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LEGISLATIVE OPTIONS FOR PRESERVING FEDERALLY- AND STATE-ASSISTED AFFORDABLE HOUSING AND PREVENTING DISPLACEMENT OF LOW-INCOME, ELDERLY, AND DISABLED TENANTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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LEGISLATIVE OPTIONS FOR PRESERVING FEDERALLY- AND STATE-ASSISTED AFFORDABLE HOUSING AND PREVENTING DISPLACEMENT OF LOW-INCOME, ELDERLY, AND DISABLED TENANTS

Wednesday, July 15, 2009

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 2:15 p.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Members present: Representatives Waters, Cleaver, Green, Clay, Ellison; Capito, and Jenkins.

Also present: Representative Castle.

Chairwoman WATERS. This hearing of the Subcommittee on Housing and Community Opportunity will come to order. But before we start with any opening statements from our witnesses, one of our members wanted very much to be here today to introduce someone who is very important to him and his work and his community, and I would like to ask the Honorable Michael Castle to please go ahead and make your introduction.

Mr. CASTLE. Thank you very much, Madam Chairwoman. And let me also thank you for this hearing. Although I cannot be here for the hearing, I think it is a very important subject, and I am glad that you are delving into it.

I would like to thank you for the opportunity of introducing a witness in the next panel, Joe Myer, who serves as a board member of the National Rural Housing Coalition and the past president of the Coalition. Joe and I have worked together for many, many years now.

In addition to his duties on behalf of the Coalition, Joe Myer serves as executive director of NCALL, the National Council on Agricultural Life and Labor, which is a nonprofit located in my home State of Delaware that specializes in affordable housing development, education, and lending. Mr. Myer worked in the nonprofit housing development for 37 years. He helped found NCALL in 1976 and went on to become NCALL's executive director in 1981.

During this time, NCALL has reached 6,500 first-time home buyer mortgage closings in Delaware, has been particularly responsive with their foreclosure prevention counseling service, and has

achieved an exemplary rating as a chartered NeighborWorks America organization as a top 10 affordable housing producer nationwide within the network.

NCALL has also provided development assistance for 45 affordable apartment communities serving rural families, elderly, and farm workers throughout the Delmarva Peninsula.

Mr. Myer is the founding president and current board member of the Delaware Housing Coalition. He has received the Housing Ambassador Award from Delaware, NADO, the National Association of Housing and Community Development Officials, and also served on the Governor's Council on Housing as well as the Delaware Housing Trust Fund Study Commission.

Prior to his work with NCALL, Mr. Myer worked for Freedom Village, Inc., as a Church of the Brethren volunteer and Delta Housing Development Corporation in the Mississippi Delta.

He received his Bachelor's in business administration from Elizabethtown College and his master's degree in business administration from Delaware State University.

Mr. Myer clearly brings a great deal of experience to the table, and the committee should look forward to his testimony today.

And if I could ask him just to stand for a moment after all that fancy introduction, this is Joe Myer, ladies and gentlemen.

[applause]

Mr. CASTLE. I yield back, Madam Chairwoman. Thank you very much for the privilege.

Chairwoman WATERS. Thank you very much. And I would like to note that without objection, Representative Castle will be considered a member of the subcommittee for the duration of the hearing even though he cannot stay. Thank you very much.

Good afternoon ladies and gentlemen. I would like to thank our ranking member, Shelley Moore Capito, and the other members of the Subcommittee on Housing and Community Opportunity for joining me for our second hearing on legislative options for preserving federally- and State-assisted affordable housing and preventing displacement of low-income, elderly, and disabled tenants.

At our first hearing, we were joined by HUD Secretary Shaun Donovan who testified about the need for this legislation and its importance in preserving federally-assisted housing and protecting the residents of that housing.

At this hearing, we will hear from Rural Housing Service Administrator Tammye Trevino about the preservation issues facing rural America. We will also hear from residents of assisted housing, housing developers, housing advocates, and others.

From 1995 to 2003, our Nation lost 300,000 subsidized affordable apartments through conversion to market-rate housing or physical deterioration. Over the next 5 years, contracts on more than 900,000 project-based Section 8 units will expire. Moreover, the Affordable Housing Incentive Programs, like Section 236 and Section 221D, are essentially a thing of the past and 200,000 units in these programs are at risk of conversion to market rate over the next 10 years.

Once these units leave the affordable housing stock, they are not replaced. In fact, according to the study by the Joint Center for Housing Studies, for every new affordable housing unit con-

structed, two affordable units are lost. The loss of these units negatively impacts communities and residents, many of whom represent our most vulnerable populations. According to HUD, 50 percent of people in federally-subsidized housing are elderly or disabled. In addition, about 77,000 veterans depend on this critical housing resource.

The Federal Government's continued commitment to the preservation of subsidized affordable housing takes on more importance in light of the decrease in the number of non-subsidized affordable units. According to a recent HUD study, from 2005 to 2007, the number of units that are affordable to households at or below 50 percent of area median income fell by 7 percent for a loss of over 1.5 million units. During this time period, the number of units that are affordable to households with incomes of over 100 percent of area median income increased by 34 percent.

Preservation not only makes sense for residents and communities, it should also make economic sense for owners and developers, because it is significantly more cost-efficient to preserve existing housing than to build new housing. It costs approximately 40 percent less to preserve an existing unit than to construct a new one.

In addition, it is far more energy-efficient to preserve existing housing; renovating an existing building produces less construction waste, uses fewer new materials, and requires less energy than demolition and new construction.

The bill before us today would ensure that preservation of affordable housing becomes a reality by providing all tenants of federally-assisted properties with enhanced vouchers, converting rent supplement and rental assistance program properties into project base Section 8, providing a first right of purchase to tenants of assisted properties, preserving State-financed affordable housing, and preserving rural housing and housing for the elderly.

I look forward to hearing from our witnesses on this much-needed legislation. And now I would like to recognize Ranking Member Capito for her opening statement.

Mrs. CAPITO. Thank you. I would like to thank the chairwoman and thank our witnesses for the hearing today. I would like to also welcome Rural Housing Service Administrator Trevino. She paid a visit to my office, I certainly appreciate that, and I look forward to your first appearance here at the subcommittee.

One area I would like to discuss—and we talked about this earlier—is the effect of a recent change to the Section 538 Program is having on development and rehabilitation of affordable multi-family housing in rural communities.

The stimulus legislation from earlier this year fundamentally changed this program in no longer allowing developers to use the interest credit subsidy in tandem with the loan guarantee. I have significant concerns as this will lead to fewer units being developed in rural areas.

I also have some concerns about changes in this legislation for owners of subsidized housing units, which may cause them to leave the program after a property sale or mortgage prepayment. Private owners of multi-family housing units are essential to the supply of affordable housing and legislation should encourage their participa-

tion in the government program. HUD programs to incent owners to maintain affordable housing units have preserved over 3,500 projects with about 300,000 units. Those programs could be undermined by this legislation because it requires a 24-hour—excuse me, a 24-month notice before a sale, imposes a formula on the owner for determining the sales price, forces the owner to sell properties on less than favorable terms, and creates a new private right of action for the tenant.

It is my hope that we can work together on ways to make the housing benefits provided by these programs a temporary stop for individuals. I think we can all agree that the goal of many of these programs is to provide families and individuals with a stable home so that they can focus on improving their skills to become self-sufficient.

I know that extensive work has been done on this draft legislation, and I look forward to working with the chairwoman and the witnesses on many of these provisions.

I yield back. Thank you.

Chairwoman WATERS. Mr. Cleaver is recognized for 3 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. This is a serious issue that we absolutely must address, and we must address it now. I left office as mayor of Kansas City in 1999. There has not been one single unit of affordable housing constructed since that time.

The problem is exacerbated by the fact that we now have legions of men and women who have lost houses due to foreclosure in the urban core. So as we are thinking about affordable housing, I think one of the things that we must focus on is preserving the affordable housing units we currently have because of the decimation of the urban core. These houses need to be in some kind of condition that might be attractive to developers or builders.

I am hopeful that we can reverse this negative trend. And it is chilling when I think that we could possibly lose almost a million units of affordable housing over the next 5 years. So I think a great emphasis, and I hope we can get into this after your comments, but a great emphasis needs to be placed, I think, on trying to preserve every single affordable unit we have presently, particularly in the urban core.

I look forward to talking with you. I yield back the balance of my time, Madam Chairwoman.

Ms. WATERS. Thank you very much. Mr. Green for 3 minutes?

Mr. GREEN. Thank you, Madam Chairwoman. And I thank all of the witnesses for appearing. I would echo what has been said thus far. I am concerned about the possibility of losing 900,000 units. I am very much concerned that the process of construction appears not to be sufficient such that we can maintain. Construction alone will probably see us losing ground. It is important that we not lose ground, especially in areas where we are talking about those who are disabled and those who are seniors.

This country is unlike many other places in the world because of the way it treats people in the twilight of life. We do not just allow people to live on the streets in the twilight of life.

I look forward to hearing from the witnesses so as to get some intelligence in terms of how they perceive we should proceed to do

what we have always done, not nearly to the extent we should have done, but that is to take care of those in the twilight of life and are disabled.

I yield back.

Ms. WATERS. Thank you very much. Our first witness will be Ms. Tammye Trevino, Administrator, Rural Housing Service. I would like to thank you for appearing before the subcommittee today. And without objection, your written statement will be made a part of the record. You will now be recognized for a 5-minute summary of your testimony.

STATEMENT OF TAMMYE TREVINO, ADMINISTRATOR, RURAL HOUSING SERVICE (RHS), U.S. DEPARTMENT OF AGRICULTURE (USDA)

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

I would like to thank all those involved with this legislation, both in this session of Congress and in previous years, for their hard work.

I am pleased to testify before you today and I look forward to working with you and the committee to further the preservation agenda.

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

During this recess and the foreclosure crisis, RHS-assisted multi-family housing facilities have served as a critical resource for some of our most vulnerable rural residents who would otherwise lack proper housing alternatives.

Unfortunately, the foreclosure rates of our RHS-assisted multi-family properties have remained variably unchanged when compared to rates of previous years. As multi-family housing facilities age and deteriorate, it is vital that we work together everyday in every way to preserve these units for the most vulnerable in our communities.

The benefits of focusing on preserving the existing housing portfolio rather than on building additional units are clear: It is less expensive, roughly a third to a quarter of the cost of new construction. It can be accomplished faster with the site and acquisition issues already resolved. It presents many opportunities to upgrade energy conservation systems and it minimizes the NIMBY effect since most communities welcome an upgrade to existing rental properties in their neighborhoods.

We are still studying the proposed legislation and may have questions regarding the implementation of certain aspects. However, the legislation appears to give the Agency a number of revitalization tools that would provide cost-effective preservation options for the existing multi-family rental housing portfolio.

We look forward to working with the committee to ensure that these tools provide the best possible mechanisms to support the revitalization efforts. Currently, our revitalization program is authorized only as a demonstration program, not in permanent authorization legislation. This makes it difficult for the Agency to promulgate permanent program regulations and to address long-term issues, including the length of vouchers.

Further, we must determine the resources needed to accomplish the goals we established, and we will develop those estimates during the budget formulation process. But, specifically, we need to examine what types and amounts of resources will be needed to work with a larger portfolio level of transactions to assure quality assurance, and to provide for consistent processing throughout the country.

The proposed legislation contains voucher authority that will provide protection for tenants against rent increases or relocation as a result of prepayment or foreclosure, as does the current Rule Development Demonstration Voucher Program.

The early results of a restructuring demonstration are extremely encouraging. When the initial application window closed on April 17, 2006, approximately 4,000 Section 515 property owners applied for debt restructuring. This represents 25 percent of the total portfolio. In the 3 full years of implementation as a demonstration program, USDA has obligated over 300 transactions that will improve the housing conditions of 10,000 tenants. These results indicate a tremendous interest among the ownership community in seeking a resolution to the revitalization challenge. Our goal is to reach 1,000 preservation transactions processed each year.

Madam Chairwoman, I was born, raised, and have lived most of my life in rural communities. For 25 years, I worked and advocated for the development of rural communities. I understand the challenges that rural communities face. I know the struggles that many families in rural America see everyday. I feel thrilled and humbled by the opportunity that I have been given by President Obama to provide housing development on a national level. And I am committed to helping the President and this committee and our private and public partners, along with Secretary Vilsack in creating a lasting foundation in rural housing in the heart of rural America everyday in every way.

Thank you for allowing me to address the committee. I am available to answer your questions now or at any time in the future.

[The prepared statement of Ms. Trevino can be found on page 85 of the appendix.]

Chairwoman WATERS. Thank you very, very much. We are very appreciative for your presence today. I would like to begin by trying to get a little bit better understanding of the ability to assist those residents who are in units that are at risk of a conversion to market rate. USDA's 2004 report entitled, "The Comprehensive Property Assessment Portfolio, An Analysis of Rule Rental Housing" said that 10 percent of rural housing units are at risk of conversion to market rate. In what ways will this bill ensure that those units remain as affordable housing?

Ms. TREVINO. It will provide us with the funding that is necessary to do the Section 515 Program and to do preservation of a

portion of that 10 percent. As I said, our goal, in order to meet the need that is spelled out in that CPA report, I believe that we should be doing about 1,000 transactions on a yearly basis.

Chairwoman WATERS. All right. Let me just raise one more question with you about Section 515 that you just alluded to, the Rural Loan Guarantee Program. One of the criticisms of the Section 515 Rural Loan Guarantee Program is that most of the loans have been provided to for-profit developments, not to nonprofit developers. In what ways will this bill increase the participation of nonprofit rural housing developers in this program?

Ms. TREVINO. I do not see that the bill distinguishes between private development and nonprofit development. That may be an issue that you may want to take up. I know that some nonprofit developers have problems with initial advance costs to try to do a deal but in terms of this legislation, I do not believe there is a factor, at least for the rule development portion. I may be wrong.

Chairwoman WATERS. All right, thank you very much.

Mrs. CAPITO. Yes, thank you for your testimony. I would like to ask just a couple of questions. I am going to go right to the Section 538 question, since I raised that in my opening statement. Do you have a comment about the inability of the developers to use the interest credit subsidy in tandem with the loan guarantee, and what kind of impact do you think that this has had on these developers in the 538 program?

Ms. TREVINO. I have seen 538 developments with and without interest credit that work. We do not know what the implications are going to be. Certainly, the interest credit subsidy has been a very popular option in allowing these deals to go forward.

So in terms of the impact and what it is going to do, I think it is a little early to find out. We know that statutorily it has been left out through the appropriations, and so we are not sure what is going to happen. I believe that it is a good tool, but obviously we are going to implement whatever is in the appropriations bill.

Mrs. CAPITO. Well, you know that I am interested in restating that as an incentive to developers to create housing. I would like to ask what is the breakdown, you said you have seen in the 538 program, there are those who have used the interest credit subsidy and those who have not, do you have any idea how that breaks down percentage wise?

Ms. TREVINO. No, I don't. I could not give you those numbers. I am speaking from experience—

Mrs. CAPITO. Right.

Ms. TREVINO. —just in Texas.

Mrs. CAPITO. Right. In your statement and in your letters you mentioned, I got the sense that you envisioned some changes of some of the provisions of the bill that might be more helpful to you in your revitalization and in our revitalization efforts. Can you say what types of changes you would make to this bill and are there provisions that would make your job harder or easier? And what specific additional tools would be helpful to you to further the goal of affordable rural housing preservation?

Ms. TREVINO. Currently, I would like to address one particular program and that is the Section 514 and 516 that provides for farm labor housing. We believe that portion of the portfolio in rural de-

velopments is an important component. I would be very interested in working with the committee to try to determine the types of resources that would be needed to address that need.

Mrs. CAPITO. Other than that, you do not see any real stumbling blocks in this bill to move forward with your programs, to simplify them, to keep the public/private partnerships active and to reach the ultimate goal, which is preserving not only housing units but also the upgrade of a lot of the housing units?

Ms. TREVINO. I believe that we are going to have a few concerns when it comes to how we implement the voucher, but, again, we are willing to work with whatever the committee proposes and try to figure out what the best mechanisms are in terms of what is available under tools in the bill.

Mrs. CAPITO. Okay, and can you tell me what the physical state of the existing 515 portfolio is? I am curious to know how many of those units are in need of repair? How do they break out? I know you cannot give me an exact number, but how many of those are in need of repair percentage wise so I can get a perspective on that?

Ms. TREVINO. I can only tell you that the CPA report stated that about 80 percent would need rehabilitation in the next 6 to 7 years.

Mrs. CAPITO. That is a large percent.

Ms. TREVINO. It is.

Mrs. CAPITO. Yes.

Ms. TREVINO. A huge portion.

Mrs. CAPITO. Thank you.

Ms. TREVINO. Thank you.

Chairwoman WATERS. Mr. Cleaver?

Mr. CLEAVER. Thank you, Madam Chairwoman. The 515 program, can you help me understand if a tenant moves out, that unit is no longer eligible for the 515 program?

Ms. TREVINO. The 515 program is more project based, and so we determine ahead of time, based on the rental assistance that we give that project, how many of those are going to be set aside for the very low income. So it really does not have to do with the tenant.

Mr. CLEAVER. Okay. The demonstration program seems to be very successful. I think you mentioned 90 percent of the tenants choose to remain?

Ms. TREVINO. Yes, 90 percent of the tenants have chosen to remain.

Mr. CLEAVER. Do you think that is due to the way the program is now working or due to the economic situation in the country right now?

Ms. TREVINO. In rural America, I would—it is my opinion that we do not have the housing stock many times that you find in an urban community, so many times, there are not better alternatives for the families. I believe that is one reason that number is high.

Mr. CLEAVER. I am curious about what if we compared it with Section 8 or even 202, two programs, in terms of—well, maybe not 202 but certainly Section 8, to draw a comparison to see what the percentage would be of individuals who would choose to remain. This just seems enormously high, which is good in a way.

Ms. TREVINO. I would not know what those percentages are, but again the population in both the city, in the urban and the rural areas, is pretty much the same. So in rural communities we have the issue of the housing stock, but you also have the issue that 60 percent of this population is an elderly population. As you know, elderly people are creatures of habit; they do not want to move. They do not like change and so that may be part of what contributes to that number.

Mr. CLEAVER. All right, thank you. I yield back the balance of my time, Madam Chairwoman.

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

Mr. GREEN. Thank you, Madam Chairwoman. And, again, I thank the witness. Ma'am, public housing has been successful to the extent that it has in my opinion because we have tried to have a collaborative effort. We have tried to inculcate the NGOs into the process. We have tried to access our intelligence from a variety of sources and sometimes the pipeline to HUD hopefully would go through the NGOs. Can you tell me, as we are now looking at the various changes that we are making, how you plan to have input from NGOs in this process?

Ms. TREVINO. Okay, we work very closely with our partners. In rural America, there are a lot of nonprofit providers. We are willing to listen to their ideas and try to determine the best ways to implement these programs. So I do not know how it has been done in previous Administrations, but I can tell you that we do have a goal within our Administration, within Rural Housing, to continue that very important work.

Mr. GREEN. Thank you. This is very encouraging. Let me just go a step further, however, and indicate that much time and energy is necessary from persons who are familiar with communities to acquire the intelligence that you need. It is beneficial to have a means by which NGOs can have the assets, the resources necessary to acquire this intelligence. Funding for NGOs, in my opinion, is quite beneficial to HUD in acquiring intelligence. We have from time to time provided funding for NGOs. Chairwoman Waters had a piece of legislation that we amended, H.R. 3965, this was the Mark-to-Market Extension and Enhancement Act of 2007. And with assistance we were able to—her assistance, we were able to add $10 million in grants to tenant groups and not-for-profits. Are you predisposed to continuing this type of relationship so that we can have NGOs that are not only willing but also able to perform the function?

Ms. TREVINO. Yes, sir, I believe that we are. And, in fact, across the country we have rural development offices, about 400 in the field, so that is quite a longer reach than perhaps HUD in a rural area. So we are very amenable to working and trying to see what—how our local offices can integrate with what the NGOs are doing.

Mr. GREEN. Thank you very much. Madam Chairwoman, I will yield back the balance of my time.

Chairwoman WATERS. There are no more questions. The Chair notes that some members may have additional questions for this witness, 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 this witness and to place her responses in the record.

This panel is now dismissed. Thank you very much for coming.

Ms. TREVINO. Thank you.

Chairwoman WATERS. I would like to welcome our second panel. And I am going to announce each of you, but prior to speaking, I would like you to give me your name, because I am sure I am not going to pronounce some of these names correctly.

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

Our second witness will be Mr. Ghebre Selassie Mehreteab, executive officer, The National Housing Partnership Foundation.

Our third witness will be Mr. Allan Isbitz, president, National Leased Housing Association.

Our fourth witness will be Mr. Ricky Leung, treasurer, National Alliances of HUD Tenants.

And, of course, you heard the introduction of our fifth witness by Mr. Castle, Mr. Joe Myer, board member, National Rural Housing Coalition.

Our sixth witness will be Ms. Katie Alitz, vice president, The Council of Affordable and Rural Housing.

Then we will have Mr. Vincent O'Donnell, president, Citizens' Housing and Planning Association.

And our final witness will be Ms. Sarah Metherell, vice president, Institute for Responsible Housing Preservation.

Thank you again for appearing before the subcommittee today. And without objection, your written statements will be made a part of the record. You will now be recognized for a 5-minute summary of your testimony.

Okay, Mr. Halliday?

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

Mr. HALLIDAY. Thank you very much, Chairwoman Waters, Ranking Member Capito, and members of the subcommittee. My name is Toby Halliday, and I am the vice president for public policy of the National Housing Trust. Thank you for inviting me to testify today in support of this important draft legislation.

Over the past decade, the National Housing Trust has helped save and improve more than 20,000 apartments in over 40 States. The vast majority of these apartments have HUD-subsidized mortgages or project-based rental assistance contracts.

Today, I am also testifying on behalf of the National Preservation Working Group, a coalition of 25 national nonprofit organizations supporting affordable rental housing. The members of the Preservation Working Group strongly support a balanced housing policy that includes the option of quality affordable rental housing and endorses this proposed legislation to protect low-income urban, suburban, rural, and elderly households whose homes are at risk of loss or conversion.

Due to the recession that now grips our economy, and the mortgage crisis that precipitated it, the need for this legislation is great-

er than ever. Continuing home foreclosures will shift many families from homeownership to rental in a market where there is already a shortage of affordable rental housing for the poorest households. Many of the affected families will experience sharp declines in household assets and credit scores, but the increased demand for rental housing at the lowest end of the market is actually leading to higher rents and tighter credit screening in some markets despite falling incomes and rising unemployment.

At the same time, many cash-strapped States and local governments are reducing assistance to needy families. All of this leads to a heightened risk of homelessness. Addressing this challenge begins with preserving existing affordable rental housing.

Federally-subsidized housing serves nearly every community in the Nation. The Trust's analysis has identified nearly 170,000 units of federally-assisted apartments with contracts that expire over the next decade located in the districts of members of this committee, as shown in Attachment A of my testimony.

At the heart of this legislation are new tools to protect residents and preserve affordability when apartments are refinanced or recapitalized or when the underlying HUD-subsidized mortgages mature. Unlike other assisted properties, there are currently no provisions to preserve the affordability of these units or to protect residents when thousands of these mortgages expire over the next several years.

The current draft includes important provisions that would, at the owner's discretion, provide rental assistance for affected apartments, both for the HUD-assisted and the rural development Section 515 properties. Improving preservation tools makes the rehabilitation of these properties easier to finance, leading to the creation of needed construction jobs.

There will be debate over the proposal to allow new purchasers to preserve the affordability of federally-assisted properties when current owners no longer wish to operate them as affordable rental housing. So long as existing owners are provided market values for their properties, we believe that new ownership dedicated to long-term affordability will help ensure affordable rental housing at a time when so many families are homeless or at risk of homelessness.

There will also be debate over the provision to allow residents to escrow their rents when properties are in disrepair. All tenants must still pay their full rent but funds will go into an escrow account or be used for HUD-approved repairs when the Secretary determines serious violations of housing quality standards or housing program requirements. The only parties who have something to fear from this provision are owners with serious property violations, which impacts not only residents but the entire community surrounding these properties.

We note that many Members of Congress recently expressed their strong view that recipients of housing assistance should be American citizens. This is already the law of the land and residents are currently required to certify their compliance with this requirement. But such new requirements will have a huge impact on many U.S. citizens who do not have birth certificates or passports in their possession, who are disproportionately senior citizens, Afri-

can Americans, rural residents, or lacking a high school diploma. In California, for example, obtaining a birth certificate can take 10 to 12 weeks and cost $5 to $23 in different jurisdictions. A passport can take several additional weeks and cost up to $100.

Finally, I would like to express our support for the titles for Section 202 elderly housing and for Section 515 rural housing administered by the Department of Agriculture. These proposed changes will provide important new tools to protect vital affordable rental housing for seniors and in rural States, especially in high-cost areas.

Again, thank you for the opportunity to comment on this draft affordable rental housing legislation. The National Housing Trust and the Preservation Working Group are looking forward to the formal introduction and enactment of this legislation.

[The prepared statement of Mr. Halliday can be found on page 29 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Mehreteab.

STATEMENT OF GHEBRE SELASSIE MEHRETEAB, CHIEF EXECUTIVE OFFICER, THE NATIONAL HOUSING PARTNERSHIP FOUNDATION

Mr. MEHRETEAB. Chairwoman Waters, Ranking Member Capito, Congressman Cleaver, Congressman Green, and Congressman Ellison, I thank for you for the opportunity to testify this afternoon on one of the most crucial issues: the preservation and creation of affordable housing, especially in urban areas.

My name is Ghebre Selassie Mehreteab, but I am mostly known as Gabe. I am the chief executive officer of the NHP Foundation, a nonprofit housing organization headquartered in New York City.

At the outset, I want to state that the NHP Foundation is in full support of the bill. Thank you, committee members.

In 1989, the National Housing Partnership was chartered by Congress as a private corporation to create and preserve affordable housing. The National Housing Partnership created the NHP Foundation as a national nonprofit organization to address America's affordable housing crisis. Our strategy was to combine the discipline of the private real estate sector with a charitable mission.

Since 1994, the NHP Foundation has preserved or converted from market rate to affordable 46 properties, totaling approximately 10,000 units in 14 States. Recently, the NHP Foundation, which was created by the corporation that was chartered by Congress, has developed a 5-year strategy plan for the creation or preservation of an additional 5,000 to 10,000 affordable housing units, again mostly to be located in urban areas.

As you are fully aware, the need for affordable housing in our society is a pressing one. Yet, as the committee members noted, we are losing much of our affordable housing daily. Against this trend, we must preserve the affordable housing that has already been built at great expense to the taxpayer. However, for preservation efforts to be successful, the nonprofit organization must raise financing from the public sector, obtain investment of private capital from banks and other financial institutions, and secure grants and loans from the philanthropy community.

One, this bill will provide new tools, reform existing programs and create incentives for financing affordable housing. For example, specifically, the bill will assist large-scale nonprofit organizations in preserving the existing stock of affordable housing. Two, it will attract private capital from banks and other institutions. And, three, leverage the initiative of philanthropic organizations.

As you know, the NHP Foundation and other nonprofit owners rely on private lenders and investors to create and preserve affordable housing. For example, over the last few years, the NHP Foundation has partnered with Bank of America's Community Development Group in obtaining debt and tax credit equity financing. However, the glue that binds the public sector with the private capital is philanthropic grants. Many nonprofits have received funding from the Ford Foundation, the McArthur Foundation, Prudential Social Investments, and other philanthropic sources for our preservation work.

In conclusion, the NHP Foundation looks forward to continuing to work with the committee and its staff on those preservation issues.

Thank you again for inviting me to testify today.

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

Chairwoman WATERS. Thank you very much.

Our next witness will be Mr. Allan Isbitz.

STATEMENT OF ALLAN ISBITZ, PRESIDENT, NATIONAL LEASED HOUSING ASSOCIATION (NLHA)

Mr. ISBITZ. Chairwoman Waters, Ranking Member Capito, and members of the subcommittee, thank you for your invitation to speak today and for the opportunity to address some of the issues of importance to our affordable housing constituency.

My name is Allan Isbitz. I am chief financial officer and vice president of real estate development for Jewish Community Housing for the Elderly, a nonprofit that owns and operates over 1,000 apartments for low-income seniors in the Boston area.

I am here today as president of the National Leased Housing Association. NLHA is pleased to present our concerns related to the preservation of federally-assisted affordable housing. NLHA represents a broad cross-section of people and organizations that provide or administer Section 8 and tax credit housing for over 3 million families and elderly.

We appreciate and applaud the efforts of the committee to produce this important bill.

I would like to spend a few minutes sharing with you to illustrate my experience with a preservation transaction where HUD guidance was confusing and inconsistent and unnecessarily impeded our ability to achieve important preservation objectives. This is about a refinancing transaction we undertook 3 years ago that involved preservation and improvement of a 33-year-old project with a Section 236 mortgage that provides 254 apartments for low-income seniors.

We had three objectives in this transaction: first, to make the necessary capital improvements to the building; second, to build a new community center so we can meet the need for essential sup-

port services for our senior residents that would allow them to continue to live there in spite of increasing frailty as they grow older; and third, to use some of the sales proceeds to help finance a new 150-unit Section 202 mixed-income development for seniors on land in Framingham, Massachusetts, that we owned and had zoned for that purpose.

To achieve these objectives, we successfully sought and received tax-exempt bond financing that generated over $10 million in tax credit equity and supplemented the proceeds of a new HUD-insured loan used to cover building improvements. We believed the $10 million of private investor equity could be used under existing HUD guidelines to support the construction of the Resident Services Community Center and the financing of the new construction project.

As an added bonus, the availability of private investor equity allowed us to set rents below market and save HUD almost $5 million in Section 8 subsidies over the term of the HUD-insured mortgage. We believed this to be a real win/win situation for us and for HUD, and the HUD field office showed strong support for the project.

However, HUD central had to approve the prepayment of the mortgage, and they refused to do so claiming that the proceeds—the sale proceeds we were realizing were too high. HUD then required us to sign an agreement as a condition of proceeding with the refinancing that restricted almost $3 million of these proceeds to fund future rent increases instead of using the Section 8 subsidy contract that existed for this purpose.

HUD's position was incomprehensible because private tax credit equity, not HUD rental subsidy, supported the sale proceeds we wanted to use for the Resident Services Community Center and for a new affordable housing development.

There is no basis in law or in regulation for HUD's actions. Its actions were inconsistent and amounted to treating nonprofit owners differently than for-profit owners in similar prepayment circumstances when HUD's written guidance on this subject states just the opposite. In the face of adverse market conditions today, we have requested HUD to reconsider its position on the use of sale proceeds for our new construction project. The project is currently shovel ready and will produce $25 million worth of construction activity, plus 259 construction jobs for the Massachusetts economy, but has been delayed for about a year now.

This situation demonstrates that producing tax-credit financed housing involves market risk for nonprofit and for-profit developers alike. So it is particularly important that both nonprofits and for-profits be given access to the same financial tools, such as sale proceeds, that they need to negotiate with their partners in the marketplace.

HUD's action in the recent years regarding sale proceeds remain an issue for nonprofits so it is important that Congress clarify this matter. The current draft includes language that attempts to address the problem, but it is not retroactive and therefore does not provide a remedy for nonprofits that have already been denied access to their rightful sale proceeds, which are necessary to meet their current needs. We prefer the language that was included in

Section 401 of H.R. 2930 that passed the House last year and request that it be substituted for Section 503 of the current draft.

I thank you again for this opportunity to let you know of our need for improvements in Federal preservation programs. I might add that we believe that Secretary Donovan and his new team share many of these concerns, and we look forward to working with the new HUD administration in this regard.

Thank you.

[The prepared statement of Mr. Isbitz can be found on page 40 of the appendix.]

Mr. CLEAVER. [presiding] Mr. Leung, you are next. Did I mispronounce your name?

STATEMENT OF RICKY LEUNG, TREASURER, NATIONAL ALLIANCE OF HUD TENANTS

Mr. LEUNG. Thank you, Chairwoman Waters. Thank you, Mr. Cleaver. My name is Ricky Leung. I am the treasurer for the National Alliance of HUD Tenants, a national tenant union, the one and only in the Nation, for privately-owned HUD-assisted multifamily housing.

Since the Title 6 Preservation Program ended in 1996, our Nation has lost at least 360,000 units of affordable low-income housing. We commend you and Chairman Frank for including the first right of purchase in the draft preservation bill to stop this loss. We also thank my own representative, Nydia Velazquez, for filing H.R. 44, now Title 4 in the bill, to address the related loss of 120,000 units of HUD's housing stock and for her leadership in addressing the new crisis of private equity.

For 30 years, I have lived in Cherry Street Apartments in a Section 8 unit with my parents, a secure home for our family. We would not survive long in the overheated Manhattan market. The 488 families at Cherry Street are a diverse mix of working and middle class, a microcosm of the City and the Nation.

In 2003, our project-based Section 8 contract was set to expire in the super hot real estate market in Manhattan. Our tenant association persuaded the owner to renew, but he did so for only 5 years. After I testified a little over a year ago in front of the full committee, our building was bought by a predatory investor for $177 million, more than $360,000 per unit. And our Section 8 contract was renewed for 5 more years.

Just 3 years from now, the new owner will again decide what to do. Passage of first right of purchase would at least give our tenant association and the City a fighting chance to save our homes. By itself, a first right purchase would not add to Federal costs. It would simply allow a city or nonprofit to purchase an at-risk property using existing programs like markup-to-market. There is ample precedent besides Title 6, for 20 years, Congress has provided a Federal right of purchase for rural housing and several States have adopted similar laws.

The need for this measure is urgent in New York City. We are losing affordable housing to speculators at an alarming rate. Since the 1990's, more than 32,000 low-cost apartments have already been lost, and the rate has spiked dramatically. A national first

right of purchase will help save 22,000 more apartments like Cherry Street that are at immediate risk.

In the wake of 9/11, the loss of 54,000 affordable apartments in New York City is a tragedy which we can neither bear nor ignore.

Nationwide, tenants are also challenged by the end of regulation in 260,000 apartments reaching an end of the 40-year HUD-subsidized mortgages. The number of expiring mortgages properties will skyrocket by more than 600 percent between now and 2012 according to the GAO. Whatever the source of risk, the first right of purchase is needed to ensure that owners use voluntary incentives in the draft bill to save our homes.

Congress dismantled Title 6 in 1996 due to concerns about excessive costs. Under Title 6, residents and HUD negotiated major repairs, permanent affordability, and transfers to nonprofit and tenant organizations. Today, the enhanced vouchers are mark-up-to-market options available to owners are just as costly as the Title 6, but with none of these benefits.

A first right of purchase will save money in the long run by removing subsidized housing from the speculated market, lessen owner windfalls, and guarantee benefits from the investment from any Federal funds.

Three weeks ago, Secretary Donovan mentioned the State court decision that struck down a right of purchase law adopted by the City of New York. I was involved in the effort to pass this law to help save my home. The court struck down the City law solely due to State and Federal preemption concerns, not constitutional questions addressed in our written testimony. In fact, the courts acknowledged the serious rental housing crisis, and they urge action by other levels of government.

We urge the committee to honor the plea of the New York tenants, echoed by the State courts, to adopt a right of purchase at the Federal level. Obviously, preemption is not an issue if Congress acts.

The National Alliance of HUD Tenants also supports the tenant empowerment provision in the bill. These no-cost measures will allow tenants to join as HUD partners to improve and save our homes.

To conclude my testimony today, just like concluding my testimony last year, I would like to pay tribute to the three main languages spoken in my community. I would like to say to everyone in this room in English: Thank you very, very much. And in Spanish, especially to my Congresswoman, Nydia Velazquez, Muchas Gracias. And in my native language, Chinese: Xie, xie doh je.

[The prepared statement of Mr. Leung can be found on page 45 of the appendix.]

Mr. CLEAVER. Thank you.

Mr. Myer?

STATEMENT OF JOE MYER, BOARD MEMBER, NATIONAL RURAL HOUSING COALITION

Mr. MYER. Good afternoon, Chairwoman Waters, and Ranking Member Capito. My name is Joe Myer. I am the executive director of NCALL. We are based in Dover, Delaware. We serve the mid-Atlantic region. I received a very nice introduction by Congressman

Mike Castle, and I want to thank him for that introduction. As a two term governor, and now Delaware's sole Congressman, Mike Castle has been an important friend of affordable housing.

I am also a current board member of the National Rural Housing Coalition. NRHC is a national membership organization that advocates for Federal policies which improve housing and community facilities in rural America. NRHC has stood for the principle that all rural residents have a right to a decent place to live. We have testified before this committee previously, and appreciate the opportunity to testify today on rural housing issues and H.R. 2876, the Rural Housing Preservation Act of 2009.

We commend the bipartisan effort of Congressmen Geoff Davis and Lincoln Davis.

It is vital to preserve our current stock of affordable rental housing because of lack of decent apartments in rural America. A disproportionate share of the Nation's substandard housing is located in rural areas. According to the 2000 census, of 106 million housing units available in the United States, 18.7 million units, or about 18 percent, are located in non-metro counties. Thirty-five percent of rural renters are cost-burdened, paying more than 30 percent of their income for housing costs. Almost one million rural rental households suffer from multiple housing problems, 60 percent of whom pay more than 70 percent of their income for housing. More than 900,000 renters live in moderately or severely inadequate housing, and 1.9 million people are rent overburdened.

Section 515 of the Housing Act of 1949 is the principal source of financing for rental housing in rural areas. Under Section 515, nonprofit and for-profit entities can receive one percent loans for acquisition, rehabilitation or construction of rental housing and related facilities. Most Section 515 loans have gone to for-profit developers who combine the subsidized loan with tax subsidies to finance housing. About 75 percent of these properties are further subsidized by the RHS Section 521 rental assistance program, and the Department of Housing and Urban Development Section 8 program, both of which provide rent subsidies to ensure that residents pay no more than 30 percent of their income towards rent and utilities.

Section 515 is generally well-managed. The portfolio is financially sound. It has a loan delinquency rate of just 1.6 percent and only 8 properties in inventory at the current time. Projects are small, sized to the communities that they serve, an average of 28 units.

So over 400,000 low-income families and elderly households live in rental housing financed under Section 515. For many rural areas, Section 515 provides the only decent affordable rental apartments in the community. Although rents are extremely low, averaging a little more than $325 per unit per month, the average resident annual income for the properties is also low, about $9,200. Twenty percent of the tenants were nonetheless rent overburdened and 7 percent paid more than half of their income towards rent. This is due to noticeably lower incomes in rural areas.

Over the last several years, the Federal Government has virtually stopped financing for new affordable rental units in rural America. In 1992, the loan level for Section 515 was $500 million.

By 1998, that number was less than $200 million. And for Fiscal Year 2009, the level of Section 515 was $69 million.

Over the last 40 years, Congress has debated the best, most appropriate way to preserve the rights of owners and tenants living in Section 515 developments. This issue is important because virtually all households living in these apartments are low income, many are elderly, and many have disabilities. These are people with few other housing options.

The evolution of the 515 program and prepayment process shows how the rural housing services lack of funding for incentives and rent subsidy vouchers has hurt both owners and tenants.

We see that the comprehensive property assessment and portfolio analysis indicates that there is a long-term need to ensure adequate operations and long-term rehabilitation of $2.6 billion over 20 years.

In response to the USDA report, Congress provided funds for a demonstration aimed at preserving rural rental developments. From 2006 to 2009, $100 million was provided in multi-family restructurings. RHS provided restructurings financing to 105 projects. The financing mostly in the form of deferred loans preserved 4,500 units. This is an important demonstration and really points to what needs to happen in the future.

The current restructuring program relies heavily on funding from other sources, but given the difficult economic climate, raising capital from other sources will prove more difficult.

[The prepared statement of Mr. Myer can be found on page 69 of the appendix.]

Mr. CLEAVER. Mr. Myer, I hate to cut you off, and I am going to have to apologize to all of you. As you probably heard, the bell just sounded, which means we have votes. We have about 40 minutes of votes. It could be longer if there are some parliamentary procedures that we have to deal with. But what I would like to do is, if the three of you who have not had made presentations would do so, and if you can, I know they are already abbreviated, but give us the Reader's Digest version. And then we will dismiss the panel because the most important part is your testimony anyway. And we will send out a memo to all the committee members that if there are questions, we will send those questions to you.

So if we can, let's move with Ms. Alitz.

Ms. ALITZ. "Alitz."

Mr. CLEAVER. Ms. Alitz, I'm sorry.

STATEMENT OF KATIE ALITZ, VICE PRESIDENT, THE COUNCIL FOR AFFORDABLE AND RURAL HOUSING

Ms. ALITZ. Mr. Cleaver, members of the subcommittee, my name is Katie Alitz, and I am the vice president of the Council for Affordable and Rural Housing. On behalf of myself and CARH, I would like to thank you for the opportunity today to address issues related to rural affordable housing, and in particular the rural housing legislation under discussion.

We also very much appreciate this committee's interest and focus on rural housing issues. CARH is an association that includes for-profit, nonprofit, and public agencies that build, own, invest and manage in rural and affordable housing. CAR members house hun-

dreds of thousands of low-income elderly and disabled residents across rural America.

CARH strongly supports preservation of affordable rural housing, and we think it is critical that the preservation efforts include Rural Development's budget being restored. Over the previous 12 years, Rural Development's budget has been decimated, especially the Section 515 multi-family loan program. This has made preservation of rural housing very difficult.

Owners have preserved Section 515 properties over the last decade largely by finding other sources of funding, primary low-income housing tax credits and also recently Section 538 guaranteed loans. However, this has never sufficiently closed the gap. Because of their small size, rural properties have always had difficulty competing for tax credits and finding equity providers. Given the recent upheavals in the low-income housing tax credit markets, these problems will be further exacerbated.

In addition, the 538 interest credit subsidy was reduced in the 2009 budget from $20 million to $8 million and eliminated in the 2010 budget. This subsidy is critical to the preservation of 515 housing and also for keeping housing affordable for low-income residents. Without the subsidy, this program will target more middle-income residents.

We also support Ms. Capito's legislation to restore this interest credit subsidy, and we thank you for your support.

In addition to funding, providing Rural Development with certain tools is critical to their preservation efforts. The preservation legislation that we are seeing today was introduced also in the 109th and 110th Congress. CARH has supported this legislation but has concerns about three provisions that we believe may impede preservation.

First, the legislation calls for a 30-year capital needs assessment. We think that is too long; the industry standard is an average of 15 years. Second, while we have no issue with limiting resident rents to 30 percent of their income, we are concerned about imposing this limit without including further rental subsidies. We think that will take a lot of eligible properties off the table. And finally, we are concerned about the restrictions on owners who participated in the prepayment settlement. There seems to be some barriers to their entry into this program.

Thank you.

[The prepared statement of Ms. Alitz can be found on page 24 of the appendix.]

Mr. CLEAVER. Mr. O'Donnell?

STATEMENT OF VINCENT F. O'DONNELL, PRESIDENT, CITIZENS' HOUSING AND PLANNING ASSOCIATION

Mr. O'DONNELL. Good afternoon. I will try to do the standing on one foot version of my written testimony. I want to thank Chairwoman Waters and Ranking Member Capito and Representative Cleaver and all the members of the subcommittee for the opportunity to testify. My name is Vincent O'Donnell. I am testifying in favor of this urgent and important legislation. I am speaking on behalf of the Citizens' Housing and Planning Association in Massachusetts, which was created in 1967 as an umbrella organization

that represents advocates for affordable housing for low- and moderate-income people in the Commonwealth. It really is a broad umbrella of producers and consumers and folks interested in housing policy and has been extremely successful.

In fact, CHAPA's involvement in preservation goes back to 1978 when we worked to implement new guidance that was created for HUD to deal with distressed properties. I think the most important thing I want to say today is that the whole concept of the preservation of affordable housing really goes back to the residents themselves. The preservation issues have always been raised by the tenants who live there. Back in 1978, residents in a gentrifying neighborhood of Boston living in distressed housing went to then-Senator Edward Brooke and got some Federal relief that enabled them ultimately to purchase that property as a cooperative. And it is still today a successful, 100 percent Section 8 cooperative. The issues have always been brought forth by the folks who live there.

Secondly, it is a changing landscape. Back then, the issue was HUD foreclosure of distressed housing. Later, the issue became the prepayment of subsidized mortgages. After that, it was the expiration of Section 8 contracts. We now have new emerging issues in what is called the Year 40 problem where, after the complete expiration of all obligations, there are no current effective ways to make sure that the tenants are protected and the housing is preserved.

So I think it is important to look at this extremely complex and comprehensive bill as something which fundamentally is addressing those basic goals. And if you look at it that way, it is, I think, a terrific piece of work that has responded to years of development of ideas by the preservation community trying to make this housing safe and affordable for the future for the tenants who live there and to contribute positively to the neighborhoods where the housing is located.

Although it deals with many, many things, I just want to highlight several things which are very important. First, I think it does address the new problems which have arisen at the end of 40 years, the extension of authority for tools like enhanced vouchers, and conversion of earlier forms of rental assistance to Section 8 so that it can more flexibly support the redevelopment of the property.

Second, the right of purchase is an extremely important aspect of this legislation. It is also extremely complex. And it exemplifies the partnership that affordable private housing is based on in this country. We have private owners, private financing serving low-income residents. This has to work for everybody. And an important tool like this is a very complex one. In my written testimony, I have some thoughts about how to make that work the best for all stakeholders.

Third, there are certain State-funded properties that were recognized in LIHPRHA, the earlier preservation legislation dealing with prepayment as requiring Federal assistance, and this bill addresses their needs.

Fourth, elderly housing is a very important element and the preservation of that stock is addressed in a comprehensive way in this bill, and I want to speak in favor of that as well.

And I think I better stop there; the rest of my comments are in the written testimony.

[The prepared statement of Mr. O'Donnell can be found on page 76 of the appendix.]

Mr. CLEAVER. Thank you.

Ms. Metherell?

STATEMENT OF SARAH METHERELL, VICE PRESIDENT, INSTITUTE FOR RESPONSIBLE HOUSING PRESERVATION

Ms. METHERELL. Good afternoon. First of all, thank you very much for inviting me here to testify today. My name is Sarah Metherell, and I am with Steadfast Residential located in Newport Beach, California. We have acquired, rehabilitated, and preserved and now own about 15,000 units of federally-assisted low-income housing. These units are mostly in California but also in a total of 18 other States.

I am here today, however, representing in my capacity as vice president of the Institute for Responsible Housing Preservation, the IRHP. Since 1989, the IRHP has represented owners and managers of federally-assisted multi-family properties on preservation issues, including advocating for legislative and regulatory changes for preservation policies and providing educational seminars on preserving affordable housing. I would add that the IRHP is primarily a group of for-profit developers, however we do have a few nonprofit members and some State agency members.

I am going to make this very quick. IRHP is generally in favor of the bill. There are a few things I would like to point out based on personal experience that I have had in acquiring affordable multifamily properties over the last couple of years. One is that the Section 236 decoupling program is a wonderful program and has been very successful in preserving HUD properties. I think if you look at the Section 236 program, you see a higher rate of preservation over other HUD programs because it is easier to preserve those properties. The primary reason is the ability to undertake a budget-based rent increase, which includes new debt service, something that is not now available for other types of HUD properties. Also, there is an increased annual distribution for all preservation owners; it applies to both for-profits and nonprofits and it costs nothing to HUD. However, these benefits are only available on Section 236 decoupling transactions and not on other types of HUD transactions, and I am not quite sure why but the new bill does change that. And we approve of that.

Finally, very briefly, I have a lot more in writing here, but we also support the rollover of certain HUD debt. And I think oftentimes when properties are being transferred to new owners, it should have certain HUD debt, including flex sub-loans and mark to market soft debt cannot be paid off in full—

Mr. CLEAVER. We have 2 minutes.

Ms. METHERELL. All right.

Mr. CLEAVER. No, no, we have 2 minutes.

Ms. METHERELL. You have 2 minutes?

Mr. CLEAVER. To get to the Capitol to vote. Voting will close in less than 2 minutes now. I apologize, as I did earlier.

[The prepared statement of Ms. Metherall can be found on page 63 of the appendix.]

Mr. CLEAVER. The Chair notes that some members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record. And before we adjourn, the written statements of the following organizations will be made a part of the hearing: The National Low-Income Housing Coalition; the American Association of Homes and Services for the Aging; the National Affordable Housing Manager's Association; the Housing Assistance Council; and a statement from the National Apartment Association and others.

If there are no other questions, we are adjourned.

[Whereupon, at 3:26 p.m., the hearing was adjourned.]

A P P E N D I X

July 15, 2009

TESTIMONY OF KATHERINE M. ALITZ ON BEHALF OF THE COUNCIL FOR AFFORDABLE AND RURAL HOUSING BEFORE THE SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, HOUSE COMMITTEE ON FINANCIAL SERVICES

LEGISLATIVE OPTIONS FOR PRESERVING FEDERALLY AND STATE ASSISTED AFFORDABLE HOUSING AND PREVENTING DISPLACEMENT OF , LOW-INCOME, ELDERLY AND DISABLED TENANTS

July 15, 2009

TESTIMONY OF KATHERINE M. ALITZ ON BEHALF OF THE COUNCIL FOR AFFORDABLE AND RURAL HOUSING BEFORE THE SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, HOUSE COMMITTEE ON FINANCIAL SERVICES

LEGISLATIVE OPTIONS FOR PRESERVING FEDERALLY AND STATE ASSISTED AFFORDABLE HOUSING AND PREVENTING DISPLACEMENT OF , LOW-INCOME, ELDERLY AND DISABLED TENANTS

JULY 15, 2009

Madam Chairman and members of the Subcommittee, I am the Vice President of the Council for Affordable and Rural Housing, and on behalf of myself and CARH, I want to thank you and the Committee for the opportunity today to address issues surrounding federal rural housing programs, rural housing opportunities, and rural housing legislation under discussion. We very much appreciate the Committee's ongoing interest and focus on affordable rural housing. CARH members house hundreds of thousands of low-income, elderly and disabled residents in rural America. CARH has sought to promote the development and preservation of affordable rural housing throughout its 29 year history as the association of for-profit, non-profit and public agencies, that build, own, manage and invest in rural affordable housing.

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

For all of the reasons stated above CARH believes that a greater financial commitment is needed for affordable housing preservation. This certainly means more financing than provided in the Administration's Fiscal Year (FY) 2010 Budget. We note the U.S. Department of Agriculture (USDA) Rural Development (RD) Housing and Community Facilities (HCF) budget eliminates the interest subsidy component to the Section 538 guaranteed loan program. As we speak, RD had an FY 2008 pipeline of 119 properties, many preserving existing Section 515 properties, still trying to close. Last week, on an industry phone call, RD representatives stated that they could only fund 50 to 60 of these properties, the rest have already begun to get RD responses that their prior approvals were being revoked. This leaves nothing for properties approved in FY 2009, and FY 2010 also promises to be a disaster for this program. Simply put, the 538 needs the interest subsidy to provide low income housing and that must be restored. This

restoration is particularly important for rural housing preservation, as the Section 538 program is being directed more and more toward the rehabilitation needs of the aging portfolio.

Similarly, many rural affordable housing rental properties are located in states decimated by the Hurricane Rita, Ike and Katrina disasters, and flooding in the mid-West. Just as affordable rural housing properties were being restored, the economic hurricane of last Fall hit, decimating the ability to raise capital. Through issues of interpretation, we understand that low income tax credits provided under Section 1400N of the Internal Revenue Code to address these disasters were not included in the exchange program under Section 1602 of the American Recovery and Reinvestment Act (ARRA) of 2009, along with other low income housing tax credits under Section 42 of the Code. CARH supports S. 1326, introduced by Senators Evan Bayh (D.IN.) and Richard Shelby (R.AL) and companion legislation H.R. 2895, introduced by Representative Artur Davis (D.AL) and Charles Boustany, Jr. (R.LA), allowing more consistent treatment for all low income housing tax credits and permitting wider use of the exchange program to restore affordable housing in these areas of the country.

As CARH members know, Section 521 Rental Assistance (RA) contracts, which were originally five years in length, were cut to one year in FY 2005 –FY 2008 in order to temporarily lower the budget outlay for RA. RA contracts, even if subject to annual appropriations, should be 5 to 20 year renewable terms, like Section 8 renewals. The administrative strain of more frequent renewal processing is already being felt by our members and observed in RD staff. Shorter term renewals and static staffing levels cause more work without corresponding increases in resources. We appreciate that the Administration and Congress recognized the movement to one-year RA contracts created a budget paradox, causing the budget to go to about $1.1 billion just to keep the contracts we have today.

The present income tax structure impedes the very preservation that we all seek. H.R. 2887, the Affordable Housing Tax Relief Act of 2009, sponsored by Representatives Artur Davis (D.AL.) and Geoff Davis (R. KY.), provides a preservation tax incentive needed to preserve Section 515 housing. Most Section 515 properties were created before the 1986 Tax Reform Act. Because rent restrictions limit any cash flow from property, new capital contributions would only generate additional passive losses which cannot be utilized by current investors. Yet, if the current owners sell a property it is almost impossible to generate sufficient cash to pay off the steep recapture taxes that would be owed. The best alternative for current limited partners is to hold the investment until death, enabling their heirs to acquire the property with a stepped up basis that avoids any recapture taxes. While that is a perfectly rational decision at the partner level, it is not consistent with sound housing policy and risks imposing far higher costs on the federal government as these capital-starved properties either continue to deteriorate as affordable housing or are sold off as market rate housing as a means of generating cash on the sale to pay off exit taxes for investors. Either way, the stock of federally assisted affordable housing is at risk of being lost, even as the affordable housing crisis in America grows worse.

A modest change in the tax rules must be adopted to preserve the stock of Section 515 affordable housing at minimal revenue cost to the federal government. This could be accomplished by waiving the depreciation recapture tax liability where investors sell their property to new owners who agree to invest new capital in the property and to preserve the property as affordable housing for another 30 years. Since very few investors subject themselves

to recapture taxes today, opting instead to pass on the property to their heirs at a stepped-up basis, the cost of this proposal should be modest, while the benefit to the federal government of extending the affordability restrictions will be far-reaching.

The Fiscal Year 2010 proposed budget also allows for rural housing vouchers for low-income tenants in Section 515 projects where loans have been prepaid. CARH recommends that the voucher program should be expanded and allowed in existing and preserved Section 515 properties. Wider use and availability of rural vouchers will protect tenants who cannot afford to live in Section 515 housing, and with average annual household incomes at about $10,000, additional voucher availability is badly needed.

The Administration's budget provides additional Section 502 funding, badly needed for new homeownership in rural America, but it neglects the already existing and aging Section 515 multifamily direct loan program. The situation has grown so acute that CARH members have again met this past month to update CARH's 2003 Position Paper on the Aging Section 515 Rural Housing Portfolio. While CARH is reviewing further possible options, it is clear that billions are needed, starting with an estimated $1 billion this year, just to keep up with deferred needs.

The main focus of CARH's preservation efforts is the Section 515/514 rural rental and farm labor housing. We appreciate the introduction of the "Saving America's Rural Housing Act of 2006" (H.R. 5039) in the 109th Congress by Representative Geoff Davis (R. KY) and introduction of the "Rural Housing Preservation Act of 2007 (H.R. 4002) in the 110th Congress by Representatives Lincoln Davis (D.TN) and Geoff Davis (R. KY). In the 111th Congress, these same Representatives have reintroduced the "Rural Housing Preservation Act" (H.R. 2876). Each introduction has had a growing list of cosponsors, which we appreciate. The bulk of H.R 2876 is contained in Title VIII of the current discussion draft of the "Housing Preservation and Tenant Protection Act of 2009". CARH had supported HR 5039, as introduced, but in all the discussion about 5039's prepayment provisions that followed the paramount issue of preservation and revitalization of the Section 515 portfolio was lost. CARH supported H.R. 4002, asking that prepayment not be included in order not to distract from the larger preservation goal. H.R. 2876 and Title VIII contain the same language as the prior H.R. 4002, which CARH largely, but not entirely supports. There are three provisions that must be addressed in Title VIII of the draft preservation legislation before the Committee. First, Title VIII, requires a 30 year capital needs assessment, but provides no funding for this requirement. Real estate industry standards are to project capital needs over 10 to 20 years, the longer the term the more money must be budgeted and escrowed. Thirty years is beyond any reasonable real estate standard, beyond anything that a 515 property could be expected to finance, and achievable only with substantial additional grants and soft loan funds from the federal government.

Second, additional rent subsidy will be necessary, both to preserve properties and address the need for further tenant subsidy as the proposed legislation caps rents for participating properties at 30% of income. CARH believes that it would be most cost-effective and administratively efficient to use an existing appropriation under the existing Section 521 Rental Assistance program or project based Section 8 program to fund those amounts.

Third, Title VIII would require owners suing to receive damages for the government's breach of their contract prepayment rights return a portion of their court awards or settlement funds, up to 50% or $100,000. When Congress enacted the Emergency Low Income Housing Preservation and Resident Homeownership Act of 1988 (ELIHPA) it breached existing agreements allowing prepayment. More than 700 owners have sued and won damages in court or through settlement with the federal government. Properties receiving damages presumably have substantial equity and market value, and currently should not need access to the sort of financial restructuring contained in the contemplated legislation. However, as the years go on, current or future owners should be eligible to utilize any available tools the Agency determines are reasonably needed. This provision is impractical as owners would not have the damage awards to return (after payment of taxes, costs, fees and distribution to current and former partners). This provision would create a new breach and new round of litigation, because the settlement affecting many properties require that the owners not be treated differently than other owners, which this provision surely would do. As there is little benefit to this questionable provision, CARH believes this provision should not be included.

CARH supports the RD demonstration program effort known as the MPR, for Multifamily Preservation and Revitalization. MPR has funded some properties, but of equal importance, are even larger number of properties owners and RD have preserved on an ad hoc basis, with just a few regulatory tools. Unfortunately, RD authority today is not enough to translate these ad hoc efforts into broader preservation and the demonstration program has not had the impact we had hoped, notwithstanding RD's substantial efforts and we believe it is for two reasons. RD needs the permanent legislation contemplated in Article VIII. However, even if these provisions were to be enacted into law, we believe that there continues to be too much reliance on the Low Income Housing Tax Credit (LIHTC) program. Mr. Chairman and members of the Committee, we do not have to tell you that the LIHTC market has been severally impacted by the downturn in the economy. While the exchange program authorized by ARRA will hopefully help, rural transactions continue to be difficult and investors in the tax credit program, tend to bypass those transactions for larger urban complexes, which is why we need these other programs.

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

Statement of Toby Halliday
Vice President, National Housing Trust
Presented to the
Subcommittee on Housing and Community Opportunity
House Committee on Financial Services

July 15, 2009

Subcommittee Chairwoman Waters, and Ranking Member Capito, Chairman Frank and Ranking Member Bachus, and members of the Committee, thank you for inviting me to testify today. My name is Toby Halliday, and I am Vice President for Public Policy for the National Housing Trust. Let me also thank Subcommittee Chairwoman Waters and Chairman Frank for convening this hearing and for your leadership on this important issue. I'd also like to thank all the members of this Committee who have supported legislative efforts to preserve and revitalize our nation's limited supply of decent, safe, affordable rental housing.

The National Housing Trust ("the Trust") is a national nonprofit organization formed in 1986, dedicated exclusively to the preservation and improvement of existing affordable housing. Our Board of Directors includes representatives of all major interests in the preservation field, including tenant advocates, owners and managers, state housing agencies, national and regional nonprofit intermediaries, housing scholars and other housing professionals who care deeply about protecting this irreplaceable resource.

The Trust acts based on a fundamental belief: preserving existing affordable rental housing is the essential first step in solving our nation's housing dilemma. Our public policy advocacy is informed by our direct experiences on the ground preserving affordable housing. The Trust's loan fund, National Housing Trust Community Development Fund, provides loans to other nonprofits to finance affordable housing preservation. The NHT/Enterprise Preservation Corporation, an affiliated organization formed as a joint venture with Enterprise Community Partners, redevelops and owns many federally subsidized properties. Over the past decade, the Trust has helped save and improve more than 20,000 apartments in over 40 states. The vast majority of these apartments have HUD subsidized mortgages or project-based rental assistance contracts.

Today I also testify on behalf of the National Preservation Working Group, a coalition of 25 organizations supporting affordable rental housing. For over 18 years the Preservation Working Group has convened on a regular basis to respond to preservation issues, share best practices among nonprofit preservation practitioners, and discuss and pursue improvements in public policy to facilitate the preservation of decent, affordable rental homes. On behalf of the tenants of assisted housing around the country, residents of the neighborhoods in which these properties exist, and mission minded nonprofit developers, owners, and managers of these properties, the members of the Preservation Working Group thank you for your attention to the critical need to protect affordable rental housing serving urban, suburban, rural and elderly households that is at risk of loss or conversion to other uses. Each individual provision in the draft legislation corrects some flaw or gap in our patchwork of housing programs and policies, and together these

provisions would significantly strengthen the foundation upon which a balanced and complete national housing policy rests. We welcome the opportunity to work with you to make this proposed legislation become law.

The members of the Preservation Working Group are:

National Housing Trust
National Low Income Housing Coalition
National Housing Law Project
National Alliance of HUD Tenants
Housing Assistance Council
Local Initiatives Support Corporation
Enterprise Community Partners
Action Housing (PA)
California Housing Partnership Corporation
Chicago Community Development Corporation
Chicago Rehab Network
Community Builders (MA)
Community Economic Development Assistance Corp (MA)
Community Service Society of New York
Coalition on Housing and Homelessness in Ohio
Coalition for Economic Survival (Los Angeles)
Community Development Law Center (Portland, OR)
Housing Preservation Project (Minnesota)
Neighborhood Reinvestment Corporation
New York Tenants and Neighbors
Stewards of Affordable Housing for the Future
Texas Tenants Union
Urban Homesteading Assistance Board (NY)
Emily Achtenberg (MA)

Preservation is a crucial national priority

Due to the recession that now grips our economy and the mortgage crisis that precipitated it, this legislation is needed today more than ever.

Continuing home foreclosures will shift many families from homeownership to rental in a market where there is already a shortage of affordable rental housing for the poorest households. Many of the effected families will experience sharp declines in household assets and credit scores, but the increased demand is actually leading to higher rents and tighter credit screening in some markets, despite rising unemployment. At the same time, many cash-strapped states and local governments are reducing assistance to needy families. All of this leads to a heightened risk of homelessness for many families. Addressing this challenge begins with preserving existing affordable housing. As the Harvard report notes, "While efforts to create new units must continue, preserving the existing stock of good-quality, subsidized rental housing is even more important." [1]

[1] Joint Center for Housing Studies. (2008).*America's Rental Housing: The Key to a Balanced National Policy.*

The relatively high overall housing vacancy rate created by current economic conditions masks the critical mismatch between the nature of existing supply and unmet demand. A recent analysis conducted for HUD demonstrates that between 2005 and 2007 the number of units affordable to households at or below 50% of area median income fell by 7%, *or a loss of over 1.5 million homes*, while the number of units affordable to households with incomes of over 100% of area median grew by 34%.[2]

Further complicating this problem is the impact of the current economic crisis on the Low Income Housing Tax Credit. Uncertain profitability and investor flight from risk has created an unprecedented drop in LIHTC activity, dramatically reducing the creation of new affordable units.

At the heart of this legislation are new tools to protect residents and preserve affordability when assisted housing is refinanced, recapitalized, or when the underlying financing naturally matures. Thousands of apartments created under HUD mortgage subsidy programs are now at risk of conversion to non-affordable use when their mortgages mature. But unlike apartments with project-based Section 8 or apartments with HUD financing that is pre-paid by private owners, there are currently no provisions to extend the affordability of these units or to protect impacted residents. We are very pleased that the current draft includes provisions that would, at the owners' discretion, provide rental assistance for affected apartments, both for HUD-assisted and Rural Development Section 515 properties. These new preservation tools, in providing equal affordability protections to these apartments, are more cost-effective than other approaches to replace affordable apartments that are lost to conversion. Finally, improving preservation tools makes the rehabilitation of these properties less risky, leading to the creation of more construction jobs. According to recent studies in Oregon, the rehabilitation of 100 units creates over 150 new well paying jobs.

There will be intense debate over the proposal to allow new owners to preserve the affordability of federally assisted property when current owners no longer wish to operate their properties as affordable housing. So long as existing owners are provided market value for their properties, we believe that new ownership dedicated to long term affordability will help ensure affordable rental housing at a time when so many families are homeless, at risk of homelessness, paying so much for housing that their food or health care needs are compromised, or living in substandard or overcrowded conditions. We pledge to protect the legitimate interests of owners to ensure that they receive fair and full sales prices to allow these properties to be preserved as affordable rental housing.

There will also be debate over the provision to allow residents to escrow their rents when properties are in disrepair. But let us be clear about what is proposed in the current draft: *all rents are to be paid,* but they will go into an escrow account or used for HUD-approved repairs when the Secretary determines serious violations of housing quality standards or housing program requirements. This is not an arbitrary and capricious standard. No one is suggesting that a tenant is allowed to avoid paying rent. The only parties who have something to fear from this

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Cambridge: Joint Center for Housing Studies of Harvard University, p. 22.

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

provision are owners with serious property violations, which impact not only residents but the entire community.

We understand that some of these provisions are arguably already within the administrative jurisdiction of HUD, and that some of these actions may be taken without legislative action. While we are very pleased at the new focus on a balanced housing policy that re-emphasizes the importance of affordable rental housing, we are also mindful that any positive steps taken by this administration could be subsequently abandoned. We urge that these provisions be enacted as proposed.

We note that many members of the Committee recently expressed their support that recipients of housing subsidies should be American citizens. This is already the law of the land, and residents are currently required to certify compliance with this requirement. However, we are concerned about the impact on legal citizens created by any new citizenship documentation requirements for housing.

Many U.S. citizens who are senior citizens, African Americans, who live in rural areas, or who lack a high school diploma often do not have a birth certificate or passport in their possession. Obtaining such documents can be time-consuming and expensive, especially for those living far from their place of birth. In California it generally takes 10 to 12 weeks to get a birth certificate from the county office, and it can take six to eight months if the information submitted is not complete. A birth certificate can cost $5 to $23; a passport can cost up to $100.

Such requirements also create costs and delays for local governments. Since a similar requirement was implemented in Medicaid, Kansas reports a backlog of about 16,000 applications that are being delayed because of the difficulties complying with the new rule. New Medicaid processing requirements are projected to cost the state of Illinois $16 million to $19 million in the first year. Colorado allocated $2.7 million to comply with the requirement in the first year and now fears that it may not be enough. Recent Medicaid data from Alabama, Kansas, and Virginia show that the impacts of these requirements can be unpredictable:

- In **Virginia**, enrollment of Hispanic children actually rose 4.4 percent after the policy was implemented, while it fell sharply for white (4.3 percent) and African American (5 percent) children;
- In **Alabama**, Hispanic children make up 6 percent of those affected by the requirement but just 3 percent of those who lost coverage as a result;
- **Kansas** found that the enrollment decline under the requirement was 2.2 percent for Hispanic children, compared to 7.8 percent for white children and 9.1 percent for African American children.

We urge that Congress move with caution on any such new documentation requirements in order to avoid high compliance costs and disproportionate impacts on elderly and other legal program participants, with little potential impact on illegal use.

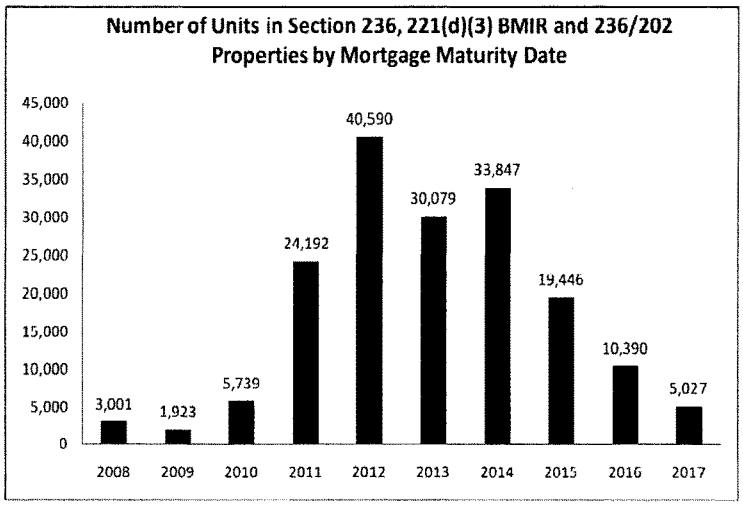
Finally, we support the additional titles for Section 202 elderly housing and for Section 515 rural housing administered by the Department of Agriculture. These proposed changes will provide important new tools to protect vital affordable rental housing for seniors and in rural areas that is at risk of deterioration or conversion, especially in high cost areas.

Federally subsidized housing is an essential housing resource

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

Our nation's most vulnerable families and seniors depend on quality affordable rental housing. According to a 2000 HUD survey, nearly 50% of federally subsidized housing is occupied by elderly or disabled persons. More than 77,000 veterans also depend on project-based affordable housing according to a December 2007 GAO report.

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



Current federal policies provide few incentives for the owner to retain the property's original use, compared to strong market incentives encouraging the owner to opt out of affordability requirements. Over the next five years, contracts on more than 900,000 Section 8 units will expire. When a Section 8 contract expires, the owner can choose to opt out of the program, ending the obligation to maintain the housing as affordable. In addition, nearly 200,000 affordable apartments in properties with HUD subsidized mortgages will be at risk of conversion to non-affordable use when then mortgages mature over the next 10 years. Many of these

apartments have project-based assistance included in the numbers above, but many receive no assistance but remain affordable to residents because of restrictions associated with the HUD-subsidized mortgages.

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

Current policies tend to limit the ability of preservation-minded owners to recapitalize, earn sufficient cash flow, and build a sustainable capital base. Owners, particularly nonprofit owners, are often not rewarded for taking risk. For example, HUD's current policy is to restrict the ability of nonprofit owners of federally regulated properties to take built up equity from the properties and use it for its housing mission. Current programs and regulations are fragmented, cumbersome, unpredictable and inconsistently applied. Owners are frustrated with HUD's inability to promulgate meaningful regulations or to sensibly apply them. Here are but a few examples:

- Owners of Section 8 properties financed by State Housing Agencies are not entitled to mark their rents up to market, even though the market rents in the community may be higher than their current rents and the owner could use the funding to avoid operating at a deficit;

- HUD routinely terminates, rather than suspends, the Section 8 contracts on troubled properties, making it quite difficult for a new, mission minded owner to obtain debt and tax credits to repair the property;

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

Preservation Works: Preserving housing is cost effective, environmentally responsible, and is the logical first step in solving our nation's housing dilemma

New construction alone will not produce enough affordable housing to meet the increasing demand. From 1995 to 2005, our nation lost nearly 1.4 million apartments with inflation-adjusted rents of $600 or less.[3] Although the low income housing tax credit program has typically generated approximately 100,000 affordable apartments each year, new construction does not add enough to the affordable rental stock to make up for lost units. In fact, for every new low-cost unit created each year, two are lost due to demolition, abandonment, or conversion to more expensive housing. Only when existing, subsidized and unsubsidized housing is preserved will building new affordable housing *add* to the affordable housing supply.

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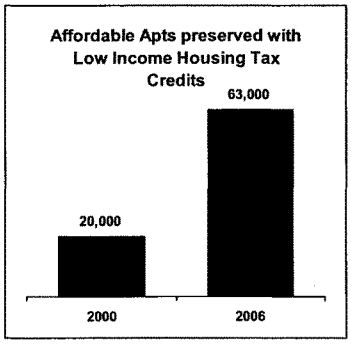
[3] Joint Center for Housing Studies. (2008). *America's Rental Housing: The Key to a Balanced National Policy.* Cambridge: Joint Center for Housing Studies of Harvard University

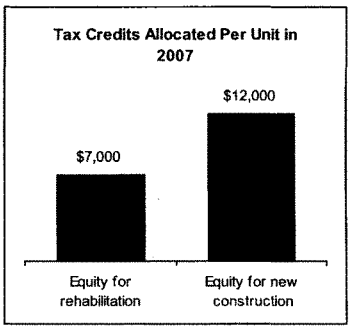
Over the past decade, state and local governments have increasingly devoted scarce resources, including low income housing tax credits, to preserve this housing. These tax credits have attracted billions of dollars in private sector investment in the rehabilitation of federally subsidized housing. Nearly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



States' decisions to emphasize preservation are particularly sensible because preserving an existing home is significantly less expensive than constructing new affordable housing. Using data on the placement of tax credit equity from the National Council of State Housing Agencies, the Trust recently determined that it costs approximately 40% more to build a new affordable apartment than to preserve one in the same community. In more expensive communities, the cost of building new affordable housing is almost double preserving affordable housing in the same neighborhood.

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

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



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

Legislative Recommendations

Financing: Stabilize and dedicate increased public funding to long-term preservation ownership; provide adequate resources to assist residents of at-risk properties; expand public-private financing sources for preservation transactions. The Preservation Working Group recommends:

1. Providing tenant protections and alternatives to conversion for properties with expiring contracts or maturing mortgages;
2. Permiting owners to transfer project-based Section 8 to another property;
3. Utilizing all available preservation tools, such as up-front grants and retaining Section 8 for purchasers of distressed properties;
4. Enacting tax incentives to preserve affordability for qualified rental housing, as provided in H.R. 2887.

Incentives: Increase tax and regulatory incentives for sellers and owners of existing, affordable rental housing to encourage preservation, reduce speculation and maximize long-term affordability. The Preservation Working Group recommends the following incentives for long term stewardship of the existing inventory:

1. Enact enhancments to the Mark-to-Market program;
2. Protect state and local preservation laws against preemption;
3. Permit owners to project-base enhanced vouchers;
4. Ensure resident participation in the preservation process and full protections for tenants affected by converted properties; and
5. Affirm that HUD has a requirement to maximize preservation.

Information: The preservation database provision requires regular and timely release of property information that is already available in government databases. HUD already makes much of these data public, and is to be commended for these efforts. Unfortunately some of these data often appear too late to be useful for preservation, and often their appearance is irregular and the types of data that are available publically for each program vary considerably. For example, HUD's "Picture of Subsidized Housing," which provides a basic outline of its affordable rental housing programs, has not been updated for nine years. The draft bill provides a way to quickly combine the various databases going forward, through the use of unique property identifiers, so that preservation-oriented owners, developers, local governments, advocates, or federal agencies can quickly see the project-based assistance in place at any one property and in properties across the nation. As Secretary Donovan said in his testimony before this committee June 25, "a comprehensive database would help us do a far better job of preserving as many units as possible for the least amount of money."

Again, thank you for the opportunity to comment on this draft of affordable rental housing legislation. The National Housing Trust is eager to support this effort as it moves forward and looks forward to the formal introduction of this legislation.

I would be pleased to respond to any questions.

Attachment A

Privately Owned, Federally Assisted Affordable Housing In Financial Services Committee Members' Districts

Committee Member	Apts with Project-Based Contracts Expiring through FY2019
Rep. Frank, MA, *Chair*	3,277
Rep. Bachus, AL, *Rnk. Mem.*	641
Rep. Gary L. Ackerman, NY	1,015
Rep. John Adler, NJ	1,304
Rep. Joe Baca, CA	2,055
Rep. Michele Bachmann, MN	2,051
Rep. J. Gresham Barrett, SC	2,253
Rep. Melissa L. Bean, IL	1,954
Rep. Judy Biggert, IL	1,230
Rep. John Campbell, CA	1,205
Rep. Shelley Moore Capito, WV	2,520
Rep. Michael E. Capuano, MA	13,919
Rep. Andre Carson, IN	5,572
Rep. Michael N. Castle, DE	4,097
Rep. Travis Childers, MS	2,263
Rep. William Lacy Clay, MO	4,226
Rep. Emanuel Cleaver, MO	4,628
Rep. Joe Donnelly, IN	3,507
Rep. Steve Driehaus	4,931
Rep. Keith Ellison, MN	5,143
Rep. Bill Foster, IL	2,169
Rep. Scott Garrett, NJ	781
Rep. Jim Gerlach, PA	1,126
Rep. Alan Grayson, FL	822
Rep. Al Green, TX	2,448
Rep. Luis V. Gutierrez, IL	2,035
Rep. Jeb Hensarling, TX	854
Rep. Jim Himes, CT	3,461
Rep. Rubén Hinojosa, TX	1,669
Rep. Paul W. Hodes, NH	3,969
Rep. Lynn Jenkins, KS	2,479
Rep. Walter B. Jones , NC	1,213
Rep. Paul E. Kanjorski, PA	3,338
Rep. Mary Jo Kilroy	3,463

Committee Member	Apts with Project-Based Contracts Expiring through FY2019
Rep. Peter King, NY	324
Rep. Ron Klein, FL	455
Rep. Suzanne Kosmas, FL	366
Rep. Leonard Lance, NJ	1,271
Rep. Christopher Lee, NY	3,000
Rep. Frank D. Lucas, OK	1,744
Rep. Stephen F. Lynch, MA	4,187
Rep. Dan Maffei, NY	3,622
Rep. Carolyn B. Maloney, NY	2,908
Rep. Donald A. Manzullo, IL	2,290
Rep. Kenny Marchant, TX	624
Rep. Carolyn McCarthy, NY	2,025
Rep. Kevin McCarthy, CA	1,001
Rep. Thaddeus McCotter, MI	2,421
Rep. Patrick T. McHenry, NC	1,145
Rep. Gregory W. Meeks, NY	2,698
Rep. Brad Miller, NC	2,579
Rep. Gary G. Miller, CA	410
Rep. Walt Minnick, ID	1,553
Rep. Dennis Moore, KS	2,330
Rep. Gwen Moore, WI	5,047
Rep. Randy Neugebauer, TX	1,388
Rep. Ron Paul, TX	752
Rep. Erik Paulsen, MN	2,607
Rep. Ed Perlmutter, CO	1,191
Rep. Gary Peters, MI	3,845
Rep. Bill Posey, FL	1,401
Rep. Tom Price, GA	285
Rep. Adam Putnam, FL	1,119
Rep. Edward R. Royce, CA	692
Rep. David Scott, GA	1,383
Rep. Brad Sherman, CA	2,540
Rep. Jackie Speier, CA	898
Rep. Nydia M. Velázquez, NY	4,973
Rep. Maxine Waters, CA	1,879
Rep. Melvin L. Watt, NC	2,608
Rep. Charles Wilson, OH	1,903
Total	169,082

Toby Halliday
Vice President

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

Prior to joining NHT, Mr. Halliday was Program Director for preservation of affordable housing at the Local Initiatives Support Corporation (LISC). During his five year tenure, LISC committed $69 million in financing and provided technical support to over 100 preservation projects and over 12,500 affordable homes. Previously Toby managed loans and technical assistance for rural community development efforts and administered federal grants and technical assistance for the reuse of closed U.S. military facilities.

Testimony of the National Leased Housing Association
Presented by Allan Isbitz
Hearing on Affordable Housing Preservation – July 15, 2009
Committee on Financial Services
Subcommittee on Housing and Community Opportunity

My name is Allan Isbitz. I am Chief Financial Officer and Vice President of Real Estate Development for Jewish Community Housing for the Elderly, a nonprofit that owns and operates federally assisted housing for the elderly. I am here today as the recently elected President of the National Leased Housing Association. My affordable housing experience covers a broad area in affordable housing, including eight years in public sector service at the state and local level, several years in private, for-profit development of mixed income housing and my current service in the nonprofit affordable housing arena

The National Leased Housing Association (NLHA) is pleased to submit our views relating to the preservation of the federally assisted housing stock. For the past thirty-seven years, NLHA has represented the interests of developers, lenders, housing managers, housing agencies and others involved in providing federally assisted rental housing. Our members are primarily involved in the Section 8 housing programs – both project-based and tenant-based as well as the Low Income Housing Tax Credit (LIHTC) program. NLHA's members provide or administer housing for over three million families.

Madame Chair and members of the subcommittee, thank you for the opportunity to testify. NLHA has been working over the past two years with you and the committee staff to craft workable legislation that will facilitate the ability of our members to preserve the stock. We appreciate everyone's hard work as we know that many of these issues are narrow and highly technical. Preserving the scarce supply of federally assisted rental housing is imperative as the demand remains high and the supply is not being notably increased. Further, it is much more cost effective to preserve housing than to engage in new construction. Most preservation transactions involve between $25,000 and $45,000 per unit in rehabilitation. New construction would cost well over $150,000 per unit.

A number of the provisions in the bill will be helpful in addressing current barriers to preservation activities, and we are pleased that the bill addresses the need to provide enhanced vouchers to residents when subsidized mortgages mature and will amplify the importance of this issue later in our testimony.

We also approve of efforts to enable properties to convert enhanced vouchers where necessary to project-based vouchers in order to retain the assisted housing stock as well as the provision permitting the transfer housing assistance payment contracts to other properties. However, we remain concerned that the revised draft includes provisions that will restrict or otherwise abrogate current housing assistance contracts or mortgage agreements. The ability for housing providers to rely on their contracts with the Federal Government is essential to their continued participation as partners in providing this housing. Further, there is an active and large community of preservation entities that have been in the business of

preserving older assisted housing properties for the last ten years therefore negating any need for forced preservation. We understand the draft is only a starting point and appreciate recent remarks by Chairman Frank confirming that it is not his intention to violate contracts and look forward to further revisions to the bill.

Due to time constraints, our testimony today is limited to a portion of the draft bill's many provisions. We will be providing the committee staff with substantive technical comments on all of the draft provisions as we did last year and look forward to a continuing dialogue.

HUD Policies

Many problems that have faced preservation entities and current owners of assisted properties in recent years are the direct result of inconsistent HUD policy application. There are quite a number of existing tools that used in tandem can accomplish preservation including the Low Income Housing Tax Credit program, the provision of enhanced vouchers, the use of project-based vouchers, the ability to decouple a 236 mortgage from the Interest Reduction Payment (IRP) and leverage the IRP as part of a refinancing, etc. However, the barriers that we have faced were often related to HUD inaction or lack of cooperation.

Over the last several years, HUD's reduced staffing (mostly due to a retiring work force) has resulted in the continued application of regulations and guidance that have not been updated in decades and are hardly relevant to today's properties. We have encouraged HUD to reinvent itself by examining its mission, attract and train bright young staff and install leaders with knowledge and vision (and authority) to look beyond the myriad of rules to the desired outcome. The current owners, managers and future owners want a partner in preserving and expanding the supply of affordable housing – not simply a regulator.

In that regard, we are very pleased that Secretary Donovan has recognized many of the barriers created by HUD in the past and his stated commitment to changing the way HUD does business in the future. The Secretary's vast experience in the housing arena and commitment to preservation is welcomed by the industry. Further, we applaud his appointment of Carol Galante as the Deputy Assistant Secretary for Multifamily Housing and look forward to working with her and Secretary Donovan to facilitate preservation efforts and ongoing operation of the assisted housing portfolio

Example of HUD Impact

I would like to spend my brief time today sharing an experience with a transaction where during the last several years, HUD's unwritten policy and inconsistent guidance proved a barrier to recapitalizing our current properties and investing in a new affordable building.

HUD approval is sometimes needed when a subsidized project is being sold or refinanced. Without statute or regulation, HUD over the last few years has arbitrarily limited the use of surplus sale or refinancing proceeds where the owner is a non profit sponsor, proceeds which the nonprofit could otherwise use for other subsidized properties or to further its mission.

In our case, in late 2006, we undertook a refinancing of a Section 236 elderly project last year, received an allocation of tax credits, etc to renovate the property and to use the other proceeds to build a community center for the residents and to subsidize rents in a mixed financed elderly project we were planning to build. The transaction needed HUD approval because the transaction was a decoupling of the 236 mortgage from the interest reduction payment (IRP decoupling) which requires prepayment approval. HUD withheld approval because it claimed the proceeds were "too high." HUD's position was incomprehensible because the transaction's proceeds were all generated via sale of the tax credits based

on the value of the property. Further, the transaction was structured in a way that would save HUD nearly $5 million in Section 8 subsidies over the term of loan. HUD would only approve the transaction if Jewish Community agreed to a use restriction that put the proceeds from the "refinancing" into a Trust. HUD dictates how we are to use the funds limiting them to fund future Section 8 rent increases. While the terms were unacceptable, we were forced to sign the agreement in order to complete the transaction.

There is no basis in law or in regulation for HUD's actions and as a result a number of needed renovations were scaled back and efforts to complete the development of a new building are currently being affected because HUD will not approve the release of our funds to us to complete the new property. Again, HUD has no authority to restrict the proceeds, yet they did so as a condition of approval of the prepayment. We are working with the staff of the new HUD administration and they have expressed a willingness to work with us. We are hopeful that a resolution will be forthcoming to enable us to complete our new development. However HUD's actions in recent years remain an issue for other nonprofits so it will be helpful for Congress to clarify this issue. The current draft includes language that attempts to address the issue, but is not retroactive. We prefer the language that was included in Section 401 of H.R. 2930 that passed the House last year and request that it be substituted for Section 503 of the current draft.

Preservation Vouchers

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

The current statute needs to be amended (as proposed in the draft bill) to address two situations that were not contemplated in 1996. Firstly, it was not necessary to address mortgage maturations in the context of enhanced vouchers as the Section 236 properties or Section 221(d)(3) BMIR properties were at least ten years from their mortgage maturation (original mortgage terms 40 years and owners in most cases had a right to prepay the mortgage after 20 years). When the mortgages mature, the accompanying affordability requirements expire (including ELIHPA projects). In January 2004, the GAO issued a study on such mortgage maturations and projects that 11,267 mortgages will mature through 2013. The first such maturations have already occurred, and will peak after 2008.

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

Treatment of Ownership Entities

Any legislation designed to preserve the assisted housing inventory must recognize the complexity of preservation transactions and present opportunities for both for profits and nonprofits. The current draft bill appears to favor nonprofits although some definitions have been revised from the previous draft. NLHA represents both nonprofit and for profit developers and has always believed that the industry benefits from the participation of any entity that has the commitment and expertise to provide quality affordable housing. Further, many transactions are the result of partnerships between the public and private sector. It is our belief and experience that the distinction between nonprofit and for-profit participants should be blurred with the focus on good stewardship of the housing.

Access to Information

The draft bill includes several provisions to increase HUD's collection of data and make that data more accessible via HUD's website. There is no disagreement that HUD's data systems leave a lot to be desired and that the information available on its website is often hard to find, however the draft bill appears to request information be made available on the web that should be protected under privacy laws (home address of investors, 2530 forms which contain social security numbers, etc.). We would oppose any attempt to provide the public with access to private information. We understand that the goal is to provide information to the residents and the public about the condition of the buildings. However that can be accomplished without exposing participants to identify theft or other harms caused by the release of private information. HUD currently posts information about the physical condition of properties along with information concerning any enforcement actions resulting in suspension or debarment.

Issues Affecting the 202 Program

We are pleased that the subcommittee has included provisions in the draft to facilitate the preservation of Section 202 properties for the elderly. As with the preservation of other properties, the sticking points have often been at the HUD level. For example, HUD had determined that a 202 loan could not be refinanced if there was no corresponding decrease in debt service. There is no statutory prohibition for such a restriction and it is certainly not realistic. Further, HUD has administratively (through a change to its Section 8 guidebook) limited rents achievable through a refinancing when tax credits are being utilized and rents are set using a budget-approach. The goal of a refinancing is to generate proceeds to recapitalize the property. The 202 provisions in the draft preservation bill would revise current HUD policy and will result in the renovation and preservation of many more properties.

Tax Law

While not in the jurisdiction of the Financial Services Committee, a major step forward in preserving the assisted housing stock could be achieved through a change in the Tax Code. Preservation entities are not always able to acquire affordable properties because the value of the properties is not sufficient to pay the tax liabilities of the investors. Many investors refuse to sell, resulting in a lost opportunity for long term preservation and a scarce asset that will eventually deteriorate without recapitalization. The current tax code benefits investors who choose to hold onto their partnership until death (when the heirs receive a step up in basis). NLHA supports a change in the code that will accelerate the tax relief provided upon death to investors who agree to sell their properties to entities (both for profit and nonprofit) that will renovate the properties and retain their low income use for at least 30 years.

The enactment of such exit tax relief would provide an immediate stimulus to the economy.
The House has introduced bills legislation that would accomplish such preservation. We urge the Committee to encourage the Ways and Means Committee to take action on H.R. 2887.

Further, the Low Income Housing Tax Credit (LIHTC) program is the primary vehicle for recapitalizing properties as part of preservation transactions. The current equity climate has reduced the number of transactions that can be finalized but we are hopeful that the tax credit exchange program enacted as part of the stimulus bill will spur activity in this arena in the next year. However, with the economy still in a recession, it may be necessary to enact other short term tax changes that will bring investors back to the table. NLHA is working with its industry partners on several items that we believe will have an impact on raising equity which we will share with this Committee along with the House Ways and Means committee for review and comment.

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

Statement To

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

Testimony on Affordable Housing Preservation
and Protection of Tenants

By Ricky Leung, Treasurer
National Alliance of HUD Tenants
July 15, 2009

Prepared Statement of Mr. Ricky Leung
Treasurer
National Alliance of HUD Tenants

Subcommittee on Housing and Community Opportunity
Financial Services Committee
Wednesday, July 15, 2009

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

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

Since Congress ended the Title VI Preservation Program in 1996, the nation has lost at least 360,000 units of affordable low income housing, through owner conversion to high market rents and/or voucherization by HUD. The Draft Preservation Bill prepared by Committee staff represents a tremendous step toward halting this loss. We commend Chairman Frank and Chairwoman Waters for including virtually all of NAHT's priority concerns in the Draft Bill, especially the no-cost First Right of Purchase in Section 103.

We also thank Representative Velasquez, who represents my District in Manhattan, for filing HR 44, the Troubled Housing reforms now incorporated in Title IV of the Draft Bill. In 1994, Congress gave HUD "flexible authority" to voucher out troubled housing, with little oversight. The nation has since lost 120,000 formerly subsidized apartments through HUD policy decisions. Today, 16,000 families in 122 substandard apartment complexes face foreclosure in New York City alone. We applaud Representative Velasquez, Chairman Frank and Chairwoman Waters for including these NAHT priorities in the Draft Bill.

NAHT testified and commented on the 2008 Discussion Draft of this bill. In the revised Draft, we appreciate that Committee staff have made major improvements to the Right to Purchase section, as well as to Section 503 regarding HUD approved prepayments, and added important provisions for HUD held and HUD owned buildings in a new Section 108. About 90% of the Bill has consensus support among the major stakeholders, including several NAHT priorities (all of HR 44 and other Troubled Housing reforms; reform and extension of Enhanced Vouchers for all expiring units; Project Based Enhanced Vouchers; and conversion of Rent Supplement and RAP contracts to Section 8). There is also consensus support for Section 513, the Tenant Technical Assistance provision, which is identical to the language adopted unanimously in HR 3965 in October 2007. We thank Representative Green, Chairman Frank and Ranking Members Bachus and Capito for their leadership on this provision.

Accordingly, my remarks today focus on NAHT's highest priorities for this legislation, namely the Federal First Right of Purchase (Section 103) and Tenant Empowerment provisions (Sections 303, 304 and 305). These priorities have been endorsed by the National Preservation Working Group, but have not been supported by all stakeholders.

Federal First Right of Purchase Will Save Our Homes

I am honored to represent NAHT before you today. For 30 years, I have grown up in the 488 unit Cherry Street Apartment complex in a Section 8 apartment with my two aging parents, whose stable jobs in the garment industry were largely wiped out after 9/11. Cherry Street has provided a secure home for our family, which I largely support while working as an apprentice architect in Manhattan. Neither my parents nor I would be able to survive long paying full rent in the overheated Manhattan market.

The other 487 families in the Cherry Street community are working families, professionals and retirees; old, young, and in between; African American, Caucasian, Asian-American and Latino. We are the diverse New York working and middle class, a microcosm of the City and of the nation. As President of the Cherry Street Tenants Association for the past eight years, I have worked to help our community sustain and thrive in the face of increasing threats from a super hot real estate market.

In 2003, our project-based Section 8 contract was set to expire again after several one year extensions. We were fearful and uncertain what would be the fate of our community, given rapid gentrification and mega development projects in the Lower East Side. Our Tenant Association persuaded our owner to renew under the Mark Up to Market Program, but only for five years. After I testified before the Committee in 2008, our building was sold to a "predatory equity" investor for $177 million –more than $360,000 per apartment—who renewed the Section 8 contract for another five years. The new owner will face the same decision of whether or not to renew in three years. Next time around, we are not so certain he will renew: he can likely make far more money converting to speculative rents on unsubsidized units or converting to condominiums.

Passage of a First Right of Purchase would at least give our Tenant Association and the City a fighting chance to save our homes.

By itself, the First Right of Purchase provision would not add to federal costs. It would simply allow a City agency, acting alone or on behalf of a nonprofit or tenant organization, to purchase a property at risk of conversion to market housing during a six month window of time, during the owner's One Year Notice period already required by federal law. A preservation purchaser would use current federal subsidy programs such as Mark Up to Market, Low Income Housing Tax Credits, city and state capital grants or loans, the National Housing Trust Fund, Stimulus Bill funds and new federal preservation grants to buy the property at full market value, while preserving affordable housing for future and current tenants. Agencies awarding funds would ensure that repair needs are met to protect tenants and the buildings.

If a viable purchase plan cannot be assembled in the required time frame, the owner would be free to opt out. In that case, the Draft Bill's provisions for Enhanced Vouchers for all current tenants (including Expiring Mortgage units) would apply.

The Right of First Purchase framework is similar to the Title II/VI Preservation program, which preserved 90,000 at-risk apartments between 1988 and 1996. Of these,

30,000 apartments were purchased by nonprofit or tenant organizations. Tenants in my building deserve the same opportunity.

New York City is Losing Affordable Housing at an Alarming Rate

Tenants' fears that owners might opt out are unfortunately well founded. As of the end of 2006, fully 27% of New York City's original 119,785 units of privately-owned, subsidized housing have been lost since 1990, and another 18% (21,561 total) were threatened with subsidy loss, according to the Community Services Society (CSS).[1] ***Of the 32,422 units lost so far, 17,911 were in federally subsidized apartments that could have been saved if a First Right of Purchase were in place.*** Needless to say, the City of New York is not building new housing affordable to low income families at anywhere near this rate.

Since 9/11, the rate of housing loss has spiked dramatically: more than 2/3 of the units lost overall since 1990 have converted since 2001. Mitchell-Lama buildings with older, non-Section rent subsidy programs (Rent Supplement and RAP, which are not eligible for Mark Up to Market) have opted out at an alarming rate. By 2004, these trends had spread from high market areas such as the Upper West Side to "medium" market areas in the City, including lower rent areas of Manhattan and the Bronx. In my neighborhood, Land's End I converted to the market rents in 2004. In 2007, the proposed conversion of the 6,000 unit Starrett City complex—the nation's largest HUD subsidized development—was only the most visible example of a much deeper crisis in our city. The new crisis in expiring 40 year HUD mortgages will only accelerate this loss.

In the wake of the traumas inflicted on New York City in 2001, the loss of more than 54,000 affordable housing units is a crisis which we can neither bear nor ignore. The people of our city are still reeling from the after shocks of 9/11. Cherry Street and other subsidized housing developments are home to many of the police, firefighters and health service workers who performed heroically after the 9/11 attacks, as well as many low income and elderly people who simply have no options in the high rental market of New York City.

Homeland security begins with a home. Adoption of a First Right of Purchase is urgently needed to preserve the estimated 20,000 federally subsidized apartments at immediate risk in New York City alone.

Predatory Investors Are Driving Up Rents and Destroying Affordable Housing

Since 9/11, the destruction of affordable housing has been fueled by an unprecedented surge of speculative investment by large, international private equity firms taking advantage of the declining dollar and market conditions in New York. A stone's throw from the World Trade Center, Independence Plaza was lost to a predatory investor who converted to high rent housing in 2004. Since then, 13,000 subsidized apartments have been acquired and deregulated by three predatory equity firms in New York City alone, with no end in sight.

For example, Cammeby's International, a private equity firm based in the Middle East, purchased 10 and 210 Stanton Street in the Lower East Side, not far from where I live, along with 10 other developments totaling 7,458 apartments in New York City. In Harlem, another investor sold 4,000 units of state and HUD subsidized housing for $300 million ($79,000 per unit) in May 2005, who then flipped them to a second investment fund managed by Morgan

[1] The full CSS report is available on line at http://www.cssny.org/pdfs/Closing_the_Door_2007_Report.pdf

Stanley, for almost $1 billion ($250,000 per unit) in 2007. The new owner tripled the debt service in a two year period, creating tremendous pressure to replace low income people with higher rent paying tenants. My own building, Cherry Street, has now joined the list of predatory equity targets with its sale at $360,000 per unit last year.

City and state agencies in New York have stepped in where they can to review and reject sales of subsidized housing where speculative purchase prices appear unsupportable, but their authority is limited. With pressure from Rep. Velasquez, HUD Secretary Jackson did block the sale at Starrett City for $220,000 per unit. But not all at-risk properties have HUD mortgages that allow HUD to do this, and HUD has rarely rejected a sale.[2] ***A First Right of Purchase would provide an additional tool to local governments to remove at-risk buildings from the speculative market spiral entirely, with a one time purchase and transfer to socially responsible ownership.***

Deregulation Has Resulted in Uncontrolled Speculation and the Loss of Housing

The explosion of predatory equity speculation in New York's subsidized housing stock is echoed in other high market areas from Boston to San Francisco, Atlanta to Los Angeles, and will soon spread to gentrifying neighborhoods across the country. It is one byproduct of the deregulation of federally subsidized housing since 1996. As in the single family mortgage industry, deregulation and speculation in subsidized multifamily housing have already had hugely negative consequences for affordable housing, low income families and communities.

Deregulation is a strategy that has failed in the mortgage lending, energy, telecommunications, banking, and airline industries in the US and in countries around the globe. It is a failure in the subsidized housing industry as well. It is time to push back with judicious, moderate regulation to save affordable rental housing, as the Committee has recommended for the single family mortgage and banking industries.

The predatory equity crisis poses new challenges for all of us. NAHT appreciates the Committee's leadership in addressing the need for new regulatory controls, such as the language protecting tenants and affordable rental housing in the TARP legislation, and Rep. Velasquez' proposals for a Multifamily Housing Preservation Program, which are currently under review by the Treasury Department and HUD. The First Right of Purchase is one more critical regulatory tool which residents and cities need in our arsenal to save our homes.

There is ample precedent for the limited, no-cost regulatory tool of the First Right of Purchase. ***Besides Title VI, for 20 years Congress has provided a Right of Purchase in the federally subsidized Rural Housing sector, which has worked to preserve this stock from conversion to high market rents.[3] In addition, since 1996 several states, including Illinois, Rhode Island, and Maine have adopted First Right of Purchase statutes.***

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[2] One measure sought by NAHT and included in the Preservation Working Group proposals is a provision mandating that HUD preserve at risk housing when it has discretion to do so. This brief proposal would nonetheless be important to redress the many ways that HUD officials have acted in a manner which undermines, rather than preserves, affordable housing. We were unable to find this proposal in the Draft Bill; since it should be noncontroversial among the HUD stakeholders, we recommend its inclusion in the final bill.

[3] 42 U.S.C. Sec. 1472 (c)

New York Courts Nullified Local Law 79 Due to Preemption, Not Constitutional Concerns, and Called for Action by Other Levels of Government

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

In response, it is important to note that the New York state trial court (upheld upon appeal) struck down Local law 79 due to concerns about preemption conflicts with state and federal laws, not because of any constitutional "taking" concerns, which the court did not address. Obviously, establishing a national Right of First Purchase, or altering the federal Notice laws, will not present any federal "preemption" problems. In fact, the New York Court wrote that "the recent sales and proposed sales of major assisted rental housing complexes in this City and the likely devastating impact of those sales on low and moderate-income residents of New York may and should function as a wake-up call for the need for immediate action" by other levels of government. We are attaching to our testimony a recent memorandum prepared by the National Housing Law Project, highlighting these points and addressing the constitutionality of Section 103.

We agree with Secretary Donovan that the Right of First Purchase provision in the bill should be carefully crafted to avoid successful constitutional challenges, by for example ensuring that there is no unwarranted delay in the exercise of a city's right to purchase and that landlords receive full market compensation for any sale. The language in Section 103 of the Draft Bill meets those tests, and improves on the Title II and VI programs in that respect.

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

More broadly, there is no sound reason for Congress to block state and local governments from protecting their own communities, or to do more to preserve affordable housing or to protect tenants than the federal government if they wish. Section 107 of the Draft Bill addresses this concern.

The First Right of Purchase Will Save Money with Greater Benefits for At Risk Families

Congress dismantled Title VI in 1996 due to concerns about excessive costs. But ***the federal costs of the current "unregulated" owner choice system usually match or exceed the cost of Title VI, but with none of the benefits.***

Today, an owner who "opts out" receives Enhanced Section 8 Vouchers which pay the full market rent for assisted units, but with no HUD oversight. An owner who chooses to renew under Mark Up to Market likewise is paid full market rents by HUD, for 5 to 20 years, with no requirement to make needed repairs. Either way, HUD pays out a full market rent in subsidies

equivalent to what was formerly paid out under Title VI, but with none of the offsetting benefits. ***Under Title VI, residents and HUD negotiated major repair programs, permanent affordability, and transfers to nonprofit purchasers and tenant organizations; none of these are required by HUD under either Enhanced Vouchers or Mark Up to Market.***

In fact, short term extensions under Mark Up to Market of five years leave residents and HUD at continued risk that owners will opt out down the road, as is happening in my building in the Lower East Side. ***As long as owners have an unrestricted choice to opt out of HUD programs, they will be able to leverage ever-increasing subsidy commitments from HUD--which residents and communities will doubtless support--since the alternative of losing affordable housing is unacceptable.*** Owners who opt out likewise trigger Enhanced Voucher costs at least the same or higher the subsidy costs in previously regulated developments. In speculative markets like New York, HUD often pays out artificially inflated subsidies—in effect, taxpayer financed windfall profits--that in turn contribute to the speculative spiral in our neighborhoods, with no public benefits other than preservation of Section 8 housing.

A First Right of Purchase will save money in the long run by removing subsidized developments from this speculative spiral, lessening owner windfalls, and ensuring that Congress receives guaranteed benefits on its investment of any federal funds such as Section 8 or the National Housing Trust Fund. Implementing the First Right of Purchase in New York would help stabilize and pull back residential real estate markets from speculative pressures that ramp up prices above true values.

Section 103 Will Save Housing Threatened by Expiring Mortgages and Other Risks

While Mark Up to Market may have slowed the loss of housing since 2000 in some regions, it has by no means stopped it. In addition to the challenges of speculation in high market areas, tenants are now threatened by the rapid growth of "expiring 40 year mortgages" across the nation, a problem that emerged in 2007 and will accelerate through at least 2015. The Federal First Right to Purchase, coupled with the Project Based Enhanced Voucher provision and other incentives in the Draft Bill, will give tenants and communities the tools they need to save these and other at-risk buildings.

In June 2008, the Committee heard about the struggle of Lincoln Place tenants in ***Venice, California*** against AIMCO, the world's largest residential Real Estate Investment Trust (REIT) and a major speculator in HUD housing. Lincoln Place could have been saved had a First Right of Purchase been in place at the time.

The same can be said about many other AIMCO buildings. For example, take Northwest Terrace and Northlake Terrace in ***Dallas***, two AIMCO buildings that once provided a racially integrated community for 472 families. In 1996, the tenants picked a nonprofit to buy both developments under Title VI, but the program ended before the sale could go through. AIMCO later indicated they would consider selling to a nonprofit, but they reneged and sold to another predatory investor in 2000. Conditions deteriorated, and rents skyrocketed 60-75% as the new owner planned to flip the land for luxury townhouse development. The property has since been demolished. This tragedy could have been avoided had a First Right of Purchase been in place.

In ***Boston,*** First Realty Management, which owns several thousand apartments refinanced in the early 1990's with equity take-out loans netting $46 million for the owners, converted the 540 unit High Point Village complex in August 2006, when the original HUD 40 year mortgage expired. The owner and his family invested only $120,000 in 1966, netting more than $90

million in windfall profits by 2006 paid largely by steadily escalating Section 8 subsidies. The owner spurned appeals to at least preserve 320 apartments as Section 8 housing, opting out instead. FRM is now systematically converting its entire portfolio, more than 2,000 apartments statewide, when they reach the end of their 40 year mortgage term. The City of Boston could have exercised a First Right of Purchase to remove High Point from the speculative market to preserve affordable housing and racial diversity.

In ***Hawaii***, the Right of Purchase, along with the revised Section 503 of the Draft Bill, would have helped preserve affordability at Kukui Gardens, an 850 unit complex being converted to mostly market housing by the nonprofit owner. Hawaii has the second highest rate of Section 8 opt outs in the country, according to the Government Accounting Office (GAO)[4]. Section 503 would tighten HUD approval requirements for prepayment by nonprofit owners, to help avoid housing losses like Kukui in the future.

Tenant Empowerment Provisions Essential

NAHT's second priority is the Tenant Empowerment measures included in Title III of the Draft Bill. Along with the urgently needed reactivation of Section 514 funds required by Section 601, these no-cost measures will empower tenants to participate as full partners with HUD to improve and save their homes. These tools will enable tenants to utilize the First Right of Purchase to save at-risk buildings, as NAHT affiliates helped preserve 90,000 apartments under Title II and VI Preservation. They also complement the Troubled Housing reform measures in Title IV of the Draft Bill. [5]

Particularly important are provisions to give tenants Access to Information regarding project budgets and ownership and substandard housing (Section 305 and 306), Third Party Beneficiary Status in HUD contracts with owners (Section 304), and Rent Withholding procedures for substandard housing (Section 303).

Access to Information (Section 305 and 601). The value of transparency regarding use of taxpayer subsidies should be self evident. Project ownership and budget information can help tenants spot waste, fraud and abuse in the use of HUD money in the buildings where we live. Tenants have the greatest stake, and the first hand knowledge, to make sure that public subsidies are used well—these are our homes. ***Only owners and managers who fail to provide quality service and/or have something to hide should raise any objection to empowering tenants with this information.***

Recently in New York City tenants had a major victory in preserving at risk housing thanks to our ability to get access to detailed financial information with the help of city and state agencies—including blind rent rolls, operating budgets and proposed sale prices. This information has aided tenants and advocates in getting regulatory agencies to reject speculative sales of subsidized projects at Starrett City and 1520 Sedgwick, known as the "Birth of Hip Hop" building in the Bronx. Tenants are now pursuing resident ownership at 1520 Sedgwick.

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[4] "Project Based Rental Assistance," GAO-07-290, April 2007

7 NAHT has also made recommendations to increase tenant involvement and minimize abuse in the Section 202 provisions authorizing transfer of project-based Section 8 contracts from one building to another.

Tenants in other parts of the country deserve the same access to information which has empowered residents in New York without any discernable harm to owners.

HUD does not now make available project budget information under the Freedom of Information Act (FOIA), outside of a short period when owners apply for rent increases. Amazingly, HUD also refuses to provide REAC inspection scores to "failed" buildings that have been referred to HUD's Enforcement Center—precisely the buildings where tenant cooperation with HUD should be encouraged the most. Worse, in 2003 former HUD Deputy Secretary Bernardi adopted a controversial policy effectively withholding information from FOIA requests that involve "current or former senior HUD management officials" or ask "questions about HUD's policies or the performance of departmental responsibilities," leaving it up to local staff to flag "controversial" FOIA requests. The outgoing Administration further weakened the FOIA with 11th hour regulations in October 2008 that impose steep fees and other obstacles to tenants seeking basic information. One result: in October 2008, HUD declined a request for an approved Mark to Market plan to a nonprofit Rhode Island tenant assistance group unless the tenants paid HUD $5,800 to assemble a copy of the Plan, even though HUD's own regulations require release of the Plan to the tenants and their representatives! Clear direction by Congress is required to help the new Administration reverse these now institutionalized policies.

Particularly where public subsidies are concerned, tenants and the public generally should know where our tax dollars are going. Subsidy contracts with owners should not be treated as a secret compact of private information beyond public scrutiny. Claims that making project budgets available to tenants will discourage investment and inhibit the effectiveness of preservation owners are contrary to the experience in areas where this information is available from local governments. In fact, as Sedgwick and Starrett City have shown, making information available to the public will enable tenants to encourage, not discourage, investment by preservation purchasers.

Rent Withholding (Section 303). This proposal would allow tenants to withhold rent when there are serious violations of housing quality standards and trigger HUD to withhold as well. It also provides that HUD will conduct an inspection or management review when requested by the local government or a petition signed by not less than 10% of the tenants. This proposal is based on language which passed the House in 1993 or was included in a Senate Floor Managers Amendment, but which was not adopted in final legislation. NAHT has submitted technical amendments to refine Section 303.

Many states allow rent withholding for serious substandard conditions; states like Massachusetts or Ohio report no problems of frivolous litigation, serious controversy or abuse. But Alabama, North Carolina, South Carolina, Louisiana, Georgia, Missouri, Colorado, Oklahoma and Texas are among the states that do not have this right. HUD receivership authority is rarely used and inaccessible to most tenants. ***Rent withholding creates a strong incentive for the owner to repair, and can help save buildings before they deteriorate. Section 303 is a natural complement to Title IV and will enlist tenants as partners with HUD in improving Troubled Housing.***

Third Party Beneficiary Status (Section 304). This proposal would establish tenants and tenant associations as third party beneficiaries in HUD contracts affecting their property. Tenants are listed as third party beneficiaries in Mark-to-Market Use agreements, but not in the Section 8 contract or any other Mark-to-Market documents, such as the Rehab Escrow Deposit Agreement or Mark-to-Market Restructuring Commitments. ***HUD is often slow or too late in***

enforcing these contracts, leaving tenants to suffer. Adding tenants as third party beneficiaries would give us standing to enforce the contracts.

One example will illustrate why this proposal is needed. The Texas Tenants Union reports that there is a 100 unit property in Longview, TX called the Jerusalem Apartments that completed HUD's Mark-to-Market (M2M) program in November 2001. The M2M plan called for $83,750 to be spent from the Rehab Escrow Account in the first year for new hot water heaters, exterior painting and carpentry, repairs to the water and sewer lines, and other repairs. Another $48,000 was supposed to be spent from the Reserve Account in the first year to begin replacing windows, furnaces, and appliances. More than two years after M2M approval, none of the improvements had begun. By the fall of 2006, HUD terminated the Section 8 contract and displaced all the families, senior citizens, and disabled tenants. HUD proceeded to foreclose on the property in the fall of 2007, and has scheduled at least three auctions to sell the property, which of course, is now without subsidies. If the tenants had been able to withhold rent early on, or been a party to the contracts, there likely would have been a better outcome.

Action Need to Make Resources Available to Empower Tenants

NAHT strongly supports Section 513, which would direct HUD to provide $10 million annually under Section 514 of MAHRAA which Congress has authorized since 1997 but HUD has not spent since 2002. Sponsored by Rep. Al Green, this language was adopted with a strong bipartisan consensus by the full Committee in October 2007 as part of the Mark to Market Reform bill, now incorporated in the Draft bill.

Tenants urgently need the resources Section 513 would provide in order to cope with a variety of preservation challenges, including the growth of expiring 40 year mortgages, troubled housing, and predatory equity. Despite the Committee's vote in October 2007, HUD has yet to provide these resources, although HUD's FY 10 Appropriations request includes $10 million for Section 514 in the project-based Section 8 account. HUD should be able to make funds available by October 2009.

It is critical for the Committee to retain Section 513 in the Preservation Bill, and to encourage HUD to implement the Committee's policy directives in the interim. An Interagency Agreement between HUD and the Corporation for National Service or similar federal agency, as provided in Section 513, is the only and most cost effective way to get resources out to the field during 2009. Similarly, it is important for HUD to implement a new grant program based on performance based contracts for eligible incurred costs, not the unworkable "fee for activity" model proposed for the new "TRIO" grant program planned by HUD staff in 2007, and to ensure that qualified locally based intermediaries get priority for grant funds. So far, HUD has not indicated support for these key provisions in Section 513.

Similarly, it is important for the Committee to urge HUD to heed the recommendations of the Alternative Management Control Review (AMCR), HUD's internal report generated by audits of earlier Section 514 programs. The AMCR recommended that new programs be administered by the Office of Grant Administration in the Office of Housing, rather than by OAHP, which had failed in its oversight of earlier programs. The AMCR further recommended that the OGA/OH be assigned three program staff to provide better oversight through Cooperative Grant Agreements. We strongly support these recommendations and ask the Committee to urge HUD to implement them, along with the policies outlined in Section 513.

NAHT and its local affiliates have the strongest stake in making sure the new program works to empower tenants. We ask the Committee's continued support to make sure that HUD adopts our recommendations to get resources out in the most timely, cost effective and effective manner.

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In summary, we urge the Committee to retain the critical provisions for a First Right of Purchase and Tenant Empowerment. The Committee has crafted an exciting and comprehensive program that will sustain our homes for decades to come.

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

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MEMORANDUM

TO: Subcommittee on Housing & Community Opportunity, House Financial Services Committee
FROM: James Grow and Adam Cowing, National Housing Law Project
RE: Proposed Federal First Right of Purchase
DATE: July 13, 2009

The Federal First Right of Purchase Does Not Amount to an Unconstitutional Taking

The Fifth Amendment requires that "private property [shall not] be taken for public use, without just compensation." Though there is no clear precedent that the proposed right of purchase would even constitute a "taking," the proposed federal first right of purchase satisfies the Fifth Amendment because it provides just compensation and furthers a valid public purpose.

- **The bill's purpose – to preserve affordable housing – is a public use.** The public use requirement has been interpreted broadly by the Supreme Court. The judiciary's role in judging public use is narrow and should be restrained "unless the use be palpably without reasonable foundation." *Hawaii Hous. Auth. v. Midkiff*, 104 S. Ct. 2321, 2329 (1984). Further, property taken need not be put into use for the general public, nor must it be held by public entities. The "mere fact that property… is transferred… to private beneficiaries does not condemn that taking as having only a private purpose." *Kelo v. City of New London*, 545 U.S. 469, 482 (2005) (citing *Midkiff*, 104 S. Ct. at 2331).

- **The proposed right of purchase specifically *requires* just compensation**. Takings analysis requires two steps: determining whether a taking has occurred and, if so, whether just compensation has been provided. Just compensation obviates the need to address the first requirement, since the Fifth Amendment does not prohibit the taking of property, only the taking of property without just compensation. The proposed bill requires that owners receive fair market value if a property is sold (sec. 103(d)(3)(B)), which the Supreme Court has held satisfies the just compensation requirement of the Fifth Amendment. *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001). Nor is there any temporary takings issue since the proposed bill permits an owner to convert at the end of the original notice period if the qualified preservation purchaser does not purchase the property (sec. 103(b)) – the same date upon which the owner could otherwise convert.

- **Precedent**: The proposed federal right of purchase is analogous to 42 U.S.C. § 1472(c), which in 1988 established a purchase right for Rural Development rental housing facing prepayment. This law has been upheld in court, against claims that it violated due process and was an unconstitutional taking. *Parkridge*

Investors v. Farmers Home Admin., 13 F.3d 1192 (8th Cir. 1994); *Lifgren v. Yeutter*, 767 Fed. Supp. 1473 (D.Minn. 1991) (deciding only the takings issue).

HUD's Position On a Federal First Right of Purchase

When asked about HUD's position on the federal right of purchase (question from Rep. Maxine Waters, June 25, 2009, Committee Hearing), Secretary Donovan stated his opinion that a legislative right to purchase must be "crafted very carefully," and is not the most important tool for preserving affordable housing.

Based upon his experience in New York City, the Secretary cited two levels of complex legal issues, which should "be looked into very carefully" because they might engender burdensome litigation: constitutional issues and state level issues. Since only constitutional issues are relevant to Congress' evaluation of possible legal impediments to a *federal* law, the inquiry here should focus upon any issues posed by the takings doctrine and the Supremacy Clause. While takings claims might be filed, they would be difficult to sustain under the authorities previously cited, and none was decided in New York. Concerning the Supremacy Clause, the Secretary's experience involved a local right of purchase law that was challenged and eventually invalidated as impliedly preempted by federal law. *Mother Zion Tenant Ass'n v. Donovan*, 865 N.Y.S.2d 64 (2008). Whatever the merits of the state court's federal preemption ruling, no such problem is presented here, for two reasons. First, a *federal* right of purchase affirmatively establishes federal policy, which must be given effect under the Supremacy Clause. Second, the proposed bill expressly clarifies that state and local preservation laws are not preempted (sec. 107(d)). The Secretary also stated that litigation challenging the New York City law disrupted preservation efforts, but this assertion or its relevance to the proposed federal policy cannot be evaluated without more facts

Secretary Donovan also expressed his belief that the federal right of purchase is not the most effective tool for preservation, stating that "carrots" are more important than "sticks" in preserving affordable housing. To be sure, incentives are of critical importance, and the proposed bill includes many such carrots, none of which are excluded in favor of creating a right to purchase. Although the federal government has provided many preservation incentives, an additional tool is necessary to preserve the value of those investments where owners reject incentives. We submit that the right to purchase at market value properly balances the owner's financial interest with the need to preserve affordable homes.

Testimony to the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Housing and Community Opportunity

Ghebre Selassie Mehreteab
Chief Executive Officer, The NHP Foundation
2 p.m., Wednesday, July 15, 2009
2128 Rayburn House Office Building
Washington, DC

Chairman Frank, Chairwoman Waters, Ranking Member Capito and members of the Committee, thank you for the opportunity to testify this afternoon on one of the most crucial issues in affordable housing.

My name is Ghebre Selassie Mehreteab. I am the chief executive officer of The NHP Foundation (NHPF), a nonprofit housing organization headquartered in New York City with offices in Washington, DC and Baton Rouge, LA.

The NHP Foundation
In 1989, The National Housing Partnership, a Congressionally chartered corporation, established NHPF as a nonprofit organization to address America's affordable housing crisis. NHPF is governed by a board of trustees composed of distinguished citizens in related fields of business and philanthropy. (See Exhibit A)

Since 1994, NHPF has preserved, or converted from market rate to affordable, 46 properties totaling approximately 10,000 units in 14 states. With a grant from the MacArthur Foundation, NHPF has developed a five-year strategic plan for the creation or preservation of an additional 5,000 to 10,000 affordable units in the United States.

At the outset, I want to state that The NHP Foundation is in full support of this Bill, the Legislative Options for Preserving Federally- and State-Assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly and Disabled Tenants. By providing new tools, reforming existing programs and creating incentives for preservation-oriented ownership, the Bill will:

(a) Assist NHPF and other large-scale nonprofit organizations in preserving the existing stock of affordable housing;
(b) Complement the important work being done in this area by grant-making philanthropic organizations; and
(c) Make it easier to attract private capital from banks and other institutions for preservation projects.

The Need for Preservation

The need for affordable housing in our society is a pressing one, and yet we are losing much of our affordable housing. The first order of business is to preserve the affordable housing that has already been built at great expense to the taxpayer. The loss of project-based section 8 housing is particularly damaging, since tax credit housing without Section 8 cannot serve the very poor. As a rule, preservation is cheaper, faster, and greener than new construction.

For nonprofit organizations to be successful in their preservation efforts, it requires partnership with the public sector, investment of private capital, and grants and loans from the philanthropic community.

Public Sector

The Bill takes important steps to preserve housing that was built with assistance from the federal and state governments, and it efficiently uses existing federal resources by allowing the transfer of existing Section 8 contracts and providing greater flexibility in the use of already appropriated Section 236 interest subsidy. The Bill also recognizes that government resources can not do it alone.

The full participation of banks and the philanthropic community is needed to enable non-profit organizations to engage in large-scale preservation efforts. NHPF's successful financing model for preservation combines public subsidy, private capital and philanthropic sources. This Bill will enhance the public and private partnership model.

Private Capital

NHPF and other preservation owners rely on private lenders and investors to create and preserve quality affordable housing. NHPF has been very fortunate in partnering with Bank of America's Community Development Group.

Over the past few years, Bank of America has provided construction and permanent financing as well as tax credit equity investments which have allowed NHPF to preserve affordable housing stock. By expanding the availability of 20-year Housing Assistance Payment contracts (subject to appropriations), the Bill expands the universe of projects where investors and lenders will be willing to risk their capital and assist in preserving the affordable housing stock. The banks can not undertake preservation efforts alone. The role of the philanthropic community is the glue that binds the public sector with the private capital.

Philanthropic Sources

Like Congress, the philanthropic sector recognizes the importance of preservation as evidenced by the John D. and Catherine T. MacArthur Foundation's initiative entitled "Window of Opportunity: Preserving Affordable Rental Housing".

NHPF and other preservation oriented nonprofits have been fortunate to receive funding from the Ford Foundation, The MacArthur Foundation, Prudential Social Investments, and other philanthropic sources for our preservation work.

In addition to raising grants domestically, the Emir of the State of Qatar, through the Qatar Katrina Fund, made a grant commitment which has enabled us to create and preserve affordable housing in New Orleans and vicinity.

Reforms and new incentives in the Bill will build on the efforts of these philanthropic organizations to strengthen large-scale, mission-driven, preservation-oriented owners of affordable housing.

In conclusion, NHPF looks forward to continuing to work with the Committee and its staff on preservation issues.

Thank you again for inviting me to testify today.

Exhibit A

The NHP Foundation Board of Trustees

Thomas A. Carr, *Chairman*
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Testimony of The Institute for Responsible Housing Preservation

Presented by Sarah Metherell, Vice President, Steadfast Companies
Financial Services Committee
Subcommittee on Housing and Community Opportunity
U.S. House of Representatives
Hearing on Affordable Housing Preservation
July 15, 2009

Madam Chairman. Thank you for inviting me to testify on the important topic of affordable housing preservation. My name is Sarah Metherell. I am Vice President of Acquisitions for Steadfast Residential Properties which is based in Newport Beach, CA. Steadfast Residential is involved in the acquisition, rehabilitation and preservation of federally assisted multifamily affordable housing properties. We own and manage approximately 15,000 apartments in 18 states, concentrated primarily in California and the Western United States. Nearly all of our properties receive some form of federal assistance including low income housing tax credits and project based Section 8.

I am here today in my capacity as Vice President of the Institute for Responsible Housing Preservation ("IRHP"). Since 1989 IRHP has represented owners and managers of federally assisted multifamily properties on preservation issues including advocating for legislative and regulatory changes for preservation policies and providing educational seminars on preserving affordable housing. IRHP members worked with this committee and HUD in structuring and closing the first Section 236 "de-coupling" preservation transactions in 1998. More than 800 Section 236 properties – approximately 80,000 units – have been substantially rehabbed and

preserved as affordable housing over the past 11 years using the de-coupling program. In his testimony before the Financial Services Committee two weeks ago, HUD Secretary Shaun Donovan recognized the de-coupling program as one of HUD's premier and successful preservation initiatives.

Madam Chairman, as you know well, even with the success of the 236 de-coupling transactions, there is more work to be done in preserving the existing HUD multifamily portfolio. No one questions the need for affordable housing. Various private and public studies prove that. Yet, notwithstanding the benefits and proven success of the Section 236 de-coupling preservation program HUD has not taken the lessons learned from this initiative and applied them beyond the Section 236 portfolio. Many other properties financed under other affordable housing programs are also in need of preservation. Many of these properties continue to be "at risk" to conversion to market rate housing or are in crucial need of updating, repairs and energy upgrades. These aging properties are approaching the end of their use restrictions, in most cases within the next few years.

We all know that it is much less expensive to preserve an existing asset than to build a new one. We think HUD should be embracing the success of the Section 236 de-coupling program and utilize the same preservation tools for these other portfolios. In most instances, HUD has the statutory and regulatory authority to implement the required preservation tools for other affordable programs.

The critical tools that made the de-coupling program a success include:

- A budget based rent increase which includes new debt service.

This upfront analysis and setting of rents is critical to get lenders and equity providers comfortable with any preservation transaction. Unfortunately, the Section 8 guidelines do not allow for budget based rent increases to include new debt service to be used in calculating rents, which would be capped at post rehab market levels. Without the ability to know what rents HUD will pay it is extremely difficult to finance a preservation transaction or be competitive with conventional buyers hoping to convert the property to market rate housing to the detriment of the residents and communities most in need. Again, in his recent testimony Secretary Donovan addressed this issue and pointed it out as a critical component to secure financing in a preservation transaction.

- An increased annual distribution for all preservation owners – for profits and nonprofits.

Both the Section 236 de-coupling program and the Section 202 preservation program permit an owner to receive increased distributions –a critical incentive to owners. The Section 8 guidelines in April were revised to allow for an updating of the annual distribution in certain circumstances but not all. Today, in many preservation transactions the new owner must accept the original owner's annual distribution limitation which was established in most cases more than 30 years ago and based on their original investment, not the new investment. HUD has the regulatory authority to change this for all of its properties. Deferred developer fees which may be needed to make a transaction viable can only be paid from distributable cash. Any limitation potentially interferes with the ability to pay a deferred developer fee. IRHP proposes that a cap on distributions be eliminated entirely. Any limitation only serves as a disincentive to preservation.

- Rollover of certain HUD debt.

Oftentimes when properties are being transferred to new ownership certain HUD debt including flexible subsidy loans and Mark-to-Market soft debt cannot be paid off in full. HUD guidelines allow for flex subsidy debt to be rolled over and deferred if it is necessary to make the preservation transaction economically feasible. Notwithstanding these guidelines, HUD over the past several years has required this debt to be repaid, often times making a good preservation transaction unworkable. The draft legislation allows for the forgiveness or assignment of flexible subsidy loans for a preservation developer. We urge you to include the deferral of this debt and expand it to include mortgage restructuring debt held by HUD.

These are simple, practical and workable preservation tools which have made the Section 236 de-coupling program a huge success. I point out that the average rehab in the preservation transactions we have participated in is $25,000-$35,000 per unit. The properties are recapitalized and renovated taking into consideration today's standards – increased security, lighting, energy efficient appliances and windows, new baths and kitchens, landscaping and the creation of community and learning centers. Often, owners will also provide a package of tenant supportive services, including lifestyle training, computer training and coordination with local service providers. We did this in our 2008 purchase of the 370 unit Foxview Apartments in Carpentersville, IL and our 2007 purchase of the 400 unit Villa Nueva Apartments in San Diego, CA. Both properties were preserved with a 20-year HAP contract and significantly renovated at a cost of approximately $30,000 per unit and $60,000 per unit respectively. In both cases, social service areas were renovated or built, major interior and exterior renovations were undertaken, security was improved, and at Villa Nueva solar panels were installed to supply nearly all of the electric needs for the property. These two acquisitions will provide renovated, safe, well operated housing for nearly 800 low income families for the next 20 plus years.

Madam Chairman, the draft preservation legislation incorporates the lessons learned from the Section 236 de-coupling program and sends a clear message to HUD that preservation should be a priority. Secretary Donovan has a strong record on affordable housing preservation and we believe he will implement key policies to expand preservation. The draft bill however goes even further. It includes converting RAP and Rent Supp contracts which are nearing their 40 year expiration to project-based Section 8, expands the events for providing enhanced vouchers to residents, keeps existing subsidies in properties that otherwise would be lost, and allows for increased opportunities for an owner to project base Section 8 vouchers. Further, it puts to rest HUD's controversial policy of restricting a nonprofit's sales proceeds.

IRHP applauds your efforts. It is critical, however, that all preservation developers – for profit or nonprofit – have access to the same resources – that there is a "level" preservation playing field. Preservation developers are competing for the same resources – tax exempt bonds, low income housing tax credits, and other available federal, state and local funds. The final preservation bill must maintain this evenhandedness. In this regard any abridgement of an owner's property or contract rights will have a chilling effect on preservation. The bill incorporates a federal right of purchase which has the potential to negatively affect these rights. Secretary Donovan himself noted the legal complications of a local law providing certain groups a priority to purchase affordable housing projects in New York City where he served as housing commissioner. The state courts eventually overturned the law but unfortunately preservation efforts in New York City were interrupted for 2 years. This provision should be eliminated.

Madam Chairman, thank you for providing us the opportunity to testify here this morning on this extremely important issue. IRHP and its members are committed to affordable housing.

We are committed to preservation. We look forward to working with you and Secretary Donovan in expanding the efforts to preserve affordable housing.

NATIONAL RURAL HOUSING COALITION

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Statement of Joe Myer
NCALL, Inc., Executive Director
National Rural Housing Coalition, Board Member

Before the
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
US House of Representatives

July 15, 2009

Chairwoman Waters and Ranking Member Capito, my name is Joe Myer and I am the Executive Director of NCALL Research, Inc. The National Council on Agricultural life and Labor Research Fund (NCALL) is a nonprofit organization based in Dover Delaware with a rural housing mission serving the Delmarva/Mid-Atlantic region with affordable housing since 1976. In addition to homeownership education, foreclosure prevention, and financial literacy services, self-help housing technical assistance across 21 states, and community development lending as a CDFI, NCALL has developed 45 multifamily housing apartment communities, mostly using the Rural Housing Service's Section 515 Rural Rental Housing and 514-516 Farm Labor Housing programs. These developments are important to our towns and rural communities because they are usually the only source of decent, affordable apartments for very low-income elderly, family, and farmworker households.

The National Rural Housing Coalition

I am also a current board member of the National Rural Housing Coalition. The National Rural Housing Coalition (NRHC) is a national membership organization that advocates for federal policies which improve housing and community facilities in rural America. NRHC has stood for the principle that all rural residents have the right to a decent place to live, safe drinking water, and basic community services. We have testified before this Committee previously and appreciate the opportunity to testify today on rural housing issues and HR 2876: Rural Housing Preservation Act of 2009. We commend the bipartisan effort of Congressmen Geoff Davis and Lincoln Davis.

Rural Housing Need

It is important to preserve the current stock of affordable rural rental housing because of the lack of decent housing in rural America. A disproportionate amount of the nation's substandard housing is located in rural areas. According to the 2000 Census, of the approximately 106 million occupied housing units available in the United States, 18.7 million units or 17.7% of the occupied units are located in non-metropolitan counties. The Economic Research Service recently released updated typologies for the Nation's counties. The classification includes a new typology which identifies 15% of non-metropolitan counties as housing stressed. In these counties, 30% or more of homes are considered too costly relative to household incomes, are too crowded, or lack certain basic facilities, such as a complete kitchen or bathroom.

Thirty-five percent of rural renters are cost-burdened paying more than 30% of their income for housing costs. Almost one million rural renter households suffer from multiple housing problems, 60% of whom pay more than 70% of their income for housing. More than 900,000 renters live in moderately or severely inadequate housing and 1.9 million people are rent-overburdened.[1]

Also according to the Economic Research Service, some four-million rural families live in "housing poverty," a multidimensional indicator that combines measures of economic need, housing quality, and neighborhood quality. The 2000 Census revealed that 5.5 million people, one-quarter of the non-metro population, face cost overburden and 1.6 million non-metro housing units are either moderately or severely substandard.

Section 515 Rural Rental Housing Loans

Section 515 of the Housing Act of 1949 is the principal source of financing for rental housing in rural areas. Under Section 515, non-profit and for-profit entities receive one-percent loans for acquisition, rehabilitation or construction of rental housing and related facilities. While for much of the history of Section 515 the loan term was 50 years, the term of the loan was recently reduced to 30 years in a cost cutting move. Most Section 515 loans have gone to for-profit entities such as developers, who combine the subsidized loan with rental assistance and tax subsidies to finance housing.

Section 515 housing also is generally well managed. Property managers often invest much of their own free time and creativity in providing tenants with a safe and cohesive community. The Section 515 portfolio is also financially sound, with a loan delinquency rate of just 1.6% and only eight properties in inventory.[2] The projects are small with an average unit size of 28.

Over 400,000 low-income families and elderly households live in rental housing financed under Section 515. For many rural areas, Section 515 provides the only decent, affordable rental housing in the community. Some 57% of Section 515 households are elderly, handicapped, or disabled; 26% are headed by persons of color; 73% are headed by women.

The average annual tenant income in these properties is about $9,200. Seventy-five percent of tenants received a rental assistance subsidy, either through project-based rental assistance, the Section 8 program, or through vouchers. Although rents are extremely low, averaging little more than $325 per unit per month, 20% of tenants were nevertheless rent-overburdened and 7% pay more than half their income toward rent. More than 100,000 rural rental housing units do not have rental assistance.

The Need for Rural Housing Preservation

Over the last several years, the federal government has gotten out of the business of financing new affordable rental units in rural America. In 1992, the loan level for section 515 was over $500 million; by 1998 that number less than $200 million and the Fiscal Year 2009 level for Section 515 is $69 million.

The other principal federal rental housing production program, Low Income Housing Tax Credits, has not picked up the slack. According to a 2007 HUD report, only 13% of Low Income Housing Tax Credit resources find their way to rural America. That was, of course, before LIHTC went off a cliff in last fall's financial crisis.

Because of the lack of financing for new units, preserving the existing rural housing stock is imperative.

Overview of Prepayment Issues

Over the last 40 years, Congress has debated the best, most appropriate way to preserve the rights of owners and tenants living in section 515 developments. This issue is important because virtually all households living in these apartments are low income; many are elderly or persons with disabilities. They are people with few other housing options.

It is important to trace the evolution of the Section 515 program and the prepayment process in order to show how the Rural Housing Service's lack of funding for incentives and rent subsidy vouchers has hurt both owners and tenants.

In the late 1970s, Farmers Home Administration (predecessor to the Rural Housing Service) found itself balancing competing pressures. Rising property values in rural areas enabled a growing number of owners to prepay their loans. Given the agency's history of enforcing the requirement that they "graduate" from the program by repaying their loans as soon as they had the financial means, the owners expected they could do so. As a result, there was a sharp increase in prepayment activity, with 55% of all prepayments since the program's inception occurring between 1977 and 1979.[3]

At the same time, tenant advocates began mobilizing to halt this trend, because prepayments often led to dramatically increased rents and the eviction of very low income tenants. Advocates argued that owners had reaped tax and other benefits at the taxpayers' expense, and that they should not be allowed to profit even more by converting their properties to market use.

Congress responded by passing the Housing and Community Development Amendments of 1979 (P.L. 96-153). This law required that properties with Section 515 loans made on or after December 21, 1979 serve low income residents for 15 or 20 years, depending on the level of the Section 515 interest rate subsidy. Congress also placed prepayment restrictions on existing pre-1979 loans, but repealed these restrictions in 1980.

As the federal tax benefits to those participating in the Section 515 program began to expire during the 1980s, more owners prepaid. The resulting displacement of large numbers of tenants, many of whom were elderly, generated much publicity and controversy. In response, Congress mandated a moratorium on prepayments in October 1986, which remained in effect until the Emergency Low-Income Housing Preservation Act (ELIHPA, P.L. 100-242) became law in 1988. While creating financial incentives for borrowers with pre-1979 loans not to prepay, ELIHPA also restricted their prepayment rights, a provision that directly contradicted the Rural Housing Service's mandate that these owners graduate from the Section 515 program as soon as they were financially feasible.[4]

In order to eliminate the prepayment issue for all new housing, Congress passed the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235), precluding prepayment for all Section 515 loans made on or after December 15, 1989. Congress then extended prepayment prevention incentives to borrowers with loans made between December 21, 1979 and December 14, 1989 through the Community Development Act of 1992 (P.L. 102-550).

The law regulated prepayment by owners and provided a set of incentives to encourage long term use. These incentives included equity loans; increased return on investment; increased

rental assistance; and interest rate write-downs to one-percent and/or loan reamortization over the remaining life of the property. Demand for incentives always exceeded supply, and owners waited as long as eight years to receive the incentives.

However, as appropriations for section 515 – the financing source for equity loans – dropped, RHS reduced funding for equity loans. As a consequence, starting in 2004, RHS faced a number of lawsuits which arose from the change in the graduation policy, the rescinding of the automatic prepayment right, and the lack of funding for incentives. Many of the lawsuits were settled in favor of the owners with an average settlement of $400,000 per project.

USDA Report on Section 515 Portfolio

In November 2004, USDA released the Comprehensive Property Assessment and Portfolio Analysis of Rural Rental Housing (CPA). The purpose of this report was to assess the status of the Section 515 portfolio in terms of prepayment options and long term rehabilitation needs. This report had at least four key findings including:

1. Only 10% of the units in the Section 515 portfolio are in 'hot markets' and could become market rate housing if the owners were to prepay;
2. 90% of the units are not in markets where prepayment is an option and are in need of additional funds to ensure adequate operation;
3. The average age of Section 515 housing projects is 26 years. Their major infrastructure systems are at or near obsolescence and need rehabilitation or replacement. Most are in need of renovation; and
4. The projected cost for ensuring adequate operations and addressing long term rehabilitation needs is $2.6 billion for 20 years.

In response to the USDA report, Congress provided funds for a demonstration program aimed at preserving rural rental housing developments. From 2006-2009, the RHS Multi-Family Housing Preservation and Revitalization Restructuring Program (MPR) financed a total of $100 million in multi-family restructurings. This funding allowed RHS to provide assistance to preserve and renovate existing section 515 developments and vouchers for families who might be displaced in the event of prepayment. Requests for restructuring regularly total over $2 billion per year. Since the beginning of the demonstration, MPR has financed some 300 transactions that will affect close to 10,000 tenants.

In 2008 alone, RHS has provided restructuring financing to 105 projects. The financing – mostly in the form of deferred loans – preserved over 4,500 units of rental housing in rural areas. The financing also stabilized tenants' rents and allow the projects to significantly increase reserves.

The current restructuring program relies heavily on funding from other sources. USDA data indicates that every dollar provided by Agriculture is matched by a dollar from some other source including tax credits, state and local financing, and other federal grants. In this difficult economic climate, raising capital from other sources may prove more difficult.

It is important to note that while the RHS demonstration has shown potential, it is just that: a demonstration. While some 300 transactions are on the books, there are some 15,000 Section 515 properties. According to the USDA CPA report, most are in need of restructuring assistance.

We support the provisions of HR 2876 Rural Housing Preservation Act of 2009, which are contained in the discussion draft legislation. The Rural Rental Housing Preservation Act authorizes assistance for owners and tenants, and charts a course toward preserving rural rental housing developments. In return for long term use restrictions, the legislation establishes financial incentives and other assistance to owners of eligible projects. These incentives include but are not limited to the following: loan forgiveness, payment deferrals, reamortization, grants, interest rate write downs, loans, and loan guarantees along the lines of the current MPR demonstration.

For any property participating in the program, the bill would leave in place current law regarding use restrictions for Section 515 developments which consists of continued affordability for low-income tenants lasting 30 years or the term of USDA's loan, whichever is longer. The legislation also insures that tenants living in restructured properties will not pay more than 30% of income for rent. Projects that are deemed ineligible to participate in the program include: owners who were participating in active lawsuits; had a history of poor property management; or were in default on a Section 515 loan.

The legislation also requires that owners who successfully sued the government for damages under various lawsuits are subject to a matching requirement when seeking restructuring assistance. With limited funds available and an extremely long road to make even a dent in the need to preserve rural rental housing development, this provision seems fair. These owners have already received assistance from the government. Given the limitation of funds available, and the huge dimension of need, Congress should require that project owners contribute to the cost of revitalization and restructuring.

The legislation authorizes the vouchers for use by tenants displaced due to prepayment and by tenants of projects that receive restructuring assistance. As we have noted, some 100,000 households living in section 515 pay more than 30% of income for rent. We support the use of vouchers for those low and very low income families as a way to ensure that restructuring does not result in a rent increase for these families.

Farm Labor Housing

We also urge the Committee to authorize the use of restructuring assistance for farm labor housing developments. The only federal program targeted to the housing needs of migrant and seasonal farmworkers is the section 514/516 loan and grant program administered by the Department of Agriculture and the Rural Housing Service. Over the history of this program, USDA has financed some 36,000 units for a cost of $1.27 billion. The current MPR includes farm labor housing developments and has had good results.

Thank you for this opportunity to testify on this important matter. I would be happy to answer any questions you might have.

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[1] These tenants pay more than 30 percent of their incomes toward rent.
[2] Rural Housing Service, Office of Rural Housing Preservation, untitled PowerPoint presentation, January 2004.
[3] National Task Force on Rural Housing Preservation, p. 8.
[4] Ibid., p. 9.

C H A P A

Citizens' Housing and
Planning Association

Testimony of Vincent F. O'Donnell
Housing Preservation and Tenant Protection Act of 2009
Submitted to the House Financial Services Subcommittee on Housing and Community Opportunity
July 15, 2009

Introduction
Good afternoon Chairwoman Waters, Ranking Member Capito, Chairman Frank, and distinguished members of the Subcommittee. Thank you for the opportunity to testify regarding the Housing Preservation and Tenant Protection Act of 2009. My name is Vincent O'Donnell, and I wish to speak in favor of this timely and important legislation.

I am testifying today in my capacity as president of the Citizens' Housing and Planning Association in Massachusetts. Established in 1967, CHAPA is a statewide non-profit organization whose mission is to expand housing opportunities for low and moderate income residents in Massachusetts. CHAPA works extensively on a number of important affordable housing and community development issues, including: the revitalization of state public housing; improving rental assistance programs; preventing homelessness; expanding homeownership education and counseling; increasing housing options for people with disabilities and seniors; spurring neighborhood revitalization; promoting smart growth and sustainable development policies; providing technical assistance and support to municipalities and local housing partnerships; and many other issues.

I also serve as Vice President for Affordable Housing Preservation at the Local Initiatives Support Corporation (LISC), a national community development intermediary dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. In that position, I lead LISC's national efforts to support nonprofit preservation transactions; to provide capacity building for CDCs, residents, and state and local government; and to coordinate a variety of preservation policy activities, including helping to facilitate the National Preservation Working Group, a broad coalition of nonprofit, tenant and governmental preservation stakeholders.

CHAPA's engagement in affordable housing preservation dates back to the mid-seventies. In 1978, I co-directed a three year demonstration program conducted by CHAPA with support from HUD and several foundations. The purpose of this project was to assist HUD in implementing new Congressional mandates and authority for the

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preservation of foreclosed affordable multifamily properties. At that time, HUD was the one of the largest and most problematic landlords of affordable rental units in the City of Boston, and the goal of the CHAPA project was to redevelop these properties with the active participation of the tenants. With the active support of HUD, we succeeded in supporting the creation of several low-income tenant cooperatives, all of which are still operating successfully, and in establishing competitive procedures designed to facilitate the disposition of these properties to high-capacity owners committed to providing high-quality affordable housing. Once again, with the help of new legislative tools, we look forward to working with HUD as a constructive partner in implementing new approaches to our affordable housing problems, including the preservation of assisted multifamily housing.

Over the past thirty five years, I have worked with tenant organizations, nonprofit and cooperative purchasers and owners of assisted multifamily housing, and state and local government. This work began with distressed housing in Boston's poorest minority areas and later addressed prepayment of subsidized mortgages and expiration of Section 8 contracts, just when those same neighborhoods became gentrified years later. More recently, I have worked from the perspective of statewide and national intermediaries, providing financial and technical support to preservation entities, and continuing to work with the government to improve the toolkit with which we approach preservation.

I mention this experience to bring perspective and context to this urgently needed legislation. Affordable housing preservation has a long history: it began with the Housing and Community Development Amendments of 1978 and continued through the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) and the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), and subsequent amendments. The priority of this early phase was defending the housing stock and its resources, and development of new preservation tools to address new risks as they emerged: prepayment of subsidized mortgages, Section 8 opt-out and renewal, and distressed HUD-foreclosed housing.

The proposed preservation legislation represents an urgently needed next phase: a consolidated package of reforms that will clarify HUD's preservation mandate, address new regulatory issues such as subsidized mortgage maturity; simplify and consolidate tools and resources; integrate needed resident services and resident participation; address obsolescence and the need for reconfiguration; and respond to changes in the populations served and changing markets. We need finally to make our current system work, and to end the distractions of putting out fires and spending valuable human resources on solving unnecessary problems with program operations.

As its history shows, affordable housing preservation policy is dynamic. If we are serious about making this housing sustainable, we must also expect that, when this package of reforms is in place, new challenges will emerge: integrating preservation with cross-cutting community transformation initiatives that involve education, workforce development, health care, transportation and environment. The 21st Century brings new

challenges for preservation, including: truly sustainable affordable housing in truly sustainable and diverse communities; working with the changing diversity of the communities served by affordable housing; addressing the concentration of poverty while respecting the vitality of existing communities; and ensuring equity of opportunity within our new revitalization strategies.

As an overall comment, I am pleased to say that the proposed legislation is highly responsive to the comprehensive recommendations produced in 2007 by the National Preservation Working Group. I would now like to discuss the specifics of this bill.

Types of Risk

The structure of the proposed legislation reflects the variety of reasons that federally-assisted affordable multifamily housing is at risk, including: conversion to market rate after the maturity or prepayment of a subsidized mortgage or an owner's decision not to renew a Section 8 contract; physical deterioration and obsolescence – including environmental obsolescence; and ineffective management to name a few. Preserving the affordable housing stock requires tools specifically targeted to these different risks.

Title I of the draft bill primarily addresses the first risk – the risk of conversion to market rate housing. The Title includes some new preservation tools, such as the right to purchase, which I will discuss shortly. First I would like to discuss several important provisions that apply existing preservation tools to an expanded universe of affordable housing programs: the early subsidized mortgage and rental assistance programs, and state agency assisted housing.

The first privately-owned multifamily subsidized housing was produced through a number of predecessor programs that existed before Section 8 came into the picture in 1974. This "older assisted stock" includes properties developed under mortgage programs such as the Section 202 direct loan program for seniors created in 1959, the Section 221(d)(3) Below Market Interest Rate loan program from 1961, and the Section 236 Interest Reduction Payments program created in 1968. These mortgage subsidy programs provided a "shallow subsidy" which effected a reduction in the rent level, but did not guarantee affordability to very low income families. The Leased Housing Program, the Rental Assistance Payment ("RAP") and Rent Supplement programs were the pre-cursors to the deep subsidy of project-based Section 8 assistance, providing income-based subsidies enabling the very poor to afford this housing. Finally, some state housing agencies – including Massachusetts – have provided subsidies and financed affordable housing over the years that is now at risk of loss. This bill includes several provisions that will align the treatment of these programs with more common subsidy programs such as Section 8, an important step toward simplifying the preservation process.

The "Year 40" Problem

Tenants in older assisted properties are protected by Enhanced Vouchers if owners exercise their right to prepay and terminate use restrictions. No such protection exists when the property's mortgage fully matures, typically after forty years. Many of these older assisted properties also have ongoing Section 8 assistance contracts (through the

Loan Management Setaside program) for some or all of the units. To the extent that the units are covered by Section 8, they are subject to the provision of MAHRA that allows – but does not require – owners to renew the contracts to maintain affordability at "year 40", and if the owner chooses not to maintain the LMSA assistance, the Section 8 tenants will receive Enhanced Vouchers.

However, there is currently no policy tool in place to preserve affordability at year 40 in entire properties or portions of these older properties that are not covered by a Section 8 contract. Once one of these subsidized mortgages matures, its regulatory agreement dissolves, and the tenants will be subject to immediate rent increases to market levels. Over the next ten years, this exposes over 100,000 households to possible displacement. This number is relatively small when compared to the total number of subsidized households and units at risk, which makes the problem one that is manageable with the right tools in place. We support the provision in the proposed bill that would open up the eligibility for Enhanced Voucher protection to these households to prevent large-scale involuntary displacement. The ability to project-base these Enhanced Vouchers is also a valuable new tool in the proposed bill.

Rent Supplement/Section 236 RAP Conversion
Units with Section 236 Rental Assistance Program (RAP) and Rent Supplement assistance are currently not afforded the same preservation incentives or renewal authority as units with project-based section 8 assistance. Most notably, these contracts cannot be marked up to market, and when the associated mortgage matures, is prepaid or foreclosed, the rental assistance is terminated. In contrast, project-based Section 8 assistance is renewable, and in the case of a mortgage prepayment or maturity, the project based assistance will either remain or be converted to enhanced vouchers, which allows tenants to stay in their home. Section 101 of the proposed bill would permit conversion of RAP and Rent Supplement contracts to project-based section 8 assistance, saving thousands of units of affordable housing. Upon conversion, the new contracts will be considered renewal contracts, and will be eligible for the preservation tools provided by the Multifamily Assisted Housing Reform and Affordability Act, including "mark up to market."

State Assisted Properties
This legislation contains two sections that are especially important to the preservation of state-financed and assisted housing.

Section 104, Enhanced Voucher Assistance and Preservation Project-Based Section 8 Assistance for State-Financed Affordable Housing, addresses an important gap in the coverage of the existing preservation toolkit. Some states, including Massachusetts, provided both rental assistance and mortgage interest subsidies for affordable multifamily housing. Just as with federally-assisted properties, there are now thousands of residents vulnerable to displacement in these properties as mortgages mature and there is no replacement subsidy. In Massachusetts alone, there are fifty five affordable multifamily properties that were assisted under the Commonwealth's Section 13A program.

These state-assisted properties were eligible for preservation incentives under the LIHPRHA program, and when those mortgages were prepaid, residents were able to receive Enhanced Vouchers. Section 104 would extend Enhanced Voucher protections to tenants of these properties upon mortgage maturity as well, continuing the parity established under LIHPRHA with regard to similar provisions in Section 102 for tenants of federally-assisted properties.

Another important provision in Section 104 of the proposed bill would provide owners of these state-assisted properties with the option to accept project-based vouchers instead of tenant-based Enhanced Vouchers. As with Section 105, acceptance of project-based vouchers would allow for an extended contract term (subject to appropriations), enabling easier use with other preservation financing sources.

Section 106 also contains provisions to assist the Preservation of state-HFA financed properties. There are more than 150,000 affordable units whose financing is provided by state Housing Financing Agencies (HFAs), using long-term, project-based Section 8 contracts. This bill will assist the preservation of these properties by: ensuring continuation of the section 8 contract if an owner refinances prior to mortgage maturity; allowing owners of these properties to use the mark up to market option prior to contract expiration, provided they agree to an extended Section 8 commitment; and permitting the cancellation of fully funded, long-term Section 8 contracts and their replacement with new, 20-year contracts subject to annual appropriations in the case of refinancings by preservation owners or sales to preservation purchasers.

First Right of Purchase Before Conversion of Multifamily Housing
Section 103 of the draft bill provides a new preservation tool aimed at properties at risk of conversion to market rate, an important issue that will affect the total number of properties that eventually get preserved. The first right of purchase would require sale of a covered affordable housing property, at fair market value, to a qualified preservation purchaser who is willing to provide essentially permanent affordability.

It also would provide a safe harbor, both for good-faith sellers, and for owners who wish to preserve without a sale. For instance, a sale to a preservation owner, or a refinancing with extension of affordability, would not trigger the first right of purchase if the terms of the transaction meet the legislation's affordability targets.

In working for many years with stakeholders in Massachusetts to secure passage of similar state legislation, we have learned that, within this overall framework, there are many nuances and complexities. The bill properly recognizes some of these complexities by requiring the Secretaries to issue regulations, for example, on important details such as what constitutes a safe harbor transaction and how to choose between competing purchase offers for a property.

Based on my Massachusetts experience, however, I believe further discussion with stakeholders would help to identify and resolve several issues that are essential to the success of this provision.

For example:

- A twenty four month notice period, as in the proposed bill, will require owners to provide a notice triggering purchase rights even if, for legitimate reasons, they have not yet decided what their intentions are.
- For a purchaser to obtain financing, post-transaction rent increases may be needed, even in the absence of rental assistance, at least to cover often-deferred operating costs, and sometimes for capital costs. But protection against abuses should also be provided.
- Most commercially reasonable offers and purchase agreements contain contingencies such as assembly of financing, deposit amounts and refundability, time to perform, and other details beyond just a fair purchase price.
- In some assisted properties, existing tenants who do not have rental assistance are paying in excess of 30% of their income for housing. Some combination of guidance and authority to the Secretaries as to resolution of conflicting goals would be helpful.

In Massachusetts, a right of first refusal (i.e., the right of a designated purchaser entity to match an arms-length third party offer), was suggested as an alternative to the right to purchase. After a lengthy discussion initiated by the legislative leadership, CHAPA and a broad coalition of owners, tenants and nonprofits ultimately supported a right of first refusal bill, but only on the condition that strong tenant protections also be provided.

There are important differences, advantages and disadvantages to various parties in these two approaches. A right to purchase provides the greatest opportunity to intervene when an owner wants to terminate affordability, such as simply letting it expire without a sale. The National Housing Law Project has argued persuasively that a right to purchase based on fair market value is not a taking, and therefore I do not think it is vulnerable to that line of critique. On the other hand, because it is rooted in an arms-length negotiation to purchase, a right of first refusal can provide a highly market-based benchmark for the terms of sale, which can eliminate costly and time-consuming implementation challenges. Those terms may include, for example, the timing of delivery of the sales price, possible tax-deferred or bargain sales, transfer of reserves controlled by the seller, timing requirements for obtaining financing and subsidy commitments, or cancelling the purchase contract after due diligence, and deposit requirements. Whichever mechanism is included in the legislation, some practical and legitimate test of commercial reasonableness is necessary. Hopefully these lessons from the Massachusetts experience can help to inform whatever mechanism is ultimately enacted.

Other Title One Provisions

Other important provisions of Title I would establish and clarify HUD's proactive preservation mandate, to ensure quality asset management that prevents the emergence of crises. HUD would also be given the authority to modify the terms of existing Flexible Subsidy subordinate loans, and to make residual receipts available to facilitate preservation in a manner which reduces the need for new appropriated funds. Restructuring of existing HUD-held debt, project reserves and existing regulatory

agreements are important preservation tools, and require greater administrative discretion and flexibility, within reasonable guidelines to protect the government's interest. This legislation encourages HUD to view its discretionary decisions as the strategic investment of assets, with a requirement for a good return in terms of long-term affordable housing with a positive community impact.

Finally, Title I includes an important provision that would ensure that state and local laws requiring additional notice periods, right to purchase or right of first refusal would not be federally preempted, unless expressly provided under federal law.

Risk of Deterioration

The draft bill also addresses the risk of physical deterioration and obsolescence of the affordable housing stock. Even the best maintained housing needs periodic recapitalization to update building systems in need of replacement and perform upgrades of other building components.

When properties are denied the ability to perform this rehabilitation on a regular basis – either through owner neglect or lack of available financial resources – they can easily fall into disrepair and create an unsuitable living environment for residents. Over time, this neglect can mean that complete replacement of a building is more feasible than rehabilitation.

Title II of the proposed bill includes a provision that encourages HUD to use, and provides a funding source for, existing authority to pool recaptured Section 236 subsidy dollars for rehabilitation grants to preservation projects. Although modest in size, this pool of subsidy dollars can be leveraged with other resources to help perform high priority repairs for at-risk affordable housing, with no new appropriations.

Title II of the proposed bill also includes an important provision to allow the replacement of outdated, physically obsolete or economically non-viable projects with better quality housing. This provision encourages mixed-income communities by allowing project-based Section 8 contracts to be transferred from one project to multiple other projects. These transfers of assistance have been made available on a temporary basis in recent years, but the use of this authority has been limited due to restrictive provisions in existing authority. The proposed bill strengthens the existing authority and makes it a permanent preservation tool.

Troubled Projects Facing Foreclosure

HUD has in place an enforcement system to help ensure that publicly subsidized housing is meeting HUD's physical standards and that good quality management is in place. This is a critical element of the public-private partnership under which this housing was created. However, the current system is in need of reform. For example, HUD's pending enforcement actions are often known only to the existing ownership entity, and not to tenants, local governments and other preservation entities until it is too late for anyone to take actions to save the housing. Once a property is in crisis, HUD sees its options as

limited, even if a preservation-oriented group is attempting to intervene, often resulting in loss of the Section 8 contract.

Title IV of the proposed bill provides flexible and incremental enforcement tools and clear direction to HUD to ensure that troubled properties are brought up to HUD quality standards, rather than using permanent loss of subsidies as the primary enforcement tool. And, when HUD foreclosure is unavoidable, the bill helps ensure that properties will remain affordable with Section 8 contracts in place after HUD disposition. The bill also repeals a prohibition against certain rehabilitation grants to foreclosed properties being sold by HUD. These so-called Upfront Grants are available from the Mortgage Insurance Fund, enhancing redevelopment feasibility without the need for new appropriations.

Title IV also recognizes that state and local governments should be partners with HUD in the preservation of troubled projects. To this end, the bill facilitates the transfer of assisted mortgages to state and local government in order to improve resolution of troubled properties. It also requires an industry-standard valuation of distressed properties being sold by HUD to state and local governments for subsequent purchase by nonprofits and other preservation entities.

Section 8 Renewal Incentives

One of the biggest challenges in preservation today in terms of the volume of units at risk is the continuing short-term renewal of project-based Section 8 contracts. Each year, subsidy contracts for between 200,000 and 300,000 units of Section 8 housing come up for renewal, and the vast majority are renewed for between 1-5 years at a time. Each time the contract expires, the owner has the option of walking away from the relationship with HUD. The challenge is to provide these owners with the right incentives to continue to renew their contracts and keep the housing affordable. The Multifamily Assisted Housing Reform and Affordability Act of 1997, which provided owners with options such as the Mark to Market mortgage restructuring program, provides an important context for renewal incentives.

While MAHRA has been very successful, there are some elements that need updating to ensure the continued success of the programs it created and to expand the law's benefits to additional at-risk housing types, including properties preserved under previous preservation programs and properties financed under the Section 8 Mod Rehab program.

One of the more important elements of Title V of the proposed bill is the ability to allow owners to obtain longer-term Section 8 contracts at their discretion. This will provide these projects with the certainty that a lender would need in order to provide financing to the property, and because the contracts are funded based on annual appropriations, this approach does not cost the government any more than a shorter-term contract would.

There is one important issue that has emerged recently but is not addressed in this bill. When Section 8 rents are renewed in properties using other resources, it has been possible to mark Section 8 rents up to comparable market levels, either on an as-of-right basis, or on a discretionary basis taking legitimate costs into account. Recent HUD

policies have called this procedure into question, in properties that are using Low Income Housing Tax Credits in conjunction with a preservation transaction. Congress recently corrected a similar problem with regard to project-based voucher assistance, in the Housing and Economic Recovery Act of 2008. A similar correction is needed in this legislation for project-based Section 8 contracts that are subject to MAHRA.

Preservation of Section 202 Supportive Housing for the Elderly
Important progress in the preservation of Section 202 multifamily housing for the elderly was achieved in the passage of Section 811 of the American Homeownership and Economic Opportunity Act of 2000. Several years of experience in working with this authority have identified certain gaps in coverage and new ideas to improve the implementation of this tool and create predictability. Subtitle B of Title VII of this bill reflects these needed amendments.

Among other things, this subtitle increases the long-term affordability requirements in exchange for HUD's consent to a prepayment, and clarifies its applicability to "old law" Section 202 properties that are not covered by existing authority. It ensures that HUD's consent should be given in order to address the physical needs of the project and to promote long-term affordability. Total debt service is allowed to be increased, if required to meet rehabilitation needs. Greater flexibility is provided to permit use of refinancing proceeds and existing project reserves for funding of social services, reconfiguration of obsolete unit types and other needs of the properties.

In addition to these improvements to existing authority, new tools are provided. Rents on existing project-based Section 8 contracts are allowed to be marked up to budget, including the cost of rehabilitation. In addition, a new Senior Preservation Rental Assistance Contract is authorized to prevent displacement of residents in "old law" Section 202 properties that have never had any form of rental assistance. Finally, several other financing issues are addressed, including a mortgage sale demonstration, clarification of underwriting standards when FHA Risk Sharing is used, and clear authority to subordinate existing section 202 and Flexible Subsidy debt in order to facilitate preservation.

Other Provisions
In addition to those elements I've discussed in detail, CHAPA supports other provisions of the bill, including the tenant empowerment provisions in Title III, the preservation database in Title VI, and the rural housing provisions of Title VIII. I have not addressed other minor technical concerns in this testimony. Comments to this effect will be provided to committee staff.

This concludes my testimony. Thank you for the opportunity to speak to you today. CHAPA and LISC look forward to working with members and staff to pass this comprehensive package of program reforms to bring preservation of affordable rental housing into the next generation. I will be happy to address any questions that you may have.

Tammye Trevino
Administrator
Rural Housing Service
United States Department of Agriculture
Before the
House Committee on Financial Services
Subcommittee on Housing and Community Opportunity
July 15, 2009

Chairwoman Waters, Ranking Member Capito, and members of the Committee, thank you for the opportunity to appear before you to discuss multi-family housing preservation in rural America. This is a critically important issue and in broad terms we believe that the strategy outlined in H.R. 2876 and in the discussion draft before the Committee is promising. I would like to thank all those involved with this legislation, both in this session of Congress and in previous session, for your hard work. I am pleased to testify before you today on behalf of Secretary Tom Vilsack, Under Secretary Dallas Tonsager, and USDA Rural Development's Housing Programs, and look forward to working with you and the Committee to further the preservation agenda.

At USDA, we advocate a strong national housing policy that both supports the American dream of homeownership and provides affordable rental opportunities. I would also note that as the number of privately-financed foreclosures continues to increase in these difficult economic times, more Americans, especially in rural areas, are relying on rental properties than in years past.

We are greatly encouraged by the committee's focus on legislation that will create national housing preservation standards for all government agencies that specialize in housing assistance, especially in rural communities.

For 60 years, our rural housing programs have provided invaluable support for low and very-low income families in rural areas. These programs currently include the Section 502 Single Family Housing Direct and Guaranteed Loan programs, the Section 515 Rural Rental Housing Direct Loan program, and the Section 538 Rural Rental Housing Guaranteed Loan program. I look forward to working closely with Secretary Vilsack, Congress, and the administration to strengthen these, and especially the direct loan programs.

The USDA rural housing portfolio as of May 2009 accounts for over 650,500 direct and guaranteed single- and multi-family loans at a value of more than $53 billion. This includes 332,000 single-family direct loans for $14 billion; 293,000 single-family guaranteed loans for $28 billion; 25,500 multi-family direct loans for $11 billion; and 288 multi-family guaranteed loans for $350 million.

In an era in which private sector foreclosure numbers are higher than they have been in a generation, the Rural Housing Service has experienced low default and foreclosure rates. In 2009, the Rural Housing Service direct loan program has 10,477 foreclosures in process, less than 50 percent of which we estimate will result in actual foreclosures as we work with our homeowners to help them stay in their homes. The foreclosures in process

represent approximately 3.4 percent of the agency's 502 direct Single Family portfolio. In May 2009, the Mortgage Bankers Association reported that 3.85% of borrowers nationally were facing foreclosure. In addition to our success in mitigating foreclosures, thus far in Fiscal Year 2009 we have funded over 86,000 loans and on July 1st we hit the $10 billion mark in the Single Family Guaranteed housing program. Moreover, we have funded 8,000 Section 502 Single Family direct loans totaling over $940 million in 2009, almost 20 percent of which were funded through the Recovery Act.

In 2008, our Section 538 Guaranteed Rural Rental Housing Program made loan guarantee commitments to build or repair 118 properties using $132 million in loan guarantees. These commitments have or will generate a total of more than $660 million in construction activity building or repairing 5,457 apartments in rural America. Of this total, more than 40 percent was used to preserve existing section 515 properties. The Section 538 guaranteed multi-family housing program has attracted more than four dollars of investor equity or other funding to these transactions for every one dollar of loan guarantee commitment. The government's direct one-time cost to build or repair these apartments is approximately $2,300 per apartment.

The $11.5 billion direct multi-family housing portfolio financed by USDA Rural Development has over 15,900 Section 515 rural rental housing properties financed primarily by 50-year 1 percent loans and Section 514/516 farm labor housing properties financed by 1 percent loans and grants. The two programs have been providing decent, safe, and sanitary affordable rental housing since the 1960's to countless rural Americans.

Rural Development multi-family housing programs were established because sufficient access to capital and credit was not available to serve the needs of very low-income renters who wished to live and work in rural communities. Although the overall capacity of the American credit system has grown since the middle of the last century, low-income rural residents continue to be underserved. The difficult economic times we are now experiencing add to the stress.

We therefore face two immediate challenges. The first is the ability to provide new affordable rental housing units. The second is the rehabilitation and revitalization of a critically important but now aging rural rental portfolio. We are here today to discuss the latter.

The Committee raised six specific questions, and I would like very briefly to address each of them in turn:

- How will the Housing preservation and Tenant Protection Act improve affordable housing preservation policy at the federal, state and local level?

  While we are still studying the proposed legislation and may have questions regarding the implementation of certain aspects of it, the proposed legislation appears to provide the Agency with a number of revitalization tools that would provide cost effective preservation options for the existing multi-family housing rental housing portfolio so that these projects can continue to serve their communities throughout rural America. The proposed legislation contains voucher authority that will help protect tenants in properties that leave the program.

- What are the benefits of preserving existing affordable housing compared with new construction?

  The benefits of preserving existing housing are clear; it is less expensive, roughly one-third to one-quarter the cost of new construction; it can be accomplished faster, with site and acquisition issues already resolved; it presents many opportunities to

upgrade energy conservation; and it minimizes the NIMBY effect since most communities welcome an upgrade to existing rental properties in place.

- What type of tools or statutory authority are needed for RHS to better assist states, local government and preservation oriented entities in preserving existing affordable housing?

  In general, the tools provided by the proposed bill would help RHS and its partners revitalize the existing portfolio. However, we would like to work with the Committee to ensure that the tools will provide the best possible options to support these critical revitalization efforts.

- Please describe any statutory, regulatory (including staffing levels), fiscal, and/or legal barriers limiting or prohibiting preservation transactions.

  Currently, our revitalization program is authorized only as a demonstration program, not in permanent authorization legislation. The lack of permanent authorization makes it difficult for the agency to promulgate permanent program regulations and to address long term issues, including the length of vouchers. Further, we need to determine the resources needed to accomplish the goals we establish and we will develop those estimates during the budget formulation process. Specifically we need to examine what types and amounts of resources will be needed to work with a larger portfolio level of transactions, assure quality control, and provide for consistent processing throughout the country.

- Please discuss the impact if any of the foreclosure crisis on RHS assisted multi-family properties and the impact of the foreclosure crisis on RHS assisted properties that have been at risk of foreclosure.

  We have not seen an increase in the foreclosure rate of RHS assisted multi-family properties. We know that there are some individuals who have lost their homes in the current economic downturn who have applied for housing,

- Please share any other views you may have on the discussion draft.

  Rural Development's Section 514 and 516 programs, providing for financing of farm labor housing, are important components of our housing portfolio. We look forward to working with the Committee in addressing the preservation needs of these rental housing resources as well.

The inclusion of voucher authority in the proposed legislation will help protect tenants in properties that leave the program. At the present time, in a Section 515 property where

the mortgage is prepaid either by borrower action or through foreclosure, the property owner can increase rents to market rates. At the same time, by leaving the 515 program, the property is no longer eligible for Rental Assistance. The current Rural Development demonstration voucher program provides protection against rent increases or the tenant having to relocate as a result of prepayment or foreclosure.

Our demonstration voucher program is in its fourth year and has been highly successful. Over the last three years, more than $13.5 million in voucher funds have been obligated and over 3,500 new and renewed vouchers have been provided to rural residents. Over 90% of voucher recipients have elected to remain in the property they have called home for a period of years. The intention behind this "soft landing" voucher approach was to provide a simple, direct and responsive solution to an immediate and growing problem without duplicating other federal rental assistance programs.

We also continue on a demonstration basis to carry out many of the objectives authorized by the proposed bill in regard to a long-term viability plan. In our multi-family housing units, we are conducting physical needs assessments with an emphasis on our older properties. We also offer a range of financial tools that include loan restructuring and rent adjustments. This approach has helped to contain growing foreclosure and default rates in these tough economic times.

The early results of our restructuring demonstration are extremely encouraging. When the initial application window closed on April 17, 2006, approximately 4,000 Section 515

property owners applied for debt restructuring. This represents 25 percent of the total portfolio. In the three full years of implementation as a demonstration program, USDA has obligated over 300 transactions that will improve the housing conditions of 10,000 tenants. These results indicate a tremendous interest among the ownership community in seeking a resolution to the revitalization challenge.

In addition to rural vouchers and debt restructuring, in order for us to successfully carry out our goals, we must also work closely with the other agencies that provide government assisted housing. The proposed legislation makes that goal easier by introducing the concept of a national database that will give us access to the information needed to track America's affordable housing stock.

We realize that the rehabilitation and capital needs of the portfolio are significant. However, at approximately $30,000 per unit, the cost effective rehabilitation tools and our ability to leverage third party financing have actually led to reductions in post-transaction rents, rather than modest increases as first anticipated. The revitalization program has also been designed to provide financing options to both sophisticated developers who work with third party financing and small owners who need affordable, accessible, and relatively simple financing options.

Finally, in cooperation with Secretary Shaun Donovan and the Department of Housing and Urban Development, Secretary Vilsack, Under Secretary Tonsager, and I will ensure

that information regarding any covered multi-family properties will be available to the public within the 18-month period after the enactment of this legislation.

Madam Chairwoman, we applaud the efforts of this legislation to include more property owners in this national preservation effort. It is my goal to assist Secretary Vilsack and President Obama in working with the Committee and our public and private partners to spur economic growth and create a lasting foundation in the heart of rural America.

I was born, raised, and lived most of my life in rural south Texas. I have worked and advocated for the development of rural communities for most of my career. I understand the challenges facing rural communities and the struggles that many families in rural America face every day.

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

The American Association of Homes and Services for the Aging
Written Testimony

House Financial Services Committee
Subcommittee on Housing and Community Development

Legislative Options for Preserving Federally- and State-Assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly and Disabled Tenants

The members of the American Association of Homes and Services for the Aging (www.aahsa.org) help millions of individuals and their families every day through mission-driven, not-for-profit organizations dedicated to providing the services that people need, when they need them, in the place they call home. Our 5,800 member organizations, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

On behalf of our members and the residents they serve, AAHSA would like to thank Chairman Frank and the Committee for tackling the affordable housing preservation issue in this comprehensive legislation. In recent years it has become evident that the loss of affordable housing will accelerate without this important legislation at the precise time that the availability of affordable housing for seniors is so challenged. Under Title VII of this bill the Section 202 Supportive Housing for the Elderly program will be reformed and modernized to address growing need for innovative financing of new developments and preservation projects, the increasing demand for supportive services to help seniors age in place, greater opportunities for rural senior housing and the expansion of affordable assisted living. AAHSA enthusiastically supports this important bill and urges its adoption.

New Development
The Section 202 program is the most successful elderly housing production program in the country. Both development and preservation deals are increasingly complex as gap financing from multiple sources is necessary for almost every Section 202 project built today. State and local requirements and varying eligibility has made this program more and more difficult to use effectively. A number of provisions under Title VII will make the development of new supportive senior housing communities easier and more uniform, including setting adequate development cost and PRAC limits, requiring that the funding of service coordinators be included as a selection criteria, factor, requiring the proper use of the up-front owner deposits, and establishing a new method of allocating non metro units. Subtitle A of Title VII also requires HUD to provide adequate PRAC increases and increases for unexpected and unavoidable cost increases, such as insurance premiums or utility costs. We were delighted that what was once the centerpiece of the new construction subtitle of this legislation, delegated processing, of mixed finance transactions

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was included in last summer's landmark legislation reforming the GSE's and establishing the National Housing Trust Fund.

Preservation
The core of Title VII and the reason it appropriately is included in this preservation bill is Subtitle B. It will further the preservation of senior housing, one of the most important federal housing policies Congress can endorse and facilitate. Preservation of existing housing can be done at a fraction of costs of new construction and it helps retain the best HUD properties in prime locations with access to transportation and services. Many elderly housing facilities have "aged" and need modernization and/or retrofitting and refinancing in order to accommodate supportive services to aging residents, assure quality of life, and accessibility. These projects could be preserved for an additional 20 years with the infusion of dollars far less than the cost of new construction.

The key changes are detailed below and highlight the difficulty involved in navigating the various legal and regulatory requirements involved in the multiple funding programs involved in a given project. Although, many of the provisions simply require HUD to do what it already has the discretion to do, there are some that require statutory changes.

- Refinancing Older Section 202 Properties
  Title VII, Subtitle B provides for critical tools to address the refinancing needs of older Section 202 properties, those that need the most work and are most at risk for loss. In particular, the original Section 202 program was a 3% loan for 50 years targeted to low-income elderly and sponsored by non-profits. These properties are not currently able to refinance and preserve the properties as affordable without the legislative authority in this Subtitle. (The original refinancing authority only applied to properties where the interest rate would be reduced.) In addition, Subtitle B provides authority to increase debt and mark rents up to budget with the Secretary's approval as most of these projects require significant rehabilitation and interest rates will be higher than their original 3% interest. Finally, the legislation changes the affordability period for refinancing. Under the initial authority, a use agreement was required only until the original mortgage matured. This legislation would require 20 years of affordability after refinancing.

- Senior Preservation Rental Contract
  This same cohort of properties also desperately needs the project based rental assistance authorized in the Subtitle to prevent the displacement of existing seniors living in unassisted units and to make certain that the housing is affordable into the foreseeable future. A total of 289 older Section 202 projects with 42,700 units (59% efficiencies) were built during the initial period (1959-1974). Of those projects 261 remain. Of those, 168 have project based section 8 assistance, a total of 13,054 units and 19 have rent supplement contracts, a total of 324 units. Only 24 projects have 100% Section 8 assistance. A GAO Report that Chairman Frank requested in 2004 identified 41 Section 202 properties with mortgages maturing through 2013. Of the 3,208 units in those properties, only 871 or 27% have section 8 assistance.

The older Section 202 properties are not eligible for enhanced vouchers, placing those properties and residents the most at risk for problems. These projects, built between 1959 and 1974 are in need of substantial rehabilitation in order to be preserved for another 30 – 40 years. Unfortunately any attempt to refinance these projects and do the necessary work means that the existing residents, who are paying rents that have been suppressed by the provider to serve a low-income population, will face rent increases that they cannot afford. The creation of a senior preservation rental contract would permit owners to actively preserve properties to serve existing and future seniors. Without a program to provide rental assistance for these properties, these Section 202s become more likely to leave the affordable housing portfolio as they reach the end of their mortgage term.

An AAHSA member acquired a property in the Cleveland area that illustrates these issues. The property was developed in the early 1970's when HUD enticed faith-based and other non-profits to address a severely underserved senior housing market by building small, efficiency units. Sixty percent of the units were efficiencies. The original non-profit owner had worked hard to maintain the building and keep the rents low, reflective of the neighborhood. Over time, however, apartments that were once desirable and marketable have been overshadowed by newer, more attractive and marketable affordable alternatives for the elderly. Over time the building and its systems aged, like the residents, and are in need of rehabilitation and reconfiguration.

None of the residents received rental assistance and were ineligible for enhanced vouchers once the rehabilitation was complete. To overcome this dilemma and to avoid displacing low income elderly, the purchaser pieced together funding from at least four sources, including the city, the state, tax credit equity, and subordination of existing HUD debt. Had rental assistance been available from the outset, funding streams at least from the city and the state may have been unnecessary and available for other affordable housing projects. The funding for rental assistance has run out. Over 20 residents have had to move due to the lack of subsidy and more seniors are on the verge of displacement.

- Payment of Equity in Sales Transactions
  Christian Church Homes of Northern California, an AAHSA member, has attempted to purchase troubled 202 and 236 properties from other not-for-profit, single asset owners that were no longer interested in pursuing affordable housing. HUD denied their requests to purchase the properties at a price above the outstanding indebtedness, thus denying the not-for-profit their equity, which they planned to use to further their mission. As a result of HUD's refusal to treat not-for-profit buyers and sellers as they would have for-profits, the owners have decided to simply wait out the term of their mortgages. These properties may not be preserved as affordable housing when the current owners are no longer subject to HUD approval for sale.

Increasing Options for Senior Housing and Supportive Services
In 2000, the House Financial Services Committee, recognizing the need to link housing and services for the elderly, established the "Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century". A number of AAHSA members served on the commission. The Commission's final report to Congress, "A Quiet Crisis in America", included a comprehensive assessment of frailty among seniors and the role that affordable supportive housing plays in the wellness and independence of the elderly.

The Section 202 program represents the only federal program designed specifically to provide supportive housing for low-income elderly. Subtitle B includes provisions that directly address housing with supportive services in the prepayment and refinancing of Section 202s.

- Use of Excess Proceeds
  Subtitle B would require HUD to permit providers that refinance to use any excess mortgage proceeds to use those funds to expand and enhance supportive services, to provide on-site service coordination or to otherwise further their affordable housing mission, either at the refinanced site or another site. The refinancing of Section 202 properties provides an opportunity for substantial capital to be raised and through excess proceeds and contributed developer's fees to create enough money to seed a permanent funding stream for staff service coordinator staff and supportive services.

- Eliminates the cap on funding for supportive services
  The current 15% on the limitation on the use of funding has long been a moving target for organizations striving to provide supportive housing. It has never been clearly defined what the 15% limitation applies to and the HUD offices have varying policies. The current limitation, no matter what the field office has based it on, ignores the growing frailty and service needs of the resident population that we are working with. The legislation would also lift the cap on residual receipts so that excess residual receipts could be used for supportive services or service coordinators. Lifting the caps would go a long way to sustaining service programs and service coordination.

  There remains a tension between funding services and service coordination as a regular part of a senior housing operating budget and reducing the increasing costs of the section 8 program; so these funds can help alleviate the pressure on operating budgets. Many providers would like to rely on the service coordinator grant program to fund service coordinators; but the Section 202/8 properties face dismal prospects for new service coordinator grants. The funding strain has made it less possible for facilities to incorporate the service coordinator funding into their operational budgets, leaving sponsors dependant on the annual grant process to fund a new coordinator or retain their existing one. This dependence on the grant program for permanent funding for service coordinator staff means that the majority of the funding goes towards renewals. That picture is changing slightly for the better in the new Administration; however tight budgets still mean that

lifting the caps as proposed in this legislation is critically important in order to provide service coordinators.

Section 202 Mortgage Maturation

In addition to commenting on Title VII, we would also like to comment on Section 102 of this important legislation. The 2004 GAO study that Chairman Frank requested provided Congress with detailed information about affordable housing at risk of loss by the year 2013. That report made it abundantly clear that impending mortgage maturations represent a potential loss of affordable housing. It is indeed the next preservation crisis, and nothing has changed. It's just coming sooner. In addition, the limited availability of rental assistance for older, non-profit owned properties in need of recapitalization represents potential displacement for hundreds of very low-income tenants if rehabilitation is undertaken to preserve the properties. Both issues are critical to preventing displacement of low-income renters and to preserving affordable housing. And the legislation that the Committee is now considering addresses these important issues directly.

Many of the non profits that make up AAHSA's membership look at the impending mortgage maturations as opportunities to purchase properties owned by others. Others, particularly Section 202 single asset providers, need some incentives to maintain the housing as affordable housing as mortgage maturation approaches and beyond. They may need some funding for repairs and many of the residents need rental assistance, but they do not need to completely refinance the entire mortgage as they could do if the provisions of Title VII of this bill are enacted. This group of properties has different needs than those that are candidates for prepayment and refinancing. So AAHSA would like to thank you for including Section 202 properties as eligible recipients of grants and loans under Section 102 because these properties are at risk unless Section 102 is enacted.

In addition to those sponsors that are working to preserve their communities, there is a group of non profits, typically single asset owners, with maturing mortgages that are interested in selling their properties. In many places investors have already begun to approach these owners promising a good price for the property. We have reports from Florida, New York, and Michigan that investors are offering top dollar that are appealing to owners because of board disinterest in maintaining the property. Original board members no longer are involved or the current board would like to use the proceeds to meet newer missions and purposes. In some cases HUD offices already have approved transfers of physical assets. Those properties will no longer be affordable housing.

Investors promise that they will keep the housing affordable at least until the mortgage matures (as they are required to do under the regulatory agreement and any other use agreements), and some even beyond mortgage maturation. To many sellers these proposals sound like a good deal; however, many of these properties are prime real estate and it is clear that their future as affordable housing is limited once the original mortgage matures. The provisions to give incentives to current owners or to purchasers who will keep the housing as affordable housing are

critical to preserve affordable senior housing. Without incentives, even non profit owners nearing mortgage maturity may simply wait out their mortgage and sell to the highest bidder.

Conclusion

AAHSA believes this legislation is critical for the future of affordable multifamily housing for seniors at a time when the senior population is exploding and the availability of affordable housing is limited. We are gratified that the Committee has chosen to include the Section 202 provisions in this bill and that 202 providers will be able to access incentives to maintain their housing as affordable housing at mortgage maturity.

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July 15, 2009

Hon. Maxine Waters, Chairwoman
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Hon. Shelley Moore Capito, Ranking Member
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member Capito:

Thank you for convening today's hearing on H.R. 2876, the Rural Housing Preservation Act of 2009. Enclosed is the Housing Assistance Council's written testimony on the bill. We hope that these remarks could be included in the record.

Sincerely,

Moises Loza
Executive Director

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Statement for the Record
of Moises Loza, Executive Director,
Housing Assistance Council
before the Committee on Financial Services,
Subcommittee on Housing and Community Opportunity,
U.S. House of Representatives
July 15, 2009

Thank you for the opportunity to submit testimony to the Subcommittee on the Rural Housing Preservation Act of 2009, introduced as H.R. 2876. And thank you, Chairwoman Waters and Ranking Member Capito, for holding this hearing. The Housing Assistance Council (HAC), a national nonprofit organization established in 1971, is dedicated to improving housing conditions for low-income rural Americans. HAC provides financing, information, and other services to nonprofit, for-profit, public, and other providers of affordable rural housing.

Throughout its existence, HAC has been active in efforts to preserve decent, affordable rental housing for the low-income and very low-income rural tenants who often have no other housing options. HAC convened blue ribbon task forces in 1991-1992 and, with the National Housing Law Project and with support from the John D. and Catherine T. MacArthur Foundation, in 2004-2005, to make major rural housing preservation policy recommendations. The U.S. Department of Agriculture and the MacArthur Foundation have supported HAC's Preservation Revolving Loan Fund to assist owners and purchasers with preservation efforts. HAC sponsored a national rural housing preservation conference in 2005 and a preservation training conference in 2006, has had preservation training tracks in the biannual HAC National Rural Housing Conference from 2004 through 2008, and is currently planning another national rural preservation conference for September 2009. In addition, the organization has published research reports, guides for nonprofit organizations and public agencies, numerous articles, and two special issues of its quarterly magazine on the topic.

HAC thanks Rep. Lincoln Davis and Rep. Geoff Davis for introducing this bill, and Chairman Frank, Rep. Hinojosa and numerous other Members of Congress for cosponsoring it. All of these Members and their staff have consistently supported low-income rural renters and the government's investment in decent, affordable homes.

We also would like to recognize and commend Chairwoman DeLauro, Rep. Lincoln Davis and the other members of the Agriculture Appropriations Subcommittee for supporting rural preservation initiatives in their bills.

The Rural Housing Preservation Act of 2009

The Housing Assistance Council supports H.R. 2876. The National Rural Housing Coalition and other witnesses at this hearing have provided extensive information about the need for Section 515 preservation, demonstrating the importance of the significant tools this bill would provide for the ongoing efforts of the U.S. Department of Agriculture Rural Development (RD) to preserve rural rental properties in its Section 515 portfolio.

H.R. 2876 would make permanent two demonstration programs: one to preserve and revitalize Section 515 rental housing (known as MPR), and one providing vouchers to tenants in properties that leave the Section 515 program. As noted in the testimony of the National Rural Housing Coalition and others, the MPR demonstration has proved its usefulness repeatedly over the last few years. RD's voucher program has a more mixed record.

Vouchers

RD vouchers serve an essential function: they enable tenants to continue to afford their apartments when properties leave the Section 515 program through prepayment or foreclosure. HAC is troubled by recent indications that time limits may be imposed on voucher recipients. The Senate report (S. 111-39) accompanying S. 1406, the 2010 agriculture appropriations bill, states that:

> When originated this [voucher] pilot was envisioned to provide limited, transitional assistance to aid tenants in obtaining alternative living arrangements with affordable rents . . . . The Committee directs the Secretary [of Agriculture] to review experiences and lessons learned under this pilot, and propose a program that is limited in duration and transitional in nature.

HAC has been unable to find any record of intent to limit voucher assistance when the program was created. Section 542, which authorizes RD to issue vouchers, was adopted in 1991 without time limits. There are no expressions of such intent in the appropriations bills for fiscal years 2005 through 2009, which funded the preservation vouchers; on the contrary, the bills require RD to operate the program consistent with the Section 8 voucher program, which has no time limits. RD has not adopted regulations for its preservation vouchers. The only relevant statement appears in RD's notice of fund availability (NOFA) for the FY 2008 voucher program (*Federal Register,* March 24, 2008, pp. 15473-75):

> The Rural Development voucher will help tenants by providing a short-term rental subsidy, up to 36 monthly payments, that will supplement the tenant's rent payment. This short-term subsidy enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance.

The 36-month time period is not mentioned in the FY 2009 NOFA (*Federal Register,* April 29, 2009, pp. 19510-13). It states only: "The voucher is renewable subject to the availability of appropriations to the USDA."

Even if the NOFAs and statutes did provide a 36-month limit, tenants cannot use their 36 months to make decisions if they do not know they need to make such decisions. It is HAC's understanding that the notices provided to tenants about their vouchers do not inform them of a time limit or a need to make other arrangements.

In short, then, it is not clear whether time limits exist for vouchers issued to date. It is clear, however, that time limits are not realistic for a substantial majority of Section 515 tenants, and therefore should not be imposed for past or future voucher recipients. The fixed incomes of the predominantly elderly and disabled tenants of Section 515 properties will not enable them to afford market rate rents in the future, and they seldom have other good housing options in the towns where they live.

HAC encourages the Subcommittee to add a provision to the preservation bill making clear that RD voucher holders, like U.S. Department of Housing and Urban Development Section 8 voucher holders, may receive assistance for as long as they need it and as long as funding is available.

Preservation Revolving Loan Fund

HAC recommends a possible addition to H.R. 2876. It is to include language authorizing the USDA Preservation Revolving Loan Fund. This House and Senate agriculture appropriators since 2005 have included funding in their bills for this small but innovative program, but it has not been authorized. As noted above, HAC and other state and national organizations have successfully used the program for relending to preserve Section 515 units.

Farm Labor Housing

HAC encourages the Subcommittee to add Section 514/516 Farm Labor Housing to the rural preservation bill. In FY 2008 and 2009, appropriations language made these properties eligible for the MPR preservation demonstration for the first time. HAC understands that no Section 514/516 property owners applied for MPR in FY 2008 but, now that these owners have had time to learn about the program and plan ways to use it, there are applications for FY 2009 funds. Most of the Section 514/516 buildings, like Section 515 developments, were constructed 20 or more years ago, and need renovations. A permanent revitalization program should address their needs as well.

Ineligible Owners Provision

Section 545(h)(3) of the preservation program created by this bill would make property owners ineligible if they participated in legal action related to prepayment unless they contributed a portion of any damages received, up to $100,000. Property owners contend that this provision violates the settlement agreement reached in one such lawsuit. The settlement agreement is not public, however, so those who were not parties to the litigation are being asked to accept this interpretation of the agreement's provisions without an opportunity to evaluate it.

The contribution requirement is fair and reasonable. The federal government has assisted these properties in the form of a settlement payment, and should not be required to duplicate that payment in order to preserve the properties. Owners are not asked to use their entire

settlement; their contribution is capped at $100,000. The need for the revitalization program far exceeds the resources available. To preserve as many properties as possible to serve their intended purpose – to provide decent, affordable housing to low- and very low-income rural tenants – federal funds must be stretched as far as possible.

Producing New Units

Finally, HAC observes that rural America needs not only preservation of existing decent, affordable rural rental housing units, but also production of new units. HAC commends the House for supporting increased annual appropriations for the Section 515 program in the 2010 USDA spending bill.

Conclusion

The Housing Assistance Council appreciates the efforts of Congress and the Administration to address the serious issues connected with the aging rural rental housing stock. It will not be easy to meet the national housing goal, stated in the Housing Act of 1949, of providing "a decent home and a suitable living environment for every American family." Preserving the current homes of tens of thousands of low-income rural tenants, and continuing to produce new homes for others, will be important steps in that direction.

July 14, 2009

Honorable Barney Frank
US House of Representatives
Chairman, House Committee on Financial Services
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Honorable Spencer Bachus
US House of Representatives
Ranking Member, House Committee on Financial Services
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Honorable Maxine Waters
Chairwoman, Subcommittee on Housing and Community Opportunity
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Honorable Shelley Moore Capito
Ranking Member, Subcommittee on Housing and Community Opportunity
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Dear Chairman Frank, Subcommittee Chairwoman Waters, Ranking Member Bachus and Subcommittee Ranking Member Capito:

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

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

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

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

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

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

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

Section 2. Definitions

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

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

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

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

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

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

Title III-Protection and Empowerment of Residents Facing Conversion

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

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

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

Sincerely,

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Testimony of Kristina C. Cook, CAE
House Financial Services Subcommittee on Housing and Community Opportunity
Legislative Options for Preserving Federally- and State-Assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly and Disabled Tenants
Wednesday, July 15, 2009

Thank you, Chairwoman Waters and Ranking Member Capito, for providing the National Affordable Housing Management Association (NAHMA) an opportunity to offer public testimony on the draft affordable housing preservation legislation. NAHMA represents management agents and owners involved in federal rental assistance programs. On behalf of our members, I respectfully submit NAHMA's recommendations for affordable housing preservation.

Chairwoman Waters, I would like to begin by commending your leadership on this issue. Preventing a loss of affordable rental housing is an important public policy goal and you have taken considerable efforts to make preservation a national priority.

NAHMA strongly believes affordable rental housing is an important resource that should be preserved. Our organization represents management agents and owners from both the for-profit and non-profit community who participate in federal rental assistance programs. NAHMA's mission is "to promote development and preservation of quality affordable multifamily housing by advancing legislative and regulatory policy and preparing affordable housing professionals to succeed in evolving economic and political environments." Preservation is at the very heart of what our members do. Our testimony will focus primarily on the factors that affect housing providers' decisions about preservation and our recommendations for overcoming the major obstacles to preservation.

Background: What Is Preservation?

The goal of preservation is to prevent a net loss of affordable units. To NAHMA, "preservation" means maintaining the current portfolio of privately-owned, federally-assisted apartments as affordable to low-income families through a public-private partnership which offers **voluntary** incentives to owners and ensures long-term sustainability of the properties, including the ability to recapitalize.

Preservation is a cost-effective way to prevent a net loss of affordable units, but it is not without costs. In NAHMA members' experience, preservation will usually require a rental subsidy to make the unit affordable to families at or below 45 percent of area median income (AMI). Also, properties located in high-appreciation markets with below market rents are the most difficult to preserve. A well administered mark-Up-To-market program, a preservation program which increases below-market Section 8 rents to bring them in line with comparable properties, is especially important to preserve these properties. Finally, the Section 42 Low Income Housing Tax Credit (LIHTC) has been used as a preservation tool, but it is designed to serve a higher-income population than traditional U.S. Department of Housing and Urban Development (HUD) subsidy programs and has experienced a severe disruption in these challenging economic times. Additionally, the different regulatory requirements of HUD and LIHTC programs make site management more complicated and require more staff training to ensure compliance.

What Factors Work Against Preservation?

A number of factors are weighed when owners decide whether to continue participating in affordable housing programs. These include market factors which would determine the property's viability as market-rate housing or condominiums, costs and benefits of remaining in the federal programs, long-term financial and physical viability of the property, and experience with HUD as a business partner. With these considerations in mind, I would like to discuss some of the major impediments and disincentives to preservation.

Market Forces

In April 2007, the Government Accountability Office (GAO) released a report, "Project-Based Rental Assistance: HUD Should Update Its Policies and Procedures to Keep Pace with the Changing Housing Market (GAO-07-290)." This report analyzed contract activity from 2001 to 2005. It focused on the number of opt-outs, which properties were most at-risk, HUD's preservation tools and reasons for the decisions to continue in or leave the program. GAO concluded that local market conditions are the primary factor in the opt-out decision, but they also acknowledged that other factors could eventually outweigh purely economic factors.

NAHMA agrees with GAO's assessment, but we would caution that this study was released prior to the financial chaos project-based Section 8 properties experienced from July through September of 2007.

Late Housing Assistance Payments (HAPs) from HUD and insufficient contract funding are now an economic consideration. In addition, our members are still feeling the effects of the "HUD fatigue" GAO discussed in its report.

Project-Based Section 8 Funding

On June 19, 2008, the full House Financial Services Committee held a hearing to examine the challenges to preserving affordable housing. NAHMA and other affordable housing providers shared first-hand accounts of how shortfalls in the project-based Section 8 program have had two immediate impacts on the day-to-day operations of affordable properties: late subsidy payments to owners and "incremental" or partial funding of the housing assistance payment (HAP) subsidy contracts. The detrimental effects of unreliable funding compromised housing providers' ability to manage properties effectively, diminished confidence in the federal commitment to the program, and wasted administrative time for the HUD staff who had to reprocess the funding several times for the same contract.

In testimony given on April 16, 2009 to the House Appropriations Subcommittee on Transportation and Housing and Urban Development, NAHMA commended the appropriators for taking decisive action to fully fund the 12-month terms of project-based Section 8 contract renewals. The American Recovery and Reinvestment Act (HR 1, PL 111-5) directed $2 billion to help specifically fund the 12-month terms of project-based Section 8 contracts. Likewise, the FY 09 Omnibus Appropriations Act (HR 1105, PL 111-8) provided $6.87 billion for contract renewals, plus $400 million in advanced appropriations for FY 2010. According to the House Financial Services Committee "Views and Estimates for FY 2010 Budget," the program should be able to return to fully funding 12-month contracts after the funding infusion from H.R. 1 and FY 09 Appropriations, allowing HUD to focus on regulatory changes to address the rehabilitation and preservation needs of the project-based Section 8 housing stock. While NAHMA remains cautiously optimistic, we request continued oversight from the Subcommittee to ensure that FY 09 contract renewals are fully funded and paid on time.

President Obama's FY 2010 budget proposes to preserve 1.3 million affordable rental units through $8.1 billion, $1 billion over FY 2009 appropriations, for project-based Section 8 contracts with multifamily property owners. NAHMA asks this authorizing Subcommittee to continue urging the House Appropriations Committee to provide sufficient appropriations for FY 10 project-based Section 8 renewals to fund all 12

months of the contract at the time of renewal and to minimize payment disruptions between federal fiscal years.

Furthermore, NAHMA supports the inclusion of a disincentive for late HAP payments by imposing interest penalties on HUD for making late subsidy payments to owners in Section 406 of the draft preservation bill. HUD should also be required to streamline its processes to provide more timely obligations of project-based Section 8 funds for contract renewals.

Poor Relationship with HUD—"HUD Fatigue"

Several NAHMA members, for-profit and non-profit alike, have experienced the condition GAO described as "HUD fatigue." GAO's report defined HUD fatigue as multiple frustrations with HUD that "could result in owners opting out of their contracts even when doing so might not be in their economic interest." The top sources of HUD fatigue were "HUD's one-for-one replacement policy for Section 8 units; policies and procedures that could lead to economic distress, especially Operating Cost Adjustment Factors (OCAF) payments; and a lack of clarity and consistency on HUD's part in applying policies."[1]

I would like to make a couple follow-up points to these findings. First, skyrocketing utility costs are one of the most important, if not the most important, concerns of affordable housing professionals, but HUD's OCAFs have not sufficiently accounted for spiking utility costs which occurred over the last four years. In February 2008, HUD released a policy memorandum permitting owners to convert efficiency units to one bedrooms (and waive one-for-one replacement requirements) when "it can be demonstrated that the conversion is warranted by local demands for affordable housing and results in the long-term financial and physical repositioning of the project." News of this policy revision was welcomed, but NAHMA believes additional measures are necessary when conversion is not practical because of structural and / or financial restrictions. In these cases, we urge Congress to provide an incentive for tenants to accept efficiency units by reducing their rent contribution from 30 percent to 20 percent.[2] On the third point, inconsistent application of policies and procedures, a huge frustration for our members has been HUD's lack of transparency in policy changes or "clarifications" which are

[1] See page 27 of the GAO report.

[2] Under current law, a tenant pays 30 percent of their income regardless of the unit size. We believe reducing the rent contribution for efficiency units would make these units more marketable, reduce transfers to one-bedroom units, save the property money that would otherwise be spent turning-over and remarketing the efficiency, and allow the tenant to pay less money for living in a smaller unit.

transmitted through e-mails, conference calls or notices to HUD staff and / or contract administrators but not directly shared with owners and agents.

In the GAO report, "Figure 10: Factors Contributing to HUD Fatigue"[3] lists a number of "sources of owner/manager frustration with HUD that could increase the number of opt-outs in the future." We agree with the factors GAO identified, which include inadequate OCAF rent adjustments, late subsidy payments, high administrative costs for few Section 8 units, outdated HUD policies and procedures, and inconsistent REAC scores.

NAHMA is optimistic that the new leadership at HUD will help eliminate the factors associated with past HUD Fatigue. However, we recognize that new leadership cannot resolve all of the problems. NAHMA requests that the Subcommittee continue to provide necessary oversight to HUD programs to ensure timely payments, common sense policies, transparency, and streamlined procedures at the agency.

Considerations about Long-Term Financial and Physical Sustainability

As properties age and replacement costs increase, a major concern for owners is where to find funding for recapitalization. Many owners have used HUD's Mark-to-Market program, but the assumptions used to underwrite these properties have become obsolete due to skyrocketing utility costs. The early (pre-2001) Mark-to-Markets are especially strained by the underwriting.

The reality is owners who wish to continue providing affordable housing will almost certainly have to prepare to operate mixed-subsidy properties that use several layers of financing from multiple sources. The more revenue streams are involved in the preservation deal, the more owners feel at the mercy of multiple bureaucracies. If one component of the preservation plan falls through, the whole deal could be jeopardized.

The LIHTC has become increasingly important as a preservation tool for HUD properties. It is often the only significant source of funding for revitalizing properties, maintaining affordability for HUD tenants and creating viable mixed-income communities of quality. However, the LIHTC program has experienced severe disruption in these challenging economic times. Although the LIHTC program has been the "go-to" program for older HUD properties, the financial climate and need to preserve affordable housing also bring

[3] See page 29 of the GAO report.

new challenges. First, the market for LIHTCs between owners has become even more competitive. State agencies set their own criteria for awarding the credits in their qualified allocation plans. There are no guarantees a property will receive the credits, regardless of how critical they may be to the owner's preservation plans. If the property does receive credits, there is no guarantee they will be able to find investors. In addition, the property would require extensive staff training to ensure it stays in compliance with HUD, Internal Revenue Service and state agency rules.

Owners entering the mixed-subsidy arena must also brace themselves for frustrating regulatory conflicts in HUD and the LIHTC programs. Ironically, even in the absence of new HUD programs or funding streams for preservation, HUD often hesitates to accommodate other agencies' regulations. A simple example is HUD's policy which prohibits owners of mixed-finance properties from using project funds to pay the mandatory LIHTC compliance fees imposed by state agencies. According to a newsletter issued by one HUB, "The payment of such fees from project funds is not permitted under Paragraph 6(b) of the Regulatory Agreement and HB 4566.2, Section 3-9, because they are not considered *'expenses reasonable and necessary to the operation of the project.'*" This policy could be reversed today, but HUD believes allowing these charges would unduly benefit the owners and would require more budget authority. When states impose compliance fees on LIHTC projects, payment is not optional. Owners with mixed HUD and LIHTC subsidies are not at liberty to pick and choose which requirements they will satisfy. Owners and management agents constantly strive to balance conflicting HUD and LIHTC requirements and to remain in compliance with each.

Insufficient Operating Cost Adjustment Factors (OCAFs)

Because of its relationship to long-term sustainability of preserved properties, I would like to take a moment to revisit NAHMA's concerns about OCAFs. An insufficient OCAF is extremely problematic because it is the annual factor used to calculate Section 8 renewal rents and rent adjustments under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA), and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) programs. The major OCAF criticisms prior to FY 08 were that they took too long to calculate and were obsolete by the time they were released. Unfortunately, HUD took the OCAF in a very questionable direction for FY 2008. HUD abandoned the nine price indices used to develop OCAFs in the past and replaced them with state-

level data derived from changes in operating expenses reported by properties filing Annual Financial Statement (AFS) data. HUD explained,

> "HUD calculated the average, per unit, change in operating costs (excluding debt service and bad debt expense), by state, for all projects submitting consecutive valid financial statement reports with Fiscal Year end dates between July 31, 2005 and July 31, 2007. The projects comprise all multifamily properties excluding nursing homes and hospitals. Furthermore, data for projects with unusually high or low expenses due to unusual circumstances were deleted from the analysis. These changes in actual operating costs experienced by properties within HUD's portfolio have become the FY 2008 OCAFs."[4]

Basing OCAFs on past expenditures bears no relation to current or future funding needs. This methodology does not even necessarily reflect a property's true costs in the past. It only reflects what the property was able to spend.

Recommended Actions to Preserve Affordable Housing

Immediate, decisive steps that encourage owners to continue participating in affordable housing programs should be taken before more units are lost. In this light, NAHMA has reviewed the current preservation discussion draft. There is much to like within this draft and we remain committed to working with the Subcommittee to enact a strong preservation bill. There are a number of industry supported provisions; however, I would like to focus my comments on the items most important to NAHMA. Our suggestions incorporate items that are included in the discussion draft, items we hope will be included in the preservation bill when it is introduced, recommendations that fall outside the House Financial Services Committee's jurisdiction but would greatly assist the goal of preservation, and recommendations for executive branch actions. We respectfully suggest:

1. **Restoring confidence in the guarantee of timely, fully-funded project-based Section 8 HAP payments is a cornerstone of preservation. This could be achieved by:**

   - **Providing the necessary appropriations to pay the full 12-month increments of HAP contracts at the earliest opportunity;**

     It is absolutely essential to fully fund project-based Section 8 HAP contracts in future Transportation-HUD appropriations bill. Likewise, I cannot over-emphasize the importance of

[4] Notice of Certain Operating Cost Adjustment Factors for 2008, *Federal Register* Vol. 72, No. 206, Thursday October 25, 2007, pg. 60689.

ensuring HAP payments are not interrupted due to insufficient funds or administrative problems when HUD operates under continuing resolutions.

- **Addressing any regulatory issues that affect the timeliness of HAP payments;**

  HUD should streamline its contract renewal process and improve the timeliness of Mark-Up-To-Market processing.

- **Creating disincentives for under-funding the Section 8 program and making late payments to owners by requiring HUD to make interest payments on late HAPs;**

  We believe HUD should pay interest on late HAPs, just as owners must pay late fees on missed mortgage and / or utility payments, which result from the late HAP. A precedent exists in the U.S. Treasury Department's prompt payment rule, which assesses late interest charges against federal agencies that pay vendors after a payment due date. NAHMA supports the legislative proposal in Section 406 of the discussion draft, which requires HUD to pay interest on late HAP payments to owners after 30 days. We urge the Subcommittee to preserve this important provision in the final bill.

- **Extending the HAP Contract;**

  NAHMA supports Section 509 of the draft preservation bill, which would allow renewed contracts, at the request of the owner, to be extended for up to 20 years and, in turn, help the underwriting of the project.

- **Extending exception rents to disaster damaged projects (Section 511).**

2. Ensuring long-term financial and physical sustainability of preserved affordable properties.

- **Of particular importance to NAHMA is Section 507 (b) of the discussion draft, Meeting Rehabilitation Needs of Previously Restructured Projects.** The underwriting assumptions for the early (pre-October 1 2001) Mark-to-Market properties with respect to operating and utility costs and other factors have become obsolete. This provision will allow a voluntary second restructuring to help the early restructured properties with rehabilitation needs. However, NAHMA feels that restricting rehabilitation assistance to the "qualified preservation owner," as defined in Section 2, is too limiting. Rehabilitation assistance should be available at the request of any owner of a property that was restructured prior to October 1, 2001.

- **A mechanism to deal with unforeseen spikes in operating costs is desperately needed.**

  In August, 2006 several affordable multifamily housing industry trade groups[5] developed the Recognized Increased Cost (RIC) proposal. The RIC plan would provide real time, mid-cycle relief for unforeseen operating costs between rent increases. It assumes that owners will borrow against future higher rents based on the recognized cost increase. Sources for RIC loans include residual receipts, replacement reserves, forgoing deposits to replacement reserves, or other sources such as owner affiliates. Such an approach yields three regulatory consequences:

  Baseline rents. At the next rent increase, the property's baseline rents will be increased by the RIC, as a starting point for processing the next rent increase (budget-based, OCAF, AAF, or otherwise).

  Market rents. In similar fashion, the property's 'comparable market rents' will likewise be presumed to have risen by the RIC.

  RIC borrowing costs as a project expense. Owners who borrow funds to cover shortfalls between application and the post-RIC rent increase will have the debt service on that borrowing (a "RIC Loan") recognized as a project expense ('above the line').

  HUD has declined to implement this through administrative action, citing unspecified legislative barriers due to OCAF. Therefore, we must ask for a legislative change. Draft legislation is provided in Appendix 1.

- **Meaningful OCAFs**

  As previously discussed, HUD has missed an opportunity to improve the reliability of OCAFs. We urge the Subcommittee to request a GAO study to examine the accuracy of OCAFs as an inflation factor to measure operating cost increases at the earliest opportunity.

- **Ensuring timely completion of the Mark-Up-To-Market process.**

  NAHMA has received reports from several members that the Mark-Up-To-Market process can drag out for months or even more than a year. Studies have shown that properties most at risk of opting-out are those with below market rents in desirable neighborhoods. We are requesting

[5] The RIC proposal was developed in partnership with NAHMA, American Association of Homes and Services for the Aging, National Association of Home Builders, National Leased Housing Association, National Association of Affordable Housing Lenders, National Housing Conference, National Housing Trust and National Multi Housing Council.

legislation to correct some of the more common time-lapse problems in this process. Draft language is attached as Appendix 2.

- **Providing incentives and funding for green initiatives is increasingly important as energy costs rise.**

  We would simply caution that such incentives should be voluntary on the owner's part, and should not constitute unfunded mandates.

3. **Recognizing the essential role of the Section 42 Low Income Housing Tax Credit program to preservation.**

- **It is imperative to overturn HUD's policy prohibiting owners from charging mandatory LIHTC compliance fees as eligible project expenses.**

  HUD's decision seems arbitrary and capricious when one considers that without the equity from the tax credits, many of the preserved HUD properties may have opted-out, defaulted on their mortgages, or fallen into physical disrepair.

- **We also urge the Subcommittee to continue working with the Ways and Means Committee to improve regulatory coordination between HUD and LIHTC programs.**

  Because mixed-finance properties have become so prevalent, we believe it is essential for the Internal Revenue Service (IRS) and the Rural Housing Service (RHS) to participate in HUD's Enterprise Income Verification (EIV) income matching program before HUD's final rule *requiring* owners to participate in EIV becomes effective on September 30, 2009. It is our understanding that legislation authorizing access to the Department of Health and Human Services' New Hires Directory for IRS and RHS affordable housing programs will likely be necessary to achieve this goal.

  Like HUD properties, LIHTC properties are also struggling with utility costs. In the tax credit program, as the utility costs rise so does tenants' utility allowance. When the utility allowance rises and income limits remain flat, rents decrease. This situation presents a serious challenge to LIHTC properties, for which there is no easy solution. We believe this is another area where GAO could be helpful in assessing the extent of the strain placed on LIHTC properties (including mixed-subsidy properties) by escalating utility costs and recommending solutions for dealing with this challenge.

4. Extending tenant protections when mortgages mature and when HAP payments stop.

NAHMA supports extending tenant protection vouchers to unassisted tenants in properties when the mortgage matures, as outlined in Section 104. Without these protections, many residents will face substantial rent increases or have to find new housing. We also believe enhanced vouchers or project-based preservation vouchers, which Section 105 would approve for use in lieu of enhanced vouchers, for tenants should be available when HAP payments stop for any reason (especially due to the government's failure to pay owners)–even before the end of the required one-year notice period.

5. Creating incentives to encourage voluntary transfer and preservation of affordable properties.

We urge Congress to quickly pass the Affordable Housing Preservation Tax Relief Act of 2009 (H.R. 2887), which would provide exit tax relief to owners who sell their properties to buyers who will continue operating the projects as affordable housing. We also believe a grant program that provides gap financing to qualified preservation entities (whether for-profit or non-profit) would facilitate more successful preservation transactions.

NAHMA would like to see Congress open the debt-relief for non-profit purchasers within Section 504 to for-profit purchasers who also intend to maintain the property's affordable status.

NAHMA also supports Section 101, allowing for the conversion of rent supplement and RAP contracts to project-based Section 8 rental assistance as long as it is voluntary, and Section 201, giving HUD the authority to transfer Section 8 assistance to other properties.

6. Recognizing the role of programs such as Section 202 and Rural Housing within affordable housing preservation.

- **Title VII Section 202 Supportive Housing For the Aging**

NAHMA supports the development and preservation of affordable and supportive senior housing. It would reduce high vacancy rates in efficiencies by requiring the conversion of obsolete efficiencies into one-bedroom units. The provision would permit the use of excess proceeds to further non-profits' housing and services missions by constructing new or rehabilitating old housing or providing additional services to residents. NAHMA supports the subordination of debt, which will make preservation of existing units easier. NAHMA also supports the proposed project-based rental assistance program, which will allow Section 202 properties built between 1959 and 1974—some of

the oldest affordable elderly housing stock—that do not currently have rental assistance to be refinanced and rehabilitated.

- **Title VIII Rural Housing Preservation**

This section would offer much-needed tools to help preserve the USDA-subsidized rural housing portfolio. It requires each USDA-RHS property to create long-term viability and financial restructuring plans, as well as physical needs assessments, and provides property owners with additional preservation incentives. While NAHMA supports the viability and financial restructuring plans for rural properties, we feel that the 30-year capital needs assessment is too far into the future to create a substantial outline of the property's needs for the period. We would like to recommend capital needs assessment for 20 years in order to refinance and restructure. NAHMA also supports making voucher assistance available to each eligible household, and permiting USDA to extend rural tenant protection vouchers to families residing in foreclosed-upon projects.

7. **The highest levels of HUD's leadership should take meaningful, proactive steps to restore a feeling of partnership with the multifamily owner and management agent communities.**

There is room for common sense and transparency in regulatory compliance. Simple gestures such as allowing reasonable implementation time to incorporate policy changes, breaking the cycle of micromanagement, placing an emphasis on the "reduction" component of the paperwork reduction act as it applies to multifamily forms and information collections, and following transparent procedures for issuing policies would go a long way in addressing the "HUD fatigue" owners and agents feel.

Proposed Policies that NAHMA Could Not Support in Their Current Form

As we reviewed the current discussion draft, there were several provisions that our members consider counterproductive to preservation. NAHMA could not support housing preservation legislation that would: severely restrict owners' options to sell or operate privately-owned properties; require public disclosure of confidential, proprietary and personal information; or create burdensome, unfunded administrative requirements, such as additional paperwork. Such measures would inadvertently prompt more owners and agents to leave the HUD portfolio rather than preserve their properties.

Section 103 Federal first right of purchase before conversion of multifamily housing

NAHMA strongly opposes restrictions on the sale of private property and the automatic preference for non-profit purchasers proposed in Section 103, which creates a federal first right of purchase before conversion of multifamily housing. We strongly believe the most successful approach to preservation is by providing *voluntary* incentives that encourage owners to continue operating the property as affordable housing or sell the property to a purchaser (who may be either a non-profit or for-profit entity) who will continue to operate it as affordable housing. We look forward to working with the Subcommittee to authorize strong incentives which will make preservation the *first option of choice* for property owners; however, we believe the approach proposed in this Section constitutes a "taking" of private property, which will prompt lawsuits. Owners have contractual rights to prepay, opt-out or remain in the program until the mortgage reaches maturity.

NAHMA does believe there is a need for gap financing to facilitate preservation, as proposed in Section 102. Members have reported that their attempts to sell properties to buyers who intended to continue operating them as affordable housing would have been greatly assisted by a preservation grant program to help purchasers acquire, rehabilitate, and then operate the properties. However, the key to awarding this assistance should not be whether a purchaser is "for-profit vs. non-profit," but whether the buyer is a "preservation-entity" that has organizational capacity and is willing to do long-term preservation (including significant, quality rehabilitation and supporting long-term use restrictions). Targeted exit tax relief, such as the Affordable Housing Preservation Tax Relief Act of 2009 (H.R. 2887) would also provide an effective win-win incentive for owners to sell their properties to those who will continue to maintain affordability.

Section 303 Ongoing enforcement of housing quality standards

We also find the discussion bill's approach to enforce housing quality standards in Section 303 problematic. Procedures already exist for HUD to deal with serious violations under REAC, the 2530 process, and annual management reviews. Additional penalties—such as withholding HAP payments, withholding rent increases, tenants withholding rent, using withheld funds to make repairs, or assuming possession and management of a project to take corrective actions—could seem highly unfair and punitive to owners who are already considering opt-outs. As an alternative, we respectfully

suggest holding on oversight hearing on the REAC process in order to improve the functionality of the existing program.

Section 304 Third party beneficiary status for residents

NAHMA strongly opposes giving third party beneficiary status to residents, as outlined in Section 304. We believe it would wreak havoc on an already cumbersome contracting process and encourage frivolous lawsuits. Tenants already enjoy protections from eviction under state and local law and there are rights afforded to tenants in Mark-to-Market use agreements, but with checks and balances. Third party beneficiary status would give tenants the same rights as stockholders, but presumably without the same obligations or consequences since they are free to move at any time.

Section 305 Resident Access to building information

NAHMA also strongly opposes legislative language that would publicly disclose documents containing personal and proprietary information. Many HUD and property documents (i.e., 2530 information, HUD-92410 annual operating statements, subsidy contracts and HUD/owner correspondence, statements of balances and expenditures, and management contracts) contain such private and proprietary information. We are especially opposed to public release of previous participation certifications (i.e., 2530s), because they include sensitive information such as individuals' social security numbers. Releasing that information could put owners, investors, and managers at risk for identity theft. In addition, correspondence among owners, agents, and HUD often involves resident issues and personal information that should remain confidential.

Section 802 (h)(3) Ineligibility Because of Action of Prepayment

NAHMA strongly opposes the ineligibility of rural housing restructuring for those who are involved in ongoing civil action to authorize the prepayment of the Section 515 loan for the eligible project or a damages action against the Emergency Low Income Housing Preservation Act of 1987, unless they agreed to repay a portion damages. This provision violates a court settlement agreement and penalizes owners who exercised their legal rights to prepay.

Conclusion

Thank you again, Chairwoman Waters and Ranking Member Capito, for allowing me to offer NAHMA's testimony today. We sincerely appreciate your efforts to preserve affordable housing, and

we know that you are committed to this issue. Please be assured that we are also committed to working with you and your staff to achieve this goal.

APPENDIX 1: DRAFT RECOGNIZED INCREASED COST (RIC) LANGUAGE

SEC. ____. PRESERVING PROJECTS FROM UNEXPECTED COST INCREASES.

(a) GENERAL. – An increase in the cost of operating an eligible multifamily housing project that is not reflected in the most recently completed annual or other rent adjustment, as determined by the Secretary of Housing and Urban Development ("Secretary"), shall be compensated for in accordance with this section.

(b) ELIGIBLE COST INCREASES. – Eligible cost increases include (1) higher charges for utilities, insurance, property taxes, labor, supplies, equipment, and regulatory requirements; (2) unreimbursed losses from natural disasters; and (3) such other costs as the Secretary may approve, but are limited to those cost increases that cannot be paid for out of excess cash flow to the project or excess project reserves, as determined by the Secretary.

(c) ELIGIBLE MULTIFAMILY HOUSING PROJECT. – An eligible multifamily housing project is a multifamily project for which rents or rent adjustments are required to be approved or determined by the Secretary or the Secretary's designee.

(d) SOURCE OF FUNDS TO COVER COST INCREASES. – For purposes of this section, the Secretary may approve the payment of eligible cost increases from (1) funds in a project replacement reserve or other project reserve; (2) cash made available by foregoing required contributions to a project replacement reserve or other project reserve; and (3) contributions from the project owner or related entity.

(e) TREATMENT OF FUNDS. -

(1) LOAN. – Funds used to pay for eligible cost increases pursuant to this section shall be treated as a loan from the project or project owner, repayable to the project or project owner, without interest, as a payment of a project expense, and amortized over such term as the Secretary may approve, but not to exceed three years.

(2) SOURCE OF LOAN REPAYMENT. - The Secretary, or the Secretary's designee, shall increase the project's next rent adjustment, and any succeeding rent adjustments that may be necessary, by the amount of the loan to be amortized for the period covered by the rent adjustment.

(3) IMPACT ON MARKET VALUE. – During the period the loan is being repaid, the amount of any annual increase in rent to cover amortized repayments shall be added to a determination of comparable rents in the area in connection with the renewal of a housing assistance payment contract pursuant to section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note).

(f) INADEQUATE FUNDS. – If a project has inadequate funds to cover eligible cost increases, the Secretary may approve an immediate rent increase to cover those costs.

(g) TIMING. – If the Secretary, or the Secretary's designee, does not approve or disapprove a payment in accordance with subsection (d) within 30 days of the project owner's request, the project owner may advance funds in accordance with subsection (d) and such funds shall be treated in accordance with subsection (e).

APPENDIX 2: DRAFT MARK-UP-TO-MARKET LEGISLATION

SEC._____. CONTRACT RENEWALS AT MARKET RENT.

Section 524(a) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding the following paragraph at the end:

"(6) PROCESSING MARK-UP-TO-MARKET REQUESTS. –

"(A) EFFECTIVE DATE OF RENT. – A rent established at the comparable market rent shall be effective not more than 120 days after a project owner has submitted a request pursuant to paragraph (4)(A) of this subsection. The minimum contract term of 5 years specified in paragraph (3) of this subsection shall commence on the effective date of the rent.

"(B) SHORT-TERM CONTRACTS. – If a final determination on a request made pursuant to paragraph (4)(A) of this subsection and execution of a renewal contract is not made prior to the expiration of a contract, the Secretary shall offer one or more short-term renewal contracts at current rents as adjusted by a partial year operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment), subject to a subsequent adjustment in rent in accordance with subparagraph (A).

"(C) TIMELY COMPARABLE MARKET RENT DETERMINATIONS. – The Secretary shall make a comparable market rent determination not more than 90 days after a project owner has submitted a request pursuant to paragraph (4)(A) of this subsection. If the Secretary fails to make this rent determination within 90 days, rents shall be established at the levels contained in the project owner's comparable market rent study if this study is conducted by an independent certified appraiser who meets general qualification standards issued by the Secretary.

"(D) CORRECTION OF ERRORS. – Within 30 days after the Secretary has made a comparable market rent determination, a project owner shall be entitled to have errors in the comparable market rent study relied on by the Secretary in making a determination of market rent corrected. The project owner also shall be entitled to have comparable properties used by the Secretary that are clearly inappropriate replaced by appropriate comparable properties. The Secretary shall make any corrections requested by a project owner and any redetermination of market rent within 30 days of the owner's request."

Testimony on the Housing Preservation and Tenant Protection Act of 2009
National Low Income Housing Coalition
presented to the
Financial Services Committee
Subcommittee on Housing and Community Opportunity
United States House of Representatives
July 15, 2009

Chairwoman Waters, and Ranking Member Capito, Chairman Frank and Ranking Member Bachus, and members of the Subcommittee, thank you for the opportunity to submit testimony on the Housing Preservation and Tenant Protection Act of 2009.

The National Low Income Housing Coalition (NLIHC) supports the aims and provisions of the June 23, 2009 draft of the Act.

In particular, in this testimony we would like to indicate our strong support for Section VI, which calls for the creation of a preservation database, and we want to thank you for including these important provisions

For the last four years, NLIHC has been using and assessing the available data on affordable housing subsidies from HUD, the U.S. Department of Agriculture, and local agencies as part of a project to assess the opportunities to create a national preservation database and the usefulness of such a database to local practitioners.

As part of this project we have built and maintained integrated address-level databases of the subsidized affordable housing stock in Washington, D.C. and Northern Virginia, and worked with partners across the country in similar efforts. As part of our work in Washington, D.C. and Northern Virginia we convene monthly Preservation Network meetings, informal groups of local government officials, developers, and advocates who review the data, discuss and flag at-risk properties, and coordinate a preservation response. Regional HUD staff members participate in these meetings.

Based on these experiences, we can say unequivocally that the database proposal in this bill is needed, practical, cost-effective, and potentially transformative for the way HUD, USDA, and their various partners do business. Ensuring that regularly updated, consistent data about assisted projects is readily available is important to ensure that the federal government can effectively manage its portfolio, Congress can oversee the use of federal resources, and communities and advocates can monitor and preserve important housing resources.

Title VI of the draft bill would do three things:

- Ensure that the data needed to monitor and preserve assisted housing is publically available and regularly updated
- Allow for the creation of a single database for all federally assisted properties based on a unique identifier for each assisted property

- Ensure the most comprehensive picture of the nation's assisted housing stock by providing grants to states and localities to facilitate the integration of local subsidy data into the nation's preservation data infrastructure.

Currently, HUD provides a considerable amount of data on federally subsidized affordable housing projects on its website. There is a project-based Section 8 database, databases for FHA subsidized and insured mortgages, a Section 202/811 database, and a Low Income Housing Tax Credit database containing data HUD collects on the properties in this Department of the Treasury-administered program.

There are, however, significant gaps in what data are available, and each of these sources provides a slightly different base set of data. Furthermore, much of the useful data on these programs that HUD has available is not being made public, even when it is not necessary to keep it confidential. To properly oversee and preserve the federally assisted housing stock, Title VI would require a consistent set of data to be released to the public, including missing elements such as information about the ownership of assisted properties and the owners' intentions with respect to continuing the property as part of the assisted inventory, bedroom count, tenant incomes, and physical status of the property, including the three most recent Real Estate Assessment Center (REAC) scores.

For programs such as HOME, Housing Opportunities for Persons with AIDS (HOPWA), and public housing, HUD headquarters collects data that are not made public. For programs such as the Section 8 Mod Rehab program and the project-basing of Housing Choice Vouchers, data are held by HUD Field Offices and public housing agencies. USDA maintains a significant amount of data on its projects but little is publicly available. Title VI would require the same consistent set of relevant data from these programs.

Even where data are currently available and useful, they often appear with a significant time lag. Without a statutory requirement to provide the data, the availability and timing of data releases can vary considerably both across and within programs. For example, the last public release of the physical inspection scores from HUD's Real Estate Assessment Center is from September 2008, though the inspections occur monthly and are of critical importance to identifying properties that HUD views as troubled. The release prior to this was November 30, 2007. Prior to 2007, REAC scores were not formally available to the public at all. We are also currently unable to access the Active 202/811 Loans and Active 236 Projects data tables. To address this issue, the bill would clarify that all information be publicly available and updated regularly.

Providing additional, consistent and updated data is an important step to improving the nation's data infrastructure for preserving affordable housing, but it is not sufficient. Data kept in separate program silos is of limited use to practitioners. A project with a soon-to-expire Section 8 contract is at significantly less risk of being lost from the affordable housing inventory if it is paired with a continuing Section 202/811 subsidy than if not. A single database would illuminate such valuable information. When these

data sets are combined, as the bill would facilitate, the information will be much more accessible as a preservation tool and as a local planning tool.

Similarly, relying on simply aggregating data from these separate subsidy databases can lead some users to miscalculate the assisted units within a community. For example, in Washington D.C., using various federal and local data sources we find 601 separate instances of federal and local assistance to properties containing nearly 70,929 units. However, as a result of the layering of multiple subsidies in a single property, when these data are integrated at the address level there are in actuality 337 unique properties receiving some form of assistance in the city and these properties contain just 37,854 units. For those interested in an accurate assessment of the nation's housing stock as well as those interested in neighborhood and individual properties, having integrated property level data is vitally important.

Today, the task of combining and integrating these data is not a simple one. While the Section 8, Federal Housing Administration and Section 202/811 programs have a shared ID number that allow these data to be combined, the other datasets do not. This means that data from different datasets must be painstakingly matched based on names, addresses, and property characteristics. When this fails, web searches, phone calls and field observations are necessary to determine whether a single property is being described by two or more of the program datasets.

This difficulty in integrating the various program data appears to affect to HUD itself. The most recent Picture of Subsidized Housing publication, for example, the closest HUD comes to publishing a detailed and integrated accounting of its properties, is based on 2000 data and was only published in 2006, a delay attributed in part to data integration difficulties.

Title VI of the draft bill would address data integration by requiring HUD to attach a unique identifier to each property receiving federal assistance. This identifier could then be used, by HUD and others, to combine data from separate subsidy-specific databases to create a single picture of the assisted housing stock at the national level or in individual communities.

Finally, many states and localities provide their own project-based subsidies. In some instances, state and local programs substitute for federal assistance and in other areas they complement it, sometimes deepening the level of assistance or extending the period of affordability. In many projects, federal assistance such as HOME or Low income Housing Tax Credits is layered with local financing or even operating or rent supplements. State agencies and local jurisdictions often keep their own databases of local and federal subsidies.[1] States and localities need to be helped and encouraged to make their data available and integrated into the national system. Title VI of the draft bill does this by authorizing grants, administered by HUD, to collect and make public

[1] For a state-by-state indication of these state and local efforts see a survey by the Shimberg Center for Housing Studies, University of Florida http://preservation.shimberg.ufl.edu/index.html

information about state and local assistance provided to properties covered by the bill or to other properties assisted by states and units of local government.

Conclusion
Clearly a better data system is needed. To correct the issues described above, the preservation database in this bill simply asks HUD to regularly publish information that it or the USDA for the most part already have and will continue to collect. To HUD's credit, many of these data elements are already made public. In our research on the bottlenecks to the creation of a national database, NLIHC was repeatedly told by HUD and USDA staff that what they lacked were not the data or the will to create a more rational and regular public data program but the clear Congressional direction on which data to release and when. Title VI of the draft bill provides that guidance, defines a clear baseline of required data and a schedule for their release, which HUD may choose to exceed by providing more data, more frequently.

The establishment of a preservation database could be transformative for HUD and those who work with HUD. With shared and well understood data, HUD and those it serves, from the tenants to the taxpayers, can more quickly reach an understanding of preservation issues and work on solutions.

From the perspective of an intensive user of these data, these reforms are extremely practical and are necessary for well-functioning preservation efforts. Providing a way in which data can be easily combined and reconciled will save countless hours of work in local planning departments, nonprofits, and private firms. The database will also help HUD do its job more effectively. As the Secretary said in his testimony before the House Financial Services Committee on June 25, "a comprehensive database would help us do a far better job of preserving as many units as possible for the least amount of money."

About the National Low Income Housing Coalition
The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes.

The National Low Income Housing Coalition's 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 homes, especially those with the most serious housing problems, including people without homes.

NLIHC is entirely funded with private donations and receives no federal funding.

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