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H.R. 647, THE MARK-TO-MARKET EXTENSION ACT OF 2007

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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H.R. 647, THE MARK-TO-MARKET EXTENSION ACT OF 2007

Tuesday, October 23, 2007

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 2 p.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Members present: Representatives Waters, Cleaver, Green; Capito, and Neugebauer.

Chairwoman WATERS. This hearing of the Subcommittee on Housing and Community Opportunity will come to order. Good afternoon, ladies and gentlemen.

I would like to thank Ranking Member Shelley Moore Capito and the members of the Subcommittee on Housing and Community Opportunity for joining me for today's hearing on H.R. 647, the Mark-to-Market Extension Act of 2007.

I would like to start by noting that, without objection, all members' opening statements will be made part of the record. I am looking forward to hearing from our two panels of witnesses on the mark-to-market mortgage restructuring program.

As we learned last week in a hearing on project-based Section 8 and the importance of timely and sufficient payments to participating owners, project-based Section 8 is a critical part of the affordable housing continuum. Project-based Section 8 allows us to meet the affordable housing needs of families in urban and rural areas, especially the elderly, persons with disabilities, and those who are trying to get back on their feet after being homeless.

Indeed, without this program, many communities would not have units targeted to these families. The program helps us to keep project-based units in our inventory at a reduced cost to the Federal Government, while protecting tenants who would otherwise be—without mark-to-market restructuring.

The mark-to-market program works by allowing the owners of project-based Section 8 properties with FHA-insured mortgages to mark their rents to market. This means that owners who have been charging above-market rents can lower their rents to those that are more comparable to rents charged in the local housing market.

In addition to saving valuable Federal resources, the program ensures that these properties are more competitive, are more finan-

cially sound, and better for tenants in the long run. Because the mark-to-market program requires owners with restructured mortgages to keep their units affordable for low-income renters for at least 30 years, the program secures affordable housing for the long term.

Through mid-2006, almost 250,000 units and over 3,200 properties remained affordable as a result of the mark-to-market program. Given the importance of this program in maintaining our affordable housing stock, I was pleased to introduce H.R. 647, "The Mark-to-Market Extension Act of 2007," with Financial Services Committee Chairman Barney Frank and Representative Deborah Pryce of Ohio.

This bill would assist us in our goal of preserving the 1.3 million project-based Section 8 units currently housing low-income families. Although the extension of the mark-to-market program has already been addressed in H.J. Res. 20, H.R. 647 is still needed, because it reforms the program, so that more properties can take advantage of its restructuring features.

First, H.R. 647 would build upon the success of the mark-to-market program by expanding eligibility to include properties with rents that don't exceed the average per-unit rent of comparable units in the same area.

I am aware of concerns that have been raised about this provision, especially concerns that allowing properties that do not have below-market rents to restructure under mark-to-market could impact Section 8 renewal policy. I am interested to hear the views of our witnesses on this provision.

Second, the bill also takes into account the impacts of natural disasters on affordable housing. As we saw in the aftermath of Hurricane Katrina, thousands of project-based units were severely damaged or destroyed. By allowing disaster-impacted properties eligible for a mark-to-market program to set their restructured rents at 100 percent of the fair market rent, instead of the usual 90 percent of the fair market rent, these properties will be able to recover from the effects of disasters.

Also, since the rent is at 100 percent of fair market rent, it remains competitive with other local rents, and accessible to lower income families.

Finally, the bill increases the percentage of mortgages that can have exception rents or rents up to 120 percent of the fair market rent from 5 percent of all mortgages to 9 percent of all mortgages. This change is especially necessary, in light of concerns that the department is already within a few hundred units of meeting the 5 percent cap, and may actually reach this cap before the end of this calendar year.

During this congressional session, this subcommittee has examined the different terms and resources needed at the Federal, State, and local level to preserve and expand on our supply of affordable housing. We quickly identified the mark-to-market program as one of these tools, introducing H.R. 647 earlier on in the 110th Congress. I am pleased to note that the Administration also agrees with us on the importance of this program, and maintaining our inventory of affordable housing units.

I look forward to hearing the witnesses' views on this very important topic, and I would now like to recognize Ranking Member Capito for her opening statement.

Mrs. CAPITO. I would like to thank Chairwoman Waters for holding this hearing, and I would like to express my appreciation to the witnesses today for coming to talk about the Mark-to-Market Extension Act. I will ask unanimous consent to submit my full statement for the record.

But just briefly, I would like to also take an opportunity to thank Chairman Frank and Congresswoman Pryce for all of their work on this important program. As you will recall, we passed this bill last year, as it was introduced by Congresswoman Pryce in the 109th Congress, H.R. 6115, "The Mark-to-Market Extension Act of 2006," by a vote of 416 to 1. So we might not have too much controversy here, and that is a good thing.

As the chairwoman has said, this mark-to-market program was created in 1997 to reduce the cost to the Federal Government of renewing Section 8 contracts. An examination of the FHA portfolio found that nearly 10,000 properties were also receiving Section 8-based rental assistance, and their rents were higher than the rents of comparable, unassisted rental units in the same area. Also, many of these projects were discovered to be financially and physically distressed.

Under this new program, or extension program, Section 8 owners are screened to see if their programs are economically viable and in good physical condition. If selected, the owners work together with participating administrative entities to develop a rental assistance program for development. All eligible owners are allowed to participate in the mortgage restructuring plan. And in exchange for debt restructuring, owners must agree to keep the property affordable—which I think is the crux of this—for low-income tenants for at least 30 years.

This restructuring, when completed, saves the Federal Government money by extending affordable housing units for future generations. Madam Chairwoman, I appreciate you holding this hearing today, and hope that we can expedite consideration of H.R. 647, "The Mark-to-Market Extension Act of 2007," to ensure that HUD will continue to have the tools necessary to not only save Federal dollars, but most importantly, to preserve critical affordable housing resources.

I look forward to the hearing, and I yield back the balance of my time.

Chairwoman WATERS. Thank you very much, Ranking Member Capito, and I want to thank you for your presence. This is a very active subcommittee, and I know it is drawing on a lot of your time, but I do appreciate your attendance at each hearing.

And the same thing is true of Mr. Cleaver, whom I would like to recognize for a 3-minute opening statement, for his presence always at these committee hearings. Thank you so very much, Mr. Cleaver.

Mr. CLEAVER. Thank you, Madam Chairwoman, and Ranking Member Capito. This, I believe, is a critically important hearing. And it relates to a very valuable proposal, H.R. 647, "The Mark-to-Market Extension Act." Under your leadership, Madam Chair-

woman, as well as the chairman of the Financial Services Committee, Chairman Barney Frank, previously voiceless, disenfranchised poor people in need of affordable housing now have champions. And I think that includes our ranking member, Ms. Capito.

And so, today, we will receive some testimony from the Administration's housing advocates. And I have to say that last week's hearing captured the fact that multi-family owners operating on project-based Section 8 contracts have been experiencing widespread Section 8 funding shortages.

And housing—the House Financial Services Committee staff indicated that HUD realized that they had a funding problem in February of 2007, and yet there were no attempts to address this problem at least until August, which has just confused me. I cannot understand why there wasn't some urgency to that program.

And the hope is that today, as we get into discussing the mark-to-market program, we won't stumble upon any unnecessary delays. I am always concerned when it appears as if poor people always end up being placed in a position where they are simply not that important.

And so, I appreciate your presence here, and I look forward to raising some questions later on during the hearing. Thank you, Madam Chairwoman.

Chairwoman WATERS. You are certainly welcome. Also, I would like to thank you, Mr. Green. You are always here, and I know this is a drain on your time, but I thank you for your participation in this.

Mr. Neugebauer came in? Oh, there you are. Mr. Neugebauer before Mr. Green. Thank you for being here. You too, are a regular participant in these hearings, and I just want to thank you, too, because I know this is a very active subcommittee, and it takes a lot of your time. But I thank you for all that you have added. And now we will recognize you for an opening statement.

Mr. NEUGEBAUER. Not at this time.

Chairwoman WATERS. Not at this time? All right, thank you. We are back to Mr. Green. Thank you very much, Mr. Green, for being here. And I recognize you for 3 minutes.

Mr. GREEN. Thank you very much for your leadership, Madam Chairwoman, and it is an honor to serve with you at the helm. I thank the ranking member, as well, for her leadership, and also our full committee chair and ranking member.

I am exceedingly pleased to associate myself with the comments of the chairwoman, and I look forward to the mark-up of the bill.

I do have one concern that I will try to address today, to the extent that we can, and it has to do with the technical assistance for tenant organizations. I understand that OTAG, which is the outreach and technical assistance grants, along with ITAG, which is the intermediary technical assistance grants, there is an effort to replace this with TRIO, the tenant resources information outreach program.

And I am interested in knowing where we are with this. The organizations that monitor these activities, the tenant-based organizations, and the consumer advocacy groups, are very much concerned about the money that is to go toward this technical assist-

ance. My understanding is that we are sort of in a hiatus right now, and I would like to know how we will extricate ourselves from the hiatus.

So, I thank you for being here, sir, and I thank the ranking member, and of course my chairwoman, for having this most important hearing. And I yield back.

Chairwoman WATERS. Thank you very much. I would now like to introduce our first panel. I would like to ask Mr. Theodore Toon to be prepared to share his testimony with us. Mr. Toon is the Deputy Assistant Secretary at the Office of Affordable Housing Preservation for the United States Department of Housing and Urban Development.

Without objection, your written statement will be made a part of the record. And now you will be recognized for a 5-minute summary of your testimony. Welcome, Mr. Toon.

STATEMENT OF THEODORE K. TOON, DEPUTY ASSISTANT SECRETARY, OFFICE OF AFFORDABLE HOUSING PRESERVATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. TOON. Thank you, Chairwoman Waters, Ranking Member Capito, and all the members of the subcommittee, for inviting me here today to testify on "The Mark-to-Market Extension Act."

The preservation of affordable housing continues to be a top priority for Secretary Jackson, Commissioner Montgomery, and the Department of Housing and Urban Development.

The mark-to-market program was originally created by Congress in 1997. It was extended in 2001, and again in 2007, now through 2011. HUD contracts with private owners of rental properties to ensure units for occupancy by low-income residents. When those contracts expire and are renewed, if the contract rents are above comparable market rents, mark-to-market reduces those rents to market levels in the renewal of the contract. By bringing Section 8 rents into line with the market, HUD controls Section 8 costs, and maximizes the number of families that can be assisted through these housing programs. The bill that you have introduced proposes modifications to the mark-to-market program.

Over the past 9 years, HUD has successfully balanced the dual mark-to-market goals of reducing the Section 8 subsidy costs while preserving much-needed affordable housing. Today, we have preserved 2,300 properties around the country with over 200,000 affordable housing units. And in doing so, we have promoted the long-term physical and financial viability of these properties. The program has generated savings totaling over $2.1 billion to HUD and the American taxpayer.

Not all the property can or will be preserved. While preservation is a primary goal of the program, Congress has made it clear that prudent use of limited resources is equally important. HUD has taken this charge seriously. There have been, and will continue to be, properties that simply cannot be responsibly preserved. These projects may be too expensive, functionally obsolete, or may be located in markets with ready availability of replacement housing.

In other situations, properties that the Department believes should go through restructuring cannot enjoy those benefits be-

cause the owner refuses to accept the terms and restructure. In these cases, HUD makes the determination that the project is infeasible. These are difficult decisions for us to make, and they are made in consultation with our local field office, the residents, and the community.

These properties are closely monitored to allow for early intervention, in the event that they begin to fail. And they retain their eligibility to come back in for a restructuring, and many, in fact, do so.

By preserving affordable housing in all 50 States and the District of Columbia, including long-term use agreements through which the properties are preserved as affordable for at least 30 years, we have provided stability for many low-income families, and for their communities. This is a win-win situation.

Beyond those properties that are currently assisted through mark-to-market are other preservation needs. And that brings us to the discussion before us today, which is the modification of the mark-to-market legislation. While the Administration has not taken a formal position on H.R. 647, and is still analyzing the budgetary impacts, I can discuss the likely programmatic impact of these legislative proposals.

The first is exception rents. For projects that cannot be preserved at market rents, but provide desperately needed housing, Congress provided authority to use above-market, or exception rents. The estimated need for this authority was based on projections made 10 years ago, and that has served us well until now.

While HUD has exercised prudent discretion in using this authority, only in the cases where it is absolutely necessary, we are today within a couple of hundred units—not buildings, but a few hundred apartment units—of that cap, and we expect to hit it before the end of the year. The proposal to increase that cap from 5 percent to 9 percent of the portfolio would, by our projections, allow HUD to continue to use this authority through the sunset of the program in 2011.

The second modification deals with at-market or below-market properties. Extending mark-to-market eligibility to these projects, at the owner's option, will make eligible approximately 1,500 properties over the next 4 years. And the profile of these projects illustrates the need for a restructuring in many cases. Over half of the projects have at least one trouble indicator, either in physical condition or financial health. And these are the best statistical predictive measures of a future default.

By requiring that the cost of such a restructure be less than the cost of a default on the property, the proposed language would charge my office with ensuring that we continue to exercise fiduciary responsibility in implementing these preservation efforts.

The third provision would allow HUD to utilize the restructure tools of mark-to-market toward the repair or rebuilding of properties that are damaged or destroyed in presidentially-declared disaster areas.

The final modification extends the period of eligibility for nonprofit purchasers requesting debt relief to 5 years. To date, we have completed 57 such transactions, with debt relief totaling over $85 million. Today, nearly three-quarters of our closed portfolio is

now beyond the reach of this type of transfer. The proposed change would make over 1,000 properties eligible for acquisition by nonprofit owners.

In conclusion, on behalf of Commissioner Montgomery, I want to thank you for affording us the opportunity to testify today on this legislation. Congress's intent in creating and twice extending the mark-to-market program was to preserve housing and save money. The program has been successfully implemented, resulting in the restructuring of over 200,000 affordable housing units around the country, improving the lives of tens of thousands of the low-income families who call these units home.

Thank you, and I stand prepared to answer any questions you may have.

[The prepared statement of Mr. Toon can be found on page 66 of the appendix.]

Chairwoman WATERS. Thank you very much for your testimony, and I will recognize myself for 5 minutes. First, I would like to share with you my general thinking about this mark-to-market, and about the subcommittee hearing that we had last week, relative to the late payments of the project-based housing assistance payments.

This committee is concerned about the fact that we have lost Section 8 project-based units over the last several years. Someone gave me a figure of about 300,000; that is a lot of units. We don't want to lose any more, and we don't want to squeeze the owners.

Their payments are late. We discovered how you do it, and that you are basing the payments on the fiscal year, rather than the full year, and you are making owners wait not only for those 3 months that are not calculated for the full year, but in addition to that, you have technology problems that cause late payments. And this makes it very difficult in trying to maintain those units.

So, on the one hand, you cannot talk about repair and keeping the units in proper condition, when the payments are not getting to the owners on time for them to make those investments in the units, and they are not being paid the proper amounts.

I am not interested in mark-to-market driving down the rents. We are interested in better market rents. And we would hope that we don't get a lot of complaints from our owners, that: First, they are being unfairly negotiated with; second, their payments are not being made in a timely way again; and third, they're not being negotiated with in a way that would help them to restructure their debt, so they can continue to provide these units.

We wish to have a happy scenario, where we will learn that you have not only helped to realign these rents so that they are truly market, whether they were above or below, that the owners are getting paid on time, that we're not losing properties, and that the monies are timely in such a way that they can invest in the rehabilitation and the upkeep of these properties. We don't want to keep fighting with HUD about all of this.

So, can you tell me, what problems do you anticipate? What problems have you run into before? Have you had owners who say that you're not calculating the market rents properly? Do you have owners who say that they're in locations where there are not a lot of units available, and that they are doing everything that they can

to provide you with these units, and they should not have to—they should be over the market rates? Tell me what kind of problems you encounter.

Mr. TOON. Sure. We have certainly heard, in various cases from owners, all of the concerns that you have raised. I think it is important to point out that the restructuring process is a transparent process.

So, at every step of the process where we are collecting physical data—we go out and do a physical inspection of the property—that information is shared with the owners and the residents, so that we can fully understand the physical needs. On the financial side, we send out an independent appraiser to do an appraisal of the market, and determine what the market rents are. Again, that is transparent, and that is shared with the owner.

So, if they have concerns about the comparable properties that have been selected, or adjustments that have been made, there is an opportunity for them to have that conversation prior—

Chairwoman WATERS. Let me just interrupt you for a moment. Are the appraisers from the local area, or do they come from Washington?

Mr. TOON. The appraisers are from the local area. We have a network of appraisers across the country that are utilized, private appraisers.

Chairwoman WATERS. But the network represents the appraisers who work in that area?

Mr. TOON. Yes.

Chairwoman WATERS. And I would like the members of this committee to see a list of those appraisers, and I would like it made available for every member of this committee, so they can understand who the appraisers are, so that when we get our complaints, we are going to have the tools by which to raise the question. So we would like that information. Thank you. Go ahead.

Mr. TOON. Certainly. In addition to that, once all of that information is loaded into the final restructuring plan that is presented, the owner has two levels of appeal that are available to them.

Now, we go through two levels of approval within our office to review all of the rent comparability information, etc. When that is offered to the owner, they have two opportunities to appeal that. So, if they disagree with our determination of rents, and they have more current, or different, or better information that they can provide, that is considered by our appeal committee. And there are two levels, as I mentioned, of appeal. So there are opportunities for the owner to have those conversations, and—

Chairwoman WATERS. And they're advised of the appeals process? It is very well set-out, and given to them?

Mr. TOON. It is very well set-out. They are notified in writing, as well as—

Chairwoman WATERS. I would like this committee to have a copy of the information that you supply to the owners about their ability to appeal, also.

Mr. TOON. Absolutely. And I think that the other questions that you have raised, or the other issues as potential problems that you have raised, I think, similarly, throughout the course of the restructuring, it is not done in a black box, it is done very trans-

parently, with the input from the owners, with two tenant meetings, so we are hearing, sometimes independent, opinions from the residents about what is going on at the property, or what the physical needs are of the property. So we are getting input from a variety of sources, prior to putting our—

Chairwoman WATERS. I hate to keep interrupting you, but I am trying to make use of our time today. You have not been finding the tenants to be organized and to be effective. And so, I don't expect a lot of participation, unless they have the technical assistance by which to do this.

So, are you committed to funding the tenant organizations, so that they can be involved in this kind of discussion?

Mr. TOON. We are. In the last fiscal year, in 2007, Commissioner Montgomery charged my office with creating a new program, a new grant program, to replace the ITAG/OTAG program. We met with stakeholders, we developed and drafted that program to be a grant program in 2007.

The legislation says the Secretary shall spend up to $10 million on this program. And, because of that, we came to Congress to ask for the approval to use that funding, and requested, in our operating plan to Congress, $10 million in fiscal year 2007. That—

Chairwoman WATERS. I'm sorry. You didn't need a special allocation. This is $10 million that comes from your budget that you just have to do. You just have to spend it, is that right?

Mr. TOON. It could either be a special allocation, or it could come from our budget, in which case—

Chairwoman WATERS. You have the discretionary money to do it?

Mr. TOON. I don't believe so. I believe that we need to request specific permission in our operating plan to use funds from any source to fund the program—

Chairwoman WATERS. Okay, all right.

Mr. TOON. —2007.

Chairwoman WATERS. Okay.

Mr. TOON. That was not granted.

Chairwoman WATERS. Okay.

Mr. TOON. Permission was not granted. We will again request that in 2008, and are prepared to fully implement that program in—

Chairwoman WATERS. Let me try and understand correctly. You have already designed the new program.

Mr. TOON. That is—

Chairwoman WATERS. For 2007?

Mr. TOON. Correct.

Chairwoman WATERS. But it is not to be implemented until 2008?

Mr. TOON. Well, again, we requested the funding in 2007. But that was not approved. So we—

Chairwoman WATERS. Okay.

Mr. TOON. —could not implement—

Chairwoman WATERS. So you need approval of funding. The same reorganized program you were requesting for 2008?

Mr. TOON. Correct.

Chairwoman WATERS. And our committee does have a copy of your new program?

Mr. TOON. Pardon?

Chairwoman WATERS. Make sure that our committee has a copy of what you are—what you have organized, and what you are recommending for the new program for involvement by the tenants, okay?

Mr. TOON. Yes.

Chairwoman WATERS. All right. I am sorry to keep interrupting, but this is the only way I can get the information quickly.

Mr. TOON. Absolutely—

Chairwoman WATERS. Please continue.

Mr. TOON. I think I was finished.

Chairwoman WATERS. All right. Thank you very much. Ms. Capito, for questions?

Mrs. CAPITO. I will ask one question. On the disaster relief provisions of H.R. 647, is this considered an expansion of the original mission of the mark-to-market program that was enacted in the late 1990's?

And, as I understand, for disaster-related units, the mark-to-market can be applied, regardless of the costing, or the more expensive, or the most damage, or—how is that going to work? And is that going to be able to—I mean, that—of course, we are very keen and very well aware of the issues of Hurricanes Katrina and Rita and Wilma, but will this be going forward? And can you just enlighten me a little bit on the disaster relief area?

Mr. TOON. Sure. The rent levels that would be determined, as I read the language, would be based upon the fair market rents prior to the disaster hitting, largely because one of the great challenges that we have certainly found in the Gulf region is that, for a very long time afterwards, establishing what a market rent is can be exceedingly difficult.

All of the properties that we would be approaching through this program—and our estimate is anywhere from 10 to 15, on average, if you sort of look at a 10-year history of disasters that have hit—those would all be subject to the exception rent cap. So, again, any very expensive restructurings would be subject to the cap that we have been discussing here today.

I think the advantage of applying—

Mrs. CAPITO. That would—the new cap, or the 9 percent?

Mr. TOON. The new percent—the new 9 percent, cap, correct.

I think that the advantage to using this authority for these properties is that one of the great challenges is that being able to have the contract vehicles and the network of professionals to get people on the ground immediately to do assessments—and even if you can rebuild the property, it may still be overburdened with its debt. So, the debt restructuring authority, to be able to restructure the debt at the same time that we are repairing or rebuilding, and establishing this for the long term, gives us the opportunity, also, to set out the 30-year use agreements for affordability.

Mrs. CAPITO. I yield back.

Chairwoman WATERS. Thank you very much. Mr. Cleaver?

Mr. CLEAVER. Thank you, Madam Chairwoman. I have a number of questions, but we have been called to vote. So it is probably—did they tell you last week what a nice time we had here, and did anybody—

Mr. TOON. I heard something about that, yes.

Mr. CLEAVER. Yes? Okay. It's so refreshing, that an answer—one question.

What happens if—or are you concerned about what happens if the highest income tenants legally possible, in order to mitigate the missed or reduced assistance payments?

Mr. TOON. I'm not sure that I understand the question, sir.

Mr. CLEAVER. Don't you think that there may be some owners who would select the highest income tenants they can legally select, in order to mitigate the impact of the missed or reduced assistance payments?

Mr. TOON. Well, I think the reduced assistance payments—I think it's important to know that, in the course of the restructuring, all of the debt of the property is sized to be serviceable by those reduced rents.

So, in most cases, in fact, the income produced by the property after a restructuring is greater than it was before. So, we do a top-down analysis, where we start with what are the market rents, the fair market rents, or the market rents, the true market rents, what are the operating expenses of the property, what is the serviceable debt load, and we back into that debt load.

So, at the time that we're reducing the rents, we're also reducing the debt to be serviceable by those reduced rents. So, hopefully we are not creating that sort of incentive.

Mr. CLEAVER. Okay. I yield back the balance of my time, in order to give my colleague a chance before we go vote.

Chairwoman WATERS. Thank you very much. Mr. Green?

Mr. GREEN. Thank you, Madam Chairwoman. Sir, you indicated that the appropriators did not appropriate for the Section 514 program, the technical assistance programs, is that correct?

Mr. TOON. That is correct.

Mr. GREEN. And you, of course, were authorized, but you did not have appropriations. And what was the rationale for not appropriating, please, as tersely as you can give it?

Mr. TOON. I do not know. The answer is simply that it was not approved, as I understand it.

Mr. GREEN. Okay. Could it be that the appropriators were concerned about the money being extracted from the project-based program, and not having enough money to complete that program?

Mr. TOON. That is entirely possible.

Mr. GREEN. Is it true that HUD could ask for the separate assistance for the technical program, and not tamper with the project-based program, and could have done that in Fiscal Year 2007?

Mr. TOON. As a separate appropriation?

Mr. GREEN. Yes.

Mr. TOON. I suppose that is possible.

Mr. GREEN. Did you spend any of this technical assistance money? Did you have money set aside for fiscal year 2006?

Mr. TOON. No, we did not.

Mr. GREEN. What about 2005?

Mr. TOON. No, we did not.

Mr. GREEN. What about 2004?

Mr. TOON. No.

Mr. GREEN. What about 2003?

Mr. TOON. No.

Mr. GREEN. 2002?

Mr. TOON. No, sir.

Mr. GREEN. 2001?

Mr. TOON. No. I believe 2000 was the last year.

Mr. GREEN. So, we have gone these many years without the technical assistance program that was authorized. And all of these years, it was not because of the appropriators, because it was just in 2007, I believe, that you decided that you were going to ask the appropriators, as you were going to combine OTAG and ITAG into TRIO.

Why wasn't the money spent in all of these other years that we appropriated, we authorized?

Mr. TOON. You will recall that the ITAG/OTAG program ran into a number of challenges and problems. Congress asked the Inspector General's office to do a full audit of all grantees in the program, and found that the program fell short of its original goals.

There were a number of audit findings that we spent a couple of years resolving, and we were also continuing to administer the remaining grants. In fact, we continue to administer, I believe, three grants that are remaining from that original program, and funds that were appropriated in 2000.

In fiscal year 2007, again, Commissioner Montgomery asked that we put a replacement program in place. That was the Commissioner's first year in his position, and he asked us to take that responsibility—

Mr. GREEN. If I may, let me just share this, as I have to leave.

Mr. TOON. Sure.

Mr. GREEN. I want to commend Commissioner Montgomery. I have a lot of respect for him, and a great appreciation for what he does. My disappointment is in allowing all of this time to pass before we continue what I believe is a good program.

And let's just use this as an extreme example. We may have some problems with some things that are happening at HUD, but we don't freeze HUD and cease to do the things that have been authorized. And to freeze this program, as it was done, I think has done a disservice to the tenants, the people who could benefit from it. And I would yield back, as we have to go vote.

Chairwoman WATERS. Thank you very much. Mr. Toon, I want to thank you for coming. We are going to break now, and go to a vote on the Floor.

I would like the record to reflect that we made a request of you for the list of appraisers that are broken down by the districts that are represented by all the members of this committee, so that we can see who these appraisers are. We want a copy of your tenant program, so that we can understand how you formulated that.

And also, another request. I would like the total list of all of the project-based Section 8 participating owners for each of the members of this committee made available to us also. I understand there was a technological problem, but that does not prevent me from wanting you to straighten it out, so that if you know who you pay, you know who they are. And we want a list of all of them for each of the members of this committee.

Mr. TOON. Of all Section 8, or those that are participating in mark-to-market, specifically?

Chairwoman WATERS. Participating in the Section 8, the project-based Section 8 mark-to-market program that you are going to restructure.

Mr. TOON. Sure.

Chairwoman WATERS. Okay?

Mr. TOON. Very good.

Chairwoman WATERS. Thank you very much.

Mr. TOON. Thank you.

Chairwoman WATERS. And, members of the second panel, we will be right back after we take the votes. Thank you. The committee is in recess.

[Recess]

Chairwoman WATERS. While our members are rejoining us, I would like to note that some members may have additional questions for the last panel, which they may wish to submit in writing. So, without objection, the hearing record will remain open for 30 days for members to submit written questions to our witness, and to place their responses in the record.

This panel that we just heard from that basically had our—Mr. Toon, the Deputy Assistant Secretary of the Office of Affordable Housing.

We are going to move on to introduce the witnesses of our second panel. I know that Mr. Frank wanted to introduce Ms. Anthony, but he is not present yet, so I am going to proceed.

Our first witness will be Ms. Amy Anthony, who is the president and executive director of Preservation of Affordable Housing, Incorporated. Our second witness will be Ms. Sheila Malynowski, president of the National Leased Housing Association, and president of Preservation Management, Incorporated.

And I know that Ms. Pryce was interested in recognizing and introducing Mr. Faith. She is not here, so I will proceed with the introduction of our third witness, Mr. Bill Faith, who is executive director of the Coalition on Homelessness and Housing in Ohio.

And our fourth witness will be Ms. Paula Foster, vice president of the western region of the National Alliance of HUD Tenants.

Without objection, your written statements will be made part of the record. You will now be recognized for a 5-minute summary of your testimony. We will just start with our first witness, Ms. Anthony.

STATEMENT OF AMY ANTHONY, PRESIDENT AND EXECUTIVE DIRECTOR, PRESERVATION OF AFFORDABLE HOUSING, INC.

Ms. ANTHONY. Good afternoon, and thank you for having us come together today. My name is Amy Anthony, and I am president of Preservation of Affordable Housing, Inc., or POAH. My organization, which is based in Boston, is a national nonprofit, which is focused, exactly as our name says, on the preservation of affordable housing, specifically privately owned housing with deep public subsidy to make rents affordable to those on the lowest rung of income.

POAH has been in existence for just over 6 years, and currently owns and manages around 4,600 units, rental homes, in 8 States

and the District of Columbia. The more than 10,000 residents who live in POAH-owned homes typically earn between 30 and 50 percent of area median. Generally, they are low-waged workers and their children, seniors on fixed incomes, or the disabled.

POAH is also a founding member of Stewards of Affordable Housing for the Future, or SAHF, an organization representing seven of the largest national nonprofit owners of affordable rental housing. Drawing on the practical experience of its members, SAHF has developed a set of policy proposals to preserve properties within the HUD inventory. I speak to you today on behalf of my SAHF colleagues, as well.

I thought that, as I talked about—I think the importance of preservation is well understood by this committee. We all know that preservation is responsible. It is good stewardship, it is environmentally friendly. It wastes less, it conserves more. Preservation recognizes that properties should not be—are a resource that shouldn't be thrown away thoughtlessly. And billions of Federal dollars have been invested already in these homes, and it is important for us to take care of them for the future.

Today, though, we are here to talk about, particularly, the mark-to-market program. I want to support its extension, generally, and talk specifically about some methods of improving this important and forward-looking program.

POAH has purchased 15 mark-to-market properties in 3 States and the District of Columbia. Collectively, these transactions have preserved and physically restored 1,900 rental homes across the country. We found that the underwriting for mark-to-market transactions is sound, and that the refinanced properties are, therefore, better positioned to survive fluctuations in operating expenses, such as utility and insurance costs.

I thought I would give a profile of one of the properties that we restructured, under the program, to give a sense of it. The Hawthorne Properties in Independence, Missouri, is 745 units of family housing in Independence, Missouri. This was restructured, using the mark-to-market program. We not only were able to physically renovate the property, which was tired and very much in need of renovation, but we were also able to construct a 2,500 square foot community building on this large public-assisted housing site, to serve the residents. There had been no community space at all, prior to that time.

That community center is now a thriving center with a day care center, with a Boys and Girls Club, with a very active computer program for residents. And it was able to be done through the combination of the use of State-allocated resources and the mark-to-market program. And we have seen in many of our transactions where that joint effort of State resources and the Federal resources in mark-to-market can come together in very positive ways to make revitalization possible.

While mark-to-market is important for its results—and that is just one of the properties that we have taken through the program—it is also, I believe, important as a prototype of what HUD can achieve. The mark-to-market program, in my mind, is central to the good news from HUD. Mark-to-market is deal-oriented. It

aims for a bottom line outcome which benefits the agency, the new owner, the residents, and the community.

Mark-to-market deals have a give and take calculus which mirrors that in the broader real estate marketplace. This is important, because staff are not paralyzed by precedent. The program was created with the benefit of advice from the private market, and from a panel of real-world practitioners.

Mark-to-market is further bolstered, I think, by the use of PAEs, participating administrative entities, which investigate deals, and offer a timely resolution that is grounded in what is on the ground.

I think the staff has also been flexible and original and efficient, and we have found them to be responsive, as we have tried to get deals saved.

There are a couple of things that I think are critical to adding to the program. HUD's primary goal should be preservation, not improving its own balance sheet. To that end, Congress indicated that the secondary debt after a mark-to-market transaction could be either forgiven or assigned to nonprofit purchasers. HUD—we believe that HUD should not demand repayment of a portion of secondary debt from these nonprofit purchasers when State and local dollars have to be used to give that HUD debt back. We believe HUD's efforts are contrary to moving the program forward, and we would like to have that clear in the future.

[The prepared statement of Ms. Anthony can be found on page 26 of the appendix.]

Chairwoman WATERS. Thank you very much. We are going to be a little bit strict about our timing, in that we have members who must be out of here by a certain time. Thank you.

Ms. Malynowski?

STATEMENT OF SHEILA MALYNOWSKI, PRESIDENT, NATIONAL LEASED HOUSING ASSOCIATION, AND PRESIDENT OF PRESERVATION MANAGEMENT, INCORPORATED

Ms. MALYNOWSKI. Madam Chairwoman, Ranking Member Capito, and members of the subcommittee, my name is Sheila Malynowski, and I am president of Preservation Management, out of Portland, Maine. Our company manages over 6,000 units of assisted housing in 11 States. I am appearing before you on behalf of the National Leased Housing Association.

The Multi-Family Assisted Housing Reform and Affordability Act—or MAHRA, for short—which was enacted in 1997 and substantially amended in 1999, provides a comprehensive framework for the renewal of Section 8 project-based contracts. Prior to MAHRA, only temporary, stop-gap legislation permitted 20-year Section 8 new construction and substantial rehabilitation contracts to be renewed, as well as 15-year moderate rehabilitation contracts to be renewed.

MAHRA has two main divisions. The first is a temporary renewal program that has been extended twice by Congress, most recently in the fiscal year 2007 HUD appropriations bill. This temporary program applies to a specific class of projects when their original Section 8 contracts expire, and provides the authority to restructure the debt on Section 8 projects with FHA-insured mortgages, and with Section 8 rents in excess of market levels. This

part of the statute is called the mark-to-market, or mortgage restructuring program. The authority for HUD to restructure mortgages on these properties expires in 2011.

The second part of the statute is permanent, in the sense that there is no expiration date, and it applies to the renewal of all Section 8 contracts that are not eligible for, or in the need of mortgage restructuring. This section is referred to as the section 524 renewals, and provides the framework for renewing the Section 8 contracts.

In both parts of MAHRA, Section 8 renewal rents are set at rents not exceeding market levels, or on a budget basis. In the mark-to-market program, or debt restructuring program, a reduction in rents is made feasible, in general, by the payment by HUD of a non-default insurance claim on the FHA-insured mortgage, and the replacement of that mortgage with another mortgage with lower debt service requirements.

In the course of this process, some funds are generated for any needed project repairs and necessary replenishment of reserves. The amount of the rehabilitation accomplished is modest, averaging about $1,800 per unit. An owner's obligation to repay the cost to HUD of the mark-to-market is secured by a second and sometimes a deferred payment third mortgage on the property, with potential repayment from a portion of surplus cash income to the project, or refinancing or sales proceeds.

MAHRA, which reaches its tenth anniversary later this month, expresses to us, the users of the Section 8 program, a congressional policy to preserve Section 8 projects into the indefinite future, and in that way provide stability, and therefore predictability, to the renewal and preservation process.

Nevertheless, experience with the renewal program, and perhaps changing conditions, may warrant modifications to MAHRA such as some of those to the mark-to-market program contained in H.R. 647. In addition, and in an exhibit to our testimony, we describe additional suggested statutory changes to the mark-to-market program and to the Section 8 renewal process, in general, that will help preserve Section 8 projects for the long term.

With respect to the provisions in H.R. 647, as we mentioned, the extension, the main purpose of the bill, has already been accomplished. However, there are several other provisions in the bill that would benefit the mortgage restructuring program, and should be considered.

We support section five of the bill that would increase the 5 percent to 9 percent of all restructured units, the number of units that can have exception rents in excess of 120 percent of the fair market rent for that area. Exception rents are budget-based. That is, they are the rents needed to operate the projects. Such rents are used as part of mortgage restructuring when a reduction to debt to zero will not be enough to yield economically viable rents at market.

The 5 percent limit was basically an educated guess when it was enacted in 1997, and HUD's experience with that limit should be acknowledged.

This amendment is important to ensuring that properties with rents above market that need substantial debt relief can continue to provide safe and decent housing for very low-income people.

National Leased Housing strongly supports Section 8 of the bill, which extends from 3 years to 5 years after mortgage restructuring, and the provisions that the members have expressed great concern with include—have expressed concern with is section 6, which would move some properties from the section 524 renewal universe to the mark-to-market debt restructuring. These are Section 8 projects with FHA-insured mortgages, but with rents at or below. This is a major alteration to the MAHRA, and has the owners concerned with the future course of the Section 8 renewal policy.

NLHA and HUD negotiated changes to HUD's original proposal to provide safeguards to the owners, including a requirement that owners consent to being put into the debt restructuring. However, National Leased Housing members remain concerned about some language in H.R. 647.

I thank you for the opportunity to testify, and I will be happy to answer questions.

[The prepared statement of Ms. Malynowski can be found on page 59 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Faith?

STATEMENT OF BILL FAITH, EXECUTIVE DIRECTOR, COALITION ON HOMELESSNESS AND HOUSING IN OHIO

Mr. FAITH. Thank you, Chairwoman Waters, for this opportunity to be here. I also want to thank you for your leadership in bringing this bill forward. It is a critically important bill to the State of Ohio. I think that's one of the reasons that Deborah Pryce also passed this bill in the last Congress, and I want to recognize her efforts, as well.

Not to beat a dead horse, but I do want to raise the HAP contract issue again. I know you did a great job having that heard last week, but when I took kind of a survey of what are the current issues with this legislation, universally, whether they're bankers, syndicators, anybody involved in these deals say, "Make sure they deal with this HAP contract problem."

And you have to understand that, in our State, preservation of this Section 8 project-based stock is a big deal. We have more of this stock than any other State, outside of California and New York. We commit some of our tax credits to this, our home money. We have a State housing trust fund. We have a receivership program. We use loan money to help get these projects preserved, many in conjunction with the mark-to-market program.

That involves lots of lenders, investors, syndicators, and others, and their confidence is shaken when they're making 30-year commitments, 20-year commitments, and HUD will only make a 3-month commitment. So, it was bad enough when it was only a year. Now we are down to 3 months.

I commend you for holding that hearing last week, and we need to act promptly, and in conjunction with this legislation, to make sure that there is sufficient funding to keep the HAP contracts fully funded.

I also—the committee sent me out some questions in advance of the hearing. I actually wanted to respond to a couple of those ques-

tions. Many of them are addressed in my testimony. One of the questions was, how has reorganization used and benefitted from mark-to-market?

We were one of the OTAG organizations. Originally, we were a direct recipient of the 514 funding in 2 different rounds. We haven't had funding under that program since, I believe, the last contract, which was in 2001. But it was a very important resource to engage the community and engage the tenants in the process of all these mortgage restructures that we have had. And we have had 361 properties sent through the mark-to-market program, either as light or as full restructures. The vast majority of those have been completed. There are still some in the pipeline.

But if this bill were to be passed because it opens up new opportunities, there would be another 175 properties in our State alone that could be eligible for a mark-to-market restructuring.

I also want to point out that we have—one of the very good efforts that this bill could open up is to address better the below-market properties. I mean, we looked at that in the State of Ohio. Over 9,300 units could be impacted, and the quality of that housing could be improved if we included those below-market properties in the mark-to-market process.

The other point I would like to make is that, you know, one of the questions was how—provide examples of ways in which the restructured properties are better off. I think there are three tangible benefits from the mark-to-market program.

One, it affects the health and safety of the properties, themselves. I mean, they get rehabbed, they're fixed up, and it improves life for the tenants. You know, there are other ways. They beef up operating reserves, and they set, as other people have said, they set operating costs at a more realistic level.

But there are other, less tangible ways that it improves, because the tenants gain a better understanding—well, provided that there is a 514-funded entity working with the tenants—but they gain a better understanding of how their properties are structured, how they work. The community stakeholders have more buy-in, and it also attracts additional State and local dollars into preserving this.

So, in summation, I want to commend you for your leadership on this. We are here to fully support this legislation, and I appreciate your efforts.

[The prepared statement of Mr. Faith can be found on page 47 of the appendix.]

Chairwoman WATERS. Thank you very much.

Our next witness is Ms. Paula Foster.

STATEMENT OF PAULA FOSTER, VICE PRESIDENT WESTERN REGION, NATIONAL ALLIANCE OF HUD TENANTS

Ms. FOSTER. Yes. Thank you, Madam Chairwoman, and panel. My family and I are one of the many thousands who live and have been improved by mark-to-market. I was fortunate to move into Ingram Square in San Antonio, Texas, in 1986. After my husband and I divorced, and our family found ourselves living in a homeless shelter, I eventually found a job and got into Ingram Square. I knew it was the right home for us, and I have been determined to make it work ever since.

I work with a nonprofit group home, providing service for mentally-disabled adults. At $9 per hour, I don't make enough for a market-rate apartment, which would cost at least $775 per month in my area. Section 8 allows me to pay much less for rent, and still support my family. Without it, we would soon be homeless again.

Although I was lucky to move into Ingram Square, I noticed right away there were serious problems. My home was plagued by water—roof leaks, porch leaks—and they were falling apart. In the playgrounds, there were rusty, rotten metal slides, endangering our children. In April 2000, our landlord applied mark-to-market to fix up our complex.

At that time, tenants were not organized, and we were fearful to speak up about what we really wanted. This was where the Texas Tenants Union came in. The TTU staff flew in from Dallas, and went door-to-door to explain the program, and encourage us to get involved. The TTU organizers were paid out of outreach and training OTAG grant, funded by HUD at the time from section 514 of the 1997 Housing Act. TTU helped us get what we needed, a repair plan.

AIMCO began repairs in 2001. Central air conditioning was installed in the first year, a real necessity in Texas. And, in the meantime, we had to really stay on Ingram's case when they dragged their feet and used cheap and shoddy materials and did shoddy work. From 2002 to 2004, we were HUD's ears and eyes, to make sure HUD got its money's worth. Texas Union worked with us the whole time. There were more than 10 trips to San Antonio, just to oversee the repairs.

AIMCO was initially hostile, and tried to make tenants fear that we would lose our homes. But with help from TTU, we overcame this fear and said, "This is our home, why shouldn't we have some say-so in it?"

Our homes are better and safer now, thanks to mark-to-market, but they are better still because of organized tenants' involvement, made possible through HUD's OTAG grants and TTU. We are not alone. The 32 OTAG groups prepared a report to HUD in October 2002, showing how tenants benefit from mark-to-market across the country. Thanks to HUD, some grants and volunteers, I request permission to submit a copy of this report today.

NAHT strong supports H.R. 647, and the reforms requested by HUD. There is one important amendment that is required, however. We need to get resources out to help tenants participate in Section 8 renewal decisions across the board. Across America, most HUD tenants remain unorganized and unaware of our rights. It is very difficult and rare for tenants to organize without some kind of outside assistance, because of the fear that they would lose their homes.

In 1997, Congress recognized this, and created section 514. Section 514 requires the Secretary of HUD to make available not more than $10 million annually to help tenants get involved. Unfortunately, since 2002, HUD has failed to provide any new funds for section 514. Worse, in 2002, HUD illegally cut off funds and failed to honor contracts with VISTA, a Federal agency, and the OTAG grantees in most of the country.

These two maps show the results. The first, from 2001, shows tenant outreach group cities, like Texas, around the country which receive either OTAG grants or VISTA volunteers to help tenants organize. The second, from 2003, shows the groups that remain after HUD's failure to fund section 514, or to honor its contracts with these groups. HUD's tenants are throughout the country.

Our written testimony goes into what happened. Tenants in Texas and across America are still suffering. The end of OTAG's funding has cut the organization's staff down to one outreach worker for HUD housing with no funds for travel.

[The prepared statement of Ms. Foster can be found on page 50 of the appendix.]

Chairwoman WATERS. Thank you very much. Your full testimony will be submitted for the record, and without objection we will include in the record the national report that you requested permission to have submitted.

With that, we will move right into our questions. And I would like to direct my first question to Ms. Anthony.

Ms. Anthony, you were trying to explain to us how nonprofits should be allowed to eliminate—or to be given consideration for not having to repay some money, and I wasn't sure what you said. Would you repeat that, please?

Ms. ANTHONY. Surely. In the case—Congress indicated in the initial legislation that when nonprofits are purchasing these properties, the secondary debt that is created in the mark-to-market process can be forgiven, or assigned to the nonprofit.

That meant, in the case, for example, of the Hawthornes, that we were able, when the State allocated tax credits, to increase the proceeds available to renovate the property. The recent direction has sought to get repayment of those second loans that Congress had said could be forgiven when a nonprofit buys a property after the restructuring has occurred.

We think it is inappropriate for that to happen when State resources have been sought, and are being used to improve the property, since that amounts to the use of State-allocated resources to pay back the Federal Government for something which Congress had indicated would be possible to be forgiven in the first instance.

And we think it has a chilling effect on the role of the States, in getting involved in these efforts.

Chairwoman WATERS. Oh. Well, I thank you for that. Do you have any idea how many nonprofits have attempted to get that consideration from HUD, and may have been denied? Is this kind of a general problem, in that most people don't get any consideration?

Ms. ANTHONY. I think that this is a new policy direction within the last 6 months or so. I don't know how many have. I do know that—I will submit with my testimony the details of one of the properties that we have been working to acquire in New Hampshire, since this new policy surfaced.

I think, though, the other statistic that I would mention is that when nonprofits buy these mark-to-market properties, and take advantage of available State resources, the rehab levels for the properties, for the units involved, goes from somewhere between $2,000 and $3,000, which is what the office states, to around $25,000

worth of rehab. So there is a significant increase, when States are involved, in doing the kind of repairs that are often required in these cases.

Chairwoman WATERS. That is very interesting. And because of the focus on this, I will make an inquiry about nonprofits and what they have done in relationship to your description of nonprofits, review tax credits, and have State assistance in order to do this rehab. That's a good thing to focus us on. Thank you very much.

With that, I will turn to our ranking member, Mrs. Capito.

Mrs. CAPITO. Thank you, Madam Chairwoman. I want to thank all of you all for your presentations.

Ms. Foster, first of all, thank you for coming and representing the tenant point of view. I really appreciate that. I think I might have had somebody from the tenants association—National Alliance of HUD Tenants—testify maybe at our last hearing or the hearing before.

I am curious to know about your organization. Are you part of a—I know you're the western rep. Are you part of a national organization? And do they educate you on what I think are extremely complicated—because you have a good grasp of what's going on here—extremely complicated financing issues? How have you educated yourself, and what do you do, then, once you gain this education, to try to help get the other HUD tenants to understand what is really going on, and how important these issues are?

Ms. FOSTER. I try to maintain a close connection with the tenants. Texas Tenant Union has been very instrumental in having individuals come up and help us out and maintain. And, yes, I do work with NAHT and the Texas Tenant Union out of Dallas.

Mrs. CAPITO. Are you in a voluntary position, or—

Ms. FOSTER. Yes.

Mrs. CAPITO. Yes? Okay. That's really all I had. I was just curious about it. I thank you for your advocacy. Thank you.

Chairwoman WATERS. And, Mrs. Capito, that is one of the reasons that I wanted HUD to submit to us their criteria, their design for tenant involvement. I want us to take a look at that, and see what they are saying. Thank you very much. Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. Ms. Malynowski, does your company manage any 202 projects?

Ms. MALYNOWSKI. We manage an 811.

Mr. CLEAVER. But no 202's at all?

Ms. MALYNOWSKI. No straight 202's, no.

Mr. CLEAVER. Okay, this is probably a question to ask HUD, because I'm trying to figure out why the 202 projects are excluded from the mark-to-market.

Ms. MALYNOWSKI. That's a great question.

Mr. CLEAVER. Ms. Anthony?

Ms. ANTHONY. I believe the 202 rents have always been set on a budget basis, and I think that contributed to why they were not included as eligible housing. But HUD may have a better answer.

Mr. CLEAVER. Yes, I apologize. It is a question I should have asked—because I'm just curious about the 202 project, and the fact that they are elderly, I would be really concerned if, somehow, their rents are being raised and, even adversely. And I apologize,

I will follow up with one of my questions. Thank you, Madam Chairwoman.

Chairwoman WATERS. Well, you are certainly welcome. Mr. Green?

Mr. GREEN. Thank you, Madam Chairwoman. Ms. Foster—and to everyone, thank you for being here—but, Ms. Foster, I am looking at the maps, and my maps are not in color. I believe yours are, is that correct?

Ms. FOSTER. Yes, sir.

Mr. GREEN. They really look nice from here.

Ms. FOSTER. May I bring it to you?

Mr. GREEN. Notwithstanding the lack of color, the maps depict what I think is a very disappointing, disconcerting, discombobulating circumstance, because it becomes transpicuously, intuitively obvious to the most casual observer that something awful has happened.

Ms. FOSTER. Yes.

Mr. GREEN. The maps are so graphic. I guess my question would become, given that there is talk of a new program, in your opinion, would the new program suit the needs of the tenants?

Ms. FOSTER. In its own structure? Yes. If we had a cap on it to have—the TRIO grant?

Mr. GREEN. Right.

Ms. FOSTER. No.

Mr. GREEN. Well, what are some of your concerns with the new program, as a person who has been involved and engaged?

Ms. FOSTER. My concern is how they are structuring this. If they put a cap on it, perhaps that could—working closer with the ears and eyes of the people, and having the people being a lot more involved, too. Because—

Mr. GREEN. Well, let me just examine that. You said the people involved. Now, the representative from HUD, whom I have respect for, indicated that they assembled the "stakeholders," that was the terminology utilized. Were you a part of that stakeholder meeting?

Ms. FOSTER. Yes, sir, working with HUD as a stakeholder.

Mr. GREEN. Are you aware of any tenant organization that was a part of that stakeholder meeting?

Ms. FOSTER. No, sir.

Mr. GREEN. Were you aware that a stakeholder meeting took place?

Ms. FOSTER. The second one, yes.

Mr. GREEN. Were you aware before the meeting, or after the meeting?

Ms. FOSTER. After.

Mr. GREEN. Would you have participated, if given an opportunity to do so?

Ms. FOSTER. Yes.

Mr. GREEN. Will you kindly explain some of your concerns with the program? And I know that my time is running out, so I better let you have some time to just tell us why you think this program is not going to meet the needs of the tenants.

Ms. FOSTER. Well, we urge the subcommittee to include the attached amendment, to make sure that funds authorized by Congress for tenant outreach are spent as soon as possible. Refunding

prior grantees with no audit findings and with a new inter-agency agreement with VISTA.

An amendment would also close loopholes in section 514, and correct the design flaws in TRIO, to make sure it works in compliance with HUD's audit recommendation, rather than the fee for activity model proposed by HUD.

Mr. GREEN. I am trying to get the horse back in the corral, and to close the gate on this. If these changes are made, you would want VISTA incorporated into the new program. Is this correct?

Ms. FOSTER. Yes.

Mr. GREEN. And, currently, VISTA, because of some concerns that have been raised, is not a part of the program, and in fact, has been extricated or expelled, or expunged, or removed in some way. Is this correct?

Ms. FOSTER. Yes.

Mr. GREEN. How—why is VISTA so important to the program, as opposed to some other means? Why is VISTA a necessary element?

Ms. FOSTER. Well, when it comes down to having our individuals being empowered, the VISTA workers were very instrumental in bringing us together, maintaining, and giving us the input that we need, in being able to further ourselves, as tenants.

Mr. GREEN. So you had a trust level—

Ms. FOSTER. Absolutely.

Mr. GREEN. —the VISTA workers, and you felt that they were dedicated volunteers?

Ms. FOSTER. Absolutely.

Mr. GREEN. I am so sorry that we don't have the opportunity to ask that young man from HUD more questions, but I will tell you that I have a lot of sympathy with what you're saying. And I am just—I am grappling with how do we put this Humpty Dumpty back together, as opposed to create a new Humpty Dumpty. And I am not sure I have the answer, but I will continue to grapple with it.

Thank you, Madam Chairwoman, and I yield back.

Chairwoman WATERS. Thank you very much, Mr. Green. And one of the reasons I asked HUD to submit to us a copy of the recommended new program is I wanted to give us an opportunity to take a look at it, and see if we have input and information by which we want to offer some changes to it, to make it more valuable, more meaningful. So—

Mr. GREEN. I am asking for a bit of time. I appreciate that greatly, Madam Chairwoman, and I really would like to have that opportunity, and perhaps get Ms. Foster to see if she would have a chance to peruse it, as well, and give us some additional comments.

Chairwoman WATERS. Okay, thank you very much. Yes, Mr. Cleaver?

Mr. CLEAVER. And this—there were about 1,600 people—this is not germane—1,600 people who were affected by the—in my district—by HUD's inability, or refusal to proceed to acknowledge that they were out of funds and needed some help.

Can we get a request that they provide us with the names and addresses of people in our prospective congressional districts?

Chairwoman WATERS. Yes. In addition to the request that we made to him this morning for getting a list of all of the project-

based Section 8 owners, you are specifically asking that we need to know those who have not been paid—

Mr. CLEAVER. Yes.

Chairwoman WATERS. —and who have complaints? Absolutely. We will make that formal request, and make sure we get that information to you.

Mr. CLEAVER. Thank you.

Chairwoman WATERS. Without objection, it is so ordered. Since 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.

Before dismissing the panel, I would like to say thank you very much for coming, for being here. It takes time out of your schedules, it takes resources to come here and share with us. But it certainly is very helpful to us. We deal with a lot of subjects, and we know a little bit about a lot of them, but we don't know much about any of them. So the more you help us to understand, the better policymakers we can be.

So we really do appreciate your being here today. Thank you. And this panel is now dismissed. However, before we adjourn, without objection, the written statement of the California Housing Partnership will be made part of the record.

Now, the hearing is adjourned. Thank you very much.

[Whereupon, at 3:48 p.m., the hearing was adjourned.]

A P P E N D I X

October 23, 2007

THE MARK-TO-MARKET EXTENSION ACT OF 2007
H.R. 647
Testimony before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing and Community Opportunity
By Amy S. Anthony, President
Preservation of Affordable Housing, Inc.
October 23, 2007

Good afternoon, Madame Chairwoman and members of the committee, and thank you very much for this opportunity to appear before you to discuss the extension of the Mark-to-Market program.

My name is Amy Anthony, and I am President of Preservation of Affordable Housing, Inc., or POAH. My organization, which is based in Boston, is a national non-profit which is focused exactly as our name says, on the preservation of affordable housing, specifically privately - owned housing with deep public subsidy to make rents affordable to those on the lowest rungs of the economic ladder. POAH has been in existence for just over six years, and currently owns and manages 4,615 affordable rental homes in eight states and the District of Columbia. The more than 10,000 residents who live in POAH-owned homes typically earn 30% to 50% of area median income. Generally, they are low-wage workers and their children, or seniors on fixed incomes, or are disabled—in short, among the most vulnerable of our citizens.

POAH is also a founding member of Stewards of Affordable Housing for the Future, or SAHF, an organization representing seven of the largest national nonprofit owners of affordable rental housing. Drawing upon the practical experiences of its members, SAHF has developed a set of policy proposals to preserve properties within the HUD inventory. I speak to you today on behalf of my SAHF colleagues, as well, and before concluding I will offer some legislative suggestions on behalf of SAHF.

I would like to introduce my comments about the Mark-to-Market program by talking first about preserving affordable housing. While preservation is a small aspect of the country's overall approach to increasing housing affordability, it is an essential effort, and is making a difference in the communities which each member of this committee represents.

What is preservation? At POAH, preservation refers to a strategy to maintain the long-term affordability of already built rental housing which

is usually privately owned but operates with deep public subsidy to make rents affordable to households earning, on average, $16,000 or less.

Between 1965 and 1990, $60 billion in federal funding was invested to create this housing--privately-owned, affordable rental homes for families, the disabled and the elderly. These homes were built in big cities, small towns and rural areas across the country. They were multi-story high-rises and single family bungalows. But all were built according to the same premise: that the government would provide funds to underwrite construction and operating costs, and in return, owners would promise rents affordable to low income families and seniors on fixed incomes for the duration of the fixed financing period. However, with the expiration of each financing agreement structured in past decades, the leverage for keeping rents affordable is lost.

POAH, and nonprofit owners like us, preserve this housing by purchasing the properties from owner seeking to exit the program. We are able to structure long-term financing to ensure continued 'affordability' -- meaning that the rents do not cost low- and moderate-income households more than 30% of their annual income. All of the buildings we purchase are older, and many are tired after decades of hard wear and tear. As part of the purchase, we attend to physical improvements wherever possible, to ensure that on our watch the property can again provide a long-term source of decent, safe and attractive housing that benefits families, neighborhoods and communities.

Why preserve this housing? There is no question of the need. Each member of this committee no doubt is familiar with the desperate bind low-wage workers or elderly pensioners can face in the search for decent, clean, safe housing they can afford. Harvard University's Joint Center for Housing Research asserts that across America there are now 5.4 million more low income households than there are affordable apartments available.

Decent, safe, affordable housing is part of our self-definition as Americans. As a country, we believe that no one should be homeless, and we understand fundamentally that a stable home contributes to healthy children, healthy families and healthy communities.

Beyond any moral or civic motivation, preservation is responsible. It is good stewardship. It is environmentally friendly. It wastes less, and

conserves more. Preservation recognizes that these properties—the buildings, the land, the homes—represent an essential resource that should not be thrown away thoughtlessly. Billions of taxpayer dollars were invested in to create and sustain these homes, and there is a fiduciary responsibility to their care. Losing these homes diminishes supply, drives up demand, raises prices and further divides the housed from the unhoused. Losing these homes to a lack of will or foresight is the worst kind of waste.

Preservation is also realistic. Given the current cost of capital, land, labor and building materials, as well as the reluctance and even refusal of many communities to consider large-scale rental developments, it should be no surprise that—according to the same Joint Center research—for every two affordable units which drop out of inventory, on average only one new unit is built. Most new affordable housing production is—for both zoning and financial reasons—on a significantly smaller scale than what was built previously. So it is not only that, without preservation, we are losing 150-unit, deeply affordable housing developments and replacing them with 40-unit tax credit developments—although that is the case. It is also emphatically that we are losing 150-unit developments in communities with good schools and job growth, and replacing them with 40-unit developments in more remote places, where jobs are fewer and services are less, because such locations are more feasible economically and sited more easily. That is the tide of resource allocation that preservation seeks to stem.

The other compelling reason to preserve and improve existing affordable homes is basic common sense: preservation costs less.

For all of these reasons, preservation is essential. Low wage workers, families of modest means, elders and the disabled on fixed incomes must live somewhere. If this housing is lost, where will they go?
And that is why Congressional action is essential. I want to urge this committee and the Congress as a whole to move forward with the greatest dispatch with legislative support for preservation. I cannot underscore too strongly the immediate and pressing need for Congressional action to address preservation. Our enormous national investment in affordable housing is maturing, the market is intervening, and with each passing day, in every corner of the country, America is losing these homes. We need speedy and effective action by this body to affirm the importance of housing preservation with both strong,

comprehensive legislation and funding sufficient to allow HUD to meet all of its fiduciary obligations.

That is my broad challenge to Congress. Today, the immediate issue before us is extending the life of the Mark-to-Market program. I want to support that extension generally, and talk specifically about some methods of improving this important and forward-looking program.

In its first decade, the Mark-to-Market program has generally proven to be an essential tool in the effort to preserve affordable housing, as well as a creative model for a new way forward in the partnership between government and nonprofit housing owners, one we believe can be extended and improved to benefit thousands of additional homes. The HUD Office of Affordable Housing Preservation, or OAHP, reports that through last week, it had completed 1,613 full restructurings to preserve 132,664 units, resulting in multiple millions of dollars in rent subsidy savings to HUD.

POAH has purchased 15 Mark-to-Market properties in three states and the District of Columbia. Collectively, these transactions have preserved and physically restored nearly 1600 rental homes serving working families, seniors and the disabled. We have found that the underwriting in Mark-to-Market transactions is sound, and that the refinanced properties are therefore better positioned to survive fluctuations in operating expenses such as utility or insurance costs. We also observe that Mark-to-Market is especially useful in weaker economic markets, where it enhances the value of available state resources.

Of course such results are important, and noteworthy, and I am sure that Deputy Assistant Secretary Toon will have more to say about the results his department has realized under the Mark-to-Market program. While Mark-to-Market is important for its results, it is also important as a prototype of what a new HUD—a reconstituted HUD—could achieve. The Mark-to-Market program is central to the good news from HUD.

Mark-to-Market is deal-oriented. It aims for a bottom line outcome which benefits the agency, the new owner, the residents and the community. Mark-to-Market deals have a give-and-take calculus which mirrors that in the broader real estate marketplace. This is in part because the OAHP staff are not paralyzed by precedent. Their program was created with

the benefit of advice from the marketplace, from a panel of expert real world practitioners who counseled Congress on creating a program which could operate like the private sector while realizing public benefit. Mark-to-Market is further bolstered by the use of PAEs, Participating Administrative Entities, which investigate each deal in the context of its locale, determine alternatives beneficial both to the agency and the deal, and push for timely resolution. All of these elements are business-like in their motivation, and combine to give the program its real-world feel.

I also want to compliment the staff at OAHP. POAH has worked closely with OAHP staff on 15 Mark-to-Market deals, and they are to be commended. Although the federal bureaucracy is often criticized for its lack of originality or efficiency or imagination, we have found this group to be responsive and committed partners in meeting the preservation challenge.

While I want to encourage the committee to move forward with extending this important program, my support presumes certain improvements which we deem essential to its future success.

First, HUD's primary goal for Mark-to-Market transactions should be preservation, not improving its own balance sheet. To that end, when the purchaser of a Mark-to-Market property is a qualified nonprofit owner, HUD should not demand repayment of any portion of secondary debt from state or local dollars contributed to the deal specifically so that housing can be preserved. We believe that HUD's efforts to the contrary, the motivation for which is unclear, are specifically undermining efforts to preserve affordable housing.

Congress clearly intended, in extending Mark-to-Market five years ago, to enhance preservation purchases by nonprofit organizations committed to long-term, responsible ownership. More recently, however, HUD has made it a practice in Mark-to-Market deals to require repayment of junior debt. The source of funds for such repayment is generally dollars which states and localities have contributed to the preservation purchase. HUD contends it is making this demand to ensure that the seller does not realize undue profit from the Mark-to-Market restructuring. Such targeting of sellers is misplaced and is in fact based on a false premise. Moreover, it is a disincentive to states to participate in these

restructurings, rather than encouraging their close participation in underwriting the appropriateness of the transaction.

Without incentive, owners seeking to realize the maximum compensation from an aging deal can simply wait until the mortgage expires, and take their chances in the open market—removing preservation from the calculus. When a socially-motivated owner has lived up to his or her initial agreement with the government, has operated a property well and maintained its affordability over time, and is seeking at exit simply to recover their own initial investment in order to meet the tax costs of exiting, HUD's position is in fact a significant step in the wrong direction, one which discourages owners from an appropriate transfer of the asset and which potentially sets the stage for abandonment of many projects.

In reauthorizing Mark-to-Market, Congress should clarify its expectations around debt forgiveness when an existing owner seeks to sell the property to a nonprofit purchaser. Mark-to-Market should not exist as a mechanism to break the government's original commitment to these early, steadfast owners.

Second, the legislation should remove the artificial three-year period during which HUD will assign or forgive such debt, an unwritten rule reportedly imposed by the Office of General Counsel. Preservation transactions often involve generations of private owners with significant estate or other tax considerations typically requiring far longer than three years to resolve. HUD's own data indicates that by the end of the last fiscal year, three-quarters of the closed portfolio had passed its eligibility date for debt forgiveness. Legislation should cure this circumstance, by extending the period from three to five years, and by including a two-year refresher window for revisiting early deals. Too many of the transactions undertaken in the early years of Mark-to-Market received insufficient financing for physical rehab and should be revisited.

The physical needs of properties which were restructured early on in the program were purposefully, but mistakenly, overlooked. These buildings are already showing signs of their underfunding, and because they are hamstrung with debt, cannot access other resources. Without legislative action, their long-term future as both affordable homes and community assets is in jeopardy.

According to OAHP, the average dollars spent on rehab for a property that has gone only through restructuring is between $2,000 and $3,000. However, when properties benefit from nonprofit debt assignment, the forgiven debt becomes an asset, counted in basis for the purposes of tax credit allocations. As such, the average rehab on these properties is approx $25,000. The two-year refresher window we are seeking through legislation would create a new opportunity for these early deals to benefit from debt assignment.

In the category of legislative improvements, I want to briefly mention exception rents. Congress needs to lift the exception rent cap so that OAHP remains able to restructure properties in certain unusual markets. In these locations, contract rents of up to 120% of fair market are still insufficient to support basic operations. It is worth noting that approximately two-thirds of properties which have already been restructured using exception rents have still realized savings to HUD, since even at the 120% level, the rents were lower than they had been before restructuring.

SAHF has a robust and lengthy list of policies it believes can be enhanced legislatively. These include:

- authorizing project-based subsidies in lieu of enhanced vouchers;
- allowing new preservation owners to rely on 20-year Section 8 contracts;
- allowing Rent Supplement and RAP contracts to be converted to Section 8 contracts; and,
- allowing maturing mortgages to be eligible for new Section 8 contracts.

I will provide written details of all of these items as part of the Committee's record.

You have also asked for thoughts about what might be expected if the Mark-to-Market legislation fails to pass. Certainly one outcome can be seen in what OAHP calls "Mark-to-Market lite". The Agency has completed 730 so-called 'lite' restructurings of 68,812 units. Lites, which re-set the rents without refinancing the mortgage, may help HUD's treasury but certainly do not benefit the long term certainty and condition of decently-preserved affordable housing.

Preserving affordable housing is what we at POAH do, and we welcome every tool which can assist us in achieving that goal. The Mark-to-Market program has proven its value, and the OAHP staff have proven that agility and creativity are possible in its administration. This is a style of governing that should be applied more broadly across the agency. But we should also be mindful that "Mark-to-Market" is a program within the *Office of Affordable Housing Preservation*—a name which suggests a wide-ranging mandate, one which would appropriately attend to the legions of properties needing concern and redress all across the country, not only those within a narrow bureaucratic window. I urge the Committee to consider the mandate and the funding of this office as part of your deliberations..

We are grateful to this Committee for your willingness to hear our ideas, and for the cooperation which we anticipate in the weeks and months ahead toward our shared goal of a stronger, more thoughtful, more resilient program to preserve affordable housing.

Thank you again for the opportunity to be heard this afternoon on this very important matter.

PRESERVATION EMPOWERMENT ACT OF 2007
Illustrative Transactions and Data

TITLE I
Short title; definitions

Within the Preservation Empowerment Act of 2007, SAHF proposes to define a qualified preservation owner as an entity that, in connection with its purchase of a project, agrees to a use restriction that retains the use and affordability of the property for a term of not less than 40 years and provides an assignable right of refusal in favor of the State housing credit agency.

TITLE II
In the case of a preservation transaction, permit owners to replace fully funded Sec. 8 contracts with new, long-term contracts subject to annual appropriations.

Authorize owners, or purchasers at the time of acquisition, to terminate the remaining portion of 40-year project-based Sec. 8 contracts on properties with state- or locally financed debt, provided that they (1) enter into new 20-year project-based Sec. 8 contracts subject to annual appropriations, (2) enter into commitments to preserve the affordability of the housing for at least 40 years, assuming continued rental assistance, and (3) receive the approval of any state or local lender that will continue to hold a loan secured by the property after the termination.

DATA

Between 2007 and 2033, the contracts will expire on more than 170,000 apartments with project-based Sec. 8 and state- or locally financed debt.

Contracts on more than 41,000 units are set to expire from FY07 through FY11.

Comprehensive data on the number of units and their locations is available via the SAHF Web site.

Source: HUD

Bridle Path. The long-term HAP contract on this 104-unit elderly affordable housing community in Randolph, Massachusetts, will expire in 2013. Preservation of Affordable Housing (POAH), a national, not-for-profit housing organization dedicated to preservation, intends to acquire and rehabilitate the property. To attract lenders and equity investors in order to compete with for-profit purchasers who would keep open the option of converting to market, POAH's acquisition/rehab. financing plan calls for termination of the existing HAP contract and its replacement with a new, long-term contract subject to annual appropriations. MassHousing is the lender and will continue to hold the loan after the HAP contract is terminated.

POAH intended to acquire the property under the Nonprofit Transfer Program, which is designed to encourage the transfer of Sec. 8 properties to qualified not-for-profit buyers. The program offers the ability to (1) mark below-market rents up to market, (2) terminate existing contracts early, and (3) obtain a new 20-year Sec. 8 HAP contract subject to annual appropriations. Chapter 15 does not make eligibility for any one of these tools contingent on the use of all of them, but the local office of HUD has insisted that Bridle Path may not use the second and third (replacement of the existing contract with a new 20-year contract), because it will not need the first (rent mark-up), as rents are already at market.

Absent a HAP contract of sufficient duration to cover at least the LIHTC compliance period, MassHousing must underwrite the property assuming that rents will fall to the tax credit rent level when the current

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contract expires, resulting in a 10 percent ($1.5M) reduction in supportable debt and thus fewer overall resources leveraged for preservation.

TITLE III
Permit access to distributions of excess cash flow and access to equity for not-for-profit housing providers.

1. *Override HUD regulations that restrict distributions to not-for-profit parent organizations.*

   Elaboration. In the treatment of "surplus cash" or "residual receipts," HUD regulations differentiate between profit-motivated, limited-distribution, and not-for-profit owners. For example, in HUD's "Regulatory Agreement for Insured Multi-Family Housing Projects (With Sec. 8 Housing Assistance Payments Contracts)," a profit-motivated owner is entitled to a distribution of any cash remaining "at the end of a semiannual and annual fiscal period" after the payment of all debt service, required deposits to the reserve for replacement account, and other obligations of the project.

   Limited-distribution owners are entitled to a payment of distributions (limited to 6 percent of their initial equity investment) before the residual receipts balance is calculated.

   Not-for-profit owners, on the other hand, are entitled to no distribution. Any cash remaining after the obligations of the project have been met are collected in a "residual receipts" account that is controlled by HUD and remains with the property.

	OWNERSHIP TYPE		
	Profit-Motivated	**Limited-Distribution**	**Not-for-Profit**
Total Revenues	$500,000	$500,000	$500,000
Operating Expenses	$260,000	$260,000	$260,000
Debt Service	$200,000	$200,000	$200,000
Reserve deposits	$10,000	$10,000	$10,000
Total cash expenses	$470,000	$470,000	$470,000
Cash remaining at end of fiscal period	$30,000	$30,000	$30,000
	Distribution of cash remaining at end of fiscal period		
Permitted distribution	$30,000[1]	6 percent of initial equity investment	$0
Residual receipts	$0	Balance remaining after distribution	$30,000 (stays with property)

[1] HUD refers to a payment to a profit-motivated owner as a payment of "surplus cash," not a "distribution."

2. *Specifically authorize a nonprofit housing provider to place any proceeds from the sales of properties it owns into a trust fund for the use of the seller or its nonprofit parent in furtherance of its affordable housing mission.*

   Pilgrim Tower North. PTN was developed as a Sec. 236 property owned by the Retirement Housing Foundation (RHF), a national, not-for-profit housing organization. Located in Pasadena, California, the property provides 258 apartments to elderly renters; 205 of the apartments benefit from project-based Sec. 8.

   In 1986, ownership of the property was syndicated to a limited partnership with a for-profit managing general partner wholly controlled by RHF. At the time, the limited partners set the terms of their exit, requiring that RHF assume the Sec. 236 mortgage, Flex. Sub. loan, and HAP contract. Once RHF had assumed these obligations, it turned around and sold the property to a new limited partnership, this time with a not-for-profit managing partner.

   RHF realized a substantial gain on the sale of the property to the new limited partnership. The proceeds were deposited in a trust account. The trust agreement negotiated with HUD permits expenditures for a broad range of affordable housing activities. Thus far, RHF has tapped into trust monies to purchase land on which it will later build a LIHTC property and to preserve properties within its Massachusetts portfolio. In terms of permitting access to proceeds and assuring maximum flexibility in their use, this transaction could serve as a model.

3. *Permit the HUD Secretary the discretion to authorize sellers to retain proceeds as they exit the field of affordable housing and transfer ownership to preservation purchasers.*

   Paraclete Manor. This 120-unit Sec. 202 property was constructed in Kansas City, Missouri, in 1964 and faced serious rehabilitation needs by the time the original owner offered it for sale in 2005. With an outstanding Sec. 202 mortgage of $418,000 and two Flex. Sub. loans totaling $1,973,385, the property was so loaded with debt that any additional borrowing would have resulted in substantial rent increases on both the assisted (102) and unassisted (18) apartments. Neither the Sec. 8 program nor the market would support such increases.

   In addition, the nine-story property required substantial rehabilitation, including a new elevator and heating plant. Many of the units had their original kitchens and bathrooms. The plan submitted to HUD by Preservation of Affordable Housing (POAH), a national, not-for-profit housing organization interested in acquiring and preserving the property, called for renovations of approximately $8,300 per apartment, an amount far beyond the minimal level of rehabilitation that could have been supported using replacement reserves.

   To support the acquisition/rehab., POAH put together a financing plan that included federal and state tax credit equity of nearly $2 million. It also obtained a new Risk Share first mortgage of more than $1.8 million. Given the magnitude of the unpaid balance of the Flex. Sub. debt, the deal could not proceed unless HUD permitted POAH to assume and extend this debt. HUD denied this request, citing proceeds to the seller as the cause for the denial.

   Despite letters of support from the Mayor of Kansas City and state and local elected officials, as well as the endorsement of the tenants, who were pleased with POAH's plans for rehabilitation and to bring a service coordinator to the property, the transaction did not go forward. The owner has decided to sell after the existing use agreement has expired, after which HUD will have no say regarding the terms or conditions of the sale.

TITLE IV
Extend the period of eligibility for not-for-profit purchase incentives and clarify that HUD may not require repayment of any portion of junior M2M debt in transactions deploying such incentives.

Modify the Mark-to-Market statute to extend the period of eligibility for not-for-profit purchase incentives and to clarify that HUD may not require a repayment of any portion of junior M2M debt in cases of acquisitions by not-for-profit purchasers using purchase incentives and state or locally allocated housing resources.

The Willows. The Willows provides 263 affordable rental apartments to a combination of elderly and family households in Bartlesville, Oklahoma. All four of the properties went through Mark-to-Market (M2M) restructuring in April of 2001. In 2006, Preservation of Affordable Housing (POAH), a national, not-for-profit housing organization, responded to a broker's solicitation, making a bid to purchase the properties from the for-profit owner. The bid was accepted, and POAH was given less than a year to put together a capital plan and acquire the properties.

The properties required new exterior siding, windows, and the replacement of many interior components, including mechanical systems. POAH also intended to introduce resident services. Recognizing that the scope of need at the properties went far beyond the reserves made available by the M2M restructuring, POAH applied for 9 percent LIHTCs and pursued funding through the Federal Home Loan Bank of Topeka. It received a commitment of $500,000 from the FHLBank and a resolution of support from the local government.

In its capital plan, POAH intended to bring roughly $6.4 million to the table in LIHTC equity and to hold rents constant. From HUD, POAH requested the assignment of subordinated M2M debt. Though it had the discretion to approve this request, HUD denied it. In addition, HUD required as a condition of the sale that POAH pay down the subordinated debt by 25 percent. To accommodate these demands, POAH would have had to undertake less rehab., lower the properties' reserves, or reduce its already modest purchase price offer. As the first two options were unacceptable to POAH given its long-term ownership horizon and the third would have undermined its position in a competitive acquisition environment, POAH was forced to walk away from the transaction.

The properties' rental assistance contracts expire in 2011. Sale to a qualified not-for-profit presents the only viable alternative in terms of recapitalizing the properties and repositioning them for the long-term. As things stand now, options available to the current owner upon contract expiration include renewal at a rent level insufficient to accomplish the necessary rehab. or opt out.

TITLE V
Authorize preservation project-based assistance in lieu of enhanced voucher assistance.

Authorize project-based assistance in lieu of enhanced vouchers to make it possible both to protect existing tenants in a project and to preserve the affordability of units at the project where an owner or purchaser seeking to preserve affordability at the property chooses to do so.

Fairweather Apartments. Located on Boston's North Shore, the Fairweather Apartments comprises 321 affordable apartments spread among four properties. The limited-dividend owner is exiting, and Preservation of Affordable Housing (POAH), a national, not-for-profit housing organization dedicated to preservation, is in the process of acquiring and preserving the properties.

In order to refinance and secure the resources to make needed renovations to the Fairweather, POAH will prepay the existing subsidized mortgages. This act will however trigger the issuance of enhanced vouchers. Because enhanced vouchers are tenant-based and not project-based, lenders

make some assumptions about attrition and underwrite a property's financing accordingly. At the Fairweathers, project-basing just a under half of the enhanced vouchers would increase the underwritable debt by more than 13 percent, providing greater resources to support the acquisition and rehabilitation of the property. In short, project-basing would permit the new owner to better leverage existing subsidy dollars.

TITLE VI
Convert Rent Supp / RAP contracts to project-based Sec. 8.

Congress should permit owners to convert Rent Supp and RAP subsidies to project-based Sec. 8 assistance. This action 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 to facilitate rehabilitation. This proposal has been scored on a preliminary basis by the Congressional Budget Office as creating a $410 million savings in fiscal year 2007 and a $292 million savings in fiscal year 2008. The savings is derived from the cancellation of long-term contracts and their replacement with one-year contracts subject to annual appropriations. This proposal is retroactive with respect to elderly housing projects to October 1, 2006.

Viewpoint Apartments. Located in Sandusky, Ohio, Viewpoint is a 153-apartment Sec. 202 property. Thirty of the units benefit from Rent Supp assistance; 54 have project-based Sec. 8. The rest of the units are unassisted. In 2006, National Church Residences (NCR), a national, not-for-profit housing organization, was approached by the owner, the local Kiwanis organization, which was interested in selling. At the time, the building was suffering a high vacancy rate due to a preponderance of unmarketable efficiency units. The operational burden of the vacancies was putting the entire building at risk.

DATA

Between 2007 and 2029, the Rent Supp/RAP contracts will expire on more than 32,000 apartments nationwide.

Contracts on more than 7,100 units are set to expire from FY07 through FY11.

Comprehensive data on the number of units and their locations is available via the SAHF Web site.

Source: HUD

Located in a weak market area, the property was unable to support new debt. In order to reconfigure some of the efficiencies into 1-bedroom units and address existing rehab. needs, NCR applied for 9 percent LIHTCs and sought permission from HUD to assume the existing mortgage. In order to maximize its LIHTC equity, NCR formed a limited partnership with a for-profit general partner, which NCR wholly controlled. Given the for-profit ownership structure, HUD denied NCR's request to assume the Sec. 202 mortgage. NCR was thus forced to prepay the mortgage, which resulted in cancellation of the Rent Supp contract. Lacking adequate project-based assistance, NCR was unable to leverage new debt. In the end, the entire acquisition/rehab. was financed with LIHTC equity and state trust fund monies. (NCR inquired as to whether the balance of the fully funded Rent Supp contract could be made available to the property when the contract was canceled and was told that it could not.)

The tenants in units formerly assisted with Rent Supp received regular vouchers, but the payment standard on the vouchers (set by the local public housing agency) is lower than the Rent Supp rents (set by HUD). The underwriting was additionally complicated due to the fact that vouchers are portable, not project-based. The net effect of the cancellation of the Rent Supp contract was a reduction in the amount of rehab. that could be accomplished. Alternatively, if NCR had been able to convert the Rent Supp contract to a project-based Sec. 8 contract, the building would have been able to support a new first mortgage and thus a greater level of rehab. For preservation purchasers

who are recapitalizing with the twin goals of renewed affordability and long-term ownership, accomplishing necessary rehab. at the point of recapitalization is essential.

TITLE VII
Preserve the affordability of older properties without project-based Sec. 8 rental assistance.

Award 15-year project-based preservation assistance, as a matter of right, to a qualified preservation owner/buyer who (1) agrees to enter into a commitment to preserve the affordability of the housing for at least 40 years, assuming continued rental assistance, and (2) receives state or locally allocated housing resources, including but not limited to low income housing tax credits, state or local funds, or tax-exemption.

Kirby Manor. Built in Cleveland in 1970, this 202-unit, Sec. 202 building was on its way to default when National Church Residences (NCR) acquired it from its original not-for-profit owner (Catholic Charities). Lacking any form of project-based rental assistance — despite average tenant incomes of just $10,000 per year — and with a 10 percent vacancy rate, the property was unable to cover even its basic operating costs.

NCR recognized that addressing the high vacancy rate meant combining some of the 300–square foot, studio apartments into 600–square foot, 1-bedroom units. When other rehab. needs were added to the costs associated with this unit reconfiguration, total redevelopment costs came to just under $16 million. To finance these expenses, NCR pursued LIHTC equity, creating a for-profit ownership structure. As a result of HUD agreeing to let this new ownership structure assume and subordinate the existing Sec. 202 mortgage, NCR was also able to take on new debt in the form of a 221(d)(4) mortgage.

The redevelopment of Kirby Manor was completed in December 2005. The property has a natural turnover rate of about 10 percent and is fully leased. New tenants may earn up to 50 percent of the area median income. The gap between what existing tenants can pay and the building's operational needs is covered by a $1 million rental reserve made possible by a contribution of HOME funds from the city of Cleveland.

DATA

From August 2007 through July 2017, mortgages on 2,044 properties will mature, according to HUD.

Of these properties, 636 (51,523 units) have 100 percent rental assistance. Within the 1,408 properties with partial rental assistance, there are 102,321 assisted apartments and 179,099 apartments overall. Forty-one properties with a combined total of 7,062 units are completely unassisted.

A U.S. Government Accountability Office study published in April 2007 found that owners of properties with rental assistance on fewer than 50 percent of the units were more likely to opt out. Of the 2,044 properties with maturing mortgages, 592 fall into this category. These properties have a combined 20,447 assisted units and 79,343 overall units.

Comprehensive data on the number of units and their locations is available via the SAHF Web site.

Source: HUD

Absent a new form of project-based Sec. 8, properties such as Kirby Manor can be preserved only with other available resources (e.g., LIHTCs), which brings about a gradual loss of units that are affordable to the nation's lowest-income renters.

TITLE VIII
Permit HUD to assign Flexible Subsidy loans.

The Flexible Subsidy program provided financial assistance to several types of federally assisted housing from the late 1970s through 1996. This proposal envisions using this debt as a tool to promote the sale of properties to nonprofits and to attract state and local resources to support preservation. It does so by authorizing HUD to forgive such debt or assign it to a nonprofit in connection with a transfer of the property to a nonprofit, just as the HUD Secretary is authorized to forgive or assign subordinate Mark-to-Market debt. This proposal also prohibits HUD from requiring any repayment of the Flexible Subsidy debt in connection with its forgiveness or assignment if the not-for-profit purchaser is utilizing any state or locally allocated resources in connection with the transfer.

Vanderbilt Apartments. National Church Residences (NCR) acquired this 151-unit elderly property from a not-for-profit seller. The property had originally been developed under Sec. 236 and had project-based Sec. 8 on 96 of the apartments and a Flexible Subsidy loan. At the time of acquisition, the vacancy rate in the unsubsidized efficiency units at Vanderbilt was 54 percent (with 19 of the 35 units vacant). NCR intended to address this issue via a unit reconfiguration that would result in no net loss of assisted apartments.

In addition to resolving the vacancy issue via a unit reconfiguration, NCR intended to address the long-term physical health of the building. The recapitalization plan called for the replacement of all flooring, appliances, and cabinetry; extensive site work; a new roof; refurbishing all bathrooms; upgrades to common areas; and the installation of a security system, among other things.

To rehabilitate this HUD-insured property, NCR brought LIHTC equity and local housing trust fund monies to the table. HUD marked the rents up to market as requested by NCR under the Nonprofit Transfer Program. HUD also required, however, that NCR repay 25 percent of the outstanding Flex. Sub. loan. Since NCR intended to assume the underlying (1 percent) Sec. 236 loan and was bringing no new hard debt to the transaction, it paid HUD using HOME funds and a Housing Trust Fund Loan from the City of Asheville. Had the HUD Secretary been authorized to assign the Flex. Sub. loan to NCR, the loan could have been counted in eligible basis, which would have increased NCR's ability to leverage LIHTC equity.

TITLE IX
Extend permanently HUD's authority to approve transfers of project-based rental assistance as a means of preserving affordability for the nation's lowest-income renters.

In instances in which preservation owners wish to transfer project-based rental assistance from one property to another in order to preserve the physical or financial viability of the transferring property; to create affordable housing opportunities in areas served by employment, educational, or similar amenities; or to deconcentrate poverty, the HUD Secretary should be authorized to permit the transfer of such assistance. This authority should be permanent.

Three of the above examples illustrate appropriate potential uses of Sec. 318 authority, which should be streamlined:

- The Willows. These properties had partial Sec. 8 assistance and a unique configuration of apartments and single-family homes. In its acquisition plan, POAH sought permission to transfer rental assistance from the single-family homes to some of the unassisted apartments at the property. POAH intended to use the single-family homes to provide first-time homeownership opportunities for current tenants or for other low-income families within the community. POAH found, however, that local HUD officials were both uncomfortable with the single-family home sale concept and unwilling to support the transfer of rental subsidy.

- Vanderbilt and Viewpoint. Each of these properties was partially assisted and had a relatively high percentage of unmarketable efficiency units. Even though the unit reconfigurations were necessary to restore each property to a sound operational footing, NCR encountered strong resistance at HUD — in one case at Headquarters and in the other at the local office. HUD's strong adherence to the concept of "one-for-one replacement" was at the root of its intransigence. A more robust application of Sec. 318 should provide the flexibility necessary to preserve properties without reducing the overall number of assisted apartments. For example, the HUD Secretary should be authorized to permit the transfer of rental assistance from properties undergoing a unit reconfiguration to properties that have unassisted apartments.

Preservation of Affordable Housing, Inc.
Amy S. Anthony, President

July 30, 2007

The Honorable Barney Frank
Chairman, Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515-6050

Re: Assignment of M2M Debt to Qualified Non-Profit Purchasers

Dear Mr. Chairman:

I am writing to provide some background information with respect to correspondence you have received on the subject of HUD's new policy regarding assignment of M2M debt to qualified non-profit purchasers for post M2M projects, and to urge you to continue to press for changes to that policy to more accurately reflect Congress' intent. The policy is set forth in HUD Notice H 2007-05, "Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Program Loans in Transfer of Physical Assets (TPA) and Refinance Transactions" issued on July 6, 2007

In a letter to you dated April 16, 2007, L. Carter Cornick III, HUD's General Deputy Assistant Secretary for Congressional and Intergovernmental relations set forth the rationale for the policy, as well as an illustrative recent example. That example happened to be of a transaction in which Preservation of Affordable Housing, Inc. (POAH) was a party, and as to which we have direct knowledge. The example is fairly typical of many other potential transactions, and while apologizing in advance for the lengthy dive into the relevant details, it is a good one around which the substantive issues involved in the policy could be illustrated in light of actual impacts.

The Case at Issue

The example used in the April 16, 2007 letter was of Sugar River Mills in Claremont, New Hampshire. The letter states that the owner entered M2M in 2004 with a project appraised at $5.2 million and a 1st mortgage balance of $8.2 million, and that after restructuring the project had a 1st mortgage of $1.2 million, a M2M 2nd of $5.1 million, and a M2M 3rd of $0.6 million. Under our purchase and sale agreement, the seller would receive $1.2 million. Mr. Cornick's letter makes the point that the $1.2 million seller's "cash out proceeds at sale is equity that certainly did not exist pre-M2M."

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A little history would better inform the analysis of whether the cash out to the proposed seller is inappropriate or problematic.

In Sugar River Mills, as in many other similar developments in the late 1970's and early 1980's, HUD was trying to encourage the development of decent safe and affordable housing in challenged markets that were – for fundamental economic reasons – not creating such housing. In Claremont, and elsewhere, the market rent (even for market housing!) did not support the construction of new rental housing. In order to encourage the production of such housing – HUD took a budget based approach to the development process – and for the most part ignored the market. Accordingly – in Sugar River Mills in 1982, HUD approved rents that were 15 to 20% higher than current market rents (see the e-mail attached from the original Sugar River Mill developer). This is a sufficiently common characteristic of Section 8 deals of that time that it has its own term in HUD parlance – the "initial difference."

Induced by HUD's agreement to provide over-market rents to cover the cost of construction, as well as tax benefits and a 6% return on equity, the original owner invested $1.8 million into the project (along with HUD's original $8.1 million loan). For the next twenty years the project went smoothly – the housing was (and remains) a mainstay of the community.

HUD could have honored its initial commitment to owners by keeping rents at the levels required to service the properties' outsized debt, allowing owners to recapture their equity contributions through sale once mortgages fully amortized. That was the original deal. However, 20 years into the transaction, HUD was feeling significant budgetary pressure – and one of the main sources of that pressure was its Section 8 obligations. At the same time, it was noticed that there was a surplus in the FHA insurance fund. HUD realized that one way it could alleviate the Section 8 pressure was by making claims against the FHA insurance fund, and reducing its Section 8 payment obligations. This was the genesis of the M2M program.

It should be noted that in this process, HUD 'did the right thing' – by also providing for necessary physical improvements to the property at the time that the mortgage was restructured. However – it also compelled owners to go through M2M, leaving them with rent levels which could not service their significant subordinate debt, and no prospect of being able to recover their initial investments. To address this potential inequity, the qualified non-profit transfer aspect created an outlet by which owners could exit the program.

In Sugar River Mills, had the project not been restructured, the owners would have owned a $5.1 million debt-free property (its appraised value in 2002) by holding on to their original deal with HUD until the maturation of the original mortgage in 2023.

In 2004, the owners had a negative capital account of slightly over $3.6 million. Selling the building to POAH for $1.2 million over the outstanding mortgages would mean that,

after the owners repaid the treasury for the tax losses that they had taken over their [illegible] years of ownership, they would get nothing of their original $1.8 million back.

In the April 16, 2007 letter - HUD states that it created the equity in these properties with the M2M restructuring. However, a review of the underlying facts reveals that it is not quite so simple. The owner would have had the ability to recoup more than its initial equity investment in the property if HUD had stuck to the original deal. By forcing a restructuring (in order to serve HUD's own financial exigencies), HUD positioned the owner such that they would never likely recover that investment.

The Policy More Broadly

While HUD's rationale for implementing its new policy has some superficial appeal, it cannot justify the policy's significant negative impact on preservation transactions. This policy should be eliminated because (1) it impedes the preservation of affordable housing, (2) it is contrary to legislative intent, (3) it diverts scarce housing resources from state and local allocating entities to HUD, and (4) it interferes with owners' legitimate claims to recovery of their initial equity investments. These issues are detailed below.

1. The policy impedes efforts to preserve threatened affordable housing.

The requirement that half of any seller proceeds be applied to repayment of junior M2M debt imposes a burden which in many cases is more than most transactions can bear, blocking the outcome which would be best for the property. Where applied, this policy has the effect of impeding the transfer of M2M properties from for-profit owners seeking to exit to not-for-profits with the resources and commitment to preserve the properties' affordability for the long run.

POAH's acquisition and rehabilitation of the Sugar River Mills property would not have been financially feasible under this policy. That transaction moved forward again only as a result of HUD's agreement to significantly reduce the amount of required repayment of M2M debt from $1.2 million to $200,000. While we sincerely appreciate HUD's accommodation in this regard (approved only because the transaction went under agreement prior to the policy being proposed), the fact is that absent such an accommodation – the deal would have died. The limited partner indicated unequivocally that it would not consent to any sale that did not clear the partner's exit tax liabilities – that they would rather hold on forever.

In the case of Sugar River Mills it should also be noted that the general partners were retiring – and were selling their entire portfolio. A policy that precludes such exits risks creating an economically moribund result – with disinvestment by the owners being one of several significant detrimental long-term consequences.

This is not the sole instance of the subject policy impeding a socially desirable preservation transaction. We know firsthand of a post M2M project that we proposed to purchase in Oklahoma - with significant unfunded rehab needs – that was not able to be

preserved because of HUD's M2M prepayment requirements. We have reason to believe that there are many others similarly situated.

2. The policy is contrary to legislative intent

This policy has the effect of undermining congressionally furnished incentives designed to encourage non-profit transfers, and as such it is contrary to legislative intent

3. The policy diverts scarce housing resources from state and local allocating entities to HUD

Most not-for-profit purchasers use tax credits and other state and local resources to make preservation transactions work. Proceeds to the seller in such transactions are the direct result of the state or local entity contributing resources, accordingly repayment of HUD M2M debt from seller proceeds represents a diversion of state and local resources from the preservation transaction to HUD. This state of affairs is not only inequitable, but also likely to discourage state and local entities from contributing resources to support non-profit transfers.

Another troubling element of this policy is the implied lack of faith in state and local entities' ability to allocate their resources effectively. In these transactions, any proceeds to the seller reflect the state and local allocating entities' assessment of the allocation of resources necessary and appropriate to make the transaction work. By imposing limits on seller proceeds through this policy, HUD is implicitly second-guessing and over-ruling these local decisions.

We believe the better policy is for HUD to trust these entities to make appropriate decisions regarding the use of their resources.

4 The policy interferes with owners' legitimate claims to initial equity investments.

As noted above – had HUD not created the M2M program to solve its own financial issues, the owners would have been able to recoup their original investment by staying in the deal until the mortgage matured. Nonetheless – we recognize that there is a line where fairness turns to abuse, and HUD has a responsibility to make sure that owners are not overpaid as a result of the non-profit transfers of M2M restructured projects. Our suggestion to HUD is that the bright line is the owner's initial equity contribution: unless the proposed sale would result in more than the owner's initial equity investment being returned, HUD should yield to the decisions of state and local entities in the allocation of their own resources - and not interfere with the owner's legitimate claim to recover their investment. Such interference is both unfair and hinders socially desirable transactions.

In the Sugar River case referenced above, for example, the owner is recovering $1.2 million in proceeds from the sale to POAH. This equates to just two-thirds of their initial $1.8 million investment, but it is enough to allow them to exit and transfer the property to POAH, which will rehabilitate and preserve it as healthy affordable housing.

In sum, the new policy represents a significant step in the wrong direction. Instead of encouraging additional resource being drawn in to preserve properties and encourage their transfer to socially motivated owners it discourages both the additional resources and the transfer. In addition it sets the stage for economic abandonment of many projects.

As we all look at supporting legislation that would broaden the number of properties eligible to participate in the qualified non-profit transfer program it is especially incumbent upon us all to make sure that we keep it working successfully.

Sincerely

Amy S. Anthony
Executive Director

Cc Ted Toon
Carter Cornick

Dedicated solely to ending America's affordable housing crisis

Testimony of Bill Faith
Executive Director of the Coalition on Homelessness and Housing in Ohio (COHHIO) and
Board Member of the National Low Income Housing Coalition (NLIHC)
presented to the
Subcommittee on Housing and Community Opportunity of the Financial Services Committee
United States House of Representatives
October 23, 2007

My name is Bill Faith. I am the Executive Director of the Coalition on Homelessness and Housing in Ohio (COHHIO) and a member of the Board of Directors for the National Low Income Housing Coalition (NLIHC). I am testifying today on behalf the NLIHC, and I am here in support of H.R. 647: The Mark-to-Market Extension Act of 2007. I would like to thank Chairwoman Waters for introducing H.R. 647 and for holding this hearing. I would also like to acknowledge the work of Congresswoman Deborah Pryce of Columbus for her support and strong leadership around this issue in the past.

Since 1984, COHHIO has worked on behalf of every Ohioan in need of a house, in hopes that someday these simple physical structures can become lasting homes filled with life's possibilities. At COHHIO we believe that everybody should have a home, so we advocate on behalf of those who do not. COHHIO supports a range of housing related services in Ohio, from stopping predatory mortgage lending to preserving our affordable rental housing. Helping our 600 member housing organizations and homeless service providers pursue their missions, COHHIO provides public policy advocacy, training and technical assistance, research and public education.

NLIHC is dedicated solely to ending the affordable housing crisis in the United States. Our members include non-profit housing providers, homeless service providers, fair housing organizations, state and local housing coalitions, public housing agencies, private developers and property owners, housing researchers, local and state government agencies, faith-based organizations, residents of public and assisted housing and their organizations, and concerned citizens. NLIHC does not represent any sector of the housing industry. Rather, NLIHC works only on behalf of and with low income people who need safe, decent, and affordable housing, especially those with the most serious housing problems.

First, let me start by saying that the most critical issue before the Committee in terms of preserving affordable housing is the need to ensure that all renewing Project-based Section 8 contracts receive full funding. Chairwoman Waters held a very important hearing last week to highlight the need for this funding. Before anyone can address the need for more tools to address the problem of aging Project-based Section 8 housing, Congress must solve the problem of the delays and projected shortfall in the Project-based Section 8 renewal process.

Chairwoman Waters' leadership on this issue has opened the discussion, which must now be pressed to a quick resolution. At this point, owner and investor confidence in the integrity of the funding stream is diminished. The present circumstance erodes owners' ability and willingness to enter into or finance a Mark-to-Market transaction. In the absence of strong, swift action by Congress, investor commitments to financing affordable housing, already shaken by the subprime lending crisis, is made even more precarious. In Ohio, my organization has heard from property syndicators that Mark-to-Market deals are being delayed because of the HAP shortfall crisis. In at least one case in Pleasantville Ohio, the Low Income Housing Tax Credits, granted by the State of Ohio, are at risk because

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the Office of Affordable Housing Preservation (OAHP) is unable to close the Mark-to-Market restructuring. At the same time, tenants in Project-based Section 8 housing are being put in jeopardy. A concern to the NLIHC and COHHIO is whether HUD can provide tenant protection vouchers if tenants are involuntarily displaced by foreclosures precipitated by HAP shortfalls or if HUD fails to renew Project-based Section 8 contracts because of lack of funding.

COHHIO and the NLIHC fully support the changes to the Mark-to-Market program proposed in H.R. 647.

Since its enactment 10 years ago, the Mark-to-Market program has preserved 125,000 affordable apartments through full debt restructurings at an estimated savings to the taxpayer of $2.1 billion. Mark-to-Market is an opportunity to preserve long-term affordability of properties in a variety of settings for a diverse market of low-income households. It is estimated that about 40% of households in Project-based Section 8 assisted housing are households that are headed by elderly or disabled persons. This percentage of households is bound to grow over the next decade as the baby boomers mature and persons with disabilities increasingly enter into independent living situations. At the same time, Project-based Section 8 housing provides an opportunity for younger families to establish households and build their careers towards greater financial stability. Unlike the stereotype of low income housing from the past, tenants in today's assisted housing are working (at low wage employment) and getting education to increase their life choices. Moreover, demand for affordable units in Ohio will increase over the next 9-12 months as 100,000 more Ohio families, lured into homeownership that they could not afford, will be returning to rental housing.

It is cheaper to preserve these housing opportunities than to try to recreate them, and vouchering-out is not typically the best solution. There is significant resistance to "voucherization" in many communities. In Ohio, the extensive use of vouchers to replace project-based housing has resulted in a backlash against voucher holders and exclusionary rental policies. NIMBY battles that were formerly about the citing of "projects" are now focused on the source of housing assistance. While these battles need to be fought at the community level by local officials and housing and low income advocates, the households in need are caught in the crossfire.

H.R. 647 builds on the Mark-to-Market model to extend the benefits of refinancing to other properties, while reducing operating expenses to the owner and HUD. Mark-to-Market has also been a success in Ohio, providing an infusion of capital for deferred maintenance and rehab into 256 properties that completed a full restructure. HUD's records show that there was a total of 361 Ohio properties enrolled in the Mark-to-Market program. Of these, 302 were "full" restructures and, of those, 186 were completed successfully. Another 44 properties are in the Mark-to-Market pipeline. There were 59 "lite" restructures (adjustment of rent levels without mortgage restructuring). COHHIO estimates that 175 properties (lite or failed full restructures) are potentially eligible for restructuring over the next 5 years as long as they have retained FHA insurance and Project-based Section 8 subsidies.

H.R. 647 makes several important additions to the basic framework of the original Mark-to-Market program.

First, raising the limit on high-cost restructuring, e.g. exception rents, from 5% of the total restructured units to 9% of the restructured units, gives HUD the flexibility to complete the hardest deals remaining in the portfolio. Exception rents are used for the most at-risk properties to address outstanding problems in the property. Hillside Apartments in Mt. Vernon, Ohio, is an example of a property with high degree of deferred maintenance resulting in high vacancy rates which required "exception rents" to make the Mark-to-Market deal work. Initially deemed infeasible by HUD, local elected officials and a community-based nonprofit stepped forward to urge HUD to approve the restructuring and extend the purchaser incentives to the local non-profit organization, which sought and received Low Income Housing Tax Credits to close the deal. One of the county commissioners who met with HUD officials on a site visit recalled how he was opposed to "government housing," in principle, but knew that this development had been a critical resource for his sister when she was trying to re-establish a home for herself and her children after a divorce. He said that others should have the chance that was available to his sister.

Second, expanding the program for declared disaster areas is also critically important. The impetus for this reform is to facilitate the recovery of housing for the areas stricken by Hurricanes Katrina and Rita, but would apply to FHA-insured housing in future disaster areas. The Congressional Budget Office (CBO) scored a savings on the measure extending eligibility to properties in declared disaster areas.

Third, expanding the types of properties eligible for Mark-to-Market to include those with market or below-market

contract rents, will enable cost efficient restructuring and avoid claims on the FHA insurance fund through defaults. Nationally, it is estimated that there are 2,109 "at risk" properties with 174,845 units that also have below market rents. In Ohio, there are 109 properties with 9,367 units, which could qualify for Mark-to-Market restructuring if this change were enacted. Using the "avoidance of default" methodology, a savings could accrue from extending eligibility to otherwise-eligible properties with rents at or below market. Had this provision been in law in 2006, Centennial Apartments might have been able to be restructured. Instead, after a finding of "below market" rent levels, this tenant-owned housing cooperative was forced into a complex refinancing scheme, which resulted in pre-payment of the FHA mortgage and dramatically increased rents for a portion of the property, which does not receive Project-based Section 8 subsidies.

H.R. 647 also extends the period during which the HUD Secretary may choose to provide debt relief for nonprofit owners from the current three to five years. This provision provides needed flexibility. Current practice allows this benefit for up to three years after restructuring. Right now about 90% of the restructured portfolio is beyond the time limits for purchaser incentives. Passage of this provision will create new opportunities for long-term stability. NLIHC and COHHIO also favor adding language to H.R. 647 that would prevent HUD from recapturing proceeds of a subsequent transaction when the buyer is a tenant endorsed nonprofit, using public funds to reinvest into the property.

Finally, I want to express strong support for the 514 Technical Assistance Funding because it is critically important to the success of the Mark-to-Market program in Ohio and throughout the country. The role of tenants and community stakeholders has been crucial to the progress to date to maximize preservation opportunities, to help improve the process and improve the overall quality of the housing. Project-based Section 8 housing does not operate in a cubbyhole at HUD, but in the real world of competing interests, scarce resources and the demands of local conditions. In Ohio, Project-based Section 8 developments range in size from an eight-unit development in Toledo to complexes of over a thousand units in Cincinnati. Project-based Section 8 exists in communities where there is no mail delivery to communities where a major sports team challenged that team from Boston for a berth in the World Series. Involving local people, tenants and stakeholders, in decision making about the future of these community assets is essential to success. Just jetting in some outside consultants to spend a day on site and then designing a plan based on what is in the HUD files is a waste of money.

My organization, COHHIO, has been the beneficiary of 514 Technical Assistance funding since the program started. We have used these funds to keep tenants informed and to engage local stakeholders in preservation activities. We urge Congress to include in H.R. 647 a new section that will confirm the scope of eligibility for technical assistance to include all FHA insured, HUD subsidized developments where tenants are at risk of displacement by pre-payment of an FHA mortgage, by expiration of an FHA mortgage, by termination of Section 8 assistance due to property disposition, owner opt-out, or HAP shortfall. Moreover, because of the demand from tenants and local stakeholders for these services, we urge that Congress direct HUD to make grants in the most expeditious manner so that organizations like COHHIO can once again respond to these needs promptly. In Cleveland just a few weeks ago, senior and disabled households were told by their management company that they would be forced to pay "market rents" as a result of the HAP shortfalls. Prompt action by local community organizers at the Cleveland Tenants Organization, using local funding sources, was required to get management to retract their threat and ally jangled tenants' nerves. At COHHIO, we continue to put a tenant outreach coordinator on the road thanks to support from the state, through the Ohio Housing Trust Fund. State officials have wondered why HUD can not support its own outreach program it created under MAHRA, when there is clearly lots more need for the program. COHHIO's Tenant Outreach Coordinator ordinarily logs 800 miles a week moving from a tenants meeting to a city council, to meetings with local development corporations to address concerns related to the preservation of affordable housing. To the extent possible, COHHIO maintains a clearinghouse of information about HUD programs, regulations, and specific information about properties. All of these programs were initiated under 514 Technical Assistance funding and, after proving their value, were abandoned by HUD. Ironically, HUD still constantly calls on COHHIO when they want local information or someone to make a site visit.

COHHIO and the NLIHC strongly endorse passage of H.R. 647 with its additional opportunities for preserving more low income units, while at the same time urging the Congress to act decisively on the HAP shortfall crisis. New Mark-to-Market authority alone is not enough to restore the confidence of owners, lenders and tenants in this housing stock. Thank you for the opportunity to be here today.

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Statement To

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

Testimony on H.R. 647, the Mark to Market Extension Act

By Paula Foster, Vice-President/West
National Alliance of HUD Tenants
October 23, 2007

Thank you for the invitation to testify today in support of H.R. 647, and to offer some suggestions for additional reforms. My name is Paula Foster. I am President of the Ingram Square Tenants Association in San Antonio, Texas; the Vice President/West of the National Alliance of HUD Tenants (NAHT); and a tenant in Section 8 housing restructured under the Mark to Market Program. I am also an active member of the Texas Tenants Union, based in Dallas, which helped us organize and sustain the tenants association in my development.

Founded in 1991, NAHT is the nation's only membership organization representing the 1.7 million families who live in privately-owned, HUD-assisted housing. The elected NAHT Board represents a membership including voting member tenant groups and areawide coalitions in 23 states. NAHT participated in the HUD roundtables which crafted the Mark to Market program, and testified in support of MAH.R.AA in 1997 and the first Mark to Market Extension bill in 2001. We are pleased to speak again in support of extending and improving this vital program.

1) Tenants' experiences with Mark to Market. The Committee has asked NAHT to describe tenants' experiences with the Mark to Market Program, and to provide examples of ways in which restructured properties are better off. My family and I are one of the many thousands whose lives have been improved by Mark to Market.

I was fortunate to be able to move into Ingram Square in 1986. I had moved to San Antonio with my husband, who was in the military, and took care of my children at home. But when my husband and I divorced and he moved away, I didn't know anyone, and our family found ourselves living in a homeless shelter for 9 months. I eventually found a job and moved into Ingram Square on an emergency basis. I knew this was the right home for us and I've been determined to make it work ever since. One of my children has been diagnosed with ADHD, and our two bedroom apartment now houses my three children and one grandchild, in addition to me.

Today, I work in a nonprofit group home providing direct services and counseling to mentally disabled children and adults. At $9 per hour, this challenging job does not pay enough for a market rate apartment, which would cost at least $775 per month in my area. Section 8 allows me to pay much less for rent and leaves enough to support my family; without Section 8, I'd be homeless again. I have been able to give back to my community through volunteering for the tenants association and advocacy for the disabled. I was the first parent in Texas assisted by the state for ADHD, and in 1994 I helped pass a state law that allows low income people to make "one-stop" applications for multiple programs in any state agency in Texas.

Although I was lucky to move into Ingram Square, I noticed right away there were serious problems. Like many 1970's concrete buildings, Ingram Square was plagued by water and roof leaks, porches that were falling apart, plumbing problems, and a playground whose rusty, rotted metal slides were a danger to our children.

In April 2000, our landlord, AIMCO, applied to M2M to bring much needed repairs to our complex. The first tenant meeting scheduled by Ontra, HUD's PAE, was scheduled for July. At this time, tenants were not organized independently of management, and we were fearful to speak up about what we really wanted. This is where the Texas Tenants Union (TTU) came in. Duane Stewart from the TTU flew in from Dallas and conducted door to door outreach to explain Mark to Market and encourage us to attend the meeting. (I later learned that the TTU organizer's salary and travel costs were paid from an Outreach and Training (OTAG) grant, funded by HUD from Section 514 of MAH.R.AA.) At least 41 tenants attended, more than 1/3 of the residents. We were not comfortable speaking in front of management, but when they left, we were vocal in providing input about property conditions.

Duane returned to Ingram Square two months later to hold a meeting with us and help us form an organization. We had to hold the meeting outside, because AIMCO would not let us use the community room. When the Draft Restructuring Plan was released in January 2001, Duane met with us to review the Draft and prepare written comments prior to the second meeting with Ontra, held in February.

AIMCO began to make the Mark to Market repairs in June 2001. Central A/C was installed in the first year—a real necessity in Texas, and a supreme victory for our Tenant Association! Meanwhile, repairs and replacements to be funded from the Reserve Account were not completed on time; we had to really stay on AIMCO's case when they used cheap materials and sometimes did shoddy work. From 2002 to 2004, we felt we were the Eyes and Ears of HUD to let them know how their funds were really being used. TTU worked with us the whole time, from beginning to end and in between. We could not have done it without them.

Throughout this process, TTU's OTAG funded staff made more than 10 trips to San Antonio to help our Tenants Association develop and oversee Mark to Market repairs, sometimes with two people coming on each trip. AIMCO was initially hostile to our proposals and attempts to organize. They made tenants fear that we would lose their homes if we went up against management. But with training and support from TTU, we overcame this fear and said, ***this is our home, why shouldn't we have a say so in it?*** I became a leader of the Tenants Association and we started meeting once a month, despite management's intimidation.

Our homes are better and safer now thanks to Mark to Market. But they are better still thanks to organized tenant involvement, made possible through HUD's OTAG program and the sustained support of the TTU. If the only thing we had was two meetings organized by HUD's PAE, we wouldn't have what we have today, and HUD would not have gotten its money's worth.

We are not alone. The 32 OTAG groups prepared a national Report submitted to HUD in October 2002 giving a rich overview of how tenants benefited from the Mark to Market program throughout the country, thanks to organized tenant involvement made possible through HUD's OTAG grants and HUD funded VISTA Volunteer program. I request permission of the Subcommittee to submit a copy of this Report with my testimony today.

2) Need for preservation tools in H.R. 647. It is essential that Congress extend the Mark to Market program and adopt the reforms requested by HUD and a wide spectrum of industry groups in H.R. 647 to improve the program. The provision extending debt forgiveness for nonprofit transfers would particularly help tenants at Prince Hall Gardens I in Fort Worth, where nonprofits are ready to take over a troubled former M2M property with failing REAC scores.

NAHT suggests one amendment to win swift passage of this bill: to cap "exception rent" increases at the "old" Section 8 contract rent level. This would address Republican objections in the Senate that a program designed to reduce Section 8 subsidy payments to market levels should not end up paying owners more than what they received before "restructuring." NAHT has proposed this compromise to Republican Senate staff and believes it could break the Senate logjam which has so far held up S 131, the Senate companion to H.R. 647. Although we understand that a third of the pending "exception rent" proposals at HUD would be affected, these M2M Plans can still go forward using state and local subsidies to fund any underfunded repair needs.

3) Additional improvements for Mark to Market: Restore resources for tenant involvement. There is one important area where further amendment to H.R. 647 is required,

however: the need to get out resources to help tenants organize and participate in Section 8 contract renewal decisions, not just in Mark to Market but across the board.

Across America, most tenants in HUD housing remain unorganized and unaware of their rights. As in my complex, tenants are almost always afraid of organizing for fear of losing their homes. It is very difficult and rare for tenants to organize without some kind of outside assistance and support, from an experienced tenant coalition or organizing project, Legal Services or similar group.

In passing MAH.R.AA, Congress recognized this problem and the value of tenant involvement by creating the Section 514 program. Section 514 requires the Secretary of HUD to make available not more than $10 million annually from the larger project-based Section 8 account ($5.9 billion in fiscal year 2007) to provide resources to help tenants participate in the decisions affecting our homes. From 1997 -2001, HUD provided a total of $26.3 million in three programs—OTAG, ITAG and VISTA—to carry out this important objective. OTAG funds provided to the Texas Tenants Union made possible our success at Ingram Square.

Although located in the section of MAH.R.AA which created Mark to Market, Congress made Section 514 funds more broadly available to help tenants cope with ALL Section 8 contract renewal decisions. In 1999, in response to a growing number of owner opt outs, Congress clarified this by emphasizing that funds are to be made available to all expiring Section 8 contracts, including *below* market contracts which "may not be renewed."

Unfortunately, since 2002, HUD has failed to provide any funds for tenant outreach from Section 514, although up to $50 million could have been made available over five years. Worse, in 2002, HUD illegally cut off funds and failed to honor contracts with the Corporation for National Service (CNCS), the federal agency which runs VISTA, or the OTAG grantees in most of the country. I'd like to submit to the Subcommittee two maps showing the result: The first, from 2001, shows the nonprofit tenant outreach groups cities around the country which received either three year OTAG grants, like the one to TTU, and/or VISTA Volunteers to help organize tenants.

The second, from 2003, shows the groups that remained after HUD's failure to fund Section 514, or to honor its contracts with these groups. HUD tenant outreach plummeted throughout the country, and nonprofit organizations that were the only housing advocacy organization in several states, such as Missouri, New Mexico, and Arizona, were bankrupted and destroyed.

HUD mishandled Section 514 audits. The destruction of tenant outreach in most of the country is a direct result of HUD's handling of the unusual Section 514 audits mandated by Congress in Section 1303 of the Defense Appropriations Act of 2001. Congress mandated the audits for "each award of funds" made under Section 514 for the previous five years, to determine whether "any" OTAG funds had been spent on impermissible lobbying. HUD interpreted this to require an unusual 100% review of all records, with no 'materiality" standard or room for error: a $5 mistake could lead to contract termination and a four year debarment.

We are pleased to report that the IG audits exonerated the OTAG, ITAG and VISTA programs of the allegation of inappropriate lobbying. After a 100% review of all records for $13 million awarded to 42 organizations over five years, HUD questioned less than $1,000 in two organizations spent on federal lobbying—and these amounts are vigorously disputed by grantees[1].

[1] A total of 5 groups were concluded to have conducted improper "lobbying" with HUD money; their funds were cancelled and reclaimed and the groups were debarred for 4 years, starting in 2002. Of these, HUD did not actually identify dollar amounts in 3

There were no proven "lobby" allegations whatsoever in the VISTA program, the vast majority of OTAG grantees, and the ITAG program. There was not one proven instance of an ineligible property aided by an OTAG grantee in the entirely country (although HUD erroneously maintained there were three ineligible properties in DE and MD).

Despite this, HUD illegally suspended 18 out of 32 grants for close to three years, mostly for minor administrative errors that easily could have been resolved. HUD provided the suspended grantees with no Notice or due process, as required under the OTAG contracts; these suspensions were not required by the IG, in most cases. [2]HUD then failed to follow the procedures in its Audit Resolution Handbook, at every step, in contrast with HUD's typically laissez faire treatment of owners and Housing Authorities who are allowed to continue receiving funds under their contracts while fighting far more serious audit findings. I would like to submit to the Subcommittee's record a legal opinion by the Washington law firm of Fried, Frank on the illegality of HUD's treatment of Section 514 grantees, to which HUD has never responded.

I am pleased to report that TTU, along with 13 other OTAG grantees, received no audit findings whatsoever. But these groups have since spent down their grants, and HUD has provided no new funding for several years. Most of the 18 suspended grantees were eventually able to get funds restored in 2005, but all but three of these drew down remaining funds to cover obligations from prior years and did not do much new outreach work. Coupled with HUD's failure to fund Section 514, this means even fewer tenants receive assistance today than in 2003.

According to the IG's Semi Annual Report to Congress for 2002, 42% of HUD's field audit resources in 2002 were spent on the Section 514 audits--we estimate this conservatively as $7 million in IG costs. Of course, these were resources that *not* spent on overseeing HUD's multibillion investment in owners and Housing Authorities, as tenant volunteers would be happy to assist HUD with if we had the Section 514 resources to serve as HUD's "Eyes and Ears."

Effect of failure to implement Section 514 on tenants. Tenants across America are still suffering from HUD's failure to implement Section 514. At TTU, the end of OTAG funding has cut the organizations staff down to one outreach worker for HUD housing, with no funds for travel. And Texas is a big state! That TTU and its Director, Sandy Rollins, continue to have a national impact is a huge tribute to her dedication and skill. In our state alone, funding cutbacks at TTU have had the following consequences for the M2M program:

- Jerusalem Apts - Longview, TX - 100 units -- TTU worked with the tenants at this property when it entered M2M back in 2000. The property was owned by an under-funded local church-based non-profit and the M2M plan was lacking. It did, however, call for some improvements which TTU's OTAG organizer was trying to make sure were implemented when OTAG funding ran out. Had TTU's funding not been interrupted, a nonprofit sale or at least implementation of the Plan could have happened. Instead, TTU learned last month that HUD terminated the contract, displaced all the residents, and are now selling the property (Nov. 15th) on the court house steps to the highest bidder with no HAP contract.

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grants, merely asserting but not proving that lobbying had occurred. There were two groups cited for under $1,000 of alleged "lobby" expenditures; these were entirely erroneous findings, both in Region III (DE and PA), where the regional IG was demonstrably incompetent and HUD refused to review extensive rebuttals submitted by the organizations.

[2] The 32 OTAG grants made in 2001 had only been funded for four months when funds were suspended for eight months due to an unrelated Anti-Deficiency Act allegation against former OMHAR Director Ira Peppercorn. HUD's Inspector General exonerated Peppercorn in March 2002, and pressure from Chairman Frank got HUD to resume funding in April 2002. The audits were mandated as part of a special appropriation in the Defense Appropriations Act of 2002 to "rerecord" $11.3 million of Section 514 funds suspended in the Peppercorn investigation.

- Pine Lake Estates - Nacogdoches - 100 units - entered M2M in 2007 - No TTU outreach or organizing due to lack of resources - Owner disqualified in August 2007 due to adverse financial or managerial actions or omissions. TTU would be working with the tenants to identify a buyer if they had capacity.
- Chateau Village - 150 units - Houston – Owner entered M2M in 2007, but opted for M2M Lite. If TTU had the resources, it would work with the tenants to try to convince the owner to enter the full M2M Program, as it did with Roxton Arms, Eastwood Terrace and others.
- 10 properties in Texas have entered or re-entered M2M since TTU's OTAG funding ran out in 2006. Tenant turn-out is almost non-existent at some of these properties—often less than 2%, when the PAE's organize the meetings without TTU aid to the tenants. By contrast, TTU's average turn-out at meetings when they can organize them is 24%.

This story is repeated across the country. In the South, Plain States, Mountain States and most of the Midwest, there is no tenant organizing or outreach whatsoever, outside of a few cities. Today, although some tenant outreach organizations barely survive in about 20 cities with private foundation funds, only three groups remain with Section 514 funding, in Rhode Island, Hawaii and Kentucky. The problem in high market areas, where owners are opting out and converting to market rents, is particularly dire: the nation has lost more than 350,000 units through owner opt outs since 1996, and at least another 100,000 more through HUD voucherization of troubled housing. Yet HUD has provided no funds since 2002 to help tenants save these homes.

HUD PDR Report demonstrates effectiveness of OTAG groups. Rather than work with the grantees, some HUD officials have instead "blamed the victims." In August 2004, HUD's Office of Policy Development and Research (PDR) concluded that "the level of direct tenant involvement in the process has been minimal. In particular, tenant organizations have been only sporadically involved in restructuring negotiations (p.22)," despite the clear Congressional mandate to involve us in the process. In its examination of 15 detailed case studies, PDR concludes that "the involvement of tenant support and/or advocacy groups, such as the ITAG/OTAG grantees, appears to be almost non-existent. Among the case studies there was only a single example of such a group being involved in the negotiating process. Just as importantly, tenants expressed no knowledge that such groups were available for support or consultation (p. 115)."

There is a good reason for these observations: ***HUD had shut down the Section 514 program in most of the country at the time the PDR case studies were conducted!*** Of the 15 case studies, two were in states that never had an OTAG grant; six were in states where the OTAG grants had been illegally suspended, in October 2002 (18 months before the study); and two more were Mark to Market Lite buildings where OMHAR required no tenant involvement process. The case studies cited only two success stories of tenant involvement, in Cleveland and New York State—which happened to be the only two areas with active OTAG grants during the study!

In short, the PDR case studies actually support the effectiveness of OTAG funded tenant involvement, while observing the dearth of tenant involvement where OTAG groups did not exist. Unfortunately, no one informed the PDR researchers about the funding suspensions, and PDR made no effort to contact either NAHT or any of the OTAG grantees to get the tenant perspective on the program.

Nonetheless, the PDR Report has since been cited out of context by HUD's Alternative Management Control Review, OAHP Director Ted Toon, and others at HUD as proof that the "OTAG program was ineffective," because tenants had not heard of the grantees and were not involved. The PDR Report proves the opposite: the OTAG funded areas were the *only* ones where

tenant involvement was substantial. A simple review of the hundreds of pages of narrative reports submitted by each OTAG grantee to OMHAR would also dispel the mistaken view that the program was ineffective. After refusing to implement the program and punishing grantees, HUD staff are now blaming their victims.

HUD punishes remaining OTAG grantees. Unfortunately, HUD's policy of punishing OTAG grantees continues today. In the three remaining states, HUD has refused to apply a recent Office of General Counsel opinion to these grants, which would allow funds to be used in the vast majority of properties eligible under the OTAG Grant Agreements, as intended by Congress. In Hawaii, after HUD reluctantly agreed to restart the grant in October 2006, the newly hired OTAG organizer was literally pulled out a tenant meeting and terminated in February due to HUD's narrow definition of "eligibility." As a result, no OTAG funds are available to help tenants in Hawaii cope with the second highest Section 8 opt out rate in the country, including eight buildings at risk in downtown Honolulu.

In Rhode Island, the OTAG grantee was able to raise other funds to creatively save the 200 units at Barbara Jordan I, no thanks to HUD; HUD retroactively cut off OTAG funding for this building, forcing staff layoffs, even though the local HUD Office considered Barbara Jordan its highest priority at-risk building and had encouraged the group to work there.

After this record of failure to honor contracts and active punishment of nonprofit tenant outreach providers, it will take a long time to rebuild confidence that HUD wants to work with tenants again.

HUD supports new Section 514 program. Nonetheless, the NAHT Board has continued to press HUD to restart the Section 514 program. Last year, to his credit, Commissioner Montgomery agreed, and convened a Stakeholders group including NAHT and several former OTAG grantees to help design a new program, to be called TRIO (Tenant Resource, Information and Outreach). The Commissioner's efforts to reprogram $10 million from project-based Section 8 in March 2007 were rejected by Appropriations Committee staff in light of the new Section 8 funding crisis. Commissioner Montgomery has pledged to try again in fiscal year 2008. However, the earliest these funds can be provided will be 2009. In addition, the Stakeholders are concerned about serious flaws in HUD's unworkable design for TRIO which would increase the risk of program failure in the future.

Last week, NAHT testified before the Subcommittee on Housing and Community Opportunity about the Section 8 shortfall. Clearly Congress must act to add $2.5 billion to Section 8 to prevent a catastrophe of mass displacement and a big jump in owner opt outs next year. But it is also urgent that Congress and HUD provide resources as soon as possible so that tenants are informed about the issue and prepared to engage with their owners and HUD to urge renewal and preservation of Section 8 contracts, before this crisis hits and tenants are forced onto the street.

$10 million out of an $8 billion program is not too high a price to pay to engage residents in decisions about saving our homes. As Ingram Square shows, a small amount of Section 514 funds can ensure that the billions of dollars invested by HUD in multifamily housing are spent wisely and well. We, the tenants who live there, are the best experts about what is needed in our buildings, and to act as volunteer "Eyes and Ears" for HUD's overstretched field staff. We appreciate the Subcommittee's support for Section 514 in the past, and request your leadership again to reactivate the program.

Amendment needed in H.R. 647. The Stakeholders convened by HUD seek the Committee's support for an amendment to H.R. 647 to make sure that Section 514 funds already authorized by Congress are in fact spent for this purpose, and to get resources out soon. The attached amendment would accomplish three important purposes:

1) Get resources out to assist tenants before the end of 2007. Congressional action is needed to ensure that Section 514 funds are in fact available earlier than 2009, HUD's new target timeline for TRIO. The proposed amendment would require HUD to re-fund prior Section 514 tenant outreach grantees at the same level as the previous awards made in FY 2001, authorizing funds from the Section 8 account in FY 08. The language specifies that only former grantees with no audit findings, a recent two year track record, and current capacity in tenant outreach and federal grant management would be eligible.

Only 14 of the 32 grantees awarded funds in 2001 had no audit findings whatsoever; of these 14, we estimate that some would either not be interested or meet the current capacity test. As a result, we estimate that no more than $5 million would be needed for prior grantees, leaving at least $4 million for a TRIO NOFA later in FY 2008. This approach would at least provide urgently needed funds to the most experienced tenant outreach organizations in several major states, creating a solid infrastructure for the TRIO program in subsequent years.

The proposed amendment would also require HUD to enter into an Interagency Agreement for $1 million with the Corporation for National and Community Service to resume HUD matching funds for a national VISTA Volunteer program in HUD multifamily housing. We are submitting for the Committee record an August 10, 2007 letter from VISTA Director Jean Whaley pledging support for a renewed partnership with HUD and NAHT, based on the successful 1996-2002 partnership. HUD funds for VISTA Volunteers in multifamily HUD housing would be matched dollar for dollar with CNCS/VISTA resources.

2) Close loopholes in Section 514. The proposed amendment also includes language to require HUD to spend $10 million annually for Section 514, clarifies that all Section 8 and HUD multifamily buildings are eligible for assistance, and clarifies that tenant outreach grantees must be independent of current or future owners to receive funds. The amendment also proposes to allow the carry-over of unused Section 514 funds into future fiscal years.

3) Ensure Stakeholder concerns are reflected in TRIO program design. Finally, we propose text to ensure that the new TRIO program works in the field and is compliant with key recommendations of HUD's Alternative Management Control Review (AMCR), which resulted from the 2002-2005 Section 514 audits. The proposed amendment would ensure that funds reach qualified, experienced tenant outreach groups that currently operate at the state or metropolitan level (approximately 15-18 at present), rather than one or two national providers, as proposed by HUD. Second, the amendment would ensure that TRIO grants include meaningful performance based measures and reimburse grantees for actual costs incurred, as recommended by the AMCR, rather than the unworkable and wasteful "fee for activity" model proposed by HUD.

Thank you for the opportunity to testify today. I would like to submit, for the record, the documents referred to in my testimony. I would also like the Subcommittee's permission to submit additional documents in response to points that may arise in today's hearing, if that is warranted.

10/22/07 DRAFT authorizing language for FY 2008:

Objectives:

- Expedite flow of funding to qualified groups, including via restart of VISTA
- Revise Section 514 to address prior deficiencies
- Address stakeholders' major concerns about future program design, including flawed administration through national intermediary and need to ensure cost reimbursement.

This recommendation should be included in the Mark to Market bill, and/or any other available vehicle.

SEC. ___. Section 514(f)(3)(A) of the Multifamily Assisted Housing Reform and Affordability Act is revised to read as follows:

"(3) Funding. -

"(A) In general. - The Secretary shall make available $10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary shall make obligations to tenant groups, nonprofit organizations, and public entities, for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation and improvement of low-income housing for which project-based rental assistance, subsidized loans, or enhanced vouchers under section 8(t) are provided (including transfer of developments to tenant groups, nonprofit organizations, and public entities, and predevelopment assistance to enable such transfers), for tenant services, and for tenant groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons. For outreach and training of tenants and technical assistance, the Secretary shall implement a cooperative grant program utilizing performance-based outcome measures for eligible costs incurred. Recipients providing capacity building or technical assistance services to tenant groups shall be qualified nonprofit statewide, countywide, areawide or citywide organizations with demonstrated experience including at least a two-year recent track record of organizing and providing assistance to tenants, and independence from the owner, a prospective purchaser or their managing agents. The Secretary may provide assistance and training to grantees in administrative and fiscal management to ensure compliance with applicable federal requirements. The Secretary shall expedite the provision of funding for fiscal year 2008 by entering into new multi-year contracts with any prior grantee without adverse audit findings, and by entering into an Interagency Agreement for not less than $1,000,000 with the Corporation for National and Community Service to resume the tenant outreach and training program under the same terms, conditions and sponsorship as that most recently conducted by the Corporation. The Secretary shall also make available flexible grants to qualified nonprofit organizations that do not own eligible multifamily properties, for tenant outreach in underserved areas, and to experienced national or regional nonprofit organizations to provide specialized training or support to grantees assisted under this section. Notwithstanding any other provision of law, funds authorized under section 514 for any fiscal year shall be available for obligation in subsequent fiscal years."

TESTIMONY OF SHEILA MALYNOWSKI,

PRESIDENT, PRESERVATION MANAGEMENT

ON BEHALF OF
THE NATIONAL LEASED HOUSING ASSOCIATION

ON H.R. 647 THE MARK-TO-MARKET

EXTENSION ACT OF 2007

BEFORE THE SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 23, 2007

Madame Chairperson and members of the Subcommittee, my name is Sheila Malynowski and I am President of Preservation Management in Portland, Maine. Our company manages over 6,000 units of assisted housing in 11 different states. I am appearing before you on behalf of the National Leased Housing Association, which for over 35 years has represented owners, managers, investors, lenders and public agencies involved in developing and preserving affordable multifamily housing under Section 8 and other housing programs. I currently serve as President of NLHA.

The Multifamily Assisted Housing Reform and Affordability Act, or MAHRA for short, which was enacted in 1997 and substantially amended in 1999, provides a comprehensive framework for the renewal of section 8 project-based contracts. Prior to MAHRA, only temporary, stop-gap legislation permitted 20-year section 8 new construction and substantial rehabilitation contracts to be renewed, as well as 15-year moderate rehabilitation contracts to be renewed.

MAHRA has two main divisions. The first is a temporary renewal program that has been extended twice by Congress (most recently in the FY07 HUD appropriations bill). This temporary program applies to a specific class of projects when their original Section 8 contracts expire and provides the authority to restructure the debt on Section 8 projects with FHA insured mortgages and with Section 8 rents **in excess of market levels**. This part of the statute is called the mark-to-market or mortgage restructuring program. The authority for HUD to restructure mortgages on these properties expires in September 2011.

The second part of the statute is permanent, in the sense that there is no expiration date, and applies to the renewal of all Section 8 contracts that are not eligible for or in need of mortgage restructuring. This section is referred to as Section 524 renewals and provides the framework for renewing Section 8 contracts.

In both parts of MAHRA, Section 8 renewal rents are set at rents not exceeding market levels or on a budget basis. In the mark to market program, (or debt restructuring program) a reduction in rents is made feasible, in general, by the payment by HUD of a nondefault insurance claim on the FHA-insured mortgage and the replacement of that mortgage with another mortgage with lower debt service requirements. In the course of this process some funds are generated for any needed project repairs and any necessary replenishment of reserves. The amount of rehabilitation accomplished is modest, averaging about $1800 per unit. An owner's obligation to repay the cost to HUD of mark-to-market is secured by a second and sometimes a deferred payment third mortgage on the property, with potential repayment from a portion of surplus cash income to the project and from any refinancing or sale proceeds.

MAHRA, which reaches its tenth anniversary later this month, expresses to us, the users of the Section 8 program, a congressional policy to preserve Section 8 projects into the indefinite future, and to do so in a manner that provides stability, and therefore predictability, to the renewal and preservation process.

Nevertheless, experience with the renewal program and perhaps changing conditions may warrant modifications to MAHRA, such as some of those to the mark-to-market program contained in H.R. 647. In addition, in an exhibit to our testimony we describe additional suggested statutory changes to the mark to market program and to the Section 8 renewal process in general, that will help preserve Section 8 projects for the long-term. These changes were formulated in consultation and cooperation with other national housing organizations.

With respect to the provisions in H.R. 647, as we mentioned, the extension (the main purpose of this bill) has already been accomplished. However, there are other provisions in the bill that would benefit the mortgage restructuring program and should be considered.

We support Section 5 of the bill that would increase from 5 percent to 9 percent of all restructured units the number of units that can have exception rents in excess of 120 percent of the fair market rent for the area. Exception rents are budget-based, that is they are the rents needed to operate the project. Such rents are used as part of mortgage restructuring when a reduction of debt to zero will not be enough to yield economically viable rents at market. The 5 percent limit was basically an educated guess when it was enacted in 1997 and HUD's experience with that limit should be acknowledged. This amendment is important to ensuring that properties with rents above market that need substantial debt relief can continue to provide safe and decent housing to very low income households.

In addition, NLHA strongly supports Section 8 of the bill which extends from 3 years to 5 years after mortgage restructuring the period during which a tenant-based or community-based nonprofit organization can purchase a mark-to-market project and obtain a modification or forgiveness of secondary debt on the project held by HUD. A longer time frame will facilitate more of these transfers to nonprofit purchasers, which often are accompanied by a low-income housing tax credit to finance substantial rehabilitation needed for the long-term viability of a project.

H.R. 647 also authorizes the mark-to-market program to be used for the repair of certain disaster related damages to section 8 projects. It appears that this provision expands MAHRA, and mark-to-market, beyond its current scope of establishing rules for the renewal of expiring Section 8 contracts, and into disaster relief assistance. NLHA has no position on this amendment but would be concerned if this provision replaced other potential forms of disaster assistance that might be more expeditiously provided than what the mark-to-market program can accomplish.

The provision that NLHA's members have expressed concern with is section 6 which would move some properties from the Section 524 renewal universe into the mark-to-market (debt restructuring) program. These are Section 8 projects with FHA-insured mortgages but with rents **at or below market**. This is a major alteration in the structure of MAHRA and has owners concerned about the future course of Section 8 renewal policy. NLHA and HUD negotiated changes to HUD's original proposal to provide

safeguards to owners, including a requirement that owners consent to being put into the debt restructuring program. This negotiated language is included in H.R. 624. However, NLHA members remain concerned that expanding the mark to market program to properties with below market rents is a major departure from the framework of MAHRA. HUD's Office of Assisted Housing Preservation has the ability to use outside contractors (Participating Administrative Entities (PAEs)) to accomplish mortgage restructurings under the Mark to Market program. We believe the ability to utilize such contractors is the genesis of HUD's request to expand the universe of eligible projects. A more appropriate solution would be for Congress to permit HUD to utilize its PAEs for other transactions outside of mark to market. Such transactions could include Section 236 decouplings, partial payment of claims, property disposition and other mortgage workouts.

Finally, we are very concerned that certain administrative actions taken by HUD, and particularly the recent severe funding problems highlighted by this committee at last week's hearing, will destabilize the Section 8 renewal process, leading more owners to consider not renewing their contracts. We are proposing a package of amendments to H.R. 647 that is designed to encourage continued participation in the program, as well as to facilitate transactions that will maintain these projects as affordable housing for a long time.

Thank you for the opportunity to testify on this important subject and I will be pleased to answer any of your questions.

NLHA PROPOSED AMENDMENTS TO MAHRA TO PRESERVE SECTION 8 PROJECTS

1. Ensure implementation of budget-based rent increases for mark-to-market projects.

Give owners of properties that have undergone debt restructuring the right to request and receive budget-based rent increases. Such rent adjustments are authorized in the mark to market regulations but discretionary and HUD has determined not to entertain any request for budget-based rent adjustments, relying instead solely on an annual Operating Cost Adjustment Factor (OCAF). Over the 30-year life of the program, it is possible that for some properties the OCAF adjustment will be insufficient to meet rising operating cost since it is based on generalized data and is uniform for an entire state. This flexibility is also particularly important as it relates to properties that were underwritten before March of 2002 when HUD amended its underwriting criteria to allow a more realistic cushion for operating cost increases. In order to maintain project viability, owners should have the option of a budget-based review of rents in those circumstances.

2. Subsequent mark-to-market restructuring.

Give owners whose projects went through mark-to-market in its earlier stages and whose rehabilitation needs may not have been adequately met the opportunity for a second restructuring of their debt to generate funds for rehabilitation.

3. Technical amendment regarding purchase of restructured projects by nonprofits.

Make a technical correction that will facilitate transfer of restructured projects to nonprofit owners. The amendment would clarify that in addition to acquiring title to a restructured project, a qualified nonprofit organization may qualify for forgiveness or

modification of secondary debt held by HUD if it acquires control over the limited partnership owning the project by becoming the sole general partner of the partnership. HUD currently recognizes that either the acquisition of title or acquisition of control of a property constitutes a transfer of physical assets (TPA), but HUD's General Counsel's office has expressed uncertainty whether the term "acquired" as used in section 517(a)(5) of MAHRA, applies to the acquisition of control over the ownership of the project.

4. Preservation projects clarification

Provide more flexibility in the renewal of section 8 contracts on preservation projects. Specifically, we seek clarification that owners of ELIHPA/LIHPRHA properties may renew Section 8 contracts under any renewal option that the project is eligible for under MAHRA. The tenant occupancy and affordability restrictions in the Plan of Action would continue to apply for the duration of those restrictions. Our amendment would also facilitate the sale of projects initially preserved under the Emergency Low Income Housing Preservation Act (ELIHPA) to purchasers who agree to extend the affordability term for at least 20 more years. The provision would clarify that owners can renew their Section 8 HAP contracts for terms that exceed the term of the Plan of Action. The new owner would operate at rents pursuant to the terms of the Plan of Action until its original expiration date, at which time the rents would be established at rents levels equal to comparable market rents.

5. Renewal of moderate rehabilitation contracts.

Encourage continued participation in assisted housing programs by providing comparable treatment of Section 8 moderate rehabilitation project renewals with other section 8 renewals under MAHRA.

6. Subsequent Section 8 renewals clarification.

Propose three technical corrections to MAHRA to clarify the original congressional intent of the statute, and to stabilize vacillating interpretations by HUD. The first would make it clear that an owner that initially renewed its section 8 contract under one provision of Section 524 may subsequently renew its contract pursuant to any other provision of section 524 for which it is eligible. NLHA's proposed amendment would also clarify that subsequent renewals of exception project contracts will be renewed using OCAF or, at the request of the owner and approval of HUD, budget-based rent adjustments. The third change would reinstate HUD's original interpretation of MAHRA that eligibility for mark-to-market debt restructuring is determined at initial contract renewal but would allow HUD and the owner to agree, after an initial renewal, under section 524, to process a subsequent renewal under mark-to-market.

7. Comparable rent studies.

Ensure a fair assessment of rent comparability in relation to a rent increase request and/or a contract renewal under MAHRA. NLHA's amendment would provide that where there is a 15 percent or greater differential between the owner's rent study and HUD's rent study, a third appraiser would be hired by HUD and the owner to make a comparable rent determination that would be binding. This mechanism is similar to one provided by statute that was used in determining compensation in return for limits on prepayment of HUD mortgages and the one still being used for determining market value of rural housing properties being sold to nonprofit buyers during the prepayment process. This amendment should enhance both HUD's commitment to objectivity and owners' confidence in the process.

STATEMENT OF THEODORE K. TOON

Deputy Assistant Secretary
Office of Affordable Housing Preservation
U.S. Department of Housing and Urban Development

Hearing before the Committee on Financial Services Committee
Subcommittee on Housing and Community Opportunity

United States House of Representatives

"H.R. 647, the Mark-to-Market Extension Act of 2007"

October 23, 2007

Thank you Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee for inviting me to testify on the proposed Mark-to-Market Extension Act. The preservation of affordable housing in our communities continues to be a top priority for Secretary Jackson, Commissioner Montgomery and the Department of Housing and Urban Development (HUD).

The Mark-to-Market program, originally created by Congress in 1997 (the Multifamily Assisted Housing Reform and Affordability Act (MAHRA)), reduces rents to market levels upon Section 8 contract expiration and renewal. This program was extended in 2001 (through the Mark-to-Market Extension Act) and in 2007 (through 2011).HUD contracts with private owners of rental units to help ensure a certain number units for occupancy by low-income, very low-income, and extremely low-income residents. When those contracts expire and are renewed, if the contract rents are found to be above comparable market rents for similar units in the same area, the Mark-to-Market program reduces the new contract rent for those units to market levels. By bringing above-market Section 8 rental rents in line with market levels, HUD controls costs of the Section 8 program and maximizes the number of families that can be helped by such housing assistance. The bill that you have introduced proposes two technical modifications, and two eligibility modifications to the Mark-to-Market program.

Over the past nine years, HUD has been very successful at balancing the dual Mark-to-Market program goals of reducing long-term Section 8 subsidy costs while preserving affordable housing. To date, HUD has preserved 2,300 properties around the country comprising over 200,000 affordable housing units, and in so doing we have promoted the long-term physical and financial viability of these properties. The program has generated net savings totaling over $2.1 billion to HUD and the American taxpayers.

Not every property can or will be preserved through Mark-to-Market. While preservation is a primary goal of the program, Congress has made it very clear that prudent use of limited resources is an equally important goal. HUD has taken this charge seriously. There have been, and will continue to be, properties referred into Mark-to-Market that simply cannot be responsibly preserved. These projects may be too expensive, functionally obsolete, or located in markets with ready availability of replacement housing.

In other situations, properties that in the Department's opinion require restructuring do not receive the benefits of the program because the owners refuse to accept the terms of the restructuring. In these cases, HUD makes the determination that the project is infeasible for restructuring. These are difficult decisions, made with consideration of the needs of the affected residents and communities, and with cooperation from both our office and the HUD field offices. Properties that need restructuring but don't accomplish it are closely monitored by HUD to allow early intervention if the property deteriorates. The analysis done while in Mark-to-Market informs and shapes the Department's decisions on other management options for the properties thereafter.

By preserving affordable housing in all 50 states and the District of Columbia, including long-term use agreements through which the properties are preserved as affordable housing for at least 30 years, we have provided stability for many low income families and the communities where they live. That is a "win-win" situation for the tenants and the community.

Beyond those properties assisted through Mark-to-Market are other preservation needs, and that brings us to the discussion before us today, which is the proposed legislative modifications to Mark-to-Market. While the Administration has not taken a formal position on H.R. 647 and is still analyzing the budgetary impacts of the legislation, I can discuss the likely programmatic impact of each of the legislative changes.

First is the issue of Exception Rents. For projects that cannot be preserved at market rent levels but provide desperately needed affordable housing, Congress provided authority to use above-market, or exception rents. The estimated need for this authority was based on projections made ten years ago. Today we have a much better sense of the true needs. While HUD has exercised prudent discretion in using this authority only when absolutely necessary, we are today within a few hundred units – not buildings but a few hundred apartment units – of the existing cap, and expect to hit the cap by the end of this calendar year. We project that your proposal to increase that cap from five percent to nine percent of the portfolio would allow HUD to continue to use this authority through the Mark-to-Market sunset in FY 2011.

The second proposed modification deals with at-market or below-market properties, which are currently not eligible for Mark-to-Market. Extending eligibility to these projects, at the owner's option, will make eligible approximately 1,500 projects with expiring contracts in the next four years, and the profile of these projects illustrates the need for Mark-to-Market: over half of the projects have at least one trouble indicator in physical condition or financial health, the best statistical predictive measures for future default. We have seen many properties in need of rehabilitation and debt restructuring that were not eligible for Mark-to-Market. By requiring that the cost of such restructures be less than the cost of a default of the property, this proposed provision will charge my office with continuing to exercise fiduciary responsibility in its preservation efforts.

Third is the challenge of disaster-damaged properties. This provision of your proposed legislation would allow HUD to utilize the restructure tools of Mark-to-Market, specifically the field assessment, rehabilitation, and debt restructuring authorities, toward the repair or rebuilding of Section 8, FHA-insured properties that may be damaged or destroyed in a Presidentially-declared disaster area. The number of properties to which this would apply is of course unknown, though a look at the past ten years suggests perhaps 10 to 15 Section 8 properties per year, on average, may fall into this category.

The final proposed modification extends the period of eligibility for non-profit purchasers requesting debt relief to five years. To date we have completed 57 such transactions with debt relief totaling over $85 million. Today, nearly three quarters of the

portfolio of closed Mark-to-Market projects are already beyond the current three-year eligibility window. This proposed change would make over 1,000 properties eligible for this type of acquisition by non-profit housing owners, with the benefits of Mark-to-Market debt relief.

In conclusion, on behalf of Commissioner Montgomery, I want to thank you for affording our Department the opportunity to testify on this legislation. Congress' intent in creating and twice extending Mark-to-Market was to preserve affordable housing and save money by proactively addressing the physical and financial challenges facing our affordable housing portfolio. This program has been successfully implemented, resulting in the restructuring of 200,000 affordable apartment units across the country, improving the lives of tens of thousands of low- and moderate-income families who call these units home

We look forward to working with you to ensure that we continue to provide affordable housing in a cost-effective manner. Thank you, and I stand prepared to address any questions you may have.

October 23, 2007

The Honorable Maxine Waters
United States House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters:

Re: Subcommittee Consideration of H.R. 647 the Mark-To-Market Extension Act of 2007

I am writing on behalf of the California Housing Partnership Corporation (CHPC) to express support for H.R. 647, the Mark-to-Market Extension Act of 2007. CHPC was created by the state legislature to assist nonprofit and government agencies to preserve and create housing affordable to lower income households in California and to provide leadership on affordable housing resource issues. To date, we have worked with our partners to preserve more than 5,000 of the HUD-assisted apartments in California and to create more than 6,000 new homes using a variety of federal, state and local programs.

Extending and improving the Mark-To-Market program is important for the thousands of lower income residents who reside in HUD-assisted properties throughout California and to agencies such as CHPC that are committed to preserving their housing. The key components of the bill, including extending the program five years to October 1, 2011, increasing from 5% to 9% the total number of apartments that can have exception rents (available when debt restructuring is not sufficient to offset the loss of revenue caused by the rent reduction) and extending from three to five years the period in which a nonprofit purchaser of a Mark-to-Market property can obtain debt relief or assignment of debt. Without debt relief or assignment these preservation transfers are not feasible in California.

Reauthorizing the Mark-to-Market program is important not only to save money in the HUD budget, but also because HUD's Office of Affordable Housing Preservation (OAHP) estimates that California still has 2,628 apartments that should go through the Mark-to-Market program or have their rents reduced. Passage of H.R. 647 into law will mean that advocates have an even more powerful tool to use in preserving the homes of lower income Californians. We thank you for your leadership on this important matter and urge your Committee to support this bill.

Sincerely,

Matt Schwartz
President

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