUD.<sup>74</sup> REAC Inspection scores range from 1-100. REAC divides the properties into three levels: (1) a score of 90 or higher requires inspection every three years, (2) a score of 80–89 requires inspection every two years, and (3) a score of 79 or below requires an inspection every year.<sup>75</sup> A score of 59 and below is considered failing by HUD and may be subject to any number of remedies if it continues, such as civil penalties, abatement of the HAP contract, transfer to a new owner, or certain judicial enforcement.<sup>76</sup>

The 2015 HUD study found that owners with lower REAC inspection scores were more likely to opt out as compared to owners with higher scores.<sup>77</sup> The study theorized that owners with lower scores may preemptively opt out rather than face the risk of abatement of HUD subsidies. Further, owners who are already intending to opt out in the future may be waiting to invest any physical improvements into the property until after opting out.<sup>78</sup>

We created a measurement for properties within Philadelphia, hypothesizing that a score of 89 or lower may create an increased opt-out risk based partially on the findings of the HUD study.<sup>79</sup> Of the properties that opted out of the contract or prepaid the mortgage, the HUD study found that 66% had a score of 89 or lower, while 44% had a score of 90 or higher.<sup>80</sup> Further, the median score of opt-out or prepayments was 88.<sup>81</sup> Finally, a score of 89 or lower is the first signal that a property has moved below an optimum level because as noted above, it requires inspections every one to two years rather than every three years (as a score of 90 or higher would).

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74. U.S. Dep't of Housing & Urb. Dev., *Physical Inspection Scores*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/topics/physical\\_inspection\\_scores](http://portal.hud.gov/hudportal/HUD?src=/topics/physical_inspection_scores) (last visited Nov. 19, 2016).

75. See 24 C.F.R. § 200.857.

76. Press Release, National Low Income Housing Coalition, Multifamily Notice Highlights Appropriation Acts Changes to Failing REAC Scores Procedures (Mar. 9, 2015), <http://nlihc.org/article/multifamily-notice-highlights-appropriation-acts-changes-failing-reac-scores-procedures>.

77. See HUD Study 2, *supra* note 65, at 26.

78. *Id.*

79. *Id.*

80. *Id.* at 13.

81. *Id.*

Based on this, we used 89 as the cut-off for our own data. Using the REAC inspection scores provided by HUD,<sup>82</sup> we found the following.

- 3 properties had a failing score of 59 or below
- 24 properties had a score of 89 or below
- 61 properties had a score of 90 or higher
- 1 property (Ephraim Goldstein Apartments) was not listed in HUD's data for REAC scores

Three of the properties had a failing score of 59 or lower, which means that these properties may be subject to HUD penalties. 24 properties had a score of 89 or lower, indicating an increased frequency of inspections from HUD. And 61 properties had a score of 90 or higher, which is in HUD's optimal range. Finally, we were unable to locate the score for one property.

#### *G. Philadelphia's Most At-Risk Properties*

Having investigated three key variables—gentrifying Census tract, for-profit ownership, and inspection score—that are related to a property's risk of opting out, we attempted to combine these variables to identify the highest risk properties. In combination, these factors paint a picture of a for-profit owner motivated to sell or rent in the private market due to higher demands in the neighborhood and who is either unable to afford the upkeep of the building or has actively chosen not to invest in it.

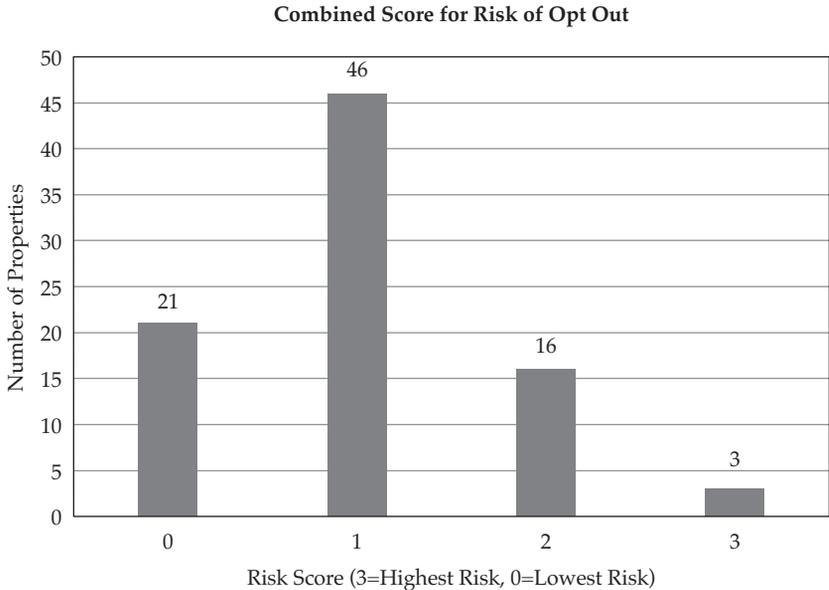
We created a score for each property that measured how many of these risk variables applied to each property. A property received one point each for having a for-profit owner, being in a gentrifying Census tract, and having a REAC inspection score under 90. We consider the properties with a score of three are at the highest risk of opt-out, those with a score of two at an intermediate risk, those with a score of one at a lower risk, and those with a score of zero at the lowest risk. We found three at the highest risk, 16 properties at intermediate risk, 46 properties at lower risk, and 21 properties at lowest risk of opt-out.

We believe this analysis reveals a prioritization for housing advocates: the three properties with a score of three and the 16 properties with a score of two should be the object of heightened advocacy to preserve these units as affordable, subsidized housing because they are at the highest risk of opt-out.

Table 1 below lists the details for each of the 19 properties in the high and intermediate risk categories, listed from highest to lowest risk. These 19 properties represent roughly 24% of all of the units under HAP contract

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82. U.S. Dep't of Housing & Urb. Dev., *Physical Inspection Scores by State*, HUD.GOV (Sept. 15, 2016), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/rem/s/reminspescscores/remspyspescscores](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rem/s/reminspescscores/remspyspescscores).



in Philadelphia. While these tables are sorted by risk scores, contract expiration is also a crucial variable: the sooner a contract is expiring, the sooner advocacy needs to begin.

#### *H. Additional Factors*

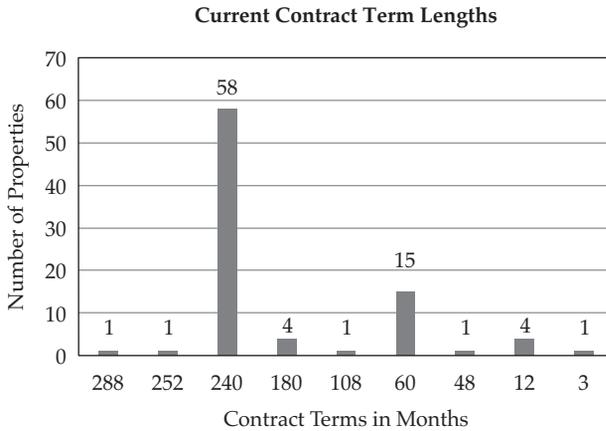
There are other factors that are relevant to prioritizing advocacy. Some of these factors are not explicitly included in our risk scores, yet are still important for advocates to consider. For other factors, we could not access reliable data. This underscores the importance for HUD and especially PHA to maintain and make public reliable, current, and thorough data about public housing in Philadelphia. For other factors, we did not have the analytic sophistication to create reliable models for analysis. Finally, for some factors, we recognize that our assumptions and perspective are only one of many. This section describes some of these specific areas for future analysis.

##### 1. Length of Contract Term

HAP contract terms are most often for 240 months (20 years) or longer. Of the 86 properties on our list, 60 properties have contract terms for 20 years or longer. One indicator of a high risk of opt-out may be a shortened contract term. Owners may agree to a new contract of only one year in order to provide the statutory one-year notice of opt-out.

Similarly, we believe that owners with contracts of 60 months (5 years) or less may be at higher risk of opting out. Our theory is that owners may be using shorter contracts as a way to bide time to opt out at a time that

Property Name	Street Address	Zip	Units	Owner Type	Contract Expiration Date	Contract Term In Months	Reac Score	Gentrified Tract?	Risk Score
Spring Garden Towers	1818 Spring Garden	19107	208	Profit Motivated	2/20/2018	60	85	Y	3
University Square Plaza	3901 Market St	19104	440	Profit Motivated	2/15/2020	108	66	Y	3
Larchwood Gardens Apts	2820 S 81st St	19153	179	Profit Motivated	12/31/2034	240	79	Y	3
Haverford House	3416 Haverford Ave	19104	32	Profit Motivated	9/30/2017	60	60	N	2
Webster Street House	5205 Webster St	19143	7	Non-Profit	4/19/2018	60	81	Y	2
Center Post Village	55 N 40th St	19104	82	Profit Motivated	2/28/2019	60	90	Y	2
Morelane Gardens	185 E Walnut Ln	19144	22	Profit Motivated	5/31/2019	60	88	N	2
Jackie's Garden	1821 N. 20th Street	19121	134	Profit Motivated	6/30/2024	180	89	N	2
Susquehanna Townhouses	2233 N 20th St	19132	36	Limited Dividend	9/30/2024	240	88	N	2
West Poplar Apartments	12th & Wallace Streets	19123	138	Profit Motivated	10/31/2024	180	92	Y	2
Haddington Townhouses	5437 Wyalusing Ave	19131	125	Profit Motivated	5/31/2025	180	73	N	2
Cobbs Creek NSA	5256 Larchwood St	19143	85	Profit Motivated	7/31/2025	240	94	Y	2
Friends Guild House East	711 Spring Garden St	19123	89	Profit Motivated	3/31/2031	240	92	Y	2
Beckett Garden Apartments	1400 N 16th St	19121	131	Profit Motivated	11/13/2032	240	99	Y	2
Samuel Tabas Apartments	2101 Strahle St	19152	300	Profit Motivated	12/5/2033	240	99	Y	2
CO-MHAR SIRCL	2201 E York St	19125	8	Non-Profit	6/30/2034	240	87	Y	2
15th & Jefferson Street Apts.	1418 N. 15th St.	19121	38	Profit Motivated	10/31/2034	240	94	Y	2
Zion Gardens Apts	1101 W Girard Ave	19123	89	Profit Motivated	12/22/2034	240	76	N	2
Olde Kensington Pavillion	1250 N 3rd St	19122	103	Profit Motivated	7/21/2035	240	94	Y	2



maximizes profit, whether it is waiting for better private market rates, finding a viable buyer, a shifting financing situation, or other similar reasons. This is only a hypothesis at this stage so we only note here that, of the 19 properties we identify as highest risk, 9 have contract terms for periods shorter than 20 years.

### 2. Number of Units in a Property

The number of units per building was not factored into our risk analysis. Like contract expiration dates and terms, this factor may be an important part of prioritizing advocacy. A property with fewer than ten units opting out would not represent the same loss to Philadelphia’s affordable housing stock as a property with several hundred units opting out.<sup>83</sup> This may argue in some cases for prioritizing advocacy to preserve some properties over others.

### 3. Future Data Analysis

There are two specific issues that are excluded from this report. First, while we note the specific REAC inspection score of each property, we group all inspection scores under 90 as at risk, without differentiating among them. As a result, our analysis treats a property with a score of 59 the same as a property with a score of 89. This is an imprecise measure that likely does not capture the intensity of risk based on the physical condition of properties. Future analysis could address more finely graded

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83. For example, one of the Section 8 properties, known as University Square Plaza, meets the three factors of heightened risk and also represents the largest number of units of any one property—440 units—in Philadelphia. Thus, proactive advocacy around University Square’s 2020 contract expiration date should be a high priority due to the number of units at risk.

differences in property inspection scores to create more specific findings. A second area of analysis concerns our composite risk score, in which all three factors are weighed equally. In a future analysis, exact probabilities could be noted of each factor and weighed against each other to rank factors in order of the probability of opt-out or prepayment.

Finally, we analyzed the factors that were possible from the available data. Better data is likely to lead to more robust indicators of risk. This is illustrated by one property, Overmont House, that has already provided the one-year notice to tenants that the owner will be opting out, yet does not match any of the three factors we measured. If HUD and PHA maintained and made available better and more comprehensive data, more precise analysis would be possible.

## V. Best Practices for Preserving Affordable Housing

Our analysis reveals potential priorities for preserving Section 8 project-based housing in Philadelphia. The next step is to understand potential strategies for achieving this goal. To answer this question, we look to how other cities and states have tried to preserve affordable housing. We report our results in three categories: expanded notice, rights of refusal, and creative or ad hoc practices.

### A. *Advanced Notice Requirements*

HUD requires that one-year notice be given to tenants when public housing is being eliminated. Philadelphia follows this requirement, but unlike other jurisdictions, has not gone further. At least ten states and eight cities have recognized that this notice is insufficient to preserve public housing. Each of these jurisdictions has created a regulatory process to protect citizens during the expiration process by requiring a longer notice period, expanding who receives notice, or both. The requirements are summarized here with citations to the specific statutes or regulations in the footnotes.

#### 1. California

California has a statewide policy that requires notice to tenant associations as well as specified qualified entities: certain local and national nonprofits, public agencies, and some profit-motivated organizations.<sup>84</sup> California cities also have additional protections.

Sacramento requires owners to submit notice to tenants and the Sacramento Housing and Redevelopment Agency (SHRA) at twelve- and six-month intervals in order to terminate, opt out, or prepay. In addition, owners may not evict tenants except for good cause for 180 days after the expiration of rental restrictions if the SHRA has arranged to take over the subsidy payments.<sup>85</sup>

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84. CAL. GOV'T CODE §§ 65863.10, 65863.11, 65863.13.

85. SACRAMENTO, CAL., CODE §§ 5.148.010–.100.

San Francisco requires owners to provide 18 months' notice to tenants and the director of housing. Information about tenants' rights must be available for any interested parties no less than 14 days prior to a mandatory public hearing, which is held no later than 45 days after the owner gives notice of their intent to prepay or terminate.<sup>86</sup>

Santa Cruz owners must give 12 months' notice to the city director of planning and development. Within 14 days of receiving this notice, the director may send a written "request for information and access," which the owner has 21 days to respond to, certifying that the owner consents to a walk-through and an inspection of the property.<sup>87</sup>

## 2. Colorado

Colorado "encourages" owners to submit notice to the state 120 days before converting publicly assisted rental housing.<sup>88</sup> Denver has gone further and mandates notice to tenants and the city. Twelve months are given for expiring Section 8 contracts, 210 days' notice are provided for intent to opt out of long-term contracts, and 150 days for intent to opt out of one-year contract extensions. The code also requires a 90-day notice any time an owner "takes action which will make the affordable housing no longer affordable." It also prevents owners from taking any action during the required notice period that would "preclude the city or its designee from succeeding to the contract or negotiating with the owner for purchase." Finally, it calls for an unspecified civil penalty for failure to comply with its provisions with all fines payable into a housing replacement fund established and run by the city.<sup>89</sup>

## 3. Connecticut

Connecticut provides 12 months' notice to tenants as well as state and local governments. Additionally, the state-level agency must post the notice on its website within ten days and send an email notification to a list of persons who have registered to receive such notice via written request.<sup>90</sup>

## 4. Illinois

Illinois gives 12 months' notice to tenants, the relevant local government, local public housing agency, and the state housing authority.<sup>91</sup> Chicago expands the Illinois 12 months' notice to include the city department of housing, which is triggered by prepayment, termination, or an intended disposition of the property.<sup>92</sup>

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86. SAN FRANCISCO, CAL., ADMIN. CODE §§ 60.1–14.

87. SANTA CRUZ, CAL., MUN. CODE §§ 21.05.010–.090.

88. COLO. REV. STAT. §§ 24-32-701 to 24-32-721.

89. DENVER, COLO., MUN. CODE §§ 27-45–27-52.

90. CONN. GEN. STAT. § 8-68c.

91. 310 ILL. COMP. STAT. 60/1–60/10.1.

92. CHICAGO, ILL. MUN. CODE § 2-44-111.

### 5. Maine

In Maine, owners must give 90 days' notice to the tenants, the state housing authority, and the local public housing agency.<sup>93</sup>

### 6. Minnesota

Minnesota gives tenants 12 months' notice of an intended mortgage prepayment, the termination or non-renewal of Section 8 contracts or mortgages, or the termination of other housing subsidy programs.<sup>94</sup> The owner must also submit a statement of impact to tenants; the state; and, if within the Twin Cities metropolitan area, the Metropolitan Council. The impact statement must identify the number of units that will no longer be subject to rent restrictions, the estimated non-restricted rents, and "actions the owner will take to assist displaced tenants in obtaining other housing."

### 7. Portland, Oregon

Portland has adopted similar provisions to those of Denver, in that it requires owners to provide to the city and tenants a one-year notice of pending Section 8 contract expirations, 210 days' notice of intent to opt out of a long-term contract, and 150 days' notice of intent to opt out of one-year contract extensions.<sup>95</sup> The ordinance applies to a variety of HUD programs, including properties with project-based rental assistance. It also prevents owners from taking any action during the required notice period that would "preclude the city or its designee from succeeding to the contract or negotiating with the owner for purchase."

### 8. Texas

In Texas, owners must follow HUD requirements by giving notice 12 months in advance of any proposed sale or other action that would terminate the subsidy. Where Texas differs is that owners must also notify the state housing department. Additionally, the statute ambiguously allows for time to be used by the housing department in an "attempt to locate a buyer who will conform to the development restrictions." There is no accompanying purchase right.<sup>96</sup>

### 9. Washington

The State of Washington mandates 12 months' notice to each tenant, local government, public housing agency, and the state when an owner intends to prepay or otherwise allow rent-assisted housing to expire.<sup>97</sup>

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93. ME. REV. STAT. tit. 30-A, §§ 4971-4978.

94. MINN. STAT. §§ 471.9997, 504B.255.

95. PORTLAND, ORE., CODE §§ 30.01.010-.110.

96. TEX. GOV'T CODE § 2306.185.

97. WASH. REV. CODE §§ 59.28.010-902.

## 10. Washington, D.C.

The District of Columbia requires owners who intend to discontinue participation in a federal assistance program to give 12 months' notice to tenants, the mayor, the director of the Department of Housing and Community Development, the director of the Department of Consumer and Regulatory Affairs, and the executive director of the District of Columbia Housing Authority.<sup>98</sup>

### B. Longer Advanced Notice

#### 1. Massachusetts

Massachusetts requires 24 and 12 months' notices to tenants, tenant organization, municipalities, the state technical finance corporation, and the state housing department.<sup>99</sup>

#### 2. Rhode Island

Rhode Island owners must give 24 months' notice of any intent to sell, lease, otherwise dispose of, or prepay the mortgage on any covered subsidized property to the tenant association, state housing agency, local public housing authority, and the municipality.<sup>100</sup> For terminations of Section 8 assistance, owners must give the same amount of notice, but only to the state agency, which must then promptly post it on the grounds of the property and provide it to the tenant association.

#### RECOMMENDATION FOR PHILADELPHIA: EXPAND NOTICE REQUIREMENT

- Owners should be required to notify city officials, housing advocate organizations, and tenant organizations.
- Owners should be required to provide 24 months' notice of opting out.

### C. Right of First Refusal or Purchase

In some instances, an owner who chooses to opt out is looking to sell the property, rather than convert to a private market rental and maintain ownership. In this situation, other jurisdictions have created a right of first refusal or right of first purchase for tenants or other parties.

A right of first refusal gives the tenants or other parties the option of buying the property from the owner before the owner sells to a third party. In many states, this right of first refusal is triggered when a third party has been identified and a contingent agreement has been reached with the owner.

98. D.C. CODE §§ 42-2851.01-08.

99. MASS. GEN. LAWS. ANN. Ch. 40T, §§ 1-10.

100. R.I. GEN. LAWS §§ 34-45-1 to 34-45-12.

A right of first purchase, on the other hand, allows the holder to make an offer of purchase before the owner can solicit an offer from a third party. In the context of subsidized housing, many states extend these rights to tenant associations, nonprofits, related public agencies, or any combination of these. An organization is then given the opportunity to make an offer to buy the building and continue its rent-assisted status. As the list below reveals, different states and cities create these rights in different ways.

### 1. California

California state law creates a right of first purchase to qualified entities, including tenant associations, nonprofits, and public agencies.<sup>101</sup> Under this statute, when an owner of subsidized housing decides to take any action that would terminate federal assistance or when federal, state, or local restrictions lapse, the right is triggered. In any of these situations, in addition to the notice of intent to terminate, the owner must send tenants and the qualified entities a separate notice of their right to make a purchase offer. Any entity that makes an offer must agree to maintain low-income use at the property for at least 30 years. To facilitate these offers, owners must provide upon request information about the project's rent rolls, vacancy rates, operating expenses, capital improvements, project reserves, and financial and physical inspection reports.

Sacramento reinforces the state's right of first purchase requirement.<sup>102</sup> In the first six months after an owner sends the initial one-year notice, it may not sell to or solicit offers from non-qualified entities. During a second six-month period, an owner is permitted to negotiate with any potential purchaser, but any sales agreement is made contingent upon this right of first refusal. If such a contingent agreement is made, it must be immediately provided to the Sacramento Housing and Redevelopment Agency, which in turn must make it available to qualified entities. The entities are given 60 days to make an offer that is substantially economically identical to the private buyer. If they do not make this offer, the owner is free to sell the property to the private buyer. Finally, the law states that any person aggrieved by the potential termination is empowered to enforce this provision.

San Francisco has an ordinance that gives the city, tenant associations, and affiliated nonprofit groups the equivalent of a right of first refusal when an owner proposes to sell or transfer any HUD-subsidized housing.<sup>103</sup> The ordinance reaches a "fair return price" that is not to exceed the appraised value of the property based on its highest and best use and also creates civil remedies for violations, while mandating that owners pay relocation fees of up to \$5,250 to low-to-moderate income tenants affected by the conversion.

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101. CAL. GOV'T CODE §§ 65863.10, 65863.11, 65863.13.

102. SACRAMENTO, CAL., CODE §§ 5.148.010–.100.

103. SAN FRANCISCO, CAL., ADMIN. CODE §§ 60.1–.14.

Santa Cruz requires owners to give notice to the director of planning and development three months prior to offering to sell their property to anyone. If an owner receives an offer from a qualified entity under California state law during this three-month period, the owner must make a reasonable effort to negotiate and must allow the qualified entity a reasonable amount of time to obtain necessary financing and government approvals. Within 12 months of an offer by a qualified entity, an owner may not accept an offer that is equal to it or less, provided the offer remains valid.<sup>104</sup>

## 2. Illinois

The State of Illinois extends the right to tenant associations and, if chosen, their non-profit or private partners.<sup>105</sup> Tenants are given 60 days from their 12 months' notice to notify the owner that they have formed a tenant association, which triggers another 60-day period in which the owner must submit a bona fide offer to sell. This offer must include the essential terms of the sale, and the tenant association has 90 days to respond with a written notice of intent to purchase. If parties are unable to agree on a price, each is permitted to hire an independent appraiser. Should these appraisers not agree, the parties can take the average of each estimation or jointly hire a third, binding appraiser. Once an agreement is struck, the tenants have 90 days from the signing of the purchase contract to close. Finally, similar to California, owners must be able to provide on request access to the project's rent rolls, vacancy rates, operating expenses, capital improvements, project reserves, and financial and physical inspection reports.

In Chicago, if a tenant association has not exercised its purchase rights under the state law, owners must still give qualified entities the right of first refusal prior to sale of the property to a non-qualified entity, unless an affordability preservation agreement has been entered into extending for a period of at least ten years.<sup>106</sup> This works by having owners enter into contingent sales agreements when dealing with a non-qualified entity that must be submitted to the city housing commissioner. The commissioner must then make this agreement available to all qualified entities, which are given 120 days to make a bona fide offer of purchase on substantially identical economic terms as the contingent agreement. If they are able to close on the sale within 120 days, the owner must sell to them and enter into an affordability preservation agreement. If a bona fide offer is not made, or if closing does not occur within 120 days, the owner may sell to the buyer identified in the contingent sales agreement under terms that do not substantially differ from the original arrangement.

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104. SANTA CRUZ, CAL., MUN. CODE §§ 21.05.010–.090.

105. 310 ILL. COMP. STAT. 60/1–60/10.1.

106. CHICAGO, ILL. MUN. CODE § 2-44-111.

### 3. Maine

Maine gives a right of first refusal to purchase to the Maine State Housing Authority.<sup>107</sup> The scope of this law covers certain properties that are both subject to federal or state income eligibility restrictions and where the rents within the projects are controlled, regulated, or assisted by a federal or state agency pursuant to a regulatory or rental assistance agreement. Despite its name, the trigger for exercising this right is “the sale, transfer, or other action that would result in termination of the financial assistance,” and therefore a private buyer or contingent sales agreement is not necessary for the housing authority to act. The housing authority has 90 days from the initial notice to respond in writing that it wishes to invoke this right, which gives it an additional 90 days to buy or produce a buyer for the property. If an owner fails to give proper notice before selling or converting their subsidized property, the state may impose a civil penalty of at least \$2,500.

### 4. Maryland

Maryland takes an expansive approach. Local housing authorities, local jurisdictions, state-registered groups representing tenants, registered non-profit low-income developers, and other registered persons with low-income housing experience that are unrelated to an owner are all permitted to use a right of first purchase.<sup>108</sup> This is triggered only by a proposed sale or transfer of subsidized property; however, notice rights and other procedural protections are more broadly triggered by a proposed prepayment or other termination as well. A potential buyer under this right must commit the property to specified extended use terms equal to the original use restrictions for at least the greater of 20 years or the remaining term of the mortgage or rental assistance agreement. The property must be appraised at fair market value, but if a buyer other than the above groups makes a bona fide offer higher than this appraisal, then the qualified buyer must match the higher price.

### 5. Massachusetts

Massachusetts grants the state housing department or its designee an opportunity to submit an offer to first purchase as well as a right of first refusal.<sup>109</sup> Owners must notify the department prior to a sale, at which point the department has 90 days to submit a purchase offer, although the owner is under no obligation to sell. If an offer is not made within 90 days, the owner has up to two years from the original notice to the department to execute a purchase contract with a third party. However, within seven days of execution, the owner must submit the third-

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107. ME. REV. STAT. tit. 30-A, §§ 4971–4978.

108. MD. CODE, HOUS. & CMTY. DEV. §§ 7-101–7-501.

109. MASS. GEN. LAWS. ANN. Ch. 40T, §§ 1–10.

party purchase contract, along with a separate proposed purchase contract to the department, containing substantially the same terms and conditions, which the department has 30 days to accept. Both the opportunity to submit an offer and the right of first refusal are exempt from certain situations, including sales of project-based Section 8 properties where the buyer agrees in a regulatory agreement to renew in whole all such contracts or successor program.

Furthermore, Massachusetts provides that for three years following a termination, the rent charged to a low-income tenant who does not receive an enhanced voucher may be increased annually by no more than the consumer price index plus three percent. For the same three-year period, any tenant who resided in the housing as of the termination date may not be evicted except for good cause.

#### 6. Rhode Island

Rhode Island's Affordable Housing Preservation Act creates purchase rights for tenant associations, the state housing agency, the local housing agency, and the local municipality (in that order of priority) in any instance where an owner seeks to terminate assistance or restrictions on certain federally insured or assisted housing.<sup>110</sup> Mirroring HUD requirements, an offer of sale with detailed terms must be provided to these organizations at minimum of 12 months before the termination of a Section 8 contract. For prepayments or the sale of the building, notice must still be provided but the statute is silent as to the amount. In the offer, the owner may charge no more than fair market value as determined by the average of two independent appraisals with the state agency allowed to choose one from a set list.

#### 7. Washington, D.C.

Washington, D.C., provides a general right of first purchase for tenants, triggered by a proposed sale or transfer of interest by the owner.<sup>111</sup> This appears to apply to all units, subsidized or not. The code requires that each offer of sale include a summary of the tenants' rights and sources of technical assistance, as published by the city. This notice must also state that the owner will promptly provide a floor plan of the building, an itemized list of monthly operating expenses, utility consumption rates, capital expenditures for each of the two preceding calendar years, the most recent rent roll, list of tenants, and list of vacant apartments.<sup>112</sup> A portion of the city's code extends this right to the city itself where subsidized housing is concerned, but the city may not exercise this power

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110. R.I. GEN. LAWS §§ 34-45-1 to 34-45-12.

111. *Washington, D.C. Tenant Survival Guide*, HARRISON INST. FOR PUBLIC LAW, GEORGETOWN UNIVERSITY LAW CENTER (Dec. 2006), <https://www.thelpa.com/Washington-DC-TenantGuide.pdf>.

112. D.C. CODE §§ 42-3404.01–.013.

unless planned sale would result in the end of the assistance program or the termination of any low-income residency requirements.<sup>113</sup>

**RECOMMENDATION FOR PHILADELPHIA: CREATE A RIGHT OF FIRST REFUSAL**

- Require owners intending to sell their properties to first allow tenants, the city, and advocacy organizations the opportunity to make an offer.
- Prevent owners from accepting an outside offer that is substantially identical.
- Use a longer (24 month) notice period to allow tenants to organize or seek representation.

*D. Creative Subsidized Housing Preservation Strategies*

The measures included in this section are not necessarily similar to one another, but are listed together because they all seek to address the loss of habitable subsidized housing outside of a notice or purchase framework. These ideas include:

- Rent control
- Prepayment of mortgages
- State-level databases
- Housing condition requirements
- Displacement assistance
- General preservation measures

1. California

In California, an owner is prohibited from selling the property within five years of being eligible to prepay or end participation in a federal, state, or local subsidy program without having extended the right of first refusal.<sup>114</sup> Additionally, local governments are required to produce a housing report that analyzes the local assisted housing stock and identifies resources available to help preserve the affordability of the housing.<sup>115</sup>

San Francisco has a rent ordinance that limits annual increases and provides eviction protections.<sup>116</sup> The ordinance does not generally apply to subsidized units or units regulated by a government agency/authority, but when a Section 8 project-based contract expires or terminates, those

113. *Id.*

114. CAL. GOV'T CODE §§ 65863.10, 65863.11, 65863.13.

115. CAL. GOV'T CODE §§ 65580-65589.8.

116. SAN FRANCISCO, CAL., ADMIN. CODE §§ 37.1-.15.

units fall under the scope and are subject to rent control at the same rate as the contract. Similarly, if prepayment or expiration of a HUD-insured mortgage should occur, the units become subject to the ordinance and the base rent is set at the contract rate.

Los Angeles has tried and failed to pass any notice or right of refusal ordinances, but a working group has made recommendations to the city for future action. These recommendations include extending state preservation provisions to the much broader set of properties covered under the local rent control ordinance, requiring relocation payments to tenants displaced by a conversion event, requiring the acceptance of any Section 8 or successor form of rental assistance if it provided a reasonable rent equivalent to the other non-subsidized units, instituting a series of graduated rent increases for tenants not receiving further federal rental assistance, imposing fines for flagrant violations of the ordinance, granting standing to housing advocates to enforce the law against non-compliant owners, and issuing required form notices with multilingual addendums. Whether or not the city adopts any of these recommendations, housing advocates continue to rely on the LA Rent Stabilization Ordinance.<sup>117</sup>

## 2. Colorado

Colorado requires the state to maintain a database of properties filing notice and authorizes it to “explore options for preserving the affordable housing resources.”<sup>118</sup>

## 3. Illinois

Illinois has addressed the issue of mortgage prepayment.<sup>119</sup> In order to prepay their mortgages, owners may enter into an agreement with the state housing authority to extend the affordability restrictions to the full term of the original mortgage or to create a comparable number of new low-income units. However, if the owner declines to enter into such an agreement, the law prohibits the authority from accepting a prepayment prior to the owner giving the tenants nine months’ notice as well as extending to the tenants a right to purchase the housing that is similar to that of the Illinois Federally Assisted Housing Preservation Act.

## 4. Ohio

An Ohio law seeks to address inadequate conditions by authorizing cities, neighbors, tenants, and nonprofit corporations to bring an action alleging that a federally subsidized building is a public nuisance and seeking relief in the form of an injunction and, if necessary, the appointment of a receiver.<sup>120</sup> This statute applies to properties receiving rental assistance

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117. LOS ANGELES, CAL., MUN. CODE §§ 151.00–151.29.

118. CONN. GEN. STAT. § 8-68c.

119. 20 ILL. COMP. STAT. 3805/8.1.

120. OHIO REV. CODE § 3767.41.

under a variety of federal project-based programs. Prior to commencement of such an action, the opposing party must give the owner 60 days' notice of the defective conditions that constitute a public nuisance.<sup>121</sup> If the nuisance is not abated within that period, a judge may find that the building constitutes a public nuisance and may issue an injunction requiring the owner to abate the nuisance within 30 days.

Alternatively, if the judge determines that the owner already has been afforded a "reasonable opportunity" to abate the nuisance and has failed to do so, the judge is required to offer any mortgagee, lienholder, or other interested party (in order of priority of interest in title) the opportunity to abate the nuisance. If no interested party is willing or able to do this, then the judge may appoint a receiver, potentially including a nonprofit that originally brought the action, to take possession and control of the building. The receiver must receive judicial approval of an abatement plan and the judge may empower the receiver to, among other things, manage the building, establish and collect rents, lease units and evict tenants, pay all operating expenses, enter into contracts, obtain financing necessary for the abatement of the property, and collect a receiver's fees.

#### 5. Seattle

In addition to HUD requirements, Seattle also entitles tenants to 90 days' notice in the event of displacement caused by demolition, change of use, substantial rehabilitation, or removal of a use restriction. In addition, low-income tenants are eligible for a relocation assistance payment of \$2,000, paid in equal halves by the landlord and the city. This notably excludes properties and units owned by the Seattle Housing Authority, condominium conversions, or cases where tenants are entitled to other relocation payments under federal, state, or other law.<sup>122</sup>

#### 6. Texas

Texas created a housing preservation incentives program to provide loans, loan guarantees, and grants for the acquisition and rehabilitation of certain affordable multifamily housing developments.<sup>123</sup>

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121. Public nuisance is defined as housing that fails to meet standards set forth in relevant federal rules. OHIO REV. CODE § 3767.41(A)(2)(a). The law provides that in no case will nuisance be found where HUD's real estate assessment center has issued a score of seventy-five or higher within the last 12 months and there has been no significant change in the property's condition. OHIO REV. CODE § 3767.41(B)(2)(c).

122. SEATTLE, WASH., MUN. CODE §§ 22.210.010–.180.

123. TEX. GOV'T CODE § 2306.805.

**RECOMMENDATION FOR PHILADELPHIA: GET CREATIVE WITH PRESERVATION**

- Provide rent control to units after termination of a federal subsidy.
- Require owners to assist tenants who are displaced through their decision to opt out. This could take the form of financial benefits, communication with housing advocates, or any other resources tenants may need.
- Maintain the length of the subsidy at its original contracted length even if the owner wishes to repay the mortgage.
- Prevent owners from selling their property within a year of prepayment.
- Mandate notice of the intent to prepay well in advance.

**VI. Conclusion: Philadelphia Can Opt in to Long Term Affordable Housing**

Philadelphia needs preemptive advocacy strategies to preserve its project-based Section 8 housing. As it stands, owners must provide notice of their intent to terminate the subsidy only to HUD and tenants themselves. This does not allow enough time for effective preservation measures that seek to prevent owners from terminating in the first place. This report's analysis identifies trends in Philadelphia housing to identify properties that are at high risk for opt-out. While Philadelphia is the focus of this report, advocates could utilize the methods detailed here to identify properties with the greatest risk in other jurisdictions. These high-risk properties must be priorities in advocacy to preserve affordable housing. To address these priorities, Philadelphia can draw on the best practices summarized in the report. Other cities can also adapt the tenant protections surveyed here to address their particular needs and limitations.

Housing advocates must demand that Philadelphia not lose its already limited supply of affordable housing. Philadelphia's leaders must bolster the protections afforded to tenants, include housing advocates in the opt-out process, and develop real solutions when opt-out cannot be avoided. With these steps, Philadelphia can opt in to long-term affordable housing.

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*Justice Lab at the Sheller Center for Social Justice, Temple University  
Beasley School of Law*

Justice Lab is a clinic at the Sheller Center for Social Justice at Temple University Beasley School of Law. Justice Lab represents client organizations (including community groups, nonprofit organizations, and governmental agencies) in a range of systemic advocacy matters. Students develop and advance policy campaigns, design and pilot legal services

and access to justice programs, draft legislation and provide legislative advocacy tools, and act as problem solvers and strategic planners. Through this social justice advocacy, Justice Lab students develop expertise in finding creative solutions to legal problems; reflect on the complex social and political aspects of legal problems; and develop strengths in interviewing; research and information gathering; policy, legislative, and strategic analysis; written and oral advocacy; collaboration; project planning and management; professional ethics; negotiation; and media advocacy skills.

The Sheller Center for Social Justice at Temple University Beasley School of Law, created in 2013 by a generous gift from Stephen and Sandy Sheller, is a hub for social justice inquiry and advocacy. The Center's faculty, staff, and affiliated faculty work with law students, the Law School's other legal clinics and experiential programs, others at the University, community organizations, and external partners to seek justice for disadvantaged populations in Philadelphia and across Pennsylvania

#### *Community Legal Services*

Founded in 1966 by the Philadelphia Bar Association, Community Legal Services (CLS) has provided free civil legal assistance to more than one million low-income Philadelphians. Approximately 10,000 clients were represented by CLS in the past year. CLS assists clients when they face the threat of losing their homes, incomes, health care, and even their families. CLS attorneys and other staff provide a full range of legal services, from individual representation to administrative advocacy to class action litigation, as well as community education and social work. CLS is nationally recognized as a model legal services program.

CLS's Housing Unit represents private, public, and subsidized housing tenants in matters involving eviction, illegal lockouts, and substandard housing. The unit also uses systems advocacy and litigation to address issues ranging from lead paint elimination, to federal housing policy changes, to tenant eviction laws.