TESTIMONY OF JAMES N. ARBURY

SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS

ON BEHALF OF THE

NATIONAL MULTI HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION

BEFORE THE

HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY

H.R. 5039, "THE SAVING AMERICA'S RURAL HOUSING ACT OF 2006"

TUESDAY, APRIL 25, 2006

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Chairman Ney, Ranking Member Waters and distinguished members of this Subcommittee, my name is Jim Arbury I am the Senior Vice President of the National Multi Housing Council, in Washington, D.C. I am responsible for implementing strategy for all legislative and regulatory issues of interest to the National Multi Housing Council (NMHC) and National Apartment Association (NAA). NMHC and NAA represent the nation's leading firms participating in the apartment industry. Their combined memberships include apartment owners, developers, managers, builders and lenders.

The National Multi Housing Council represents the apartment industry's largest and most prominent firms. NMHC members are the principal officers of these organizations. NAA is the largest national federation of state and local apartment associations, with 190 affiliates representing more than 50,000 professionals who own and manage more than six million apartments. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

I am pleased to address the views and opinions or our membership on H.R. 5039, the "Saving America's Rural Housing Act of 2006". While the number of NMHC and NAA owners and developers serving rural areas is a small component of our overall membership, supporting their efforts to provide safe, decent, affordable rental housing is no less important than those that are engaged in such efforts in urban and metropolitan areas. We are here today as an advocate for a stronger, more responsive Rural Housing Service (RHS) preservation program that offers a balanced approach and which is fair to the owners and managers of rural multifamily housing, as well as those served by this critical housing stock. We see H.R. 5039 as a major step towards this goal. Legislation that addresses the research and recommended actions sought by the United States Department of Agriculture (USDA) and addresses most of the issues that housing providers face in the market will go a long way toward ensuring that decent affordable housing continues to be available.

I would like to focus my comments on key elements of the legislation in an effort to help the Subcommittee take the appropriate action to move this important legislative initiative forward.

Before I discuss the housing issues related to Rural Housing, I would like to offer some background on the apartment industry in general and alert you to our ongoing concerns with regard to hurricane recovery issues.

INDUSTRY OVERVIEW

Apartments account for about 14 percent of the entire housing stock, and approximately 16 million American households live in apartments. These households represent the full spectrum of America's population; they are young and old, single and married, wealthy and poor. Rental housing is an important economic driver in the American economy. Apartment revenues total almost $120 billion annually, and apartment management is responsible for approximately 550,000 jobs. More than 200,000 new apartment homes have been built each year for the past three years at an average value of $26 billion annually, and this construction activity supports jobs for more than 220,000 workers. Apartments are owned by a wide range of investors, including individuals, partnerships, real estate investment trusts, publicly-traded corporations and nonprofit organizations. They are financed by an array of lenders including commercial banks, thrift institutions, life insurance companies and government-sponsored enterprises. A growing share of the financing comes from publicly traded mortgage-backed securities.

BALANCED HOUSING POLICY

Housing and community development have become top priorities for many communities in recent years, fueled by a worsening affordable housing shortage and growing citizen calls for more livable communities and a better quality of life.

Unfortunately, there is a growing disconnect between the country's housing needs and federal housing policy. As it has for the past 50 years, national housing policy continues to emphasize homeownership almost exclusively. While homeownership is a worthy goal for many families, it cannot solve many of the country's most pressing housing challenges.

Raising the homeownership rate will not solve the affordable housing shortage. It will not create homes for many nurses, teachers, fire fighters and police officers who cannot find shelter reasonably close to their jobs. It cannot hope to house the estimated 13 million immigrants who will come to this country in the next 10 years or the nation's nearly 74 million Baby Boomers as they age and find single-family housing too difficult to manage. For many of America's most pressing challenges, from suburban sprawl to affordable housing, apartments are a much better solution.

By 2030, there will be 94 million more people in the United States than there were in 2000. And all of these people need somewhere to live, somewhere to work and somewhere to shop. If the country hopes to accommodate this population growth without giving up all green space and adding to the nation's pollution and traffic congestion, Americans need a more balanced housing policy that explicitly recognizes and values apartments and rental housing.

Apartments help create stronger and healthier communities: by offering enough housing for the workers that businesses need; by reducing the cost of providing public services, such as water, sewer and roads; and by creating vibrant live/work/play neighborhoods.

Not only are apartments needed, but a growing number of Americans want them. For generations, married couples with children dominated housing markets. But today those families are less than 25 percent of American households. In their place are young professionals, childless couples, empty nesters and single parents who want the conveniences, amenities, shorter commutes and financial freedom that apartment life gives them.

The National Apartment Association (NAA) and the National Multi Housing Council (NMHC) seek a more balanced housing policy for our nation, one that respects the rights of individuals to choose housing that best meets their financial and lifestyle needs. NAA/NMHC urge decision-makers at all levels of government to work with the apartment industry to craft a smarter national housing policy that:

- Ensures that everyone has access to decent and affordable housing, regardless of his or her housing choice;
- Respects the rights of individuals to choose the housing that best meets their financial and lifestyle needs without disadvantaging, financially or otherwise, those who choose apartment living;
- Promotes healthy and livable communities by encouraging responsible land use and promoting the production of all types of housing;
- Recognizes that all decent housing, including apartments, and all citizens, including renters, make positive economic, political and social contributions to their communities; and
- Balances the expected benefits of regulations with their costs to minimize the impact on housing affordability.

HOUSING HURRICANE EVACUEES

Hurricane Katrina will go down in the record books as the nation's largest and most costly natural disaster ever. According to Red Cross estimates, at least 416,894 housing units across the Gulf region were destroyed, nearly ten times more physical damage than any previous U.S. natural disaster. In addition, 85,000 housing units suffered major damage and 130,000 suffered minor damage. Forty-seven percent of the units destroyed throughout the region were rental units; in New Orleans 55 percent were rental units.

The record-breaking 2005 hurricane season caused the largest mass migration of Americans in the past 150 years, leaving more than one million people homeless.

As our nation struggled to recover from this unprecedented disaster, one of the most pressing needs was to find safe and decent housing for hurricane victims. Moving displaced families from temporary shelters into more suitable housing is the first step in helping them rebuild their lives. These are extraordinary times that call for the private sector and the federal, state, and local governments to respond accordingly.

In the immediate aftermath of hurricanes Katrina and Rita, the apartment industry stepped up to the plate and took a leadership role in the relief efforts to house the displaced people of Louisiana, Mississippi and Alabama. The response was immediate, creative and generous.

In the early days following Katrina, federal officials reached out to the apartment industry, and the industry responded enthusiastically by submitting thousands of available units into a national database. They also answered FEMA's call for blocks of apartments that the agency could rent directly.

When it became clear that the federal government was not going to quickly offer official guidance or assistance to house the newly homeless evacuees, the apartment industry initiated several programs of its own. In Texas, where the largest number of evacuees were sent, many NMHC and NAA member firms forged relationships with local charities and created programs to award free rental units and other support services to needy families. In all, more than 400 free apartments were donated to the United Way and the Urban League.

Around the country, apartment owners submitted their available units into a national housing registry, www.hurricanehousing.net, complete with offers of waived security deposits, reduced rents, flexible leases and other concessions.

The first few months of the recovery effort were marked by a series of different FEMA assistance programs, nearly constant changes in rules and deadlines and a level of confusion and chaos. Three different government assistance programs were created to help move the evacuees out of shelters and hotels. Some people are eligible for housing assistance through a special Katrina voucher program created by the U.S. Department of Housing and Urban Development (HUD), others can receive housing assistance directly through FEMA's Individuals and Households Program, and still others are being helped by FEMA-funded city voucher programs through the FEMA public assistance programs.

The information provided to both the evacuee and the apartment owners remains inadequate and continues to lead to significant confusion. In many cities, rents promised through the voucher programs remain unpaid. Many evacuees, unaware that their assistance checks could only be used for rent, used the money instead for pressing needs like food, clothing and medicine. Even now, nearly eight months after the hurricane, the evacuees face new issues which range from having to become experts with regard to FEMA housing programs and in some cases evacuees in Texas are just learning that they do not qualify for assistance. As you can imagine this is an option that neither the evacuee or the housing provider likes to have to address.

At present we are supportive of language in H.R. 4939, the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery" passed by the House on March 16, 2006 and the Senate Appropriations Committee on April 5, 2006. The legislation will be brought to the Senate floor, today, April 25, 2006. This legislation provides for much-needed housing assistance funds for the victims of Hurricanes Katrina and Rita.

We are particularly interested in Section 2501 of the bill, which grants the Federal Emergency Management Agency (FEMA) the authority to provide funds to a state or local entity to pay for utility costs associated with the thousands of leases currently in place. This is important because limitations of the Stafford Act prevent FEMA from allowing the payment of these costs through the Individuals and Households Program (IHP), which is a primary source for housing assistance. Under prior program funding, evacuees entered into apartment leases that covered the cost of rent and utilities, but they are at risk of losing utility coverage as they transition to the Individuals and Households Program. Without this provision, evacuees will incur additional financial obligations they did not anticipate and may not be able to pay. In addition, prevention of such payments interferes with the contracts in place between the evacuees and housing providers.

The apartment industry continues to do its part to house evacuees. However, it is essential that we operate with clear and consistent rules. Commitments were made, leases were signed and evacuees are being housed. To deny payment of utilities is unnecessary and certainly harmful to the evacuees as well as to the apartment owners who have generously opened their doors to evacuees.

We look forward to working with the Administration, Congress, FEMA and HUD to resolve current problems and develop solutions for the future.

We commend you, Chairman Ney, for your leadership, and we thank the Members of the Subcommittee for your valuable work addressing the important issue of housing. We appreciate the dedication of the Subcommittee on this issue.

REVITALIZING AND RESTRUCTURING EXISTING 515 RENTAL HOUSING

In the area of revitalization of the current Section 515 rental housing stock, we support the approach in H.R. 5039 to look at the long-term needs and provide sound tactical actions such as restructuring debt, providing grants and deferring principal and/or interest payments. Much of the problem today has to do with properties that are in need of maintenance and repairs, but do not have adequate cash flow to support the needed improvements. Addressing the underlying debt is a critical component to creating the needed cash infusion and to create a long-term cash reserve program to ensure a long-term solution to the existing portfolio. This action in tandem with the creation of a long-term viability plan incorporates the physical needs assessment with the debt restructuring to ensure that proper reserves are funded to ensure the long-term housing need the properties are intended to serve.

However, we are concerned with the capacity and expertise of the Rural Housing Service (RHS) to administer such a program. Based on the 2003 data from the 2004 ICF Consulting study commissioned by the USDA Rural Development, there are over 15,800 properties in the program accounting for over 430,000 units. The assumptions of the report by ICF notes that the Rural Housing Administration will need to restructure and address between 7,900-11,850 properties in this portfolio. This task would be daunting for a large institutional commercial real estate firm let alone the RHS. Our concern is that the need to address policy, create regulations and to oversee the administration of such an effort may be beyond the current capacity of the RHS. Based on feedback from members, current program operations are inconsistent throughout the RHS state and district office network due to a range of resources and skills among RHS field personnel. Some owners have not received responses from RHS offices to prepayment requests for over 15 months. We would encourage you to carefully examine the large task presented by this legislation to make sure that the legislation can be implemented properly. This will be critical given the large number of properties and the unique nature of real estate at the property level. Using the model that was established for the Section 8 Housing Program restructuring, through the creation of the Office of Multifamily Housing Assistance Restructuring (OMAR) seems to be a reasonable approach. We believe it could assemble the resources necessary to address the problems that were unique to each property and focus on the housing needs at the property level. It could more effectively leverage the existing resources in the field and take a more comprehensive and consistent approach to the problem.

RENTAL ASSISTANCE AND VOUCHERS

Key to providing adequate low-income housing is the need to provide subsidy to the resident's rental obligation. However, we are concerned with the needed budget authority that rental assistance will place on the RHS to ensure adequate long-term rental assistance. We support the need for a maximum tenant rent of no more than 30 percent of income, however, it must be recognized that the need for continued subsidy will be required to support the properties financially, including the funding of reserves for replacement to ensure the long-term viability of the properties.

Keeping owners vested in the property continues to grow more challenging as these properties are subject to increased fixed and largely uncontrollable expenses that constantly increase such as energy and utility costs, property taxes, other local taxes and fees, and insurance. With income fixed based on the need to meet the needs of low-income families, a sound resident subsidy funding program is key to keep owner's focused on maintaining the real estate and to provide them with the needed long-term investment needs that create the critical partnership between government and the private sector.

We remain greatly concerned regarding budget authority and the assumption that the RHS will not have the funds to serve the housing needs through adequate rental assistance - - that there will be problems with payments that will stem from the annual budgetary process as has occurred in other government rental assistance programs.

PREPAYMENT OF OLDER PRE-1990 SECTION 515 LOANS

H.R. 5039 addresses a critical issue and provides a sound approach to addressing the loan prepayment rights of long-term owners that secured loans before December 15, 1989 and whose loan documents do not prohibit prepayment. While some may see this as a loss of needed housing, it is but one small part of the existing stock and will allow the RHS to focus attention on the inventory that will remain in the inventory and requires minor to significant rehabilitation.

Our concerns with H.R. 5039 as it pertains to prepayment of 515 loans that were funded before December 15, 1989 relate to the process to notify tenants, the RHS and others regarding prepayment of sale of the property. We support the need for adequate resident notification. Fewer residents will be adversely affected by augmenting the current resident support with a voucher system will allow impacted residents to secure alternative housing. The 90 day notification period is not problematic, but H.R. 5039 is not clear what specific trigger is to be used for an owner to implement the 90 day notice period. We would recommend that the owner notify the residents and the RHS of its intent to prepay the loan at the time the owner has made that final decision.

We are also concerned with the "sale restrictions" provisions in H.R. 5039 prohibitions on the sale of the property to any purchaser other than one who will extend the use restrictions for 20 years. Such requirements do not appear in other government loan programs and how this restriction will be applied is not specified other than the owner may not engage in a sale for a 75 day period. It is unclear when the period begins and ends, other than it seems to coincide with the 90 day notification period. Seeking a new owner that will agree to extend the long-term affordability may seem reasonable, but it should take place as a right of refusal process, not as a process forced upon the owner. We would recommend a period not to exceed 60 days, following the receipt and acceptance by an owner of a contract purchase offer, for any party to submit a valid offer without further contingency from any party, including non-profit or government organizations, that is not less than the initial contract offer accepted by the owner.

We would welcome the opportunity to work with the Committee to resolve any of these issues.

RELATED AFFORDABLE HOUSING LEGISLATION

Mr. Chairman, I commend a related bill to the attention of the Subcommittee. H.R. 3715, the "Affordable Housing Preservation Tax Relief Act of 2005," that was introduced last September by Representatives Ramstad and Cardin. The bill would implement an important recommendation made to Congress in 2002 by the Millennial Housing Commission designed to preserve federally assisted affordable housing. In a nutshell, the bill would provide "exit tax" relief to apartment owners, including owners of Section 515 properties, who sell their properties to new owners who commit to preserving their affordability. The legislation is intended to address the problem of owners who are hesitant to sell federally assisted housing to preservation purchasers because of the capital gains tax burden they would face upon the sale. The bill has attracted support from across the housing spectrum, ranging from our organization to the National Low Income Housing Coalition, the American Association of Homes and Services for the Aging, the Council for Affordable and Rural Housing, the National Council of State Housing Agencies, the National Housing Trust, the National Leased Housing Association, the Enterprise Foundation, and the Local Initiatives Support Corporation, among others.

CONCLUSION

We are here today as an advocate for a stronger more responsive RHS preservation program that offers a balanced approach and which is fair to the owners and managers of rural multifamily housing, as well as those served by this critical housing stock. We see debate on H.R. 5039 as a vital step towards this goal. Legislation that addresses the research and recommended actions sought by the USDA and addresses most of the issues that housing providers face in the market will go a long way toward ensuring that decent affordable housing continues to be available.

Thank you very much and I will be happy to respond to any questions you may have.