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
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March 24, 2010

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Subcommittee on Housing and Community Opportunity
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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 their 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 to 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.

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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.

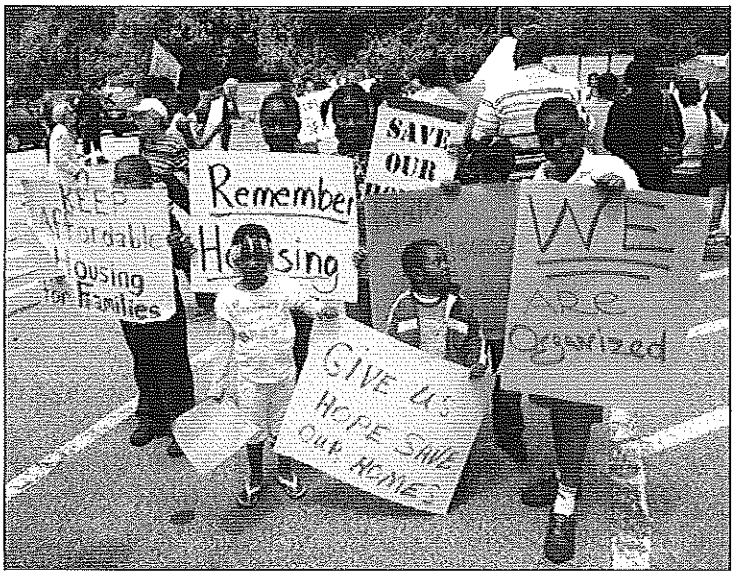

Photo by Maria Moreno

"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.

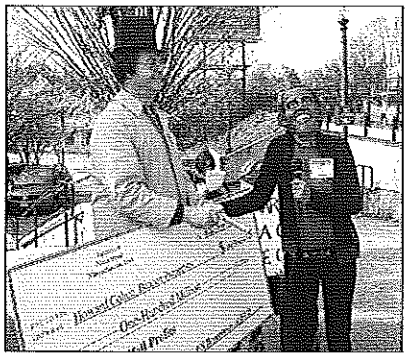

Photo by Kay Mathew

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. Im 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 HUDs 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 dont 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 NAHTs 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

U.S. Department of Housing and Urban Development

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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.

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