

**H.R. 4868, THE HOUSING PRESERVATION
AND TENANT PROTECTION ACT OF 2010**

HEARING
BEFORE THE
SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
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H.R. 4868, THE HOUSING PRESERVATION AND TENANT PROTECTION ACT OF 2010

Wednesday, March 24, 2010

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Members present: Representatives Waters, Velazquez, Cleaver, Green, Ellison, Donnelly, Driehaus, Himes, Maffei; Capito, Biggert, and Jenkins.

Mr. CLEAVER. [presiding] Let me first of all apologize for the late start. The Chair should be here shortly. Chairwoman Waters will join this important subcommittee hearing today on H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010.

I would like to express appreciation to the chairwoman of this committee, Maxine Waters, and the ranking member, Ms. Capito. And I think this is a very important meeting.

While the Financial Services Committee has held a number of hearings in recent years addressing threats to the Nation's affordable housing inventory, this hearing will focus on the policy provisions contained in the legislation, including the impact of the loss of affordable housing properties on residents, efforts by the Federal Government and nongovernment organizations to recapitalize and preserve the affordable or federally- and State-assisted properties, and the cost of preserving affordable housing units compared to building or acquiring new units.

Our chairman, Barney Frank, introduced H.R. 4868 on March 17, 2010. This bill, as the chairman explains it, is intended to preserve the Nation's existing stock of federally- and State-assisted affordable housing, multifamily rental units in both urban and rural communities, and to protect low-income tenants, many of whom are elderly and disabled, from being displaced by higher rents caused by conversion to market rate housing.

I am delighted that the Chair has called this hearing, and also delighted to see that HUD is represented here today by Ms. Galante. Now, we will have an opening statement from the ranking member, Ms. Capito.

Mrs. CAPITO. Thank you, Mr. Chairman. And I thank Chairwoman Waters for holding this hearing today on the legislation in-

roduced by Chairman Frank, H.R. 4868, which is designed to address the preservation of the existing affordable housing stock.

Since the 1960's, the Federal Government has supported the production of privately-owned properties that are affordable to low- and moderate-income families, those with incomes 80 percent or less of the area median income.

HUD has historically supported the building and maintaining of affordable housing by offering property owners affordable—or, excuse me, favorable mortgage financing, long-term rental assistance contracts, or both, in exchange for owners' commitments to house low-income tenants for at least 20 years, and in some cases up to 40 years.

The worry has always been that as these contracts expire or reach maturity, current owners will choose to convert the properties to market rate, which will translate into significant loss of existing affordable housing stock. Congress has grappled with how best to achieve the goal of preservation.

I think it is important to highlight the important role that the private sector has played in the availability of affordable housing. Over the years, the creation and preservation of affordable housing has been a collaborative public/private partnership.

While the Federal Government has played a key role in the availability of affordable housing for low- and moderate-income families, it would not have been possible without private sector participants. And in that regard, both for-profit and nonprofit entities have been important participants in efforts to preserve affordable housing.

For this reason, I think it is imperative that any legislation designed to preserve the assisted housing inventory must recognize the complexity of preservation transactions, and it must incentivize rather than penalize those who participate.

Unfortunately, I share many of the concerns that will be raised today by some of our witnesses, and that are outlined in the letter that I am going to ask to submit with unanimous consent dated March 23rd and signed by many of the private sector participants who construct and preserve affordable housing.

I am concerned that some of the provisions included in H.R. 4868 may discourage future private sector participation in Federal housing programs, and ultimately limit the availability of affordable housing. One of the more problematic provisions in H.R. 4868 is Section 107, which creates a Federal right of refusal, which is seen by some as an abrogation of housing assistant contracts or mortgage agreements.

In addition, many of the provisions included in this bill, such as increased enhanced vouchers and project-based vouchers, and a requirement that HUD convert rental assistance payments to Section 8 project-based vouchers, and the grant and loan sections in Section 102, carry significant costs. At this time of significant budget deficits, I am just not sure where we will find the funds to pay for these new and costly provisions.

I want to take this opportunity to welcome our witnesses on both panels, and to again commend my colleagues for their work and commitment to preserving affordable, decent housing for low- and middle-income families.

Thank you. And I do ask unanimous consent to submit this letter for the record.

Mr. CLEAVER. Without objection, it is so ordered.

We now recognize the gentleman from New York, Mr. Maffei.

Mr. MAFFEI. Thank you, Mr. Chairman. I just have one comment. I am very grateful to you and to Chairwoman Waters and to Ms. Capito for having this hearing, and to all the witnesses for being here.

In terms of protecting our housing stock, I would like, if possible, for the witnesses to address at some point, both the first and second panels, issues of urban planning and sprawl.

And one of the concerns in my area of the country, in upstate New York, is as some of the housing stock gets moved, some of it—the owners may want to graduate from affordable housing, etc.

And new affordable housing tends to get built in the suburbs, putting more of a strain on our infrastructure. And though in the short run, it might be better—you just want to get more housing for people—in the long run, it ends up hurting our overall urban structure, our school districts, etc., and putting more strain on our infrastructure.

So I would be very pleased if the witnesses could address that at some point that they feel it is appropriate. I thank the Chair. And I yield back.

Mr. CLEAVER. Thank you.

The Chair recognizes Ms. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman. I would like to thank Chairwoman Waters for holding this important hearing. And I would also like to thank Chairman Frank for including in H.R. 4868 the language that I worked on with Mr. Maloney of Florida during the 110th Congress to streamline and simplify the development of affordable housing for our seniors.

During the last Congress, I co-sponsored H.R. 2930, Section 202, Supportive Housing for the Elderly Act of 2007, which the House passed by voice vote on December 5, 2007. Like H.R. 2930, Title 7 of the bill under discussion today provides the necessary flexibility to the Section 202 program so that local community groups can best serve the needs of our seniors.

It also proposes changes to the program to enable better use of mixed financing—tax credits, grants, and loans—to preserve and build housing for seniors. And finally, it expands refinancing opportunities.

Mr. Mike Frigo, the vice president of Mayslake Village, which is located in my district, testified in September 2007 about the benefits these reforms could provide to helping Mayslake rehabilitate around 100 apartments that were no longer rentable to seniors. He also testified that H.R. 2930 included reforms that would provide refinancing and rehabilitation opportunities so that the 100 empty units could again be rented for another 40 years.

In addition, Mr. Frigo said that rehabilitating this Mayslake building would cost \$10 million to rehabilitate, versus \$15 million to build a new facility, a cost savings of \$5 million.

I also support Title 7 of H.R. 4868, as well as other incentive-based approaches to rehabilitating and preserving existing housing stock for another 40 years, as Mike Frigo mentioned.

However, I have great concerns about the provisions in this bill that would discourage private sector, nonprofit, as well as for-profit individuals and organizations from utilizing the Federal housing programs, and therefore dramatically reducing their participation in making available units of rental housing to low-income individuals and families.

I am particularly concerned with sections of the bill, for example, Section 107 and 108. As with the Section 202 program, we have learned that encouraging owners to preserve units is a common-sense and cost-effective approach to maintaining housing for low-income people.

It is important that these programs continue to provide incentives, not mandates, so that there is voluntary and greater participation. I was encouraged by statements issued by Chairman Frank in his March 18th press release that: "We are committed to working with current owners of these affordable housing units."

So I look forward to improving this legislation with Chairwoman Waters, Chairman Frank, and Ranking Member Capito. And with that, I would yield back the balance of my time.

Chairwoman WATERS. Mr. Green, do you have an opening statement?

Mr. GREEN. Yes, I do, Madam Chairwoman. Thank you, Madam Chairwoman, and I thank the witnesses as well.

I would also like to thank the chairman of the full—

Chairwoman WATERS. I don't think your microphone is on.

Mr. GREEN. Musical chairs early in the morning can be fun.

Reclaiming my time, I would also like to thank Chairman Frank, especially Chairman Frank and Chairwoman Waters, for the letter that we sent to HUD addressing a concern with reference to affordable housing.

And I would like to make this letter a part of the record. The letter made an inquiry with reference to what the intentions of HUD were in terms of helping us with the first right of purchase and third party beneficiary status. I would like to make it, without objection, a part of the record, Madam Chairwoman.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. GREEN. Also, I would like to thank Chairman Gutierrez and the many persons who sponsored a letter or were signatories to it that went to Chairman Frank and Chairwoman Waters. And this letter addressed and outlined the concerns associated, again, with these two key pieces of concern, first right of purchase and third party beneficiary status.

I would like to make this a part of the record, without objection, as well.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. GREEN. Thank you. The concern that I would like to call to the attention of the committee is one that relates to the affordable housing stock that is being depleted by virtue of properties that came online and are not deteriorating, or properties that may be sold because they are no longer under contract with owners who purchased them such that they could become a part of the affordable housing stock.

These properties are important to us, especially at this time when we have this housing crisis in the country. And what we have

attempted to do in the legislation is propose that there be an opportunity for the tenants to purchase the property, a first right of purchase, which does not mean that the owner has an absolute obligation to sell to tenants.

It does mean that the owner would go out and seek an opportunity to have a buyer purchase at market rate, and then, upon finding this buyer, could give the tenants—by and through HUD, I might add—the opportunity to purchase. HUD would have the opportunity to actually make the purchase, but could assign this to the tenants.

We believe that this would allow these apartments, these units, these multifamily dwellings, to stay within the affordable housing stock, given that it costs much more to produce new stock at this time, and given that for every unit that we construct, it appears that we may be losing two units; which means that if construction alone is utilized, we will not maintain the stock at its current rate.

Before my time expires, I would just like to make one final comment, which is that we have a third party beneficiary status with HUD such that these tenants would have the opportunity to take some of their concerns to HUD. And if the concerns are not addressed, then the tenants could literally litigate themselves, which would relieve HUD of some of its responsibilities and actually be of help to HUD.

I will say more about these things at a later time. I thank you for your leniency, Madam Chairwoman, and I yield back the time that I do not have.

Chairwoman WATERS. Thank you very much.

At this time, I would like to welcome our distinguished first panel. Our first witness will be Ms. Carol Galante, Deputy Assistant Secretary for Multifamily Housing, U.S. Department of Housing and Urban Development. Our second witness will be Ms. Tammie Trevino, Administrator, Rural Housing Service, U.S. Department of Agriculture.

Ms. Galante?

STATEMENT OF CAROL GALANTE, DEPUTY ASSISTANT SECRETARY FOR MULTIFAMILY HOUSING, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ms. GALANTE. Good morning, Chairwoman Waters, Ranking Member Capito, and distinguished members of the subcommittee. Thank you for the opportunity to testify on behalf of the Department today on the Housing Preservation and Tenant Protection Act of 2010.

Chairwoman Waters, I would first like to express my gratitude on behalf of the Department for yours and Chairman Frank's tireless leadership on the issue of affordable housing preservation. With the introduction of this legislation, we have the opportunity to move forward together to safeguard affordable shelter for our families and neighbors in need, and to improve and revitalize multifamily properties that anchor our communities. HUD is proud to provide project-based rental assistance to more than 1.4 million households throughout the country. We value our partnership with private owners of the thousands of assisted properties across our

portfolio. Through these partnerships, we are able to offer safe, decent, and affordable shelter.

However, despite the deduction of so many of our partners, these housing resources are at risk. We are deeply concerned about ongoing loss of long-term affordability in these properties. Today, more than 1,700 properties nationwide are financed with HUD direct or insured mortgages that will mature within 5 years.

These properties offer affordable housing to nearly 200,000 families through an array of HUD rental assistance programs. HUD maintains the affordability of these properties through recorded use agreements.

When the mortgages mature or expire, so will the HUD affordability use restrictions. Without the presence of such restrictions, owners will have more incentives and face more market pressure to opt out of Section 8 HAP contracts.

For those properties with project-based rental assistance, current tenants would be protected through the provision of enhanced vouchers. Our concern is, of course, for those tenants, but also for the long-term affordability of these properties. Unless we take action, these affordable units may be lost to future generations.

Built some 30 or 40 years ago, many of these aging properties have deferred maintenance or obsolete systems, and are in need of refurbishment and significant upgrading. Some are at risk of default or foreclosure, casualties of the down economy.

In order to break free of HUD regulatory oversight and/or capture equity, some owners continue to opt out of Section 8 assistance and sell their properties to private entities. Some 335,000 apartments receive Section 8 assistance that will expire within one year unless owners make the choice to renew assistance contracts. Owners have opted out of more than 550 Section 8 contracts in the last 5 years, stripping rental assistance from 9,000 units.

In any scenario, when Section 8 assistance is lost and affordability restrictions expire, the loss reverberates across communities. As you know, HUD offers no new project-based rental assistance to replace such lost Section 8 units, although we do protect the assisted tenants.

That is why HUD supports the fundamental principles of this bill. With some refinements, we believe this legislation will provide HUD with additional tools to facilitate the preservation work that can renew and protect our multifamily properties.

Red tape should never stand in the way of an owner making a choice to be a good steward of an affordable property. The Department applauds the bill's focus on streamlining regulatory requirements. Sections 110, 111, 201, and 204 allow owners to use project resources to improve their properties and leverage State and local private financing.

Section 110 gives HUD the authority to assign and forgive or defer flexible subsidy loans for preservation, refinances, or acquisitions. Section 111 enables owners to tap a residual receipts account to fund new capital improvements or facilitate preservation purchase.

Section 204 allows the Department to approve Section 8 rents at post-rehab levels, which we know from experience can be used by owners to refinance properties. Section 201 would facilitate the

transfer of Section 8 contracts from one building to another, protecting rental assistance as properties enter into obsolescence.

And while some of these measures are already under way or could be achieved administratively by HUD, the clear direction that the bill provides is quite welcome. Together, these sections make preservation deals more viable.

We also support the principle of helping move at-risk preservation-worthy properties into the hands of preservation purchasers. Section 106 of the bill, the Preservation Exchange Program, provides incentives to owners who agree to sell their properties to purchasers who will maintain long-term affordability. Regulatory waivers, streamlining processing, and other project resources can be powerful incentives, and we believe many owners will take advantage of this opportunity.

[The prepared statement of Deputy Assistant Secretary Galante can be found on page 46 of the appendix.]

Chairwoman WATERS. Thank you very much.

I will now call on our second witness, Ms. Tammye Trevino.

STATEMENT OF TAMMYE TREVINO, ADMINISTRATOR, RURAL HOUSING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. TREVINO. Chairwoman Waters, Ranking Member Capito, and members of the subcommittee, thank you for the opportunity to appear before you to discuss multifamily housing preservation in rural America.

This is a critically important issue, and in broad terms, we believe that the strategy outlined in the Rural Housing Preservation Act of Title 8 of the proposed legislation is very promising.

I would like to thank all those involved with this legislation, both in this session of Congress and in previous sessions, for your hard work. I am pleased to testify before you today on behalf of Secretary Tom Vilsack, Under Secretary Dallas Tonsager, and the USDA Rural Housing Service.

At the USDA, we advocate a strong national housing policy that both supports the American dream of homeownership and provides affordable rental opportunities. We are greatly encouraged by the committee's focus on legislation that will create national housing preservation standards for all government agencies that specialize in housing assistance, especially in rural America.

We further believe that your goals and ours are the same in both the desire to preserve the Nation's existing stock of federally-assisted, affordable multifamily rental housing, and the protection from displacement of low-income families, especially the elderly and the disabled.

For 60 years, our rural housing programs have provided invaluable support for low- and very low-income families in rural areas. In the current economy, the challenges that have faced rural communities for decades have grown more acute.

Recent studies show there are there are 386 persistent poverty counties in the United States. Of these 386 counties, 340, almost 90 percent, are considered rural counties. The same study indicates that persistent poverty and the degree of rurality are also linked. The poverty rate is the highest in the completely rural counties. So

not only do rural Americans earn less than their urban counterparts, they are also more likely to live in poverty.

Rural development multifamily housing programs were established because sufficient access to capital and credit was not available to serve the needs of the very low-income renters who wish to live and work in rural communities. The need to preserve the Nation's existing stock of federally-assisted, affordable multifamily rental housing, and the protection from displacement of low-income families, especially the elderly and disabled tenants in rural America, gave rise to the Multi-family Preservation and Revitalization Demonstration Program that began in 2006.

MPR is in its fourth year of existence. To date, rural development has obligated over 400 MPR revitalization transactions for Section 515 properties that will affect close to 14,000 tenant households.

Currently, our MPR program is authorized as a demonstration program, with no permanent authority. The lack of permanent authorization makes it difficult for the agency to promulgate permanent program regulations and to address long-term issues. By providing permanent authorization, the legislation would dramatically enhance the quality of the multifamily housing stock and protect tenants in rural America.

In rural America, low-income residents continue to be underserved, especially given the current economic environment. For example, turbulence in the housing credit investment market has had some effect on rural deals in the preservation pipeline.

While the vast majority of approved MPR transactions are now closed, the recent depletion of investors due to market instability has reduced equity that is available to be brought into low-income housing tax credit transactions in rural areas.

Half of all MPR transactions funded include transfers as part of the revitalization transaction. This has slowed the rate of closing for MPR transactions obligated during Fiscal Years 2008 and 2009, that included a transfer dependent on low-income housing tax credit funding.

At USDA Rural Housing, we are pleased with five key features in your proposed legislation:

Number one, it provides the agency with a number of revitalization tools that provide cost-effective preservation options for the existing multifamily housing rental portfolio.

Number two, it contains enhanced voucher authority that will protect tenants and properties that leave the program, as well as ensuring long-term affordability for tenants through long-term use agreements.

Number three, it includes RD's farm labor housing programs.

Number four, it includes provisions for long-term viability planning.

And number five, it introduces the concept of a national database that will give us access to the information needed to track America's affordable housing. Passage of the bill codifies the Demonstration Program and will provide additional tools and incentives to our current 515 program.

In general, we support the principles reflected in the bill, and look forward to working with Congress to approve this legislation.

It is my goal to assist Secretary Vilsack and President Obama in working with the committee and our public and private partners to spur economic growth and create a lasting foundation in the heart of rural America.

[The prepared statement of Administrator Trevino can be found on page 111 of the appendix.]

Chairwoman WATERS. Thank you very much.

In the interest of time, Ms. Velazquez, who chairs another committee, will have to leave. I am going to yield to her to begin the questioning. I will recognize you for 5 minutes, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Madam Chairwoman.

Ms. Galante, while the market for single-family homes shows some signs of stabilizing, many multifamily apartment buildings remain at significant risk of default and foreclosure, with buildings overleveraged and lacking sufficient rent rolls to support operating expenses and maintenance.

Does HUD have adequate tools to address this problem, since FHA and the GSEs currently represent about 90 percent of today's multifamily market?

Ms. GALANTE. Thank you for that question. You know, clearly, in the market today, you are correct that single-family is stabilizing. I think most economists would say that the multifamily sector is behind in terms of that overall recovery, and so that there is significant stress in the multifamily sector, particularly the private market rate market, not so much in the affordable stock.

So in terms of the FHA multifamily insured loans, we do have significant tools to deal with distressed properties. I think generally in the marketplace, there is concern that some privately financed market rate complexes don't have the similar tools to take care of those needs.

Ms. VELAZQUEZ. Well, the reason that I am asking that question is that I am concerned about the fate of tenants who live in multifamily buildings that are at risk of default or foreclosure. We all know the ripple effects of this investment in this development can affect entire communities.

So what are some of the ways that provisions in H.R. 4868 will help you in addressing this issue?

Ms. GALANTE. There is a provision that strengthens HUD's ability to deal with its own portfolio of distressed properties. There are not provisions in this bill that would impact those other private market rate types of properties.

Ms. VELAZQUEZ. And the legislation being discussed today attempts to help owners of federally-assisted housing find viable, long-term purchasers for their properties through a voluntary preservation exchange program, Section 106 of the bill.

Given the voluntary nature of this program, however, do you think sufficient numbers of owners will participate in this program?

Ms. GALANTE. I am quite optimistic that Section 106, the voluntary preservation exchange program, will enable a significant number of private owners to make the choice to stay with the HUD programs. And that in conjunction with some of the other streamlining of red tape that we are doing as part of this legislation, I think, will be quite successful.

Ms. VELAZQUEZ. Ms. Galante, you know that the bill under consideration will establish a right of first refusal. Housing advocates, however, believe that the right of first refusal provides weaker protections for affordable housing than a first right of purchase, which has shown great success in a State like Illinois.

Do you believe that the right of first refusal should be strengthened to provide greater protections for tenants?

Ms. GALANTE. We have concerns about—and you heard Secretary Donovan mention this back in June when there was a preservation hearing—with the mechanics of whether it is the right of first purchase or the existing Section 107 here.

Both of those provisions, you know, have significant challenges in terms of implementation in this private market ownership environment that we have. So we think that, you know, those could be challenging to implement and to legally mandate.

Ms. VELAZQUEZ. Okay. Thank you. Thank you, Madam Chairwoman.

Chairwoman WATERS. Ms. Capito?

Mrs. CAPITO. Thank you.

I want to stay with that topic that we were just talking about, Ms. Galante. In terms of—you mentioned Secretary Donovan, who was here in June, and his experience in New York had solidified his opinion that incentives for preservation work much better than perceived mandates. Section 106, the preservation exchange, I think, reflects what the Secretary has in mind.

But then Section 107 turns around and includes a Federal first right of refusal. Do you think there is any conflict between the two, Section 106 and 107, and what would be the results of trying to enforce both of those?

Ms. GALANTE. Well, my reading of the bill is that if you voluntarily agree to participate in Section 106, that while you are participating in that, Section 107 would not apply. So in that way, I don't think there is a direct conflict. But, you know, they are philosophically different approaches.

Mrs. CAPITO. Right. And I want to talk again about Section 107, which provides the right of first refusal, for either HUD or an approved assignee to purchase low-income assistance properties at the fair market value to prevent those from drifting away from the affordable housing stock.

I am concerned about allowing HUD to purchase these properties. I am assuming that—would this be the first time that HUD has entered into these kinds of arrangements? Where exactly would this money come from? How does HUD decide to value the properties? How long does HUD intend to hold the investments, and all kinds of questions surrounding that? Could you speak about that section a little bit?

Ms. GALANTE. Yes. I am not sure I can answer all of those questions. I don't know if this is the first time that HUD has done this. I am not aware of other circumstances. But I am relatively new to the Department, so I can't speak to that.

I think that the section does provide for HUD to assign its rights to another entity. And clearly—

Mrs. CAPITO. So that would be after HUD—not after HUD purchases, but assigns their right of first refusal to somebody?

Ms. GALANTE. Correct.

Mrs. CAPITO. So who else would that be?

Ms. GALANTE. Well, HUD would have to establish a proposed panel of bidders, so to speak, or preservation-minded entities that would like to purchase these properties. And we would have to have some kind of program set up to enable folks to come in and step in, essentially, to HUD's shoes in this case unless HUD wanted to take on doing that themselves.

Mrs. CAPITO. Well, with HUD's—I mean, I just think that this is obviously not fully fleshed out, this whole idea of right of first refusal. And I think it is something that if it is going to entail HUD actually purchasing the properties, or managing the properties, or how long are they going to hold the investments, it really, I think, puts a—with HUD's reputation for technological challenges, I think it will put another technological challenge onto an already overburdened staff.

I would like to ask Administrator Trevino a question. You and I talked about this, actually, on the phone. The 502 single-family loan guarantee program will exhaust its funding by the end of April. And we have already heard that lenders are already stopping taking applications for this program because they are concerned that their funding is not going to be there. I have received numerous e-mails from folks who use this program and say it is a great program, but are concerned about the lack of programs.

How many American families have used the program so far? And how critical is this for rural families? And do you believe that—what are you doing to continue the viability of this program through the end of this fiscal year?

Ms. TREVINO. Just based on our numbers that we have, we had over 85,000 homeowners who went through the guarantee program, so it was very highly successful. It was our first program in housing that used up all its funding. And that happened actually in December.

So it is a very popular program. We have four major lenders that participate in the program, as well as numerous smaller ones.

Mrs. CAPITO. And what are you doing to see that this can continue from the end of April to the end of the fiscal year, where we are going to have the shortfall?

Ms. TREVINO. At the current time, there are folks at a lot higher level than I am that are weighing the options. There are several options. The two more popular ones are fee-based options. And that decision will be made at a higher than I, and so at some point we hope to have some type of resolution.

Mrs. CAPITO. All right. Well, I am very interested in the results of this, as I expressed to you on the phone the other day, and would love to participate in trying to help find a solution to this program.

Ms. TREVINO. Thank you. I appreciate that.

Mrs. CAPITO. Thank you.

Chairwoman WATERS. Thank you very much. I will recognize myself for 5 minutes.

As you can see, there is a lot of interest in the Section 107 Federal first right of refusal. As you know, some of us are interested

in the opportunity for tenants to own property if the opportunity presents itself. And it seems a little bit confusing.

It talks about the owner being able to accept an offer, and then HUD comes in behind the acceptance of the offer and matches that offer. And then I guess it would have the first right of purchase.

Is that your understanding?

Ms. GALANTE. Actually, my understanding is there is a two-part test under 107. And the first is that the one notifies of their intent to opt out of the program. And I think there is a 90-day period where HUD has the ability to raise their hand and say, we want to purchase the property or assign our ability to purchase the property.

And if at that point HUD does not do that, then the private owner is free to go out and make a purchase arrangement with a private owner. And then HUD can come back in under certain circumstances to essentially match that private offer.

Chairwoman WATERS. So it is not your understanding that the owner would, a year ahead of time, notify that they would like to sell the property, and then go out to the market and get a fair market value appraisal, and then HUD would have the opportunity to match that fair market available or value? So do they notify a year ahead of time?

Ms. GALANTE. Yes, they do.

Chairwoman WATERS. And then do they place the property on the market and accept an offer? That is what is kind of confusing me. Normally, when you think of an acceptance of an offer, it seems that you have something that is legally binding that you have to honor in some way.

But this appears that after the acceptance of the offer, HUD can then come in and either match that offer or maybe over-match the offer and have the first right.

Ms. GALANTE. That is correct. That is the right of first refusal portion of Section 107. My understanding, and maybe I read it incorrectly, but my understanding is that prior to that right of first refusal, there is this 90-day period where HUD could say they wanted to actually purchase it before the owner goes out and gets a third party offer.

Chairwoman WATERS. All right. Ms. Galante, you didn't mention Section 303, which would confer third party beneficiary status on residents. What is the Department's position on this provision?

Ms. GALANTE. This is a relatively new provision of the bill, and we haven't taken a formal position on that.

Chairwoman WATERS. Thank you.

I will then call on Mr. Cleaver.

Mr. CLEAVER. Thank you, Madam Chairwoman. I just have one question for this panel.

In going over the background information for this legislation that our Chair has introduced, I find that 193,000 subsidized rental units will move into market rate over the next 10 years.

So my question and concern—well, the point of the question is to determine how much of an emergency this bill is for now, when you consider we have walked almost to the precipice economically in the country. And if we are talking about 193,000 in 10 years, how many can we estimate falling over in 2010/2011? With less

money moving around in the economy, the renters and the owners are probably in a less favorable situation to recapitalize some of the units.

So do you have any idea or estimate on how many will move to market rate this year or next year?

Ms. GALANTE. I don't have the exact figures. I think the place where we are in the economy today has two situations affecting these properties. On the one hand, I believe some properties are less likely to opt out of their Section 8 contracts because their properties might be less valuable in the market rate rent situation.

On the other hand, there are property owners who, because they are reaching a certain—there is a peak of properties reaching maturity and expiring use, that if they don't pull the trigger today, they are not—they have an opportunity to pull the trigger today and get out of the program.

And so those properties are significantly at risk. And particularly those with maturing mortgages aren't really protected under current regulations. And so I think there is a significant risk in the next 5 years for these properties.

Mr. CLEAVER. Ms. Trevino, do you have any comments?

Ms. TREVINO. Well, we have currently about 100 properties that have left our portfolio. That is about 2,700 units that we have lost in the last—based on either transferring out or no longer decent.

Mr. CLEAVER. Yes. The point was how much of an emergency do we have? Is there something we need to do? I am willing to vote for it to be done yesterday, and I am getting a sense of the fact that the losses are occurring right now.

Ms. TREVINO. It is about the same. We lose about a hundred. Our portfolio, about 10 percent of our total portfolio, is in the worst condition.

Mr. CLEAVER. How are we going to handle the fact real estate values have dropped about 36 percent since the beginning of the great recession? Are we going to have problems with property owners who, when they began participating in this program, had one value on their property, and now it is 36 percent lower?

Do you have any idea how we would be able to handle that, and whether property owners are going to be willing? My assumption is that the cost is going to be significantly less today than it would have been if we had tried to do this 2 years ago.

We have a bridge in my district that came in when the city first sent out a request for bids at \$25,000 to rebuild it. When we receive the money through the TIGER grant, the new bid is \$10,000. So people are moving to a new economy that we have unwittingly created. Do you think we will have problems?

Ms. GALANTE. If I could just say, again, it cuts both ways. In this situation, owners whose properties are less valuable in the private market with market rate rents because of the drop in values may be more likely continue to opt in to project-based Section 8 because that is a more secure situation.

On the other hand, if they are under economic distress with other properties that they own, even though they may be getting less value for the property than they would have 2 years ago, they may be motivated to take out equity now for other reasons and fig-

ure it is going to be a while before the market comes back, and they have an opportunity now and they are going to take it.

So it is a complicated situation and I think it is partly a micro-economic valuation at different parts of the country.

Mr. CLEAVER. Thank you.

Chairwoman WATERS. Thank you very much.

Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman.

Let me go first to the letter that I referenced earlier to Secretary Donovan, which is signed by Chairman Frank, Chairwoman Waters, and myself. A slight modification in my earlier statement because this letter actually deals with an amendment that I had to H.R. 3965, the Mark-to-Market Extension and Enhancement Act of 2007. It would reactivate Section 514 of the grant program, which accords about \$10 million to tenant groups for training and technical assistance, the purpose of which would be to improve and preserve properties.

My understanding is that there is now a proposal to develop language that has not been shared to date, and HUD would do this. Ms. Galante, can you briefly, as tersely as possible, share with me how your language would be better than the language that is currently proposed in Section 514?

Ms. GALANTE. Certainly. In concept, we are very supportive of Section 514 and tenant outreach and education. We have developed a draft program on which we are having conversations with tenant organizations. It is not final. We want to get input to make sure that it is going to work. We are calling it the Tenant Resource Network, or TRN.

And, fundamentally, it is a very solid program. I think the one difference between where this program is going and the language in the legislation is the language in the legislation requires there to be a national MOU with the corporation that runs Vista.

And in our program, we are allowing grants to go to resident organizations, and they can use those grants as matching funds to receive local Vista volunteers.

Mr. GREEN. Because I have one other question and time is of the essence—

Ms. GALANTE. Yes.

Mr. GREEN. —may I make a request that, if it does not breach some protocol or ethics, that my office be involved with you as you are developing this? Given that I have demonstrated an interest in this—

Ms. GALANTE. Certainly.

Mr. GREEN. —prior to this moment in time. And I will have someone visit with you afterwards.

Ms. GALANTE. Great.

Mr. GREEN. Now, let's move to the next letter, and talk about the first right of purchase versus the first right of refusal.

Do you agree that a right to purchase is a stronger right than a right to refuse?

Ms. GALANTE. Yes.

Mr. GREEN. And as such, it appears that the right to refuse, while it can be of benefit, the right to purchase would put a tenant organization—or HUD, if indeed HUD chose to make the purchase,

and I am not sure that would be the case—but it would put you in better standing in terms of moving forward.

Would you agree with this?

Ms. GALANTE. I would say this; I think Section 107 is relatively new. I have read through it a number of times. It is complex. Again, my reading of it was that even though it is called a right of first refusal, that there is a kind of initial stage which is more like a right—it is not a right to purchase, but it is more like a right to offer that kind of takes care of both of those situations.

That is my reading of it, and I could be wrong.

Mr. GREEN. So currently, you are supportive of 107 as structured?

Ms. GALANTE. Well, again, we have concerns about the mechanics of 107 as expressed by the Secretary back in June on the right of first purchase, the Section 106, which is the preservation/exchange voluntary program we think has more flexibility in terms of how it gets implemented.

Mr. GREEN. Have you looked at the rural development program and the mandatory purchase rights contained therein?

Ms. GALANTE. I have not.

Mr. GREEN. Would you be amenable to our working with you—and I would, of course, work with the Chair as well, if the Chair permits—on language for 107?

Ms. GALANTE. Certainly.

Mr. GREEN. And of course, the Chair has proposed language, which means that I would obviously talk to the Chair before encroaching in this area. But it is something of concern because one of the best ways for tenants to maintain affordable housing is to have a stake in it beyond being a renter.

And if they can have the opportunity to be a part of a purchase program, which I think can be replicated quite efficiently across the country, I think that it will bode well for tenants in the future. It would be a new paradigm, or a paradigm that would expand. I think it has been before, but if we could expand a paradigm.

So thank you very much, and I yield back.

Chairwoman WATERS. Thank you very much.

Mr. Ellison, for 5 minutes.

Mr. ELLISON. Thank you, Madam Chairwoman, and thank you for holding this very important hearing. I just want to point out a quick fact before I get to my question. My home district of Minneapolis is poised to lose over 5,000 apartments with Federal project-based contracts by 2019. And the loss of these assisted housing units could not come at a more difficult time for the residents of Minneapolis. Nearly 60 percent of the foreclosed homes in our City were occupied by tenants. This means that the housing insecure face even fewer options. And so I would just put that out there for you. And maybe I will just ask you a general question.

How serious is this problem around the rest of the country?

Ms. GALANTE. I certainly can say that I think Minneapolis is not the only location. I think it is a universal problem across the country, wherever there are these types of rental assistance programs. Hot markets are more vulnerable than weaker market locations in terms of market rate rents. But, it is a serious problem.

Mr. ELLISON. Ms. Trevino, let me ask you this question. In your testimony, you noted that of the 10,000 rural development vouchers that are offered to tenants, only about a third of them actually use them.

Why do you think so few tenants use the voucher program, and would it—could we redistribute them without doing any damage to our rural tenant program? Because that is something I would never want to do. In Minnesota, we have a very nice balance between rural, suburban, and urban.

But if they are not using them, couldn't they be redirected?

Ms. TREVINO. I think that the way you have proposed them in the bill with the three different vouchers, I don't think we are going to have a problem using them up in that scenario. Right now, we run one voucher program, and this bill proposes three. So I don't think that will be an issue if this bill goes forward.

Mr. ELLISON. Okay. Well, thank you for your questions. I yield back.

Chairwoman WATERS. Thank you very much. The Chair notes that some members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record. This panel is now dismissed, and I would like to welcome our second panel. Thank you very much.

Good morning. I am pleased to welcome our distinguished second panel.

Our first witness will be Mr. George Caruso, executive vice president, Edgewood Management Corporation, on behalf of the National Affordable Housing Management Association.

Our second witness will be Mr. Toby Halliday, vice president for public policy, National Housing Trust, on behalf of the National Preservation Working Group.

Our third witness will be Mr. Ricky Leung, treasurer, National Alliance of HUD Tenants, and president of the Cherry Street Tenants Association.

Our fourth witness will be Ms. Michelle Norris, senior vice president, acquisitions and development, National Church Residences, on behalf of the American Association of Homes and Services for the Aging.

Our fifth witness will be Mr. Raymond K. James, partner, Coan & Lyons, on behalf of the National Leased Housing Association.

And our final witness will be Mr. William Shumaker, president of the board, the Council for Affordable and Rural Housing, and vice president of the Provident Companies.

Without objection, your written statements will be made a part of the record. You will now be recognized for a 5-minute summary of your testimony. And we will start with our first witness, Mr. George Caruso.

STATEMENT OF GEORGE CARUSO, EXECUTIVE VICE PRESIDENT, EDGEWOOD MANAGEMENT CORPORATION, ON BEHALF OF THE NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION (NAHMA)

Mr. CARUSO. Good morning, Chairwoman Waters and Ranking Member Capito. I am George Caruso, executive vice president of Edgewood Management Corporation in Germantown, Maryland. We are the ninth largest manager of assisted housing in the Nation. I am appearing today for the National Affordable Housing Management Association. Thank you for allowing my statement to be introduced into the record.

We are pleased with much of H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010. NAHMA has been a strong supporter of preservation for some 20 years now. NAHMA has had an opportunity to review the bill in detail at our winter meetings last week.

Although our general membership opposes the bill in its current form, our opposition is limited to provisions in seven sections: Sections 107; 108; 109; 110; 302; 303; and 304. We applaud the remaining 60 sections of the bill.

Indeed, we appreciate that numerous provisions address issues that we have been discussing with the committee members on both sides of the aisle for a number of years. These issues include the long-term physical and financial viability of properties, the continued affordability of properties with mature mortgages, and finally, protecting tenants from severe rent burdens when affordability restrictions expire.

Allow me to get to the major issues we have. First, Section 107, the Federal first right of refusal: This provision will, in our view, serve to drive potential purchasers and equity providers away. There are a variety of problems with this provision which include, but are not limited to: undermining owner and investor confidence in their agreements with the Federal Government; and potentially alienating willing purchasers, who must wait through a lengthy process, thereby affecting market value. We believe a better and more workable approach is suggested in Section 106, the preservation exchange program, which NAHMA supports.

Second, Section 304, the resident access to building information: The provisions of this section are overly broad, and they will force the release of proprietary information. It is useful to observe that the bulk of the information required to be released here is submitted to HUD through the most secure computer system that HUD has, and it is accessible only on a limited basis inside HUD, since they judge the data to be very sensitive. The less sensitive building information referenced in this section is already publicly available from HUD.

Third, the Section 110 authority for HUD to assign flex subsidy loans: We view this provision, among others, as tilting the playing field in preservation to nonprofit organizations. NAHMA represents both for-profit and nonprofit owners. Part of our policy is that there be no bias between the two types of ownership. Both bring substantial advantages to the table. Both are required to make preservation work. Preservation tools, we believe, should be equally available.

Our concerns on the remaining sections we object to are detailed in our written testimony. Let me move now to a more positive note.

We are particularly pleased to see the provisions in: Section 406 addressing correcting harm caused by late subsidy payments; Section 501, the extension of the mark-to-market program; and Section 508, budget-based rent adjustments.

Section 406 penalizes HUD for making excessively late subsidy payments to owners, and will assure that the properties are properly funded going forward. The language in Section 508 will allow for a re-underwriting of a group of mark-to-market properties that were incorrectly underwritten initially, and will retain them as viable assisted housing going forward. These sections will work to assure that more housing is preserved.

There are many other sections of the bill that we find very encouraging. They, too, are detailed in our written materials.

Madam Chairwoman and Ranking Member Capito, thank you very much for allowing us to share our views and concerns with the subcommittee. NAHMA remains committed to the essential task of preserving the assisted and affordable housing portfolio. We remain available to members and staff to answer questions and make suggestions to get to a successful conclusion of this legislation.

Thank you very much.

[The prepared statement of Mr. Caruso can be found on page 36 of the appendix.]

Chairwoman WATERS. Thank you.

Our second witness will be Mr. Toby Halliday.

STATEMENT OF TOBY HALLIDAY, VICE PRESIDENT FOR PUBLIC POLICY, NATIONAL HOUSING TRUST, ON BEHALF OF THE NATIONAL PRESERVATION WORKING GROUP

Mr. HALLIDAY. Thank you, Subcommittee Chairwoman Waters, Ranking Member Capito, and members of the subcommittee. My name is Toby Halliday, and I am vice president for Federal policy for the National Housing Trust. It is my pleasure to testify today in support of H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010. Today, I am also testifying on behalf of the National Preservation Working Group, which is a coalition of 36 non-profit organizations supporting affordable rental housing.

H.R. 4868 safeguards affordable apartments that are home to more than one million extremely low-income families, elderly, and disabled persons. As foreclosures on homes and apartment buildings continue to unfold, a growing number of renters are competing for a limited supply of affordable rental housing. Many of these families will be seeking apartments at the lower end of the scale, where there is already a shortage of affordable housing for the poorest households.

Although market conditions have resulted in lower housing costs for many middle-income households, increased demand for the most affordable housing is actually leading to higher rents and tighter credit screening in some markets.

Shortages of decent, safe, affordable housing are complicated further by ongoing problems in the low-income housing tax credit market. Uncertainty among traditional tax credit investors about future profitability, together with a preference for the simplest and

shortest investment options available to other investors, has left the tax credit market crippled in all but a few markets, dramatically reducing the creation of new affordable units from its peak in 2007.

This legislation includes important new tools to protect residents and preserve affordability when assisted housing is refinanced, recapitalized, or when the underlying HUD financing or RD financing matures. This legislation includes provisions that would, at the owner's discretion, provide rental assistance for affected apartments both for HUD-assisted and rural development 515 properties. Improving preservation tools makes the rehabilitation of these properties easier to finance, leading to the creation of needed construction jobs.

The legislation we see today also benefits from extensive discussion and revision to accommodate competing interests. For example, last summer, several private industry groups raised strong objections to four draft provisions. In the bill as it currently stands, all four of these provisions have been revised or removed entirely, despite the objections of many housing advocates.

The right of first refusal in Section 107 allows preservation-oriented buyers to match the offer of any other bona fide purchaser of HUD-assisted property. This ensures any seller a full and fair sales price, and is modeled on similar provisions already in force in many jurisdictions. It is a fair, low-cost way to protect the substantial taxpayer investment that has already been made in existing affordable rental housing.

H.R. 4868 also retains an important local control provision in Section 108 that ensures that State and local preservation and tenant protection laws are not preempted by Federal law.

Section 303 includes a revised provision that allows legal action for building violations only when HUD has failed to act on a documented deficiency. This protects responsible owners while ensuring that residents have some recourse against unscrupulous landlords.

Section 302 permits residents to escrow their rents only when the Secretary of HUD determines serious violations of housing quality standards or housing program requirements.

We are interested to learn more about a new proposal to create a voluntary program to encourage the transfer of assisted rental properties to preservation owners in Section 106. We believe this could be a useful new preservation tool so long as appropriate checks are in place to prevent the deterioration of property during negotiation, and to make sure that buyers have both the desire and the capacity to support long-term affordability.

Titles 7 and 8 include important provisions needed to facilitate repair and preservation of thousands of Section 515 affordable rural housing units and Section 202 elderly housing units.

We thank Chairman Frank and the 13 co-sponsors for the introduction of this legislation, and urge committee action on this much-needed legislation. Thank you very much.

[The prepared statement of Mr. Halliday can be found on page 50 of the appendix.]

Chairwoman WATERS. Thank you.

Next, we will hear from Mr. Ricky Leung.

STATEMENT OF RICKY LEUNG, VICE PRESIDENT/EAST, NATIONAL ALLIANCE OF HUD TENANTS (NAHT), AND PRESIDENT, THE CHERRY STREET TENANTS ASSOCIATION

Mr. LEUNG. Good morning, Chairwoman Waters.

Since the Title 6 preservation program ended in 1996, our Nation has lost at least 360,000 units of affordable low-income housing. Chairman Frank has filed a very exciting and extremely comprehensive bill that will sustain our homes for decades to come.

We also thank my own representative, Congresswoman Velazquez, for filing H.R. 44, now Title 4 in the bill, to address the related loss of 120,000 units of HUD's troubled housing stock, and for her leadership in addressing the new crisis of predatory equity.

The bill includes virtually all the priority items sought by the National Alliance of HUD Tenants for many years, most of which are consensus items. NAHT supports voluntary incentives in the bill to encourage owners to save our homes, including the new preservation exchange program. Our written testimony suggests ways to strengthen the exchange to better protect tenants.

The bill also substitutes a new first right of refusal section for the broader right of first purchase that I testified on last summer. We urge the committee to restore the broader right of first purchase in committee markup, and we want to thank Representative Gutierrez and the 11 other committee members for their strong letter in support on this issue.

The first right of refusal in Section 107 would allow HUD to step in only where owners are selling to someone who proposes to end HUD use agreements. But owners in high-market areas are not selling; they are simply converting to market rents, while retaining ownership of the buildings.

Massachusetts recently passed a proposal on which Section 107 is based. There is not a single current instance of a building in that State that would be saved by the first right of refusal. Instead, owners have filed opt-out notices to either convert to market or leverage higher government subsidies to stay in the program.

By contrast, the broader first right of purchase in last summer's bill would allow HUD to buy out owners at fair market value in any case where owners attempt to convert to market rent, whether or not they are selling. Only this would provide the regulatory tools to ensure that voluntary programs work to save our homes.

My own building is an example. The 480 families at Cherry Street are diverse working and middle-class, a microcosm of the City and the Nation. In 2008, our building was bought by a predatory owner, and our Section 8 contract was renewed for 5 more years. In 2 years, the new owner will decide what to do. Only passage of a first right of purchase will give our tenants association peace of mind and at least a fighting chance to save our homes.

The need for the measure is urgent, especially in New York City. A first right of purchase would help save 20,000 more apartments like Cherry Street that are at immediate risk. Nationally, as many as 200,000 units are at risk to be saved.

There is ample precedent for the broader first right of purchase. Besides Title 6, Congress has provided a Federal right of purchase for rural housing for 20 years, and several States have adopted similar laws. As Representative Gutierrez pointed out, owners have

learned to live with the Illinois law and have not challenged it in the courts. We appreciate the inclusion of Section 108 in the bill, which would allow States to do more to regulate the stock if they choose.

Last summer, Secretary Donovan raised constitutional questions about these regulatory proposals. In response, Chairwoman Waters obtained a memo from the Congressional Research Service. The CRS memo did not conclude there are constitutional barriers to either right to purchase or right of first refusal as long as owners are awarded full market compensation and there is no delay in implementation. In fact, the owner representative who testified in 2008 supported the right to purchase if it could meet that test.

NAHT also strongly supports the tenant empowerment provisions in the bill. These no-cost measures would allow tenants to join HUD as partners to improve our homes. Some owners have objected that giving tenants access to information or third party status to enforce HUD contracts would unduly burden businesses and violate their rights. But in my State, tenants have long been able to access budget and repair information without any discernible controversy or harm to owners.

I am testifying today on behalf of residents living in multifamily housing who just want to live in a safe and healthy home. Two of our board members here, Judy and Lonene, right there, please take a snapshot of us. You will see there is a diverse ethnicity, age, and profession and culture background of residents living in subsidized affordable housing across the Nation.

Let's be real. Only owners and agents who have something to hide or slumlords will mostly be objecting to these provisions. So as—

Chairwoman WATERS. I'm sorry. We are going to have to move on.

Mr. LEUNG. Thank you very much.

[The prepared statement of Mr. Leung can be found on page 65 of the appendix.]

Chairwoman WATERS. Ms. Norris?

STATEMENT OF MICHELLE NORRIS, SENIOR VICE PRESIDENT, ACQUISITIONS AND DEVELOPMENT, NATIONAL CHURCH RESIDENCES (NCR), ON BEHALF OF THE AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING (AAHSA)

Ms. NORRIS. Good morning, Chairwoman Waters, Ranking Member Capito, and members of the subcommittee. My name is Michelle Norris. I currently serve as senior vice president of acquisitions and development at National Church Residences.

I thank you for the opportunity to speak on behalf of AAHSA, a national association that represents not-for-profit providers who offer a continuum of care of services—adult day services, home health, community services, senior housing, assisted living, continuing care communities, and nursing homes. AAHSA has State associations in each of your States as well.

NCR has been an active member of AAHSA for the last 30 years. Our CEO, Tom Slemmer, served as chairman of AAHSA for the last 2 years. At NCR, I also have had the opportunity to be the past president of NAHMA, another really great organization.

NCR has the privilege of having a very significant affordable senior housing portfolio that has been financed with a wide variety of programs and funding sources, including the HUD 202 loan program, the HUD 202 PRAC program, the low-income housing tax credit program, and others.

In addition, we have a large health care group in Ohio, so we have a really unique perspective on the costs and benefits of the various levels of housing and health care when you combine the two.

For most of our 50-year history, our development of affordable housing focused on new construction. About 8 years ago, our leadership team realized the thing that we now are all aware of: Our Nation is losing affordable housing faster than we can build it.

Since 2002, NCR has been proud to say that we have been an active participant in preserving over 5,000 units of affordable housing with various locations in this country, including: Manhattan, Kansas; Detroit, Michigan; St. Louis, Missouri; Mount Sterling, Ohio; and Montgomery, West Virginia.

Therefore, because of our experiences, I want to commend your leadership for the efforts of this bill. H.R. 4868 is sorely needed if affordable senior housing is to survive in the future. I have seen firsthand numerous examples of existing senior housing units that were converted to market rate, or that became obsolete either financially or physically to the point of no return.

Though time does not permit me to elaborate on many of the most significant and positive features of this bill, please let me highlight a few.

Title 7 includes in its entirety Section 202, Supportive Housing for the Elderly Reform bill. This section is dedicated to the many issues that will improve the existing 202 new construction program and will greatly facilitate the efforts to preserve and rehab the existing 202 stock.

Section 101 converts rent sup and RAP contracts into Section 8 rental assistance. This is a great example of a technical fix that can have an enormous impact on many of the most frail seniors living in older HUD buildings.

Section 104 allows project-based preservation assistance in lieu of enhanced vouchers. I know this sounds like a technical fix, but it can have a significant impact on leveraging other funds necessary to do substantial rehab and to preserve communities.

Section 110 allows HUD to assign existing flex subsidy loans as part of a preservation transaction. In North Carolina, our own organization essentially had to use HOME monies to pay off a flex sub loan instead of diverting the HOME monies to substantial rehab.

Finally, a very important modification under Section 731 encourages organizations like NCR to create very needed affordable assisted living facilities. In 2009, NCR officially opened our very first community using a HUD assisted living conversion grant. This was the first in the State of Ohio, and we were proud to be the first owner.

This section of the legislation will decrease the cost of such facilities by eliminating a mandatory licensure requirement. These are

just some of the great examples of the technical fixes and policy initiatives this bill provides.

My written testimony describes in more detail these and other powerful and important provisions. In spite of the many positive provisions, there are several sections that do concern us. However, we have conferred with our industry colleagues, and I will defer to them to highlight some of those concerns.

So in conclusion, on behalf of AAHSA and NCR, I commend you for the hard work done on this bill. As the legislation moves forward, AAHSA and NCR stand ready to provide resources to assist in the necessary fine-tuning.

I thank you for the opportunity to testify on behalf of AAHSA.

[The prepared statement of Ms. Norris can be found on page 81 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. James, for 5 minutes.

STATEMENT OF RAYMOND K. JAMES, PARTNER, COAN AND LYONS, ON BEHALF OF THE NATIONAL LEASED HOUSING ASSOCIATION (NLHA)

Mr. JAMES. Thank you, Madam Chairwoman, Ranking Member Capito, and members of the subcommittee. I am Raymond K. James of the law firm of Coan & Lyons in Washington, D.C., and I am testifying on behalf of the National Leased Housing Association, which for the past 38 years has represented developers, lenders, housing managers, State and local agencies, and others interested in assisted housing, with a focus on Section 8 and the low-income housing tax credit. NLHA's members have provided or administered housing assistance for over 3 million families.

This legislation has many faces. I would like to talk about three of them: first, the statutory gaps it fills; second, the statutory mistakes it corrects; and third, the new statutory provisions that we believe will be mistakes for the future.

First, the gaps it fills. There are a number of situations where project subsidies terminate and the tenants are not afforded protection in the form of enhanced vouchers. This legislation would correct that.

These are the programs that people often talk about when they say there are 100,000 or so units at risk in the near future. These are units that are part of programs with older subsidy forms that terminate at certain points and cannot be extended, even if the owner wants to extend those subsidies. There is nothing that can be done about it under current law.

Now, this bill does contain something that could be useful by allowing owners to convert these older subsidies that cannot be extended in their current form, to convert those to Section 8. And as we know, Section 8 can be extended indefinitely as long as there are appropriations.

Statutory mistakes of the past that are being corrected: The Section 8 moderate rehabilitation program has been subject to statutory provisions over the last 13 years that have been a preservation disaster. The inventory of mod rehab units has been reduced from about 100,000 units to approximately 25,000 units, a reduction of 75 percent.

This bill attempts to correct that 13-year statutory mistake. And it is not the fault of this committee; this committee has tried to correct it in the past, but other parts of the Congress have prevented that.

Third, there are some proposed statutory mistakes. I will mention two.

Section 108, which is a wide-open preemption provision that turns the supremacy clause of the U.S. constitution on its head. It would permit State laws, local laws, to basically overturn Federal law in a number of situations. There is no need—if there is a problem with a particular Federal law that is thwarting a specific State law, the thing to do is to address that specific Federal law and not thousands of Federal laws, which this provision does. It is totally chaotic and would destabilize the program.

Finally, Section 107. This program 10 years ago, 11 years ago, had no stability and predictability. Renewal authorities were on a year-to-year basis and the terms were not generous. Owners could not mark the rents up to market, so the opt-out rate in the early years was quite high.

Chairman Frank and others, particularly Chairman Frank, worked with OMB and the Department to get them to accept a markup to market. On a bipartisan basis, a renewal law was enacted 10 years ago, and that has formed the basis for giving owners predictability, and giving lenders and investors predictability and stability.

We are worried about any provision that would upset that long-term stability, and we think the right of first refusal is something that owners feel restricts their choice of a buyer and the time to sell that will be disadvantageous to them.

Now, there is more to selling a project than just the terms, the sales terms—how much the sale price is, when the consummation should take place. Owners want to pick their buyers. Sometimes it is difficult to get financing in small towns and rural areas, and a larger nonprofit organization that is on the approved list may not be able to get the financing.

So it is very important that buyers feel they have those property rights preserved to select the owners and the time of their transactions. Thank you.

[The prepared statement of Mr. James can be found on page 58 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Shumaker?

STATEMENT OF WILLIAM C. SHUMAKER, PRESIDENT OF THE BOARD, THE COUNCIL FOR AFFORDABLE AND RURAL HOUSING (CARH), AND VICE PRESIDENT OF THE PROVIDENT COMPANIES

Mr. SHUMAKER. Madam Chairwoman, Ranking Member Capito, and members of the subcommittee, I am Bill Shumaker. I am the president of the Council for Affordable and Rural Housing, located here in the D.C. area. I am also vice president of the Provident Companies, located in Ohio. We own, manage, construct, develop, and do everything we can to promote and develop affordable housing.

CARH members house hundreds of thousands of low-income, elderly, and disabled residents in rural America. CARH has sought to promote the development and preservation of affordable rural housing through its 30-year history as the association of for-profit, nonprofit, and public agencies that build, own, manage, and invest in rural affordable housing.

We looked at the bill. Most of our comments refer to Title 8, which is the section on rural housing. One of the most important things in our written testimony says neither the public nor the private sector can produce affordable rural housing independently of the other. It has been and should be a partnership.

The 514 and 515 portfolio consists of 15,977 apartment complexes containing over 452,000 units. Our portfolio is aging, and we need help. Maintaining the existing housing stock is more cost-effective and less expensive than allowing the stock to deteriorate and to be replaced with new housing.

Most important, these housing units constitute a vital social resource by providing a decent home in which elderly and families can live with dignity. More importantly, also, the recession has created turmoil among residents and applicants.

CARH members report a material change where residents are moving to find work or moving into Section 515 properties as a last resort after losing jobs. We are greatly concerned that some current and former residents are at a tipping point towards homelessness.

We have several issues which we would like to bring forth to the committee. And we recently updated our aging portfolio bill, and I am going to review some of those quickly.

First, we believe that the existing portfolio needs \$5 billion, or \$1 billion a year for 5 years, to invest in this housing stock to rehabilitate it. USDA's funding commitment does not adequately reflect the MPR is RD's priority. Indeed, USDA should take advantage of credit reform rules, and has not done so.

Most of the 515 mortgages that can be restructured under MPR were originated before credit reform. As such, RD should not need new budget authority to restructure most loans, but USDA has not allowed RD to proceed under existing budget rules.

The Section 521 rural assistance program is an essential component of the Section 515 program. RD provides deep subsidies to very low-income residents by paying the difference between 30 percent of the residents' income and base rent required to operate the property.

Our members would like to see first in line for RA and override the administrator's requirement giving preference to the most rent overburden; otherwise, eligible, needy residents who have waited for a longer period. Most importantly, there needs to be additional RA to remove rent overburden.

One quick fix to RA to make RA more effective is to provide 20-year contracts subject to annual appropriations. The Section 538 program was enacted in 1996, and most recently Congress eliminated the interest subsidy for that program. This needs to be reinstated. I checked with Ohio. Two years ago, they were processing 15 to 20 applications for 538. This year, they are processing two.

A long-neglected tool in Section 515 is the 515(t), where Rural Development is authorized to guarantee equity loans to provide a

fair return and further preservation resources for properties that are 20 years or older. This program should be funded and implemented. It will provide owners a further incentive to remain in the 515 program and provide further resources to capitalize the property.

A modest change in the tax rules must be adopted to preserve the stock of Section 515 affordable housing. This could be accomplished by waiving the depreciation recapture tax liability, where investors sell their properties to new owners who agree to invest new capital in the property and to preserve the property as affordable housing for another 30 years.

We need to extend the current LIHTC carryback period from 1 year to 5 years, and tax credits should be available to S corporations, limited liability companies, and closely held C corps, to the same degree that tax credits are currently available to widely held C corps.

We ask you to please review our written testimony, and we thank you very much.

[The prepared statement of Mr. Shumaker can be found on page 101 of the appendix.]

Chairwoman WATERS. Thank you very much for your testimony, all of you. It was tremendously informative. And I would like to recognize myself for 5 minutes. I have a few questions.

My first question is directed to Mr. Caruso. Mr. Caruso, it appears that you oppose all of the sections of the bill that were requested by tenant groups. However, I have been informed that all of the sections that owner groups requested were included in the bill.

Can you explain to me how this bill can protect the tenants who live in these properties since you oppose the provisions that they believe will do the best job of protecting them?

Mr. CARUSO. Madam Chairwoman, I will try. Let me start with Section 107, and then I will move to the other sections.

There are minor problems in the 300 series sections that we think need to be addressed. Section 107—and there has been a lot of back and forth this morning on, you know, the right of first purchase or an option to purchase a building. In my own firm, we have actually done three tenant acquisitions of buildings, so I have some considerable experience in this area.

I think the biggest issue you have with these sections is how they will be viewed by the banking and investment community. At the end of the day, if you are going to do any transaction, you have to go borrow a lot of money to do it with. And there has to be confidence on the part of the lenders and the other equity providers, and particularly the tax credit equity providers, that the transaction can move forward on a timely basis, it is properly financed, and it can go.

The language that exists today with the timeframes in it is very long indeed. We just in my firm did an acquisition last fall; from the point at which we started looking at the documents to the point at which we closed the transaction was about 80 days.

If the timeframes could be tightened up and other issues could be addressed, we might be able to look more favorably upon those provisions. But one of the biggest problems is in fact the timeframe

and the fact that you have—in almost all of these transactions to preserve housing, we are going to need to bring tax credits in, and that is very time-demanding.

So that is my answer, in part.

Chairwoman WATERS. Thank you.

Mr. Leung, I am aware that you prefer to see a right of first purchase instead of the right of first refusal that is currently in the bill. However, if the right of first refusal stays in this bill, in what ways can it be improved so that it actually results in the preservation of affordable housing units?

Mr. LEUNG. I am sorry.

Chairwoman WATERS. That is okay. It is all right to say, “I just like first purchase. I prefer the right of first purchase. I don’t entertain the other at all.” It is okay.

Mr. LEUNG. I do. I am just a regular kind of guy, who got the chance to represent the voices of tenants all across the Nation. And frankly, this is quite over my head. I have to thank everyone all across the Nation and the local organizations who help us, working on this issue.

Chairwoman WATERS. Well, you have done a great job representing this morning. And I think it is Cherry Street, you said, should be very proud of you. So thank you for coming here today.

I think I have one more question for Mr. James. It is my understanding that language was added to the bill at the suggestion of some to provide safeguards to prevent the release of personal and proprietary information.

Based on your testimony, it appears that there are still concerns that this language would lead to such information being disclosed, and we would thus welcome the submission of specific language to address these concerns.

How can this section of the bill be improved to address your concerns?

Mr. JAMES. Well, I think there are certain types of information that have traditionally been considered confidential, such as the financial reports of housing projects. And I think that is still required to be disclosed publicly in this bill.

There are a lot of items that are already being disclosed, and we have no problem with that. But the very personal items, financial items, HUD has traditionally not disclosed those. And we would continue to object to a requirement that they be disclosed.

Chairwoman WATERS. And you will be specific about what you have concerns about?

Mr. JAMES. Yes. Yes, Madam Chairwoman. We are particularly concerned about financial and personal information.

Chairwoman WATERS. Thank you very much.

Ms. Capito?

Mrs. CAPITO. Thank you, Madam Chairwoman.

I would like to kind of get a little slice of life here from maybe Mr. Caruso and Mr. Shumaker because you both manage properties and have properties.

How many units do you have currently, approximately, in your portfolio, Mr. Caruso? Is that higher and lower? What is the state of disrepair of some of these? Do you move in and out of these properties every year?

Mr. CARUSO. Thank you, Ms. Capito. We manage roughly 26,000 units in about 15 States. The bulk—

Mrs. CAPITO. Do you own those units?

Mr. CARUSO. No, ma'am. We—

Mrs. CAPITO. So you manage for the property owner?

Mr. CARUSO. We manage for the property owners. Edgewood Management does not own any units. I personally have a limited partnership interest in certain of our properties, but we do not—Edgewood Management does not actually own any of the units that we manage.

Mrs. CAPITO. Do you own units, Mr. Shumaker, your company?

Mr. SHUMAKER. Yes. Our company has 78 apartment complexes—

Mrs. CAPITO. Seventy-eight?

Mr. SHUMAKER. Seventy-eight apartment complexes, 2,997 units. We are the general partner in every one of those.

Mrs. CAPITO. Okay. So if I had asked you that question 5 years ago, or last year, how many apartments would you actually have had in your portfolio at that point?

Mr. SHUMAKER. We would have had the same number.

Mrs. CAPITO. The same number. So, what are your long-term plans here? Do you plan to move more into this market or—I'm trying to get a feel for as people are leaving, we heard on the last panel, you know, they are losing thousands of available units. Are people moving into this market at the same time, or is it just a net loss every year?

Mr. SHUMAKER. I think there are some people moving into the market. There are people out there who are interested in acquiring existing affordable housing and rehabbing it using the various resources available.

Our company built its first apartment complex in 1974. We just rehabbed it last year. So our company goal is to rehab our existing housing stock with what resources we have available. The problem is there are not enough resources available. There are not enough tax credits. There are not enough HOME funds. There are not enough of these resources for us to rehab all the existing apartment complexes we have.

Mrs. CAPITO. Would you include in that the low-income housing tax credit program that people are not accessing at the point?

Mr. SHUMAKER. Yes. I think in Ohio, it is a 3 or 4 to 1 ratio; for every three to four applications they receive, they fund one. In Ohio, they do have a provision for Rural Development-funded projects that receive some—that can receive funding, from priority for tax credits. However, Ohio has over 400 515 projects. If they rehab 3 or 4 a year, it is going to take 100 years.

Mrs. CAPITO. Right. Also, you mentioned, I think, in your testimony a 5-year plan of, I think it was \$5 billion, \$1 billion a year. Was that your testimony?

Mr. SHUMAKER. Yes.

Mrs. CAPITO. I guess in the bill, there is a—it requires a 30-year capital needs assessment for eligible properties. I guess this is getting to the point that we are talking about.

What is the real estate industry standard in terms of the capital needs assessment? Is 30 years way out there, or is it—you are talking 5 years.

Mr. SHUMAKER. Yes. Thirty years is quite extensive. We propose in our written testimony a 20-year capital needs assessment. When we go in and do a capital needs assessment with a 515 project, Rural Development is looking at that capital needs and assuring that we have all the funds available for the next 20 years.

When you extend that out 30 years, the need to place all those funds in a reserve account is tremendous. And the rents would skyrocket if we had to go to a 30-year.

Mrs. CAPITO. Ms. Norris, did you have something you wanted to say in terms of the numbers of units that you are experiencing? Are they replacing? Are they—

Ms. NORRIS. Sure. Well, to answer the question you asked the other gentleman—

Mrs. CAPITO. Yes.

Ms. NORRIS. —we also have our own portfolio. We have about 23,000 units in 28 States. So we do have a very interesting perspective, as well as the other gentleman, about what your ownership interests are. All of our stuff is affordable. Most of our stuff is senior, though we do have family and also homeless housing.

The question of whether—we are looking long-term. Our priority as an organization is to do affordable housing in the manner of which it is available, so whether that be to use a tax credit, low-income housing tax credit to build a new facility, or to try to use a tax credit to rehab an existing 202, or to build a new one.

So we try to do all those. I think you have to work on all those fronts because we clearly know that there is more need than there is stock. In the 202 program alone, there are probably 9 or 10 people for every unit that is out there.

Mrs. CAPITO. Okay. Mr. James, could you weigh in on that question in terms of whether the amounts in your organization are moving up? Down? Are people getting into this market as we are losing housing? I understand the rehabbing needs are tremendous. I just didn't know if you had a comment to add here.

Mr. JAMES. Yes. Of course, I am a lawyer, so I don't know much about what is happening to specific projects. But the provisions that are in place in the law now, with a little tweaking once in a while, encourage continuation in the programs and recapitalization and preservation transactions.

And the problems we have had in the last 8 years have generally been administrative problems with HUD, which is adopted policies that made it more difficult—

Mrs. CAPITO. Right.

Mr. JAMES. —to preserve the housing. And now those policies are being reviewed at HUD and being modified to help the preservation.

So we have an excellent system in place. The number of opt-outs has gone way down. There are always going to be some.

Mrs. CAPITO. Right.

Mr. JAMES. But they have gone way down, and everybody is familiar with the current system. And we certainly wouldn't want to see that upset.

Mrs. CAPITO. I just would like to make one comment concerning—I alluded to this in my opening statement. And I think we have seen really conflicting opinions on the Section 107 on the right of first refusal. And I think we really need to tread lightly here.

The one question that I had originally was if HUD gets into the business of purchasing these complexes or these—where is this money going to come from and how is it going to be accounted for? It is just a whole different view. So I am very interested to see how we can work out some of the differences we have heard today.

Chairwoman WATERS. Thank you.

Mr. Cleaver?

Mr. CLEAVER. Thank you, Madam Chairwoman.

Mr. Halliday, I just have one question. Maybe there are two inside the one. But HUD apparently, based on your testimony, terminates troubled housing or troubled property owners rather than suspend.

And the two questions are, first, is there a policy that would require termination at a point when a property is determined to be troubled? Or is that a decision left to the PHAs as a result of their contract with HUD in the cities?

And the other is your opinion about whether or not we could possibly be losing people who could be actually very good property owners for us in the Section 8 program when we just cut them off. I mean, a dog generally growls before it bites. So maybe we ought to have a growing policy to property owners before we completely terminate them.

Mr. HALLIDAY. Thank you, Congressman. National Housing Trust and our affiliate, National Housing Trust Enterprise Development Corporation, actually owns and manages our own portfolio of affordable rental housing. And we have quite a bit of experience with the situations you are describing.

The question of termination versus suspension, from HUD's perspective, in my opinion, is driven by a couple of things. First of all, HUD has an obligation to the residents of any building that they need to protect them from health and safety violations that may put life and safety in danger. So HUD takes a pretty strong view that they need to get out of properties that they think are being managed so badly that the residents' health and safety is at risk. And of course, we would agree with that.

The question is: What do you do before you get to that point? And I think it is fair to say that through a period of years, the ability of HUD to identify and intervene early in situations where properties are not being properly maintained is not as robust as it could be or it should be.

And I know that Deputy Assistant Secretary Galante and others at HUD are working on this. They are aware of this. But we and other organizations are very interested in working with them to come up with a better framework for identifying problem properties and intervening in them before they get to this point where you simply have to cut off the rental subsidy because of a threat to the residents who are there.

That decision, to answer your other question, is actually made by HUD staff. These again—we are talking here about privately

owned, project-based Section 8 properties. so the contracts in those properties are overseen primarily by HUD staff in the field, and they are the ones that make those decisions.

Some HUD field staff are much more interested in trying to prevent the sort of last-minute, falling-off-the-cliff sorts of situations. Others are less aggressive about trying to solve the problems before they blow up. But in our minds, we could do a lot more to prevent properties from being terminated and really becoming drags on the entire community by doing more in early intervention.

Mr. CLEAVER. Thank you. That is exactly what I wanted you to say for the record. Thank you.

I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

Mr. Green?

Mr. GREEN. Thank you. And I want to associate myself with the comments of the Chair and Ranking Member Capito. Ms. Capito has indicated some concern about Section 107, and I share her concerns as well, and want to take us back for just a moment to 1965, or thereabouts, when we made this commitment try as best as we can to help people who were living literally on the streets and in places that we found unacceptable.

Affordable housing was something that we decided was appropriate, both economically and morally—morally, I think, because we ought to do what we can to help people who are homeless, but we also found that we were spending an inordinate amount of money on housing helping people, and that it would be much better if we developed affordability programs. Hence, we have many of the programs we have today.

And if we don't take on this question that we are grappling with right now, we are going back to 1965, and we may get back there a lot faster than we like. So I think it is important that we do what we can to try to retain the affordable housing stock that we have.

I find myself, Mr.—is it Caruso?

Mr. CARUSO. Yes, sir. It is.

Mr. GREEN. Mr. Caruso, I want you to know that I understand that owners have rights and needs. And I also understand that tenants have rights and needs. It appears that the Chair was—and I am talking about Chairman Frank—tried to find that balance in Section 107. And you have indicated that with some tweaking, you may be able to work with 107.

Mr. CARUSO. Yes, sir.

Mr. GREEN. But it appears that he tried to find that balance because there are some of us who think that a right to purchase would be a cleaner and easier way to do it because you have a specific amount of time, perhaps, to exercise your right to purchase. You don't do it, then you can move on. And that is one way. And then, of course, we have the right of refusal.

But my point that I would like to make with you is I am really sincerely—and I want to make this as clear as I can—I am sincerely interested in finding a solution that is acceptable to tenants, Mr.—is it Leung? Mr. Leung—and to the owners. There may be a solution. And if there is not, then we will all stand on our principles and move forward.

But my question to you is: Are you amenable to visiting with me? Five minutes in an open hearing is not nearly enough time to understand all of the concerns that the owners have, not nearly enough time to understand all of the concerns that the tenants have. You need more time to talk to people—

Mr. CARUSO. Yes, sir.

Mr. GREEN. —to understand the nuances of the problems because one of the things that was called to my attention by Mr. Leung is that they are converting these to market and not selling them. That brings in another dynamic to have to contend with, if we are not having the opportunity to purchase in the first place.

So I think that it would be helpful if I could ask you to allow us to set appointments at different times and visit with you so that I can get a much deeper understanding of what we are trying to accomplish. Is this something you find acceptable, sir, Mr. Caruso?

Mr. CARUSO. Absolutely. It happens I live in Fort Washington, so the commute is handy. And we at NAHMA and myself personally were more than committed to doing that. I think there is a middle ground to be found here. Chairman Frank is to be commended for the work he has done so far.

Mr. GREEN. I absolutely agree with you.

Mr. CARUSO. We have worked with him a lot on it. You know, as I sit with owners and we consider—we have in our firm now more than 15 properties whose mortgages expire in the next 4 years. We sit every month and start looking at what we are going to do with those properties as they start coming out.

Mr. GREEN. Well, we want you to work with us and see if we can find a way to keep them in the affordable housing stock.

Mr. CARUSO. It is our commitment to do that, sir.

Mr. GREEN. And Mr. Leung, would you be amenable to—if you can't meet, perhaps distance may be a problem. Maybe we can talk on the phone and I can get a better understanding from you of some of the concerns that the tenants have. Having been both a tenant and an owner, I understand to some extent where we are.

And finally, I want to make note of this. Mr. Gutierrez, who has done an outstanding job chairing the Financial Institutions Subcommittee, the letter that we sent dealt with the first right of purchase. He is, I believe, the author of the letter, but I concur with the language in it.

He mentions that the Illinois Federally Assisted Housing Preservation Act includes a first right of purchase, and it seems to be functioning quite well. Mr. Caruso, are you familiar with that, this Act that—

Mr. CARUSO. I am only dimly familiar with it. I don't have a precise understanding of it. There is similar legislation in Massachusetts as well.

Mr. GREEN. Okay. Well, what we will do is talk about it more when we meet.

Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much. I thank you all for being here today.

The Chair notes that some members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days

for members to submit written questions to these witnesses and to place their responses in the record.

This panel is dismissed, and I will make certain submissions a part of the record before we adjourn. The written statements of the following organizations will be made part of the record of this hearing: the National Rural Housing Coalition; Stewards of Affordable Housing for the Future; the National Housing Law Project; and the Housing Assistance Council.

Again, I would like to thank you for your testimony today. This panel is adjourned.

[Whereupon, at 11:59 a.m., the hearing was adjourned.]

A P P E N D I X

March 24, 2010



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**Testimony of George Caruso, SHCM, NAHP-e
House Financial Services Subcommittee on Housing and Community Opportunity
H.R. 4868, Housing Preservation and Tenant Protection Act of 2010
March 24, 2010**

Good Morning Madam Chairwoman, I'm George Caruso, the Executive Vice President of Edgewood Management Corporation in Germantown Maryland. We are the 9th largest manager of assisted housing in the nation. I am appearing today for the National Affordable Housing Management Association (NAHMA). I would ask that my full written statement be placed in the record; it has details in it to support my testimony this morning.

We're pleased with much of HR 4868, The Housing Preservation and Tenant Protection Act of 2010. NAHMA has been a strong supporter of Preservation for some twenty years now. NAHMA has had the opportunity to review the bill in detail at our Winter Meetings last week. Although our General Membership opposes the overall bill in its current form, our opposition is limited to provisions in seven sections: Sections 107, 108, 109, 110, 302, 303, and Section 304.

We applaud the remaining 60 sections of the bill. Indeed, we appreciate that numerous provisions address issues that we have been discussing with Committee members on both sides of the Aisle for a number of years. These issues include long-term physical and financial viability of properties, continued affordability of properties with mature mortgages, and protecting tenants from severe rent burdens when affordability restrictions expire.

Let me get to the major issues we have:

First: Section 107 Federal First Right of Refusal. This provision will, in our view, serve to drive potential purchasers and equity providers away. There are a variety of problems with this provision which include, but are not limited to, undermining owner and investor confidence in their agreements with the Federal Government and alienating willing purchasers who must wait for a lengthy process, thereby affecting market value. A better, more workable approach is suggested in Section 106, the Preservation Exchange Program, which NAHMA supports.

Second: Section 304 Resident Access to Building Information. The provisions of this section are overly broad, and they will force the release of proprietary information. It is useful to observe that the bulk of the information required to be released here is submitted to HUD through the most secure computer system they have, and accessible only on a limited basis inside HUD since they judge it to be very sensitive. The less sensitive building information referenced in this section is already publically available from HUD.

Third: Section 110 Authority for HUD to assign Flex Subsidy Loans. We view this provision among others as tilting the playing field in preservation to Non Profit organizations. NAHMA represents both For Profit and Non Profit owners. Part of our policy is that there be no bias between the two types of ownership. Both bring substantial advantages to the table; both are required to make preservation work. Preservation tools should be equally available.

Our concerns on the remaining sections we object to are detailed in our written testimony.

On a positive note, we are particularly pleased to see the provisions in Section 406, Correcting Harm Caused by Late Subsidy Payments, Section 501 Extension of the Mark-to-Market Program and Section 508, Budget-Based Rent Adjustments. Section 406 penalizes HUD for making excessively late subsidy

payments to owners, and will assure that properties are properly funded going forward. The language in Section 508 will allow for a re-underwriting of a group of Mark to Market Properties that were incorrectly underwritten initially, and retain them as viable assisted housing going forward. These sections will work to assure more housing is preserved.

There are other sections of the bill we find very encouraging; they too are detailed in our written materials.

Thank you for allowing us to share our views and concerns with the Subcommittee. NAHMA remains committed to the essential task of preserving the assisted and affordable housing portfolio. We are available to the Members and Staff to answer questions and make suggestions to get to a successful conclusion.

**NAHMA's Overall policy view on HR 4868
The Housing Preservation and Tenant Protection Act of 2010**

Title I – Preservation of Federally Financed and State Financed Affordable Housing at Risk of Conversion To Market-Rate Housing.

Section 101 – Conversion of Rent Supp and RAP Contracts. We are of the view that it is long past time to consolidate these legacy contracts into project-based Section 8. We support this section.

Section 102 – Preservation of Properties with Expiring Use Restrictions. We generally support these provisions. The language specifying that further assistance can only be given to properties in strong markets suggests that a major reworking of the RHS portfolio in the upper Midwest and Mississippi Delta may be required.

Section 103 – Enhanced Voucher Assistance. We continue to support the use of Enhanced Vouchers. We support this section.

Section 104 – Project-Based Preservation Assistance. Continued Project-Based Preservation Assistance is essential, we support this provision and the concept generally.

Section 105 – Preservation of State Financed Affordable Housing. The language on state agency deals is needed, we support it.

Section 106 – Preservation Exchange Program. The provisions in this section are useful preservation tools, and we support them.

Section 107 - Federal First Right of Refusal. We oppose this section in its entirety. This provision will, in our view, drive potential purchasers and equity providers away. There are a variety of problems with this provision which include, but are not limited to, undermining owner and investor confidence in their agreements with the Federal Government and alienating willing purchasers who must wait for a lengthy process, thereby affecting market value. It will make it difficult to do preservation deals with Tax Credits due to the time and final right of HUD to purchase. The provisions in Section 106 serve the same purpose to preserve the affordable portfolio and are much preferable.

Section 108 – Amendment to LIHPRA. We oppose this section as well. LIHPRA applies only to a small percentage of the overall portfolio, and changing the provisions of the agreements on an ex-post-facto basis is unacceptable to NAHMA. We are also opposed to the broad and vague exemption from federal preemption of state and local laws “*intended to further preservation of affordable housing or to protect tenants when owners propose to terminate their participation in Federal affordable housing programs.*” (Italics added.)

Section 109 – Preservation of HUD Held and HUD Owned Buildings. We oppose this section because the language is too broad, and it needs to be revisited and tightened. HUD holds both performing and non performing mortgage notes. Our information suggests that HUD holds roughly 10,000 performing mortgage notes on properties that are well run and in good condition. Performing notes from properties with passing REAC scores and Management Reviews should be excluded from the provisions of Section 109.

Section 110 – Authority to Assign Flexible Subsidy Loans. We oppose this Section. We view this provision, among others, as tilting the playing field in preservation to non-profit organizations. NAHMA represents both for-profit and non-profit owners. Our policy is that there must be no bias between the two

types of ownership. Both bring substantial advantages to the table, and both are required to make preservation work. Preservation tools should be equally available to all owners.

Section 111 – Use of Existing Section 8 Funds to Preserve Affordable Housing. We support this language and support the expanded access to Residual Receipts.

Section 112 - Authority for Ginnie Mae to Securitize FHA Mortgages. We support Ginnie Mae being given authority to securitize loans.

Title II – Restoration of Housing At Risk of Loss Due to Deterioration.

NAHMA supports all the provisions of Title II.

Sections 204 and 205, Clarification of Budget-Based Rent Increases for Rehabilitated Projects and [continuing] Interest Reduction Payments for Section 236 Projects Experiencing A Reduction of Units, will be extremely useful tools in preservation transactions. Bringing the concept of Mark-Up-To-Market to these transactions will give purchasers and existing owners new ways to ensure that the properties have enough operating cash and cash to fund capital work.

Title III – Protection of Residents

Section 301- Tenant Protection Vouchers. The one for one voucher replacement is an important component of preservation, we support this section.

Section 302 – Maintenance of Housing. We oppose this section in its entirety. HUD already has enough statutory, regulatory, and handbook authority to address issues presented by non-compliant owners. We

object to converting all of those tools to a statutory framework. The current system works, and should not be changed. Statutory language will tend to constrain HUD as time moves forward.

The provisions allowing tenants to escrow rents and the preemption on evictions bring what are now state or local landlord tenant issues into the Federal arena. Adding language here will confuse the current legal environment, and generate significant additional litigation. We believe limited resources are best used to preserve the housing rather than to pay legal fees.

Section 303 – Resident Enforcement of Public Housing Agency or Project Owner Agreements with HUD. We oppose this section in its entirety. While the section-by-section analysis of HR 4868 indicates that this section just comports the language in this bill with the Mark- to-Market and Tax Credit agreements, our reading of the language suggests that the bill goes beyond the intent in either the Mark-to-Market or Tax Credit contexts. HUD already has sufficient enforcement tools. Giving tenants the right to go to court will, we believe, only serve to constrain HUD and add litigation with no clear positive result.

Section 304 – Resident Access to Building Information. We oppose this section in its entirety. We do not believe any public purpose is served by releasing the full 2530 Previous Participation Certification (also known as an APPS filing) for an ownership and/or management entity. Also the bill states that Social Security Numbers are to be redacted, other personal and proprietary information would still be available. The APPS system now includes information on partnership structures, upper tier ownership structures, and links to all other properties owned or operated by the entity. Releasing that information will give any recipient the ability to “reverse engineer” the corporate structure and interest holdings of not only the property in question, but also the owners, general partners, and large holding limited partners. We strongly believe this information which is provided to HUD on a confidential basis should remain so. Making this information available generally will serve to drive off equity investors who do not want their holdings subject to general scrutiny.

The last sentence of paragraph (a)(3) on page 119 lines 24 and 25 is chilling since the generality of the statement would include correspondence between ownership and HUD on fair housing matters, tenant fraud issues, and many other sensitive and private subjects involving individuals living on the site or prior tenants.

Issuing copies of Management Reviews will release significant amounts of private confidential tenant data since Management Reviews examine individual tenant files and comment on issues contained therein. Neither HUD nor the Contract Administrators have the resources to issue edited versions of these documents.

Finally, the annual audits required by the Department similarly contain significant amounts of confidential and business data in some schedules and in the footnotes, management representation letters, and legal representation letters. As we have noted elsewhere, this information now flows to HUD through their most secure computer system.

The language in paragraph (b) protection of personal information on page 120 at lines 10 to 15, while helpful, will not prevent releases of information that would allow "reverse engineering" of property fiscal structures, and ownership data.

Title IV- Preservation of Troubled Projects Facing Foreclosure

NAHMA supports all the provisions of Title IV.

Section 406 – Correcting Harm Caused by Late Subsidy Payments is a significant step forward, and NAHMA strongly supports the provisions. We have for some time been discussing these issues with the Committee and Subcommittee members. We are very pleased the provisions have been included. These

provisions will be especially helpful to small owners and non-profit organizations that do not have the capital available to carry properties for several months when payments are delayed.

Title V- Incentives Under MAHRA for Owners to Maintain Housing Affordability.

NAHMA supports all the provisions of Title V.

Sections 501 and 508, Extension of the Mark to Market program and Budget-Based Rent

Adjustments, are extremely important. Section 508 also allows restructuring of early Mark-to-Market projects. This provision is very helpful, and it will allow struggling early Mark-to-Market deals to have their rents and financing adjusted to assure their continued viability. This authority will be very useful in preserving the stock of affordable housing.

Section 512 Exception Rents, will allow HUD Broader Exception Rent authority, and is very useful in preserving housing in high cost markets.

Title VI - Preservation Database.

NAHMA supports all the provisions of Title VI, based on the assumption that HUD and the USDA-Rural Housing Service are responsible for collecting, assembling and providing the information.

This information already exists in HUD's REMS system and in a similar data base at USDA.

Title VII – Section 202 Supportive Housing for the Elderly.

NAHMA supports all of the provisions of Title VII, and supports our colleagues at AAHSA in their testimony on this Title. The tools added in Title VII will allow for better preservation of the existing Section 202 stock, we support all of the provisions.

Title VIII – Rural Housing Preservation.

NAHMA supports all the provisions of Title VIII.

**TESTIMONY OF DEPUTY ASSISTANT SECRETARY FOR MULTIFAMILY HOUSING
CAROL GALANTE
HEARING ON H.R. 4868,
THE HOUSING PRESERVATION AND TENANT PROTECTION ACT OF 2010
BEFORE THE HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY
WEDNESDAY, MARCH 24, 2010**

Good morning Chairwoman Waters, Ranking Member Capito and distinguished members of the Committee. Thank you for the opportunity to testify on behalf of the Department today on the Housing Preservation and Tenant Protection Act of 2010.

Chairwoman Waters, I would first like to express my gratitude on behalf of the Department for your tireless leadership on the issue of affordable housing preservation. With the introduction of this legislation, we have the opportunity to move forward together to safeguard affordable shelter for our families and neighbors in need, and to improve and revitalize multifamily properties that anchor our communities. HUD is proud to provide project-based rental assistance to more than 1.4 million households throughout the country. We value our partnerships with private owners of the thousands of assisted properties across our portfolio. Through these partnerships, we are able to offer safe, decent and affordable shelter.

However, despite the dedication of so many of our partners these housing resources are at risk. We are deeply concerned about ongoing loss of long-term affordability in these properties. Today, more than 1,700 properties nationwide are financed with HUD direct or insured mortgages that will mature within five years. These properties offer affordable housing to nearly 200,000 families through an array of HUD rental assistance programs. HUD maintains the affordability of these properties through recorded use agreements. When the mortgages mature or expire, so will the HUD affordability use restrictions. Without the presence of such restrictions, owners will have more incentives – and face more market pressure—to opt out of Section 8 HAP contracts. For those properties with Project Based Rental Assistance, current tenants would be protected through the provision of enhanced vouchers. Our concern is for the current tenants, of course, but also for the long term affordability of these properties. Unless we take action, these affordable units will be lost to future generations.

Built some 30 or 40 years ago, many of these aging properties have deferred maintenance or obsolete systems and are in need of refurbishment and significant upgrading. Some are at risk of default or foreclosure, casualties of the down economy.

In order to break free of HUD regulatory oversight and/or to capture some equity, some owners continue to opt-out of Section 8 assistance and sell their properties to private entities. Some 335,000 apartments receive Section 8 assistance that will expire within one year unless owners make the choice to renew assistance contracts. Owners have opted out

of more than 550 Section 8 contracts in the last five years, stripping rental assistance from over 9,000 units

In any scenario when the Section 8 assistance is lost and affordability restrictions expire, the loss reverberates across our communities; as you know, HUD offers no new project-based rental assistance to replace such lost Section 8 units (but does protect the assisted tenants).

That's why HUD supports the fundamental principles of this bill. With some refinements, we believe this legislation will provide HUD with additional tools to facilitate the preservation work that can renew and protect our multifamily properties.

Red tape should never stand in the way of an owner making a choice to be a good steward of an affordable property. The Department applauds the bill's focus on streamlining regulatory requirements. Sections 110, 111, 201, and 204 allow owners to use project resources to improve their properties and leverage state, local and private financing.

Section 110 gives HUD the authority to assign, forgive or defer flexible subsidy loans for preservation refinances or acquisitions. Section 111 enables owners to tap residual receipts accounts to fund needed capital improvements or facilitate a preservation purchase. Section 204 allows the Department to approve Section 8 rents at post-rehab levels, which we know from experience can be used by owners to finance repairs. Section 201 would facilitate the transfer of a Section 8 contract from one building to another, protecting rental assistance as a property enters obsolescence. And while some of these measures are already underway or could be achieved administratively by HUD, the clear direction that the bill provides is welcome. Together, these sections make preservation deals more viable.

We also support the principle of helping move at-risk, preservation-worthy properties into the hands of preservation purchasers. Section 106 of the bill, the Preservation Exchange Program, provides incentives to owners that agree to sell their properties to purchasers that will maintain long-term affordability. Regulatory waivers, streamlined processing, and use of project resources can be powerful incentives and we believe many owners will take advantage of this opportunity.

Section 504 of the bill, meanwhile, provides nonprofit owners with an incentive to sell their properties to preservation purchasers and capture the equity from the sale. The Department has long restricted nonprofit owners from realizing equity from the sale or transfer of a property. Many nonprofit-owned properties have maturing mortgages. Upon maturity, the HUD affordability restrictions will be lost. Section 504 will provide these nonprofits with an incentive to complete preservation transactions now, while we can still safeguard the affordability. We believe Section 106 and Section 504 are good voluntary incentive programs that will be attractive to property owners.

We believe strongly in the power of information. Our partners – owners, tenant organizations, potential purchasers, public and private lenders – are committed to

preservation, but their actions are limited by the lack of current, reliable information on the federally-assisted housing stock. We support the bill's focus on building awareness on the rights and responsibilities of project tenants, owners and potential purchasers.

In concept, the Department is supportive of the Section 514 tenant outreach and education program. It is critical that residents have awareness of their rights and have a say in the preservation of their own homes. In this spirit, we have already drafted a new tenant outreach program that we call the Tenant Resource Network, or TRN. This program harnesses limited resources to engage tenants in properties at greatest risk. We believe the TRN program is a strong model that includes a cost-sharing partnership with the Corporation for National and Community Service (also known as VISTA) without requiring the Department to transfer funds directly to VISTA as detailed in Section 514. We would be happy to share further details on TRN with the Committee.

Finally, we commend the Committee for drafting Section 601 of the bill, which would create a Preservation Database. Such a clearinghouse of information – capturing data on HUD mortgages, project based assistance, Low Income Housing Tax Credit properties and other federal assistance – is long overdue. The Department is now taking steps to launch a preservation database which we think will serve our partners well.

While we support the policies I've mentioned here along with many others, we believe that together we can make several provisions more targeted and efficient. For example, Title V of the bill expands Mark-to-Market rent restructuring and budget-based rent increases to a much broader universe of properties. While these programs can be effective preservation tools, this dramatic expansion may not be the best strategy to leverage scarce resources to preserve those properties most at-risk.

Title VII, which makes modifications to the Section 202 Housing for the Elderly and Section 811 Housing for the Disabled programs, takes important steps towards modernizing these programs although we still see a need for further changes. Indeed, stakeholder meetings are currently underway at HUD to review possible strategies for revising these programs. So while we generally support the many of the modifications to Section 202 and Section 811 that Title VII provides, we see some opportunities to build off this proposal going forward.

Last June, Secretary Donovan came before you to speak of the Department's commitment to serve as a leader and a partner in preserving critical housing resources. He noted that, too often, HUD policies and practices get in the way of preservation efforts rather than supporting them. I am pleased that we have begun to make the kinds of administrative changes that can fundamentally shift this relationship. In fact, we are moving forward on a number of regulatory changes included in the legislation we are discussing today. For example, we are in the process of rewriting the Section 8 renewal guide to allow owners to secure new financing using "post-rehab" section 8 rents, particularly for properties with Low Income Housing Tax Credits, which allows HUD subsidies to be leveraged with private debt and equity.

Additionally, HUD proposes to launch an ambitious, multi-year effort called the Transforming Rental Assistance (TRA) initiative, which would simplify HUD's complex regulations, help address the capital repair backlog, provide mobility to subsidized families and move HUD's rental housing programs into the housing market mainstream, as well as, help preserve the nation's assisted housing stock.

This initiative is anchored by four guiding principles:

First, that the complexity of HUD's programs is part of the problem - and we must streamline and simplify our programs so that they are less costly to operate and easier to use at the local level. Ultimately, TRA is intended to move properties assisted under these various programs toward a more unified funding approach, governed by an integrated, coherent set of rules and regulations that better aligns with the requirements of other of federal, state, local and private sector financing streams.

Second, that the key to meeting the long-term capital needs of HUD's public and assisted housing lies in shifting from the federal capital and operating subsidy funding structure we have today—which exists in a parallel universe to the rest of the housing finance world—to a federal operating subsidy that leverages capital from other sources.

Third, that bringing market investment to all of our rental programs will also bring market discipline that drives fundamental reforms. Only when our programs are truly open to private capital will we be able to attract the mix of incomes and uses and stakeholders necessary to create the sustainable, vibrant communities we need.

And fourth, that we must combine the best features of our tenant-based and project-based programs to encourage resident choice and mobility. TRA reflects HUD's commitment to complementing tenant mobility with the benefits that a reliable, property-based, long term rental assistance subsidy can have for neighborhood revitalization efforts and as a platform for delivering social services. And in a world where the old city/suburb stereotypes are breaking down, and our metropolitan areas are emerging as engines of innovation and economic growth, we have to ensure our rental assistance programs keep up.

The Administration will soon transmit proposed legislation to this committee to authorize the long-term property-based rental assistance contracts, with a resident mobility feature. The Administration looks forward to working with Congress to finalize this vital legislation.

Thank you again for your hard work to preserve our affordable housing stock. We look forward to working with you on some refinements to this bill; but note that this legislation represents tremendous progress for those of us committed to providing affordable homes to future generations.



**Testimony of Toby Halliday
Vice President, National Housing Trust
March 24, 2010**

**Subcommittee on Housing and Community Opportunity,
House Committee on Financial Services**

H.R. 4868, the Housing Preservation and Tenant Protection Act

Subcommittee Chairwoman Waters, and Ranking Member Capito, Chairman Frank and Ranking Member Bachus, and members of the Committee, thank you for inviting me to testify today. My name is Toby Halliday, and I am Vice President for Federal Policy for the National Housing Trust. It's my pleasure to testify in support of H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010.

The National Housing Trust is a national nonprofit organization formed in 1986, dedicated exclusively to the preservation and improvement of existing affordable rental housing. Through our work in real estate development and affordable housing finance, the Trust has helped save and improve more than 22,000 apartments in 41 states, leveraging more than \$1 billion in investment for affordable housing. The majority of these apartments have HUD subsidized mortgages or project-based rental assistance contracts.

Today I also testify on behalf of the National Preservation Working Group, a coalition of nonprofit organizations supporting affordable rental housing. We welcome the opportunity to expand upon our previous testimony on this important issue. Participants in the Preservation Working Group are:

- Action Housing (PA)
- Alliance to Develop Power (MA)
- American Association of Homes and Services for the Aging
- Association for Neighborhood and Housing Development (NY)
- California Housing Partnership Corporation
- California Rural Housing Coalition
- Center on Budget and Policy Priorities
- Chicago Community Development Corporation
- Chicago Rehab Network
- Coalition for Economic Survival (Los Angeles)
- Coalition on Housing and Homelessness in Ohio
- Community Builders (MA)
- Community Economic Development Assistance Corp (MA)
- Community Service Society of New York
- Emily Achtenberg (MA)
- Enterprise Community Partners
- Housing Assistance Council
- Housing Preservation Project (MN)

Local Initiatives Support Corporation
 Mercy Housing
 Minnesota Housing Partnership
 National Affordable Housing Trust
 National Alliance of Community Economic Development Associations
 National Alliance of HUD Tenants
 National Council of State Housing Agencies
 National Farm Worker Service Center (CA)
 National Housing Conference
 National Housing Law Project
 National Housing Trust
 National Low Income Housing Coalition
 Network for Oregon Affordable Housing
 New York Tenants and Neighbors
 Oregon Opportunity Network
 Preservation of Affordable Housing (MA)
 Stewards of Affordable Housing for the Future
 Texas Tenants Union
 Urban Homesteading Assistance Board (NY)

Preservation is a crucial national priority

H.R. 4868 safeguards affordable apartments that are home to more than one million extremely low income families, elderly and disabled persons. It includes many policy recommendations made to Congress by the National Housing Trust and the National Preservation Working Group.

One-third of our nation's families and seniors depend on quality rental housing. Preserving affordable housing is cost effective, environmentally responsible, and is the logical first step in solving our nation's housing dilemma.

There is an emerging crisis in the commercial real estate market that could have significant impacts on the affordable housing market. Thousands of commercially financed rental properties now are worth less than the debt that is owed on them. Yet many properties need to be refinanced, even as the recession forces rents downward and commercial credit is as tight as ever. One certain impact is that many residents of these properties will be displaced as a result of default and foreclosure even though they may never have missed a single rent payment.

As foreclosures on homes and apartment buildings continue to unfold, a growing number of renters are competing for a limited supply of affordable housing. Many of these families will be seeking apartments at the lower end of the of the cost spectrum, where there is already a shortage of affordable rental housing for the poorest households. Although market conditions have resulted in lower housing costs for many middle-income households, increased demand for the most affordable housing is actually leading to higher rents and tighter credit screening in some markets. At the same time, many cash-strapped states and local governments are reducing assistance to needy families. All of this leads to a heightened risk of homelessness.

The relatively high overall housing vacancy rate created by current economic conditions masks the critical mismatch between the nature of existing supply and unmet demand. A recent analysis

conducted for HUD demonstrates that between 2005 and 2007 the number of units affordable to households at or below 50% of area median income fell by 7%, *or a loss of over 1.5 million homes*, while the number of units affordable to households with incomes of over 100% of area median grew by 34%.¹

Shortages of decent, safe, affordable housing are complicated further by ongoing problems with the Low Income Housing Tax Credit (LIHTC). Uncertainty among traditional investors about future profitability, together with a preference for the simplest and shortest investment options among other investors, has left the LIHTC crippled in all but a few markets, dramatically reducing the creation of new affordable units from its peak in 2007.

This legislation includes important new tools to protect residents and preserve affordability when assisted housing is refinanced, recapitalized, or when the underlying financing naturally matures. For example, this legislation includes provisions that would, at the owners' discretion, provide rental assistance for affected apartments, both for HUD-assisted and Rural Development Section 515 properties. These new preservation tools, in providing equal affordability protections to these apartments, are more cost-effective than other approaches to replace affordable apartments that are lost to conversion. Finally, improving preservation tools makes the rehabilitation of these properties less risky, leading to the creation of more construction jobs.

The legislation we see today also benefits from extensive discussion and revision to accommodate competing interests. For example, last summer several private industry groups raised strong objections to draft provisions that they feared would have required owners to sell or experience financial losses on expiring properties, revealed potentially proprietary owner information, excluded certain owners from the Rural Development Multifamily Portfolio Revitalization program, and provided tenants with an expanded right to take legal action if a landlord was in violation of their HUD contract. In the bill as it currently stands, all of the provisions that raised the concern of private owners have been revised or removed entirely, despite the strong objections of many members of the PWG.

First, the current draft replaces a right of first purchase with a right of first refusal, which allows preservation-oriented buyers to match the offer of any other purchaser of a HUD-assisted property. This ensures any seller a full and fair sales price, and is modeled on similar provisions already in force in many jurisdictions. It is also a low-cost way to protect the substantial taxpayer investment that has already been made in existing affordable rental properties. H.R. 4868 also retains an important local control provision that ensures that state and local preservation and tenant protection laws are not pre-empted by federal law.

The legal standing for tenants provided in an earlier draft has been replaced with a revised provision that allows legal action only when HUD has failed to act on a documented deficiency. This protects responsible owners while ensuring that residents have some recourse against unscrupulous landlords. H.R. 4868 also permits residents to escrow their rents when properties are in disrepair. Rent must always be paid, but may go into an escrow account or used for HUD-approved repairs when the Secretary determines serious violations of housing quality standards or housing program requirements.

¹ Eggers, F.J. & Moumen, F. (2009, June). *American Housing Survey: Rental Housing Dynamics: 2005-2007*. Prepared for U.S. Department of Housing and Urban Development Office of Policy Development and Research. Bethesda, MD: Econometrica, Inc.

We are interested to learn more about a new proposal to create a voluntary program to encourage the transfer of assisted rental properties to preservation-oriented owners. We believe this could be a useful new preservation tool, so long as appropriate checks are in place to prevent deterioration of the property during negotiation and buyers have both the desire and the capacity to support long-term affordability.

Preserving Affordable Rural Housing and Housing for the Elderly

Many Section 202 properties serving the elderly are 40 years old or older, in need of repair and improvements, and are stretched to meet the needs of their increasingly frail residents. Under the current law, the development and preservation of existing Section 202 elderly properties can be cumbersome. Title VII of the bill would simplify, streamline, and modernize procedures to improve and preserve these properties, encourage broader participation by developers, lenders, and investors, and create needed construction jobs.

The Trust strongly endorses these provisions. We also support the proposal to provide new resources to protect current and future residents from rent increases needed to pay for necessary recapitalization. The bill should clarify that such assistance will be made available to all currently unassisted units when a property is refinanced and rehabilitated. Without such a provision, properties are at greater risk of conversion, or currently unassisted units could face significant rent increases.

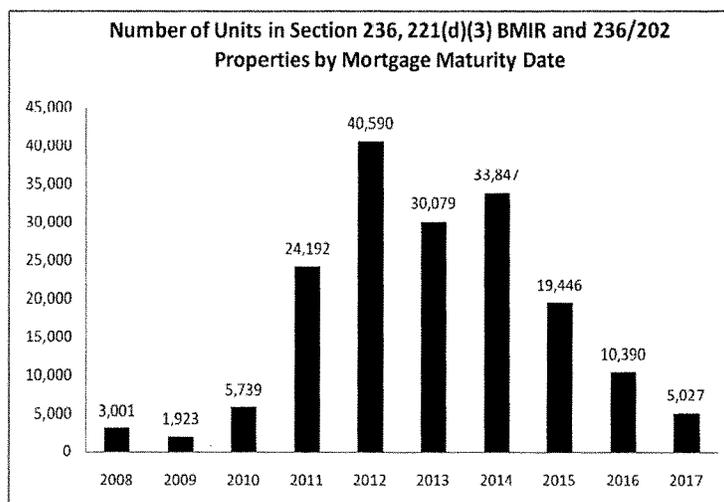
Finally, we support the proposed changes for Section 515 rural housing administered by the Department of Agriculture. The formal authorization of Rural Development's Multifamily Portfolio Revitalization program is critical to save needed affordable rental housing that is at risk of conversion in many rural and formerly rural areas.

Essential subsidized housing is at risk

The federally assisted housing rental stock is an especially important resource because it provides homes affordable to those with worst case housing needs at a time when housing affordability challenges are growing worse. The largest of these programs, the project-based Section 8 rental assistance program, provides affordable apartments for more than 1.3 million extremely low income households.

Federally subsidized housing serves nearly every community in the nation. Over 1.5 million affordable apartments have been lost since 1995, and many more are at risk. The Trust's analysis shows that nearly 170,000 federally assisted apartments with contracts expiring over the next decade are located in the districts of the members of this committee, as shown in Attachment A. Many properties were constructed more than 30 years ago and are suffering from physical deterioration and are in need of significant capital improvements.

National Housing Trust Testimony on H.R. 4868, the Housing Preservation and Tenant Protection Act (March 24, 2010)



Current federal policies provide few incentives for the owner to retain the property's original use, compared to strong market incentives encouraging the owner to opt out of affordability requirements. Over the next five years, contracts on more than 900,000 Section 8 units will expire. When a Section 8 contract expires, the owner can choose to opt out of the program, ending the obligation to maintain the housing as affordable. In addition, nearly 200,000 affordable apartments in properties with HUD subsidized mortgages will be at risk of conversion to non-affordable use when then mortgages mature over the next 10 years. Many of these apartments have project-based assistance included in the numbers above, but many receive no assistance but remain affordable to residents because of restrictions associated with the HUD-subsidized mortgages.

Federal government costs increase when an owner opt outs of a federal project-based rental assistance contract because the vouchers provided to protect eligible tenants from being displaced typically cost more—\$1,000 more than the average project-based subsidy.

Current policies tend to limit the ability of preservation-minded owners to recapitalize, earn sufficient cash flow, and build a sustainable capital base. Programs and regulations are fragmented, cumbersome, unpredictable and inconsistently applied. Here are but a few examples:

- Owners of Section 8 properties financed by State Housing Agencies are not entitled to mark their rents up to market, even though the market rents in the community may be higher than their current rents and the owner could use the funding to avoid operating at a deficit;
- HUD routinely terminates, rather than suspends, the Section 8 contracts on troubled properties, making it quite difficult for a new, mission minded owner to obtain debt and tax credits to repair the property;

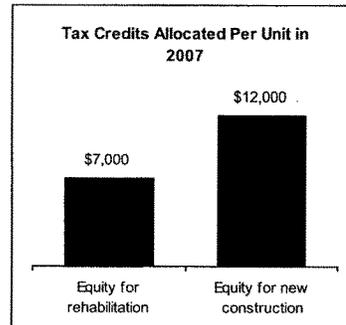
- Current law requires that owners give notice to tenants and the federal government of a decision to opt out of a Section 8 contract or prepay the subsidized mortgage, but this information is not made publicly available. If preservation minded organizations knew which owners were planning to leave the federal programs, they could offer to purchase the property and preserve the apartments as affordable.

Preservation is the logical first step in solving our nation's housing dilemma

Over the past decade, state and local governments have increasingly devoted scarce resources, including low income housing tax credits, to preserve this housing. These tax credits have attracted billions of dollars in private sector investment in the rehabilitation of federally subsidized housing. Nearly all 50 states are now using low income housing tax credits to preserve existing affordable housing.

Preserving existing affordable housing provides an opportunity to reinvest in and improve our communities and protect the historic investment made by the federal government. If we do not preserve and improve the millions of apartments that have been produced through these successful public-private partnerships, we will permanently lose our nation's most affordable homes. This will represent a squandering of billions of taxpayer dollars. Safeguarding this housing presents an opportunity to reinvest in and improve our communities.

It is also more energy efficient to preserve existing housing than it is to build new affordable housing where there is not an existing transportation infrastructure. The National Housing Trust and Reconnecting America have identified federally assisted affordable housing located in close proximity to existing or proposed public transportation in 20 cities. *More than 250,000 federally assisted housing units in these cities are located within a half mile of rail or frequent bus transit. Approximately 63 percent of subsidized apartments near rail stations are covered by federal rental assistance contracts that expire before the end of 2012.*



Policymakers must act to ensure that this essential housing resource remains affordable to families and seniors. Preserving affordable housing near transit means more than simply saving a building—it means preserving meaningful transit opportunities for low-income families and seniors. Affordable housing located near transit allows families and seniors to live an affordable lifestyle in sustainable communities that offer access to employment, education, retail, and community opportunities.

National Housing Trust Testimony on H.R. 4868, the Housing Preservation and Tenant Protection Act (March 24, 2010)

Attachment A

Expiring Housing Assistance Contracts in Committee Members' Districts

| Committee Member | Apts with Project-Based Contracts Expiring through FY2019 | Committee Member | Apts with Project-Based Contracts Expiring through FY2019 |
|-----------------------------------|---|-----------------------------|---|
| Rep. Frank, MA, <i>Chair</i> | 3,277 | Rep. Suzanne Kosmas, FL | 366 |
| Rep. Bachus, AL, <i>Rnk. Mem.</i> | 641 | Rep. Leonard Lance, NJ | 1,271 |
| Rep. Gary L. Ackerman, NY | 1,015 | Rep. Christopher Lee, NY | 3,000 |
| Rep. John Adler, NJ | 1,304 | Rep. Frank D. Lucas, OK | 1,744 |
| Rep. Joe Baca, CA | 2,055 | Rep. Stephen F. Lynch, MA | 4,187 |
| Rep. Michele Bachmann, MN | 2,051 | Rep. Dan Maffei, NY | 3,622 |
| Rep. J. Gresham Barrett, SC | 2,253 | Rep. Carolyn B. Maloney, NY | 2,908 |
| Rep. Melissa L. Bean, IL | 1,954 | Rep. Donald A. Manzullo, IL | 2,290 |
| Rep. Judy Biggert, IL | 1,230 | Rep. Kenny Marchant, TX | 624 |
| Rep. John Campbell, CA | 1,205 | Rep. Carolyn McCarthy, NY | 2,025 |
| Rep. Shelley Moore Capito, WV | 2,520 | Rep. Kevin McCarthy, CA | 1,001 |
| Rep. Michael E. Capuano, MA | 13,919 | Rep. Thaddeus McCotter, MI | 2,421 |
| Rep. Andre Carson, IN | 5,572 | Rep. Patrick T. McHenry, NC | 1,145 |
| Rep. Michael N. Castle, DE | 4,097 | Rep. Gregory W. Meeks, NY | 2,698 |
| Rep. Travis Childers, MS | 2,263 | Rep. Brad Miller, NC | 2,579 |
| Rep. William Lacy Clay, MO | 4,226 | Rep. Gary G. Miller, CA | 410 |
| Rep. Emanuel Cleaver, MO | 4,628 | Rep. Walt Minnick, ID | 1,553 |
| Rep. Joe Donnelly, IN | 3,507 | Rep. Dennis Moore, KS | 2,330 |
| Rep. Steve Driehaus | 4,931 | Rep. Gwen Moore, WI | 5,047 |
| Rep. Keith Ellison, MN | 5,143 | Rep. Randy Neugebauer, TX | 1,388 |
| Rep. Bill Foster, IL | 2,169 | Rep. Ron Paul, TX | 752 |
| Rep. Scott Garrett, NJ | 781 | Rep. Erik Paulsen, MN | 2,607 |
| Rep. Jim Gerlach, PA | 1,126 | Rep. Ed Perlmutter, CO | 1,191 |
| Rep. Alan Grayson, FL | 822 | Rep. Gary Peters, MI | 3,845 |
| Rep. Al Green, TX | 2,448 | Rep. Bill Posey, FL | 1,401 |
| Rep. Luis V. Gutierrez, IL | 2,035 | Rep. Tom Price, GA | 285 |
| Rep. Jeb Hensarling, TX | 854 | Rep. Adam Putnam, FL | 1,119 |
| Rep. Jim Himes, CT | 3,461 | Rep. Edward R. Royce, CA | 692 |
| Rep. Rubén Hinojosa, TX | 1,669 | Rep. David Scott, GA | 1,383 |
| Rep. Paul W. Hodes, NH | 3,969 | Rep. Brad Sherman, CA | 2,540 |
| Rep. Lynn Jenkins, KS | 2,479 | Rep. Jackie Speier, CA | 898 |
| Rep. Walter B. Jones, NC | 1,213 | Rep. Nydia M. Velázquez, NY | 4,973 |
| Rep. Paul E. Kanjorski, PA | 3,338 | Rep. Maxine Waters, CA | 1,879 |
| Rep. Mary Jo Kilroy | 3,463 | Rep. Melvin L. Watt, NC | 2,608 |
| Rep. Peter King, NY | 324 | Rep. Charles Wilson, OH | 1,903 |
| Rep. Ron Klein, FL | 455 | Total | 169,082 |



Toby Halliday
Vice President

Toby Halliday is Vice President for Public Policy for the National Housing Trust (NHT). NHT engages in the preservation and revitalization of affordable rental housing through real estate development, lending, and public policy initiatives to better the quality of life for the families and elderly who live there. NHT has helped to save more than 22,000 affordable apartments in 41 states through technical assistance, real estate development, and lending activities. Since joining the Trust in early 2008, Toby has worked with other supporters of affordable rental housing to promote policy changes at HUD and in Congress to facilitate the preservation and improvement of affordable rental housing. Mr. Halliday is the moderator of the National Preservation Working Group.



Testimony of the National Leased Housing Association

**Presented by Raymond K. James
Hearing on the "Housing Preservation and Tenant Protection Act of 2010"**

March 24, 2010

**Committee on Financial Services
Subcommittee on Housing and Community Opportunity**

My name is Raymond K. James, I am a partner with the law firm of Coan and Lyons in Washington, DC and specialize in HUD related housing issues. Prior to my work in private practice, I served as Chief Counsel to this subcommittee. I am an active member of the National Leased Housing Association (NLHA) on whose behalf I am presenting testimony today.

The National Leased Housing Association (NLHA) has for the last 38 years represented the interests of developers, lenders, housing managers, housing agencies and other involved in providing federally assisted rental housing. Our members are primarily involved in the Section 8 housing programs – both project-based and tenant based- as well as the Low Income Housing Tax Credit (LIHTC) program. NLHA's members provide or administer housing for over 3 million families.

Madame Chair and members of the subcommittee, thank you for the opportunity to testify. NLHA has been working over the last three years with you, Chairman Frank, and the committee staff along with our industry partners including the Institute for Responsible Housing Preservation (IRHP) to craft workable legislation that will facilitate the ability of our members to preserve the assisted housing stock. We appreciate everyone's hard work as we know that many of these issues are narrow and highly technical.

Preserving the scarce supply of federally assisted housing is important to our members and we have devoted significant effort over the last many years to promoting the preservation and recapitalization of the affordable housing stock through technical seminars and workshops as well as through our advocacy before HUD and on Capitol Hill. However, the ability for our members to rely on their agreements with the Federal Government is also important as these relationships are the basis on which we have developed or acquired the housing.

H.R. 4868, the “Housing Preservation and Tenant Protection Act of 2010” contains many widely supported provisions (several of which will be addressed later in this testimony) that will be helpful in preserving affordable housing and protecting tenants, but it also contains several provisions that would destabilize affordable housing programs, harm preservation efforts, lead to more opt-outs and prepayments, and generate breach of contract litigation.

The two most damaging provisions of the bill are section 107 (Federal right of first refusal) and section 108 (restricting preemption of state and local laws by federal law).

Provisions That Are Inimical To Preservation

NLHA must oppose H.R. 4868 as long as it includes Section 107 that restricts an owner’s choice in selling its project at any time up to 15 years before its assistance contract is scheduled to expire. This provision, therefore, governs the transfer of properties for almost the entire current inventory of HUD assisted housing. It even covers small programs that were terminated decades ago, such as urban development action grants (UDAG) and housing development grants (HODAG) that may have involved thin subsidies for some units. Also covered are programs with their own preservation and sale provisions, such as rural housing programs administered by the Secretary of Agriculture and the low-income housing tax credit.

It is unclear why the Committee believes that a restricted sales process is necessary in today’s environment. There is a viable and active community of preservation entities that have the resources, sophistication and desire to acquire assisted properties to preserve them for long term use. As a result, opt-outs are few and far between. HUD’s own data show that the rate of Section 8 opt outs declined drastically with the passage and implementation of the Multifamily Assisted Housing Restructuring Act of 1998 (MAHRA) that set the framework for Section 8 renewals. By establishing a market based approach to renewals, Congress removed one of the main reasons for owners to leave the program. In the year 2000, when MAHRA was just beginning to be understood and implemented, 288 contracts were not renewed. In 2009 that number was down to 59.

Further, HUD Secretary Donovan indicated in his June 2009 testimony before the House Financial Services Committee that his experience in New York has solidified his opinion that incentives work much better than sanctions to preserve housing. Section 106 of this bill which we believe was based on Secretary Donovan’s views includes a “preservation exchange” program that appears to be what the Secretary had in mind when advocating the carrot vs. stick approach. NLHA believes such an exchange program will be helpful to further facilitate preservation without impinging on owners’ contract or property rights. However, Section 107, the Federal Right of First Refusal provision, effectively moots any benefits of an exchange program.

Specific problems with Section 107 include:

(1) Adds delay and uncertainty to the transfers of subsidized properties. These transfers are important to the rehabilitation and improvement of assisted projects and are particularly time sensitive when the low-income housing tax credit is used as a preservation tool.

The provision gives the Secretary of HUD up to four time-consuming opportunities to purchase an assisted property the owner wishes to sell. Further, if the owner misses certain deadlines in the process it must restart the process from the beginning.

The first opportunity for HUD (or more likely its assignee) to purchase a property is when the owner is required to submit a notice to HUD that it wishes to sell the property. If, within 90 days, HUD does not submit an offer or its offer to buy is unacceptable to the owner, HUD is given a second opportunity to buy after the owner has executed a binding purchase contract with a third party. The contract is required to be binding on the seller as well as the buyer but it really isn't because HUD could replace the third party buyer. Will a third party spend the time and money before committing to buy a property which it most likely will not be able to buy? If the owner cannot find a third party to execute a binding contract in about a nine-month period it must go back to Start and entertain again a purchase offer from HUD, whose sales price and terms and conditions might be unacceptable, or give up on the attempt to sell the project.

If the owner does find a bona fide third party to execute a binding purchase contract, the contract has to be submitted to HUD, which can submit its own contract containing the same material terms and conditions as the third party contract, except there would be a limit on the amount of an earnest money deposit. Of course, it is HUD that determines whether its offer is a match of the third party contract. The owner will have to sell to HUD or not at all.

The third opportunity for HUD is for it to make a counteroffer to the third party contract, presumably because it finds the terms unacceptable. If the owner rejects HUD's counteroffer, it has two years to complete a sale or go back to Start.

If within the two-year period, the owner finds a third party buyer, HUD will have a fourth opportunity to buy the property if HUD determines that the third party sale is upon economic terms and conditions that are the same or materially more favorable to the purchaser than HUD's counteroffer.

(2) Encourages owners to opt out of section 8 contracts or prepay subsidized mortgages. One option for owners who wish to sell their properties but do not want to take the risk of an unacceptable HUD purchase offer or replaying Groundhog Day over and over is not to renew their contracts or to prepay their mortgage. Another option is to find a buyer willing to commit to staying in the program forever, which would avoid the convoluted process. But such sales may not be feasible or in the best economic interests of an owner.

Even owners without immediate plans to sell their properties will chafe at this effort to dilute their property rights, which, when added to other HUD irritants known to drive owners out of the programs, will push more owners to opt out.

(3) Retroactively and materially changes the contractual agreements between owners and HUD. HUD assistance programs covered by this provision were designed to enlist private entities to use or develop their property for affordable housing under detailed terms specified in a contract. Nowhere in these contracts is there an indication that owners would be forced to submit to a cumbersome process when they wished to sell their properties, designed to steer the sales to the Secretary of HUD or its designee or to other favored purchasers.

While HUD has a contractual right to determine whether a purchaser of an assisted project is fit to operate the project, it is a breach of the contract with the owner for Congress to restrict the sales process to give a priority to the Secretary of HUD or its designee.

(4) Affects projects over which the Secretary of HUD has no regulatory authority. The Secretary of HUD does not have the regulatory authority to approve or disapprove purchasers that is necessary to efficiently implement this provision with respect to rural housing programs. Moreover, one of the major problems to preserving this housing stock has been the administrative barriers to transferring these rural projects from one owner to another. The addition of another administrative barrier to transfers is counterproductive to preservation.

The Secretary of HUD also cannot effectively enforce this provision with respect to projects with low-income housing tax credits. In addition, these projects are subject to a right of first purchase provision in the tax code. Any attempt to give the Secretary of HUD effective authority to restrict sales of these projects is within the jurisdiction of the tax writing committees of Congress.

While HUD might use the 2530 process to encourage compliance for some owners, in other situations it would need to engage in litigation with owners to attempt to enforce this provision.

(5) Interferes with preservation sales. While some of these sales may qualify for exemption from this provision, others will not but they still will be desirable preservation transactions. Trying to force every transaction into a rigid mold will do more to harm than to help preservation of affordable housing.

The 2nd undesirable provision in the bill is Section 108. This provision will permit states and localities to regulate owners of projects assisted under federal law with respect to preservation and tenant protection even if the regulation conflicts with federal law. The only way to avoid a conflict under this provision is for the federal law to explicitly preempt state and local laws. Most federal housing laws do not contain preemption provisions. Under judicial

precedents federal law can preempt a local law without express preemption provisions if the local law conflicts with federal law.

Since no effort is apparent in the preservation bill to identify provisions of federal law which should be given preemption protection, it is fair to assume that none of the hundreds or thousands of provisions in housing, tax and other laws that currently do not expressly preempt local laws are intended to have protection.

Thus owners of section 8 housing, for example, who have been dealing for some time with stable and predictable federal laws, as have their lenders and investors, will now be subject to the uncertainty and destabilization of being subject to rules from potentially hundreds of jurisdictions that conflict with federal laws and contracts.

In this provision, Congress would permit states and localities *to change federal law*. Contracts with HUD could be rendered meaningless. There is no point to this provision unless its authors want state and local laws that conflict with federal law to have supremacy, contrary to what normally happens under the U.S. Constitution.

Section 108 could be extremely harmful and therefore is opposed by NLHA.

Expanding Preservation Vouchers: Long Overdue

One of the most important and necessary legislative provisions in H.R. 4868 is one that will ensure that residents living in properties with expiring mortgages are not physically or economically displaced. In 1996, when Congress restored owners' rights to prepay Section 236 or Section 221(d)(3) mortgages, Congress amended the U.S. Housing Act of 1937 to provide tenant protection to families or elderly living in such properties. Eligible residents who were not receiving rental assistance at the time of the prepayment were now eligible to receive an enhanced voucher if/when the owner raised the rents on the units. In other words, the prepayment of the mortgage eliminated the use restrictions and subsidies related to the previous loan. Once the mortgage is paid off, the owner is free to raise the rents to the market rent resulting in tenants paying more. The receipt of vouchers by eligible residents, those with incomes generally at or below 80 percent of median or in tight rental markets 95 percent of median, enables the families to afford the rents and stay in their homes. The statute was amended again in the next few years to provide enhanced vouchers to families/elderly living in properties in which the owners opted out of their Section 8 contracts.

The current statute needs to be amended (as proposed in the bill) to address two situations that were not contemplated in 1996. Firstly, it was not necessary to address mortgage maturations in the context of enhanced vouchers as the Section 236 properties or Section 221(d)(3) BMIR properties were at least ten years from their mortgage maturation (original mortgage terms 40 years and owners in most cases had a right to prepay the mortgage after 20 years). When the mortgages mature, the accompanying affordability requirements expire

(including ELIHPA projects). In January 2004, the GAO issued a study on such mortgage maturations and projected that 11,267 mortgages will mature through 2013. The first such maturations have already occurred, and will peak in the next few years.

Secondly, the enhanced vouchers provisions did not address situations in which a nonprofit sponsor prepays such a mortgage (or the mortgage expires) because the original eligibility for enhanced vouchers was tied to the ability of owners to prepay their mortgages without HUD permission (nonprofits need HUD permission to prepay in most cases). However, in today's low interest environment, it is not unusual for a nonprofit to seek and receive permission to prepay its mortgage to allow a refinancing and recapitalization of properties that are on average 30 to 40 years old. This includes Section 202 loans that were made prior to 1975, which did not receive Section 8 assistance. We are appreciative that the bill will address this important issue and will permit owners to request project-based Section 8 assistance in lieu of enhanced vouchers. This choice will provide comfort to lenders thereby ensuring sufficient recapitalization and thereby long term viability

Conversion of Old Rental Subsidies

We are pleased that Section 101 of the bill would provide an opportunity to permit the conversion of Rental Assistance Payment (RAP) and Rent Supplement contracts to project-based Section 8. The RAP and Rent Supplement programs were a precursor to Section 8 and their conversion was mostly accomplished in the 1980's. However, there are a number of such properties that remain in the inventory. Their conversion at an owners' request would ensure preservation past the term of the property's mortgage.

Other Positive Provisions

The majority of the provisions in Section V of the bill would remove administrative barriers and clarify HUD policy on a number of issues that have delayed or otherwise hampered preservation transactions. While HUD is making progress administratively on removing its own barriers, several of the provisions are necessary to clarify congressional intent or to provide statutory authority. Such provisions include ensuring that a property may receive budget-based rents for underwriting purposes for preservation transactions, improving the chances of expiring ELIHPA properties to be preserved beyond their use restriction, clarifying a number of issues in the HUD Mortgage Restructuring Program including a requirement that HUD provide budget-rents for properties that were restructured before HUD amended its underwriting criteria to ensure continued viability, addressing properties in disaster areas and more.

Non Profit Proceeds

HUD approval is sometimes needed when an FHA insured project is being sold or refinanced. Without statute or regulation, HUD over the last few years has arbitrarily limited the use of sale or refinancing proceeds where the owner is a non-profit sponsor, proceeds which the

nonprofit could otherwise use for other subsidized properties or to further its mission. This requirement has stalled numerous preservation transactions where the nonprofit sought to sell its property a few years before the mortgage maturity to a preservation entity that agreed to renovate and recapitalize the property for long term preservation. Last month, HUD indicated that it will review its policies and allow waivers to current barriers to preservation which should address this situation. Section 504 of the bill, we believe attempts to deal with the proceeds issue, but falls short in that the language appears to contemplate the same ownership refinancing versus a new owner acquiring the project for preservation purposes. We believe the language should be amended to address sales as well as refinancing and that the proceeds of the nonprofit seller not be restricted as this will prevent the sale from occurring. We submitted language to the subcommittee that we believe meets the stated objectives and would apply retroactively to several transactions the closed in recent years.

Access to Information

The bill includes several provisions (Sections 303 and 304) to increase HUD's collection of data and make that data more accessible via HUD's website and to ensure proper HUD oversight of property conditions.

There is no disagreement that HUD's data systems leave a lot to be desired and that the information available on its website is often hard to find, however the bill appears to require information be made available on the web that should be protected under privacy laws (home address of investors, 2530 forms, financial information, etc.). We would oppose any attempt to provide the public with access to private information. We understand that the goal is to provide information to the residents and the public about the condition of the buildings. However that can be accomplished without exposing participants to identify theft or other harm caused by the release of private information.

Further, HUD has a myriad of enforcement tools which it employs should a project fall into disrepair obviating the need for tenants to seek judicial relief. In addition, HUD currently posts information about the physical condition of properties along with information concerning any enforcement actions resulting in suspension or debarment. In addition, residents have two other avenues to address their concerns: 1) a HUD hotline; and 2) contacting the project's Contract Administrator who will register the complaint, notify the owner and provide follow-up until resolution.

Additional Comments

Due to the length and breadth of the bill, NLHA is not able to comment on all of the provisions, but intends to provide additional comments and add to the comments above when our members have sufficient time to thoroughly review the bill.

Thank you for the opportunity to share our views. I am happy to answer any questions.

Statement To

**Subcommittee on Housing and Community Opportunity
Financial Services Committee
United States House of Representatives**

Testimony on Housing Preservation and Tenant Protection Act of 2010

**By Ricky Leung, Vice President/East
National Alliance of HUD Tenants
March 24, 2010**

**Prepared Statement of Mr. Ricky Leung
Vice President/East
National Alliance of HUD Tenants**

**Subcommittee on Housing and Community Opportunity
Financial Services Committee
Wednesday, March 24, 2010**

On behalf of the National Alliance of HUD Tenants (NAHT), I want to thank Chairwoman Waters, Ranking Member Bachus, and members of the Subcommittee for inviting our testimony today. My name is Ricky Leung. I am an architect by profession and a tenant in project-based Section 8 housing; the President of the Cherry Street Tenant Association in the Lower East Side of Manhattan; and the elected Vice President/East of the NAHT Board. I also work closely with NAHT's New York affiliates, New York Tenants and Neighbors, the Urban Homesteading Assistance Board (UHAB), and Good Old Lower East Side (GOLES).

NAHT is the national tenant union representing the 1.7 million families who live in privately-owned, HUD assisted multifamily housing, including the 1.3 million families, elderly and disabled people in apartments receiving project-based Section 8 assistance. The elected NAHT Board represents voting member tenant groups and areawide coalitions in 23 states.

Since Congress ended the Title VI Preservation Program in 1996, the nation has lost close to 400,000 units of affordable low income housing, through owner conversion to high market rents and/or voucherization by HUD. The Housing Preservation and Tenant Protection Act of 2010 (hereinafter "the Bill"), filed last week by Chairman Frank, Chairwoman Waters and 11 co-sponsors is an historic step toward halting this loss.

We also thank Representative Velasquez, who represents my District in Manhattan, for sponsoring the Troubled Housing reforms included in Title IV of the Bill, and for her leadership in addressing the crisis of "predatory equity" by including language for a Multifamily Housing Preservation Initiative in separate legislation that has passed the House.

More than 95% of the Bill has consensus support among the major stakeholders, including many priorities long sought by NAHT. These include Troubled Housing reform, tenant protections for all expiring use families, and several provisions to extend project-based Section 8 assistance to broader categories of tenants and buildings. There is also consensus support for new voluntary preservation programs and Section 514, the "Green Amendment" adopted unanimously by the Committee in October 2007. We again thank Rep. Green for his leadership, and Chairman Frank, Chairwoman Waters and Ranking Member Capito for their support for Section 514. We also appreciate the decision to keep most of the original bill intact with regard to matters within HUD's discretion, both to provide policy guidance to the Department and to ensure long-term continuity in preservation policy.

A few important no-cost provisions sought by tenants have been opposed by some owner groups. We are grateful to Chairman Frank for retaining NAHT's priorities that empower tenants to help HUD in its oversight mission (Sections 303, 304 and 401) and to allow state and local governments to do more to save our homes (Section 108). We particularly want to thank Rep. Gutierrez and 11 other Committee Members for their strong letter of support for these measures, as well as for restoring the broader Right of First Purchase section which was in the 2009 Draft Bill. My remarks today focus on these issues.

Preservation Exchange and Other Voluntary Incentives

NAHT strongly supports the various voluntary incentives in the Bill to encourage owners to save our homes. The preservation grant and loan program (Section 102), for example, would provide grants to nonprofit organizations to buy at-risk buildings and permanently preserve them as affordable housing, where owners are willing to sell. With Green Amendment funds to help tenants organize, this program could enable a new flowering of resident-controlled and/or nonprofit ownership across the nation, as the Title VI Preservation Program did in the 1990's.

Similarly, providing Enhanced Vouchers for all expiring use tenants (Section 102) and allowing their conversion to Project Based Assistance (Section 104) would enable tenant organizations to persuade some owners to preserve affordable housing, and even to restore affordable rents in buildings already converted to market.

We submit with our testimony a recent article in Shelterforce magazine that highlights the successes and challenges faced by NAHT's Massachusetts affiliate, the Mass Alliance of HUD Tenants (MAHT), in coping with expiring mortgages. The owner of Georgetowne Homes, a 967 family development in Boston featured in the article where tenants face up to \$700 per month rent increases when current mortgages expire, has agreed to convert to Project Based Assistance and permanently preserve affordable housing if Congress enacts these provisions by the end of 2010, which would set an important national precedent.

The new Preservation Exchange section in the Bill would add important additional incentives to this mix. We support this provision in principle. We offer the following initial suggestions for improvements, based on the experience of the successful Title VI Preservation Program in the 1990's:

- ***Retain HUD property standards.*** The incentive allowing the Secretary of HUD to waive REAC inspections and Management Reviews would leave tenants at risk of substandard conditions and mismanagement. It should be dropped from Section 106. In particular, since an owner can enlist for up to five years in the Exchange, some owners could enlist to avoid HUD scrutiny without ever completing a sale.
- ***Tighten affordability restrictions for purchasers.*** Section 106 currently would require a preservation purchaser to extend affordability for 40 years for "very low income households" and to "maintain any existing limits or restrictions" on rent and income eligibility for 40 years. The parallel language in Section 102 requires preservation purchasers to operate the property for its "remaining useful life" in accordance with "all affordability restrictions that are applicable". We recommend that the language in both sections be harmonized, and modeled more closely on the proven LIHPRHA definitions: 50 years or the remaining useful life of the property, maintaining the previous income and unit profile of lower, low, very low, and extremely low households, for both current and future tenants.
- ***Ban "scam" nonprofits, require arms-length transfers.*** The Committee should add a provision to Section 106 to guard against self-dealing and "scam" nonprofit entities created by for-profit companies to take advantage of Exchange incentives while retaining effective control of the properties. This became a major problem during the LIHPRHA program, addressed in its later years. More recently, NAHT groups have reported large companies selling individual properties to "captive" nonprofits to take undue advantage of limited LIHTC and other resources from state and local agencies. The Exchange

Program should require arms-length transfers to unaffiliated preservation purchasers, using safeguards and policy tools from LIHPRHA.

- **Establish a role for residents in preservation purchases.** The Committee should add a role for endorsement by residents and/or legitimate tenant associations as defined by 24 CFR Part 245 for preservation purchasers in the Exchange program, as well as in the Section 102 Preservation Loan/Grant program. In addition, the Committee should add a “super priority” for purchase by resident-controlled nonprofit or limited equity cooperative entities in the Exchange program, and in the related sales aided by Section 102 grants or loans. Again, the “super priority” for resident purchases in LIHPRHA serves as a guide and precedent.

Voluntary Incentives and First Right of Refusal Not Enough to Save Our Homes

While NAHT supports voluntary incentives, experience demonstrates that this is not enough to save affordable housing. HUD has provided voluntary incentives paying market rents under the Section 8 Mark Up to Market Program since 2000, supplemented by state and local resources in most states, but this has not stopped the loss of our homes.

The 2009 Draft Bill included a broad Right of First Purchase provision to supplement voluntary incentives with a regulatory framework to save affordable housing, at no additional federal cost. Under the Right of First Purchase, HUD or its designee would have been able to step in and purchase, at full market value, any subsidized building at imminent risk of conversion to market rate, whether or not an owner is planning to sell the property.

Instead, Section 107 of the revised Bill proposes a more limited First Right of Refusal, allowing HUD or its designee to match a proposed sale of expiring use housing by an owner in cases where a proposed purchaser does not intend to preserve affordable housing. *Unlike a Right of First Purchase, the First Right of Refusal does NOT apply if an owner is not selling, but simply converting the property to market rents and staying on as owner—a much more common scenario.* As a result, Section 107 will not stop the loss and market rate conversion of affordable housing, especially in high market areas like New York City, California or Massachusetts.

Under Section 107, an owner who wishes to sell the property to a purchaser who does not intend to preserve affordability could simply wait a year until subsidies and use restrictions terminate, and sell the next day. Section 107 would do nothing to prevent this from happening.

Massachusetts First Right of Refusal Does Not Save Housing

Section 107 is modeled on a state law passed in Massachusetts in November 2009. NAHT’s local affiliate, the Mass Alliance of HUD Tenants, has led the 15 year fight for stronger measures, including a broader Right of First Purchase proposal similar to the 2009 Draft Bill. Landlord groups watered down the final legislation in closed door meetings with legislators from which MAHT and organized HUD tenant groups were completely excluded. According to Mass Housing, the state’s housing finance agency, *there is not a single HUD subsidized building in Massachusetts today that would trigger the First Right of Refusal under this bill, nor has there been any that would have triggered it in the past three years.*

In Massachusetts, the rate of conversions has spiked with the “expiring mortgage” crisis. More than 1,750 apartments have been lost in Boston alone, including several hundred at High

Point Village, Camelot Court and Brandywyne Apartments since 2006. Under the new state law, owners have filed opt out notices at Cummins Towers, Burbank Apartments, Georgetowne Homes and Blake Estates, housing more than 1,650 Boston families. *These owners are not selling, but announcing plans to convert to market, in some cases to leverage additional state, city and federal subsidies. The Massachusetts First Right of Refusal does not apply to these cases.* As a result, a broader federal Right of First Purchase is needed now, more than ever, to save these at-risk buildings in Massachusetts and ensure more cost effective use of housing preservation subsidies.

The Massachusetts law at least has a provision that allows the state or its designee to exercise its First Right of Refusal, if an owner tried to circumvent it by waiting out existing subsidy contracts and selling the next day, for a four year period after termination of subsidy contracts. Section 107 does not contain this provision.

Improvements Needed to Strengthen First Right of Refusal

Nevertheless, Section 107 could provide meaningful regulatory protections in lower market areas where large owners may be inclined to sell part of their portfolios. That would enable HUD or its designees to step in and purchase properties offered for sale, perhaps even utilizing the Right of First Offer option where owners do not have third party purchaser lined up. At least some at-risk housing could be preserved that might otherwise be lost to market conversion or deterioration.

If a broader Right of First Purchase is not restored and the First Right of Refusal is retained in the final Bill, we urge the following minimal improvements:

- Include a four year “reach back” provision, as in the Massachusetts bill, to discourage owners from circumventing the First Right of Refusal by simply waiting one year while federal contracts expire before selling to a market-converting purchaser
- Remove the “gag order” in Section 102 (b)(4) and (5) that would prevent tenants and their representatives from accessing information about building conditions, environmental hazards, repair and operating budgets and redevelopment plans from HUD if and when an First Right of Refusal process begins. This unnecessary secrecy is based on the owner-driven Massachusetts law, and contradicts the principles in Section 304 of the Bill. Residents should be active partners with HUD and its designees to preserve our homes if the First Right of Refusal applies. At a minimum, residents and their representatives should be designated as “representatives of the Secretary” to ensure their inclusion in preservation purchase plans.
- Replace the restrictive definition of “resident council” in Section 107. Very few tenant associations are “incorporated nonprofit organizations” that would meet this standard and thus be eligible to receive Notices under this Section. Instead, HUD’s more flexible definition of a “legitimate tenants association” in 24 CFR Part 245 should be referenced here, which is the definition in the Massachusetts state First Right of Refusal law.

Restoring Right of First Purchase Will Save More Homes

We very much appreciate the letter circulated by Rep. Gutierrez and signed by 11 Committee Members, including my own Representative Velasquez urging restoration of the

broader Right of First Purchase provision. Only this will give HUD the regulatory tools to save our homes, especially in high rental markets.

Take my situation in New York City as an example. For 30 years, I have grown up in the 488 unit Cherry Street Apartment complex in a Section 8 apartment where I now care for my two aging parents. We would not be able to survive long paying full rent in the overheated Manhattan market. The other 487 families in the Cherry Street community are the diverse, multiracial working and middle class, a microcosm of the City and of the nation.

Our building is currently owned by a “predatory equity” investor, who purchased the building for \$177 million—more than \$360,000 per apartment—in 2008, financed by a five year Mark Up to Market Section 8 contract from HUD. The owner will face the decision whether or not to renew in just two years. This time, we are not so certain he will renew: he can likely make far more money converting to speculative rents on unsubsidized units or converting to condominiums. A First Right of Refusal will neither give us peace of mind, nor any guarantee that the owner won’t convert our homes to market rate, or just wait out the contract and sell to someone else who will do the same.

By contrast, passage of a Right of First Purchase would at least give our Tenant Association and HUD a fighting chance to save our homes.

Across New York City, the need for stronger federal controls is urgent. The City has lost more than 17,900 federally subsidized apartments since 2006 that could have been saved if a Right of First Purchase had been in place. Recently, UPACA 7 in Harlem was lost forever as affordable housing when the “predatory equity” owner refused to sell to two willing nonprofit preservation purchasers, with City support, choosing to prepay the HUD insured mortgage and convert to market rents. Although current tenants are protected with Enhanced Vouchers, they will be replaced over time as the building converts. Section 107 would not have saved these apartments, since the owner was unwilling to sell; only a Right of First Purchase would have enabled tenants to save these homes.

In New York, the rate of loss has accelerated since 9/11, thanks to the crisis of overleveraged, “predatory equity” investment reported in my testimony last June. Nationwide, the spike in expiring 40 year HUD mortgages will only exacerbate the problem, especially in higher market areas. Without the Right of First Purchase, an estimated 200,000 federally subsidized apartments in communities across the nation are at immediate risk.

We urge the Committee to replace Section 107 with the broader Right of First Purchase from the 2009 Draft version of the Bill in Committee mark-up.

Federal and State Precedents for Right of First Purchase

There is ample precedent for the limited, no-cost regulatory tool of the Right of First Purchase. The Title II and VI Preservation Programs preserved more than 90,000 at-risk apartments between 1988 and 1996, before Congress dropped funding for the program. Owner legal challenges to Title II focused on alleged delays to realize market gains, a concern addressed in the design of the Right of First Purchase. In addition, for 20 years Congress has provided a Right of Purchase in the federally subsidized Rural Housing sector, which has worked to preserve this stock from conversion to high market rents.¹

¹ 42 U.S.C. Sec. 1472 (c)

Since 1996, several states, including Illinois, Rhode Island, and Maine have adopted First Right of Purchase statutes, on which the federal Right of Purchase in the 2009 Draft Bill was based. The value of this regulatory framework is illustrated by the Illinois Federally Assisted Housing Preservation Act. The Right of First Purchase in this law was instrumental in preserving the Lorington Apartments, occupied by 54 families assisted by project-based Section 8 on Chicago's Northwest side, and has helped save other at-risk buildings.

As Rep. Gutierrez' sign-on letter points out, "This successful example has by no means deprived owners of compensation rights or delayed owner decisions. Rather, owners in Illinois adjusted well to the new statute and have not challenged it in the courts." Adoption of a well designed federal Right of First Purchase will similarly minimize the threat of successful legal challenge.

Right of First Purchase and First Right of Refusal are Constitutional

In New York City, tenants won Local Law 79, which enacted a First Right of Purchase in the City, based on these statewide models. We are aware that HUD Secretary Donovan expressed reservations about the Right of First Purchase at the Committee hearing on June 25, 2009. The Secretary alluded to "constitutional" and other objections which were raised by landlord groups and the City of New York in state court litigation which ultimately struck down Local Law 79. He suggested that the Committee explore these constitutional issues and proceed cautiously before adopting this regulatory tool.

In response, Chairwoman Waters obtained an advisory memorandum from the Congressional Research Service (CRS) exploring the legal ramifications of both the Right of First Purchase and the First Right of Refusal. We are pleased that the CRS memorandum did not conclude that there is a constitutional barrier to enacting either provision, as long as owners are awarded full market compensation in any sale and there is no delay in implementation that would amount to a cost to owners. Both Section 107 and the Right of First Purchase provision in the 2009 Draft Bill are structured to pass these constitutionality tests, and improve on the Title II and VI Preservation programs in that respect.

It is also important to note that the New York state trial court (upheld upon appeal) struck down Local law 79 due to concerns about preemption conflicts with state and federal laws, not because of any constitutional "taking" concerns, which the court did not address. Obviously, establishing a national Right of First Purchase, or altering the federal Notice laws, will not present any federal "preemption" problems. In fact, the New York Court wrote that "the recent sales and proposed sales of major assisted rental housing complexes in this City and the likely devastating impact of those sales on low and moderate-income residents of New York may and should function as a wake-up call for the need for immediate action" by other levels of government.

Congress Should Allow State and City Governments to Do More to Save Our Homes

On the question of federal preemption, the New York Court referred to Section 232 of the now-defunct Title VI program, which expressly preempts state or local laws that regulate rents in buildings that were once eligible for Title VI. Since the original purpose of Section 232—to ensure that appraisals under Title VI reflected unrestricted market value—is no longer applicable, this archaic provision should be clarified, limited only to properties that executed a Title VI Plan.

More broadly, there is no sound reason for Congress to block state and local governments from protecting their own communities, or to do more to preserve affordable housing or to protect tenants than the federal government if they wish. Section 108 of the Bill addresses this concern. We commend Chairman Frank and many other Committee members for their strong support of this principle.

**The Right of First Purchase Will Save Housing at Lower Cost
and with Greater Benefits for At Risk Families**

Congress dismantled Title VI in 1996 due to concerns about program costs, not constitutionality. *But the federal costs of "unregulated" owner choice usually match or exceed the cost of Title VI, but with none of the benefits.* Under the comprehensive regulatory framework of Title VI, residents and HUD negotiated major repair programs, permanent affordability, and transfers to nonprofit purchasers and tenant organizations

Today, an owner who "opts out" receives Enhanced Section 8 Vouchers which pay the full market rent for assisted units, but with no HUD oversight. An owner who chooses to renew under Mark Up to Market likewise is paid full market rents by HUD, for 5 to 20 years, with no requirement to make needed repairs. Either way, HUD pays full market rent subsidies equivalent to what was formerly paid out under Title VI. Tenants, communities and HUD are often reluctant to enforce housing standards or reject excessive subsidy requests, for fear that owners will simply walk away and convert in high market areas.

In fact, short term extensions under Mark Up to Market of five years leave residents and HUD at continued risk that owners will opt out down the road, as is happening in my building in the Lower East Side. *As long as owners have an unregulated choice to opt out, they will be able to leverage ever-increasing subsidies from HUD--which residents and communities will doubtless support--since the alternative of losing affordable housing is unacceptable, and the cost of new low income replacement housing is even higher..*

Because it will not stop the conversion of at-risk units, the First Right of Refusal will not limit this speculative spiral. *Only the Right of First Purchase will save money in the long run by removing subsidized developments from this speculative spiral, lessening owner windfalls, and ensuring that Congress receives guaranteed benefits on its investment of federal preservation funds.* Implementing the Right of First Purchase would help stabilize and pull back residential real estate markets like New York's from speculative pressures that ramp up prices above true values.

Likewise, only a comprehensive Right of First Purchase would reduce the current reluctance of tenants and HUD in high market areas to maintain property standards and seek improvements, for fear of losing our homes. Passage of this measure will help tenants ensure that Congress gets "more bang for the buck" on its investment in Section 8 housing.

Tenant Empowerment Provisions Essential

NAHT strongly supports the Tenant Empowerment measures included in Titles III and IV of the Bill. Along with Section 514 funds, these no-cost measures will empower tenants to participate as full partners with HUD to improve and preserve our homes. These tools will enable tenants to utilize voluntary incentives and regulatory tools to save at-risk buildings, as NAHT affiliates helped preserve 90,000 apartments under Title II and VI Preservation. They also complement the Troubled Housing reform measures in Title IV of the Bill.

Particularly important are provisions to give tenants Access to Information regarding project budgets and ownership and substandard housing (Section 304), Third Party Beneficiary Status in HUD contracts with owners (Section 303), and Rent Withholding procedures for substandard housing (Section 401).

Access to Information (Section 304). The value of transparency regarding use of taxpayer subsidies should be self evident. Project ownership and budget information can help tenants spot waste, fraud and abuse in the use of HUD money in the buildings where we live. Tenants have the greatest stake, and the first hand knowledge, to make sure that public subsidies are used well—these are our homes. ***Only owners and managers who fail to provide quality service and/or have something to hide should raise any objection to empowering tenants with this information.***

Owners have objected that this provision could be abused by disclosing their social security numbers and personal financial information to others. Tenants suffer the indignities of disclosure of every aspect of our personal lives and finances to owners and their agents all the time, so we understand why owners would object to the invasion of their privacy. However, we have no interest in obtaining this type of information about owners or their agents. The Bill responds to owners' objections by clarifying that social security numbers, tax returns and similar personal financial information are not releasable under Section 304.

Owners have also claimed that making project budgets available to tenants will discourage investment and inhibit preservation. This has not been our experience in New York, where tenants have long had access to this type of information, without any discernable controversy or harm to owners. Nor have there been major problems from tenants accessing budget information during the 60 day review window allowed under current HUD regulations when owners apply for HUD regulated rent increases. Tenants nationwide deserve the same routine access to this information as tenants in New York have enjoyed for many years.

Particularly where public subsidies are concerned, tenants and the public should know where our tax dollars are going. Subsidy contracts with owners should not be treated as a secret compact of private information beyond public scrutiny. In this regard, Section 304 (a) (3) unduly restricts releasable contracts and agreements to a short list in another section of the Bill. This oversight should be corrected, by clarifying that any subsidy contracts and regulatory agreements, use agreements, or any other contracts between owners and HUD are releasable to residents.

Section 304 is needed to access information from HUD that should be readily available, but has not been for most of the last decade. In 2004 former HUD Deputy Secretary Bernardi adopted a controversial policy of discouraging release of any information under the FOIA which might embarrass "current or former HUD staff" or call into question policies or procedures of the Department. HUD also adopted regulations in October 2008 that impose steep fees and other obstacles to tenants seeking basic information.

In one case included with our testimony last year, HUD declined a request for an approved Mark to Market plan to a nonprofit Rhode Island tenant assistance group unless the tenants paid HUD \$5,800 to assemble a copy of the Plan, despite regulations requiring release of M2M Plans to residents. Recently, HUD denied residents in Boston release of an owner's Capital Needs Assessment (CNA) on the grounds that this was "proprietary information" that should be withheld as a "trade secret" (letter attached). It is no secret to the residents and the

community that these buildings are substandard; they seek the CNA to better work with HUD, local agencies and the owner to repair and improve their homes. Clear direction by Congress is required to help the new Administration to reverse these now institutionalized policies.

Rent Withholding (Section 401). This proposal would allow tenants to withhold rent when there are serious violations of housing quality standards and trigger HUD to withhold as well. It also provides that HUD will conduct an inspection or management review when requested by the local government or a petition signed by not less than 25 % of the tenants. This proposal is based on language which passed the House in 1993 or was included in a Senate Floor Managers Amendment, but which was not adopted in final legislation. The revised Section 401 in the Bill responds to concerns raised by HUD by increasing the threshold of signatures triggering a REAC inspection from 10 to 25%.

Many states allow rent withholding for serious substandard conditions; states like Massachusetts or Ohio report no problems of frivolous litigation, serious controversy or abuse. But tenants in many other states do not have this right. HUD receivership authority is rarely used and inaccessible to most tenants. *Rent withholding creates a strong incentive for the owner to repair, and can help save buildings before they deteriorate. Section 401 will enlist tenants as partners with HUD to improve Troubled Housing.*

Third Party Beneficiary Status (Section 303). NAHT has proposed to establish tenants and tenant associations as third party beneficiaries in HUD contracts affecting their property. Tenants are listed as third party beneficiaries in Mark-to-Market Use agreements, but not in the Section 8 contract or any other Mark-to-Market documents, such as the Rehab Escrow Deposit Agreement or Mark-to-Market Restructuring Commitments. *HUD is often slow or too late to enforce these contracts, leaving tenants to suffer. Adding tenants as third party beneficiaries would give us standing to protect our homes. This provision would only come into play when owners are in violation of their existing agreements and HUD fails to act.*

Our testimony last year gave as an example Jerusalem Apartments in Longview Texas where third party beneficiary status and rent withholding rights would have prevented displacement of residents and loss of affordable housing. Many more such cases could be cited.

Owners have objected that third party status would result in frivolous lawsuits and impair their ability to provide housing. This claim is unfounded. Tenants have had third party status in the Low Income Housing Tax Credit program for many years. No one has cited an example of frivolous legal action or management impairment in this program. Unlike owners, low income tenants and cash strapped legal service agencies do not have the resources to pursue frivolous litigation. Legal recourse pursuant to third party status is likely to be pursued only in the most egregious cases of HUD failure to enforce. Owners and agents who comply with the law and maintain decent housing have nothing to fear from this provision.

We appreciate the inclusion of Section 303 in the Bill, and the support of Rep. Gutierrez and other Committee members for this measure. In principle, we have no objection to a required 90 day period of administrative complaint and review before tenants could avail themselves of their right to sue in court, although subsection (a) should be edited so it cannot be construed to limit administrative petition rights only to "covered agreements."

However, the new wording of Section 303 is unclear at several points, such as the reference to "public housing agencies" in the title and in subsection (c). As with Section 304, Section 303 (c) should be broadened to include any and all contracts and agreements between

HUD and owners as “covered agreements,” as in the 2009 Draft Bill. We will forward technical corrections for this section to the Committee in the near future.

In summary, Chairman Frank and others have filed an exciting and comprehensive Bill that will sustain our homes for decades to come. The Bill includes virtually all of the priority items sought by NAHT for many years, most of which are consensus items supported by Stakeholders from across the spectrum.

We urge the Committee to further strengthen the bill by substituting the Right of First Purchase from the 2009 Draft Bill for Section 107 of the Bill, adding tenant safeguards to the Preservation Exchange, and retaining and improving the Access o Information, Third Party Beneficiary, and Preemption Reform provisions opposed by owner groups.

We would be happy to provide more information to the Committee upon request. Thank you for developing this legislation and inviting NAHT to submit its views.

February 12, 2010

SHELTERFORCE

THE JOURNAL OF AFFORDABLE HOUSING AND COMMUNITY BUILDING STRATEGIES

Slipping Away

As a wave of HUD mortgages expires in the next four years, an already dwindling supply of affordable units may nosedive with owners making windfall profits -- unless the right mix of federal legislation and local organizing can save the day.



Photo by Maria Moreno

“Expiring use,” a term used to reference housing units whose affordability restrictions can end if owners prepay their subsidized mortgages or decide against renewing their rent assistance contracts upon expiration, is not an unfamiliar nomenclature in the affordable housing world. The first wave hit in the late 1980s, when units subsidized with below-market interest rate mortgages in the 1960s and 1970s under the Section 236 and Section 221(d)(3) programs began to reach the 20-year mark at which owners were eligible to prepay their mortgages and opt out of keeping the units affordable. Many owners did so, especially those in hot markets. But two federal provisions passed in 1987, known as the Title II and VI Preservation Program, saved about 90,000 units by providing various incentives for owners to remain in the programs (such as Section 8 subsidy increases and lucrative equity take-out loans) and by requiring owners to either refinance as

affordable housing or sell to a nonprofit or tenant group

that would preserve affordability. Tenants groups or nonprofits purchased about 30,000 units using this provision. But these laws were terminated in 1996, and the National Alliance of HUD Tenants (NAHT) estimates that 360,000 units have since been lost as owners decide to prepay mortgages and/or not renew expiring Section 8 contracts.

The New Wrinkle

The next several years may see an even greater loss of affordable housing as the 40-year mortgages are themselves expiring. A 2004 GAO report found that 21 percent of HUD-subsidized mortgages are scheduled to reach maturity by 2013. This amounts to 2,328 properties and 237,000 units. (In addition, about 30,000 units saved under the Title II Preservation Program will also have their use restrictions expire with the end of the mortgage, despite the additional incentives owners received not to opt out in the early 1990s. These units were missed by the GAO report, according to NAHT.)

There are currently no requirements for owners to extend HUD contracts beyond the 40-year mortgages. Since current rents are tied to the original subsidized mortgages and are typically hundreds of dollars per month below market, the temptation to convert to market rents is very real. Only a few cities with local rent controls, such as Los Angeles, have been able to limit huge rent hikes.

In expiring mortgage buildings where owners decide to not renew, or “opt out,” of project-based Section 8 contracts, current tenants are at least eligible for “enhanced vouchers,” which allow them to stay in their homes by paying the full market rent to the owner. But the issue here is replacement, not displacement. Each time a low-income resident leaves, that unit converts to market rate and is lost to the affordable housing stock for good.

And for the 101,000 families in expiring mortgage buildings who do not now receive Section 8, there are no federal protections in place whatsoever. They are not currently eligible for enhanced vouchers and face immediate displacement when mortgages end and rents increase. Nor are they entitled to the one-year notice provisions that Section 8 tenants get or the 150-day prepayment notices for non-Section 8 tenants.



Photo by Kay Mathew

For tenants like Evelyn Cobb, a hard-working single mother and naturalized citizen from Jamaica who lives in the 967-unit Georgetowne Homes complex in Boston's Hyde Park, these threats are real. Cobb, who is employed as a commercial analyst, says “There’s no way I can afford a \$700 per month rent increase, which is what the owner could charge when the mortgage runs out next March. I’m having a hard time making ends meet now.” Cobb, a leader of Georgetowne Tenants United, questions the fairness of Georgetowne owner Howard Cohen making \$170 million in windfall profits, paid for by tenants and federal, state, and city subsidies, if his company carries through on threats to convert to market. “People objected when AIG got \$160 million from taxpayers for bonuses paid to 3,000 employees last year,” she notes. “Yet just one person stands to make a bigger windfall at Georgetowne.”

Tenants Organize

Anticipating the flood of expiring mortgages, NAHT’s local affiliate in Massachusetts, the [Mass Alliance of HUD Tenants](#) (MAHT), is the first group to organize tenants in buildings whose mortgages are about to expire. They’ve had some notable wins, but the losses underscore the need for mandatory federal regulation to preserve affordable housing.

In the state’s first expiring mortgage building, MAHT helped the Bowdoin Residents Organization (BRO) in Malden in its negotiations with Winn Development, which purchased the development from its prior owners. In 2004, with MAHT assistance, the BRO negotiated a written agreement with Winn that preserves all 226 units as affordable housing for 99 years for the same income profile as previously served by the development (50 percent project-based Section 8, most of the remaining units below 80 percent of the area median income). BRO and MAHT also retained staff and an architect to help residents have input into the rehab design plans and relocation procedures.

“The thing we’re most proud of is the 99 years of affordability, so that the people behind us who are struggling will have a place to raise their families,” comments Yvonne Putney, BRO president and grandmother of four. In a different twist, the owner at Bradford Apartments (now Sycamore Village) in Lawrence, Massachusetts, failed to apply for enhanced vouchers despite being eligible for them. MAHT helped the tenant group apply for vouchers directly from HUD (a national first) that protected many tenants from displacement after the mortgage ran out. Since then, a new owner has purchased the building and is accepting Section 8 vouchers—perhaps the first case of a building that left HUD programs being restored as low-income housing.

Other developments have been more difficult. In several Massachusetts buildings owned by First Realty Management (FRM), tenants have been harassed as they try to organize. Despite a vigorous “Save Our Homes” campaign and a fair housing lawsuit, tenants at High Point Village in Boston were unable to persuade FRM owner Bill Kargman to renew a 320-unit Section 8 contract under HUD’s Mark Up to Market Program, which pays full market rent to the owner while preserving housing for low-income families. Kargman chose to replace the low-income families with market-rate tenants instead. More than half the 540 High Point families have been replaced in three years, and High Point is now a “gated community” called “Stonybrook Commons.”

Because HUD multifamily housing is often the only racially diverse housing in suburban areas, conversion of developments like these often reinforces patterns of racial exclusion and re-segregation.

“High Point is no longer a family oriented development,” laments tenant leader Elaine Marin, who raised two biracial children at High Point. “The people moving in are young professionals with roommates, and units turn over fast. I don’t know my neighbors anymore.” Salea Perry, High Point leader and married mother of three, added: “It sickens my heart to know there are families out there in shelters that can’t move in because one man wants to make more money.”

Although MAHT considers High Point a loss, Marin, Perry and other High Point leaders have taken the "Save Our Homes" message to other FRM buildings. Their persistence paid off when Kargman announced plans to renew the expiring Section 8 contract for 266 units at Brandywyne Village in East Boston for another five years. FRM has since done the same at other buildings in Boston and Worcester. Veteran MAHT tenant leaders now are organizing tenants at Georgetowne and other expiring mortgage buildings. Tenant organizing is essential and powerful, but it is not sufficient when owners, especially those in hot market areas, have few incentives to remain in subsidy programs and no requirements to sell to a preservation purchaser, even one making a fair market value offer. MAHT has proposed state legislation, killed recently by the Massachusetts legislature, to allow cities to regulate rents after federal contracts end, as in Los Angeles, and to require renewal of expiring Section 8 contracts, which would save at-risk buildings at no cost to city and state governments. NAHT and others are also advocating for federal legislation to stanch the loss of expiring use units.

Federal Legislation

Rep. Barney Frank's (D-Mass.) multifamily housing preservation bill, which has been in the works for five years and may be introduced this session, contains a long list of provisions that should help address the situation. The bill would provide enhanced vouchers for the 101,000 families not currently eligible for them in expiring mortgage buildings, and allow conversion of enhanced vouchers back to project-based Section 8 to keep buildings in the affordable housing system. It proposes new tools to address troubled subsidized housing, a range of incentives to encourage owners to keep units affordable, and even funding for tenant organizing. Most of these provisions have widespread support. NAHT estimates that 90 to 95 percent of the bill is "noncontroversial."

However, owners' trade associations are opposing three items in the bill that NAHT considers crucial. Two of these are tenant empowerment measures: First, giving tenants access to information about the operations of their building, such as annual operating budgets, HUD contracts, and HUD management reviews. Ricky Leung, NAHT vice president/East, told Congress in 2008, "Only owners and managers who fail to provide quality service and/or have something to hide should raise any objection to empowering tenants with this information." But they are, citing privacy concerns.

NAHT also wants tenants to be designated as third-party beneficiaries of HUD contracts, with standing to sue owners if they are violating them. But NAHT's top priority is "right of first purchase," a provision that Frank may take out of the bill due to pressure from owners groups, who have threatened to oppose the whole bill if it remains. Similar to the former Title II/VI provisions, the right of first purchase would provide a six-month window during which a tenants' group or nonprofit purchaser that intended to keep the development affordable would have the right to purchase the building before it went on the open market. Such a right is in place for federally subsidized rural housing, and for HUD-subsidized housing in Illinois. When New York City tried to pass a similar measure, though, it was struck down by state courts who said it should be implemented nationally.

In early November, 35 organizations, including the Housing Preservation Project, National Alliance of Community Economic Development Associations, National Housing Law Project, and the National Low Income Housing Coalition (NLIHC), sent a sign-on letter organized by NAHT and NLIHC to Frank to encourage him to retain the right of first purchase. "While we continue to support the expansion of voluntary incentives to preserve at-risk housing," they wrote, "more is needed to ensure an opportunity to preserve certain properties through transfers to preservation purchasers where owners reject generous incentives for properties that are often the best of the inventory."

While it seems likely that the preservation bill will pass, it remains to be seen whether it will contain these provisions. Meanwhile, new development, which costs significantly more than preservation per unit, is stalled, rental assistance contracts are also expiring, and a flood of predatory equity investments is putting other affordable buildings at risk. It's clear that the expiring mortgage problem is part of a larger crisis in affordable housing, but at least it has some promising solutions—if Congress follows through.

Michael Kane has served as the executive director of National Alliance of HUD Tenants since 1994 and of the Mass Alliance of HUD Tenants and its predecessors since 1983.

Miriam Axel-Lute is associate director at National Housing Institute.

RELATED RESOURCES

National Alliance of HUD Tenants www.nhi.org/go/savehomes
 Multifamily Housing: More Accessible HUD Data Could Help Efforts to Preserve Housing for Low-Income Tenants, GAO www.nhi.org/go/gao

National Alliance of HUD Tenants: 617.267.2949 www.saveourhomes.org

U.S. Department of Housing and Urban Development



Office of the Regional Director
 Thomas P. O'Neil Jr. Federal Building
 10 Causeway Street - Room 301
 Boston, MA 02222-1092

(617) 994-8223
 (617) 565-6558 Fax

JAN 26 2010

Frank Hart
 Mass Alliance of HUD Tenants
 42 Seaverns Avenue
 Boston, MA 02130

SUBJECT: Property Names: **Mattapan Apartments**
Tab II Apartments
Morton Apartments
Freedom of Information Act Request

Dear Mr. Hart:

Thank you for your Freedom of Information Act Request dated November 17, 2009 regarding the subject developments. This will advise you that pursuant to the Freedom of Information Act ("FOIA") and HUD's regulations implementing the FOIA, which can be found at 24 C.F.R. Part 15, our office has determined that the Capital Needs Assessment for the subject developments that you requested is exempt from mandatory release. This document consists of commercial or financial information that is privileged or confidential or whose release may impair the Government's ability to obtain such information in the future, and consequently this document clearly falls within the scope of Exemption 4. Pursuant to this exemption, our office is authorized to withhold this information rather than release it in response to your request. Moreover, there is a need in the public interest to assert Exemption 4 inasmuch as it is in the public interest to protect the commercial/financial interest of the development from which this information was obtained. As a result, this will advise you that the information you have requested is exempt from mandatory release pursuant to Exemption 4, and that, accordingly, we are withholding that information. (5 U.S.C. Sec. 552(b)(4); 24 C.F.R. Sec. 15.3(a)(4)).

Pursuant to 24 C.F.R. §15.111 you may appeal this denial of your request within thirty (30) days of the date of this letter. Your appeal should describe and identify the basis for your appeal, and in particular indicate why you believe that the information is not exempt from mandatory release under the law. Your appeal must include a copy of your original FOIA request and a copy of this denial of your request, as well as a statement of all of the reasons, circumstances, or arguments that you wish to assert in support of disclosure.

www.hud.gov espanol.hud.gov

The envelope containing your appeal should be clearly identified and prominently marked as a "Freedom of Information Act Appeal" and it should be addressed to the Assistant General Counsel for Procurement and Administrative Law, Room 10176, 451 Seventh Street, SW, Washington, D.C., 20410.

If you have any questions about this matter, please contact Kim Cuscuna, Project Manager of my staff at (617) 994-8527.

Sincerely,


Kristine G. Foye
Deputy Regional Director



**Statement of Ms. Michelle Norris
Senior Vice President of National Church Residences**

**Testifying on behalf of
The American Association of Homes and Services for the Aging**

**Subcommittee on Housing and Community Opportunity
“H.R. 4868, Housing Preservation and Tenant Protection Act of 2010”**

Introduction

Good morning Chairwoman Waters, Ranking Member Capito and members of the Subcommittee. My name is Michelle Norris and I am pleased to be here to today, representing the American Association of Homes and Services for the Aging. The members of the American Association of Homes and Services for the Aging (www.aahsa.org) serve as many as two million people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our 5,700 members offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities, and nursing homes. More than a third of our membership is housing members which is the fastest growing segment of our membership; and most of them are assisted housing providers. AAHSA's commitment is to create the future of aging services through quality people can trust.

I am also the Senior Vice-President for Development and Acquisitions of National Church Residences (NCR) where I have worked for 16 years. National Church Residences, a Columbus, Ohio-based non-profit organization, was founded in 1961 and is one of the largest developers of

**American Association of Homes and Services for the Aging
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affordable senior housing in the United States. NCR is also a founding member of Stewards of Affordable Housing for the Future (SAHF), an organization comprised of nine national non profit housing providers, seven of which are members of AAHSA as well, dedicated to the preservation of existing affordable housing communities. I am also the immediate past president of NAHMA.

NCR owns and/or manages over 20,000 affordable senior and family housing units in 300 properties in 27 states and Puerto Rico. Our portfolio is diverse in the financing programs we use and the populations we serve, including supportive housing for the homeless, assisted living communities, and five health care facilities in Ohio. NCR continues to be an active developer doing both new construction and preservation of affordable housing. NCR's portfolio of Section 202s include many located in districts represented by the members of this subcommittee and the original cosponsors of H.R. 4868. Finally, NCR is headquartered in Ms. Kilroy's district in Columbus, Ohio.

On behalf of AAHSA, NCR, my staff and the residents and families we serve, I would like to thank you for holding a hearing on this important issue. I especially would like to thank Chairman Frank and the original co sponsors for introducing this legislation and for including the provisions of the Section 202 Supportive Housing for the Elderly reform legislation in Title VII of this bill. This legislation is sorely needed if affordable senior housing is to survive into the future. Though I am aware that some of our industry colleagues have concerns about several sections in the bill, I will respectfully defer to them to address these concerns in detail.



Overview of Elderly Housing Crisis

Our nation's affordable housing crisis is particularly acute among the elderly living on low or moderate incomes. In 2006, AARP released an update of its Section 202 study and found that, on average, there were ten seniors waiting for each Section 202 unit that became available. AAHSA believes that there are six major contributing factors to the elderly-housing crisis:

- the unnecessary loss of federally subsidized housing units,
- the extremely limited number of new affordable housing units built,
- an elderly population boom,
- a national policy that has favored vouchers instead of production as the solution to the affordable housing crisis,
- escalating operating costs, and
- a lack of predictability for social services funding.

Despite the estimates of the Congressionally mandated *Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century* that we will need an additional 730,000 units of assisted housing in 2020, the Section 202 program has been flat funded, for most of the last eight years, building fewer and fewer units each year. In fact in the year 2008, the 202 grants awarded will produce only 3500 units for the entire country, an average of 70 units per state. This year the Administration's budget proposal recommends zero funding for new capital advances although we are hopeful that the Congress will reject that proposal.

Compounding the problem of a limited number of new units produced is the loss of existing senior housing units that are being converted to market rate, or demolished to free the property for



other uses. We are absolutely losing ground. That is why H.R. 4868 is so important. For AAHSA members and for the NCR leadership team, HR4868 presents real opportunities for aging in place and making senior affordable housing the platform for the delivery of supportive services. Not only are there provisions in this bill which will make it easier and more efficient to refinance and preserve Section 202 properties, but there are provisions that will address the next preservation crisis of maturing mortgages and will apply the new authorities for the 202 refinancings to other affordable housing properties.

As you requested, I will focus my testimony mostly on the issues of how HR 4868 will address the challenges of preservation, refinancing and recapitalizing the older assisted housing stock and prevent the displacement of assisted housing residents with special emphasis on supportive housing for the elderly and housing and supportive services so critical to aging in place.

Title VII of HR 4868 includes in its entirety the Section 202 reform legislation. (Its counterpart in the Senate is S. 118.) This legislation will further the preservation of senior housing, one of the most important federal housing policies Congress can endorse and facilitate. Preservation of existing housing can be done at a fraction of the cost of new construction and it helps retain the best HUD properties in prime locations with access to transportation and services. We are encouraged that the current Administration is focused and committed to a national policy of preservation. Secretary Donovan stated at a June hearing on preservation before this Committee that “HUD needs to be a leader and a partner in preserving critical housing resources. Too often it seems that HUD policies and practices get in the way of preservation efforts instead of supporting



them. That is going to change.” HR 4868 will equip HUD with many new tools and clear authority to preserve affordable senior housing.

It is a fact that many elderly housing facilities have “aged” and need modernization and/or retrofitting in order to accommodate supportive services to aging residents, update the aging building systems, increase environmentally friendly features and address handicap accessibility. These projects could be preserved for an additional 30 years with the infusion of private dollars far less than the cost of new construction. In addition, if these facilities are allowed to disappear, it is unlikely that many communities will support large scale affordable housing of the size that currently exists in the Section 202 portfolio. We estimate that new construction costs in our 202 portfolio are approximately \$100,000 per unit, yet NCR’s preservation projects only need \$45,000 per unit in renovation. When we acquire a property and rehab that property, instead of allowing an owner to “opt out”, the total preservation cost can be approximately \$70,000 compared to \$100,000 per unit for new construction.

Attracting the private capital necessary to do such extensive work is often blocked or unnecessarily complicated due to the current 202 refinancing policies. Unfortunately, over the last 5-10 years, there have been many situations where the preservation of properties was made difficult or impossible by HUD’s out-of-date and contradictory regulations, processing delays and absence of clear policy at both the local offices and at headquarters. This legislation along with the new leadership we have seen at HUD to ease this confusion and lack of direction.

The provisions in Title VII are essential to the successful preservation of existing housing. To many, these changes appear very detailed and technical. Yet I can assure you that each of these

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can be critical to the success (or failure) of real preservation efforts. The changes will go a long way towards navigating the various legal and regulatory requirements involved in today's preservation transactions. Although many of the provisions simply require HUD to do what it already has the discretion to do, this legislation would ensure HUD will be increasingly proactive about such efforts. Though the current HUD administration is increasingly focused on the value of preservation, this legislative authority guarantees that the policies will survive any change in administrations. Indeed, this bill will definitely equip and encourage HUD to take the active leadership that it must take in order to preserve the nation's irreplaceable senior housing stock. Please allow me to use the rest of this testimony to highlight some of the very specific improvements that are created by HR 4868 in preserving the 202 stock and other senior housing, protecting seniors from displacement, and in promoting aging in place strategies.

Use of Unexpended Amounts to Provide Equity

Christian Church Homes of Northern California, another AAHSA member, has attempted to purchase troubled 202 and 236 properties from other not-for-profit, single asset owners that were no longer interested in pursuing affordable housing. HUD denied their requests to purchase the properties at a price above the outstanding indebtedness, thus denying the selling not-for-profit any equity, which they planned to use to further their mission. I can personally confirm that NCR has had very similar experiences in other areas of the country. Though there may need to be appropriate limitations on the amount of equity permitted and on how that equity may be expended, without the ability to pay some equity, these owners can simply wait out the terms of their mortgages and these properties may not be preserved. I am aware of many situations where



paying a seller any price above the existing debt may make the preservation less feasible, but where the payment of some equity is feasible, it should be permitted. HR 4868 addresses the issue of appropriate equity payments. We understand that HUD is already working on a policy that will address this issue; however it is important to include legislative authority so that future administrations cannot renege on the policy.

The Senior Preservation Rental Contract

Another complication in the efforts to preserve communities is unique to the oldest cohort of Section 202 properties. These projects, built between 1969 and 1974 are often the most in need of substantial rehabilitation in order to be preserved for another 30 – 40 years. Unfortunately any attempt to refinance these projects and do the necessary work means that the existing residents, who are paying rent amounts that often are far below market, will face rent increases that they cannot afford after any refinancing and rehabilitation. There often is no rental assistance available to ease the burden and prevent displacement. Preservation entities are faced with a decision to either evict those least able to pay or to not do the necessary rehabilitation to the property. Neither of these options is an acceptable answer for our nation!

The creation of a senior preservation rental contract would permit owners to actively preserve properties while protecting the homes of existing and future low-income seniors. To give you an idea of the magnitude of this exposure, there were 292 properties built during this period comprising 45,000 to 50,000 units. While some have full or partial Section 8 or Rent Supplement Assistance, most do not. Section 725 of HR 4868 would establish a new project based rental



assistance contract for unassisted residents upon refinancing. I would respectfully request that this provision be made retroactive to address the very few projects from this generation of 202s that have been refinanced to date. The impact of not having rental assistance is devastating as is described in one of our Ohio case studies, Kirby Manor, attached to this testimony.

We are delighted that this legislation extends in section 104 this new project based assistance to other affordable housing properties that have been partially subsidized or where there are preservation transactions where heretofore only enhanced vouchers would have been available. Where seniors reside this is particularly important so that affordable housing units are preserved for the long term rather than simply protecting current tenants from displacement if there are enhanced vouchers available.

Use of Excess Proceeds

HR 4868 also addresses the issue of the use of excess proceeds in a 202 preservation transaction. . . . As an example, NCR had three Section 202 properties in California which we refinanced and rehabilitated. We'd requested permission to use the \$2 million in excess proceeds to create a housing trust fund for new development. HUD denied this request and required NCR to put the funds into each project's reserves for replacement, which were already fully funded. This essentially locked the funds into each individual project instead of allowing the funds to be distributed (within HUD approved parameters) "as needed" across a portfolio of affordable projects. Others can give more graphic examples of the flawed HUD policy that requires the



passage of legislation to permit not-for-profit sponsors to use excess proceeds to further their housing and supportive services mission. HR 4868 will correct HUD's policy.

The use of excess proceeds is the authority in the bill which will have the most direct impact on the ability of senior housing providers to preserve housing for seniors so that they can age in place. The excess proceeds can be used to provide amenities, design features and enhancements in both seniors' apartments and in the community space that otherwise might not be funded. The excess proceeds can also be used to establish escrows and funds that will provide seed capital to establish service programs or provide subsidies to seniors purchasing services such as meals, housekeeping, or chore services from third party providers.

We are delighted that in the clarification of prepayments under Section 250 of the National Housing Act, the authority which permits the prepayment of mortgages for non profit owners, the definition of the use of proceeds of the refinancing includes "affordable housing and related social services under a plan approved by the Secretary." Such authority will enable providers to facilitate aging in place and to invest in new affordable housing for seniors.

Waiver of Flexible Subsidy Loan Repayment

In April, 2006, NCR acquired a property in Asheville, NC in order to preserve the property as affordable. The property had an existing flexible subsidy loan, which could not be paid off as part of the refinancing and financial restructuring. NCR requested consideration that would allow the loan to be assumed into the new ownership. It took HUD almost eight months to inform us that they would only allow 75% of "flex sub" loan to be assumed and required 25% of the loan to be



paid off. NCR applied for, and was awarded, state HOME funds – which was then used to pay off the required amount of the flexible subsidy loan. Essentially, NCR used local HOME funds to pay down the flex sub loan in lieu of using the HOME funds to do more rehab. There are countless other examples of HUD’s refusal to permit forgiveness of flexible subsidy loans that make preservation deals unworkable. Section 725 of HR 4868 will correct this HUD policy that inhibits preservation.

We also are pleased that the authority to waive or assign flexible subsidy loans has been extended to other assisted housing preservation transactions at Section 110 of HR 4868.

Other Preservation Provisions

There are also a number of other provisions not directly related to Section 202 refinancings on which I would like to comment:

- Sec. 101. We have a number of members with rent supplement and RAP contracts that are close to expiration and who did not convert in the 80s; so this new opportunity is welcome.
- Sec. 102. The maturation of mortgages particularly in the Section 202 program is the next preservation crisis; so we are pleased that Section 102 offers grants and loans for purchase or rehabilitation of properties whose use restrictions will terminate within a 10 year period. It is a proactive way to encourage the preservation of these properties that may not need substantial rehabilitation or whose owners do not want to refinance the property. By 2013 at least 40 Section 202s will have mortgages that will mature, most without rental assistance. The number of similar properties will accelerate after 2013. This provision



will provide incentives for preservation rather than encouragement to convert to market rate properties once the mortgages mature.

- Sec 106. We welcome the preservation exchange program. For organizations like NCR whose primary business is preservation of affordable housing, this is an exciting opportunity.
- Sec.107. Like many of our industry colleagues, we are concerned about the Federal Right of First Refusal. Although the provision is intended to be a further tool for preservation and regardless of the buyer, the seller will receive fair market value or the original buyer's offer will be matched, we believe that the complicated process and the time frames in any sale may actually undermine the sale and in the long run preservation.
- Sec. 111. The use of residual receipts in preservation transactions is another important source of funding; so we welcome the clarity this section provides. We understand that HUD is considering new guidance with respect to residual receipts, but the statutory clarity ensures that future administrations will provide the same policy.
- Sec. 204 Like other sections this section that addresses the use of after rehabilitation rents puts into the law policies that HUD already has implemented; however, it is important to legislate this policy so that there will be no confusion under future administrations.

Assisted Living Conversion Program

HR 4868 also addresses the Assisted Living Conversion Program in Subtitle C of Title VII; it's a different type of preservation that will ensure that seniors have the health and other supportive services they need to age in place. Affordable assisted living is an option almost completely unavailable for low and very low-income seniors. Assisted living costs range from \$1,742 to



\$5,197 per month in the United States with the average assisted living resident paying \$2,968 per month.¹ To meet the needs of the very low income frail elderly, the Section 202 program includes an Assisted Living Conversion Program (ALCP) to fund the rehabilitation of existing properties to serve frail seniors that need assisted living services. NCR has been awarded three ALCP grants in Ohio over the last couple of years. In 2009, we officially re-opened our first community using this grant. This was also the first affordable assisted living community in the ENTIRE state of Ohio. We are honored to have brought the top leadership of HUD Ohio and the top leadership of the Ohio Dept of Aging together for the first time. We are dedicated to implementing each of the projects; however, we also know from hands-on experience that these are more complicated and expensive than necessary. Once again, this legislation encourages modifications that will allow more efficient use of these funds in order to encourage more creative solutions that deliver results!

As an example, although HUD does not provide funding for direct services or licensure, by law the current ALCP program is only open to those buildings able to become licensed under their state's assisted living statute. This requirement can be extremely expensive to comply with and has left the program underutilized. It almost guarantees that the only states where ALCP grants will work are those with Medicaid waiver programs. In addition, it locks all the residents into services that are required as part of the assisted living license. To encourage less costly and more "flexible housing plus services" models, Sec. 731 amends the definition of eligible assisted living under the Assisted Living Conversion Program. The amended definition will permit non licensed

¹ MetLife, "Market Survey of Assisted Living Costs 2005"



properties as eligible grantees that provide supportive services of the resident’s choice either directly or through a licensed or certified third party. I believe that this legislation will increase the availability of assisted living-like services to very low-income elderly so that they can age in place with dignity; and that HR 4868 will allow more facilities to convert to a model that allows higher level of care with higher resident satisfaction at lower cost to the government.

New Development

Subtitle A of Title VII also addresses reforms to the capital advance program which are particularly relevant not to preservation, but to the Administration’s budget proposal for the 202 program. The Administration has stated that the capital advance program needs to be more efficient and targeted to justify new capital advance funding. Although many of the Administration’s reform proposals can be accomplished administratively, if there are statutory reforms that are identified as necessary to reform the program, this legislation could provide a vehicle. So I would like to highlight two reforms in particular.

Service Coordination

In addition to providing sufficient PRAC to cover service coordination, HR 4868 will establish non monetary incentives for employing a service coordinator. The 202 program is called the “Supportive Housing Program for the Elderly”, but the selection criteria have never included the extent to which the applicant ensures that there will be a service coordinator for the property. Section 712 of will add service coordination as a selection criterion. NCR believes each property should have a service coordinator so that the seniors can learn about and link to community based



supportive services which will assist seniors to remain independent for as long as possible and to age in place.

Non Metro Allocation

Currently, under the Section 202 program, 15% of the 202 funds are set aside for non metropolitan allocations by statute. HUD currently provides each field office with a minimum of five units in non-metropolitan areas. Increasingly fewer units are available to each office due to flat program funding in addition to escalating construction costs. Non-metropolitan allocations often go unused due to insufficient funding to build in rural areas, lack of developer interest in building such small developments, lack of demand in the locality, or difficulty in economically providing services. In Section 717, the legislation provides that the non metro allocation should be a national or regional competition.

Conclusion

The need for affordable, supportive, senior housing development and preservation is undeniable and urgent. I am grateful to have an opportunity to appear before the subcommittee in support of HR 4868. AAHSA members and my colleagues at NCR have been actively involved in these issues throughout the country and have testified before this and other committees on the very problems that I discussed today. We are thrilled that Congress believes that these topics warrant a national policy discussion. Today you will have a chance to take a positive step in the furtherance of a goal and mission that we all support. I urge you to advance HR 4868 in order to increase the further the efficiency and effectiveness of the preservation of Section 202 properties and to help the residents that the program serves today and those it will serve in the future age in place.



For your consideration, I have attached two case studies which serve as the poster children for Title VII of this legislation. I am pleased to report that many of the problems from these case studies are addressed in HR 4868. In addition, I am including a listing of all the preservation projects that NCR has completed or is in the process of completing since 2002.



A Preservation Case Study: Kirby Manor in Cleveland, Ohio

Kirby Manor, is a pre-1974 Section 202 development with no rental subsidy. None of the existing seniors were eligible for enhanced vouchers. The rehab needs were substantial, but the residents could not afford to pay for the increased rent that additional debt would trigger. None could bear the burden of higher rents; none wanted to move; and as a mission-oriented purchaser, NCR did not want to displace the residents. NCR's experience with the preservation of this project is illustrative of the typical issues that developers experience. Our goal at Kirby Manor was to preserve the property and keep residents in place. Our plan was to refinance the project using tax credits, reconfigure the existing efficiencies, converting them into one bedroom units and to construct additional units. Most of the 202 units were efficiencies of 287 square feet, a portion were studios of 345 square feet and the remaining were small one-bedrooms of 439 square feet. The project as it stood was unattractive and unmarketable as compared with the West Cleveland neighborhood where new, subsidized, more desirable housing had been built for a younger population. Although the sponsor and owner of the project had maintained the project in excellent condition, all of the building's original plumbing, mechanical and HVAC systems were nearing the end of their life expectancy. Only a significant recapitalization would provide sufficient resources to preserve the property.

NCR submitted a waiver request to HUD to request the subordination of the existing Section 202 loan and received an allocation of 9% tax credits which provided approximately \$8,400,000 in equity. In addition, Kirby received a commitment of \$1,000,000 in HOME funds from the City of



Cleveland; and, a commitment of \$450,000 from the Ohio Housing Finance Agency as subordinated debt. The new first mortgage was a HUD 221(d)(4) insured loan of \$4.467 million at 6.5% interest. Because enhanced vouchers were not available to these residents, NCR funded a \$1,000,000 reserve from the equity generated in the refinancing to cover the increased rents for seniors as long as they remained. Once those residents pass away or leave there will be no deeply targeted subsidy to allow us to house the lowest income seniors. The rents will revert to tax credit levels and the poor seniors in that community will end up on a waiting list for Section 202/8 or Section 202 PRAC communities. If there were a senior preservation rental assistance program, NCR would be able to house other low-income seniors in those units.

The project redesign included the reduction of the number of units from 202 to 147 units and the conversion of units from efficiencies and one-bedroom units into renovated and newly constructed one- and two-bedroom units. After countless hours of negotiations, legal opinions and waivers, this project was completed. If the statutory changes included in S. 118 were enacted, then projects like Kirby Manor could be accomplished comparatively quickly and with little aggravation. Kirby Manor would be the norm instead of one in a hundred, and preservation of the Section 202 would be enhanced to prevent the loss of affordable housing just as the senior population is exploding.

A Preservation Case Study: Viewpoint Apartments, Sandusky, OH

Viewpoint Apartments is another early generation Section 202 property in Sandusky, Ohio, that NCR tackled. It had been developed and owned by the Kiwanis. The property had a number of



efficiencies that were no longer marketable and thus experiencing a high vacancy rate. The project was only 50% subsidized and the rest of the units were unsubsidized and ineligible for enhanced vouchers. NCR applied for permission to reconfigure the existing units, changing them into one bedrooms and requested HUD's permission to subordinate the original 202 loan. HUD initially determined that rather than allow the reconfiguration they'd disallow the change under a strict "one for one" replacement policy in spite of the proven limited demand for efficiencies in the Ohio market. HUD also denied our request to subordinate the existing 202 loan or to allow the assumption of the old loan into the new financing structure. The good news is that after months of painful HUD processing, NCR was able to eventually close on the refinancing and provide a \$7,000,000 update and facility transformation to this valuable Sandusky community. However, NCR truly believes that it should not be this hard and that HUD should serve as a proactive partner trying to do whatever it takes to preserve these precious community assets. These are extraordinarily complex transactions, but we're hopeful that with this legislation and the leadership at HUD, the next ones will not be as difficult.



National Church Residences Preservation

Preservation Efforts Since 2002

Total Number of Units: 3205

| State | Name | City | Number of Units |
|-------|--------------------------|--------------|-----------------|
| AZ | Memorial Towers | Phoenix | 153 |
| GA | Baptist Tower | Atlanta | 300 |
| GA | Lakewood Christian Manor | Atlanta | 250 |
| GA | Trinity Tower | Atlanta | 240 |
| MI | Madison Tower | Detroit | 170 |
| MI | Romulus Tower | Detroit | 126 |
| MI | Solberg Tower | Detroit | 170 |
| MI | Wayne Tower | Detroit | 154 |
| MN | Prairie View | Long Prairie | 47 |
| MO | Roosevelt Apartments | St. Louis | 154 |
| NC | Battery Park Apartments | Asheville | 122 |
| NC | Clinton Crossing | Clinton | 32 |
| NC | Cotton Street Commons | Monroe | 72 |
| NC | Gregg Court Apartments | Rocky Mt | 72 |
| NC | Midland Commons | Charlotte | 60 |
| NC | Vanderbilt Apartments | Asheville | 123 |
| NJ | Alexian Manor | Elizabeth | 75 |
| OH | Bristol Court | Waverly | 82 |
| OH | Harborview Apartments | Sandusky | 100 |
| OH | Kirby Manor | Cleveland | 147 |
| OH | Viewpoint Apartments | Sandusky | 117 |
| WI | Lakeside Villas I | Milwaukee | 151 |
| WI | Lakeside Villas II | Milwaukee | 206 |
| WI | Maplewood Commons | Fond du Lac | 82 |

NCR Portfolio Preservation

Total Number of Units: 1231

| State | Name | City | Number of Units |
|-------|-------------------|-------------|-----------------|
| CA | Cypress Sunrise | Los Angeles | 75 |
| CA | Clara Park | Los Angeles | 50 |
| CA | Summerfield Plaza | Sacramento | 40 |
| CA | Wysong Plaza | Los Angeles | 95 |

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| | | | |
|----|---------------------------|--------------|-----|
| FL | Fair Havens Village | Sebring | 80 |
| FL | Franklin House | Eustis | 46 |
| FL | Grove City Manor | Grove City | 101 |
| FL | Palm Springs Villa | Hialeah | 53 |
| FL | PSI Mandarin Center | Jacksonville | 80 |
| IN | Rosewood Terrace | Richmond | 57 |
| MD | New Towne Village | Leonardtown | 36 |
| OH | Trinity Manor | Middletown | 90 |
| OH | Meadowview Apartments | Mt. Sterling | 40 |
| PA | Neshannock Woods | New Castle | 81 |
| PR | Santiago Fajardo | Fajardo | 60 |
| PR | Villa Esperanza | Carolina | 100 |
| PR | Villa Providencia | Guaynabo | 75 |
| WI | Courtyard at Willow Woods | Tomah | 72 |

Future Preservation

Total Number of Units: 341

| State | Name | City | Number of Units |
|-------|------------------|--------------|-----------------|
| MI | Clark East | Detroit | 200 |
| MI | Madison Manor | Detroit | 81 |
| MO | Friendship Manor | Blue Springs | 60 |

Total Number of Preservation Units: 4777



Council for Affordable and Rural Housing

Serving the Affordable Housing Needs of Rural America

**TESTIMONY OF WILLIAM C. SHUMAKER
ON BEHALF OF THE
COUNCIL FOR AFFORDABLE AND RURAL HOUSING
BEFORE THE SUBCOMMITTEE ON HOUSING AND COMMUNITY
DEVELOPMENT, HOUSE COMMITTEE ON FINANCIAL SERVICES**

H.R. 4868, HOUSING PRESERVATION AND TENANT PROTECTION ACT OF 2010

March 24, 2010

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Madam Chairman and members of the Subcommittee, I am Bill Shumaker, the President of the Council for Affordable and Rural Housing. I am also Vice President of Provident Management, a full service real estate company that develops, owns and manages close to 80 affordable housing complexes with over 2000 units throughout Ohio and West Virginia.

I want to thank you and the Committee for the opportunity today to address issues surrounding federal rural housing programs, rural housing opportunities, and rural housing legislation under discussion. We appreciate your efforts, Chairman Frank's efforts and the efforts of the co-sponsors and the Committee for the introduction of H.R.4868, Housing Preservation and Tenant Protection Act of 2010. We believe that many of its provisions will help address issues faced by rural affordable housing providers. We believe several provisions could be made more effective, and we share general concerns voiced by other housing advocates.

CARH members house hundreds of thousands of low-income, elderly and disabled residents in rural America. CARH has sought to promote the development and preservation of affordable rural housing throughout its 30 year history as the association of for-profit, non-profit and public agencies that build, own, manage and invest in rural affordable housing.

The condition of our nation's housing stock, in general, has improved over the last thirty years, but affordability of that stock is a growing problem. In rural areas throughout the country, there continues to be an overwhelming need for both affordable and decent housing. The need for rental housing is even more acute. With lower median incomes and higher poverty rates than homeowners, many renters are simply unable to find decent housing that is also affordable. While the demand for rental housing in rural areas remains high, the supply, particularly of new RURAL housing, has decreased. This is in large part due to a reduction in federal housing assistance. Neither the private nor the public sector can produce affordable rural housing independently of the other. **It has been and should be a partnership.**

As any property ages, it requires more attention and periodic rehabilitation. Building systems begin to fail and need replacing at or after the fifteenth anniversary from construction or substantial rehabilitation. In some cases this has already begun to happen as the United States Department of Agriculture's (USDA's) Rural Development (RD) Section 515 rural multifamily housing and Section 514 farm labor multifamily properties are typically 30 years old and the vast majority have not been rehabilitated. These properties have suffered from federal funding shortages and statutory and regulatory barriers that exist and make preservation difficult. The portfolio is more exposed today due to the economic conditions that permeated this country in the later part of 2008. The portfolio for many years has relied on the Low Income Housing Tax Credit (LIHTC) program. Lack of investors in the LIHTC, particularly in rural housing has put this important segment of the affordable housing market even more at risk.

The Section 514 and 515 Programs, funded by private capital and government under Section 514 and 515 of the Housing Act of 1949, operates through a successful

public-private partnership. The 514 and 515 portfolio consists of 15,977 apartment complexes containing 452,610 unitsⁱ, and comprises 50% or more of subsidized properties outside of many metropolitan counties and 9% inside metropolitan areas.ⁱⁱ

Past studies conclude that there are nearly 14 million families and elderly persons with critical housing needs, a significant proportion of which are rural residents.ⁱⁱⁱ The burden of this need falls disproportionately on non-metropolitan areas.^{iv} Consequently, federal housing programs must address non-metropolitan and rural housing needs more effectively. Any failure to do so will exclude a significant number of Americans from our national economy. Unfortunately, prior gains in addressing these housing needs through the Section 515 program are eroding, due in large part to an overall shrinking of the rental housing supply.

Funding shortages and regulatory barriers threaten the ability to operate, maintain and rehabilitate older buildings. Real estate of all types is periodically updated and rehabilitated as an essential and typical part of property operation and maintenance.^v This is especially true of the subject multifamily and seniors housing apartment complexes, which are in constant use, and which successfully provide homes to hundreds of thousands Americans.

In 2002, RD, through its Housing and Community Facilities agency, estimated that 4,250 Section 515 properties with 85,000 units “will physically deteriorate to the point of being unsafe or unsanitary within the next 5 years.” At that time, RD estimated it would need \$850 million to maintain just this portion of the portfolio, and that as much as \$3.2 billion will be required for portfolio-wide rehabilitation.^{vi} Little preservation progress has been made since 2002. Adjusted for inflation, the 2002 \$3.2 billion estimate is now approximately \$3.8 billion.

We believe that streamlining current procedures and creating flexibility in existing programs are the best ways to address existing properties. We categorically believe that maintaining the existing housing stock is more cost effective, and less expensive, than allowing that stock to deteriorate and be replaced with new housing. The prospect of a new housing program to replace these affordable units is highly remote; no comparable program has been created in over 30 years. Moreover, this portfolio constitutes a multi-billion dollar government investment. These properties are the government’s mortgage security, and the government has a strong interest in their continued maintenance and good repair. Most importantly, these units constitute a vital social resource by providing a decent home in which the elderly and families can live with dignity.

Prepayment and conversion to market-rate rents is not a realistic option for most of the Section 515 portfolio. Prepayment has been estimated to only reach about 3,900 of the more than 16,000 properties in the total portfolio. Only those properties have both (a) enough equity to make prepayment feasible and (b) the original right to prepay.^{vii} Congress removed the prepayment right for the pre-1989 properties and replaced it with the Emergency Low Income Housing Preservation Act of 1987 (“ELIHPA”), which, as the title suggests, was supposed to be a short term solution. The process was intended to

swap owner equity for “incentive” payments and, in the process, extend low-income restrictions. However, Congress slashed funding for incentives, and never restored owner’s prepayment rights, leaving owners remaining in the program without the ability to receive a financial return on investments in the 515 program, creating a barrier to raising new capital.

Many properties are most needed as affordable housing, and do not have an independent economic purpose. In other words, even though a property is in good condition and otherwise marketable, its available market is limited to low-income persons by economic conditions, regardless of government regulation. But for government funding sources, either through loans, tax incentives and/or guarantees, such properties would not have access to enough capital to continue fulfilling their mission. Many other properties do have a highest and best economic use as other than affordable housing, but the contractual and regulatory restrictions close off the possibility of a commercial refinancing, and again, they need access to such government funding sources. In both instances we have been able to leverage public financing with private resources. That ability to leverage is now greatly diminished. Since the fall of 2008, lending and private equity investment in affordable rural housing has virtually ceased from the fallout of the credit shortage in the wider economy. We have seen the Administration’s policies bear fruit and affordable housing providers appear to have sustained their ability to preserve housing and provide jobs through different government programs provided in last year’s stimulus legislation, the American Recovery and Reinvestment Act of 2009. Early indicators for 2010 appear to indicate re-entry of private equity sources into the market place. However, that appears to be correlated with Community Reinvestment Act (CRA) needs. This appears to be creating a recovery for urban and suburban areas, but rural areas are not seeing even this recovery, our members report. This compounds the pre-existing hurdles rural housing faces in attracting commercial financing, namely the small size, community specific focus and remoteness of rural housing..

More importantly, the recession created turmoil among residents and applicants. CARH members report a material change where residents are moving to find work or moving into Section 515 properties as a last resort after losing jobs. We are greatly concerned that some current or former residents are at a tipping point towards homelessness.

We believe that any analysis of the Section 515 portfolio and its ability to provide residents with housing is driven by the financial status of the properties themselves, and options have been declining. RD has kept rents down to artificially low levels, even for affordable housing, about half of comparative HUD programs, and created processing barriers to rent increases. Rent processing problems have also resulted in owner returns not being paid or even budgeted. The owner’s return is never assured, but when budgeted, creates a minimal compensation for their efforts and serves as prudent underwriting to provide a contingency for successful operations. Owners have also found most of the original investment basis and tax benefits taken away through the Tax Reform Act of 1986. Finally, many investors also need to sell for estate planning or other reasons. This is particularly applicable to this portfolio, which has many properties with

individuals as general partners. After 20 years or so of operations, these people seek to retire or, increasingly, pass on.

Additionally, CARH members estimate that immediate and near term modernization needs for most of the portfolio range from \$15,000 per unit to as much as \$60,000 per unit, depending on location and area of the country. For example, members in Florida estimate immediate and near term needs at \$15,866 per unit, while members in New York and Ohio estimate needs at \$30,000 to \$60,000 per unit. These needs represent costs to properties currently performing but have not had capital to replace components for 30 years.

CARH believes that a great and financial commitment is needed for affordable housing preservation. While CARH and our members understand the budget constraints facing all government programs, we cannot support further reductions in the multifamily programs at the U.S. Department of Agriculture when the impact of reductions threatens the housing for low and moderate income families throughout the country.

For instance, the Administration's Fiscal Year 2011 budget request does not request funding for what has been RD's primary preservation program during the last several years. Madam Chairman, we know that this Committee has attempted to make the Multi-Family Housing Revitalization Program (MPR) permanent since it has operated as a demonstration program through the Appropriations Committees. However, one of the reasons for the agency's justification for not requesting funding is that the program is not permanent. We recognize that Title VIII of H.R. 4868 would do just that. We do however have major concerns that the agency in its budget notes that "the most cost effective and justified repairs have been achieved." This is plainly false. In fact, the Administration's budget statement is contradicted by RD's own conclusions in proposing and supporting the MPR program each year over the past four years when the agency set its goals at restructuring over 7,000 transactions. To date, more than 8,000 applications have been submitted. However, RD only obligated 400 transactions over four years, and it is unclear as to the exact number of transactions that have actually closed. The elimination of the MPR program would essentially eliminate any organized preservation program at RD. The Administration's budget also stated that the MPR program benefits owners, which is also false. The MPR program, while a good effort that CARH supports, is far from perfect. One defect is the failure to recognize or compensate owners for their efforts. Another defect are the potential tax affects of a mortgage restructuring.

From repairing aged roofs to providing units with air conditioning, improvements made to this vital resource greatly enhances residents' lives and creates jobs all over the country.^{viii} Notwithstanding the significant cost of such rehabilitation, CARH members estimate that replacing this housing could cost five times rehabilitation, if not more. RD has advised CARH that it values this portfolio at \$11.5 billion. Without funds for needed rehabilitation and repair, these projects will not be able to maintain the required level of financial feasibility and meet resident needs. We believe that \$5 billion, or \$1 billion a year for five years is a reasonable investment to save this important housing stock in rural America.

USDA's funding commitment does not adequately reflect that MPR is RD's priority. Indeed, USDA could take advantage of credit reform rules, and has not done so. Most of the Section 515 mortgages that could be restructured under MPR were originated before credit reform. As such, RD should not need new budget authority to restructure most loans, but USDA has not allowed RD to proceed under existing budget authority.

One way we may be able to pay for a portion of the needed funds is with a new revolving loan program. We propose utilizing deposits in the Rural Housing Insurance Fund, not needed in the current fiscal year, to loan to eligible properties at the applicable federal rate of interest, currently floating around 4.5%. Half of the interest would be used to cover RD salaries and expenses to administer the program, and/or for a contractor to assist RD with asset management. The funds would be backed by a voluntary guaranty or pledge of Section 515 reserve funds from owners of participating properties. In exchange, the reserve accounts would receive the other half of the interest charged, providing additional reserves for 515 repairs. This proposal would more fully utilize the Rural Housing Insurance Fund, provide security for the Fund, and additional repair funds for Section 515 properties.

The Section 521 Rental Assistance (RA) Program is an essential component of the Section 514/515 program. RA provides deep subsidy to very low-income residents by paying the difference between 30% of a resident's income and the basic rent required to operate the property. Sixty-three percent of 515 units are subsidized with RA. The RA Program must continue to provide sufficient funds for both current levels of RA and sufficient additional RA to support increasing program costs. Also, there needs to be a "first in line" for RA and override the administrative requirement giving preference to the most rent-burdened over otherwise eligible, needy residents who have waited for a longer period. More importantly, there needs to be additional RA to remove rent overburden, the condition of tenants paying more than 30% of income in rent, without reducing project operating income. Some Section 515 projects also utilize HUD Section 8 Rental Assistance. An alternative to additional RA would be expanded Section 8 for rural properties.

RD has been reluctant to commit resources to fund identified project capital improvements necessary to provide decent, safe and sanitary housing. That historical reluctance has depressed operating budgets below current project needs and forced owners to defer needed maintenance in some cases. As this reluctance stems in large part from 1490 USC(a)(1)(C)(i), which allows RD to require budgets that do not fully fund project needs, we propose amending 1490 USC(a)(1)(C)(i) to insert "capital needs" after "utilities" to read:

"the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, capital needs and maintenance. . . ."

One quick fix to make RA more efficient is to provide 20 year contracts, subject to annual appropriations. Not only would this reduce the costs associated with reprocessing contracts on an annual basis without increased appropriations, it would also

create more reliable subsidy. This will help attract potential investors and lenders to Section 514 and 515 projects. The 20 year approach is consistent with that taken by U.S. Department of Housing and Urban Development (“HUD”) on project based Section 8 contracts, which has created greater investor and lender interest in project Section 8 projects.

The Section 538 program was enacted in 1996 as Section 538 of the Housing act of 1949 to build new affordable rural housing as well as preserve the existing Section 515 portfolio. Each year most Section 538 loans completed carried interest subsidy, which reduces the interest rate and makes low-income affordability possible. Congress’s removal of the interest subsidy has made the 538 program all but irrelevant, as it now effectively addresses only moderate income needs. CARH strongly recommends that the interest subsidy be restored.

A long neglected tool in Section 515 is 515(t), where USDA is authorized to guarantee equity loans to provide a fair return and further preservation resource for properties that are 20 years old or older. This program should be funded and implemented. It will provide owners a further incentive to remain in the 515 program and provide further resources to recapitalize properties.

Another barrier to preservation and tenant protection is an unintended one, resulting from a conflict between the tax code and market forces. Almost all Section 515 properties were constructed through limited partnership arrangements whose structure makes it exceedingly difficult to introduce new capital into these properties, either through additional capital contributions from current owners or through the transfer of such properties to new owners. Most were also created before the 1986 Tax Reform Act. Because rent restrictions limit cash flow, new capital contributions would only generate additional passive losses that cannot be utilized by current investors. Yet, if the current owners sell a property it is almost impossible to generate sufficient cash to pay off the steep recapture taxes that would be owed. The best alternative for current limited partners is to hold the investment until death, enabling their heirs to acquire the property with a stepped up basis that avoids any recapture taxes. While that is a perfectly rational decision at the partner level, it is not consistent with sound housing policy and risks imposing far higher costs on the federal government as these capital-starved properties either continue to deteriorate as affordable housing or are sold off as market rate housing as a means of generating cash on the sale to pay off exit taxes for investors.

A modest change in the tax rules must be adopted to preserve the stock of Section 515 affordable housing. This could be accomplished by waiving the depreciation recapture tax liability where investors sell their property to new owners who agree to invest new capital in the property and to preserve the property as affordable housing for another 30 years. Since very few investors subject themselves to recapture taxes today, opting instead to pass on the property to their heirs at a stepped-up basis, the cost of this proposal should be modest while the benefit to the federal government of extending the affordability restrictions will be far-reaching. This concept is embodied in H.R. 2887, the Affordable Housing Tax Relief Act of 2009.

Congress should extend the Section 1602 Low Income Housing Tax Credit (LIHTC) exchange program as established in the American Recovery and Reinvestment Act of 2009 through 2010. It appears that Congress has endorsed this proposal in that, H.R. 4213 the American Workers State and Business Relief Act or "Tax Extenders Act of 2009" as passed by both the House and Senate and awaiting conference, would give a one year extension. Congress should also modify it to include four percent LIHTCs for multifamily housing tax-exempt bonds. This will allow some 515 properties to apply for needed resources. While rural properties must have specialized financial tools that will address rural needs, some rural properties will also benefit from a general, active affordable housing financing program.

Extending the current LIHTC carryback period from one year to five years will stimulate investment interest in LIHTCs in general. In the short term, LIHTC investors should be permitted to carryback for up to five years LIHTCs from their 2008-2010 income tax returns, but only to the extent they immediately reinvest LIHTC amounts carried back in new affordable rental housing. The alternative minimum tax relief provided under the Housing and Economic Recovery Act of 2008 ("HERA") should be extended to LIHTCs carried back.

The Federal Internal Revenue Code restricts potential LIHTC investors through passive loss limitations, limiting the ability of associations that are not real estate professionals from investing. LIHTCs should be available to S Corporations, Limited Liability Companies, and closely-held C Corporations to the same degree LIHTCs are currently available to widely held C Corporations, to offset revenue with LIHTCs that would otherwise be taxable when passed through to the owners of these businesses. To ensure high standards of oversight, such entities should have at least \$10 million in annual gross receipts, be formed for reasons other than just avoidance of Federal income tax, and have an expectation of reasonable asset management. This proposal is aimed at accessing substantial investment capital available from sophisticated financial institutions and businesses that happen not to be widely-held Schedule C corporations. Indeed, this change would allow the 1,954 commercial banks and 55 savings institutions to invest in low-income housing tax credits in the communities in which they operate.

Congress should also permit taxpayers to carryback LIHTCs claimed after 2008, generated by new developments up to five years during the ten-year period that LIHTCs are generally taken. This will enable new investors to participate where they might otherwise be uncertain if they will have ten straight years of positive taxable income.

As noted above, we appreciate introduction of H.R.4868 and Title VIII of the legislation. As you know, this title follows several other house bills introduced in previous Congresses. We believe this title is a better means for preservation than previous bills. However, we continue to be concerned over a couple of items:

Title VIII requires a 30 year capital needs assessment, but provides no funding for this requirement. Real estate industry standard are to project capital needs over 10 to 20 years, and the longer term requires more up front budgeting and escrowing, raising costs above market when the program operates with below-market resources. This provision

should be changed to remove the 30 year requirement and require a commercially reasonable capital needs assessment. Thirty years is beyond any reasonable real estate standard, and will doom Title VIII to failure because it will require resources beyond anything that a 515 property could be expected to finance. We also believe that owners who have exited the program under law should not be required to take a tenant voucher where that voucher does not provide for a reasonable rent at least equivalent to market rents or where the housing is being converted to for-sale housing. CARH strongly supports the additional vouchers and the ability to provide enhanced vouchers. We are concerned that there is too much complexity in the current voucher provisions and we ask that the committee review those provisions and make certain they are as administratively simple as possible.

As stated earlier, CARH supports continuation of RD's Multifamily Preservation and Revitalization (MPR) program. MPR has funded some properties, but of equal importance, are even larger number of properties owners and RD have preserved on an ad hoc basis, with just a few regulatory tools. Unfortunately, RD authority today is not enough to translate these ad hoc efforts into broader preservation and the demonstration program has not had the impact we had hoped, notwithstanding RD's substantial efforts and we believe it is for two reasons. RD needs the permanent legislation contemplated in Title VIII, and we must recognize that Title VIII will only achieve RD's goal of 7000 refinancings where 514/515 properties have access to Low Income Housing Tax Credit program, exchange and other programs.

On behalf of CARH, we again thank the Committee for this opportunity to highlight the important issue of rural housing preservation. With a few relatively minor changes Congress can provide the tools needed to continue the successful public/private partnership for affordable rural housing.

ⁱ "RHS Multifamily Inventory Shows Small Decline in Housing Projects, Units," Housing and Development Reporter, at 523 (August 31, 2009); July 14, 2009 unnumbered letter from Tammye H. Trevino, Administrator, Housing and Community Facilities Program, USDA ("July 2009 Letter").

ⁱⁱ Connecting The Dots: A Location Analysis of USDA's Section 515 Rental Housing and Other Federally Subsidized Rental Properties in Rural Areas, (May 2008).

ⁱⁱⁱ Stegman, Quercia, McCarthy "Housing America's Working Families," New Century Housing (June, 2000).

^{iv} General Accounting Office's September 2000 report entitled "Rural Housing Options for Optimizing the Federal Role in Rural Housing Development."

^v "What We Have Learned About Properties, Owners, And Tenants from the 1995 Property Owners and Managers Survey", by Howard Savage, U.S. Census Bureau. "Homeowner Remodeling Trends Affect Contractor Workloads," Housing Economics, April 1990.

^{vi} See GAO Report "Multifamily Rural Housing, Prepayment Potential And Long-Term Rehabilitation Needs For Section 515 Properties," May 10, 2002 ("2002 GAO Report"), p.3.

^{vii} 2002 GAO Report

^{viii} "The Local Impact of Multifamily Construction in a Typical Metro Area, Income, Jobs and Taxes Generated" National Association of Home Builders (June 2009). For every 100 units of rental housing, it is estimated 122 local jobs are created, with 32 recurring local jobs also created.

**Tammy Trevino
Administrator
Rural Housing Service
United States Department of Agriculture
Before the
House Committee on Financial Services
Subcommittee on Housing and Community Opportunity
March, 24, 2010**

Chairwoman Waters, Ranking Member Capito, and members of the Committee, thank you for the opportunity to appear before you to discuss multi-family housing preservation in rural America. This is a critically important issue and in broad terms we believe that the strategy outlined in the Rural Housing Preservation Act of Title VIII of the proposed legislation (H.R. 4868) is very promising. I would like to thank all those involved with this legislation, both in this session of Congress and in previous session, for your hard work. I am pleased to testify before you today on behalf of Secretary Tom Vilsack, Under Secretary Dallas Tonsager, and USDA Rural Development's Housing Programs, and look forward to working with you and the Committee to further the preservation agenda.

At USDA, we advocate a strong national housing policy that both supports the American dream of homeownership and provides affordable rental opportunities. We are greatly encouraged by the committee's focus on legislation that will create national housing preservation standards for all government agencies that specialize in housing assistance, especially in rural communities. We further believe that your goals and ours are the same in both the desire to preserve the nation's existing stock of federally assisted affordable multi-family rental housing and the protection from displacement, of low-income families, especially the elderly and disabled tenants.

For 60 years, our rural housing programs have provided invaluable support for low and very-low income families in rural areas. Key multi-family housing programs currently include the Section 514/516 Farm Labor Housing Program, the Section 515 Rural Rental Housing Direct Loan program, the Section 538 Rural Rental Housing Guaranteed Loan program and USDA's housing voucher program.

The USDA Rural Housing Service multi-family housing portfolio currently accounts for over 15,900 multi-family and farm labor housing properties financed with direct loans and grants for \$11.4 billion; and 300 multi-family guaranteed loans for \$350 million. In our direct portfolio, we house over 450,000 tenant households across the country, with an average income of \$11,000. Within our housing program participants, two of every 3 households are headed by a person who is elderly or handicapped and 1 of every 3 is a minority headed household. Seven of every 10 households participating in our housing programs are headed by a female, 99 of every 100 tenants are low or very low income, but 2 of every 10 receive no deep tenant subsidy, such as RD's rental assistance or HUD vouchers.

In the current economy, the challenges that have faced rural communities for decades have grown more acute. Recent studies show there are 386 persistent poverty counties in the US. (Defined as 20% or more of the population living in poverty over the last 30 years). Of these 386 counties, 340 (almost 90%) are considered rural counties. The same study indicates that persistent poverty and degree of rurality are also linked... the poverty

rate is the highest in the completely rural counties. So not only do rural Americans earn less than their urban counterparts, they are also more likely to live in poverty. In addition, more rural Americans are over the age of 65 and have completed fewer years of school, and more than half of America's rural counties are losing population.

Rural Development multi-family housing programs were established because sufficient access to capital and credit was not available to serve the needs of very low-income renters who wished to live and work in rural communities. The need to preserve the nation's existing stock of federally assisted affordable multi-family rental housing and the protection from displacement, of low-income families, especially the elderly and disabled tenants in rural America gave rise to the Multifamily Preservation and Revitalization Demonstration (MPR) Program that began in 2006.

MPR is in its fourth year of existence. To date, RD has obligated over 400 MPR revitalization transactions for Section 515 properties that will affect close to 14,000 tenant households. Currently, our MPR program is authorized as a demonstration program, with no permanent authority.

The lack of permanent authorization makes it difficult for the Agency to promulgate permanent program regulations and to address long term issues. By providing permanent authorization the legislation would dramatically enhance the quality of the MFH stock and protects tenants in rural America.

In rural America, low-income residents continue to be underserved especially given the current economic environment. For example, turbulence in the housing credit investment market has had some effect on rural deals in the preservation pipeline. While the vast majority of approved MPR transactions are now closed, the recent depletion of investors due to market instability has reduced equity that is available to be brought into Low Income Housing Tax Credit (LIHTC) transactions in rural areas. Half of all MPR transactions funded include transfers as part of the revitalization transaction. And because half of all MPR transactions funded have included transfers as part of the revitalization transaction, this has slowed the rate of closing for MPR transactions obligated during FY 2008 and FY 2009 that included a transfer dependent on LIHTC funding.

Passage of the bill offers tools and incentives that will keep property owners interested in staying in the program and fills the void caused by the recession through a new permanent program authority that can be used to revitalize and preserve thousands of rural rental units across the land. Each of the tools this bill proposes offers new benefits that will allow eligible sponsors to rest assured the long term goals of the program have not left them without a responsible strategy, in exchange for their commitment to keeping the units available for eligible tenants. In general, we support the principles reflected in the bill and look forward to working with Congress to improve this legislation.

At USDA Rural Housing, we are pleased with five key features in the proposed legislation:

1. It provides the Agency with a number of revitalization tools that provide cost effective preservation options for the existing MFH rental portfolio so that these projects can continue to serve their communities throughout rural America.
 - The benefits of preserving existing housing rather than financing new multi-family housing properties are clear. It is cost efficient – roughly one-third to one-quarter of the cost of new construction; It can be accomplished faster, with site and acquisition issues already solved; It presents many opportunities to upgrade existing properties' energy efficiency; and upgrades to existing rental housing properties generally are more readily accepted by the community than newproperties.
 - Moreover, MPR demonstration program indicates a tremendous interest among the ownership community in seeking a resolution to the revitalization challenge most are facing and has demonstrated that these measures lead to reduced post-transaction rents.
2. It contains enhanced voucher authority that will help protect tenants in properties that leave the program as well as ensuring long term affordability for tenants through long-term use agreements.
 - The current RD voucher program provides protection against rent increases or the tenant having to relocate as a result of prepayment or foreclosure. At the present time, in a Section 515 property where the mortgage is prepaid either by borrower action or through foreclosure, the property owner can increase rents to market rates. At the same time, by

leaving the 515 program, the property is no longer eligible for Rental Assistance.

- The voucher authority proposed in this legislation will provide our Agency with the enhanced abilities to protect more of our tenants over an extended period of time.
 - Over the last three years, more than \$13.5 million in voucher funds have been obligated and over 3,500 new and renewed vouchers have been provided to rural residents. Over 90% of voucher recipients have elected to remain in the property they have called home for a period of years.
3. It includes RD's farm labor housing programs.
- Earlier versions of the proposed legislation did not include this smaller but similar RD program. We welcome its inclusion as many of the farm labor housing properties will need the same type of help. We understand GAO will be examining the program in more detail, and we appreciate the fact that the proposed legislation will give us access to the revitalization tools.
4. It includes provisions for long-term viability planning.
- On a demonstration basis, we are conducting physical needs assessments with an emphasis on our older properties and also offer a range of financial tools that include loan restructuring and rent adjustments.
 - This approach has helped to contain growing foreclosure and default rates in these tough economic times.
5. It introduces the concept of a national database that will give us access to the information needed to track America's affordable housing stock. Specifically the

revitalization tools provided by Title VIII give us the ability to be full partners with other Agencies such as HUD, as we work together to preserve the portfolio.

In the ten months I've served as the Administrator for RD's Housing and Community Facilities programs, I've had the opportunity to travel across the Country to visit with tenants, owners, property managers and locally elected officials. I've observed the condition of our multi-family housing portfolio. I have seen the best and worst of our MFH properties. Many of our properties are 30, 40 and 50 years old and in need of revitalization. But because of the revitalization efforts, I have also seen first-hand, newly revitalized units along with the hope and appreciation that these efforts inspire in our tenants across the nation. Madam Chairwoman, I applaud this committee's efforts through this legislation to enshrine this national preservation effort.

It is my goal to assist Secretary Vilsack and President Obama in working with the Committee and our public and private partners to spur economic growth and create a lasting foundation in the heart of rural America.

Thank you for allowing me to share our Department of Agriculture perspective as you address this important issue. I am available to answer your questions now or at any time in the future.

ATTACHMENT FOLLOWS

RURAL HOUSING**QUESTION:**

Please provide information on the RHS voucher program (number of families currently receiving assistance) and any challenges faced by the agency in administering the program.

ANSWER:

Program started FY 2006
First Vouchers issued: Georgia

Total Obligated To-Date: \$18.3 million
Total Vouchers Offered Ever: 10,095
Total Vouchers Accepted Ever: 2,800 (utilization about 1/3)
Total Vouchers Now Active: 1,633
Total Landlords in Program Now: 407
Ave. No. Vouchers Obligated Per Month (FY 09): 180
Average Mo. Payment of Rural Development Vouchers (FY 09): \$274

Total Tenants Who Moved from Prepaid Property: 354

Total States Participating: 39
States Not Yet Participating: AR, CT, DE, HI, KS, MA, MS, NV, PR, RI, VT, VI, WV

The RD Voucher is designed to respond to an immediate need and provide some rent assistance support in prepayment situations while the tenant weighs his options – to remain in place, to move, or to utilize other forms of rent assistance, such as Section 8. The RD Voucher is available to all low income tenants who live in the RD property, whether or not they received RD's traditional Rental Assistance benefits. Tenants must be low income, with an income at or below 80% of median income, and must be US Citizens or legally-admitted aliens. There is no additional test for a voucher holder.

Voucher holders may use the voucher anywhere in the U.S. or its territories where a landlord will accept the voucher (except public housing or Section 8 project-based properties, where a double-subsidy would occur). Housing must also pass the RD housing inspection standards.

Although all low-income tenants in a property where the owner intends to prepay the Rural Development mortgage or where Agency action to foreclose has been initiated are offered an Rural Development Voucher, not all tenants request a Voucher: some tenants who continue to be protected under Restrictive Use Provisions required under prepayment regulations may not want the voucher; some tenants already have a HUD housing voucher, which is generally more financially beneficial; some tenants are

protected by an existing project-based HUD Section 8 housing assistance payments contract and do not want the Rural Development voucher; and, some tenants just do not request an Rural Development voucher. The Agency believes it is necessary to conduct a study to determine the reasons behind prepayment-tenant decisions.

Four years of experience with the Rural Development Voucher program have shown that about one-third of the tenants to whom a voucher is offered will request it. Two-thirds of those who request a voucher actually use it. The average amount of an offered voucher is \$272 a month; the average amount of a voucher actually used is \$264. Of the 10,000 vouchers that have been offered, about 2,800 tenants have requested a voucher. Program experience has shown that about 93 percent of voucher holders do renew their voucher.

Portability of the voucher, or the ability to use the voucher in any area of the country and in any rental situation, is a key feature of the program. Such portability would enable tenants facing stiff rent increases to move to a more favorable rental situation. However, experience has shown that only 354 tenants (12.6 percent) have moved from the prepaying property, indicating either satisfaction with living conditions in that property or a lack of other affordable housing options.

The Agency is deciding on final program design: whether to offer vouchers that continually renew or have a time limit. Cost is a factor in our decision, as is the protection of tenants who were previously Rural Development residents. We are giving this careful consideration and our decision will be part of our Voucher Report to Congress.

RURAL HOUSING

QUESTION:

Please provide information on the agency's policy with respect to acceleration when a property goes into default or foreclosure.

ANSWER:

During FY 2009, in the 16,000 property Direct Multi-Family Housing loan portfolio, the Agency issued 102 notices of serious default, sent 39 acceleration letters and initiated 21 foreclosure actions. Our actions in these cases are guided by our regulations and handbooks which outline how we address defaults and non-compliance in our portfolio. Briefly those procedures include:

When routine monitoring of projects reveals noncompliance with program requirements, the Agency takes immediate steps to notify the borrower of the need for timely corrective actions. To protect the security value of a property, it is in the Agency's best interest to work with the borrower to resolve any compliance violations.

If a borrower fails to provide an acceptable work-out agreement or fails to comply with the work-out agreement, RD initiates enforcement actions when liquidation is not in the Government's or the tenants' best interests. This might occur in cases of defaults that do not affect the health and safety of tenants and where the cost of liquidation is not in the government's best interest because it is significant relative to the violation, or where the cost of liquidation and providing adequate tenant protections is also high.

When it is in the Government's or the tenants' best interest to liquidate, or if enforcement actions have been unsuccessful, the Agency will initiate liquidation through either voluntary liquidation or foreclosure. After the Agency has properly notified the borrowers of program violations, the Agency may proceed directly to liquidation if doing so will not adversely affect tenants. Normally this is reserved for cases where the borrower has abandoned the project or a partnership has been dissolved, leaving no legal entity in place to oversee the property. Properties where serious health and safety concerns exist are the most likely to go straight to enforcement or liquidation.

When the Agency moves toward liquidation, the tenants continue to be protected with respect to rent payments: tenants do not pay more than they paid prior to the acceleration. In addition, the Agency offers tenants a Rural Development Voucher coincidental with the foreclosure sale. This enables the tenant to remain protected while the foreclosure is proceeding, and provides time for tenants to decide on their next option for affordable housing.


Housing Assistance Council

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**Statement for the Record
 of Moises Loza, Executive Director,
 Housing Assistance Council
 before the Committee on Financial Services,
 Subcommittee on Housing and Community Opportunity,
 U.S. House of Representatives
 March 24, 2010**

Thank you for the opportunity to submit testimony to the Subcommittee on the Housing Preservation and Tenant Protection Act of 2010, H.R. 4868. And thank you, Chairwoman Waters and Ranking Member Capito, for holding this hearing. The Housing Assistance Council (HAC), a national nonprofit organization established in 1971, is dedicated to improving housing conditions for low-income rural Americans. HAC provides financing, information, and other services to nonprofit, for-profit, public, and other providers of affordable rural housing. HAC's testimony focuses on the Rural Housing Preservation Act of 2010, Title VIII of H.R. 4868.

Throughout its existence, HAC has been active in efforts to preserve decent, affordable rental housing for the low-income and very low-income rural tenants who often have no other housing options. HAC convened blue ribbon task forces in 1991-1992 and, with the National Housing Law Project and with support from the John D. and Catherine T. MacArthur Foundation, in 2004-2005, to make major rural housing preservation policy recommendations. The U.S. Department of Agriculture and the MacArthur Foundation have supported HAC's Preservation Revolving Loan Fund to assist owners and purchasers with preservation efforts. HAC sponsored national rural housing preservation conferences in 2005 and 2009 and a preservation training conference in 2006, has had preservation training tracks in the biannual HAC National Rural Housing Conference from 2004 through 2008, and is currently planning a similar track for the 2010 National Rural Housing Conference. In addition, the organization has published research reports, guides for nonprofit organizations and public agencies, numerous articles, and two special issues of its quarterly magazine on the topic.

HAC thanks Chairman Frank for introducing this bill and other Members of Congress for cosponsoring it. Thanks are due also to Rep. Lincoln Davis and Rep. Geoff Davis for introducing H.R. 2876, an earlier version of the Rural Housing Preservation Act. All of these Members and their staff have consistently supported low-income rural renters and the government's investment in decent, affordable homes.

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The Rural Housing Preservation Act of 2010

The Housing Assistance Council supports Title VIII of H.R. 4868. At its July 15, 2009 hearing on H.R. 2876, the Subcommittee heard extensive information about the need for Section 515 preservation, demonstrating the importance of the significant tools this bill would provide for the ongoing efforts of the U.S. Department of Agriculture Rural Development (RD) to preserve rural rental properties in its Section 515 portfolio.

Title VIII would make permanent two demonstration programs: one to preserve and revitalize Section 515 rental housing (currently the Multi-Family Housing Preservation and Revitalization program, known as MPR), and one providing vouchers to tenants in properties that leave the Section 515 program. As noted in testimony on July 15, 2009, the MPR demonstration has proved its usefulness repeatedly over the last few years. RD's voucher program has a more mixed record.

Changes in H.R. 2876

The provisions of Title VIII differ from those of H.R. 2876 in three important ways. HAC appreciates, and strongly supports, two of them, and is disappointed in the third.

Farm Labor Housing. First, HAC supports the changes making Section 514/516 Farm Labor Housing properties eligible for USDA's preservation program. Most of the Section 514/516 buildings, like Section 515 developments, were constructed 20 or more years ago, and need renovations.

References to Section 516 are not needed in the bill, however; Section 514 is the relevant loan program. Section 516 grants (the program does not authorize loans) are made only to entities receiving Section 514 loans. That is, references to Section 514 and 515 loans would cover all properties in the USDA multifamily loan portfolio.

Similarly, as Section 805 of this bill amends Section 515, the bill should also amend Section 514 to provide for a priority for financing of new Farm Labor Housing projects where prepayments have created a shortage of affordable rental housing.

Tenants' Rights. Second, HAC supports the addition of a new Section 518 to the Housing Act of 1949, providing rights to USDA tenants equivalent to the rights of residents in U.S. Department of Housing and Urban Development housing.

Eligibility Restrictions. HAC is disappointed that Title VIII does not include Section 545(h)(3) of the preservation program that would have been created by H.R. 2876, making property owners ineligible if they participated in legal action related to prepayment, unless they contributed a portion of any damages received, up to \$100,000. HAC believes such a contribution requirement would be fair and reasonable. The federal government has assisted these properties in the form of a settlement payment, and should not be required to duplicate that payment in order to preserve the properties. Owners would not be asked to use their entire settlement; their contribution would be capped at \$100,000. The need for the revitalization program far exceeds the resources available, and these contributions would help stretch federal funds to preserve as many properties as possible to serve their intended purpose – to provide decent, affordable housing to low- and very low-income rural tenants.

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National Housing Law Project Testimony

HAC endorses the portion of the National Housing Law Project's testimony regarding Title VIII of this bill.

Preservation Revolving Loan Fund

HAC recommends adding language to Title VIII authorizing the USDA Preservation Revolving Loan Fund. This House and Senate agriculture appropriators since 2005 have included funding in their bills for this small but innovative program, but it has not been authorized and, as a result, the Administration's budget proposes no funding for it in FY 2011. As noted above, HAC and other state and national organizations have successfully used the program for relending to preserve Section 515 units.

Producing New Units

Finally, HAC observes that rural America needs not only preservation of existing decent, affordable rural rental housing units, but also production of new units. HAC encourages Members of Congress to support increased annual appropriations for the Section 515 program in the 2011 USDA spending bill.

Conclusion

The Housing Assistance Council appreciates the efforts of Congress and the Administration to address the serious issues connected with the aging rural rental housing stock. It will not be easy to meet the national housing goal, stated in the Housing Act of 1949, of providing "a decent home and a suitable living environment for every American family." Preserving the current homes of tens of thousands of low-income rural tenants, and continuing to produce new homes for others, will be important steps in that direction.



**STATEMENT OF
THE NATIONAL HOUSING LAW PROJECT
ON H.R. 4868
THE "HOUSING PRESERVATION AND TENANT PROTECTION ACT OF 2010"**

**BEFORE THE
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
OF THE
COMMITTEE ON FINANCIAL SERVICES**

U.S. HOUSE OF REPRESENTATIVES

March 24, 2010

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The National Housing Law Project is a charitable nonprofit organization providing legal and technical support for housing advocates, tenant leaders and public officials nationwide on the housing issues confronting Americans with incomes at or near the poverty level. Our support role has included legal research, advice and co-counsel regarding litigation matters; legislative and administrative advocacy and assistance with Congress, federal agencies and state and local governments; publication of our *Housing Law Bulletin* and housing law manuals; and training and technical assistance. Since our inception in 1968, our work with local housing advocates, dealing with the day to day problems and opportunities presented by implementation of affordable housing laws and programs, has informed the views we express today.

The privately owned, federally supported affordable housing stock totals almost 2.0 million units in almost 20,000 properties located throughout the urban, suburban and rural areas of our nation, providing affordable housing to more than 4 million seniors, people with disabilities and families with low and very-low incomes. These units, regulated by HUD and the USDA's Rural Housing Services under a variety of mortgage loan and rental assistance programs, represent more than one-third of our country's deeply subsidized affordable housing inventory that focuses on meeting the critical and growing needs of lower-income Americans for decent affordable housing. The vast majority of residents who call these units home have very low annual incomes, many below \$15,000. An additional two million federally supported units are provided under the Low-Income Housing Tax Credit (LIHTC) program, which provides more than \$4 billion in credits annually to develop and rehabilitate affordable units for people with incomes around 50%-60% of area median, many of which serve those with even lower incomes. These LIHTC units also face significant preservation risks from conversion or capital deterioration, like their HUD and RD counterparts that are the subject of this legislation.

The "Housing Preservation and Tenant Protection Act of 2010" ("the proposed Act") contains many important provisions intended to remedy more than 15 years of incoherent federal affordable housing preservation policy. During this period, both Congress and several Administrations acted with astonishing inconsistency, defunding programs to preserve HUD and RD properties in favor of expensive vouchers and deregulating federal preservation policies for troubled properties, while almost simultaneously enacting well-conceived programs to preserve properties with expiring Section 8 contracts. Finally, under the leadership of Secretary Donovan and many members of the Financial Services Committee, the time has come to restore the consistent tools, including both incentives and protections, necessary to reposition this essential housing resource to meet the needs of tenants and communities in the 21st century. Beyond supporting many positive reforms in the proposed Act, we remain hopeful that the Department will move forward quickly on those preservation initiatives that do not require specific additional legislative authority.

We look forward to working with the Committee staff to provide more specific suggestions on the many issues raised by H.R. 4868 as the bill moves forward.

In order to make many of these authorities effective, Congress will have to provide additional appropriations over the coming years. This Congress and the Administration have already evidenced their commitment to preservation by restoring the more than \$2 billion shortfall in project-based Section 8 funding through the American Recovery and Reinvestment Act of 2009, as well as providing seminal funds for energy retrofits to reduce energy consumption and costs, while improving tenant comfort and health. Working closely with a supportive Administration, together we must ensure that adequate funding to preserve and improve properties is requested and provided, every year. When

properly administered, the financial resources needed for preserving housing are comparable in cost to market-based tenant protection alternatives. Preservation also offers the added benefits of housing security, dedicated access and community stability.

Preserving and Improving Troubled Properties

Many affordable housing properties are at risk of loss not because of market-rate conversion, but rather because of poor performance by a small subset of owners or the lack of capital available for rehabilitation or subsidies to maintain affordable rents. Section 8 properties in poor condition are at risk of subsidy abatement and termination, and default and foreclosure of any underlying HUD-insured mortgage. The proposed Act would specifically reverse some of the neglect wrought by the “flexible authority” statute and the Deficit Reduction Act (described *infra*), reestablishing a federal responsibility to plan for and preserve federal housing assets where feasible. This is an area where improved administrative collaboration with tenants and communities can prevent some properties from falling into serious disrepair or further deteriorating, thus stabilizing both affordable homes and surrounding neighborhoods.

When privately-owned HUD-insured or assisted properties become severely deteriorated or financially mismanaged, HUD, as the responsible regulatory agency, must take corrective action, often as the actual note holder following default and assignment. In enacting the “Multifamily Housing Property Disposition Reform Act of 1994” (Pub. L. No. 103-233, codified at 12 U.S.C. §1701z-11), Congress provided HUD greater flexibility by substantially revising HUD’s statutory obligations with respect to properties being sold at foreclosure or from the HUD-owned inventory, reducing the agency’s preservation duties but still requiring some minimum standards and procedures. Starting in 1995, in large part to save budget authority, the 104th Congress provided even greater “flexible authority” (12 U.S.C. §1715z-1 la(a)) for HUD’s foreclosure and disposition activities, later adding authority to HUD to provide “up-front” repair grants from the Insurance Fund to purchasers of HUD-owned properties. In 1996, HUD revised its disposition regulations (24 C.F.R. Part 290) to implement the 1994 statute. In 2000, Congress first explicitly required renewal of Section 8 contracts at a foreclosure or disposition sale for projects primarily occupied by the elderly and disabled, unless “infeasible” (Pub. L. No. 106-377, § 233 (Oct. 27, 2000)), and renewed that mandate for several years, until it was broadened to cover all properties, regardless of occupancy, through the bi-partisan efforts of Senators Schumer and Bond. Pub. L. No. 109-115, 119 Stat. 2936, § 311 (Nov. 30, 2005) (for FY ‘06). This provision has been renewed each year, most recently for FY 2010. Pub. L. No. 111-117, div. A, § 217, 123 Stat. ____ (Dec. 16, 2009).

Also in 2000, Congress extended indefinitely HUD’s authority to make up-front grants for rehabilitation (Pub. L. No. 106-377, § 204), and later amended the “flexible authority” statute to require transfer of HUD-owned properties to state or local government where the project is unoccupied or there are more than 25% severely defective units. Pub. L. No. 106-554, App. G, §141, 114 Stat. 2763, 2763A-614-617 (Dec. 21, 2000). However, Congress also effectively blocked both up-front grants and negotiated sales by enacting the Deficit Reduction Act of 2005, Pub. L. No. 109-171, §§ 2001-2003, 120 Stat. 9 (Feb. 8, 2006), which required specific appropriations for any up-front preservation grants or for any discounted sales price for a property or loan set below fair market value.

Under current law, after default and assignment of the mortgage to HUD, HUD may work out the loan delinquency, may sell the property to a third party at foreclosure (in some cases without

equivalent affordability restrictions), may acquire the property by bidding its debt or by accepting a deed-in-lieu of foreclosure, before re-selling the property. However, in order to preserve the affordability of these properties facing foreclosure or other disposition sale, since FY 2006 Congress has required HUD to generally maintain the project-based Section 8 contracts via the Schumer Amendment.

Because HUD has sometimes avoided this requirement by terminating contracts prior to foreclosing, Congress should once again further solidify this mandate. Congress should also enact specific portions of Representative Velazquez' H.R. 44, introduced in the 110th Congress, which would repeal HUD's "flexible authority," require HUD to maintain rental assistance to buildings undergoing rehabilitation as part of a preservation transfer, and extend HUD's non-judicial foreclosure authority to local government units acquiring HUD-held mortgages. The bill includes all of these provisions, in Title IV.

Title IV of the proposed Act also includes many necessary reforms (also included in Rep. Velazquez' earlier bill) to ensure that local governments can purchase these properties and loans at prices that permit preservation of affordable housing. One provision would require HUD to include repair or rehabilitation costs in determining an appropriate sales price for HUD-owned buildings and HUD-held loans, so that preservation purchasers need not pay twice for the same thing. The bill would also remove the restriction imposed by the Deficit Reduction Act of 2005, so that HUD can determine appropriate sales prices for these assets and provide grants and loans from the insurance fund for the necessary cost of rehabilitation of these properties, without further appropriations. Yet another provision of the bill (Section 202) would promote the soundness of additional investments. Upon any sale of a HUD-supported property, purchasers must demonstrate a track record of compliance with state and local housing and health codes. While Section 219 of the 2004 HUD/VA appropriations act¹ required HUD to promulgate regulations to this effect, at least for foreclosure and disposition sales, HUD has never finalized such rules. Congress should therefore enact these provisions of the bill, also based on H.R. 44, to ensure that all buyers of both troubled *and* non-troubled properties are in compliance with housing and health codes.

Section 109 of the proposed bill would also require HUD to use all available enforcement and intervention tools, including mortgagee in possession and contract rights, to stabilize properties in distress. Agency indifference will no longer be an acceptable legal standard, regardless of the Administration in charge.

In those situations where a project is not restorable, HUD should have authority to transfer project-based assistance to a new development, as authorized by recent Appropriations Acts² and other laws (42 U.S.C. § 1437f(bb)), with appropriate protections to prevent abuse. These provisions (Section 201) must promote the workability of such transactions by broadening the definition of eligible properties, allowing partial transfers, strengthening tenant endorsement provisions, and affirming applicability of existing fair housing laws, among other things.

Finally, HUD has access to already appropriated but unused funds resulting from prepaid or terminated Section 236 interest reduction subsidies. Section 531 of the Multifamily Assisted Housing

¹ Pub. L. No. 108-199, § 219, 118 Stat. 397 (2004).

² E.g. Pub. L. No. 111-117, div. A, § 212, 123 Stat. ____ (Dec. 16, 2009).

Reform and Affordability Act of 1997 (MAHRAA)³ directed these funds to be used for rehabilitation of multifamily properties, but accumulated funds have often been rescinded. Section 203 of the bill properly mandates that HUD implement a rehabilitation program; Congress should make a corresponding appropriation of these available funds.

Creating Preservation Purchase Opportunities to Permanently Preserve Affordable Housing

Since 1995, under policies that have authorized owner choice and offered incentives when use restrictions or contracts expire or can be terminated, the nation has unnecessarily lost hundreds of thousands of affordable units. The central irony of current federal preservation policy is that, without preserving actual housing units, the federal government is still paying equivalent subsidies by supporting new higher “market rents” through the Enhanced Voucher program, 42 U.S.C. §1437f(t). This is true for both units lost through mortgage prepayment and Section 8 opt-out, at least as long as the tenants choose to remain in place.

In light of growing community needs for housing affordable to very low-income people, units facing the threat of market-rate conversion at whatever time (opt-out, prepayment, or mortgage maturity) should be preserved. Where fair incentives prove insufficient to entice sound owners to continue their participation, owners should be bought out at market value, through mandatory transfers to tenant-endorsed preservation purchasers. The only effective way to accomplish preservation where owners are unwilling is through a right to purchase, as contained in last year’s Discussion Draft of the bill, as has been required under federal law since 1988 for RD properties facing prepayment (42 U.S.C. §1472(c)), and as enacted by a few states and localities (Illinois, Rhode Island, and New York City).

In contrast to HUD preservation programs that currently provide only voluntary incentives to owners, the RD and state and local purchase opportunity laws seek to enable communities to directly determine the future use of the property. These rights can vary substantially, typically taking one of several different forms:

- a “right of first refusal,” permitting a designated purchaser to acquire title by matching another existing offer,
- a “right to make an offer,” with no obligation on the owner’s part to sell, and
- a “right to purchase,” requiring the owner to sell to a designated preservation purchaser at market value in lieu of converting the property to market-rate.

Using varying terminology, some states and localities have adopted a right of first refusal, requiring owners to provide a bona fide offer of sale to specified preservation purchasers, whenever the existing owner proposes a sale to another party. This is effectively the policy approach of Maryland, Massachusetts, San Francisco, and the District of Columbia. While these efforts represent an important recognition of the importance of preservation, they may often be easily avoided by converting the property via prepayment or nonrenewal of an expiring subsidy contract prior to any proposed sale. The proposed right of first refusal in Section 107 of the bill is similarly vulnerable to evasion.

The incentives authorized by the preservation exchange program proposed in Section 106 of the bill are also welcome, but they will not preserve properties with unwilling owners.

³ Pub. L. No. 105-65, § 531 (1997).

Only a right of purchase at market value, triggered by an owner's intention to terminate the existing subsidy or affordability arrangements, would preserve housing affordability where owners are unwilling to do so. We are gratified that Representative Gutierrez has been joined by 11 other members of the Committee in voicing support for this policy, which balances the need for fair compensation to owners with the tenants' needs for preserving the affordability of their homes. For last year's hearing on the Discussion Draft, we submitted a legal memorandum demonstrating that such a right to purchase policy meets constitutional standards. Although there is no clear precedent that such a policy would implicate the takings clause, it should be upheld because the purpose of preserving affordable housing is a valid "public use," just compensation at market value is provided, and any transfer must be completed within the applicable conversion notice period, or the owner may proceed with conversion. Courts have upheld the similar federal right to purchase policy for RD properties.⁴

Properties facing conversion are often the best of the federally supported affordable housing inventory. Decades of experience has demonstrated that preservation policies that utilize incentives and profit-motivated ownership will eventually leave some tenants and communities vulnerable to conversion risks, whenever time-limited use restrictions or rental assistance expire and the owner elects the market-rate conversion option. Breaking this cycle must be a higher priority of federal policy, as once again providing market-value incentives for limited periods of time will only postpone the problem and raise long-term costs, especially in strong markets, as properties are repeatedly revalued using market-based incentives.

Protecting State and Local Authority from Preemption Claims

Facing uncertainty concerning the federal government's preservation policies, state and local governments have often filled the void by utilizing a variety of notice, purchase opportunity and relocation laws to preserve affordable housing and protect tenants.⁵ These policies, adopted pursuant to the existing police powers of states and localities, have also included applying rent stabilization and eviction protections previously applicable to all rental housing. In many places, when these laws are enforced, owners have raised judicial claims that this long-standing state and local authority has been vitiated because it has been expressly or impliedly preempted by federal law. Because of the vagueness of preemption doctrine, federal and state courts faced with these claims have issued inconsistent rulings.

Since 2003, judicial decisions using the doctrines of express and implied preemption have threatened the authority of state and local governments to address the impacts of threatened affordable housing conversions. Regarding express preemption, notwithstanding the fact that the federal preservation law (the Low-Income Housing Preservation and Resident Homeownership Act of 1990, or "LIHPRHA") is no longer funded to provide federal incentives to preserve additional properties, as well as clear legislative history that Congress intended to build upon state and local preservation policies, the Eighth and Ninth Circuits have ruled that owners of properties that never executed a LIHPRHA preservation plan may nevertheless use LIHPRHA's express preemption provision to invalidate state and local protections prior to prepayment. The Eighth Circuit has also held that

⁴ In *Parkridge Investors v. Farmers Home Admin.*, 13 F.3d 1192 (8th Cir. 1994), the Eighth Circuit ruled that the law did not violate due process and was not an unconstitutional taking, and the Supreme Court denied review. Another federal court had earlier upheld the law against the takings challenge. *Lifgren v. Yeutter*, 767 Fed. Supp. 1473 (D.Minn. 1991).

⁵ Summaries and text of these laws have been compiled on NHLP's website at <http://nhlp.org/resourcecenter?tid=129>

Minnesota's preservation laws are invalid under the conflict preemption doctrine. Using logic that threatens any state and local preservation notice law for conversion of federally assisted properties, it refused to defer to HUD's position that LIHPRHA did not preempt state laws for non-LIHPRHA properties. A New York appellate court has relied on the Eighth Circuit's decision in ruling that New York City's Tenant Empowerment Act, which allows for preservation of affordable housing threatened by an owner's conversion to market-rate through a right to purchase at market value, is similarly impliedly preempted. Fortunately, many state and federal courts have ruled otherwise when faced with similar claims. HUD has also recently clarified that local evictions protections are not preempted for tenants with enhanced or regular vouchers.⁶

Absent a clarification, LIHPRHA's express preemption provision and unfounded application of the conflict preemption doctrine will continue to jeopardize state and local prepayment notice, purchase opportunity and tenant protection laws in twelve states (California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, Ohio, Texas, Rhode Island, and Washington) and the District of Columbia, and an additional nine cities (Denver; New York City; Chicago; Portland, Oregon; San Francisco, Sacramento and Santa Cruz, CA; Seattle, WA; and Stamford, CT). Preemption is only legitimate where the federal government is requiring preservation and footing the bill, and expressly displaces state and local authority. States and localities should otherwise retain full authority to craft preservation responses and tenant protections suited to local conditions.

To put an end to this nullification risk, Section 108 of the bill properly clarifies that LIHPRHA's preemption provision does not apply to properties that never executed a preservation plan under that program, and that other provisions of federal law do not impliedly preempt state or local authority to preserve properties or protect tenants.

Ensuring Tenant Protections When Properties Are Converted

To protect tenants facing displacement from market-rate conversions, in 1999 Congress passed unified authority requiring HUD to provide "enhanced vouchers" for all tenants facing housing conversion actions, including owner opt-outs and prepayments.⁷ Unfortunately, the law as passed and implemented by HUD fails to clearly protect tenants, as Congress intended. Two of the most common problems over the past decade have included: (1) the owner's obligation to accept the voucher and terminate the tenancy only for tenant misconduct, and (2) the PHA's authority to re-screen these previously assisted tenants.

After Congress in 2000 further clarified that tenants receiving enhanced vouchers may "elect to remain" in their units,⁸ HUD issued subregulatory guidance properly clarifying that owners must

⁶ HUD Notice PIH 2009-18 (June 22, 2009).

⁷ Pub.L. No. 106-74, §538, establishing a new Section 8(t) of the United States Housing Act, 42 U.S.C. §1437f(t).

⁸ Pub. L. No. 106-246, §2801 (July 13, 2000) (H.R. 4425, FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations) (amending Section 8(t) to state that "the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event..."). The Conference Report states that this is a clarification of law: "inserts language as proposed by the House and the Senate clarifying the intent of title V, subtitle C, section 538 of Public Law 106-74." H. Rep 106-710 (June 29, 2000).

accept the vouchers, requiring owners to so certify, and stating that this protection lasts until there is good cause to terminate the lease, not just for one year. However, this guidance has only limited applicability and is not clearly enforceable. Many owners, managers, HUD and PHA staff, and tenants, are sufficiently uncertain about the owner's duty that tenants have had to resort repeatedly to federal court litigation to remain in their homes.⁹ HUD has never issued regulations to notify the public of its policy position, including requirements to make the protection more easily enforceable by requiring its inclusion in the lease. HUD has rarely taken effective enforcement action where owners refuse to accept the vouchers or to renew them.

A related issue concerns the conditions upon the tenants' security in their homes – for what reasons can they be evicted? HUD's guidance properly state that the tenant may remain until there is cause, but HUD has issued no implementing regulations to define those grounds. Because this security does not exist in the ordinary voucher program, which is administered by the same public housing authorities, most tenants, PHAs, and owners are unaware that enhanced voucher tenants have good cause eviction protection, because it is not set forth in the lease, nor is it adequately defined. The ordinary voucher eviction rules provide insufficient protection because they do not require good cause at the end of the term of the lease, nor do they expressly limit enhanced voucher tenancy terminations to tenant misconduct.

In accord with the proposed Section 8 Voucher Reform Act (H.R. 1851) now awaiting House floor action, as well as the prior Discussion Draft, the bill should clarify the enhanced voucher statute to specifically require owners to accept the voucher and terminate the tenancy only for tenant breach of the lease. HUD should be required to issue implementing regulations, including required lease addenda.

Another gap in tenant protections concerns the current HUD policy permitting PHAs to re-screen prior project-based Section 8 or Section 236 tenants that are prospective enhanced voucher recipients because of impending conversion, as if they were brand new Section 8 applicants, under different criteria than those used to determine continued occupancy under their project-based lease. This re-screening can deny tenant protection vouchers to tenants in good standing under their lease. There is no sound reason to allow a change in the form of subsidy to trigger a reevaluation of the recipient's suitability for tenant protection assistance, when a tenant was previously assisted. Congress has appropriated funds for these tenant protection vouchers, and we believe that existing law does not allow HUD and PHAs to establish additional eligibility conditions for tenants facing housing conversion actions.¹⁰ However, HUD has so far declined to revise this policy.¹¹ To ensure that existing

⁹See, e.g., *Jeanty v. Shore Terrace Realty*, No. 03-Cv. 8669 (BSJ), 2004 WL 1794496 (S.D.N.Y. Aug. 10, 2004) (enjoining owner from refusing to accept enhanced voucher); *Estevez v. Cosmopolitan Assocs. LLC*, 2005 WL 3164146 (E.D.N.Y. Nov. 28, 2005) (enjoining evictions for nonpayment of rent based on owner's refusal to renew voucher assistance); *Feemster v. BSA Ltd. P'ship*, 471 F.Supp.2d 87 (D.D.C. 2007), *aff'd in part, rev'd in part and remanded*, 548 F.3d 1063 (D.C.Cir. 2008) (requiring acceptance of enhanced vouchers); *Barrientos v. 1801-1825 Morton, LLC*, No. CV 06-6437-ABC (FMOx) (C.D.Cal., Sept. 11 and Oct. 24, 2007), *aff'd on other grounds*, 583 F.3d 1197 (9th Cir. 2009); *Park Village Tenants Ass'n v. Mortimer Howard Trust*, No. C-09-4780-SBA (N.D.Ca. order Jan. 29, 2010).

¹⁰E.g., Section 524(d) of MAHRAA, as amended by Pub. L. No. 106-74, §531(a), 113 Stat. 1113 (Oct. 20, 1999) (HUD "shall make enhanced voucher assistance ... available on behalf of [each family residing at contract expiration]").

tenants receive protection from displacement, as proposed in SEVRA and the prior Discussion Draft, Congress must clarify that PHAs cannot apply their usual application criteria to tenants entitled to tenant protection assistance because their homes face conversion.

Preserving Housing and Protecting Tenants When Mortgages Expire

Under the leadership of Chairman Frank, since 2004 the Committee has been considering policy responses to the growing problem of mortgage maturity for hundreds of thousands of units, when the federal occupancy, rent and affordability restrictions accompanying the mortgage under the regulatory agreement expire by their own terms. The GAO issued a report on the problem in 2004, but Congress has yet to act. Mortgages were executed between the late 1960s throughout the 1970s and early 1980s, usually for 40-year terms. If not already prepaid, they will mature soon. Among these are properties that were preserved from prepayment and conversion by the Emergency Low-Income Housing Preservation Act (“ELIHPA”), enacted in 1988, but only for the remaining term of their mortgage. Others may be properties originally developed by nonprofits, which were subject to a use restriction for the full mortgage term, in contrast to those owned by for-profit or limited dividend sponsors that usually had only a 20-year lock-in. Still others have never consummated prepayment, even if eligible, either due to weak market conditions or owner decisions or paralysis. Unfortunately, for some properties, mortgage maturity dates have already arrived, with no protections for the tenants or preserving housing affordability.

Section 102 of the bill would authorize HUD to offer preservation incentives to preserve and improve properties where owners want to extend their participation in affordable housing programs, or are willing to sell to a preservation purchaser that would commit to a long-term use restriction. Significantly, wherever an owner extends or sells under a preservation plan, the bill authorizes additional project-based Section 8 rental assistance, where needed to cover rent increases for currently unassisted residents of a HUD-supported property. Where owners are unwilling to extend their participation, and instead seek to convert to market-rate, the bill would authorize enhanced vouchers for tenants, which owners must accept so that tenants can remain in their homes. Although these are all positive steps, further refinements may be necessary to harmonize these provisions with other sections of the bill or to ensure that additional investments or tenant protections operate as intended. In addition, because tenants are now being harmed by these expirations, Congress should adopt some version of these tenant protections sooner, through another legislative vehicle, since final enactment of this bill within a few months is unlikely.

Preserving and Improving Rural Development Properties and Protecting Tenants

The National Housing Law Project heartily endorses Title VIII of H.R. 4868 which will make permanent the nearly four year old demonstration programs to revitalize and preserve the Section 514 and 515 housing stock and protect residents of those developments, as well as those that are prepaid, through the extension of Rental or Voucher Assistance. The provisions of Title VIII are critical to the conversion of these demonstration programs to permanently authorized programs and are based on the knowledge that has been gained from the operation of the demonstration programs.

¹¹ In the 107th Congress, H.R. 3995, § 403 (via an amendment from Rep. Velazquez, Committee print June 18, 2002, as approved by Subcommittee) sought to resolve any possible ambiguity on this issue.

Our support for the bill notwithstanding, we urge that the Committee amend Title VIII to include five provisions that will further the preservation of the Section 514 and 515 stock and protect its residents from displacement. We are enclosing specific language for these amendments and briefly summarize them here.

First, we ask that Section 502(c)(5)(G) of the Housing Act of 1949 be amended to authorize the Rural Housing Service (RHS) to extend the same assistance to developments that are transferred from a current owner to a nonprofit or public entity as it currently provides to nonprofit or public entities who purchase such properties after the current owner has filed a request to prepay the loan and must offer the development for sale for the required six-month period. We believe that such an amendment would facilitate more transfers that will preserve the Section 514 and 515 housing stock and will speed up the preservation process since owners will not have to go through the prepayment process in order to assure nonprofit or public agencies forms of assistance that will make the operation of the transferred development feasible.

Second, Section 502(c)(5)(C)(i) of the Housing Act of 1949 should be amended to authorize RHS to make predevelopment grants to limited partnerships or limited liability corporations whenever such entities are managed by a nonprofit general partner. Currently, only nonprofit and public agencies are authorized to receive predevelopment grants. Limited partnerships and LLCs, which are formed by nonprofit entities in order to qualify for Low Income Housing Tax Credit financing, are not eligible to receive these grants even though they have comparable needs for such assistance. The extension of the grant provisions to limited partnerships and LLCs managed by nonprofit corporations will facilitate the preservation of the Section 514 and 515 housing stock because it will increase the capacity of these organizations to undertake the necessary due diligence prior to the purchase of a prepaying development.

Third, owners' capacity to circumvent the current prepayment restrictions through defaults and RHS' ability to foreclose on or dispose of property that is not decent, safe and sanitary, must be proscribed. Accordingly, we urge that Section 515 of the Housing Act of 1949 be amended to preclude RHS from accepting a loan prepayment in response to an acceleration unless the borrower or successor in interest is obliged, through a regulatory agreement, to maintain the property as affordable housing. Similarly, RHS should be precluded from releasing its security interest at a foreclosure sale unless the purchaser agrees to continue to operate the development as affordable housing in accordance with any restrictions that were in effect prior to the foreclosure. The same restrictions should also be made applicable to any sale by RHS of inventory multifamily property. The only time such restrictions should not be made applicable is when RHS determines that the property no longer meets decent safe and sanitary standards, in which event appropriate use restrictions should be placed on the property that obligate the purchaser to bring the development to habitable standards before the property is occupied by residents.

Fourth, we ask that the Subcommittee require RHS to report on its plans to revitalize and restructure that portion of the Section 514 and 515 inventory whose owners are not applying to RHS, or who have not qualified, for assistance to preserve or restructure their properties. Such a report should include suggestions for new authorities needed by RHS to ensure that the entire Section 514 and 515 housing stock is preserved in decent, safe, and sanitary standards.

Fifth, we request that RHS and owners of Section 514 and 515 developments who have applied to prepay their loans be required to send notices to residents that are in plain English and, when

appropriate, are translated to languages understandable by the residents. Currently, prepayment notices are replete with legal terms and are written in a manner that is not understandable to residents of Section 514 or 515 developments. This practice must be changed.

Protecting Housing Affordability When Properties are Rehabilitated

For those properties under the HUD Section 202 program for the elderly and the Rural Development program, this bill includes separate titles (Titles VII and VIII, respectively) intended to preserve housing affordability and protect current and future tenants when properties require recapitalization.

Rehabilitation of properties experiencing mortgage maturity are covered by Section 102. Rehabilitation of those with project-based assistance for all units are covered by existing authorities under MAHRAA, for mark to market, mark-up to market or mark up to budget. Troubled properties may also receive preservation recapitalizations under existing law,¹² once the impediments of flexible authority and the Deficit Reduction Act are removed by the provisions of Section 109, and Titles II and IV, and the language of the Schumer provision is strengthened by Section 405 of this bill.

For HUD-supported properties that do not have rental assistance for all units, Section 109 would also authorize budget-based rent increases to cover the costs of necessary rehabilitation, so long as rental assistance is provided to offset the resulting rent increases. This provision should be improved by extending the length of the affordability commitment by participating owners beyond the end of the mortgage term, which is fast approaching.

Empowering Tenants as Partners and Promoting Tenant Outreach and Education

At various times over the past two decades, Congress has recognized that tenants are essential partners in providing high quality, affordable rental housing for the long-term. Even if HUD staff and contract administrators are properly directed, trained and equipped by leadership committed to HUD's housing mission, there is simply not enough oversight staff to ensure that statutes, regulations and contractual provisions are monitored and enforced on a timely basis. Congress has therefore previously established tenants' security of tenure through good cause eviction protections, the right to organize, and tenant participation rights on major issues affecting their homes, while providing resources through Section 514 of MAHRAA to support outreach and education for tenants to preserve and improve their homes. Tenants and housing advocates are pleased that the Secretary is personally committed to implementation of Section 514 in the FY 2010 and 2011 budget cycles, and look forward to working with the Department to launch this initiative. Building on years of support from members of the Committee since the program's unwarranted suspension in late 2001 by the prior Administration, Section 514 of this bill would move in the same direction, and should be modified as necessary to account for any progress made by the time of enactment.

Because administrative priorities change under different leadership, other more permanent tools are needed to further improve performance of the assisted inventory. Although a small percentage

¹² The existing framework includes the 1994 Multifamily Housing Property Disposition Reform Act, 12 U.S.C. §1701z-11, as well as the Schumer Amendment's requirement to maintain Section 8, Pub. L. No. 111-117, div. A, § 217, 123 Stat. ___ (Dec. 16, 2009).

overall, still too many properties fall into disrepair and eventually face termination because of lax enforcement of housing quality standards. When substantial violations occur, HUD is often slow to take responsive remedial action. When properties undergo major life cycle events like rehabilitation or preservation incentive programs, or threatened conversion to market-rate operations, tenants need access to basic financial and physical condition information about their homes in order to explore preservation options and ensure proper expenditure of scarce subsidy funds. Title III of the bill would further this mission by guaranteeing access to project information, subject to certain legitimate privacy concerns (Section 304), by establishing tenant's right to withhold rent in limited circumstances to encourage owner compliance (Section 302), and by permitting tenants to enforce project agreements where HUD fails to do so (Section 303). These are all positive steps, and we will soon submit further recommendations concerning their specifics.

Other Provisions of the Bill.

H.R. 4868 contains numerous other significant provisions, such as Title V to extend and improve the Mark to Market restructuring program established by MAHRAA in 1997, Title VII to authorize certain prepayments and refinancing of Section 202 properties for the elderly, and Section 601 to establish a preservation database. These are substantial and positive policy changes. After further review, we will submit further specific recommendations to the Committee. Congress may also soon consider other proposals related to preservation, such as those in SEVRA or those concerning energy efficiency and green preservation, climate change or job-creating legislation, or HUD initiatives such as Choice Neighborhoods or Transforming Rental Assistance. Conforming adjustments both in this bill and in the related legislation may also be necessary.

On behalf of residents of federally supported affordable properties nationwide, the National Housing Law Project appreciates the opportunity to testify on this important legislation, and looks forward to working with the members to refine these provisions. Thank you.

**Amendments to Title VIII of HR 4868
Proposed by the National Housing Law Project**

1. Section 502(c)(5)(G) of the Housing Act of 1949 is amended by the addition of the following new subparagraph at the end of the subsection:

(iii) the Secretary approves the transfer or sale by the borrower of the housing and related facilities at fair market value, as determined in accordance with paragraph (5)(A)(i), to a non-profit organization or public agency, as defined in subparagraph (5)(B), and the nonprofit organization or public agency agrees to maintain the housing and related facilities in accordance with paragraph (5)(B)(i)(II).

(I) In the event of such transfer or sale, the Secretary shall facilitate the sale or transfer by extending to the nonprofit organization or public agency all the forms of assistance authorized by subparagraph (5)(C) and subject to the limitations set out in subparagraphs (5)(D) and (E).

2. Section 502(c)(5)(C)(i) of the Housing Act of 1949 is amended to include :

(i) to the extent provided in appropriations Act, make an advance to the nonprofit organization, ~~or~~ public agency, limited partnership, or Limited Liability Corporation, provided that the general partner of such partnership or corporation is a nonprofit organization, . . .

3. Section 515 of the Housing Act of 1949 is amended by adding at the end the following section:

(bb) Maintenance and Release of Use Restrictions

(1) With respect to any loan made or insured under Section 515 of the Housing Act of 1949 [42 U.S.C. § 1485,] the Secretary may not:

(a) accept payment in response to a notice of acceleration unless the Secretary ensures that the borrower, and successor(s) in interest, are obligated to utilize the assisted housing and related facilities for the purposes specified in Section 515 and in accordance with the terms and conditions of the original loan instruments and any applicable regulatory or other agreements in effect at the time of the payment, for a period of not less than the balance of the original full term of the loan.

(b) release the security interest in the property at a foreclosure sale unless, as a condition and term of release, the purchaser agrees to continue to operate the property for a period of not less than the original full term of the loan, in accordance with the terms of the program under which the loan or insurance was

provided, and with any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale.

(c) sell any property that has come into the possession of the Secretary unless the purchaser agrees to continue to operate the property for a period of not less than the original full term of the loan, in accordance with the terms of the program under which the mortgage insurance or assistance was provided, and with any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of the property coming into the Secretary's possession.

(2). The conditions and terms of sale set out in paragraph 1 shall not be required and the restrictions on bidders or purchasers shall not apply if prior to the foreclosure sale the Secretary determines that there is no longer a need for such housing and related facilities or that the operation of the housing and related facilities for the purposes specified in Section 515 is no longer financially viable. If the Secretary makes such a determination:

(a) the purchaser and successor(s) in interest shall be required to maintain the property in decent, safe and sanitary condition and shall be prohibited from using the property for the purposes of habitation unless the property is in compliance with all local health and safety and building codes.

(b) the defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof shall not be eligible to bid on or acquire the property being sold in a foreclosure sale.

(3). The terms and conditions of payment in response to a notice of acceleration required by paragraph 1 and the conditions and terms of sale required by paragraph 2 shall be evidenced and enforced by a recorded agreement against the property and be enforceable, by the Secretary or current and future tenants of the property as covenants running with the land.

(4). Notwithstanding section 42 USC §1490n, the Secretary shall issue interim final regulations, with a request for comments, to carry out the provisions of paragraphs 1,2 and 3 not later than 60 days after enactment.

4. Substitute the following Subsection (j) to the newly proposed Section 545 of the Housing Act of 1949 and redesignate the existing subsections "(j)" and "(k)" as "(k)" and "(l)".

(j) Preservation of developments whose owners do not apply to preserve, refinance and revitalize their developments--

(1) The Secretary shall exercise all available authorities, other than foreclosure, to ensure that all Section 515 developments whose owners have not applied to preserve their developments by refinancing and restructuring their loans or who

have not qualified for such refinancing and restructuring, are maintained in decent safe and sanitary condition for the balance of the loan terms and that the tenants of such developments are protected against displacement and rent increases. These authorities include the right to take possession of properties, force changes in management or ownership, and make repairs.

- (2) The Secretary shall, within 180 days of the passage of this Act, prepare a report to Congress that will address how the Secretary is exercising existing authorities and sets out new authorities that the Secretary needs to ensure that properties that are in the Section 515 inventory whose owners have not applied to preserve their developments by refinancing and restructuring, or who have not qualified for such refinancing and restructuring, are maintained in decent safe and sanitary condition for the balance of the loan terms. The report shall also include: the number of properties and units that have been revitalized and restructured, estimates of the number of properties and units that will be restructured and refinanced over the next five years, the number of properties and units that are not likely to apply for, or qualify, for refinancing and restructuring, and the number of properties and units that are in financial or other default. The report shall address the Secretary's existing authorities to take possession, rehabilitate and force a change in management or ownership of developments that are in default or likely to go into default or are not maintained as decent, safe and sanitary housing. The report shall also address authorities that the Secretary needs to ensure the maintenance of these developments and the protection of residents against displacement and rent increases.

5. Plain English and Translated Notices

The Secretary shall ensure that all notices sent by the Secretary or owners of Section 515 developments to residents of Section 515 developments with respect to a prepayment, foreclosure, preservation of the development or with respect to any other matter are in plain English and, where there are concentrations of non-English speaking residents, that such notices be translated into the language of the residents.

NATIONAL RURAL HOUSING COALITION

1331 G Street, N.W., 10th Floor, Washington, DC 20005 • (202)393-5229 • fax (202)393-3034 • <http://ruralhousingcoalition.org>

The Honorable Barney Frank
Chairman
Committee on Financial Services
US House of Representatives
Washington, DC

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

Dear Mr. Chairman and Representative Bachus

We write in support of HR 4868 and its rural housing title -- Rural Housing Preservation Act of 2010. This legislation authorizes assistance for owners and tenants and charts a course toward preserving rural rental housing developments. In return for long term use restrictions, the legislation establishes financial incentives and other assistance to owners of eligible projects. These incentives include but are not limited to the following: loan forgiveness, payment deferrals, reamortization, grants, interest rate write downs, loans, and guarantees along the lines of the current MPR demonstration.

In November 2004, USDA released the Comprehensive Property Assessment and Portfolio Analysis of Rural Rental Housing (CPA). The purpose of this report was to assess the status of the Section 515 portfolio in terms of prepayment options and long term rehabilitation needs. This report had at least four key findings including:

1. Only 10% of the units in the Section 515 portfolio are in 'hot markets' and could become market rate housing if the owners were to prepay;
2. 90% of the units are not in markets where prepayment is an option and are in need of additional funds to ensure adequate operation;
3. The average age of Section 515 housing projects is 26 years. Their major infrastructure systems are at or near obsolescence and need rehabilitation or replacement. Most are in need of renovation; and
4. The projected cost for ensuring adequate operations and addressing long term rehabilitation needs is \$2.6 billion for 20 years.

In response to the USDA report, Congress provided funds for a demonstration program aimed at preserving rural rental housing developments. From 2006-2009, the RHS Multi-Family Housing Preservation and Revitalization Restructuring Program (MPR) financed a total of \$100 million in multi-family restructurings. This funding allowed RHS to provide assistance to preserve and renovate existing section 515 developments and vouchers for families who might be displaced in the event of prepayment. Requests for restructuring regularly total over \$2 billion per year.

Since the beginning of the demonstration, MPR has financed some 300 transactions that will affect close to 10,000 tenants.

In 2008 alone, RHS has provided restructuring financing to 105 projects. The financing – mostly in the form of deferred loans – preserved over 4,500 units of rental housing in rural areas. The financing also stabilized tenants' rents and allow the projects to significantly increase reserves.

The current restructuring program relies heavily on funding from other sources. USDA data indicates that every dollar provided by Agriculture is matched by a dollar from some other source including tax credits, state and local financing, and other federal grants. In this difficult economic climate, raising capital from other sources may prove more difficult.

It is important to note that while the RHS demonstration has shown potential, it is just that: a demonstration. While some 300 transactions are on the books, there are some 15,000 Section 515 properties. According to the USDA CPA report, most are in need of restructuring assistance.

For any property participating in the program, the bill would leave in place current law regarding use restrictions for Section 515 developments which consists of continued affordability for low-income tenants lasting 30 years or the term of USDA's loan, whichever is longer. The legislation also insures that tenants living in restructured properties will not pay more than 30% of income for rent. Projects that are deemed ineligible to participate in the program include: owners who were participating in active lawsuits; had a history of poor property management; or were in default on a Section 515 loan.

The legislation authorizes the vouchers for use by tenants displaced due to prepayment and by tenants of projects that receive restructuring assistance. As we have noted, some 100,000 households living in section 515 pay more than 30% of income for rent. We support the use of vouchers for those low and very low income families as a way to ensure that restructuring does not result in a rent increase for these families.

Sincerely,



Robert A. Rapoza



**Stewards of Affordable Housing for the Future
Testimony for the Record
House Committee on Financial Services
March 24, 2010**

Stewards of Affordable Housing for the Future (SAHF) is pleased to submit these comments on HR 4868, the Housing Preservation and Tenant Protection Act of 2010.

SAHF members have a strong commitment to the preservation of affordable housing properties. We view this bill as extremely important for the work that we do. The legislation represents an opportunity to extend preservation protections to more residents of assisted housing properties, to streamline the current rules and regulations governing assisted housing, and to ensure that assisted housing is owned by strong, capable organizations dedicated to the long-term stewardship of the properties. We congratulate the Chairman for introducing this bill and look forward to working with the Committee as the bill moves through the legislative process.

SAHF is a 501(c) (3) consortium of nine sophisticated, non-profit, affordable housing providers who are committed to the long-term, sustainable affordability of multifamily rental properties for low-income families, seniors, and disabled individuals. SAHF members include: the Evangelical Lutheran Good Samaritan Society; Mercy Housing; National Church Residences; National Affordable Housing Trust; National Housing Trust; NHP Foundation; Preservation of Affordable Housing, Inc.; the Retirement Housing Foundation; and Volunteers of America. Together, SAHF members own and operate housing in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – providing homes to approximately 90,000 low-income households across the country. The members are high capacity, mission-driven social enterprises experienced in operating affordable housing properties serving low-income residents while making available a wide range of social services.

SAHF's members came together in 2004 to promote their shared ownership objective, which embraces the notion that stable, affordable housing is critically important in the lives of our citizens. Stable affordable housing can enable working families to retain jobs, grow earnings, and build a better future for their children. Affordable rental homes with services enable low-income seniors to age in place with dignity rather than face disruptive and costly institutionalization. Well designed and operated housing also makes it possible for Americans with disabilities to enjoy a high level of independence.

SAHF's members develop, acquire and own affordable multifamily rental homes with these beliefs in mind. SAHF's members undertake acquisitions ranging from individual properties to

multistate portfolios. The members have extensive experience with the Department of Housing and Urban Development (HUD) and Department of Agriculture housing programs, housing bonds, tax credits, 501(c)(3) bonds, Federal Home Loan Bank affordable housing program loans and grants, and a wide array of state and local government funding sources.

Our nation faces a significant affordable housing crisis that has only been worsened by the current economic downturn. In 2007, more than 8.7 million renter households in America were paying more than 50% of their incomes for rent – an increase of more than 1.4 million cost-burdened renter households since 2001.¹ Moreover, the Joint Center for Housing Studies at Harvard University points out that “households in the bottom income quartile are most likely to face affordability problems – indeed, fully 51 percent of low-income renters – paid more than half their incomes for housing.”²

While the need for affordable housing in our society is already a pressing one, the preservation crisis will serve to exacerbate these outstanding needs. Housing Assistance Payment (HAP) contracts established in the 1970s and 1980s are expiring at an astonishing rate, resulting in the loss of precious affordable housing. The nation remains at risk of losing much of what we have. The loss of project-based Section 8 assisted housing and other comparable project-based assistance programs is particularly unconscionable because it is the vehicle by which our federal housing programs are able to serve the very poor. The first order of business is to keep affordable the housing we have already built – making the need for preservation of affordable housing clear.

HR 4868 represents an important and significant step in fulfilling the preservation agenda. We urge the Committee to move forward toward the enactment of this bill. SAHF supports most of the provisions of the legislation, and we believe their enactment would go a long way toward ensuring that the nation’s assisted housing resources remain affordable and available to low-income households. At the same time, there are a handful of provisions in the bill that we believe the Committee should amend prior to final action.

Finally, SAHF wholly supports Title X (Section 202 Supportive Housing for the Elderly). SAHF and its members worked closely with the American Association of Homes and Services for the Aging (AAHSA) in generating the ideas presented in the bill. These ‘fixes’ will go a long way to improving the Section 202 program while aiding nonprofit affordable housing providers in the development of much needed affordable housing for some of America’s poorest senior citizens.

Provisions that SAHF Supports

The bill includes many important provisions that will protect residents of federally-assisted housing from displacement and protect these valuable affordable housing assets from loss to gentrification or obsolescence.

¹ Joint Center for Housing Studies, *State of the Nation’s Housing 2009*, p. 38.

² Joint Center for Housing Studies, *State of the Nation’s Housing 2009*, p.26.

One important need addressed by HR 4868 is to provide long-term, renewable rental assistance for properties and their residents supported by Rent Supplement (Rent Supp) or Rental Assistance Payment (RAP) contracts. Section 101 of the bill allows the conversion of rent supplement and rental assistance payment contracts to project-based Section 8 assistance. Rent Supp and RAP are legacy HUD programs. There are approximately 35,000 apartments assisted with these subsidies. Over the next ten years, the contracts on approximately 21,000 of these apartments will expire. Under current law, upon expiration an owner has no right to renew the contracts and tenants are eligible for enhanced vouchers only in limited circumstances. By 2029, all of the apartments will have been lost to contract expiration. Not only are all of the assisted apartments at risk of loss, but tenants are inadequately protected against potential rent increases. Adoption of this provision would protect low-income tenants in danger of losing their homes, save valuable rental housing, and, in some cases, make it possible to mark rents up to market rates in order to facilitate rehabilitation.

Likewise, SAHF supports the provisions in section 104 of the bill that allow an owner to request project-based section 8 assistance in lieu of enhanced vouchers when such assistance is offered. Enhanced vouchers are provided to protect existing tenants from displacement when the owner of the assisted multifamily housing property prepays a subsidized mortgage or terminates an insurance or rental assistance contract. However, when a unit assisted by an enhanced voucher turns over, the voucher assistance leaves the property with the tenant, and the housing is lost as a resource for future low-income families. Allowing the rental assistance to be project-based will provide a financeable revenue stream for preservation-oriented owners and purchasers and allow many worthwhile projects, especially in strong markets, to continue as affordable housing. We also commend the bill for providing that such rental assistance does not count against the various limits otherwise imposed on project-based vouchers, such as the cap on the share of a Public Housing Authority's (PHAs) vouchers that may be project-based and the limit on the share of units in any project that may be project-based.

Another valuable tool for affordable housing preservation is included in section 110. This provision allows the use of Flexible Subsidies debt to promote the sale of properties to nonprofits and to attract state and local resources to support preservation by authorizing HUD to forgive such debt or transfer it to a nonprofit. The Flexible Subsidy program was created by section 201 of the Housing and Community Development Amendments of 1978, and, until its discontinuance in 1996, provided financial assistance to prevent financial and regulatory defaults (and foreclosures that would have resulted in claims on the FHA mortgage insurance funds) to certain HUD assisted properties.

The bill also takes some other important strides to enhance the role of the nonprofit sector in the delivery of HUD's programs. SAHF welcomes the language in Section 504, for example, that requires HUD to permit nonprofit affordable housing providers to have access to refinancing proceeds in the same manner that applies to for-profit entities. We believe that the intent of the section is to also treat nonprofits no less favorably than for-profits with respect to cash distributions. Over the years, many nonprofits, including SAHF's members, have grown into sophisticated owner, operators, and developers of affordable housing. These organizations have

become important players in the HUD affordable housing delivery system. Yet, HUD's regulatory structure has failed to keep pace with the evolution of these high-capacity, nonprofit organizations and therefore constrains their ability to address the needs of their portfolios and to unlock this equity. For example, HUD regulations generally prohibit distributions of excess cash flow from single-purpose nonprofit organizations to their parent nonprofits, even in circumstances where a for-profit could distribute cash to its owners for uses unrelated to the property. Similarly, when a nonprofit organization recapitalizes a property using state allocated bonds and tax credits, it often is not permitted to use sales proceeds for affordable housing, even though a for-profit could distribute its proceeds to its investors. The net effect of these regulations is to lock up the embedded equity in these properties that could be a significant resource for housing development and preservation.

Moreover, many smaller scale nonprofit owners have found that the needs of their projects have outstripped their capacities. The inability of these smaller nonprofit organizations to receive some proceeds from a sale causes them instead to retain ownership. At the end of their required affordability period, these organizations will be able to sell the properties and retain any proceeds, but this comes with a net loss of apartments from the affordable inventory. Instead, these smaller-scale owners should be permitted to receive some proceeds from the sale for their charitable missions, in return for selling to organizations that commit to meeting the properties' rehabilitation needs and renewing their long-term affordability.

SAHF also supports the provisions in section 201 that allow the transfer of Section 8 authority to other properties. This tool is valuable because it helps to avoid a choice that the government or the owner often faces between (1) rehabilitating a highly-distressed, and otherwise undesirable property, or (2) losing precious project-based section 8 authority. Overly tight restrictions in existing law have hampered SAHF members' ability to make use of the transfer authority.

SAHF supports giving HUD the permanent authority to approve partial transfers, and applauds the Committee for including legislative language that adds additional flexibility where the existing law, FY 2010 Transportation, Housing and Urban Development Appropriations Act (TTHUD) (Pub. L. No. 111-117, Division A, Title II, Sec. 212.), has defeated sensible transfers owing to its overly prescriptive regulations. Partial transfers serve important policy goals, and the authority for partial transfers should be made permanent. SAHF applauds the Committee for including language that allows any transfer to take into account the unit configuration relative to the demands of a local waiting list for assistance under Section 8 or current market demand. These partial transfers of assistance would make sense for example, where the owner needs to reconfigure the unit mix in a property – say from efficiencies to one bedroom units in older senior properties – in order to meet the current market demand. One note of concern is that the transferring property must be physically obsolete or economically non-viable. In past experiences working to transfer Section 8 as authorized under FY2010 TTHUD section 212 that the definitions “physically obsolete” and “economically nonviable” have deterred the use of transfer authority to deconcentrate poverty within a neighborhood as part of a redevelopment plan. We encourage the Committee to consider a broad and flexible definition that promotes the needed redevelopment of Section 8 properties.

Section 505, period of eligibility for nonprofit debt relief would also achieve important changes for nonprofits in affordable housing. These provisions would extend program eligibility on or before the later of seven years from the date of recordation of the affordability agreement and two years after the date of enactment and prohibit the Secretary from requiring repayment in “additional funds” transactions. When the Mark-to-Market (M2M) program was reauthorized for five years in 2002, the program was amended to permit the HUD Secretary to assign junior M2M debt to not-for-profit purchasers or to forgive that debt entirely. These “purchase incentives” recognized the value of not-for-profit stewardship, the stifling effect of this otherwise burdensome debt, and fact that the incentives would enable not-for-profit purchasers to raise funds to buy out old owners and leverage significant outside resources for rehabilitation, primarily Low Income Housing Tax Credits. HUD’s implementation requiring repayments in connection with these transfers has been problematic, in that it ultimately creates a disincentive for preservation transfers and results in the absorption of these state and local resources by HUD. The public entities overseeing the allocation of these resources will be less inclined to commit resources to these projects if HUD is the ultimate beneficiary of a portion of that allocation.

SAHF supports section 103(b) of the bill, which provides that, with the approval of a state housing agency or local authority, a property owner with a section 8 project-based contract that has debt financing from a state housing agency or local authority may terminate the contract and enter into a new project-based contract for a term of at least twenty years, subject to appropriations. Importantly, granting this authorization would generate budget authority savings. Funds for the existing project-based contracts were fully appropriated when the contracts were entered into and in many cases have several years to run. Terminating the remaining appropriated amount of the existing contracts would recapture several years of budget authority. Under the bill, any authority that is recaptured as a result of termination would be utilized by the Secretary for the purpose of making assistance payments with respect to the initial twelve-month term of the new Section 8 contract, and the balance would be used to fund other preservation initiatives under this Act.

Finally, SAHF strongly endorses the provisions in section 301, tenant protection voucher to replace lost subsidized units on a 1-for-1 basis, of the preservation bill. Section 301 would expand the range of properties for which tenants would receive enhanced vouchers to include all those projects without project-based section 8 assistance that cease to be covered multifamily housing properties due to demolition, disposition or conversion.

Areas for Additional Consideration by the Committee

There are several provisions in the HR 4868 that SAHF would recommend that the Committee reconsider before reporting out the bill. As mission-driven developers and acquirers of affordable housing, we welcome the concept that the law would encourage the transfer of properties to owners who have the long-term interest of the property and its residents at the core of their mission. However, we oppose the provision in section 107 of the bill that provides the Secretary with a right of first refusal. We believe that the provision is highly unworkable and is too

detrimental to the interests of the owners of these assets. We think it unlikely that a third party would negotiate with the current owner of the property and offer its best price given the possibility that the Secretary will make a competing bid. The third party would face the likely costs of delays and uncertainty that comes with the insertion of the Secretary in the process. Likewise, we raise concerns about the capacity of the Department to execute on these responsibilities and concerns about the processes that the Department would have to create to ensure fair participation in the ultimate acquisition of the property. We welcome other approaches in the bill, such as the incentives included in section 106, which would authorize the Department to provide incentives to owners and preservation entities to enter into transactions that serve to preserve at-risk properties as affordable housing for the long term where the properties might otherwise be lost to the affordable inventory.

As mission-driven owners, SAHF members are committed to providing the residents of their properties with a quality place to live and services to meet their needs. We align ourselves with our residents in their desire for decent, safe, and affordable housing, free from the worry of inordinate rent increases, deterioration in the quality of the living environment, or displacement when the subsidies that keep their housing affordable expired. Yet, SAHF would recommend that the Committee delete the requirement in section 304 that the owners of the property provide tenants with proprietary information related to the financial conditions of the properties and the provisions in section 303 that potentially allow tenants a right of action in the case of a property where the owner's have failed to maintain the property. While this latter provision is noble in its efforts to force bad owners to comply with required building standards, we are concerned that this could have the negative, counterproductive impact of tying up a property in the courts and impeding the opportunity for HUD to transfer the property to a preservation entity if the circumstances dictate.

Finally, one area that could benefit from additional consideration by the Committee is the emerging HUD effort to streamline the project-based rental assistance programs under the Transforming Rental Assistance (TRA) initiative. Decades of federal participation in affordable housing development have spawned a vast array of program rules that impose what the field has come to call "brain damage" on owners and HUD alike. HUD has estimated that the Department now manages at least 13 different project-based rental assistance programs. SAHF is anxious to work with the Congress and the Administration toward simplifying the rules governing project-based assistance and streamlining the policies that govern this assistance. Toward this end, we congratulate the Committee for taking some of the first steps in this process – for example the provisions allowing the conversion of Rent Supp/RAP units to project-based section 8 contracts.

At the same time, we are concerned that the bill has the potential to add to the complexity of the operating environment. We note that the bill has several different definitions of "eligible properties" or "covered properties" and does not seem to apply a consistent approach to the renewal terms and affordable use periods for properties that are renewed at expirations, converted from one form of assistance to another, or transferred to new owners for long-term preservation. These different treatments across various programs and properties add to the complexity and costs of the system, ensuring that scarce rental subsidy resources end up paying

for unnecessary operating cost, legal costs, or transaction costs. As the bill moves through the process, we encourage the Committee to continue to consider ways in which to continue to consolidate and make uniform the existing project-based programs – though not at the expense of moving this bill and its many important provisions to enactment expeditiously

Thank you very much for introducing and considering this milestone legislation. We will plan to share a few additional, technical comments with the Committee staff and look forward to working with the Committee throughout the upcoming process.

Congress of the United States
Washington, DC 20515

November 19, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street SW
Washington DC 20410-0001

Dear Secretary Donovan:

We are writing to thank you for taking steps to reactivate Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 and to ask for your support for Congressional efforts to improve the program.

When it was established in 1997, Section 514 provided \$10 million annually in Outreach and Training Assistance Grants (OTAG) to assist tenants participating in decisions regarding the expiration or renewal of project-based Section 8 housing contracts. In October 2001, the Bush Administration stopped funding the program. However, in 2007 it agreed, in principle, to adopt a Section 514 grant program. At that time, the Administration proposed the Tenant Resources, Information, and Outreach (TRIO) program, which raised major concerns for tenant groups but was never implemented.

As you may know, Rep. Green offered an amendment to H.R.3965, the Mark-to-Market Extension and Enhancement Act of 2007, during the 110th Congress to reactivate the Section 514 grant program. The language from this amendment is currently included in Section 513 of House Financial Services Committee Chairman Barney Frank's discussion draft of the Housing Preservation and Tenant Protection Act of 2009. The section provides \$10 million to tenant groups for training and technical assistance for the purpose of improvement and preservation of properties. Moreover, it requires the Department of Housing and Urban Development to renew an interagency agreement with the Corporation for National and Community Service for a VISTA Volunteer program in HUD multifamily housing.

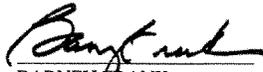
To this end, we are inquiring about your position on the following questions:

- (1) What kind of Section 514 tenant assistance program does the Department of Housing and Urban Development currently intend to pursue?
- (2) Has the Department of Housing and Urban Development taken a position on the tenant organizing grant program currently written in Section 513 of Chairman Frank's discussion draft of the Housing Preservation and Tenant Protection Act of 2009?

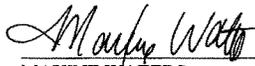
(3) Does the Department currently intend to independently pursue implementation of the provisions of Section 513 of the Housing Preservation and Tenant Protection Act of 2009?

Thank you for your time and we look forward to hearing from you soon.

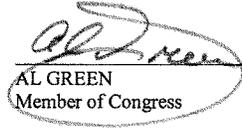
Sincerely,



BARNEY FRANK
Chairman
House Committee on
Financial Services



MAXINE WATERS
Chairwoman
Subcommittee on Housing
and Community Opportunity



AL GREEN
Member of Congress

cc: Carol Galante, Deputy Assistant Secretary for Multifamily Housing Programs

Congress of the United States
Washington, DC 20515

February 22, 2010

The Honorable Barney Frank
Chairman
House Committee on Financial Services
Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Chairwoman
Financial Services Subcommittee on
Housing and Community Opportunity
Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank and Chairwoman Waters:

My colleagues and I commend your leadership in preparing a comprehensive Preservation Bill to address the nation's ongoing crisis of privately-owned, federally subsidized multifamily housing. We are pleased that the current draft of the bill includes important measures proposed by several Committee members, with wide support from stakeholders, to preserve and improve this legislation.

However, though we applaud your work to protect the availability of affordable housing for minority and low-income residents, we are concerned that the current draft omits important provisions for buildings that are at risk of conversion to market-rate housing. We respectfully refer back to the June 2009 draft of the bill, which we believe better addresses this issue. Two notable examples, which we urge you to include in your final bill language, include the First Right of Purchase for properties with expiring federal contracts (Section 103) and Third Party Beneficiary status for tenants in HUD assisted buildings (Section 304).

Retaining the First Right of Purchase provision is a particularly urgent priority. The value of such a regulatory framework has already been demonstrated by the Illinois Federally Assisted Housing Preservation Act. This law includes a "first right to purchase" provision that was instrumental in preserving the Lorington Apartments, 54 units of Section 8 housing on Chicago's northwest side, and has encouraged the preservation of other at-risk developments. This successful example has by no means deprived owners of compensation rights or delayed owner decisions. Rather, owners in Illinois adjusted well to the new statute and have not challenged it in the courts.

In the absence of similar protections, owners in high value market areas across the country have taken advantage of expiring mortgages or Section 8 contracts to convert their properties to market-rate rental units. In New York City alone, more than 17,900 federally subsidized apartments were lost by 2006; they could have been saved if a First Right of Purchase had been in place. Furthermore, the rate of loss has accelerated since then, and expiring 40-year HUD mortgages will only exacerbate the problem. Without the First Right of Purchase, an estimated 20,000 federally subsidized apartments in communities across the nation are at immediate risk.

Similarly, in Massachusetts, the rate of conversions has spiked, with more than 1,750 apartments lost in Boston alone, including several hundred at High Point Village, Camelot Court and Brandywyne Apartments since 2006. Currently, another 1,200 residents at Georgetowne Homes and Blake Estates in Boston are facing One Year Opt Out Notices and rent increases up to \$700

per month. Recently passed "right of first refusal" legislation in Massachusetts will not apply to the vast majority of these conversions, since few at-risk buildings are being offered for sale.

Voluntary incentives alone are inadequate to preserve these buildings as affordable housing. Passage of the First Right of Purchase tool would complement current and future voluntary incentives and provide a critical preservation tool to local and state governments. For example, the New York state court struck down New York City's attempt to regulate these buildings on preemption grounds noted the need for national regulations to preserve these homes.

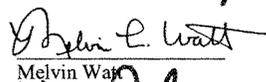
For these reasons, we request that the provision establishing a national first right to purchase contained in Section 103 be retained in the bill when it is introduced. Additionally, we applaud your inclusion of section 107 of the June 23 draft, which would protect the ability of states and local governments to enact local laws to preserve properties and protect tenants.

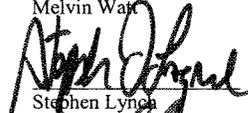
Likewise, Section 304 of the draft bill provides an additional oversight tool by enlisting residents to help HUD oversee this portfolio at no cost to the federal government. The existence of third party beneficiary status for tenants in the Low Income Housing Tax Credit Program has caused no discernible harm to owners while helping residents ensure that owners and agencies maintain these properties. We urge retention of this valuable tool in the bill when it is introduced.

Thank you for your leadership on this important issue and for your consideration of our request.

Sincerely,

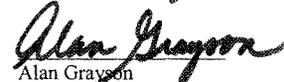

Luis V. Gutierrez


Melvin Watt

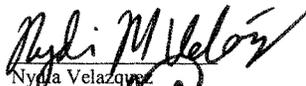

Stephen Lynch

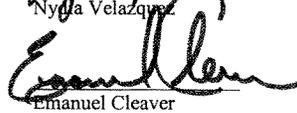

Al Green

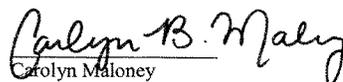

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