

July 14, 2009

Honorable Barney Frank  
US House of Representatives  
Chairman, House Committee on Financial  
Services  
2252 RHOB  
Washington, DC 20515

Honorable Spencer Bachus  
US House of Representatives  
Ranking Member, House Committee on  
Financial Services  
2246 RHOB  
Washington, DC 20515

Honorable Maxine Waters  
Chairwoman, Subcommittee on Housing  
and Community Opportunity  
House Committee on Financial Services  
US House of Representatives  
2344 RHOB  
Washington, DC 20515

Honorable Shelley Moore Capito  
Ranking Member, Subcommittee on  
Housing and Community Opportunity  
House Committee on Financial Services  
US House of Representatives  
2443 RHOB  
Washington, DC 20515

Dear Chairman Frank, Subcommittee Chairwoman Waters, Ranking Member Bachus  
and Subcommittee Ranking Member Capito:

The undersigned organizations are writing to express our opinion on the discussion draft, "Housing Preservation and Tenant Protection Act of 2009," which will be the subject of a hearing entitled *Options for Preserving Federally-and State-Assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly and Disabled Tenants* on July 15. The production and preservation of affordable multifamily housing is critical to remedy the shortage of decent and affordable housing for low- and moderate-income families. The nation needs programs that will help the private sector develop housing for all Americans.

We are supportive of the overall goals of the bill that seek to preserve affordable housing by providing HUD with additional tools and resources to facilitate long-term affordability for residents as well as ensuring the housing is safe, sound and decent. In particular, we support the provisions in Section 104 that would allow a PHA, at an owner's request, to provide project-based vouchers in lieu of enhanced vouchers in the event of an eligibility event (e.g., prepayment). Enhanced vouchers are meant to prevent displacement of tenants from a property that undergoes a prepayment or where an assistance contract is terminated. Such vouchers would not count against the PHA's 20 percent limitation on using vouchers for project-based assistance.

We also support provisions that give HUD the authority to transfer Section 8 Assistance from one or more properties to one or more other properties. Although HUD already has the authority to do this, it has been used sparingly and with difficulty. The provision attempts to clarify under what circumstances the assistance can be transferred.

Another important provision is contained in Section 502, which encourages the preservation of Section 8 Moderate Rehab projects. The provision provides for comparable treatment of rent setting upon contract renewal for Section 8 mod rehab projects as for other Section 8 renewals under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA). In addition, for mod rehabs that had rents reduced at

initial renewal under the existing law, upon subsequent renewal under this act, the base rent will be adjusted to reflect the original rent prior to first renewal plus OCAFs. There is no retroactive increase, but the new rent will be higher going forward. The current MAHRA provision for Section 8 mod rehab has resulted in the loss of over half of these properties to market-rate use because rents upon renewal most often have been reduced.

There are other important provisions in the draft bill which we support, but we do have several major concerns, as follows:

## **Title I-Preservation of Federally financed and State-Financed Affordable Housing at risk of Conversion to Market-Rate Housing**

### *Section 2. Definitions*

We agree that qualified preservation owners (QPO) should include both for-profit and nonprofit organizations that will agree to retain the use and affordability of these properties. However, we do not support (1)(B) of the definition, which requires that the QPO provide an assignable right of refusal in favor of the State housing credit agency to purchase the property upon termination of any federal low-income rental assistance or use restriction. This right of first refusal is subordinate to the right of first refusal granted in section 103 of the bill.

State housing finance agencies do not purchase properties; these entities provide financing to for-profit and nonprofit housing developers to build, acquire and/or rehabilitate affordable housing. This provision should be deleted.

### *Section 103. Federal First Right of Purchase Before Conversion of Multifamily Housing.*

We strongly oppose this entire section. A two-year notification period is imposed on owners whose covered housing property has an impending "conversion event." A conversion event includes the expiration or non-renewal of a project-based rental assistance contract, any full payment, expiration, prepayment or termination of a mortgage for the housing; or any termination or expiration of use restrictions of affordability requirements for the housing. During this period, an owner cannot sell or otherwise transfer the property or enter into any sale or other transfer of the housing. During the first 12 months of this period, if an owner receives an offer to purchase the property from a QPO, the owner has to accept the offer and sell to that purchaser.

This section applies to housing that is financed by a loan or mortgage or assisted under the Section 8 project-based, Section 221(d) below market interest rate, Section 236, Section 202, and rent supplement programs; all of the multifamily rural housing programs administered by the U.S. Department of Agriculture (USDA); as well as any housing financed by the Community Development Block Grant (CDBG) program, HOME Investments Partnerships and the McKinney-Vento Homeless Assistance programs. CDBG and HOME provide only gap financing for affordable housing; as such, only a small amount of funding could trigger the right of first refusal provision. In addition, these provisions would apply to Sections 42, 142(d) and 147 of the Internal Revenue Code, programs for which this committee has no jurisdiction.

This bill should seek to provide incentives to owners to preserve affordable housing, not take away existing owners' rights to sell their property. A two-year restricted period is tantamount to a taking and will be challenged in court. This provision precludes the owner from opting out of the subsidy program and keeping the property, which could constitute a "taking". In addition, the formula that is provided in the draft mirrors the HUD formulas used in the HUD prepayment statute from 20 years ago and in the 515 program – which have been found by the courts, to be a "taking". In this instance it is important to review the guidance provided by the Supreme Court in the *Franconia* decision. Lenders who recall the Section 8 payment delays, reductions and problems of the past, will not look fondly on this provision. Stability and predictability are imperative to residents, lenders and owners – this provision does not provide either. A more useful approach would be to give HUD a role in matching up potential purchasers with owners who are interested in selling their affordable properties. We support a 12-month notification period in the event of an impending prepayment or mortgage expiration that would result in the lapse of use restrictions or expiration of a rental assistance contract, which gives tenants and owners time to consider their options.

### **Title III-Protection and Empowerment of Residents Facing Conversion**

*Section 304. Third Party Beneficiary Status for Residents.* This provision permits tenants and resident associations to become third party beneficiaries to contracts between HUD and other parties, such as owners. As a third party, they would have the right to sue to enforce HUD requirements or to seek damages.

We oppose this provision. Third parties may have vastly different interpretations of statutory and regulatory requirements related to the various programs, which could result in an onslaught of litigation. Such potential lawsuits from third parties could be disastrous to the financial health of the property. Tenants and resident associations already enjoy protections from eviction under state and local law, and there are other rights conveyed to them under the Section 8, mark-to-market program and FHA-insured programs, but with appropriate checks and balances.

Thank you for the opportunity to provide comments on this important legislation. We look forward to working with you as the bill moves forward.

Sincerely,

Institute of Real Estate Management  
National Affordable Housing Management Association  
National Apartment Association  
National Association of Home Builders  
National Multi Housing Council