



## **MTW Agencies' Expiring Use Preservation Programs An Innovative Effort to Preserve Affordable Housing in Massachusetts**

**Laurie Gould, VIVA Consulting  
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### **EXECUTIVE SUMMARY**

Massachusetts' affordable housing stock includes many properties developed by private owners with HUD-subsidized resources in the 1960's, 1970's and 1980's. In exchange for interest subsidies, rent subsidies, or both, these owners agreed to use restrictions on the properties lasting between 20 and 40 years. Since the late 1990's, residents of properties in which a HUD-subsidized mortgage is prepaid have been eligible to receive "enhanced vouchers" (EV's), tenant-based rent subsidies which entitle the holders to remain in their units at an affordable rent. EV's have been a powerful tool for protecting individual tenants from displacement as use restrictions expire, but they do little to support the preservation of affordable properties. Owners cannot borrow against tenant-based contracts, so they are unable to raise capital to preserve the properties as affordable. Once tenants with EV's move, the units are forever lost to the affordable portfolio.

In response to this threat, two housing agencies in Massachusetts – the Cambridge Housing Authority (CHA) and the state Department of Housing and Community Development (DHCD) – have used their flexibility as "Moving to Work" (MTW) agencies, exempt from many HUD program rules, to create innovative Expiring Use Preservation programs. CHA and DHCD have worked with owners and tenants in at-risk developments to convert EV's to project-based rent subsidies (PBV's). PBV conversion introduces a 15-year contractual subsidy to keep units affordable to low-income tenants for an extended period. Further, the relatively predictable rents and occupancy accruing to long-term, project-based rent subsidies allow owners to raise capital, for a preservation purchase and/or a program of capital improvements.

Conversion from an EV to a PBV is entirely at the tenant's discretion: each tenant with income at 80% or less of the area median is allowed to decide for herself whether to keep the EV or convert to a PBV. The choice can be quite complicated. Households choosing EV's may (or may not) end up with higher rent than they would with PBV's, but they retain complete mobility: they can move at any time, in which case their subsidies will become standard Housing Choice Vouchers. Beyond cost and mobility, the EV/PBV choice may have different implications for tenants who are expecting their incomes to rise or fall, who are expecting a change in household composition, or whose household members include immigrants. All participants agree that educating tenants about their choices is the program's most challenging demand.

Between the two agencies, the MTW Expiring Use Preservation programs have preserved affordability at 13 properties, awarding PBV's to over 1,000 units. 5,608 units in 34 developments in Massachusetts are potential future targets for preservation through this initiative. The majority of these units are also eligible for conversion to PBVs through the

federal Rental Assistance Demonstration (RAD) program, which targets expiring use properties with rent subsidies through several sun-setting rent subsidy programs that were precursors to Section 8. Conversion through RAD rather than MTW Expiring Use offers the advantage that tenants do not have an option to keep their EV; conversion to PBV's is solely at the owner's discretion. However, the MTW Expiring Use option may offer owners greater flexibility in other terms, particularly regarding the ability to retain site-based waiting lists. Currently, RAD is only authorized through December 31, 2014; while it is clearly HUD's intention to renew and expand the program, the continued availability of RAD as a preservation alternative is dependent on Congressional action.

The DHCD and CHA programs are similar in most respects, but there are a few differences: in the fees charged to owners, in which agencies will administer the vouchers going forward, and in policies regarding over-housed tenants and mobility requests for tenants who originally request vouchers but subsequently wish to request a mobile option. At one time the two agencies began negotiations to standardize program policies, but these discussions ended without resolution. Both agencies have expressed interest in continuing the discussion, and preservation policy in the state would likely benefit from standardization.

Nationally, there are several hundred properties with HUD-subsidized mortgages with use restrictions expiring between 2014 and 2020, the set of properties that could benefit from the replication of the MTW Expiring Use Preservation programs in other states. There are currently 38 MTW agencies in the country (including the three in Massachusetts), many located in strong real estate markets. It is in such strong rental markets that replication of the program would be most helpful, since owners have a significant incentive to opt out of further use restrictions in order to maximize profits. And it is in such tight markets that tenants might be most motivated to convert EV's to PBV's: out of a desire to lower their own rents, or perhaps out of a commitment to keeping their buildings affordable in places where such resources are increasingly scarce.

# **MTW Agencies' Expiring Use Preservation Programs**

## **An Innovative Effort to Preserve Affordable Housing in Massachusetts**

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Among the affordable housing resources in Massachusetts are many properties developed by private owners with HUD-subsidized resources in the 1960's, 1970's and 1980's. These owners received deep mortgage interest subsidies, rent subsidies, or both. In exchange, they agreed to use restrictions on the properties lasting between 20 and 40 years. The expiration of these use restrictions has led to a substantial loss of affordable housing in the state, and it presents the potential for significant additional losses.

Two housing agencies in Massachusetts – the Cambridge Housing Authority and the state Department of Housing and Community Development – have used their capacity as “Moving to Work” agencies to create an innovative preservation opportunity for many of these properties.<sup>1</sup> These agencies have worked with owners and tenants to create long-term, project-based rent subsidies for at-risk developments. These project-based subsidies enable owners to raise new capital for upgrade and improvement of the properties, while ensuring that the units will remain affordable to very low-income tenants for years to come.

### **The Preservation Challenge**

In the early 1960's, national affordable housing policy began a shift towards production by private owners. In 1961, Congress launched the 221(d)(3) Below-Market Interest Rate (BMIR) loan program, which provided interest subsidies to owners; the 236 program followed later in the decade. Both of these programs subsidized the cost of debt that private owners used to build multifamily housing. In exchange for the low-cost debt, owners agreed to reduce rents to keep the units affordable to low- and moderate-income tenants. In some of these developments, interest subsidies were paired with rent subsidies to make the units more deeply affordable to tenants at lower income levels: first through the Rent Supplement (“Rent Supp”) program, then through the Rental Assistance Program (“RAP”), and finally through the Section 8 program. Starting in 1974, Section 8 rent subsidies, and the borrowing capacity they created, became the main driver of new affordable unit production, and it remained so for the following decade.

All of these resources were paired with time-limited use restrictions, usually between 20 and 40 years. Owners would commit to a specific schedule of rents (subsidized or unsubsidized); for the most part, these rents would be allowed to increase annually only with operating cost inflation, so owners had no ability to capture the benefits of an improving real estate market. Further, most of these properties were, for many years, locked out of the normal recapitalization process that enables owners to repair and upgrade

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<sup>1</sup> Cambridge Housing Authority was responsible for the initial program innovation, announcing the Expiring Use Preservation Program in their 2011 MTW Annual Plan. CEDAC was instrumental in encouraging DHCD, also an MTW agency, to amend their MTW Annual Plan to include a similar program.

their buildings in order to continue to provide quality housing and to stay competitive in an evolving market. Over time, the affordable portfolio saw the loss of many of these units. In weaker markets, many properties fell into disrepair, with owners lacking the capacity or the financial incentive to raise new funds to address deferred capital needs. In stronger markets, as rent restrictions expired, owners might “opt out” of continuing subsidies (and attendant use restrictions) in order to take advantage of growing property values. Massachusetts is home to some of the country’s strongest housing markets; as a result, the “opt out” pressure has been considerable. The Community Economic Development Assistance Corporation (CEDAC) estimates that as of January, 2014, Massachusetts had already lost more than 7,351 affordable units (these had been subsidized under a range of both state and federal programs).<sup>2</sup>

Over the years, Congress has created a number of programs aimed at preserving this pool of properties. The Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) of 1990 created incentives for owners to remain in the federal program rather than prepay their subsidized mortgages, and provided funding for nonprofits and resident groups to buy these expiring use properties. The 1997 Multifamily and Assisted Housing Reform and Affordability Act (MAHRAA) was targeted at projects with long-term Section 8 contracts, enabling them to align rents to market levels and right-size mortgage debt. The late 1990’s also saw the creation of Enhanced Vouchers (EV’s), mobile subsidies made available to residents of properties where the owners elected to prepay in order to extinguish use restrictions. In 1999, Congress extended the program to provide EV’s in properties where owners opt out of use restrictions. These tenant-based subsidies will allow residents to stay in their current units while paying owners full market rents. EV tenants continue to pay the lesser of 30% of their income, or the rent they paid prior to the property’s release from use restrictions.

EV’s have been a powerful tool for protecting individual tenants from displacement. But they do little to support the preservation of affordable properties. Owners cannot borrow against tenant-based contracts, so they are unable to raise additional capital to preserve the properties as affordable. Once tenants with EV’s move, the units are forever lost to the affordable portfolio.

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<sup>2</sup> Notes to Accompany Expiring Use Database, Community Economic Development Assistance Corporation (CEDAC), 2014, <http://cwc.cedac.org/Uploads/Files/April2014DatabaseEndnotes.pdf>

## **Project-Based Vouchers as a Preservation Tool**

Long-term, project-based Section 8 contracts are a powerful tool for preserving affordable properties. In contrast to EV's and other mobile vouchers, project-based Section 8 ties a long-term rent subsidy to a specific unit. When a tenant leaves, the unit will be rented to another low-income tenant, paying an affordable 30% of household income. The unit stays affordable at least for the duration of the subsidy contract.

Further, the long-term contract guarantees not only that a unit will be affordable, but also that the annual rent received for that unit will be relatively predictable. Most contracts are benchmarked either to general cost inflation or to specific budget increases (or, in some cases, to market rent increases or Fair Market Rent standards). This consistency and predictability in rental revenues allows owners to borrow against these rents, raising capital for a preservation purchase and/or a program of capital improvements. In many properties, owners will further leverage project-based Section 8 rents to raise low-income housing tax credit (LIHTC) equity, facilitating a broad-scale rehab and locking in long-term affordability.

## **Public Housing Authorities and Section 8 Project-Basing**

Public Housing Authorities (PHA's) across the country administer the Section 8 Housing Choice Voucher program. For the most part, the Housing Choice Voucher (HCV) program is a tenant-based program that enables voucher holders to lease apartments from private landlords. If the rent is within program payment standards, then tenants pay 30% of their income for housing costs (including an allowance for utilities); tenants are allowed to pay up to 40% of their income if they choose a slightly more expensive apartment. In recognition of the preservation (and development) potential of project-based Section 8s, federal policy allows PHA's to convert up to 20% of their portfolio to Project-Based Vouchers (PBV's). Recently, HUD issued a notice confirming that the PHA's ability to convert to PBV's extends to EV's that they administer.

However, there are a number of obstacles to preservation PBV conversion for PHA's:

- The 20% cap on PBV's across a PHA's portfolio provides a disincentive at best, and an insuperable obstacle at worst. Every unit converted to PBV's brings a PHA closer to its 20% cap, thus reducing flexibility for future efforts. Further, a large-scale preservation property could conceivably add a hundred or more PBV units to a PHA's portfolio. Nationally, 88% of PHA's are small, with 500 or fewer units (public housing and HCVs combined). For those small public housing authorities that administer Section 8 programs, the average HCV portfolio is 320 units. Given the 20% cap, a PHA of this size could not consider converting a 200-unit preservation property to PBV's.<sup>3</sup>
- Current rules limit the number of PBV's per development to 25% of total units. An exception is made for projects serving special needs and elderly households and those family developments providing social services.

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<sup>3</sup> Data on housing authority size from the CLPHA (Council of Large Public Housing Authorities).

Process requirements may also present obstacles. PHA's are required to adopt a policy regarding which units they will accept for PBV conversion, and they are required to publicly advertise the availability of PBV's to potential owners/developers. These requirements make it more difficult to target a specific at-risk property for preservation.

### **Moving to Work**

The Moving To Work (MTW) program was authorized by Congress in 1996. Still technically in its demonstration stage, the program grants special status to certain high-performing PHA's. MTW agencies are provided with their annual funding in the form of a block grant. The money is fungible; MTW agencies are allowed to deploy funds for housing programs as they see fit. MTW agencies are required to provide affordable housing to the same number of households that they would have served under traditional regulatory constraints; but they have much greater discretion in determining how they do so.

The statutory goals of the program are threefold: to achieve greater cost effectiveness; to promote economic self-sufficiency for families (thus the name "Moving to Work"); and to provide greater housing choices for families. MTW agencies are expected to develop innovative programming in response to their communities' needs and resources. They must lay out their program plans each year in an Annual Plan.

Massachusetts has three MTW agencies: Cambridge Housing Authority (CHA), the state Department of Housing and Community Development (DHCD), and the Holyoke Housing Authority. Both CHA and DHCD have launched efforts to use their MTW flexibility for housing preservation by project-basing EV's for private owners. Both agencies include this program in their Annual Plans as the *Expiring Use Preservation Initiative* (DHCD) or the *Expiring Use Preservation Program* (CHA). Both agencies take advantage of their flexibility to project-base units without regard to the 20% per agency constraint, and to allow developments to access PBV's for up to 100% of the units in a development without requiring social service programs. The agencies also offer flexibility on "overhousing" issues (more on that matter below). Finally, while most PHA's manage the waiting lists for PBV's in their portfolio, both of these MTW agencies follow a policy of site-based waiting lists for PBV projects, allowing the owners a great deal more control over leasing and tenant populations.

### **How the MTW Expiring Use Preservation Programs Work**

The MTW Expiring Use Preservation programs are a tool for preserving buildings where the tenants are eligible for EV's because of expiring use restrictions due to prepayment of a federally-subsidized mortgage. If they were to receive the EV's, these tenants would be allowed to stay in their units even after the owners raise the rents. The tenants would continue paying the greater of their current rent or 30% of their income, and the EV would provide owners with the difference between the current rent and the market rent for the unit. The MTW Expiring Use programs offer the owners an opportunity to convert these EV's to PBV's, locking in rents, subsidies and affordability, and thus enabling the owners to secure long-term financing. However, conversion is completely at the tenant's discretion. Each tenant who would receive an EV has the opportunity to decide whether to keep the EV or to convert to a PBV. The choice can be confusing, with implications for rent levels, unit size, and mobility: not surprisingly, everyone who has participated in the process points to tenant education as the most significant challenge.

An owner seeking to use the program will approach one of the two MTW agencies to initiate the process. (Ultimately, the choice to assign a project to one of these agencies belongs to HUD; but to date they seem to have honored the owner's initial choices.) The parties initiating the process may be current owners looking to refinance and improve a property. One such example is nonprofit Madison Park Development Corporation, which used the MTW conversion initiative to refinance Smith House, a 132-unit senior property in Boston's Roxbury neighborhood. Others may be preservation purchasers; these buyers will use the program to raise capital to both buy and rehab the property. Examples include for-profit Beacon Properties, which has used DHCD's program to acquire and renovate properties in Medfield, Maynard and Framingham, and nonprofit HRI, which worked with CHA to acquire and preserve 125 at-risk units in Cambridge's Inman Square.<sup>4</sup>

The owner and the MTW agency will then begin the process of educating residents about their choices. DHCD works with CEDAC to engage the local Legal Services agency to complete the tenant education process for its preservation projects; CHA keeps this function in-house. For both agencies, tenants are provided with a Preservation Agreement that outlines in great detail the changes from the current rent structure and the options faced by tenants in different situations. This document also covers the owner's rehab plans and other policies that will have an impact on tenants (such as income recertification and over-housing). The templates for these documents were negotiated with a great deal of effort for the initial round of transactions between the housing agencies, Legal Services, and owners; since the basics are in place, it has become relatively easy to adopt the agreements for subsequent deals.

Once tenants have had an opportunity to review their options and choose their course of action, then the administering housing agency begins the process of qualifying tenants and issuing vouchers. This process involves reviewing tenant incomes and immigration status to determine eligibility, inspecting the units for compliance with Housing Quality Standards (HQS), and eventually signing a Housing Assistance Payment contract with the owner for the PBV units. If the development will also be leveraging low-income housing tax credits (LIHTC), then the owner may need to income-qualify tenants per the LIHTC rules at the same time that the housing authority is qualifying them for vouchers.

## **Tenant Choices**

Nearly all tenants in a converting development have a choice about how to proceed. Exceptions include:

- Tenants who already have PBV's or the state equivalent, Massachusetts Rental Voucher Program contracts (many buildings have partial contracts for some units): their units will all be PBV post-conversion; and
- Tenants with incomes over 95% AMI: they are not eligible for assistance.

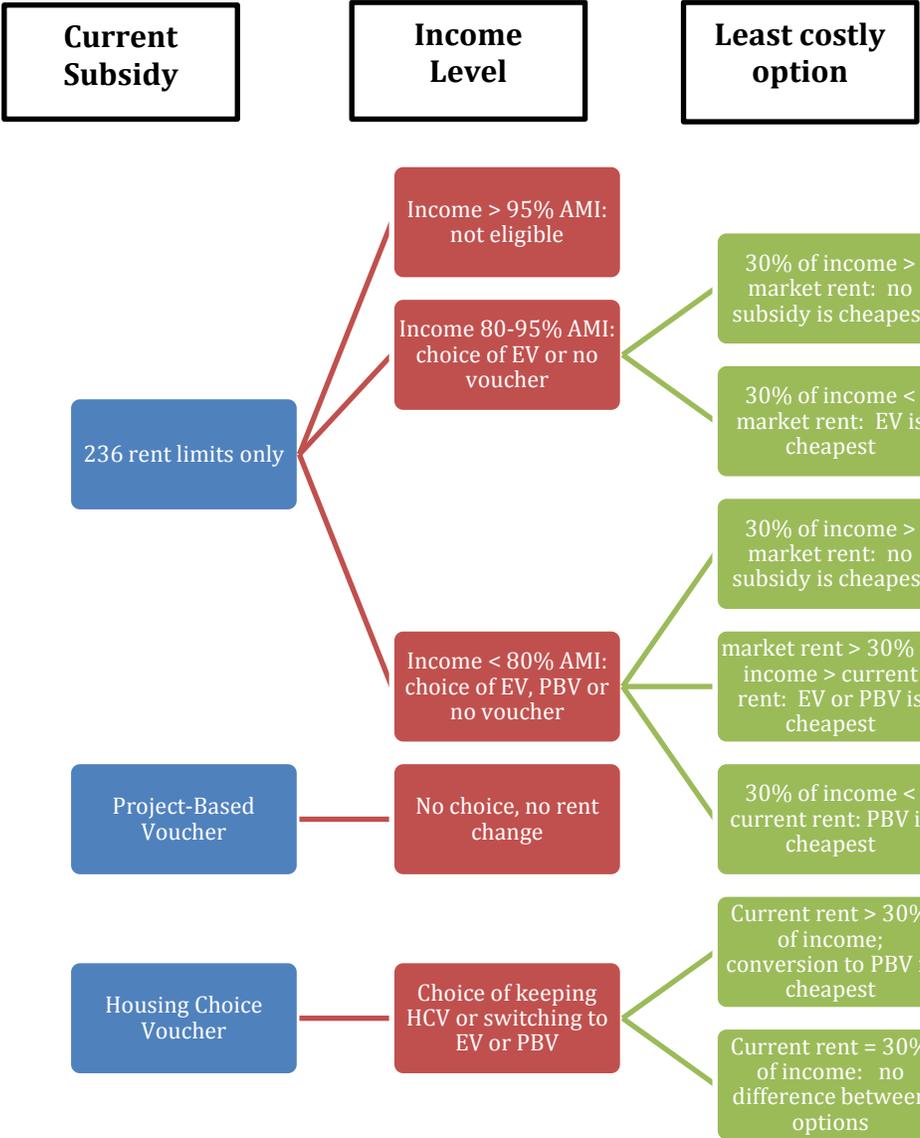
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<sup>4</sup> For more information on the Inman Square project, see Bill Brauner, *Cambridge Housing Authority Converts Enhanced Vouchers to Project-Based Vouchers to Preserve Inman Square Apartments*, CEDAC, 2011, <http://cwc.cedac.org/Uploads/Files/CHAConvertsEnhancedVouchersToProjectBased.pdf>

All other tenants face a choice of some sort, although the exact nature of the choice will depend on their current subsidy (if any), their income level, and their household size. Households with incomes of 80% AMI or less get to choose either an EV or conversion to PBV; households with tenant-based HCVs can choose to keep their HCV or to convert to either a PBV or an EV. In many (and perhaps most) cases conversion to a PBV will mean lower rent for the tenant; but for certain tenants (especially those with incomes on the higher end of the eligible range) this may not be the case. Further, different types of converting developments may have different underlying restrictions which will change the implications of tenant choices from one property to another. For example, properties that refinanced earlier under LIHPRHA have use restrictions that extend for the useful life of the property, limiting their ability to increase rents in perpetuity.

The following chart is a partial representation of tenant decision options, based solely on rent levels, for one particular preservation project in Cambridge:

**Tenant Decision Options**



For a tenant, determining the least costly rent option is complicated enough. Beyond price, the different subsidy programs have different implications for tenants who are likely to see their incomes go up or down; different implications for those who are over-housed or likely to become over-housed;<sup>5</sup> different implications for issues such as the presence of immigrants in the household; and most of all, different implications for mobility.

Households choosing EV's may end up with higher rent, but they retain complete mobility: if they decide to relocate from the development, their subsidies will become standard HCVs. Households choosing PBV's may request conversion to a mobile subsidy in the future, but their ability to get such a voucher will be limited by the availability of a mobile voucher for their use; they may need to wait for some period of time before a mobile resource becomes available.

The choices are indeed complex, and the process of educating tenants about their options takes time. One owner estimated that the education process needs a full 90 days to be sure that all tenants thoroughly understand their choices. Cultural and linguistic factors may complicate matters further: at one building in Framingham, meetings and materials needed to be presented not only in English and Spanish, but also Russian and Portuguese.

In most cases, owners want the largest possible number of units to convert to PBV's. Units with PBV's have predictable incomes that can support debt; the permanent affordability reduces market risk going forward, as well. In addition, many preservation transactions also leverage LIHTC equity; a unit with a PBV is more likely to be and to remain a low-income unit with an income-qualified tenant, therefore eligible to be included in tax credit basis.<sup>6</sup>

As the above chart shows, the choice of a PBV over an EV may or may not lower a tenant's rent; the lower the tenant's income, the greater the chance that conversion to a PBV will be to the tenant's economic advantage. For those who would be paying 30% of their income with either a PBV or an EV, then the EV would seem to be to the tenant's continuing advantage, because it offers greater future mobility.

However, some owners have had great success in convincing tenants to convert to PBV's even though conversion offered no financial advantage and theoretically limited future options. Residents of senior/disabled buildings may not place much value on future mobility, since they may consider themselves likely to stay where they are. The CHA reports that at every senior building they have converted, over 95% of the tenants chose to stay. Owners report that some communities have particularly committed tenants, who are compelled by the issue of continuing affordability and the broader preservation agenda. These residents may also be aware that a larger number of PBV's leads to greater capital leverage, and thus a more complete rehab program.

- Beacon Properties reports that preservation was a major motivation for many of the residents of a senior development in Maynard, the overwhelming majority of whom chose to convert to PBV's.

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<sup>5</sup> A household is considered "over-housed" if their unit has more bedrooms than would generally be allowed under housing program rules, given the size and composition of the household

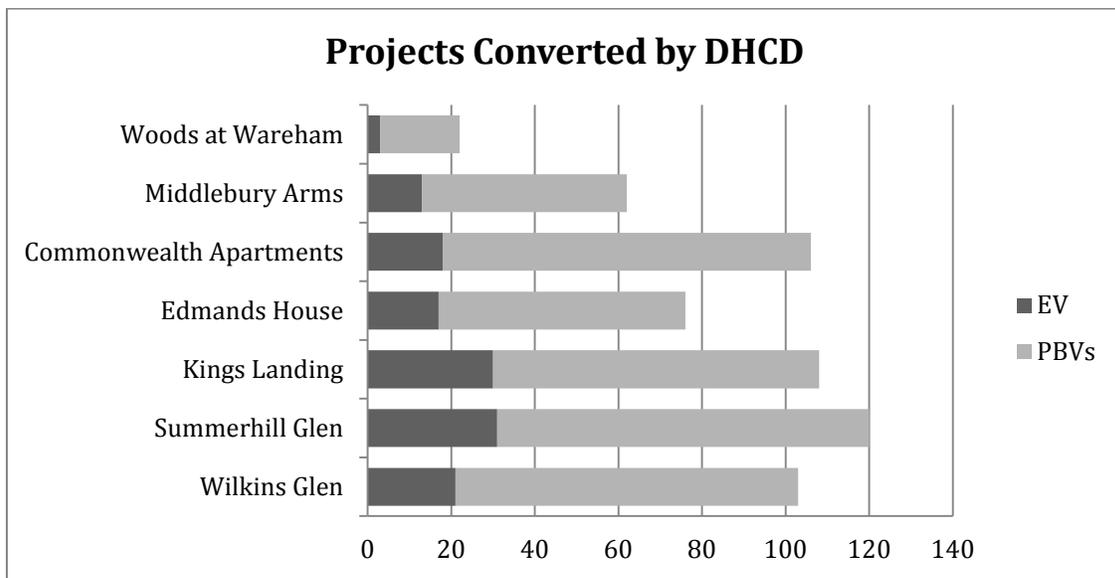
<sup>6</sup> Since the LIHTC income limits are 60% of AMI and households up to 80% of AMI are eligible for PBV's, it is not necessarily the case that all units receiving PBV's will initially be occupied by LIHTC-eligible households.

- At another Beacon development, a family property in Medfield, many residents chose to convert to PBV's because the excellent local school system offered a powerful incentive for families to stay in that location; and recognizing that affordable housing is a scarce local resource, these families placed value on preserving the local units.
- Madison Park CDC, a nonprofit owner, was able to convince residents in 129 of Smith House's 132 units to convert to PBV's; they attribute this high conversion rate to residents' strong commitment to the community.
- At Inman Square, HRI, also a nonprofit owner, needed at least 80% of the tenants to accept PBV's in order to make the transaction work; in the end, they got far more. HRI reports that residents were keenly aware of rent and property value pressures, in the neighborhood, and they were eager to contribute to both preservation and renovation by accepting project-based subsidies.

Both MTW agencies have been able to deploy other resources to increase the number of PBV contracts even when residents do not choose to convert. The percentage of units receiving PBV's gets a boost from the MRVP contracts in place at the time of conversion, since MRVP units will be converted to PBV automatically. In addition, both CHA and DHCD have to some extent been able to pledge to owners that they will commit PBV's to EV units in the future, once the EV tenants leave, increasing the overall size of the PBV contract. These agencies' ability to make this commitment up front may depend both on available resources and on the agencies' assessment of the importance of preserving as many units as possible at a particular property.

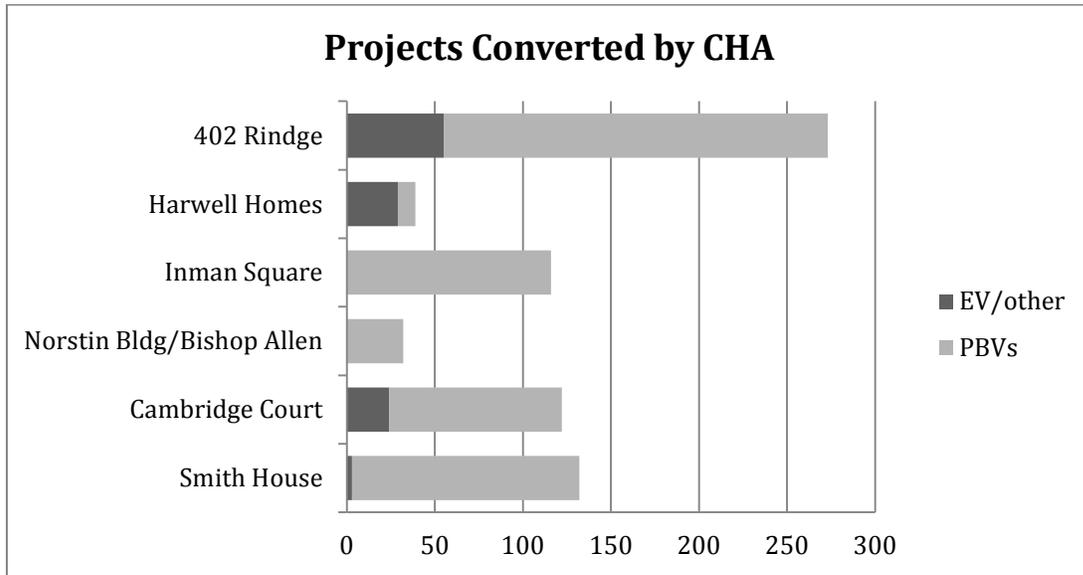
**Completed Projects and Results to Date**

To date, DHCD has completed seven PBV conversions through their Expiring Use Preservation initiative, with a total of 597 units, 464 (77%) of which have converted to PBV's:



Two additional projects are currently in process, with a total of 135 units (although it is still uncertain how many will PBV units will be included in the final HAP contracts).

CHA has completed six projects, with a total of 714 units, 603 of which (84%) ended up with PBVs:



One additional benefit of the Expiring Use Preservation program has accrued to the state of Massachusetts. A number of developments that have gone through the program have had rent subsidy contracts under the state Massachusetts Rental Voucher Program (MRVP). These units would be eligible for EV's through federal regulations; thus, these units have been able to convert from MRVPs to PBVs, essentially replacing a state resource with a federal one.

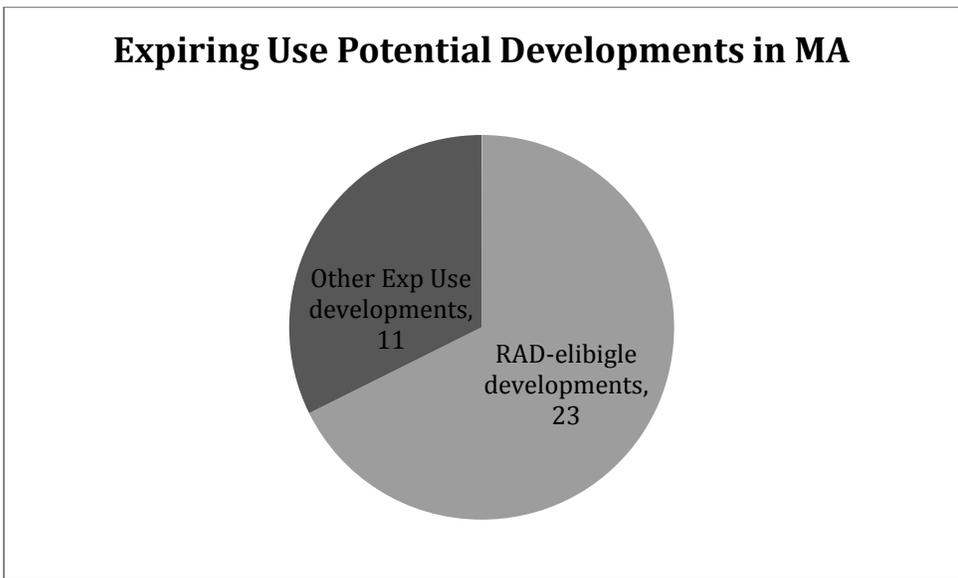
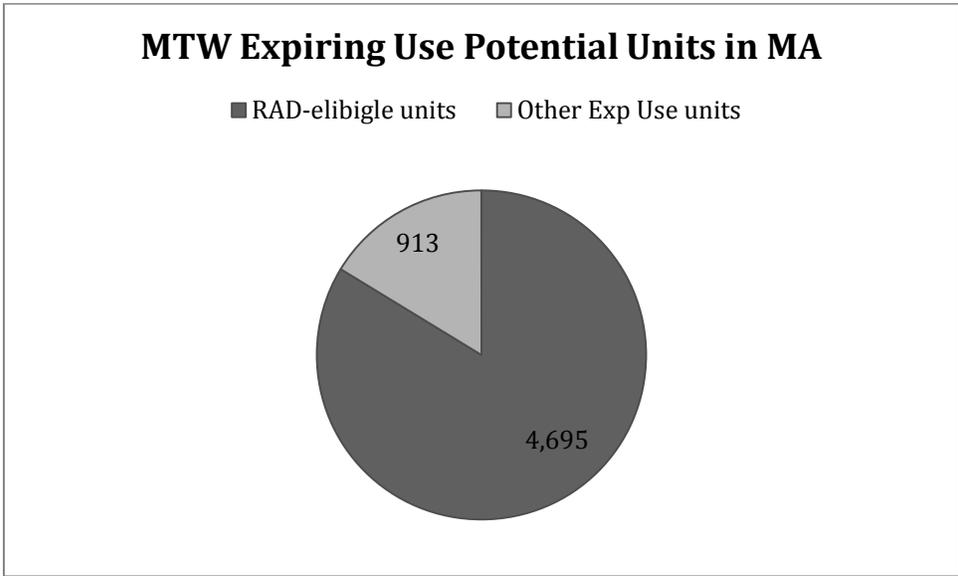
Stakeholders interviewed for this study, including owners, MTW agency representatives, Legal Services tenant advocates, and representatives of the PBV administering agencies, have all praised the program and its effectiveness. Said one advocate, "It's a great preservation tool...it spruces up the property and brings up the property value and people get a nice unit out of it." An owner summed it up: "It works, and it works well."

**Potential Future Projects**

Several agencies maintain data that contributes to an understanding of how many projects in the state might take advantage of the MTW Expiring Use Preservation programs in the future. Drawing data from both CEDAC's Preservation Database and from MassHousing's list of Section 236 projects with Rent Supp or RAP assistance, it appears that there are 34 developments remaining in the state, with a total of 5,608 units, with use restrictions expiring between 2015 and 2020, that could potentially take advantage of the MTW programs for preservation purposes. This calculation excludes expiring use properties that already have PBV's in place: these projects may well be in danger of opting out of further use restrictions, but clearly the availability of PBV's is not relevant to future preservation efforts. Further, this calculation excludes properties that were assisted through Massachusetts' 13A interest subsidy program. The 13A program was a state-funded mirror of the national 236 program, and it was HUD's practice for some time to provide EV's to residents facing expiring use restrictions through this state program. However, in recent

years HUD has changed its policy and the state has yet to prevail to reinstate the availability of EV's for 13A projects; so for the time being, 13A properties are not MTW Expiring Use Preservation candidates.

Of the 5,608 units and 34 developments, the majority (23 developments, 4,695 units) have some number of "orphan program" subsidies in place from the Rent Supp or RAP programs, and thus are also candidates for preservation through HUD's RAD program, as will be discussed in the next section.<sup>7</sup>



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<sup>7</sup> These statistics were compiled by combining the CEDAC database with the list of RAD-eligible properties compiled by MassHousing. The totals here include all non-PBV 236 properties on the CEDAC list where the use restrictions have not yet expired, which have no Rent Supp or RAP units; plus all of the projects on the MassHousing RAD-eligible list.

## **MTW and the Rental Assistance Demonstration Project (RAD)**

Eligibility for EV's, and thus for MTW Expiring Use Preservation, extends to all properties with expiring use restrictions due to the prepayment of HUD-subsidized mortgages. There is substantial overlap between this set of properties and the properties that are eligible for conversion through another, more recently-launched effort: the Rental Assistance Demonstration program (RAD).<sup>8</sup> RAD offers an option for conversion to PBV's for those properties that have rent subsidy contracts through the Rent Supplement ("Rent Supp") and Rental Assistance Program ("RAP") programs. These two programs, both precursors to project-based Section 8, were paired most frequently with the Section 236 rent program. Prepayment of 236 loans is the main eligibility trigger for EV's, at least in Massachusetts. Both Rent Supp and RAP have long since been phased out by HUD, and as the current round of subsidy contracts expires, there is no funding available to renew these resources.

The RAD Program is a multi-dimensional effort to streamline, rationalize and recapitalize affordable housing in key HUD programs. The relevant portion of RAD for the portfolio discussed here offers properties with Rent Supp or RAP contracts the opportunity to convert these units, plus many others in the developments, to long-term PBV contracts. For these properties, RAD offers the same advantages as the MTW preservation program: the chance to lock in long-term affordability, and the ability to raise capital from both debt and, in some cases, from LIHTC equity.

In Massachusetts, most Rent Supp and RAP projects could convert to PBV's either through RAD or through the MTW Expiring Use program. From an owner perspective RAD offers one very significant advantage: owners can elect to convert any qualified unit to PBV without offering the tenants a choice to keep the EV. This removes a major source of uncertainty for owners, and it relieves them of the task of explaining the very complicated decision dynamics to tenants choosing between an EV and a PBV. Tenants in RAD conversions who hold HCVs, however, do have the choice of retaining the mobile voucher or converting to a PBV; and this somewhat more limited choice is something that owners will need to thoroughly explain to affected residents.

Because of the resident choice issue, most owners who have faced a choice have decided to work through RAD rather than through the MTW Expiring Use option. However, there is one area in which the MTW approach offers an advantage that is compelling to at least some owners. In most cases, RAD PBV conversions are administered by PHA's; and most PHA's manage only one master waiting list for all of the PBV's in their portfolios. Some of these PHA's impose restrictions beyond the standard income limits for these waiting lists, exclusively targeting homeless households, for example. Both DHCD and CHA have the policy of site-basing waiting lists for all PBV projects. At least one owner has chosen to go the MTW Expiring Use route rather than conversion through RAD in order to retain this degree of waiting list control.

Additionally, while RAD increases the cap on PBV's at a site from 25% to 50%, in order to have PBV contracts on more than 50% of the units in a family property, the owner will need to offer supportive services, and these services will need to be mandatory for new tenants.

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<sup>8</sup> A full discussion of RAD can be found on the CEDAC website in the report *RAD as a Preservation Tool in Massachusetts: Initial Implementation*, by Laurie Gould, July 2014. <http://cwc.cedac.org/Uploads/Files/July2014RADreport.pdf>

The MTW agencies, by virtue of their exemption from many regulatory requirements, are able to relieve owners in the Expiring Use conversion program from that obligation.

Finally, MTW agencies have some greater flexibility in setting PBV rents than RAD permits. RAD limits rents to a maximum of 110% FMRs. At some properties, this rent level does not come close to true market rents. MTW agencies have some flexibility to set rents at higher levels. While the DHCD program term sheet calls for capping contract rents at 110% FMRs, in at least one Cambridge project, CHA set contract rents at 120% FMRs.

Currently, RAD is only authorized through December 31, 2014. It is clearly HUD's intention to renew and expand the program; but the continued availability of RAD as a preservation alternative is dependent on further Congressional action.

### **CHA and DHCD**

The CHA and DHCD MTW Expiring Use Preservation programs are similar, but divergent in several ways:

- DHCD requires owners to pay for Legal Services to handle the tenant education process. While CHA worked closely with GBLS to settle terms for the first project, since that time CHA has completed the training on its own.
- While CHA does not require owners to pay specifically for tenant education, they do charge owners a per unit fee to participate in the program. DHCD does not charge such a fee (beyond the training fees paid to Legal Services).
- DHCD administers its HCV program through a network of eight nonprofit Regional Administering Agencies. Once DHCD accepts a project, it is assigned right away to the regional nonprofit appropriate to the property's geographic location.
- CHA is able to convert properties in any part of the state, although most conversions to date have been within Cambridge. In all cases, CHA staff will do the initial education, income certifications, and management of the process through the issuance of the HAP contract. If the property is in Cambridge, CHA will continue to administer the PBV's. If it is elsewhere in the state, then CHA will usually work with the local PHA to transfer contract management to that local agency, retaining a 20% portion of the administrative fee to cover its own costs.
- The two agencies have modestly different policies regarding over-housed tenants, mobility requests for tenants who convert to PBV's but later wish to move, and the provision of PBV's for non-converting units once the EV tenants have left the property.

There was an earlier effort for the two agencies to work together to align their program policies so that owners and tenants throughout the state face a consistent set of options and requirements. These negotiations eventually trailed off without final resolution. Key staff at both agencies express interest in resuming these discussions. It would likely be of benefit to both agencies, and to the cause of preservation generally, to achieve as much consistency and predictability as possible.

## Implementation Challenges

As described above, the greatest challenge to implementation is educating tenants about the complex choices they face. Participants in the program describe a number of additional challenges to implementation:

- Each development and its population has tended to raise its own set of unique questions about program rules. In some developments over-housing was a particular challenge; another had a great number of improperly leased units and unauthorized tenants inherited from a previous owner; a third had a large number of undocumented immigrants making up some portion of some of the households. Each of these cases presented a set of new policies that needed to be negotiated.
- The process of conversion to PBV's can be time-consuming. Once the conversion process has started, it can take several months until the paperwork is completed so that owners can receive subsidy payments for all of the converted units. Different administering agencies have different assessments of the time needed for cash to flow freely to owners: one agency claims to complete the process within 45 days, others project that it will take 4-5 months. This delay can pose liquidity challenges for some owners.
- While Cambridge retains a list of properties within the city that could be candidates for conversion through the Expiring Use Preservation program, the nonprofit Regional Administering Agencies (RAAs) that administer the conversions elsewhere in the state do not currently have a means of anticipating upcoming conversions. Projects going through DHCD can arrive on a RAA's work schedule with little notice. The properties tend to be large, and the conversion process is very work-intensive; so this lack of predictability can be an organizational planning challenge.
- Both agencies offer some form of preferential waiting list placement for households who accept a PBV but later wish to convert to a mobile voucher. Some of the administering agencies are concerned that offering conversion preference to these households might swamp their already appreciable mobile voucher waiting lists.

## National Replication Potential

Nationally, there are less than 100 Section 221(d)(3) BMIR properties remaining with unexpired use restrictions; roughly 300 active federally-insured 236 properties, and 342 236 properties financed by state housing financing agencies.<sup>9</sup> This list includes many properties that already have project-based contracts in place, as well as properties that have already completed 236 decouplings or other preservation refinancing. The total pool of eligible properties is probably limited to several hundred, with the final set of mortgages and related use restrictions expiring in 2020.

While the pool of eligible properties is shrinking, it still represents thousands of units, a significant resource for low-income households around the country. The 38 MTW agencies are not present in every state, but they are located in many of the country's strongest-market areas (such as California, the Pacific Northwest, the District of Columbia). It is precisely these strong markets where there is the greatest potential to use conversion to

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<sup>9</sup> From HUD's database of insured mortgages, and the National Preservation Database, maintained by the National Low Income Housing Coalition and the Public and Affordable Housing Research Corporation.

PBV's to preserve housing. Profit-oriented owners have the strongest motivation to opt out of use restrictions in areas with high demand and rents to match. And it is in such tight markets that tenants would be most motivated to convert EV's to PBV's: out of a desire to lower their own rents, or perhaps out of a commitment to keeping their buildings affordable for future generations of tenants in a place where such resources are increasingly scarce.

Appendices:

Appendix A: List of interviewees

Appendix B: DHCD Term Sheet for Expiring Use Preservation Initiative

Appendix C: Preservation Acronyms

## **Appendix A: Individuals Interviewed**

Bill Brauner, CEDAC  
Mary Corthell, Beacon Properties  
Peter Daly, HRI  
Charles Francis, HUD  
David Harrison, SMOC  
Susan Hegel, Cambridge Legal Services  
Mike Johnston, CHA  
David Keene, MassHousing  
Stephen Matthews, South Shore Legal Services  
Paul Nixon, DHCD  
Daniel Rogers, HUD  
Russ Tanner, Madison Park Development Corp  
Thacher Tiffany, Beacon Properties

**Appendix B.  
DHCD Expiring Use Preservation Program Term Sheet (April 2012)**

As part of the Moving To Work (MTW) program, the Massachusetts Department of Housing and Community Development (DHCD) has established an initiative to promote the long-term preservation of affordable housing units in subsidized “expiring use” multi-family developments. Under this initiative, DHCD may convert Enhanced Vouchers and enter into Project Based Voucher (PBV) contracts for some or all of the units in these properties. The following provides a discussion of eligible properties and a summary of terms and conditions applicable to the PBV contracts entered into pursuant to the program. DHCD reserves the right to modify the terms and conditions, to establish additional conditions and/or limitations on participating properties, and to suspend or terminate the program at any time.

<b>Program Description</b>	Under this initiative, DHCD will enter into Project Based Voucher agreements for some or all units in subsidized, expiring use, multi-family properties that are undergoing a conversion action and for which HUD intends to issue tenant-based Enhanced Vouchers (EV). Upon conversion, existing, pre-conversion tenants in these properties may elect to receive a tenant-based Enhanced Voucher or a Project Based Voucher (PBV). Only those properties that meet DHCD’s definition of eligible properties may participate. DHCD utilizes its authority under the Moving to Work (MTW) Agreement between DHCD and HUD to implement certain features of this initiative.
<b>Eligible Properties</b>	Eligible properties are limited to those which meet all of the following criteria: <ul style="list-style-type: none"> <li>• Existing subsidized multi-family properties undergoing a conversion action for which HUD has issued a notice of intent to provide Enhanced Vouchers to current tenants.</li> <li>• HUD has designated DHCD to administer the Enhanced Voucher Annual Contributions Contract.</li> <li>• Owner or prospective owner has requested participation in the DHCD Expiring Use Preservation program.</li> <li>• Property meets HUD Housing Quality Standards, rent reasonableness and other standards applicable to the Project Based Voucher program.</li> <li>• Property meets the criteria as established by DHCD in its MTW Plan.</li> </ul>
<b>Units Covered Under PBV Contract</b>	Prior to the conversion action date, DHCD shall determine the maximum number of Project Based Vouchers to be included under the PBV Housing Assistance Payments contract. Generally, DHCD will include the following units in a Project Based Contract: <ul style="list-style-type: none"> <li>• Units that accommodate tenants that have chosen to live in a Project Based Section 8 unit.</li> <li>• Units that receive vouchers but have ineligible tenants.</li> <li>• Units that receive vouchers but are vacant at the time the voucher is issued.</li> </ul>
<b>Backfill PBV Units</b>	DHCD may decide to commit to adding additional Section 8 vouchers to the Project Based Voucher contract when a unit occupied by an Enhanced Voucher tenant is vacated (referred to as backfill PBVs). These additional backfill PBVs would be added to the PBV Housing Assistance Payments contract at a later point. The number of additional backfill PBVs per project will be determined on a case by case basis. At no time will the total number of backfill PBV units

	<p>exceed 15% of the total statewide Section 8 mobile vouchers available upon turn-over in that same year. As Section 8 vouchers are a scarce resource, priority for backfill PBV units will be given to projects that demonstrate one or more of the following conditions:</p> <ul style="list-style-type: none"> <li>• The project is located in a neighborhood that offers economic and educational opportunities.</li> <li>• The owner agrees to work with DHCD to establish a tenant self-sufficiency program for the project.</li> <li>• The project is located in an area where replacement costs effectively prohibit the development of replacement affordable housing units.</li> <li>• The project is located in a city or town where the percentage of affordable units is less than 10% of the total or where the loss of the development would represent a loss of 25% or more of its affordable housing stock.</li> <li>• The project aligns with DHCD's Sustainable Development Principles.</li> </ul> <p>DHCD maintains the option to revise these criteria to meet housing need and State sponsored initiatives.</p>
<b>Term</b>	<ul style="list-style-type: none"> <li>• Initial term of up to fifteen (15) years.</li> <li>• Up to three (3) five-year renewals may be entered into by DHCD for a maximum total term of thirty (30) years.</li> </ul>
<b>Contract</b>	Project owners will enter into a modified version of the standard HUD Project Based Voucher Housing Assistance Payments contract.
<b>Processing of PBV Contracts</b>	<p>Prior to entering into a PBV Housing Assistance Payments contract, the following processing steps must be completed:</p> <ul style="list-style-type: none"> <li>• Owner submits application to DHCD including tenant selection plan, development team description and capital improvements plan if applicable</li> <li>• DHCD conducts HQS inspection</li> <li>• DHCD reviews and documents compliance with applicable Site and Neighborhood standards. Owner provides relevant information as part of the application process.</li> <li>• Environmental review performed as required</li> <li>• DHCD determines reasonable rent</li> <li>• PBV HAP Contract executed by parties</li> </ul>
<b>Tenant Choice/Education</b>	<ul style="list-style-type: none"> <li>• Tenants of the conversion property will be offered a choice of an Enhanced Voucher or a Project Based Voucher.</li> <li>• At least sixty (60) days before the conversion action, all tenants will be contacted by an independent third party engaged by DHCD at the owner's expense.</li> <li>• At least one general meeting involving the owner, the independent third party and DHCD will be conducted to inform tenants of their options.</li> <li>• At least one meeting will be conducted with each individual household at which time tenant eligibility and rent under each option will be assessed and tenants will be required to select the EV or PBV option</li> <li>• Owner will be required to reimburse DHCD for costs associated</li> </ul>

	with an independent Tenant Choice Education program.
<b>MRVP</b>	Tenants in an existing MRVP unit will be offered the option of receiving an Enhanced Voucher or remain in a unit with a Project Based voucher. If a tenant that was residing in an MRVP unit at the time of conversion is not eligible for the Section 8 program, they can continue to reside in a MRVP unit if they meet the criteria of the MRVP program, subject to DHCD's ability to negotiate acceptable MRVP rent levels with the owner.
<b>Rent Policy</b>	Initial gross rents (rent to owner plus allowances for any tenant-paid utilities) shall be the lower of: <ul style="list-style-type: none"> <li>• Owner requested rent</li> <li>• Reasonable rent as determined by DHCD</li> <li>• 110% of the then current HUD Fair Market Rent for the locality</li> </ul>
<b>Property Standards</b>	<ul style="list-style-type: none"> <li>• Properties must meet HUD's Housing Quality Standards at all times during the term of the Housing Assistance Payments Contract.</li> <li>• DHCD will conduct a pre-selection HQS inspection.</li> </ul>
<b>Tenant Selection</b>	<ul style="list-style-type: none"> <li>• Owners must submit a Tenant Selection Plan for DHCD review and approval.</li> <li>• Applicants who applied on site-based waiting lists prior to conversion will maintain their position on the waiting list; however, DHCD may require changes to the tenant selection methodology upon conversion.</li> <li>• Owners will generally be required to maintain and manage their own site-based waiting lists post-conversion in conformance with DHCD's MTW policies.</li> </ul>
<b>MTW Policies</b>	<ul style="list-style-type: none"> <li>• DHCD's MTW policies and procedures shall apply to Project Based Vouchers including initial eligibility, recertification, transfer and other relevant policies with the exception of the required waiting period of two years from initial occupancy for a PBV tenant to apply for a mobile voucher. For PBV tenants living in an EV preservation project at the conversion date, the waiting period will be shortened to one year.</li> <li>• Tenants who elect to keep their Enhanced Voucher shall be subject to EV rules established by HUD for the first year. After the first year, certain MTW operating flexibilities may be applied to EVs.</li> <li>• DHCD may, at its option, modify or establish additional MTW policies and procedures applicable to the PBV program.</li> </ul>
<b>Applicable Regulations</b>	Unless explicitly waived by DHCD in its MTW Plan, Project Based Vouchers are subject to the provisions of 24 CFR 983 and Enhanced Vouchers are subject to applicable HUD Notices including PIH 2001-41.

## **Appendix C. Preservation Acronyms**

**13A:** A Massachusetts program providing interest subsidies for debt financing the development of affordable housing; state equivalent of the federal 236 program

**236:** Federal program subsidizing mortgage interest down to 1% in exchange for extended use restrictions and rent limitations

**221(d)(3) BMIR:** Federal program subsidizing mortgage interest in exchange for extended use restrictions and rent limitations; predecessor of the more-generous 236 program

**AMI:** Area Median Income; updated annually by HUD for each Metropolitan Statistical Area

**CEDAC:** Community Economic Development Assistance Corporation

**CHA:** Cambridge Housing Authority, a MTW agency

**DHCD:** Massachusetts Department of Housing and Community Development, a MTW agency

**ELI:** Extremely Low Income (30% of AMI or less)

**EV:** Enhanced Voucher, a rent subsidy available to households when a HUD-subsidized mortgage is prepaid. EV holders can remain in their units, paying the higher of 30% of household income or the previous rent.

**FMR:** Fair Market Rent, determined annually by HUD for units of different sizes in each Metropolitan Statistical Area

**HAP:** Housing Assistance Payment, the contract covering PBV's

**HCV:** Housing Choice Voucher, a mobile Section 8 rent subsidy that moves with the tenant to any eligible unit

**HQS:** HUD's Housing Quality Standards

**IRP Decoupling:** A refinancing mechanism whereby the remaining interest subsidy payments ("Interest Reduction Payments") connected to a 236 mortgage are disconnected from the underlying mortgage in a preservation refinancing; these subsidy payments continue to flow in support of the refinanced property

**LIHTC:** Low-Income Housing Tax Credits

**MTW:** Moving to Work, a federal demonstration program providing certain high-performing housing authorities with greater regulatory flexibility and fungible financial resources

**PBV:** Project-Based Voucher

**PHA:** Public Housing Authority

**RAD:** Rental Assistance Demonstration project

**RAP:** Section 236 Rental Assistance Program, a rent subsidy program that was a precursor to the Section 8 program

**Rent Supp:** Rent Supplement program, a rent subsidy program that was a precursor to the Section 8 program

**Section 8:** Federally-funded rent subsidy program

**TPV:** Tenant Protection Voucher, provided to tenants in properties with expiring federally-subsidized mortgages