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Executive Summary

**A Study of
Government-Subsidized
Housing Rehabilitation
Programs and Arson:**

Analysis of Programs Administered
in New York City, 1978-1981

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I. Background and Statement of Intent

The commitment to "a decent home and suitable living environment for every American family,"^{<1>} first stated in the National Housing Act of 1949, resulted in a multitude of Federal, state and local initiatives to attain that goal. Aside from the host of public housing programs a broad spectrum of housing strategies have been implemented to stimulate the private sector production of housing. Despite modifications, the mechanism used to pursue this policy was, and remains, the guarantee of an adequate return on investment for housing providers.

The condition of rental properties in New York has been declining, in recent years, mainly because of their age. Sixty-two percent were constructed prior to 1947 and 38 percent before 1929. Many now require systems replacement and more intensive maintenance to remain habitable. It is estimated by the Department of City Planning that almost fifty percent of New York City's existing housing is in need of improvements ranging from moderate to substantial. Many owners, however, confronted by rising operating expenses (particularly fuel and utility cost), are finding it increasingly difficult to perform repairs and adequately maintain their properties.

Concurrent with the diminishing inventory of rental units and their generally declining condition, has been an increased demand for apartments. In 1981 the overall vacancy rate in New York City was only 2.1 percent.

In areas such as the Upper West Side of Manhattan, Clinton/Chelsea, Brooklyn Heights, and Park Slope (areas undergoing rapid changes over the past few years) there has been an increasing willingness to pay high rents for conveniently located apartments. Many property owners have been unable to realize profits commensurate with this increased demand, however, because of continuing rent regulation and the condition of their properties. In such cases, it may be in the owners best interest to convince the existing tenants to leave, rehabilitate the building and receive market level rents which could pay for rehabilitation.

In recent years market dynamics, the prohibitive cost of new construction and available financial benefits succeeded in stimulating rehabilitation. Tenants benefited from superior living accommodations and neighborhood stabilization; owners profited from increased rental income, tax benefits, and property value appreciation. One group, however, that might not have benefited was the occupants of buildings

^{<1>} Subcommittee on Housing and Community Development, Committee on Banking, Currency and Housing, House of Representatives, on: Evolution of Role of the Federal Government in Housing and Community Development, U.S. Government in Housing and Community Development, U.S. Government Printing Office, 1975, p.25.

about to undergo substantial rehabilitation. These tenants sometimes faced eviction, displacement, and relocation in order to allow substantial rehabilitation to proceed.

Legal eviction and relocation tend to be slow or expensive propositions. An illegal method of moving tenants out, which tends to be expeditious and inexpensive, is displacement through harassment. Such displacement can be achieved by several methods including: diminishing services, renting to rowdy tenants, and harassment fires. All three methods are sometimes used and may be said to have a synergistic effect as they produce a climate of fear.

With increased emphasis on government-assisted rehabilitation by private developers, harassment fires as a means of tenant displacement has become an increasingly serious issue. An influx of government funds into specific neighborhoods generated concern among community groups that arson was being used to displace tenants to facilitate rehabilitation. Conversations with police and fire department investigators echoed these fears.

Arson is not employed to vacate buildings in the vast majority of cases. However, even when arson is not a factor, a risk of fire may still be present. An owner about to rehabilitate his property has few incentives to provide ongoing maintenance and repairs. The resulting neglect may encompass the heating system, elevators, plumbing, janitorial services, building security, etc. Poorly maintained systems may malfunction, potentially causing fires in the boiler, incinerator, and electrical systems. If janitorial services are discontinued rubbish accumulates providing an opportunity for fires to start. The lack of security or failure to seal vacant apartments may allow vagrants, as well as other types of firesetters, to enter. Tenants using their ovens to provide heat also increases the risk of fire.

When arson is employed to vacate a building, it is believed to take the form of "harassment type" fires which are designed to create a climate of fear as well as severe inconvenience through the cessation of services. In addition, larger fires may result in extremely hazardous building conditions which may necessitate an ordered vacating of building.

Although the literature on this subject is sparse <2>, there are few references to the relationship between arson and housing rehabilitation assistance. A San Francisco study refers to "conversion" or "gentrification" arson-for-profit and states that "(s)uch arson is present when land values are rising, and when a property use (e.g., residential hotel) is not as profitable anymore as perhaps a condominium or commercial office would be." <3> That study also found a relationship

<2> A computerized literature search at the John Jay College of Criminal Justice in New York failed to find a single source.

<3> Goetz, Barry,
The San Francisco Early Warning System Summary of Research San

between residential arson and the granting of Federal housing rehabilitation subsidies.

Because of the lack of research in this area, the New York City Arson Strike Force requested and received a grant from the National Institute of Justice to study the relationship between government assisted housing rehabilitation and arson. The current research is the result of that grant. Its objectives include: (1) to determine whether arson has been used to profit from Federal, State, and local housing rehabilitation programs; (2) to understand the methods, patterns, and motives associated with such acts; (3) to evaluate the effectiveness of existing arson prevention policies; (4) to develop more effective arson prevention policies and procedures; and (5) to suggest regulatory and statutory changes to existing and future programs to lessen arson susceptibility.

2. Methodology

Four housing rehabilitation programs administered in New York City were selected for study: (1) the Section 8 Substantial Rehabilitation Rent Subsidy Program, (2) the Participation Loan Program; (3) The J51 Tax Exemption and Abatement Program, and (4) the Article 8A Rehabilitation Loan Program. They were selected because they represent rehabilitations from moderate to substantial, encompass a variety of benefit formats (rent subsidies, tax benefits, and rehabilitation loans), and because records were readily available.

Each program was reviewed for; (1) enabling legislation; (2) rules and regulations governing the selection of properties, disbursement of funds, and scope of work allowed; (3) applicant processing; (4) applicant disclosure and screening procedures; (5) tax implications; (6) geographical clustering of benefits; (7) administrative management; and (8) programmatic anti-arson procedures. In most cases the program director was interviewed at length and, whenever possible, procedures were discussed with staff involved in the process. Program overviews were prepared, and a review of the literature was done. Also an analysis of possible methods by which these programs could be manipulated for profit using arson was conducted. Specific buildings were also selected for case study to further refine hypotheses.

Sample Selection

In order to discern if a relationship existed between Government rehabilitation and arson, a comparative analysis was conducted whereby program and control samples were compiled for each program. Each control sample is comprised of every multiple dwelling on a tax block in

Francisco Fire Department Arson Task Force, 1981, p.82-83.

the boroughs of Manhattan, the Bronx, and Brooklyn <4> which contained at least one building in its particular program. This selection procedure was employed to limit wide fluctuations in buildings size and other neighborhood factors (such as an inferior housing stock, neighborhood decay, etc.) which contribute to fires.

Program samples are made up of buildings involved in the respective programs. The percentage of program buildings studied for each program is described in the text of this report.

Variables

The independent variables in this study were the four rehabilitation programs mentioned above.

The dependent variable "suspicious fires," was culled from the New York City Fire Department's Battalion Chief Structural Fires File and represents a compilation of several preliminary cause determination classifications. The blanket term "suspicious fires" was used to describe these four fire classification in the analysis of aggregate data. It should be remembered that the dependent variable is not arson, but rather the surrogate measure described above.

Statistical Analysis

Generally, analysis included two steps; first, program and control groups were examined to determine whether program buildings experienced more suspicious fires than controls. Second, analysis was performed to determine whether any specific groups based on neighborhood, processing type, or physical/demographic characteristics experienced more fires than other buildings in the same program. Specific methods included bi-variate and regression analysis<5>

Control Variables

Since the samples could not be selected randomly due to the nature of the research, there existed the possibility that the program and control samples had different susceptibility to arson. One way to overcome this problem would have been to match the samples (program and control) for each program. Matching, with regards to factors such as building size, vacancy rate, tax arrears (all factors involved in arson) would have proved an impossible task. The method chosen to protect the internal validity of this research design was to identify these extraneous variables and control for them by including them through regression and

<4> Only three of the City's five boroughs were included because the remaining two boroughs, Queens and Staten Island, contained too few program-assisted buildings for meaningful analysis.

<5> All significance tests in this report will be least at the .05 level for a Two Tail Test unless it is specifically stated otherwise.

bi-variate analysis.

Several control variables were used in both the bi-variate and regression analyses. These variables were selected because they generally serve to predict arson rates, as demonstrated by their use in arson prediction indices in a number of cities.

New York<6> San Francisco<7>, and New Haven<8> demonstrated that a building's economic condition is an important risk factor. In a New York study it was found that "...only 15% (or the 10,000 buildings in their sample that did not experience arson) had an outstanding tax bill, while 48% of the arson cases were in arrears.<9>

The New York and New Haven studies also found that occupancy influenced risk. In New York the mean occupancy rate for buildings that did not experience arson was 96%, while mean occupancy for arson buildings was 76%. They concluded that "...Low occupancy or total vacancy attracts vandal arsons, and that arson may be the last step of an owner's successful attempts to evict tenants by harassment." <10>

In New York, building size was also found to be related to arson incidence and is included in the current study as a control variable.

A final control was imposed by the sample selection criteria. Because only buildings on blocks with a program-assisted structure were studied, the effect of unique neighborhood characteristics was held constant.

3. Limitations of the Study

Research Design

The nature of the study precluded an experimental design, the random selection of samples, and the random assignment of treatments to samples. The problems were overcome to a large degree by the sample selection criteria used and by controlling, through regression and bi-variate analyses, for extraneous variables.

Variables

Although, the literature is rich with factors found to be related to intentional fires, this study was constrained by the limited number of control variables available through existing data bases. This

<6>Pesner, R., et al., Arson Analysis and Prevention Project: Final Report N.Y.C. Arson Strike Force under a LEAA grant, 1981.

<7>Goetz, Barry, The San Francisco Arson Early Warning System Summary of Research: 1979-1981.

<8>United States Fire Administration, Anti-Arson Implementation Kit, 1981.

<9>Pesner, op.cit., p. 14.

<10>ibid., p.14.

limitation manifested itself in low-r-square values when regression analysis was performed. As a result, doubt remains about what the analytic outcome would have been had additional controls been available.

The dependent variable (suspicious fires) used in this study is a composite of those classes of fires that could not be attributed to a known accidental cause. The majority of these fires were found to be suspicious by the fire chief directing extinguishment, but were not necessarily incendiary. While arson apparently played a role in most of these fires, it should not be assumed that every fire was deliberately set.

Analysis

In part, this research project was designed to ascertain if program buildings experienced more fires than controls with regards to each program. Caution is advised that:

a. Comparisons made prior to controlling for extraneous variables say little about any relationship between arson and rehabilitation programs due to the differences in the samples.

b. When the data shows that more suspicious fires occurred in a group of program buildings than in the control sample it should not be assumed that the owners were responsible, nor should it be assumed that the motive was tenant harassment.

Alternative explanations for each of the fires in the samples studied include revenge, vandalism, juvenile mischief, tenant discontent, pyromania as well as others. Therefore, when "relationships" are discerned it should be understood that these data do not demonstrate causality, establish responsibility, nor do they confirm such relationships.

4. Housing Rehabilitation Programs

Section 8 Substantial Rehabilitation Rent Subsidy Program

Analysis of the Program and Risk Factors

Section 8 of the Housing and Community Development Act of 1947 was promulgated to encourage the maintenance and production of low to moderate income housing through rent subsidies and tax shelter sales. Although Section 8 encompasses subsidies for tenants in place without rehabilitation (Section 8 existing), moderate rehabilitation, and substantial rehabilitation or new construction, this report focuses on the substantial rehabilitation component.

Section 8 subsidized the difference between the rent level necessary to ensure a predetermined operating profit and the rent tenants could afford (25% of gross annual income). Developers also benefited from tax

shelter sales which often provided much of the initial capital needed for rehabilitation.

Developers were invited to submit proposals to the Federal Department of Housing and Urban Development (HUD) through a Notice of Fund Availability (NOFA). Funding decisions were made by HUD.

The Neighborhood Strategy Area (NSA) NOFA was used experimentally in 1978-79. The processing of NSA NOFA (or just NSA) applications was similar to regular NOFA applications, with the following exceptions:

- a. Rather than HUD allocating Section 8 Funds directly, allocative authority was granted to municipalities, which selected target zones (NSA), and advertised the availability of funds.
- b. Proposals were evaluated by the municipalities with input from HUD and selected in accordance with criteria outlined in the mandated Housing Assistance Plan (HAP), requirement for cities receiving Federal Community Development Block Grant (CDBG) funds from HUD.

The policy of HUD and New York City's Department of Housing Preservation and Development (HPD) was to prevent displacement of existing tenants. Thus, a significant criterion in determining project eligibility was occupancy. HUD ruled that "in the evaluation and selection of proposals consideration shall be given to whether there are site occupants who would have to be displaced... Greater weight shall be given proposals which do not require displacement, or where displacement is required, which will involve the least amount of hardship." <11> The City's selection criteria for proposals submitted in response to the NSA NOFA closely paralleled those of the 1979 NOFA. The policy of the NSA was to "focus on... rehabilitating the abandoned vacant buildings." <12>

Few developers chose to submit buildings that were not vacant. They were aware that such proposals would not be considered as highly as those for vacant sites and that occupied projects were subject to relocation costs of up to \$4,600 per family. Moreover, vacant properties were immediately ready for rehabilitation and free of delay.

The City also directed, in its 1978-79 HAP, that "City-owned housing-- particularly that with the potential for being restored to private ownership and the tax rolls--should be given preference for

<11> 24 CFR (Code of Federal Regulations), Section 881
<12> The New York City HPD Crown Heights Neighborhood Strategy and Application, 1978, p. 12.

Section 8 assistance." <13> The targeting of these units to City-owned properties limited the opportunity to vacate buildings through diminished services and neglect/harassment. These buildings were under City management which prevented the manipulation of service and maintenance levels if they were occupied.

Some of the Neighborhood Strategy Areas contained either too few, or too few appropriate, City-owned buildings to permit Section 8 projects composed exclusively of such properties. One-half of the buildings selected for rehabilitation under the NSA program were privately owned. If the owners of some of these buildings knew that they could apply for Section 8 benefits 15 months in advance (when areas were selected), this would have afforded ample time to ensure that their properties would be vacant by the time applications were submitted. Analysis of case studies suggests that a few developers exploited this situation by attempting to illegally evict tenants through a pattern of purposeful neglect and harassment. The developer of two Section 8 buildings was fined \$40,000 in conjunction with two findings of harassment and forced by HPD to divest himself of his interest in the Section 8 project. Several case studies indicated instances of neglect and suspicious fires apparently leading to vacant buildings shortly before the submission of the Section 8 application. These case studies, however, merely confirm that harassment was a factor in emptying buildings in a small number of cases. They do not address the extent or frequency of these occurrences.

In the above cases it is clear that applications processing was not sufficiently sensitive to detect all such acts. The submission of NOFA proposals between 1977 and 1980 initiated no review by HUD to determine the conditions under which vacant buildings achieved that status. HUD projects were reviewed only for the developer's experience, financial status, prior participation in HUD programs, and compliance with HAP criteria. There was no investigation of harassment allegations or findings.

The City, in its selection of NSA projects, required applicant disclosure information, but no determination was made of when the building became vacant and under what circumstances. After becoming aware of this problem the City immediately, in its 1980 HAP, adopted a formal policy that no rehabilitation assistance (under Section 8 or other programs) would be awarded to individuals against whom harassment or displacement charges were alleged until such charges were dismissed or settled.

Findings

1. General Fire Rate (Pre-Controlling for Extraneous Variables)

Although buildings in the Section 8 program had a higher incidence of suspicious fires than control buildings this comparison was made prior

<13> 1978-79 HAP, p. 46.

to controlling for several extraneous variables which affect a building's susceptibility to fire and arson.

After controlling for some of those factors (tax arrears, building size, vacancy rate, etc.) it was learned that specific categories of Section 8 buildings (rather than all) had an elevated incidence of suspicious fires. Specifically, NSA submissions, privately-owned buildings, and Section 8 buildings in specific neighborhoods demonstrated increased suspicious fire activity. After these factors (and building size, tax arrears, and occupancy rate) were held constant statistically through regression analysis, program buildings had fewer fires than control buildings.

2. Suspicious Fire Incidence Among Specific Categories of 8 Buildings

Buildings that were privately-owned prior to the submission of a Section 8 application had more fires than other Section 8 and control buildings after neighborhood, building size, tax arrears, occupancy rate, and program status were held constant. Regression analysis demonstrated that private ownership of a Section 8 building added .9 suspicious fires to the number of fires predicted. This is not a trivial increment given that the mean number suspicious fires in all buildings in the sample was .7.

City-wide, the 98 privately-owned Section 8 buildings in the sample were 1.5 times as likely as the 246 City-owned buildings to experience at least one suspicious fire and more than twice as likely to experience more than one such fire. Sixty-five percent (64) of the privately-owned Section 8 buildings had more than one suspicious fire compared to 18% (45) of the 246 City-owned buildings.

Ninety-two of the 98 privately-owned buildings in the sample were submitted for funding in 1979. These buildings represented 34% of the 263 properties that received Section 8 subsidies in 1979. Fifty-four percent (54%) of these 263 buildings experienced suspicious fires. In 1980 New York City's HPD adopted a policy giving virtual priority to in-rem buildings largely because of a concern about tenant harassment. As a result the percentage of privately-owned Section 8 buildings awarded grants dropped to 4% with a concomitant 44% drop in the percentage that experienced suspicious fires.

These findings suggest that some building owners, sensing the opportunity to profit from Section 8 assistance may have promoted fires through neglect or intent to force tenants to vacate and prepare their buildings for substantial rehabilitation.

A more dubious relationship between NSA status and fire incidence was found. Fifty-eight percent (106 buildings) of all NSA submissions had suspicious fires, while 39% (62 buildings) of the NOFA submissions had suspicious fires. After regression analysis was applied to control for the effects of building size, tax arrears, occupancy rate, program status, and Crown Heights, Sunset Park, and West Harlem locations, the effect of NSA status and fire incidence was due to the fact that these

buildings were more likely to be privately-owned and in areas where Section 8 buildings had more fires."

In general, Section 8 buildings in Crown Heights, NSA buildings in Sunset Park, and privately-owned Section 8 buildings in West Harlem experienced a greater number of suspicious fires than could be attributed to the effect of NSA status and private ownership alone. Each of these neighborhoods were Section 8 target areas, received large Section 8 awards, and had a high percentage of privately-owned Section 8 buildings. The data suggests relationships exists; however, it cannot answer what it was about these specific categories that increased the suspicious fire incidence.

Recommendations

Section 8

Recommendation S8-1: The City should continue to adhere to its policy of granting substantial rehabilitation assistance to City-owned properties, as should other municipalities containing large inventories or publicly owned residential structures.

Recommendation S8-2: Programs that target subsidies and loans to vacant buildings within specific areas should restrict approval to buildings that are vacant when neighborhoods are selected, or when it can be demonstrated to be a special case under predetermined criteria.

Recommendation S8-3: If the selection of target areas for substantial rehabilitation is long standing, project approval should be contingent on a determination that the owner did not intentionally cause tenant abandonment.

Recommendation S8-4: Federal, state and local housing agencies should require documentation that buildings selected for substantial rehabilitation programs, whether funded under categorical or block grants, have not been vacated through arson and other forms of harassment prior to or subsequent to selection.

Recommendation S8-5: If an applicant is the subject of a judicial, criminal, or administrative harassment proceeding, no project approval should be given until a thorough investigation is completed. This policy should be explicitly included in Federal, state and local housing regulations.

Recommendation S8-6: A judicial, administrative, or criminal determination of harassment against an individual should result in the exclusion of that individual and any corporate entity of which he or she is a principal from government housing rehabilitation assistance.

Recommendation S8-7: Federal, state, and local housing agencies should require disclosure statements (similar to those described in Chapter 7) from all applicants for government housing rehabilitation assistance and should verify all disclosed information. Individuals who knowingly provide false information or disclosure statements should be prosecuted to the fullest extent of the law and excluded from loan and/or subsidy programs.

Recommendation S8-8: Submission of vacant privately-owned buildings for subsidized substantial rehabilitation should initiate a thorough review by the granting agency to determine when the building became vacant and under what conditions.

Recommendation S8-9: No elected or appointed public official who was involved in the selection or approval of buildings to receive subsidized substantial rehabilitation, nor an individual who held the position within the previous three years, nor his/her immediate family should be allowed to act as general or limited partner, corporate stockholder,

developer, contractor or sponsor of a Section 8 project in their own city.

Participation Loan Program

Analysis of Program and Risk Factors

The Participation Loan Program provides benefits directly through low interest rehabilitation loans and indirectly through J51 and rent restructuring. The City uses CDBG funds to finance up to 60 percent of the total mortgage on the property at nominal interest rates, usually one percent. When combined with a market level private sector loan this arrangement decreases below market level the cost of financing the project. The developer may also benefit from tax shelters available to developers of low income housing.

Participation Loan projects range from moderate to substantial rehabilitation, although the program encourages moderate rehabilitation with tenants in place. Under the CDBG HAP, priority is given to projects targeting: (1) the elimination of slums and blight and/or for the benefit of low to moderate income people, (2) buildings in Neighborhood Preservation or Neighborhood Strategy Areas or transitional areas, (3) buildings with ten or more units, (4) buildings in proximity to past or planned public or private investment, and (5) buildings located on blocks where other occupied privately-owned buildings exist.

Unlike Section 8, which targeted City-owned properties, the focus of the Participation Loan Program is privately-owned buildings. The purpose of this policy is to prevent the existing buildings from degenerating to such a degree that City in-rent take over becomes inevitable. The program differs from the Section 8 program in another important way as well. Moderate rehabilitation with tenant in place is both allowed and encouraged. Section 8 substantial only allowed the gut rehabilitation of vacant structures. As a result, there is no immediately apparent programmatic need to vacate a building.

As with Section 8, there were, during the period studied (1978-81), problems in the screening of applicants. In several cases applicant review did not commence until a few days before the Participation Loan closed as a result of the policy of allowing approval of a current loan based on investigations conducted with regard to previous applications.

Findings

Receiving a Participation Loan does not itself appear to increase a building's susceptibility to suspicious fires. While it can be shown that buildings that received Participation Loans experienced more fires than control buildings during the period studied, part of this increased fire incidence was related to the fact that such buildings tended to be larger than average. Additionally, after controlling for neighborhood, building size, and tax arrears, only two classes of Participation Loan buildings experienced a greater than expected incidence of suspicious

fires. These two buildings categories were PLP buildings in Flatbush and those owned by three specific developers.

Two thirds of the Participation Loan buildings in Flatbush experienced at least one suspicious fire from January 1, 1978 to December 31, 1981. More than half of the Participation Loan buildings in Flatbush experienced more than one suspicious fire during that period. Regression analysis demonstrated that even after controlling for the base level of fires in Flatbush, building size, tax arrears, etc., being in Flatbush increased the expected number of fires in loan buildings by .9 fires.

Fifty percent of all suspicious fires (36 of 72) in Participation Loan buildings in Brooklyn were in six buildings (12% of the Brooklyn PLPs) owned by three developers. Even after controlling for building size, tax arrears, neighborhood (all of their buildings were in Crown Heights or Flatbush), and the effect of being in the Participation Loan Program in these neighborhoods, ownership by one of these developers was related to an increase in the number of suspicious fires.

Although ownership of a program building produced an effect on the number of suspicious fires it experienced, this finding was based on the actual number of fires in only eight buildings.

While being in Flatbush increased the observed number of suspicious fires a program building experienced, this finding was also based on a small number of cases (15 buildings) and does not answer the questions that remain: What was it about Flatbush that increased the suspicious fire incidence in buildings that received Participation Loans? As with the Section 8 regression model, the r-square value of the PLP model (r-square=.246) was somewhat low, indicating that many sources of variation in how suspicious fires occur are possible, and that additional control variables would have been helpful.

Recommendation PLP-1:

All pending government subsidized rehabilitation loans should be forwarded to the appropriate investigative unit of the local housing agency for screening at the earliest possible time to ensure that adequate time is allowed for review and clearance procedures, as is current policy in New York, Loan approval should be contingent on the positive evaluation of an applicant by the local housing agency.

Recommendation PLP-2: Municipalities should develop guidelines for applicant evaluation detailing general grounds for loan denial.

J51 Tax Abatement and Exemption Program

Analysis of Program and Risk Factors

This program neither provides rent subsidies (like Section 8), nor low interest rehabilitation financing (like Participation Loans).

Instead, it provides tax abatement and exemptions for privately financed rehabilitations.

During the period studied J51 benefits were available for (1) substantial rehabilitation and major capital improvements, (2) moderate rehabilitation with tenants in place, (3) commercial and industrial conversions to residential use, and (4) the conversion of hotel or single room occupancy (SRO) buildings to regular residential use. Changes in the law in 1983 removed SRO conversions from benefit eligibility.

Although benefit eligibility extended to a wide range of renovations, the analysis in this report was restricted to the rehabilitation of Class A multiple dwellings where total certified rehabilitation costs (CRC exceeded \$100,000). This limit the sample of properties studied to less than ten percent of all buildings that received J51 benefits (the majority of J51 projects include only moderate repairs), but it focused research on those projects which are more likely necessitate a vacant building by virtue of the scope of work contemplated. Ofcourse, this assumption might not always be true. While the \$100,000 CRC may necessitate vacancy of a smaller building, it may be insufficient to require vacancy in a large building.

During the period studied, tenant harassment was not statutory grounds to deny benefits. Consequently, and as a result of the as-of-right nature of the program, there was not background investigation conducted to determine whether the owner had harassed tenants into leaving. 1983 amendments to the law, however, made harassment statutory grounds to deny benefits. As a result, owner screening will now occur.

Findings

Residential buildings that received J51 benefits between July 1, 1980 and June 30, 1981 for rehabilitation with CRC over \$100,000 experienced a greater incidence of suspicious fires than control buildings from January 1, 1978 to December 31, 1979, the period immediately prior to rehabilitation. Because this sample only included 97 buildings, however, it was not possible to accurately determine statistical significance.

Twelve of 97 buildings that received J51 (12.4 percent) experienced at least one suspicious fire during the period reviewed compared to 71 of 1661 control buildings (4.4 percent). Eight J51 buildings (8.3 percent) experienced more than one suspicious fire. Only 11 of the controls (.7 percent) had more than one suspicious fire. The relationship was similar in each of the three boroughs studied and held after controlling for building size.

This finding should not be misconstrued to mean that suspicious fires were rampant in the J51 sample. The vast majority of buildings in the J51 (87.6 percent) and control groups (95.7 percent) did not experience a single suspicious fire.

All indication were that fires in properties that received J51 benefits for substantial rehabilitation generally occurred in buildings that were not economically troubled. J51 buildings were slightly more than twice as likely as controls to be vacant in 1978 (37% versus 15.8 percent), but vacant J51 buildings did not have more than vacant control buildings. Partially occupied J51s were more likely than partially occupied controls to have experienced multiple suspicious fires, as were J51s that were fully occupied.

Suprisingly, an examination of tax arrears points to the fact that those J51 buildings exhibiting the least tax arrears had the most fires. 10.6 percent of the J51s with four or less quarters of tax arrears had more than one suspicious fire, while among those with more than four quarters of arrears only 3.6 had more than one suspicious fire.

Recommendations

Recommendation J51-1: Findings of tenant harassment and owner instigated arson should be statutory grounds to deny government rehabilitation benefits, as is now the case with J51 benefits in New York.

Recommendation J51-2: Owners should be required to submit notification of their intent to perform substantial rehabilitation prior to the start of such work to allow the municipality time to determine whether grounds to deny benefits exist, as is currently mandated by the new J-51 in New York.

Recommendation J51-3: Such notification should trigger a complete review by the local housing agency to determine whether harassment or arson occurred as is current policy in New York City.

Article 8A Rehabilitation Loan Program

Analysis of Program and Risk Factors

Under this program rehabilitation is always performed with tenants in place and is limited to the upgrading or replacement of major building systems. The work may not total more than \$5,000 per dwelling unit, although the actual average is closer to \$2,000. Unlike programs that provide funds for more substantial work, there is usually no change in rent levels. Rehabilitated properties also receive J51 moderate rehabilitation benefits.

The Article 8A Loan Program provides virtually no economic benefits that may be obtained through fire, neglect, or harassment because it is HPD's policy to award Article 8A loans for moderate rehabilitation with tenants in place only. It would be self-defeating for an owner to damage or cause tenants to leave his building.

Findings

After controlling for building size, there was no significant relationship between the receipt of an Article 8A loan and suspicious fire.

5. New York's Experience

One of the goals of this study was to develop more effective arson prevention policies and procedures and to suggest regulatory and statutory changes to lessen arson susceptibility. The review of the administration of the four housing assistance programs in New York City disclosed that significant efforts have been made to address the issue of tenant displacement through neglect, fire and arson, which it is believed is sometimes used to obtain government housing assistance benefits.

With regard to the Section 8 program, New York City's Department of Housing Preservation and Development initiated a policy in 1979 of selecting in-rem (City-owned as a result of tax foreclosure proceedings) properties. Under this policy, the City attempted to provide rehabilitation housing for low income tenants, and decrease its inventory of City-owned buildings. Limiting Section 8 substantial benefits to City-owned buildings also eliminated the potential for vacating these buildings through diminished services and maintenance because these buildings were under City management. As a result, opportunities to exploit the program through harassment and intentional fires were reduced.

During the period of this study, the City's HPD reviewed the fire histories of every building with an NSA application as part of its evaluation process. This was done through information supplied by the New York City Fire Department's Division of Fire Investigation. However, the information reviewed was insufficient to adequately inform HPD of the true picture of the building's history.

Upon learning of the ineffectiveness of this process, HPD in 1980 revised its policy at the time of its next NOFA offering to require that the Arson Strike Force provide complete fire profiles on buildings under application for Section 8 and other housing assistance programs.

Finally, the City in its selection of NSA projects, during the period studied, required applicant disclosure information. However, no determination was made of when the building became vacant and under what circumstances. The NSA concept was unique in its design and the City was not yet aware of its possible impact on the frequency with which fires and harassment would occur. Once this was recognized HPD, in its 1980 HAP, adopted a formal policy that no rehabilitation assistance (under Section 8 or other programs) would be awarded to individuals against whom harassment or displacement charges had been alleged until such charges were dismissed or settled.

In the Participation Loan Program it is apparent that New York City's HPD made efforts to eliminate the problems associated with the

disclosure/investigation process during 1978-79. This has been the result of greater cooperation between the Inspector General and program staffs. The outgrowth of this cooperative effort has been the submission of clearance requests by program staff prior to commitment.

These policies adopted by HPD in recent years appear to have prevented problems due to the submission of clearance requests immediately prior to closing and clearing applicants based on past applications.

The purpose of the Inspector General's review is to ensure that applicants have not committed acts which would prevent them from receiving Participation Loans. The basis for this determination is the disclosure statement submitted by applicants prior to commitment. This document furnishes the City with information on the applicant's real estate holdings, previous loan defaults, tax arrears, harassment charges, and other factors which may be detrimental to a loan request. Resources drawn upon to supplement these disclosures are extensive; information is requested from the Commissioner on Human Rights, Department of Investigation, and the appropriate District Attorney. Additionally, complete fire profiles of the applicant's properties are requested from the Arson Strike Force. The I.G.'s recommendation for pending loans, submitted at closing, is based on analysis of this information.

Applicant screening is particularly important for the Participation Loan Program. As demonstrated in Section IV, buildings owned by some developers experienced more fires than buildings owned by others. While this may be due to factors outside of the owner's control, it underscores the necessity to evaluate carefully the backgrounds of all PLP applicants. HPD has attempted to do this through implementation of applicant screening.

In the J51 program the City and State of New York have recently instituted measures intended to ensure the safety and well-being of tenants in buildings about to be renovated or converted.

The 1983 amendments to Section 489 of the Real Property Tax Law have been passed by the State legislature and signed into law by the Governor. Included are several anti-harassment provisions. Most importantly, the law specifically denies benefits to "every owner of record and owner of substantial interest in the property or entity owning the property or sponsoring the conversion, alteration, or improvement... (who) has been found to have harassed or unlawfully evict tenants (by) judgement or determination of a court or agency (including a non-government agency having appropriate legal jurisdiction) under the penal law, any state or local law regulating rents or any state or local law relating unlawful eviction..."

Equally important is the fact that the law now requires owners to file an affidavit of non-harassment 30 days before construction begins in order to convert or rehabilitate a building. The new law requires that every owner of record or substantial interest be listed on the affidavit and that it contain a statement that they had not "within the

five years prior (to the affidavit) been found to have harassed or unlawfully evict tenants..." The local housing agency is required to review these affidavits. To facilitate such review, HPD has made a commitment to provide resources to screen such applicants.

This measure will deny J51 benefits on the basis of harassment and will hopefully be a deterrent in cases where harassment is found.

Additionally, Section D16-101 of the NYC Administrative Code, which was enacted in September 1982, amends the Code with respect to unlawful eviction in any residential building in the City. Unlawful eviction is defined under the law as:

- using or threatening force to induce the occupant to vacate;
 - interrupting or discontinuing essential services; and/or
 - engaging or threatening to engage in conduct which prevents or is intended to prevent a tenant from the lawful occupancy of their apartment, or which is intended to induce the tenant to vacate.
- Such actions include removing the occupant's possessions, removing the door, and locking the tenant out.

This section classifies such acts as Class A misdemeanors and provides a penalty of up to \$100 per day for failure to make such a good faith effort to restore an unlawfully evicted tenant to occupancy.

END