AFFORDABLE HOUSING PRESERVATION AND PROTECTION OF TENANTS

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

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AFFORDABLE HOUSING PRESERVATION AND PROTECTION OF TENANTS

Thursday, June 19, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the committee] presiding.

Members present: Representatives Frank, Waters, Velazquez, Watt, McCarthy, Lynch, Scott, Green, Cleaver, Murphy, Speier; Manzullo, Capito, and Neugebauer.

The CHAIRMAN. This hearing of the Committee on Financial Services will come to order.

This is a continuation of an interest I have had for some time. When I was chair of the Subcommittee on Manpower and Housing, as it was then called—we changed the name—of the Committee on Government Operations back in 1983, I began hearings on the issues of expiring use, because coming from Massachusetts, I had experienced this.

As a matter of fact, one of the first projects done under this program dating back to the 1960's was the Castle Square project in the South End of Boston. And when I ran for the State legislature in 1972 in downtown Boston, the heart of the only reliably Democratic precinct in my business, so I became quite attached to it and worked with it. People here who know of it, who would said it was an example of the importance of this housing, how many?

In 1972, Boston was going through difficult times, in particular, racially. This project, affordable housing, was located in the South End, then a poor, working class neighborhood on Tremont Street between Arlington and Berkley in the South End. And it was a haven, I found, for a number of interracial couples, because we were in Boston at the time in a period where, frankly, there was a lot of racial tension; and, interracial couples, to be honest, could face problems if they lived in certain neighborhoods. One or the other partner could have encountered some hostility.

Now, if you were rich enough and you were interracial, you could move to a suburb where that was less likely to be a problem. But I was struck by the fact that this publicly-aided resource became a place where people of limited income and interracial couples could live in a kind of social peace. It was an example of how the public sector can behave appropriately.

We moved them well beyond that, but it was important at the time, and I learned at the time, too, that these were projects which

were affordable temporarily. But because of decisions made years ago—none of us here made them—they could expire. Now, here is the problem, and it is an interesting one.

We now face a serious problem in trying to get affordable housing built in addition to the problem of resources. And it is what in my judgment is an excessively negative view towards people in neighborhoods. There is an unduly critical approach. Whenever you talk about building any kind of affordable housing, you run into, "Oh, not near me," and, "It's going to ruin my neighborhood."

The fact that we have this problem with preservation is one example of how inaccurate that perception is, because what we are now facing is this: We are talking about preserving in an affordable way housing that was built 30 or 40 years ago. I know at the time it was built, not today's neighbors—they probably weren't around—but people very much like the people who today object to the erection of subsidized housing, were complaining about this housing saying, "Don't build this in my neighborhood. You're going to deteriorate my neighborhood! I don't want those projects in my neighborhood."

And what do we have today? The contemporary equivalent of the people who objected to the housing in the first place now want to buy up the housing and move the poor people out. In other words, contrary to this objection that it was going to ruin the neighborhood, it is now deemed to be so attractive that we have to protect the poor people economically against being priced out of this housing by people who objected to its construction in the first place on the argument that it was going to be a blight.

I hope people will understand this. I was particularly struck by that, and so obviously there was an overwhelming logic to this. Indeed, the fact that we still do have this problem of where to locate housing, there is an overwhelming argument for preserving this housing, because it averts the debate about where to put it.

Preserving existing affordable housing greatly improves our ability to get the housing done. It is also almost certainly going to be economical. Now, there has been some difference here. In the late 1980's, my colleague Joe Kennedy and I, under the leadership of one of the great housing advocates in our country's history, Henry B. Gonzalez, adopted some legislation to try to preserve the affordable housing.

Let me be clear. I wish they hadn't passed a law that gave the owners the right to opt out, but I also wish I could eat more and not gain weight. My wishes are often not binding, and so, we have to accommodate ourselves to reality. We cannot abrogate people's constitutional rights. We can give people inducements to keep this housing, and, fortunately, in many cases, the people who did this are people who want to do this.

What we did was to provide the best inducements we could to stay in. Now, when party control changed, there was a difference in philosophy. And beginning in 1995, the legislation that we had in place to preserve the tenancies was replaced by legislation to protect the tenants. But as those tenants die or move out, the units are lost.

It is also kind of expensive, and here is my problem: It was part of this voucher thing, and I think the voucher program is a good

one. Enhanced vouchers, of course, are costly, but the basic problem is if you have a voucher only program, and it is a program where you only have annual vouchers, you are adding to the demand for housing in a way that does not help the supply. And when that provides some equity, it generates upward price pressure.

I am for the voucher program, but it should be accompanied by efforts to deal with the supply as well. We are now going back to that, and I hope that we will be able to come up, and I know various groups are working on it and I appreciate that. But from HUD to the tenant groups to others, we want to preserve the housing.

People may not understand that until it happens, but we saw in New York State, in New York City, the outcry when it looked like Starrett City might go out of the inventory. And we worked together, the House and Senate, and we have language in the bill that I hope is going to pass that will preserve Starrett City. We have had others come to us, as well.

Our colleague here on this committee, the gentlewoman from Ohio, Ms. Pryce, has sponsored a bill that would protect some housing from going out of the inventory in Columbus, work done by Ohio State. Mr. Dingell from Michigan, Mr. Markey, we have been doing it ad hoc. The time has come to do the best we can overall.

Now, let me just say, and I appreciate the indulgence, I invited a witness who couldn't come for health reasons, but let me read an excerpt of his statement.

"Preservation of affordable housing is an issue we have been grappling with for many years. I have been strongly committed to the idea, since 1967. In 1977, I was approached by a group of tenants from Methunion Manor, a HUD-assisted, church-sponsored, nonprofit property located in Boston's South End." Not the one I talked about, but one I visited last Monday—Methunion Manor and the church, it's mainstay.

"Methunion Manor was built in 1970 when the South End was a low-income neighborhood undergoing urban renewal. Seven years later, in part because of the lack of adequate HUD asset management tools, the property had fallen into financial default and physical distress. At the time, like many urban communities in America today, the South End had begun to gentrify. The Department of HUD which insured the mortgage was about to foreclose on the property." By the way, this is in a Democratic Administration. This is a nonpartisan issue. He is talking about 1977, the Carter Administration.

"The tenants believed, and rightly so, that their buildings would be sold to the highest bidder without the existing, long-term, affordability requirements, and they would all be pounced out of their homes. I worked with members of this committee to enact a provision, housing and community development amendments of 1978, that for the first time required HUD to sell properties facing foreclosure to groups that would preserve affordable housing, including local governments and tenant nonprofit organizations, or nonprofits, and provided adequate resources to ensure affordability and decent quality. As a result of that legislation, and with HUD's subsequent cooperation, Methunion Manor is today a thriving, af-

fordable, limited equity cooperative that is only controlled by its residents and which continues to contribute to the South End's historic diversity."

And, it closes with a plea: "The time to act is now. I commend the committee for examining ways to maintain the existing supply of affordable rental housing and allow us to focus our efforts on preserving units protecting the tenants."

And there is a statement submitted by former Senator Edward Brooke, who served in the United States Senate for 12 years and was, as he indicates here in 1977–78, one of the first to get legislation enacted to preserve affordable housing.

So I want to stress again; this is a bipartisan issue. This began with a Republican Senator preserving affordable housing from an effort that was going to be undertaken by a Democratic Administration; and, what Senator Brooke acted on, and what he urged us to do, he was of course also the author of the Brooke amendment, which is the basis for limiting the rents that are charged in public housing and subsidized housing.

So I am very much moved. Senator Boucault, when he heard about what we were doing and volunteered that he would like to be helpful in the effort, hoped to be able to come. For health reasons, he wasn't able to come, but he did submit this statement, because, as I said, he is really the pioneer in what we are trying to do. He was a Republican Senator who was very concerned about housing. And I hope we can continue these efforts.

I appreciate the indulgence of my colleagues and I now recognize the ranking member of the subcommittee, the gentlewoman from West Virginia.

Mrs. CAPITO. Thank you, Mr. Chairman, for your leadership on this issue and for holding today's hearing on affordable housing preservation.

As we know, since the 1950's, the Federal Government, mainly through HUD, has subsidized $1.7 million in rental units and over 23,000 privately-owned properties that are generally affordable to low-income tenants, those with incomes 80 percent or less of an area's median income.

HUD supported the development of affordable housing by offering property owners favorable mortgaging financing, long-term rental assistance contracts, or both, in exchange for the owner's commitment to house low-income tenants for at least 20 years, and in some cases up to 40 years. In addition, through the favorable financing provided through these years, many of the properties received long-term rental assistance provided under various programs such as Section 8, rent supplements, and rental assistant payment programs.

The properties subsidized under these programs represent a significant source of affordable housing across the country. Many of the commitment periods will be completed within the next several years, and when owners pay off the mortgages, the subsidized financing ends and so does the requirement to keep these units affordable. Therefore, the end term of the mortgage could result in increased rents, a source of great concern to all of us.

One of our responsibilities here today will be to understand what happens to all of those tenants, many of them elderly, when these

mortgages expire or mature. In some cases, there are provisions, either through the State or Federal or local governments that will assist in finding or preserving affordable housing. In other instances, however, there will be no assistance, and development owners will be free to charge market rates that could be and would be, in a lot of cases, out of the tenant's reach.

Today's hearing will begin to lay the foundation for our understanding of this very complex matter. Notwithstanding the tenants' concerns, however, I think we should applaud the owners of these developments for their participation in these affordable housing programs. In a country such as ours, free enterprise allows owners of private property to use the property as they please. I am hopeful that some of these owners will find it fruitful to continue to provide affordable housing to low-income tenants.

How we address their needs as owners will greatly impact how we can preserve a very successful private/public partnership that leverages private capital to achieve public policy goals.

Mr. Chairman, thank you again for your leadership on this issue, and I look forward to hearing today's testimony.

The CHAIRMAN. Are there any further members who wish to make opening statements?

The gentleman from Massachusetts.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. Chairman, as you know, I grew up in public housing in the Old Colony Housing Project in South Boston, so I have a special place in my heart for the families who now rely on affordable housing. I appreciate you holding this hearing today to try and analyze the impact of the loss of affordable housing in our communities.

I recently, like the chairman, had an opportunity to visit one of the affordable housing communities in my district in Boston—the Georgetown Homes community—and when visiting there, it underscored for me why changes to our housing preservation system are so important at this time.

For more than 35 years, Georgetown Homes has provided quality housing to more than 3,500 residents, and nearly 1,000 affordable apartments, and they currently have a waiting list to get in. When I compare the public housing that I lived in to Georgetown Homes, it is a vast improvement. However, in the next 3 to 5 years, Georgetown Homes will have fulfilled its pledge to provide affordable housing for 40 years, and, in the absence of changes to the current law, many of the Georgetown Homes units will become unaffordable for their current residents.

Georgetown was originally created as two separate developments back in the 1960's, and some resident apartments receive project-based Section 8 rental assistance, while others do not. These two developments that were merged have always been maintained by one management, and very well by the way, and they were formally, financially merged together under one mortgage when the original loan for the development was pre-paid in 2004.

But because they were originally purchased in separate transactions, when the affordability restrictions for the property end in a few years, some residents will be protected while others will not. This is just one example, and I'm sure this is replicated thousands of times across the country. So I appreciate our efforts here to try

to come up with legislation that will address these situations so that we can proactively reassure the tenants that they are not going to be tossed out of their homes when these restrictions expire.

With that, Mr. Chairman, I will yield back.

The CHAIRMAN. If the gentleman would yield, let me just say that he raised a very important point.

I know how seriously he has been working on these issues and I will address this to HUD and I did have a conversation, in fact, with the new Secretary on the question of Detroit. I hope that help is on the way for these projects, and I hope that no one wants to be the last person to die in a war. We don't want any group of tenants to be the last ones who were evicted before help arrived.

So I am hoping that we can work with HUD to show some flexibility and maybe extend this period and there is always the option of bill-by-bill. But I think it would probably be better if we could get some understanding of how to approach these things, and I do expect—and I think there is a lot of bipartisan support for this—that we will be able to deal with something next year.

I should add, by the way, that this is not only a city problem, but there's a rural preservation piece, which goes through the Agriculture Department that the gentleman from Tennessee, Mr. Davis, and the gentleman from Kentucky, Mr. Davis, have collaborated on and that will be part of it. So we will be working to try to avert any irrevocable actions before that.

The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman, and I thank you for your insightful analysis. I thank the ranking member as well for her comments.

Mr. Chairman, I am concerned about a number of things. The Section 8 vouchers are a plus but we do have circumstances wherein they don't meet needs. For example in Louisiana, down in New Orleans, the Section 8 vouchers were available but there were no properties available to use the vouchers such that you could have shelter. That caused some consternation.

I am also concerned about the waiting list. Some of our authorities will literally suspend the waiting list, and, when this is done, then you have no way of knowing how many people are actually in need, because the list has been suspended and they suspend it sometimes for long periods of time, such that people who actually need housing can't record this in such a way that we here will have empirical evidence of what the actual need is. That causes me some concern.

In this country, homelessness is a real problem: 800,000 people are homeless; and about a quarter of them are veterans. In my State alone, we have 16,000 veterans; in my City, 2,400. I am concerned that we do have the Section 8 vouchers to help people move from the streets of life to shelter as quickly as possible, but I do think that the notion of one-for-one replacement with the housing stock that we have in certain areas is of paramount importance.

So I come back again to Louisiana and to post-Katrina housing wherein we have actually had some units to be raised, and we have not had a raising after having had a razing, meaning demolition. But we haven't started the construction, and I remember the chair-

woman of the Housing Subcommittee being very vocal about trying to have one-for-one replacement.

She speaks well for herself, but I do want to join her in this notion that one-for-one replacement is of paramount importance, especially in an area like New Orleans, Louisiana, or Louisiana in general, where people are trying to get back home and we are eliminating the housing stock.

I thank you very much for the time, Mr. Chairman. I will have to leave at some point and I apologize for this. But I assure you I will be monitoring the witnesses and the activities of the committee.

I yield back.

The CHAIRMAN. Are there any further members who wish to make opening statements?

The gentleman from Missouri.

Mr. CLEAVER. Thank you, Mr. Chairman.

I only have a short statement. I, like my colleague, grew up in public housing, and sometimes experienced some very ugly living conditions. But, at least, we had housing. I left the office of Mayor of Kansas City in 1999. Shamefully, we have not had a single, affordable housing unit come online since 1998—the largest City in the State of Missouri, and not one unit. I speak with the heads of CDCs who are all outraged and at a time when the subprime crises is causing all kinds of housing problems all over the country, the neediest people in our community are experiencing even more trauma, and I am very anxious to explore with you ways in which the largest city in my congressional district can do something about the construction of affordable housing. It is woefully inadequate and embarrassing.

I yield back the balance of my time.

The CHAIRMAN. If there is no further discussion, we will hear from our witnesses, and I am pleased that we have a very balanced panel.

First, we have Mr. John Garvin. Let me say that when I raised this issue initially with Secretary Jackson some time ago, he told me that Mr. Garvin, who was the Deputy Assistant Secretary for Multi-Family Housing, would be the responsible individual. I have found him to be exactly that, and I appreciate the chance to discuss this with him.

We also have Shaun Donovan, the commissioner of the City of New York where we have just, I think, managed to show how this can be done with Starrett City.

And Mr. Clarence Snuggs from the Maryland Department of Housing and Community Development, who has worked with us before on the questions of foreclosed property. So, I think, having the Federal, State, and City is exactly the appropriate balance. And let me just say as we go forward, it would be my hope that whatever legislation we adopt would offer these incentives, not just to the federally-funded programs, but to the State programs as well. Tenants are tenants and affordable housing is affordable housing, and those States that stepped up and tried to do something should, I think, get the cooperation and recognition as well.

Mr. Garvin, we will begin with you.

STATEMENT OF JOHN L. GARVIN, DEPUTY ASSISTANT SECRETARY FOR MULTI-FAMILY HOUSING PROGRAMS, AND SENIOR ADVISOR TO THE FEDERAL HOUSING COMMISSIONER, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. GARVIN. Thank you, Chairman Frank, Ranking Member Capito, and members of the committee.

I am very pleased to be here today to talk about the Housing Preservation and Tenant Protection Act of 2008. Secretary Preston and Commissioner Montgomery both send their regards and their thanks for holding this hearing.

As our policies illustrate, we are very committed to preserving safety and affordable housing when feasible; and, I have to admit, I haven't read this whole legislation. Even the summaries are very long and it's intensive, but I really thank you for taking serious recognition of the need for a national, affordable housing preservation policy, and I think this moves us much closer to that.

Well, you know, we do not have an official position on this legislation yet. I am very, very pleased, and I think it is real progress that this bill does propose to give the Secretary of HUD the authority to provide enhanced vouchers to eligible tenants from 236's and 221(d)(3), below market rate/interest rate developments, is an excellent move for tenant protection.

As I said, this is a powerful step and I really thank you, Chairman Frank, and your staff, for taking such an intense position on preserving affordable housing. Even before I came to HUD, I ran a great organization of tax credit developers and syndicators, investors, and property managers. We appreciate all of your efforts to preserve and construct new, affordable housing.

As you know, one of our strongest preservation tools at HUD, and it has been extremely successful and it even comes the closest, I can say at HUD, to being a fine running machine, is the Mark-to-Market program, that to date would preserve 200,000 units and save taxpayers more than $2.1 billion. It is definitely our strongest.

On our project-based, Section 8 portfolio, I am also pleased to say that we do have more than a 90 percent retention rate, and while a 10 percent loss isn't good, 90 percent preservation is really good. As I mentioned earlier, working with that multi-family development group, I met with them before I decided to come up to HUD and take this job. And I said, you know, what is up with HUD and FHA multi-family?

One of my board members runs a nonprofit in San Antonio, and she looked at me and she said, "FHA is the best game in town if you can take the headache out of it." And so since I have been there, and I'm not promising any miracle, but since I have been there, I have really enjoyed working with Commissioner Montgomery and my multi-family staff to take some of this headache out.

As you know, most of these maturing mortgages are in need of recapitalization well before the maturity date, and a lot of them, if not most of them, go for low-income housing tax credits to recapitalize and rehabilitate the properties. If they do that, that is preservation. HUD has not always had a good reputation of mixing low-income housing tax credits with preservation deals, so I asked my

staff. And it has been excellent, that really increases their flexibility. I asked them to look at ways, if we could all get together and get with the industry, a lot of the folks who were here today, to figure out how to make HUD more attractive to owners for refinancing deals, so they would come to HUD, and get rid of that headache. And we have been doing a lot over the last several months to make HUD more attractive.

Yesterday, the Commissioner signed off on a policy to get into clearance, to really streamline the process for using tax credits with mainly our 221(d)(4) program. We took a serious look at the 100 percent tax credit equity escrow situation, which back when I was on the tax credit side was the biggest barrier, why none of my members would ever use (d)(4) insurance, because no one wanted to put 100 percent of the equity up front.

We took a serious look at that, and I can't make the announcement yet, because it is still being cleared, but I think you will all be pleased.

The CHAIRMAN. Mr. Garvin, I am going to interrupt you at this point because I want to ask you for your help.

Mr. GARVIN. Sure.

The CHAIRMAN. As you may know, Chairman Rangel and I, through our staffs, worked hard to do exactly what you are talking about, which is to make these more interactive.

Mr. GARVIN. Right.

The CHAIRMAN. Some of that is in the Senate Bill. When we get to a final conversation, I think at no cost to anybody we have language that if it survives, is going to build on the work you do. And I realize you are doing as much as you can without a statutory change, and we want to do statutory change that is similar.

So we will look for your help in making sure we maximize this.

Mr. GARVIN. Definitely, definitely, and we look forward to it.

But in the new guidance, we took a lot of issues that I think the development community will turn back to FHA and we will be able to preserve a lot more units than originally thought of.

When I first started in the multi-family side, we were not allowing any reduction in the number of units when they would refinance it. I know one-for-one replacement is of utmost importance, but we were seeing that folks were getting out of the affordable business, because we were putting restrictions that you had to have. If it was an efficiency, it had to stay an efficiency. Well, in a lot of markets, efficiencies were not leasing, so we did a conversion. It was a unit conversion policy that said you can turn a vacant efficiency into a one bedroom. It's a more marketable unit. The developers made it again more attractive to refinance these in FHA (d)(4).

I see my time is almost up. I look forward to questions, and thank you again for this opportunity to testify.

[The prepared statement of Mr. Garvin can be found on page 102 of the appendix.]

The CHAIRMAN. Thank you, Mr. Garvin, and I think this is an ongoing project with a lot of cooperation.

Mr. Donovan?

STATEMENT OF SHAUN DONOVAN, COMMISSIONER, CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Mr. DONOVAN. Good morning, Mr. Chairman, Ranking Member Capito, and members of the committee. I am Shaun Donovan, commissioner of the New York City Department of Housing Preservation and Development, the Nation's largest municipal housing development agency. And while our mission to promote quality housing and viable neighborhoods for New Yorkers has not changed over the years, our challenges have changed dramatically.

The crisis of abandonment that plagued many New York communities in the 1970's and 1980's was solved by rebuilding neighborhoods, driving down crime, and improving schools. But today we face the challenge of affordability in those very same neighborhoods. There are about 250,000 Federal- and State-assisted housing units in New York City. The programs that finance these units developed decades ago for a different housing market all include expiring use restrictions. The units represent a safety net of affordable housing for hundreds of thousands of New Yorkers, but the City is at risk of losing them. Given the strength of the City's housing market as the use restrictions expire in some of these developments, owners face great temptation to leave the programs and raise rents to market levels.

In other cases, properties face physical deterioration so severe that units risk becoming uninhabitable. In both of these situations, residents of these units may face displacement, and as the chairman said before, we lose those units permanently for the affordable housing stock when an owner either opts out or fails out of the program.

Mayor Bloomberg's expanded new Housing Marketplace Plan, the largest city affordable housing plan in the Nation's history, recognizes the need and the opportunity to focus on these units. Out of the 165,000 units that will be created or preserved under the plan, 73,000 are preservation and 37,000 are affordable assisted units with expiring uses and subsidies. And HPD has designed a series of initiatives that will allow the agency to achieve this goal.

But New York City and cities like us across the country cannot preserve this resource on our own. We need the commitment and partnership of the Federal Government. That is why I am so pleased to be able to testify on the importance of the Housing Preservation and Tenant Protection Act of 2008.

The committee's bill is a comprehensive set of measures to stem the tide of affordable housing loss. We are extremely supportive of Congresswoman Velazquez' bill, H.R. 44, and I am pleased that it is contained in its entirety in the Housing Preservation and Tenant Protection Act of 2008. If enacted, this bill would give HUD and local governments new tools and the flexibility needed to maintain our stock of affordable housing.

These tools are needed now more than ever. The problems in the subprime market have risen to the top of the national agenda. Homeowners and neighborhoods are threatened by this crisis, and it has highlighted again the importance of having a supply of decent and safe rental housing available to moderate- and low-income people. There is much in this bill to be applauded, but my testi-

mony will focus on those provisions which most directly complement the work we are doing in New York City.

On June 2, 2008, Deputy Secretary Bernardi, Senator Schumer, Congressman Towns, Congresswoman Velazquez, Governor Paterson, and City and State officials announced that a deal had been reached with the owners of Starrett City to keep the development affordable. Starrett City, a nearly 6,000-unit project in East New York, is the largest federally subsidized project in the country. The owner's initial attempt to sell the development and opt out of the various State and Federal subsidies was met with public outcry and ultimately with HUD's rejection of the sale.

The agreement reached with government represents a framework for preservation of Starrett to which the buyer of the development will have to adhere. And I would just like to depart from my testimony for a moment to recognize John Garvin and all of the work that he and his staff did to make this possible.

Perhaps the most important part of the agreement is on the Federal subsidies there. Converting the Rental Assistance Payment contract to a project-based Section 8 contract is a lynchpin of preserving affordability at Starrett. We are very grateful to the committee for including the Starrett City-specific legislation in H.R. 3221.

Passage of the committee's bill before us today would extend the possibility to the 470 other developments with these type of contracts. There are around 35,000 units nationally that are covered by rental assistance payment or rent supplement contracts. These subsidies, commonly referred to as "RAP and Rent Supp," are decades old, antiquated programs. Unlike the newer project-based Section 8 program that replaced them, "RAP and Rent Supp" contracts are not renewable.

In the next 20 years, all of these contracts will expire, and 35,000 units of affordable housing will be lost. The committee's bill would rectify this problem by giving owners the option to convert their "RAP and Rent Supp" contracts to project-based Section 8.

In exchange for a commitment to longer-term affordability, the owners get the ability to mark rents to market and the option to renew the contract.

Allowing enhanced vouchers, which are tenant-based in nature to be converted to project-based Section 8 at the request of an owner is another significant preservation tool created by this bill. This is a good example of a low-cost means to preserving thousands of units of housing. In New York, the cost of an enhanced voucher is more than the cost of project basing, so while saving public funds, we could create a permanent source of affordable housing.

HPD is currently negotiating with HUD to purchase a portfolio of loans on multi-family properties. The sale would allow HPD to buy all the notes on subsidized properties being held by HUD in New York City. Instead of waiting for the properties to fall into greater disrepair and enter foreclosure for an opportunity to purchase them through a right of first refusal, this sale will allow HPD to purchase the entire portfolio and be proactive in partnership with HUD about the property's preservation.

The New York City note sale is being watched closely by other States and cities for possible replication. There are two impedi-

ments to the sale, both of which your bill addresses, and we're grateful to you for including those as well.

There are many other noteworthy provisions in the bill, but in the interest of time, a discussion of them is included in my written testimony.

Thank you for the opportunity to testify before the committee today. I look forward to answering any questions you may have.

[The prepared statement of Mr. Donovan can be found on page 98 of the appendix.]

The CHAIRMAN. Mr. Snuggs?

STATEMENT OF CLARENCE SNUGGS, DEPUTY SECRETARY, MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Mr. SNUGGS. Good morning, Chairman Frank, Ranking Member Capito, and distinguished members of the committee. I am Clarence Snuggs, deputy secretary of the Maryland Department of Housing and Community Development. I want to thank you for giving me the opportunity to testify before you on the Housing Preservation and Tenant Protection Act of 2008. I also want to thank you for your leadership on this issue and your commitment to crafting tools to help preserve affordable housing for the Nation's low-income families.

The State of Maryland and DHCD are strongly committed to preserving affordable rental housing. Over the past 5 years, DHCD has preserved over 4,300 affordable rental units through the use of mortgage revenue bonds, low-income housing tax credits, State financing, and other resources. We have committed $75 million in bond authority for preservation this year, and we are currently a finalist for the McArthur Foundation funding for both our past and future commitments to preservation efforts.

Additionally, we have re-engineered our State-funded lending and insurance products to facilitate preservation. We have been proactive in stepping out of the box to preserve affordable housing opportunities in Maryland, and we look forward to working with the Federal Government to do the same. DHCD, in addition to being a cabinet agency, is also the State's housing finance agency. We support the language in the bill that gives States and State housing finance agencies greater control and participation in the preservation process.

State HFAs are the right place to direct Statewide preservation authority. Because we have the favorable track record of supporting preservation, we know the variations of the State, preservation cannot be a one-size-fits-all approach.

What we need most from the Federal Government is flexibility and timely decisions. Regional and field HUD offices where most decisionmaking should occur with the ability to delegate decisionmaking to State HFAs. We have an excellent working relationship with the Baltimore HUD office and have been able to sit down and negotiate the first in the Nation inter-creditor agreement designed to streamline the process of financing packages that involve both Federal and State resources.

The FHA risk-share program and MOUs for subsidy layering requirements are similar examples of coordinated and delegated deci-

sion-making between HUD and State agencies. These agreements have a longstanding history of protecting the Federal Government's interests while facilitating timely and prudent production and preservation of affordable rental housing.

What's most important is that the bill enabled HUD's field offices to defer to HFA's request for changes in existing loan terms and rental assisting contracts that are approved by the State HFA that is refinancing the project.

We would also ask that the bill language allow for a delegated underwriting and approval of changes in project-based rental assistance within some broad parameters. This could be developed following the successful FHA risk-share and subsidy layering models. There is precedence for this intergovernmental partnership. It is efficient and effective government in action.

In that light, we would ask that the legislation include provisions that would establish a demonstration program to waive the numerous rules and regulations of the preservation process. The amount of time it takes to preserve properties is one of the biggest obstacles in actually doing deals. We think the provision should be modeled along the FHA risk-share model that sets basic parameters regarding what protection HUD has to have, but gives the field office and State HFAs the ability to move more quickly when preservation opportunities arrive.

We are pleased to see the requirement that HUD and USDA Rural Housing Services work together to create a database of subsidized properties. What we would like to see is language that calls for the coordination of rules and financing between HUD and RHS. Therefore, we would also like to see a requirement for HUD and RHS to develop an inter-creditor agreement that we can all use if the project is funded by both.

Lastly, while we have some resources to finance preservation, we need more. This would include increases and caps on MRBs, an increase in the Federal low-income housing tax credit, as well as more Federal funding for home program or other new sources of funding which can finance the improvements and repairs preserved properties often need.

It would be particularly useful to see provisions that would fund a program to provide short-term preservation funding to enable quick acquisition of at-risk properties before MRBs and tax credits are used as permanent financing options.

The new resources would also be flexible and be designed to work in concert with or in deference to existing programs and requirements.

Thank you again for giving me the opportunity to testify. I have submitted more extended remarks for the record, and would be happy to take any questions that you may have.

[The prepared statement of Mr. Snuggs can be found on page 156 of the appendix.]

The CHAIRMAN. Thank you, Mr. Snuggs.

Before we get to the questions, several of our colleagues have to go to a very important meeting at 11:00, and one of our witnesses is here at the invitation of the Chair of the Housing Subcommittee, who has been a leader on all these issues, so I am now going to

defer to her, so she can make the early introduction of the witness, which we will all remember when the witness testifies.

Ms. WATERS. Thank you very much, Mr. Chairman. Before I introduce the witness, let me thank you. This was something that you identified early on, when I came onto this subcommittee. And it is perhaps one of the most important efforts we're going to make to preserve housing. I was very pleased to be involved in the hearing up in New York; I think that was alluded to today.

And I thank you also for this hearing today. I have an extraordinary witness who will be on the next panel, Ms. Amanda Seward.

She is currently serving as counsel for the Lincoln Place Tenants' Association, and as part of the team of attorneys who have been representing the tenants and their eviction cases brought by the owner of Lincoln Place. She is the author of the California State Historic Resource nomination of Lincoln Place, which was approved by the State Historic Resources Commission in 2005. It was through this nomination that she learned of the plight of the tenants.

She was an elected member of the board of the Marvista Community Council Board of Directors, and she is a founding member of the Marvista Historical Society, and former chair of the Residential Council of the Los Angeles Conservancy's Modern Committee. She has been active in the preservation community in Los Angeles for 10 years, and is especially focused on the preservation of modern architectural housing.

Ms. Seward received her JD from Georgetown University Law Center, and received her BA in philosophy from Spelman College. She is a member of the State Bar of California, and the State Bar of Georgia.

And I am sorry that I am going to have to leave early, because the story of what these wonderful people have done, fighting for preservation, is just absolutely wonderful.

The CHAIRMAN. Well, if the gentlewoman would yield, I appreciate that. And it's nice to have a lawyer who works for tenants here, because I think some of our colleagues could benefit from maybe the de-demonizing of that role, as our colleague from North Carolina had been fighting for. We hope that people recognize that there are a number of cases where a lawyer working with tenants makes a very constructive contribution.

With that, I'm going to begin the questioning, and we have a great deal of substantial agreement. One of the things I am going to be asking, Mr. Garvin, I anticipate some issues here as we go forward with this, with the scoring under the Congressional Budget Office. And I think what will be important for us to work together is, yes, there will be some initial outlays here. But if you look at policy going forward, it seems to me that we ought to be able to deduct from those outlays what the cost would have been of enhanced vouchers, going forward. Because enhanced vouchers are very expensive.

Now the problem, of course, is that there is no legal obligation to provide the enhanced vouchers, so CBO can theoretically say, "Well, you're putting out this money and you know next year you could have them all evicted." I'm hoping we could prevail on CBO to take a more realistic view of this, and to look at what the costs

would be of preserving those tenants, because obviously when you do that, you bring down the cost. Would you agree?

Mr. GARVIN. 100 percent, yes, definitely.

The CHAIRMAN. One of the things I think would be helpful for HUD to prepare for us would be estimates of what the actual cost would be in some of these cases, if we were to continue enhanced vouchers, rather than preserve the tenancies. And it might not be binding, but it would help me with my colleagues.

Mr. Donovan, do you—

Mr. DONOVAN. I would just want to chime in there for a moment, Mr. Chairman. One of the reasons why the effort on Starrett City has been successful is we worked very closely with HUD and with Senator Schumer to look at the scoring of the conversion of the contract at Starrett City. And in fact the CBO did recognize that there was zero cost to that, because the owners had in fact made it very clear that they were going to opt out and there would be enhanced vouchers—

The CHAIRMAN. Well, that's very helpful—

Mr. DONOVAN. In fact, the cost of the conversion to project-based Section 8, because it's only 60 percent of the units and 40 percent of the units will remain below market, the cost of the conversion is actually saving the Federal Government—

The CHAIRMAN. Well, that's—I'm glad that we have that precedent, and that's going to be a very helpful factor for us to do this going forward.

It is also the case—and I know you looked at this, Mr. Snuggs, as well—I want to make sure that I'm working with your colleagues at the State level that we are not discriminating between State and Federal here; and that is something that we want to make sure has been totally integrated.

But let me just ask, do you think you know the answer to the question: What are the comparative costs of preserving a unit—even without the enhanced voucher situation—but what are the comparative costs of preserving a unit versus constructing one from scratch?

Mr. Garvin?

Mr. GARVIN. I really couldn't generalize on the answer, because you could go into a building and it could be in pretty good condition, and have some rehab and preserve it. You could go into a building, not knowing what—

The CHAIRMAN. No, I'm talking in general—suppose we did this under the Affordable Housing Trust Fund, or Section 811, or building from scratch new units.

Mr. GARVIN. In general, it is obviously cheaper to rehab an existing unit. I mean—

The CHAIRMAN. And in some cases, it seems to me we don't even have to rehab.

Mr. GARVIN. Right.

The CHAIRMAN. When I talk about preserving, I guess I phrase it too ambiguously. I'm not talking about necessarily physically preserving it, but legally preserving it in the inventory, as opposed to building a new unit.

Mr. GARVIN. Right.

The CHAIRMAN. Mr. Donovan, in New York City what is the comparative cost?

Mr. DONOVAN. I think Mr. Garvin is correct; it obviously depends on the extent of the rehab, but in general what we find is that the cost of new construction is roughly twice what it costs to preserve in terms of public subsidy that we provide.

The CHAIRMAN. Mr. Snuggs?

Mr. SNUGGS. I would concur, but I would suggest that in Maryland, construction of a new unit would run somewhere around $150,000 a unit.

The CHAIRMAN. And you could preserve for less.

I thank you. I have no further questions. Ms. Capito?

Mrs. CAPITO. Thank you, Mr. Chairman. I want to thank the panel.

Mr. Garvin, in your statement you mentioned something that it's 90 percent of the Section 8 vouchers had been preserved, 10 percent loss. Can you—

Mr. GARVIN. That's the project-based portfolio, not the voucher.

Mrs. CAPITO. Okay. What does that result in? Does that result in 10 percent fewer tenants or fewer units? Or can you expound on what that actually means in terms of folks living there?

Mr. GARVIN. Sure. Private owners of those properties that receive project-based Section 8 have an affordability period, and then they can opt out. And some want to opt out and do. Others realize it's a very good business decision to stay with a guaranteed cash flow, the renewing project-based Section 8.

But like Chairman Frank mentioned earlier, some markets people really want these properties to make them upscale condominiums, and it's very, very hard to preserve them.

Mrs. CAPITO. So you're saying in terms of the ones who had the expiring tax provisions, 90 percent of those stayed in the program; 10 percent left. Is that—

Mr. GARVIN. Yes. I think it's a little higher than 90, but my staff wouldn't let me say that. So I think it's a little bit higher.

Mrs. CAPITO. Okay. Let me ask you, if you're in that 10 percent where they're going to out to free-market prices, if you're a tenant in one of those units or one of those buildings, what is the notification requirement? And is there any HUD program that comes in and works with folks to try to help them find alternative units?

Mr. GARVIN. Yes. I think the notification is either 1 year or 9 months; I don't remember. I think it is a year. And then it is project-based Section 8, so they do get an enhanced voucher to pay a higher level—

Mrs. CAPITO. I'm sorry, they get what?

Mr. GARVIN. They will get an enhanced voucher to pay a higher level of rent.

Mrs. CAPITO. At that same unit?

Mr. GARVIN. Right.

Mrs. CAPITO. That same unit. Okay. Thank you.

The CHAIRMAN. Ms. McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman. Listening to the talk about preserving and everything, as we renovate some of them to preserve them, are we doing anything about increasing access for handicapped people?

Mr. GARVIN. Well, we have good laws such as 504 accessibility guidelines that new construction has to deal with. And if it's a significant rehab, they have to put accessibility into an existing development.

Mrs. MCCARTHY. And the other area is foreseeing housing in apartments or whatever. Are you bringing them up to grade, you know—actually I personally think every apartment that you do should already be incorporated for the showers, handles, everything—

Mr. GARVIN. Grab bars, yes.

Mrs. MCCARTHY. As we look at our senior citizens getting older, there is nothing wrong with having handles in the bathtub and the shower and things like that for safety—

Mr. GARVIN. Or at least the supports behind the wall, so that when they—

Mrs. MCCARTHY. Right—

Mr. GARVIN. I remember I worked in Texas at the Housing Finance Agency, and we had accessibility features like that built into our new construction, that it would be prepared to put in accessibility features and doorways and such.

Mrs. MCCARTHY. Two of my colleagues unfortunately aren't here right now. Mr. Ellison, Mr. Capuano, and myself, have introduced legislation, H.R. 5963, which really goes towards the protection of the tenants, especially under a foreclosure or anything else like that. I don't know if you have had a chance to look at it. I hope you have. If you have, could you give me some feedback on it?

Mr. GARVIN. I haven't seen it yet, but I will look at it and make sure you get my comments.

Mrs. MCCARTHY. I appreciate that.

Going back to my own district, my area—I live on Long Island, and the surrounding districts are really high cost. I mean apartments are extremely expensive to start with. How will the Housing Preservation and Tenant Protection Act of 2008 address the difficulties in preserving affordable housing in areas like the one I represent?

Mr. GARVIN. I think I'll let my friend from New York here take that one.

Mr. DONOVAN. Well, I think there are a couple of very important provisions that are contained in the bill that will help that. But just to step back, I think overall one of the things that HUD has done very effectively that has kept the rate of preservation that you heard about over 90 percent is in markets like New York to allow rents to be marked up to market under Section 8. In other words, it goes to this very principle the chairman was talking about, that if in fact the government is going to be required to pay a market rent through a voucher, and that it is not going to preserve the housing long term, why not look at the opportunity to actually raise the rents to market under the project-based program, particularly in areas where the housing is hardest to preserve, which is where the mark-up to market program has been focused. And that has been very, very successful in New York, both within the five boroughs, but also in Long Island and other areas in preserving existing housing.

One of the great threats that we face right now is that there has not been adequate funding over the last few months to renew all the Section 8 contracts for a full year. And it is absolutely critical, no matter what we do in this bill, that there be the resources to be able to preserve that housing.

We have about half of all the RAP and Rent Supp units nationwide in New York State. And it is absolutely critical in order to preserve that housing that we get the ability to convert those to project-based Section 8, because right now not only do you not have the opportunity to mark those up to market, so there's a huge incentive for owners to get out of those properties and convert them to market, but in fact you can't even renew those contracts. So when they end, there's nothing you can do currently to be able to preserve those properties.

So that's one of the very important things specifically for Long Island and New York State in general in terms of preserving project-based housing.

Mrs. MCCARTHY. And I agree with you on that, because I'm looking at some of my areas that actually are doing very well with Federal help on bringing back their towns and the villages. Now we are looking at where the affordable housing is, and it is prime location now to build condos and to have higher-income families coming into the area. I think we need to do what we need to do to preserve the housing, because there is no place on Long Island that we can—we can't ship them out to Montauk and have them drop off the island.

[Laughter]

Mrs. MCCARTHY. So it's an important issue.

Mr. DONOVAN. Congresswoman, you also mentioned foreclosures. At the other end of the spectrum—not properties that are at risk of converting to market rate, but ones that are at risk of deterioration and foreclosure—we have worked very cooperatively with HUD and over a dozen properties have been preserved through the foreclosure process. One of the things the bill would fix—right now it was language in the Deficit Reduction Act of 2005, which stops HUD from being able to value properties and loans at a proper price.

Just to give you an example, we have a property in the South Bronx that needs a huge amount of rehabilitation. It has a negative market value, if you look at it correctly. In fact, the current language in the Deficit Reduction Act required HUD, when we wanted to buy it under our right of first refusal, to value it at close to $7 million. So we would have to take $7 million of New York City taxpayer money to buy a property that was actually worth less than zero because of the rehabilitation you had to put in. With the change in language that is in the bill, we could value that property correctly; we could buy it for a dollar, put our own resources in, and fix it up, just as we have been doing. And that is something that is affecting cities all over the country. Nobody has been able to use this right of first refusal—in Syracuse and a whole range of other places around the country—since this language was put in place. This bill would rectify that problem.

Mr. GARVIN. And that is important. We have not done one since this legislation took effect. And it baffles the cities when they want

to preserve units, and we say, "You have to spend $12 million for a property that's not worth anything." Can I say that?

The CHAIRMAN. Try to address that going forward.

The gentleman from Connecticut?

The CHAIRMAN. Oh, I'm sorry. I didn't see that the gentleman from Texas has joined us. A distinguished housing advocate here, the gentleman from Texas.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

I appreciate the chairman bringing this bill up before this hearing today. You know, we talk a lot about it as we have hearings. We have hearings on this existing program, and one of the things this bill does is it tries to make an existing program somewhat better and more flexible.

I think the question I want to ask the panel this morning is if you had a clean piece of paper today and, you know, you didn't have the confines of the existing programs and all of those, what would the new program—what would the program moving forward—what would that program look like? Because we have projects. We have vouchers. We have tax credits. We have all of these different scenarios out there and we are always trying to fit them together. And the question I have with a lot of Federal programs, I think we keep trying to fix something. And some of these programs are over 40 years old.

The question I have is, if we started over, what works best?

Mr. GARVIN. I have to be a little careful here, and this is just my opinion, but I have to tell you, I have been at HUD for 2½ years and Shaun knows, because he was there before me. I guess legislation changed every year between the 1970's and the 1990's, that changed each existing program, so someone will come in with a refinance. And, it will be like, no. They have, you know, gas, electric, utility or something, so it operates this way. Or, they have five windows extra, so it operates another. There's no deal.

There is no one deal that is ever alike. So I think streamlining; I think the low-income housing tax credit program has been just such a huge success, because it basically stays the same—mixed tax credits with some rental assistance and it's much cleaner and easier to do.

Mr. NEUGEBAUER. Mr. Donovan?

Mr. DONOVAN. I would agree that I think the tax credit has become a very, very effective model. And I do believe that the work that Chairman Frank and Chairman Rangel are doing together to try to integrate those programs better is extremely important. We waste, frankly, way too much public funding in hiring lawyers and hiring consultants, and hiring a whole range of folks just to make programs work together, and, so simplification, to make the existing programs work, I think is very, very important.

Beyond that, what I would say is what we have learned in New York City is that mixed income housing works best. And we have been able to find ways to do that, but I think there are ways to make the tax credit program, and also in particular to use vouchers more creatively, project-basing them as a percentage of units within developments. That can be extremely effective.

What is interesting is that most of the affordable housing we produce in New York today, and we are doing a lot of it, is abso-

lutely invisible to most people. Just as Chairman Frank was saying earlier, housing that was fought against 20 years ago is now highly valued in the neighborhoods. This isn't being fought against, because people don't differentiate it at all from unsubsidized housing in the neighborhood because of the mix of folks who are there. And that has allowed us to really be successful in a way that I think with some changes to the tax credit program, and in addition to some changes in the voucher program, we would have the right combination going forward.

Mr. NEUGEBAUER. Mr. Snuggs?

Mr. SNUGGS. It's difficult to go back to that white piece of paper, which I guess is the ultimate in simplicity. But I mention in my testimony that we work well with the local HUD office in Baltimore, and I think out of that we have been able to get additional flexibility, a desire to get the decisions quicker. And I think having the authority at the local level to work with the State as we work with our developers, I think that is critical. And that is what I would suggest.

Mr. NEUGEBAUER. You know, one of the things I heard some of you saying is that some of these projects, over 20, 30, or 40 years, you know, the neighborhoods have changed. The dynamics of the community have changed; and, I appreciate the fact that Mr. Garvin said that he had been working with the developers themselves. And, I assume, Mr. Donovan, you have been doing the same as this partnership that the mayor is putting together, you know, offering some kind of innovative thoughts of mitigation.

In other words, one of the things we know is that as Mr. Donovan says, having these huge concentrations of low-income housing, we found that that was not necessarily a good thing. And so having mixed projects and being able to refine the financing and in using some of the tax credit programs to help facilitate that, even to the point where if that developer can go buy an additional piece of property and be able to change the dynamics of the one that's currently under the Federal program, but being able to move some of that to another location, possibly makes sense.

And I think that's where I said I don't want to throw the baby and the bathwater out, but what I do know is that a lot of those programs that we've had had some constraints on them that are causing the development community, for example, just to say, you know, I'm not going to fool with that. And certainly the streamlining is one of them, and I don't know if it is still as large as it used to be.

Back over 30 years ago, I used to work for a developer that put together some Federal projects, and the soft costs were so much higher doing one of those types of developments than a normal development that the lawyer fees and the consulting fees, I mean, it was astronomical. That takes away a lot of the feasibility for a lot of those deals.

Mr. DONOVAN. I just mentioned there is one provision in the bill which I think could be very helpful and exactly the kind of flexibility that you are talking about. I think, currently, HUD has just current-year, legislative approval to move Section 8 contracts from existing properties to new properties. As you said, there are places where the building is so deteriorated that preservation may not

make sense, or that it is so concentrated or there are other features and general preservation is the right strategy.

But that doesn't mean that in 100 percent of the cases it is, and it would give HUD permanently the ability to move Section 8 contracts to new developments where that makes sense. It is a great outcome, because it preserves affordable housing. Right now, we are losing those units. But it also recognizes that a one-size-fits-all strategy doesn't work for every city or state.

The CHAIRMAN. Well, if the gentleman would yield, I would add, first of all, in terms of areas where it doesn't make sense, and let's be honest, there are probably some cases where the increase in property values is such, and there may not be a lot of those, that the amount of money it would take to keep that one in the affordable inventory isn't worth it, and that you would be better off given that we have limited resources.

So some have deteriorated so much, and there may be a few cases where it is just better to take that money and be able to use it elsewhere. The other thing I would say is from the standpoint of that flexibility, I have been told by every developer—the nonprofits, the religious groups, the for-profits—that harmonizing the HUD appropriations programs and the low-income, tax credit program with zero appropriation increase is one of the best things we can do.

And that is one of the things that is in our legislation. The staff, bipartisan, worked this out. Our staff on a bipartisan basis worked with the Ways and Means staff on a bipartisan basis. It wasn't fully in the Senate bill. I think it was more of an oversight than anything else, but that's another very important piece that we can do to get that full integration.

Let me just say to my colleagues—I don't think it is a big secret—we have a lighter than usual attendance, because many of our colleagues who have a great interest in this who are members of the Congressional Black Caucus, had another engagement, namely a meeting with Senator Obama. So I think people will think that their absence from this meeting might be understandable. It shows no lack of interest in this subject.

The gentlewoman from California.

Ms. SPEIER. Thank you, Mr. Chairman.

Mr. Donovan, in your prepared testimony, you referenced that oftentimes the rehabilitation costs for HUD properties are as much as $100,000 per unit, which is a lot of money. Now, in certain areas, in high-cost areas, you are probably better off rehabilitating those properties, but in lower-cost areas, I would think $100,000 would be a windfall to those who are somehow rehabilitating those properties.

Do you happen to know whether this figure is flat-rate or is this a figure that varies from area to area?

Mr. DONOVAN. It absolutely varies from area to area. When I heard my colleagues say that they could construct a new unit for $150,000, I almost fell off my chair. We are at least double that in the five boroughs, simply because of the constraints on space, the cost of moving materials, labor, and a whole range of things.

So, $100,000 would be a very high number. That would be at the top end of the spectrum. We have HUD properties that we preserve

where we only need to put in $10,000 or $20,000 a unit; and, absolutely, I think that top figure, New York City, San Francisco, there are few of the highest cost areas where $100,000 would be at the top end. But in most other places it would be significantly lower than that, simply because of the cost of materials and labor and other things are lower.

Ms. SPEIER. Because the market changes so radically from period to period, and many of these programs have been on the books for 10, 20, 30, or 40 years, I wonder if you know of any provisions that really should just be terminated, that no longer fit the bill, that may in fact be boondoggles, that we should just strip out of the existing programs? And maybe this is a question to both Mr. Garvin and to Mr. Donovan.

Mr. DONOVAN. I was going to say that I think one of the things that has been very refreshing to us in the world trying to preserve these properties is to see HUD over the last few years really try to simplify some of the programs and streamline some of those requirements. I think with Mark to Market, for example, distribution restrictions and certain things that are really, I think, frankly, anachronistic at this point in terms of the way these deals get done today that can really help create incentives for owners to stay in, while, you know, actually benefiting residents, because the programs do remain.

I think one of the provisions I would very much point to is that there are programs like "Rent Supp" and "RAP" that are out there today, where compared to the project-based, Section 8 program, which has well over a million units, there are 35,000 units in RAP and Rent Supp. There are other lingering programs that are older, and what we are recommending and is included in the bill is to simply take those programs and roll them into the current programs.

Whenever you can have one program instead of three or five or seven programs, it is going to make administration much simpler and preserve units in the long run. So I think in particular this RAP and Rent Supp conversion is a very good example of where we can just say, "You know what? It is just not worth retaining those whole programs. Let's just put it into project-based Section 8 program that is working well today to preserve property."

Ms. SPEIER. So, are there any other programs that aren't working that should be addressed?

Mr. GARVIN. I will take that one.

Ms. SPEIER. All right.

Mr. GARVIN. There are definitely programs that have the issues, and that is why, as Chairman Frank hit it on the head earlier, the more flexible HUD can be working with folks with low-income housing tax credits or tax exempt bond financing, making us not such an obstacle. And I'm very impressed with staff, like Shaun was saying, over the last year or so, that they have opened up and want to be a partner, less a harsh regulator.

But they want to get the deal done and make it efficient, and I think that is going to be with using other programs, is going to be the best change for production and preservation.

Ms. SPEIER. One final question, Mr. Chairman.

The foreclosure scenario that is alive and well in our communities across the country could avail HUD and local housing programs of opportunities to pick up properties. And I am curious whether or not you are nimble enough, whether or not we have created the opportunity for you to take advantage of those opportunities. And, if we haven't, what can we do quickly to address that?

Mr. GARVIN. I think what we are doing now, which is the most responsible thing, and I didn't expect a single-family question, but is we have come up with FHA secure, which is our refinance mortgage insurance product, and our volume has tripled since October. So I think presenting foreclosure is the most important thing, and the HOPE Now Alliance has done a phenomenal job too working out something to prevent foreclosures.

The CHAIRMAN. If the gentleman would yield, I would say in the bill, actually, that our colleague from California carried on to the Floor and then to the Senate, we have two versions of funding to go the cities, precisely to buy-up foreclosed property, somewhat contrary. The Senate wanted to put this in a package, and it may go into a later package, but we have been trying. Both the House and the Senate provided additional funding to the cities for exactly that purpose.

Mr. GARVIN. And it is a double-edged sword, because in one way, knowing that there is going to be a possibility for cities and States to purchase foreclosed homes might make the lenders less interested in trying to work-out the loan and take it right down. So it is a double-edged sword.

The CHAIRMAN. What we did in our bill, to respond to that, was to limit it to property that has already been foreclosed; there is enough of that out there that we could use.

Mr. DONOVAN. I would also just add, I think there is a model out there that the single family side of HUD has put together that can show how this is done well: the ACA program or asset control area. We are, like many localities around the country, buying foreclosed FHA homes for 50 cents on the dollar or less; and, we are able to take those, add in local funds, renovate them, and sell them affordably.

I completely agree that keeping folks in their homes is absolutely the first option, but not everybody will be able to, and it is very important. The funding that Chairman Frank talked about is absolutely critical. What's interesting in New York City, we found we had a rash of tax foreclosures on properties. My agency owned more than 100,000 units in 1980 around New York City.

We put billions of dollars of City capital into renovating those buildings and working with the private sector either as homeownership or as rental housing. Studies have found that the increase in property taxes the City collected from the surrounding properties was larger than the billions of dollars we spent in City capital to renovate those properties. The billions of dollars may seem like a lot of money in the Federal bill, but in fact the ripple effects of that investment can more than pay back the government. It's a good investment in stopping the decline of nearby properties and resulting property tax declines for states and localities and the Federal Government.

Ms. SPEIER. My question was about foreclosures on apartment buildings and whether or not we have the means to move quickly into the purchase of those in a foreclosed setting.

Mr. GARVIN. We do auctions and such.

The CHAIRMAN. Pull the microphone closer to you. Just pull it close. It won't hurt.

Mr. GARVIN. This is about as close as I can do it.

Ms. SPEIER. He doesn't want to kiss it.

Mr. GARVIN. Right, right, right. We will do auctions relatively quick. And multi-family is nowhere near as bad as single family. I mean, there is very, very little foreclosure relative to single family.

Ms. SPEIER. Thank you.

Mr. DONOVAN. I would definitely compliment HUD, too, in the work that they have done. As I mentioned earlier, we have had more than a dozen properties in foreclosure that we have bought. This provision in the bill that we are discussing today would be critical in terms of allowing HUD to value those properties correctly. But, also, this loan sale that we are working on, I think, is a preventive measure to stop properties from getting to foreclosure in the first place.

If we can take control of those loans, invest local assets, and work to bring in new owners, hopefully those properties will never get to foreclosure in the first place, and we save public dollars. We save an enormous amount of heartache and terrible conditions for residents. I think it's a great model and HUD is being innovative in terms of looking to that as a new model for being able to deal with the next generation of foreclosed properties.

The CHAIRMAN. We have some votes.

So I thank this panel, and we appreciate this.

Let me introduce the next panel now, and then we are going to take a break. We have four votes, I'm told, which should take about 40 to 45 minutes. There is nothing we can do about it. If people want to get a cup of coffee or an early lunch or something, you can do that. We will be resuming in about 40 to 45 minutes, and we will start as soon as we can.

I am going to introduce the panel now and that will save us time later: Mr. Michael Bodaken, president of the National Housing Trust; Laura Burns, president of Signal Group/Eagle Point Properties; Amanda Seward, previously introduced by our colleague, Ms. Waters; Laverne Joseph, president and chief executive officer of the Retirement Housing Foundation; Ricky Leung, president of the Cherry Street Tenant Association; J. Kenneth Pagano, secretary of the National Affordable Housing Management Association; and Brian Poulin, a partner with Evergreen Partners.

We will be in recess. We may have some more of our members when we come back, and as soon as we come back, we will continue.

[Recess]

The CHAIRMAN. I regret the fact that this took as long as it did, but we will now presume. Unfortunately, the votes also interrupted a meeting that the Congressional Black Caucus was having with Senator Obama. There are members who very much regret not

being here, but they will be reading your testimony and benefitting from what you say.

We will begin with Michael Bodaken, the president of the National Housing Trust.

STATEMENT OF MICHAEL BODAKEN, PRESIDENT, NATIONAL HOUSING TRUST

Mr. BODAKEN. Chairman Frank, Ranking Member Bachus, thank you for inviting me to testify today. My name is Michael Bodaken and I am president of the National Housing Trust.

Since 1986, the Trust has been dedicated exclusively to the preservation and improvement of existing affordable subsidized housing. The Trust acts on a fundamental belief, preserving existing affordable rental housing is an essential first step in solving our Nation's housing dilemma. Our public policy advocacy is informed by our direct experience in the field.

The Trust has helped preserve and improve more than 22,000 affordable rental units in 41 States and the District of Columbia.

Today, I also testify on behalf of the National Preservation Working Group, a coalition of 24 organizations dedicated to preservation of our Nation's rental housing stock.

Let me begin by thanking you for this draft comprehensive legislation. Federally subsidized housing is an essential housing resource in nearly ever community in the United States of America.

Our analysis demonstrates that in this committee alone, over 190,000 federally subsidized housing units are located, and will expire over the next decade. We have a committee district by district list located in Attachment A to our testimony.

Mr. Chairman, our Nation is currently undergoing a massive foreclosure crisis in the single family housing stock. A clear implication of those foreclosures is that many will result in families shifting from home ownership to rental housing. We will need that rental housing stock as a backstop to the situation that we are in today.

Funded by the MacArthur Foundation, the Joint Center at Harvard just published a study which indicated that as displaced owners are forced into the rental market, a growing number of renters are competing for a limited supply of affordable housing.

By addressing this challenge, it begins with preserving rental housing and preserving rental housing will be much helped by the legislation drafted by this committee.

At one time, we had a one-size-fits-all Federal housing program. That is certainly no longer the case. Over the past decade, State and local governments have increasingly devoted scarce resources, including low-income housing tax credits and an array of other resources to save tens of thousands of Section 8 units throughout the Nation.

These decisions to emphasize preservation are particularly sensible because preserving an existing home is significantly less expensive than constructing new affordable housing.

The Trust recently concluded that it cost approximately 40 percent less to preserve a multi-family rental unit than to preserve one in the same community. In more expensive communities, the

cost of building new affordable housing is almost double that of preserving affordable housing in the same neighborhood.

However, in order for federally assisted housing to stand the test of time, the Federal Government must act as a fair and consistent partner by honoring its commitments.

The stock of privately owned affordable housing is the result of a successful 4-decade partnership between the Federal partnership and the private sector. However, last summer, many owners went month after month while their Section 8 payments were either delayed or paid very, very late and often in not the amounts that were required. For the tenants and owners, this is unacceptable.

The first principle of preservation is for the Federal Government to provide prompt reliable funding for existing housing assistance contracts. Without full appropriations to fund existing contracts, your efforts to preserve affordability faces a daunting challenge.

Mr. Chairman, I brought with me a Tzedakah box today that I received this morning from a Jewish organization, and as you know, every Friday night, we give to some charity by depositing a gift into the Tzedakah box. We provide a little bit of money to remind ourselves of the responsibility we owe the world.

There are many of us out there who are accepting our responsibility to preserve and improve affordable rental housing. We are observing our obligation. We ask the Federal Government to satisfy its obligation halfway, and if we do that, we can save a lot of this housing.

We believe the principles form an useful framework for thinking about policy change that can and will improve the number and quality of preservation transactions.

We have three principles that we would urge you to consider in your legislation. Number one, to encourage and support responsible long-term ownership of affordable rental housing. Number two, to encourage and streamline sales and transfers of at-risk housing, to qualify preservation owners, and number three, to provide appropriate support to existing residents of affordable rental housing who seek to remain in their homes.

We have many more detailed recommendations, many of which are included in the draft legislation. The Preservation Working Group's recommendations are included in Attachment B.

I cannot thank you enough, Mr. Chairman, and the entire committee, for putting this legislation in place at this particular time.

[The prepared statement of Mr. Bodaken can be found on page 46 of the appendix.]

The CHAIRMAN. Thank you. For the benefit of the reporter, I think the common spelling of "Tzedakah" is T-z-e-d-a-k-a-h.

Mr. BODAKEN. Well spelled.

The CHAIRMAN. Thank you. I think that is the commonly accepted translation from the Hebrew.

Next we have Laura Burns, president of the Signal Group/Eagle Point Place Properties.

By the way, we have been joined by the leaders of the Small Business Committee, who were elsewhere because the Small Business Committee was working on other things. Small businesspeople would actually be involved in some of these units, so we have the gentleman from Illinois, Mr. Manzullo, and the gentlewoman from

New York, Ms. Velazquez, whose sponsorship of one of the major bills was already commented on very favorably by Mr. Donovan.

Ms. Burns?

STATEMENT OF LAURA BURNS, PRESIDENT, SIGNAL GROUP/ EAGLE POINT PROPERTIES

Ms. BURNS. Mr. Chairman, members of the committee, my name is Laura Burns and I am the president and CEO of the Eagle Point Companies and a board member of the National Leased Housing Association.

My affordable housing experience began in the public sector in 1985 at the Boston Redevelopment Authority and later as a consultant and a developer.

My company is dedicated to the preservation of affordable housing stock, and over the last 6 years, we have acquired and/or rehabilitated 23 properties and 5,300 apartments in six States and Washington, D.C., which will remain affordable for the next 30 years.

NLHA has been working with the committee staff to create workable legislation to facilitate the preservation of the existing housing stock. However, I would like to spend my time today sharing several experiences that highlight particular barriers to my company's ability to complete preservation transactions.

Eagle Point has enjoyed some very successful and satisfying experiences in coordinating the complex world of State agency programs, the low-income housing tax credit program, and HUD.

In 2004, my company acquired a property known as Delsea Village Apartments in Millville, New Jersey. This 100-unit family property originally built in 1971 under the HUD Section 236 program also had a Section 8 project-based assistance contract. The property had been well cared for by the prior owner, but as with any property that is 30-plus years old, certain systems needed to be replaced and all of the apartments were dated and tired, leading to a declining quality of life for the residents.

We gathered the financial commitments necessary to acquire and renovate the property, and gained approvals for tax-exempt bond financing, low-income housing tax credits, New Jersey low-interest loans, and other State agency assistance.

We provided HUD with an independent study showing the expected market rents after our planned $20,000 per unit renovation.

As a Section 236 project, HUD guidance allows a budget based rent increase up to the as improved market rents. HUD allows that budget to include the new debt service and the cost structure after the renovation. HUD approved the rent increase and the use of the 236 IRP subsidy and that project was successfully acquired and renovations began in April 2004.

In order to arrive at Delsea Village, our residents and their visitors must drive straight through another HUD-assisted complex known as Delsea Gardens. Although the names and dates of construction are similar, the prior owners were different, and Delsea Gardens was in much worse condition.

Instead of mowing the grounds, the owner had decided to simply pave the front yards, and the exterior of the buildings, the play areas, and the manager's office all reflected minimal maintenance.

Delsea Gardens also has 100 units and has project-based Section 8 assistance, so it seemed to us a natural and obvious decision to acquire and renovate Delsea Gardens.

We negotiated a purchase and sale agreement, obtained the same set of subsidies from the State of New Jersey, and looked forward to the day our residents at Delsea Village would drive through an improved neighborhood property, and we looked forward to the day that both properties would have the same level of services and improvements so that no child would wish he or she lived next door at the nicer property.

However, Delsea Gardens was constructed and financed under a different HUD program, and HUD does not allow rents to be set at the "as improved" market rent, only at the current inferior condition.

Furthermore, HUD rules limit this project to a budget based review using old debt service and the old cost structure. This, of course, would not have allowed enough funds to improve the property.

Therefore, the approved subsidy was returned to New Jersey, the seller terminated the purchase contract, and shortly after, the property was sold to an owner who continues to operate it at the current level. The pictures that you see before you were taken last week.

HUD established this rule which differentiates outcomes for different properties without the direction of Congress. The proposed draft legislation before you would correct this inconsistency and allow a property that is to undergo rehabilitation to request a rent increase based on a budget with increased debt service and the new cost structure.

We have been attempting to preserve another property for almost 5 years. We had our first meeting with HUD 4 years ago to discuss the need to renovate a 118-unit elderly project in Connecticut, which happens to be owned by a nonprofit organization.

For these last 4 years, we have waited for HUD's policy decision and direction relative to whether the seller may accept some or all of the sales proceeds. Five-and-a-half years from now, this seller, a rotary business group, has the unilateral right to sell the property at market rates, terminate the Section 8 contract, and accept all of the sales proceeds.

This seller has been patient in working with us and has agreed to defer over $1.5 million in value. The residents have had no choice but to be patient as they enter their fourth summer without renovations and they might expect continued plumbing problems, broken elevators, and deteriorating windows.

We think that we are finally close to getting an approval with HUD, but a different seller might have decided to walk away from this preservation transaction and instead just simply waited another 5 years and accepted significantly increased financial benefits.

Again, this unwritten policy to limit sales proceeds to nonprofits has been HUD's misinterpretation of current law and results in properties that would otherwise have been renovated and preserved today, instead to be put at risk of loss in the future.

This draft legislation would address the issue so that more properties will be preserved and renovated when the need is there and a preservation buyer is willing and able to purchase the property.

Thank you for the time. I am happy to answer any questions.

[The prepared statement of Ms. Burns can be found on page 77 of the appendix.]

The CHAIRMAN. Ms. Seward?

STATEMENT OF AMANDA SEWARD, COUNSEL, LINCOLN PLACE TENANTS ASSOCIATION

Ms. SEWARD. On behalf of the tenants of Lincoln Place Apartments in Venice, California, I am pleased to be here. We applaud you for recognizing this critical issue.

The tenants of Lincoln Place have been victimized by the failure to protect the government's investment in affordable and workforce rental housing, and their story will hopefully lend support to the position of HUD tenants speaking before you today.

Lincoln Place is not currently a HUD property, but because of rent control and long-term tenancies at a 795 unit, it provided much of the affordable housing available in Venice. The property's subsequent sale to investment speculators and the forced eviction of the tenants tell of the horror communities face when we do not take steps to protect our investment in low- to moderate-income housing.

Lincoln Place was financed under Section 608 of Title VI of the National Housing Act of 1934. It was an aggressive program enacted by Congress which was designed to stimulate investment in low- and moderate-income rental housing, during a period in which private enterprise was reluctant to invest in such housing.

Lincoln Place was the largest 608 development in California. It was a particularly successful development due to the progressive design ideas of the multi-cultural team that created it. The team included a Jewish developer, an African-American architect, and an Asian-American draftsman, all working in an unusual combination in post-World War II California.

Their goal was to create luxury on a budget. Their effort in 1949 was designated a historic resource in 2005. Lincoln Place is a wonderful example of how architecture and site planning can be a successful social took in creating ideal communities.

The tenants varied ethnically and in age. There was economic diversity including Section 8 households, teachers, postal workers, architects, designers, and lawyers.

It flourished under the ownership of the original developer until the 1980's when it was first sold. In 2003, AIMCO, a REIT, and one of the largest owners of HUD-subsidized housing in the country, purchased the property and shortly thereafter, eviction proceedings began.

On December 6, 2005, the Sheriff's Department locked out 52 households, including 21 children. It was the largest lockout in a single day in Los Angeles' history. These tenants were not evicted because they did not pay their rent. They were evicted because they were not paying enough rent.

Some of these tenants have still not found housing. Some have had to move out-of-State. Families report that their children still

suffer nightmares. Some have moved to areas in Los Angeles where their children often hear gunfire at night.

After the 2005 lockout, many of the remaining tenants who because of age and disability were entitled to a longer notice period, now felt they had no choice but to move, but they did not give up hope, and their struggle has not been in vain.

The California Court of Appeals recently ruled the evictions were unlawful. Negotiations are now underway to find a friendly buyer who will reinstate the tenancies of those who were evicted and rehabilitate the property.

The City is now posed to enforce habitability standards. While we are hopeful about the future, the fight has been long and it is not over yet.

The success of our efforts to save Lincoln Place is due to an unique set of circumstances that cannot be easily replicated across the Nation. It took a group of tenants who loved their community so much they simply refused to move. They risked their credit standing. They organized community meetings, established a tent city, they pursued the court system, and an activist community supported them when it was not fashionable to do so. A team of lawyers worked on a pro bono basis or at reduced fees to defend their rights. Some politicians lent their support including, notably, a member of this committee, Congresswoman Maxine Waters.

The personal sacrifice made by so many people has been extraordinary, but it should not have been this hard and it should not have taken this long.

You have the opportunity to give tenants the tools they need to save their homes. In my view, the most important protection is the national right to purchase and the definition of a "nonprofit" should be broad enough to cover tenant based cooperatives and land trusts.

Other important provisions include the tenant empowerment measures, particularly those which provide that tenants are third party beneficiaries under HUD contracts so that they can require enforcement.

Legal fees should be awardable to prevailing parties in the HUD contracts in order to encourage legal support for efforts to enforce legitimate tenant rights.

Thank you for holding this hearing and allowing us to participate. We would be happy to answer any questions that you may have. Thank you.

[The prepared statement of Ms. Seward can be found on page 150 of the appendix.]

The CHAIRMAN. Mr. Joseph?

STATEMENT OF REVEREND LAVERNE R. JOSEPH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, RETIREMENT HOUSING FOUNDATION, ON BEHALF OF STEWARDS OF AFFORDABLE HOUSING FOR THE FUTURE (SAHF)

Mr. JOSEPH. Chairman Frank, and members of the committee, thank you for the opportunity to testify this morning on one of the most critical issues in affordable housing. I have submitted my written comments for the record.

My name is Laverne Joseph, and I am president and CEO of the Retirement Housing Foundation headquartered in Long Beach, California. RHF owns and operates about 15,000 affordable rental homes, assisted living units, and nursing beds in 24 States.

I am testifying today on behalf of Stewards of Affordable Housing for the Future, known as SAHF.

RHF and SAHF together provide affordable housing to more than 100,000 persons in 48 States, the District of Columbia, Puerto Rico, and the Virgin Islands. RHF is also an active member of the American Association of Homes and Services for the Aging and a member of AAHSA's affordable housing finance committee, and SAHF and AAHSA collaborate on policy issues that affect low-income seniors.

The need for affordable housing in our society is a very pressing issue and yet we are losing, as you know, much of what we have. The first order of business is to keep affordable housing that we have already built at great expense to the taxpayer.

Your letter of invitation lays out many of the discouraging statistics. I am not going to repeat them. I would only add that the loss of project-based Section 8 housing is particularly damaging since tax credit housing without Section 8 cannot serve the very poor.

Moreover as a rule, preservation is cheaper, faster, and greener than new construction. The importance of preservation is underlined by the decision of the John D. and Catherine T. MacArthur Foundation to invest $150 million in an initiative entitled, "Window of Opportunity, Preserving Affordable Housing."

MacArthur is making a difference by: One, strengthening the nonprofit sector; two, supporting the policy analysis; three, researching the impact of affordable housing on residents and communities; and four, stimulating the preservation work of State and local government.

Any legislation to preserve affordable housing inventory will be complicated because as we have heard here today, all of the programs are very complex.

This morning, I would like to briefly emphasize just four themes. First, Congress should extend the availability of tenant protection vouchers to residents in a much wider range of properties. When despite all efforts, a federally assisted or insured property is lost to affordability, we have a moral obligation to give the residents access to affordable housing, and current law falls well short of meeting this obligation.

Secondly, we need long-term project-based assistance. For example, with RHF, we have had direct experience when the need for 20-year project-based assistance to preserve affordable housing in tight markets made it possible for us to buy and preserve 10 properties with nearly 1,600 apartments. Without passage of preservation legislation, we would be blocked from acquiring the rest of this inventory. We look forward to its passage.

When older Section 202 properties without Section 8 are refinanced or their mortgages mature, they should also be eligible for project-based rental assistance or they will continue to deteriorate in weak markets or be converted to expensive rentals or condos in strong markets.

Legislation should permit the use of project-based assistance in place of enhanced vouchers and the conversion of Rent Supp and RAP contracts to Section 8.

Third, Congress should recognize the key role played by social enterprises like SAHF members in preserving affordable housing. We operate efficiently at a scale to serve nonprofit missions. We have invested heavily in professional staff and technology and in training, and yet HUD sometimes continues to treat us as if we were captive organizations without a need for capital to deal with problem properties and to grow our missions.

Where a for-profit owner could not make distribution of funds to investors for personal use, a nonprofit subsidiary is barred from donating funds to its nonprofit parent corporation to expand the mission. Legislation should remove these restrictions so that the distribution of cash flow can make it possible to re-use these proceeds from recapitalization.

Finally, we must secure long-term preservation. In the 1960's and 1970's when America first began to attract developers to affordable housing, Congress offered a big upside on eventual conversion of the housing to market rate in order to attract the necessary capital.

Today, we are often forced to use scarce tax credit resources to buy out huge appreciation. Now, there is a mature industry, both nonprofit and for-profit, interested in owning affordable housing and there is no need for windfall rewards to attract investors.

To conserve tomorrow's resources, SAHF suggests that Congress create a new category, preservation owner. In return for preservation incentives, these owners would be required to keep properties affordable for at least 40 years, assuming continued availability of rental assistance.

Thank you for inviting me to testify today. Thank you for the work that you have done on affordable housing for more than 2 decades, and we look forward to continuing to work with you and the committee and its staff on this very critical preservation initiative.

[The prepared statement of Reverend Joseph can be found on page 106 of the appendix.]

The CHAIRMAN. Mr. Leung?

STATEMENT OF RICKY LEUNG, PRESIDENT, CHERRY STREET TENANT ASSOCIATION

Mr. LEUNG. Good afternoon to you all. Thank you, Chairman Frank. My name is Ricky Leung. I am a tenant leader of the Lower East Side of Manhattan, New York City, and also a board member of the National Alliance of HUD Tenants, a national tenant union representing families living in privately owned HUD-assisted multi-family housing.

Since the Title VI preservation program ended in 1996, our Nation has lost at least 360,000 units of affordable low-income housing. We commend you and Chairwoman Waters for including the first right of purchase in the draft preservation bill to stop this loss.

We also thank my own Representative, Congresswoman Nydia Velazquez, for filing H.R. 44, now Title IV in the bill. Title IV

comes back full circle to center Ed Brooke's original vision for preserving HUD's troubled housing in 1978. For 30 years, I have lived at 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 the diverse working and middle class, a microcosm of the City and the Nation.

In 2003, our project-based Section 8 contract was set to expire. We were fearful what would happen given the super hot real estate market in Manhattan. Our tenant association persuaded the owner to renew, but he did so for only 5 years. In August 2008, he will decide again what to do.

Passage of a first right of purchase will at least give our tenant association and the City a fighting chance to save our homes. By itself, a first right of purchase would not add to Federal costs. It would simply allow a city or a nonprofit to purchase an at-risk property using existing programs like Mark Up to Market.

There is ample precedence besides Title VI. 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 real estate speculators at an alarming rate. Since 2001, over 32,000 units have already been lost and the rate has spiked dramatically.

A national first right of purchase will help save 20,000 more apartments 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.

Behind this crisis is a surge of global predatory investors taking advantage of the declining dollar and the de-regulation of HUD housing since 1996. Just three investors have recently converted 13,000 subsidized apartments in New York City alone. In Harlem, one investor flipped the sales price of 400 units from $300 million to $1 billion in just 2 years.

Radical de-regulation has failed in the mortgage industry and the subsidized multi-family industry alike. We have lost too many affordable homes and communities. It is time to push back with judicious moderate regulation to save affordable rental housing, as the committee has recommended for the single family stock.

Congress dismantled Title VI in 1996 due to concerns about excessive costs. Under Title VI, residents and HUD negotiated major repairs, permanent affordability, and transfers to nonprofits and tenant organizations.

Today, the enhanced voucher or Mark Up to Market options available to owners are just as costly as Title VI, but with none of these benefits.

As long as owners like mine have an unrestricted choice to opt out, they can extort ever increasing subsidy payments from HUD. Taxpayer-financed windfall profits is the alternative of losing affordable housing. It is unacceptable.

A first right of purchase will save money in the long run by moving housing from the speculative spiral owner windfalls and guarantee benefits for investment of any Federal funds.

The Section 8 funding shortfall reinforces these opt out trends and makes the loss of HUD housing a nationwide crisis. As many as 500,000 units could be at risk due to funding uncertainty.

NAHT also supports tenant empowerment provisions in the bill. These no cost measures will allow tenants to join HUD as partners to improve and save our homes.

Tenants have the greatest stake and the firsthand knowledge to make sure that public subsidies are used well. Owners and agents who provide quality housing should welcome us as partners in this mission.

We urge the committee to retain and strengthen these tenant empowerment provisions and the first right of purchase. When Senator Ed Brooke initiated principles for preserving at-risk HUD housing in 1977, the year I was born, he understood that a combination of judicious regulation, tenant protection, and empowerment was essential to save our homes.

We commend the committee leadership for crafting a bill which reaffirms these principles and addresses the new challenges we face today.

To conclude, in the three main languages that are spoken in my community, I would like to say in Spanish, "gracias." In my native tongue, Chinese, "siur siur," and in English, "thank you." Thank you very much.

[The prepared statement of Mr. Leung can be found on page 116 of the appendix.]

The CHAIRMAN. Mr. Pagano?

STATEMENT OF J. KENNETH PAGANO, SECRETARY, NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

Mr. PAGANO. Thank you, Chairman Frank, for holding this important hearing to examine preservation of affordable rental housing. My name is Ken Pagano. I am honored to be here today to speak on behalf of the National Affordable Housing Management Association.

I am currently serving as secretary of NAHMA, chairman of the regulatory committee, and vice chairman of the tax credit committee. I am also president and CEO of Essex Plaza Management and president of NAHMA's Regional Chapter, JAHMA.

Chairman Frank, I would like to begin by commending your leadership on this issue. Preventing the loss of affordable rental houses is an important public policy goal and you have made a considerable effort to make preservation a national priority.

Preservation is the heart of what NAHMA members do. Our organization represents managing agents and owners in both the for-profit and nonprofit community who participate in Federal rental assistance programs.

My written statement has been submitted for the record. The testimony I offer today will summarize the major obstacles to preservation and NAHMA's recommendations for overcoming these challenges.

The most common factors working against preservation, NAHMA members report, are market forces, undependable project-based Section 8 funding, poor experiences with HUD as a business partner, and concerns about long-term sustainability of projects, insuffi-

cient operating costs adjustment factors, and overall complexity of preservation transactions.

It was very nice to hear HUD say this morning that they have worked out all their problems. They seem to be relying on figures and statistics that were before the debacle last summer when many operators were faced with 3 or 4 months of no subsidy.

The number of property owners that are going to be opting out this year remains to be seen. We received a lot of indication from our members that, in fact, they will be opting out because they are receiving pressure from limited partners. Limited partners are looking at no return, a risky project that is not receiving its regular funding, and no rental adjustments to make corrections either in the Mark to Market program underwriting or to make up for operating costs that are unforeseeable.

Many municipalities, as they have been cut back over the years by State aid, have resorted to different methods of passing expenses off to property owners. They are requiring costly security measures. They are requiring trash pick up on the unit owner as opposed to being done by the municipality. They have also sold off water and sewer formerly municipal held to private vendors who are now raising rates which are unaccountable for.

There is no way under the current system of HUD for us to adjust for those increases. Many of the projects that went through the Mark to Market process have in fact been operating at a deficit and the investors are getting nervous.

The program is at a crossroads, based on last summer's debacle. Restoring confidence in the guarantee of timely full funded project-based Section 8 payments is a cornerstone of preservation.

To achieve this, NAHMA recommends full funding 12 month HAP contracts in Fiscal Year 2009, ensuring HAP payments are not interrupted due to insufficient funds or administrative problems, addressing regulatory issues that affect timeliness of HAP payments, and swift approval of Representative Maxine Waters' Mark to Market Extension and Enhancement Act, H.R. 3965, which includes a section requiring HUD to pay interest on late HAP payments to owners.

It is getting more difficult for managing agents to convince owners to stay in the program. My owners, especially the limited partners, are looking at a situation where their costs are increasing, returns are diminishing, and the uncertainty of HAP funding is putting the project at risk for default on the mortgages.

NAHMA recommends creating incentives which encourage voluntary transfer preservation. Congress should quickly pass H.R. 1491 which would provide tax relief to owners whose buyers preserve the affordability.

We also believe a grant program which provides gap financing to qualified preservation entities, whether for-profit or nonprofit, would facilitate more successful preservation.

A successful preserved property should be physically and financially sustainable for 20 to 30 years. Properties will have to be recapitalized. Many owners have used the Mark to Market program but the assumptions used to underwrite these properties have been obsolete due to skyrocketing utility costs.

NAHMA presented a proposal for HUD to recognize cost increases. HUD has been sitting on that proposal now for over a year-and-a-half, and they have made no comment on it.

We would like to thank you for allowing NAHMA here to testify and I would be happy to answer any questions you have.

[The prepared statement of Mr. Pagano can be found on page 126 of the appendix.]

The CHAIRMAN. Mr. Poulin?

STATEMENT OF BRIAN POULIN, PARTNER, EVERGREEN PARTNERS, LLC

Mr. POULIN. Mr. Chairman, thank you for inviting me to testify on this important topic of affordable housing preservation.

My name is Brian Poulin and I am a partner in Evergreen Partners which is based in Portland, Maine. My partners and I solely focus on the acquisition, rehab, and preservation of federally assisted affordable housing properties. We currently own and manage 4,800 affordable units in 11 States.

I am here today in my capacity as the president of the Institute of Responsible Housing Preservation. Members of the Institute worked with this committee and HUD in structuring the first Section 236, interest reduction payment preservation transaction, now known as the IRP de-coupling transaction, back in 1998.

Using that program, more than 750 Section 236 properties, approximately 75,000 units, have been substantially rehabbed and preserved. HUD recognizes the de-coupling program as one of its premiere preservation initiatives.

That being said, not much has been done to take the lessons learned in that program and apply them throughout the HUD portfolio.

There is no question that we need more affordable housing and there is no question that we have a lot of expiring units.

Notwithstanding the benefits of that 236 program, we need to take those lessons and actually apply them to the (d)(4)'s, the (d)(3)'s, and other programs out there. Many of these properties continue to be at risk to convert to market rate housing or are in crucial need of updating repairs. These aging properties are approaching the end of their use restrictions.

As we discussed earlier today, it is much less expensive to preserve an existing asset than to build a new one. The HUD preservation tools used in the 236 program that were critical to make that a success included budget based rent increases, which includes new debt service.

Many of the programs today do not allow for using budget-based rent increases to set rents nor do they allow the use from new debt service. It is critical to get lenders and equity providers comfortable with any preservation transaction to know what the rents are going to be once the renovation is done. Many lenders and equity providers are willing to take market risk. They are not willing to take HUD risk. We need to know what the rents are going to be. Unfortunately, the Section 8 guidelines do not allow for it.

The second item that worked in the 236 program was the increase of annual distributions for preservation owners, both for-profits and nonprofits. Both the Section 236 de-coupling and the

Section 202 preservation programs permit an owner to receive a distribution of 6 percent of new equity, 6 percent of the new money they are putting into the transaction. That annual distribution is a critical incentive to owners.

Again, the Section 8 guidelines do not allow for updating of the annual distribution and today, in many preservation transactions, the new owner must accept the original owner's annual distribution limitation.

HUD has the regulatory authority to make this change but has chosen not to do so. This is a no cost item to HUD and to the Federal Government. The rents are not set based on an owner distribution. They are based on expenses or on market factors. This really is not a cost implication to HUD. It basically incentivizes wholly to keep people in the affordable program versus converting to market where there is no distribution limitation whatsoever.

My partners and I personally have experience with that issue and find it difficult to justify the purchase and rehab of HUD properties because of that. We have worked through many of the program issues and have been successful in some but there are others that we have not been successful in pushing through the HUD limitation.

Lastly, there is a rollover of certain HUD debt. Oftentimes when properties are being transferred to new ownership, there are certain HUD debts, including flex supp loans and Mark to Market soft debt that cannot be paid off in full. HUD guidelines actually allow for this to be rolled over. However, HUD seems to have a policy where they are not allowing it to happen, in which case they have an older property with non-servicing debt where all they needed to do was allow the rollover and we would have a long-term preservation transaction where the units can be preserved and rehabilitated.

Mr. Chairman, your draft legislation incorporates many of the lessons learned in this 236 de-coupling program and it sends a clear message to HUD that preservation should be a priority. It is unfortunate that it takes legislation to make this happen.

We applaud a lot of the things you have put in your bill, including converting Rent Supp and RAP contracts to Section 8, so thank you very much. We are here for questions.

[The prepared statement of Mr. Poulin can be found on page 145 of the appendix.]

The CHAIRMAN. Thank you. I do want to note that I am pleased at this because it is our practice that the Majority selects most of the witnesses. The Minority on the committee is always allowed to request at least one. We had Administration officials, and I think the degree of unanimity we have had on the core here is very encouraging.

Mr. Joseph, I appreciate your noting that the tax credit program alone cannot get the rents affordable enough without Section 8, etc. Some people do not understand that. In high-cost areas with low-income people, you have to put some of these programs together to reach the level that you need.

Mr. Poulin and others have mentioned some things that HUD could do. We are going to take another shot at it. We will write a letter to HUD. If there are things that are within HUD's adminis-

trative authority to do, particularly if we can say they are not big budget items, get that list to Mr. McCoy. We will then, maybe on a bi-partisan basis, write a letter to HUD to urge them to do that.

On the slow pay issue, the half payments and others, you know, we did pass a bill in the House that would correct that situation. It has been held up in the Senate.

Let me say with regard to that and some other issues, I know you have some very decent people, if people were simply interested in maximizing their profit, they would not be in the affordable housing business. There are easier ways to make money than dealing with the government, with the tenants, etc. That does not mean they are ready to throw their money down the drain, but I appreciate the fact that we are dealing with socially responsible business people.

I know it is tough. If I can send them a message through many of you, it would be to give us a year. They have done good work. Depending on what happens in November, we may be in a position a year from now where we will have done some of the things that they want to do, so if they can hang on for another year, help may be on the way.

The one thing that is somewhat controversial, and there is no point in ducking it, one of the issues Mr. Leung mentioned—the first right of purchase. He represents an organization that I have worked with for many years, which does a lot of good work in Boston. I have worked with them both on policy advocacy and in individual cases.

I understand that is problematic to some owners. I acknowledge the fact that first of all, nothing in that requires anyone to sell, if he or she wants to continue to own. Secondly, nothing in there I would hope—and I would think we were capable of drafting it this way—requires somebody who has decided to sell to lose a nickel. That is it should be written so that the right of first purchase is only operational with someone who will meet any other offer.

Given that, I understand there are some concerns about it. Could people explain to me if we did it right, if we did it in a way that did not require the owner who had independently of this decided to sell, to lose any of the purchase price, what are the problems with it?

Mr. Pagano?

Mr. PAGANO. There are no problems. The biggest problem now is there are several companies that are buying up limited partners. They are going out and paying exorbitant prices to get their foot in the door. They are then ignoring the long-term affordability requirements either causing the project to default and forcing the general partners to sell.

I think if we can come up with some exit strategy for the existing partners, that the affordability would last longer.

The CHAIRMAN. I appreciate it. That is not in our jurisdiction. Affordable housing has no better friend than the chairman of the Ways and Means Committee. He is one of the fathers of the low-income housing tax credit and a great defender, Mr. Rangel. We will work on that. I agree, the exit strategy is very important.

Mr. PAGANO. I think a lot more people would stay in the program or if the second generation and third generation had an exit strat-

egy to get out. Right now, they are driving—you can have an appraisal on a property. We have an 110-unit property in Jersey City, a senior citizen building. I have an appraisal that says the property is worth $4 million.

The group that came in to buy up some of the limited partners has just forced us to put it on the market, and they are claiming they can get us $9 million.

When you are making those types of representations to limited partners that they are going to double the money that they thought they could get, it is just untenable and it will be a problem for any tenants group that wants to go in because I cannot make the number work at $9 million.

The CHAIRMAN. I probably know the property.

Mr. Poulin? Is it possible for us to do a first purchase right in a way that would not impinge on the owner's rights?

Mr. POULIN. I think it is. There is always that tradeoff of an owner having fulfilled his obligation to HUD, having kept the property affordable, which I am a big proponent of, and frankly as I said, that is all we do.

As long as it is done correctly where the tenant group is qualified and can do it—

The CHAIRMAN. You have to be assured they are getting paper that is going to be paid. We are not asking people to take—I understand we have an obligation, there is almost a burden of proof on us to show that it is being done correctly.

Mr. POULIN. I think so.

The CHAIRMAN. Ms. Burns?

Ms. BURNS. Washington, D.C., as you may know, has a right of first refusal legislation in place for the tenants, and we have worked on several transactions where, sometimes it is just an additional tool such that it may not end up where the tenants purchase the property, but the tenants do have a much greater say in who the purchaser is; we have joint ventured in several cases.

The CHAIRMAN. Let me invite everyone here, and I want to be clear, there are very few owners in this program who were not somewhat socially motivated, you know, if you just want to make the money—I do think the right of first purchase is important. I understand constitutionally if for no other reason it has to be done in a way that does not deprive the owners of any revenue.

I believe we should be able to come up with a program that will not unduly delay, because delay can be a cost, it will not put you at risk of taking bad paper, I am encouraged by this. I hope we can work that out.

The gentlewoman from New York.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I would ask unanimous consent for my statement to be entered into the record.

The CHAIRMAN. Without question, since it is your bill, your statement should be in the record.

Ms. VELAZQUEZ. Mr. Bodaken or any other member of the panel, if you wish to comment, in New York, we are seeing a number of HUD-subsidized buildings being bought by private equity firms and flipped to other buyers soon thereafter. My concern is that some of those of those deals are financially unsustainable under current operating income.

I have an example here where a development was sold, almost 4,000 units of housing was sold for $295 million. Two years later, it was sold for $918 million. This definitely poses a real threat to current low-income tenants.

Have you seen this kind of transaction take place elsewhere in the country? Can you share your insights from those transactions?

Mr. BODAKEN. Congresswoman, I have not seen that magnitude of difference, but I think it is not unusual to see, in very hot real estate markets, owners buy HUD-subsidized properties with the notion of eventually making a significant profit by flipping them.

Just coincidentally, both the right of first purchase and some of the other tools that are in the bill that has been introduced would very much focus on that particular issue and I think it would make it much more difficult for that to take place. That is number one.

Number two, I think it is important that in those situations, HUD has the ability, and I am not sure about this particular situation, but HUD has the ability certainly as we have learned in other situations, to make owners more responsible in how they convey their properties, and as you know, we worked with Congress and everyone else to try to save that property, and I think in those situations, we need to keep a very alert eye until this legislation becomes law. We need to very much focus on those properties because once lost, they are irreplaceable.

Ms. VELAZQUEZ. Definitely. Does anyone else wish to comment on that?

[No response]

Ms. VELAZQUEZ. In your opinion, is it more important to focus on preserving buildings that are at risk of losing their affordability status or instead to concentrate on programs to create new affordable housing options?

Mr. Poulin?

Mr. POULIN. The new programs that are out there today do not have the ability, as was said earlier, to really help the tenants most in need. The tax credit program is wonderful but without HUD and Section 8 behind it with the vouchers, it does not hit the tenants most in need.

Project-based Section 8 is only in preservation deals. They have not offered project-based Section 8 in years. Preserving those transactions both from a cost standpoint and from who you are servicing standpoint, I think ought to be the top priority of what HUD is doing.

Ms. VELAZQUEZ. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentlewoman very much.

Mr. Joseph?

Mr. JOSEPH. I was just going to comment on that. I think it is both. We need both new construction and we need preservation. One of the most successful programs which used to produce 20,000 new units a year in the late 1970's and 1980's, the HUD 202 program for seniors, is now producing less than 4,000 units a year, while the age tsunami is sweeping through.

As Chairman Frank already mentioned, the tax credit program is a very important program, but for an elderly woman getting a Social Security income, even though the tax credit rent is a bargain in that market area, she simply cannot afford it on Social Security.

I think we need both.

The CHAIRMAN. Mr. Bodaken?

Mr. BODAKEN. Very briefly, Congresswoman, I think in an unconstrained resource environment, both are essential. We live in a constrained resource environment. Unless we are ready and able to construct tens of thousands of new affordable units, I think the preservation imperative is obvious.

We know that preservation is about 50 percent less in most States and in your City, new construction has doubled the price of preservation.

I think in this environment, both have to be looked at, but I think preservation is the essential first step.

Ms. VELAZQUEZ. Thank you.

The CHAIRMAN. I thank the panel. Mr. Leung, I was able to help the reporter with "Tzedakah," but with "thank you" in Chinese, you are going to have to help him. I will not even try to pronounce it and get that wrong.

Thank you. I appreciate this. It has been very useful. Again, the members of the Congressional Black Caucus, in particular, expressed to me on the Floor that they regret not being able to be here, because this is a high priority for many of them, but meeting with Senator Obama obviously was also a priority.

The staff has been here. We were listening. I appreciate the degree of agreement we have on the goals here. We are in a serious drafting phase.

There is no chance that the bill is going to become law before the end of the year, but I think it would be helpful in the process if later in July or the first week in August, I would hope the House could pass a good version of this. That would get us off to a good start.

I would hope if the House passed it, that would help some of you who are fighting the good fight and trying to persuade people not to flee the program, not to sell out, but that would be a kind of earnest of our good faith. I am not asking them to wait indefinitely. If we can get a bill passed this summer, that would be a pretty good indication that we may well have one into law by the fall of 2009.

I am hoping that we can work together to try to persuade people.

Thank you very much. This is an enterprise worth a lot of our effort.

[Whereupon, at 1:03 p.m., the hearing was adjourned.]

A P P E N D I X

June 19, 2008

Statement of Rep. Nydia M. Velázquez
Committee on Financial Services
Hearing on
"Affordable Housing Preservation and Protection of Tenants"
June 19, 2008

Chairman Frank, I want to commend you for bringing attention to the issue of affordable housing preservation. It is critical that this Congress takes swift action to protect the nation's affordable housing stock.

The number of households spending more than half their income on housing has risen sharply since 2004 – up from 1.2 million to 17.7 million in 2006. Owners and renters, middle-income and poor - most of them working Americans bear the brunt of this burden.

Meanwhile, rising rents have brought the steady erosion of working class neighborhoods. As gentrification moves further into our cities, speculators begin circling. Already, real estate tycoons have their sights set on subsidized housing. In New York City alone, private equity firms have snatched up 80,000 apartments from working class renters.

In fact, last year a real estate investor went to Brooklyn and tried to buy Starrett City, the nation's largest federally subsidized housing complex - home to over 14,000 tenants, spread out over 5,881 units. When that real estate investor came in with his $1.3 billion bid, renters knew they were at risk of losing their apartments. Tenants, advocates and public officials fought back. As a result, Congress passed H.R. 5937 to keep Starrett affordable.

However, that is just one building. Because of the housing crisis the home ownership market has softened, while the rental market has tightened. That especially hurts poor families and seniors. The trade-off for many Americans is a longer commute coupled with high gas cost, substandard housing, or crowded living quarters. It can also mean no savings and less spent on healthcare, food, or clothing.

With HUD facing a $2.4 billion deficit in its Project-Based Section 8 program, the stability of some 300,000 families now hang in the balance. If we cannot meet this shortfall, thousands of landlords will opt-out of their subsidy contracts, rents will skyrocket, and many working families will scramble to find a place to live.

This is why last year I introduced H.R. 44, the Stabilizing Affordable Housing for the Future Act. This bill was developed in conjunction with housing advocacy groups to allow for the preservation and rehabilitation of our housing stock. Buildings at risk of becoming unaffordable will be stabilized, providing greater certainty for low-income tenants. The steps H.R. 44 takes to safeguard affordable housing are vital because current gains fall far short of offsetting losses of other subsidized units.

By empowering local governments and communities, H.R. 44 would help protect the affordable housing we have now, particularly older buildings. The bill also requires HUD to make information about a building's condition available to the public online. These provisions will ensure that families not only have a place to call home today, but a safe place to call home in the future. I am glad to report that H.R. 44 in its entirety has been included in the comprehensive preservation legislation that we are reviewing today.

I want to thank Chairman Frank for his leadership and work on the Financial Services Committee, and for holding this hearing. Today, we move towards removing obstacles to affordable housing preservation and help stop the erosion of housing opportunities for low- to moderate- income households. This hearing provides new hope for tenants struggling to climb the ladder towards economic stability for their families. Thank you.

Testimony of

Michael Bodaken

President
National Housing Trust

before the

House Committee on Financial Services

Hearing on Legislation to Preserve Affordable Rental Housing

Washington, D.C.

June 19, 2008

Chairman Frank, Ranking Member Bachus, and members of the Committee, thank you for inviting me to testify today. My name is Michael Bodaken. I am the President of the National Housing Trust ("the Trust") 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 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 24 supporters of affordable rental housing. For over 17 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 and expand the preservation of decent, affordable rental homes for low-income households. 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)

Let me begin by thanking you, Chairman Frank, Housing and Community Opportunity Subcommittee Chairwoman Maxine Waters, and others on the Committee who have exercised the commitment and hard work necessary to convene this hearing and present a draft of comprehensive preservation legislation for our review and comment. 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 preserve affordable rental housing that is at risk of conversion to other uses. We support the enactment of legislation to strengthen and expand tools for preservation, and welcome the opportunity to work with you to make this proposed legislation become law.

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.

The need for this housing is great. Our nation's most vulnerable families and seniors depend on quality affordable rental housing. According to HUD, between 2003 and 2005 the number of very low income renter households with worst case housing needs increased by more than 15 percent. There are now nearly 6 million such households, the highest number reported since HUD began collecting data in 1990. 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.

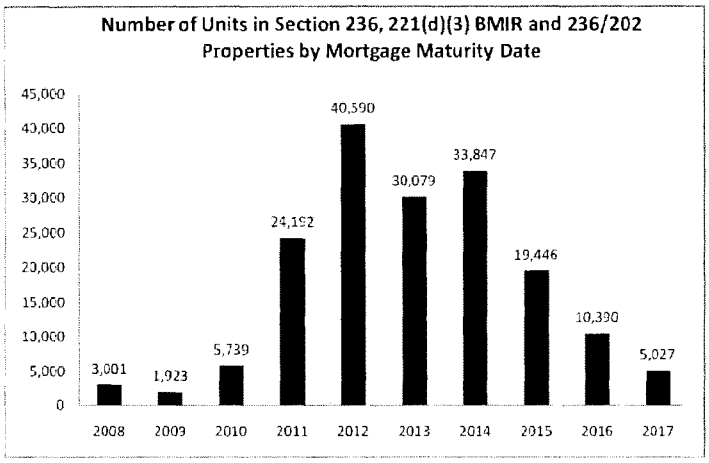
Federally subsidized housing serves nearly every community in the nation. The Trust's analysis shows that nearly 190,000 federally assisted apartments with contracts expiring over the next decade are located in the districts of the members of this committee, as shown in attachment A.

Many federally assisted homes have rents well below market, making them the most affordable housing in the nation. But today their future in high cost housing markets is threatened. Many properties have increased substantially in value, giving owners the incentive to opt out of the federal programs and convert the housing to market rate. Constructed more than 30 years ago, many properties are suffering from physical deterioration and are in need of significant capital improvements.

Despite these risks, current federal policies provide few incentives to retain the property's original use, and many incentives to opt out of affordability requirements. The Trust estimates 350,000 units of subsidized housing have been lost over the past decade through conversion to market-rate housing or physical deterioration. 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.



Home foreclosures increase new pressure on affordable rental housing.

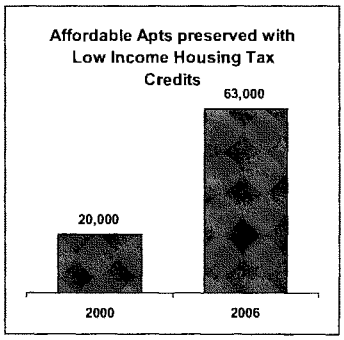
As every member of this Committee knows, our nation is currently undergoing a massive foreclosure crisis in the single-family housing stock. According to the Pew Charitable Trusts, one in 33 homeowners is projected to be in foreclosure, primarily over the next two years, as a result of subprime loans made in 2005 and 2006. Homeowners being foreclosed upon will not be the only homeowners affected, according to data cited in the report. An additional 40 million neighboring homeowners may see their property values and their municipalities' tax bases drop by as much as $356 billion.

Another clear implication is that future foreclosures will shift many families from homeownership to rental, and that many of these families will be seeking rental units at the lower end of the of the cost spectrum, where there is already a shortage of affordable rental housing for the poorest households. *America's Rental Housing: The Key to a Balanced National Policy*, published by the Joint Center for Housing Studies and funded by the MacArthur Foundation, makes the point that as displaced owners are forced into the rental market, a growing number of renters are competing for a limited supply of affordable housing, adding to market pressures. Addressing this challenge begins with preserving existing affordable housing. As 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."

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

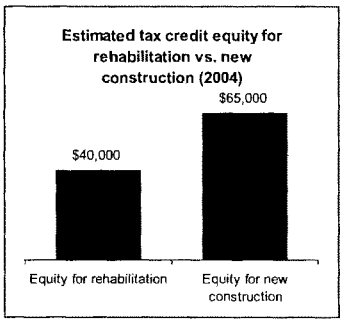
New construction alone will not produce enough affordable housing to meet the increasing demand. From 1995 to 2005, our nation lost nearly 1.4 million apartments with inflation-adjusted

rents of $600 or less.[1] Although approximately 100,000 affordable apartments are created each year through the low income housing tax credit program, 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.



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. The accompanying chart demonstrates how 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.



Building enough new housing affordable to low-income families at current wages would be an impossibly expensive solution given budgetary constraints. Current local zoning laws, land use controls, and other regulatory barriers have seriously hampered the production of affordable rental housing and have increased housing prices. High land prices and restrictions on allowable densities have pushed the median asking rent of a newly built apartment to $1,057 in 2006, a 30 percent increase above the median asking rent in the mid-1990s (measured in constant dollars).[2] Significantly increasing production requires addressing these regulatory obstacles—a substantial challenge considering the strong opposition to building new affordable housing in many communities throughout the country.

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[1] 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

[2] Ibid

In addition, 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.

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. Instead, safeguarding this housing presents an opportunity to reinvest in and improve our communities.

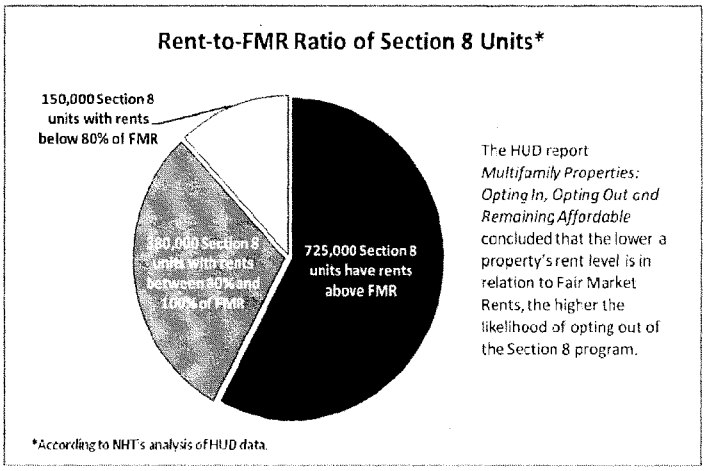
Moreover, it is more energy efficient to preserve existing housing than it is to build new affordable housing where there is not an existing transportation infrastructure. Much of this housing serves as existing transit oriented development in our nation's cities. The National Housing Trust and Reconnecting America have identified federally assisted affordable housing located in close proximity to existing or proposed public transportation in 8 cities: Boston, Chicago, Cleveland, Denver, New York City, Portland, St. Louis, and Seattle. More than 100,000 federally assisted housing units sheltering more than 300,000 individuals in these cities are located within a half mile of rail stations or proposed rail stations. Approximately 63 percent of subsidized apartments near rail stations are covered by federal rental assistance contracts that expire before the end of 2012. The number of units near public transportation increases dramatically when subsidized apartments near frequent service bus lines are included in the analysis.

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.

In order for federally assisted housing to stand the test of time, the federal government must act as a fair and consistent partner by honoring its commitments.

The stock of privately owned affordable rental housing is the result of a successful four-decade partnership between the federal government and the private sector. This partnership led to the creation of nearly two million units of rental housing that is affordable to economically disadvantaged households, a large portion of which include elderly or disabled individuals. Today, private sector owners, managers, lenders, and investors associated with affordable rental housing have reason to doubt the federal government's willingness to honor its obligations under the contracts that were the basis of that partnership. Last summer, many owners went month after month while the Section 8 payments due to them under these contracts went unfulfilled. This winter, HUD announced that its new scheme to meet these obligations was to provide funding only a few months at a time, rather than for the entire contract period, and that funding would expire at the end of each fiscal year. For the tenants and owners that rely on prompt, reliable payments to meet their own obligations, this is unacceptable.

Owners of buildings with project-based rental assistance projects have the right to opt out of the program. Owners who have properties with market rents proximate to or higher than the current project-based Section 8 subsidy amount will be more inclined to leave the program if the reliability of their payments is in doubt. According to the Trust's analysis of HUD data, approximately 150,000 Section 8 apartments have rents well below fair market rent:



Aside from the impact on local vendors, businesses, and mortgage holders (many of whom depend on FHA insurance for these obligations), these late payments also affect the confidence of lenders and investors needed to finance the recapitalization of older properties in need of repair. If these lenders and investors can't rely on the federal commitment to these properties, our ability to preserve their affordability into the future is severely compromised.

For this reason, the first principle of preservation is prompt, reliable funding for existing housing assistance contracts. Without full appropriations to fund existing contracts, our efforts to preserve affordability face a daunting challenge.

Current policies also 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.

In addition, 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;

- There is no nationwide effort to inform preservation minded organizations when an owner gives notice to convert a property to market rate. 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.

Legislative Recommendations

The John D. and Catherine T. MacArthur Foundation supports the National Housing Trust and NHT/Enterprise, and has supported leading housing developers and others working to promote and finance affordable housing preservation. In October of 2006 the MacArthur Foundation outlined three Guiding Principles for Preservation Policy. These principles still apply today and provide a useful framework for thinking about policy changes that can improve the number and the quality of preservation transactions.

1. To encourage and support responsible long-term ownership of affordable rental housing.

2. To encourage and streamline sales and transfers of at-risk affordable rental properties to qualified preservation owners.

3. To provide appropriate support to existing residents of affordable rental housing who seek to remain in their homes or require relocation assistance.

These guiding principles shaped four basic recommendations for comprehensive preservation policy reform:

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. Thus, the Preservation Working Group recommends:

1. Providing full appropriations to fund project-based Section 8 contracts on a 12-month basis;

2. Providing tenant protections and alternatives to conversion for properties with expiring contracts or maturing mortgages;

3. Permiting owners to transfer project-based Section 8 to another property;

4. Utilizing all available preservation tools, such as up-front grants and retaining Section 8 for purchasers of distressed properties;

5. Enacting Exit Tax relief, as provided in H.R. 1491.

Regulation: Streamline policies and coordinate administrative practices to improve support for long-term preservation owners and make preservation transactions easier, faster and less costly. The Preservation Working Group works with HUD on an ongoing basis to ensure that regulatory changes improve prospects for successful preservation outcomes.

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 enhancements to the Mark-to-Market program;
2. Protect state and local preservation laws against preemption;
3. Permit owners to retain project-based assistance in lieu of 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: Collect, standardize, and widely share information about the characteristics of existing affordable rental properties, their residents, and key factors that create a risk of loss, as well as innovative and successful preservation strategies. The Preservation Working Group recommends establishing an early warning system for opt-outs, together with easy to access comprehensive information on HUD-assisted properties.

The Preservation Working Group's complete recommendations can be found in Attachment B.

Again, thank you for the opportunity to comment on the need for comprehensive preservation 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 in FY08-17
Rep. Frank, MA, *Chair*	4,220
Rep. Bachus, AL, *Rnk. Mem.*	670
Rep. Gary L. Ackerman, NY	1,314
Rep. Joe Baca, CA	2,057
Rep. Michele Bachmann, MN	2,497
Rep. J. Gresham Barrett, SC	2,626
Rep. Melissa L. Bean, IL	2,206
Rep. Judy Biggert, IL	1,466
Rep. Dan Boren, OK	2,979
Rep. Ginny Brown-Waite, FL	176
Rep. John Campbell, CA	1,005
Rep. Shelley Moore Capito, WV	2,694
Rep. Michael E. Capuano, MA	18,246
Rep. Andre Carson, IN	5,772
Rep. Michael N. Castle, DE	4,833
Rep. William Lacy Clay, MO	5,095
Rep. Emanuel Cleaver, MO	5,861
Rep. Geoff Davis, KY	3,099
Rep. Lincoln Davis, TN	2,016
Rep. Joe Donnelly, IN	3,707
Rep. Keith Ellison, MN	6,625
Rep. Tom Feeney, FL	249
Rep. Bill Foster, IL	3,339
Rep. Scott Garrett, NJ	889
Rep. Jim Gerlach, PA	798
Rep. Al Green, TX	2,414
Rep. Luis V. Gutierrez, IL	1,993
Rep. Dean Heller, NV	1,709
Rep. Jeb Hensarling, TX	977
Rep. Rubén Hinojosa, TX	1,997
Rep. Paul W. Hodes, NH	4,097
Rep. Walter B. Jones , NC	1,692
Rep. Paul E. Kanjorski, PA	3,971

Rep. Peter King, NY	388
Rep. Ron Klein, FL	454
Rep. Steven C. LaTourette, OH	1,581
Rep. Frank D. Lucas, OK	2,023
Rep. Stephen F. Lynch, MA	5,578
Rep. Tim Mahoney, FL	612
Rep. Carolyn B. Maloney, NY	2,963
Rep. Donald A. Manzullo, IL	2,508
Rep. Kenny Marchant, TX	538
Rep. Jim Marshall, GA	2,949
Rep. Carolyn McCarthy, NY	2,240
Rep. Kevin McCarthy, CA	1,158
Rep. Thaddeus McCotter, MI	2,521
Rep. Patrick T. McHenry, NC	1,035
Rep. Gregory W. Meeks, NY	2,803
Rep. Brad Miller, NC	2,563
Rep. Gary G. Miller, CA	410
Rep. Dennis Moore, KS	2,815
Rep. Gwen Moore, WI	6,912
Rep. Christopher S. Murphy, CT	5,028
Rep. Randy Neugebauer, TX	2,057
Rep. Ed Perlmutter, CO	1,911
Rep. Ron Paul, TX	1,324
Rep. Steve Pearce, NM	2,309
Rep. Tom Price, GA	534
Rep. Deborah Pryce, OH	4,283
Rep. Adam Putnam, FL	1,338
Rep. Peter J. Roskam, IL	1,906
Rep. Edward R. Royce, CA	757
Rep. David Scott, GA	2,371
Rep. Christopher Shays, CT	3,789
Rep. Brad Sherman, CA	2,647
Rep. Nydia M. Velázquez, NY	5,262
Rep. Maxine Waters, CA	2,107
Rep. Robert Wexler, FL	908
Rep. Charles Wilson, OH	2,443
Rep. Melvin L. Watt, NC	2,961
Total	**189,275**

Attachment B

Legislative Provisions
to
Support the
Preservation of Affordable Housing

Compiled by the
National Preservation Working Group

SECTION I: Maintain housing at risk of being converted to market.

From 1965 to the mid-1980s, the government played an essential role in creating affordable rental homes. The federal government partnered with the private sector by providing financial incentives, including interest rate subsidies (Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR)), or rent subsidies (Section 8), in exchange for a commitment from property owners to keep the apartments affordable to low-income households. As a result of these programs, there are millions of federally assisted, privately owned affordable homes in nearly every community in the nation. The largest of these programs, the project-based Section 8 rental assistance program, provides affordable apartment homes for more than 1.3 million households, including more than 700,000 homes for senior citizens.

The apartment homes created with the help of the federal government provide some of the most affordable rental housing in our communities. Many federally assisted homes have rents well below market making them the most affordable housing in the nation, serving a wide range of low- to moderate-income households. But today their future, especially in high cost housing markets, is threatened. Many properties have increased substantially in value, giving owners the incentive to opt out of the federal programs and convert the housing to market rate. Many other properties, constructed more than 30 years ago, are suffering from physical deterioration and are in need of significant capital improvements. From 1995 to 2003, our nation lost 300,000 subsidized affordable apartments through conversion to market-rate housing or physical deterioration. 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.

Preserving federally assisted affordable housing is the essential first step in solving our affordable housing crisis. New construction alone will not produce enough affordable housing to meet the increasing demand. Any strategy to ensure a sufficient supply of affordable housing must begin with holding on to what we have. According to the Joint Center for Housing Studies, for every new affordable apartment constructed, two affordable apartments are lost. Without preserving existing housing, we are losing ground.

Preserving existing affordable housing provides an opportunity to reinvest 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. Instead, safeguarding this housing presents an opportunity to reinvest in and improve our communities.

Preserving existing affordable housing saves scarce resources. It is significantly more cost-efficient to preserve existing housing than build new housing. It costs approximately 40 percent less to preserve an existing apartment than to construct a new apartment. It is also 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.

Assure adequate appropriations to meet Section 8 renewal needs in FY '08.
The Administration is requesting $300 million less for contract renewals in 2008 than the amount approved for 2007; a funding level that likely falls short of what will be needed to renew all Section 8 contracts expiring in 2008. The National Housing Trust estimates that the president's request of $5.523 billion for contract renewals is at least $400 million short of what will be needed.

Solution
Congress should appropriate adequate funds to assure the renewal of all expiring contracts.

Enact Mark-to-Market program reforms.
Since its enactment 10 years ago, the Mark-to-Market program has preserved 125,000 affordable apartments through full debt restructurings at an estimated savings to the taxpayer of $2.1 billion. When it was reauthorized in January 2002, the program was improved modestly, to take into account lessons learned during the initial five years of implementation. In 2006, additional improvements were proposed that would have benefited properties and residents by:

- making a broader range of properties eligible for Mark-to-Market debt restructuring;
- extending HUD's authority to approve rents in excess of 120 percent of FMR when necessary to preserve properties; and
- broadening the base of previously restructured properties that could benefit from not-for-profit purchase incentives and lengthening the period of time after an initial restructuring during which such incentives could be utilized.

The case for each of these improvements is provided below.

Making a broader range of properties eligible for Mark-to-Market debt restructuring. Bills introduced in the 109th and 110th Congresses would make two types of properties eligible for M2M debt restructuring: (1) otherwise-eligible properties with rents at or below market eligible and (2) properties in presidentially declared disaster areas. By extending program eligibility to these types of properties, Congress could preserve additional apartments and save additional taxpayer dollars through avoidance of default. The Congressional Budget Office (CBO) scored a savings on the measure extending eligibility to properties in presidentially declared disaster areas. Using the same "avoidance of default" methodology, a savings would accrue from extending eligibility to otherwise-eligible properties with rents at or below market. In fact, over the life of the M2M program, HUD has renewed Sec. 8 contracts (without mortgage restructuring) on more than 10,000 projects whose rents were at- or below market, and 190 of those properties (representing 18,000 affordable apartments) subsequently defaulted. Within the next five years, contracts on approximately 1,500 properties with rents expected to be at- or below market will expire. Of these properties, 1,016 have troubled physical scores, 476 have troubled financial scores, and 377 properties have both. These low financial and physical scores have been proven to have significant statistical correlation to potential for default.

Extending HUD's authority to approve rents in excess of 120 percent of FMR (exception rents) when necessary to preserve properties. HUD's ability to approve exception rents is capped at 5 percent of the restructured portfolio. This cap will be reached in April 2007. Beyond that date, the restructurings of approximately 1,000 units that are eligible for exception rents will need to be put on hold until more units become available. HUD will have to determine whether to mark the rents down to market during the hold period, which puts properties at risk, or continue to pay the above-market rent subsidies. Further, many properties need Exception Rents over 120% because of extensive physical rehab needs and/or because they are financially not viable, and both situations will likely worsen if the restructure is put on hold. Lastly, low-income housing tax credits are often combined with Exception Rent transactions, allowing extensive rehabilitation of HUD-subsidized properties using non-HUD funds. Hold times will negatively impact properties' ability to utilize state-allocated credits within a tax credit cycle. Properties requiring exception rents are often the most at-risk properties in the portfolio in terms of physical condition, financial health, and local need for affordable housing preservation. By definition, the properties are not financially viable at market rents. Not restructuring them substantially increases default and foreclosure risk to FHA/HUD, and risk of loss of the units from the affordable stock. According to HUD, the majority of transactions utilizing exception rents over 120 percent of FMR still result in Sec. 8 savings, because the restructured rents, though above market, are lower than the rents prior to restructuring.

Broadening the base of previously restructured properties that could benefit from not-for-profit purchase incentives. The average rehabilitation per unit of properties going through a M2M debt restructuring is just under $2,000. When tax credits are involved, the average rehab. per unit increases to approximately $30,000 per unit. Many state housing finance agencies give a preference in their qualified allocation plans to not-for-profit organizations and/or preservation. Access to LIHTCs is one of the many benefits that not-for-profit purchasers bring when they purchase properties that have already gone through a M2M debt restructuring. In recognition of this fact, Congress enacted not-for-profit purchase incentives when it reauthorized the M2M program in 2002. Specifically, the HUD Secretary is authorized to assign secondary M2M debt to a qualified not-for-profit purchaser or to forgive that debt entirely. HUD's Office of General Counsel (OGC) has limited to three years (after the initial restructuring) the period of time during which the HUD Secretary can exercise this authority, undermining the utility of this preservation tool. According to HUD, as of February 1, 2007, 65 percent of the closed portfolio is already beyond the three year eligibility window, and the number will increase to 75 percent by the end of FY 2007. Recently, HUD has further undermined the not-for-profit purchase incentives created by Congress by requiring a repayment of junior M2M debt in transactions involving the use of the incentives when a nonprofit assembles additional funds to benefit the property. Congress should prohibit HUD from capturing the value added by a nonprofit purchaser. This policy requires a legislative fix.

Solution

The 110th Congress has already extended the Mark-to-Market Program through September 30, 2011, but it has not enacted the program improvements described above. These improvements could become law through the enactment of S. 131 and H.R. 647, companion bills that have already been introduced in the 110th Congress. Section 4 of each bill contains language extending the program through September 30, 2011. As this extension has already been accomplished via Public Law 110–5, Sec. 4 could be dropped from each bill. Specifically, the bills would improve the Mark-to-Market program by:

- Extending eligibility to otherwise-eligible properties with rents at or below market eligible and properties in presidentially declared disaster areas;
- Lifting from 5 to 9 percent of the restructured portfolio the cap on HUD's ability to approve exception rents; and

- Extending from three to five years the period during which the HUD Secretary can choose to exercise the not-for-profit purchase incentives and prohibiting HUD from requiring repayment of junior M2M debt in deals involving state or locally allocated housing resources.

Preserve properties with maturing mortgages and protect tenants.
About 200,000 units in properties with HUD-subsidized mortgages and rent restrictions are scheduled to expire by 2013. When mortgages and affordability restrictions expire, under current law neither the housing nor the tenants have access to preservation resources or protections. In 2004, in the 108th Congress, Chairman Frank introduced H.R. 4679, the Displacement Prevention Act, to address this problem. The bill authorized assistance to owners and purchasers, for rehabilitation, acquisition, or rent subsidies, in exchange for extending the term of affordability restrictions. The bill also authorized enhanced voucher protections for tenants where the housing is not preserved. Although hearings were held, the bill was never acted upon, nor revised to reflect the suggestions made at the hearing.

Solution
Before enactment, revise the proposed Displacement Prevention Act to reflect the recommendations previously made by NPWG members, including the following:

- To help preserve properties with maturing mortgages:
  - cover all properties with a HUD-insured or HUD-held mortgage that are subject to budget-based rent restrictions, since many were not deregulated and deserve the same protection as the Section 221(d)(3) BMIRs and 236s
  - permit rehab funds to be made available as either loan or grants, to maximize tax credit equity
  - permit HUD to defer or extinguish prior Flexible Subsidy loans as part of a preservation plan
  - clarify that nonprofit acquisition grants can cover acquisition, rehab, and transaction costs, if not funded otherwise, and that HUD-set, per-unit grant limitations should be flexible in light of variable real estate markets
  - clarify that existing nonprofit owners have access to the same rehabilitation assistance and similar rental assistance as for-profit owners, especially if rehab funds do not cover all costs
  - clarify that "nonprofit entities" include limited partnerships or limited liability corporations controlled by the nonprofit organization or its affiliate
  - in the case of an acquisition by a not-for-profit preservation purchaser who commits to renewed, extended affordability and brings additional resources allocated by a unit of state or local government, award 15-year project-based assistance subject to annual appropriations
  - provide more specific guidance on HUD's authority to determine which market areas qualify for affordability assistance
- To protect tenants:
  - ensure tenant participation and endorsement of preservation planning
  - establish suitability requirements (track record and responsiveness to tenants) for owners and purchasers
  - clarify that the extended affordability restrictions include the preexisting budget-based rent schedule and the duty to renew any expiring project-based subsidy contracts and to accept vouchers
  - establish that tenants may enforce the preservation subsidy requirements and affordability restrictions
  - require HUD to make enhanced vouchers available at a specific point prior to maturity, to enable tenants who wish to move time find other housing and move

- strengthen notice requirements by requiring owners to certify that they will accept any vouchers ultimately provided (as per HUD Renewal Guide), and requiring a second notice closer to the maturity date concerning the owner's final decision, and specifying other remedies for noncompliance

The National Housing Law Project is available to assist in drafting legislative language to revise H.R. 4679 (included in Appendix) to implement any of the improvements described above.

Convert Rent Supp / RAP contracts to project-based Section 8.
There are approximately 35,000 apartments with Rental Supplement (Rent Supp) and Rental Assistance Payment (RAP) contracts. Over the next 10 years, the contracts on 21,433 of these apartments will expire. By 2029, all of the apartments will have been lost to contract expiration. These contracts exist in 35 states, but the majority of them are located in New York, New Jersey, Massachusetts, Michigan, Illinois, Virginia, Washington State, and California, as the table below demonstrates. In addition, owners are not permitted to mark up to market, and as a result needed recapitalization is deterred and some owners have an incentive to prepay underlying mortgages, resulting in loss of the rental subsidy.

State	Rent Supp/RAP Units
New York	17,091
New Jersey	4,775
Massachusetts	2,697
Michigan	2,619
Illinois	1,411
Virginia	916
Washington	851
California	804

Under current law, at the expiration of a contract issued with Rent Supplement (Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s)) or Rental Assistance Payments (Section 236(f) (2) of the National Housing Act (12 U.S.C. 1715z-1)), an owner has no right to renew the contract, and tenants are eligible for enhanced vouchers only under limited circumstances.

Solution
Congress should permit owners to convert Rent Supp and RAP subsidies to project-based Section 8 assistance. This action would protect low-income tenants in danger of losing their homes, save valuable rental housing, and in some cases make it possible to mark rents up to market to facilitate rehabilitation. This proposal has been scored by the Congressional Budget Office as creating over $700 million savings in the first two fiscal years it is in effect. The savings are derived from the cancellation of long term-contracts and their replacement with one-year contracts subject to appropriations.

Preserve state-HFA financed properties.
Nationwide, there are more than 150,000 affordable apartments at state-financed properties with long-term, project-based Section 8 contracts but without HUD/FHA financing. Between 2007 and 2012 alone, more than 47,000 affordable apartments are at risk as project-based Section 8 contracts begin to expire. At mortgage maturity, owners will have to decide whether to renew their contracts or opt out of the Section 8 program. The potential exists for many property owners to make substantial profits by converting the housing to condominiums or more expensive apartments, either by opting out of the program at contract expiration or by prepaying the state HFA mortgage and terminating the Section 8 contract early.

Solutions

There are three easy, non costly solutions that would go a long way toward saving this housing. Specifically, HUD should clarify that it will continue to provide project-based Section 8 upon prepayment of such a property, and it should permit owners to mark-up-to-market.

1. Provide that, should an owner of one of these properties want to refinance prior to maturity, HUD will continue to provide project-based Section 8.
   A controversial 2002 opinion from HUD's Office of General Counsel (OGC) threatens approximately 900 Section 8 projects financed under the set-aside program for state housing finance agencies. The OGC ruled that under Section 8 contract language in effect until 1980, the contracts terminated when the HFA mortgages were prepaid. The opinion is not the only reasonable reading of the HAP contract language and is contrary to the regulations in effect at the time and to decades of HUD practice approving such prepayments. HUD has not actually terminated contracts but has issued no guidance clarifying the effect, if any, of the OGC opinion. The lack of clarity has created a chaotic situation that, combined with the problem described below, actually encourages prepayments. The proposed legislative language cures this problem without federal expenditures.
2. Allow owners of such properties the right to mark up to market prior to contract expiration in exchange for an extended Sec. 8 commitment.
   Owners of non-HUD insured, state-HFA financed properties are unable to mark-up-to-market (MU2M) or mark-up-to-budget, because their long-term contracts have not yet expired. While they will be eligible to MU2M at contract expiration, many owners either cannot or do not wish to wait. As a consequence, some properties are falling into disrepair. In other situations, owners are anxious to prepay and increase the rents to much higher, market levels via prepayment. This policy effectively provides owners an incentive to prepay their mortgages, and they can use the OGC opinion described above to terminate their HAP contracts. By permitting — not requiring — such owners to MU2M prior to contract expiration in exchange for a commitment to renewed, long-term affordability, Congress could preserve thousands of affordable apartments assisted with project-based Section 8.
3. Permit 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.

Permit Mod. Rehab. properties to mark up to market.

In the Section 8 Mod. Rehab. program, project-based Section 8 Housing Assistance Payment (HAP) contracts were issued for 15 years by public housing authorities at cost-based rents. Nearly 60,000 affordable apartments currently benefit from Section 8 Mod. Rehab. assistance. When these contracts expire, renewing owners are prohibited from entering the mark-up-to market process. As a result, these contracts, many of which are deeply below market level, can be adjusted by only a modest operating cost adjustment factor. On the contrary, if owners were able to renew under mark-up-to-market, they would enjoy a significant increase in net income, with all of the benefits flowing to the property and the residents. Under current law, however, even preservation-oriented owners and purchasers have reluctantly been terminating Mod. Rehab. HAPs, resulting in the loss of much-needed deep affordability. In addition, some public housing authorities administering Mod. Rehab. HAPs have refused owners' requests to renew contracts, arguing that MAHRA does not impose the same renewal duty on a PHA as it does with HUD. (A separate problem, the prohibition against the use of Low Income Housing Tax Credits (LIHTC) with continuing Mod. Rehab. Section 8 contracts, also contributes to the loss of Mod. Rehab. apartments, with owners exiting the program in order to access LIHTC equity.)

Solution

Amend Section 524 of MAHRA to enable Mod. Rehab. Section 8 renewals to be treated in the same way as other project-based Section 8 contracts. Properties that have already renewed subject to the existing language should be given a "hold-harmless" opportunity to restore rents

to the level that would be in effect if not for the existing restrictions. Our proposed legislative language does not provide retroactive rent hikes for moderate rehab properties that have already been renewed but does require that public agencies renew Section 8 mod rehab contracts when requested by the owner.

Enact a federal first right of purchase.
For most federally assisted housing, with the exception of Rural Development (RD) properties facing prepayment, federal law establishes no protections for the property when the owner seeks to convert the property to market-rate use. For most converting properties, tenants receive enhanced vouchers or other vouchers, with subsidies set at comparable market rent and supported wholly by federal appropriations, but the housing is lost as an affordable housing resource to the community, despite years of federal investment. For RD properties facing prepayment, Congress established a right for preservation entities to purchase properties at fair market value prior to conversion. (Congress also established similar preservation buyouts at market value for many HUD-subsidized properties facing prepayment in the LIHPRHA program, which remains on the books but has received no funding for almost an entire decade.) Illinois, New York City, and Rhode Island have legislated similar policies.

Solution
Require owners proposing to end participation in federal affordable housing programs (at least HUD and RD programs) to offer the properties for sale at fair market value to preservation purchasers, at least for the notice period. Purchasers would have to assemble the resources to support any purchase, using the existing array of federal, state, and local programs, as well as any made available in the future (e.g., project-based enhanced vouchers).

Protect state/local preservation laws against preemption.
Existing state and local preservation laws across the country risk nullification unless Congress clarifies that the preemption provisions of the long-dormant Low Income Housing Preservation and Rental Homeownership Act (LIHPRHA) are inapplicable to properties that never participated in that program.

Facing uncertainty concerning the federal government's preservation policies, many state and local governments have enacted notice requirements to enable them to take responsive preservation activities. Federal court decisions since July 2003 now threaten the authority of state and local governments to address the impacts of threatened conversions. Notwithstanding the fact that LIHPRHA is no longer operational for providing federal incentives to preserve additional properties, as well as clear legislative history that Congress intended to build upon state and local preservation policies, the Eighth and Ninth Circuits have held that owners of properties that never executed a LIHPRHA preservation plan may nevertheless use LIHPRHA's express preemption provision to invalidate state and local protections prior to prepayment. The Eighth Circuit has also held that Minnesota's preservation laws are invalid under the conflict preemption doctrine; using logic that threatens any state and local preservation notice law applicable to various federally assisted properties, it rejected any deference to HUD's position that LIHPRHA did not preempt state laws for non-LIHPRHA properties.

Unless revised or repealed, LIHPRHA's express preemption provision and unfounded use of the conflict preemption doctrine will continue to jeopardize state and local prepayment notice laws in nine states (California, Connecticut, Illinois, Maine, Maryland, Minnesota, Texas, Rhode Island, and Washington) and the District of Columbia, and an additional seven cities (Denver; Los Angeles; New York City; Portland, Oregon; San Francisco; Santa Cruz, CA; and Stamford, CT). Despite their narrow original purpose to ensure that owners receive full federal preservation incentives provided under LIHPRHA, these federal laws have since been judicially interpreted to

impede state and local efforts to craft preservation responses and tenant protections suited to local conditions.

Solution
Congress should amend Sec. 232 of the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) to clarify that

- the statute does not apply to properties that are not regulated by a LIHPRHA plan of action, and
- state and local preservation initiatives for at-risk, federally subsidized properties are not otherwise preempted.

Permit owners to retain project-based assistance in lieu of enhanced vouchers.
Enhanced vouchers are provided to protect existing tenants from displacement upon the occurrence of an "eligibility event" in a multifamily housing project — generally prepayment of the subsidized mortgage or termination of a rental assistance contract. Upon turnover, these vouchers move with the tenant, and the housing is lost as a resource for future low-income families. Authorizing project-based voucher assistance in lieu of enhanced vouchers will make it possible both to protect existing tenants in a project and to preserve the affordability of units at the project where an owner/preservation purchaser chooses to do so. Project-basing the assistance will provide a financeable revenue stream for preservation-oriented owners and purchasers, without which many worthwhile projects, especially in strong markets, have been forced to exit the affordable program.

Solution
Permit owners to retain project-based assistance, subject to the approval of the PHA. Preservation project-based voucher assistance would be subject to the general rules for project-based voucher assistance, except that it would be exempt from the 25 percent cap on project-based units, it would be disregarded for the purpose of calculating the 20 percent limitation on attaching PHA funding to structures, and it would cover all existing tenants in the project who would otherwise receive enhanced vouchers. In addition to preserving desperately needed affordable units, this provision may result in reduced Section 8 subsidy costs, because maximum rents for project-based voucher assistance (generally 110 percent of fair market rent) in strong market areas may be less than the market rent levels that would otherwise apply for enhanced voucher assistance. Although not required by our draft language, in those situations where only regular vouchers are provided as replacement subsidies due to the narrow technical requirements of the enhanced voucher statute, Congress should also consider permitting nondefaulting owners or purchasers to retain that assistance as project-based as well, with similar exemptions from project-based voucher program rules.

Protect the ability of owners to use Section 8 incremental financing.
Housing agencies across the country have used the project-based voucher program to spur production of new affordable housing in communities where there is an inadequate supply to meet the needs of voucher holders. In particular, innovative agencies have used project-based vouchers to create permanent supportive housing targeted to the chronically homeless. On October 13, 2005, without any notice and contrary to the policy in effect since the statutory provision was added in late 2000, HUD published a Final Rule on the project-based voucher program that eliminated agencies' discretion to set rents at market when units also receive housing tax credits (a practice known as "Section 8 incremental financing"). In addition, by creating the risk that state and local housing agencies will be required to reduce subsidy payments if HUD reduces the fair market rent by 5 percent or more, the Final Rule also undermined the ability of such agencies to leverage project-based Section 8 vouchers and of housing developers to borrow funds based on a long-term project-based voucher contract.

Solution
Restore the ability of state and local housing agencies to enter into project-based voucher contracts at market rents in buildings financed by Low Income Housing Tax Credits. Establish safe harbor future rents for ongoing project-based voucher contracts.

Affirm that HUD has a requirement to maximize preservation.
HUD has often failed to preserve at-risk affordable housing in policy areas where it has discretion to do so. For example, after Congress gave HUD "flexible authority" to dispose of troubled housing "regardless of any other provision of law," more than 100,000 units have been sold with vouchers in the past decade when most could have been sold with project-based Section 8 and preserved as affordable housing.
HUD's failure to use its discretion to preserve at-risk housing was a focus of Senate hearings in 2000 (for troubled housing) and October 2002 (for HUD's multifamily stock overall.)

Solution
H.R. 44 would repeal HUD's "flexible authority" regarding the disposition of foreclosed and HUD owned buildings. Congress should additionally direct the Secretary to exercise HUD's other discretionary powers in a manner which preserves and improves the at-risk stock for current and future Section 8 eligible tenants. We understand the Senate has prepared proposed legislative language to accomplish this objective, following a hearing on Mark to Market extension in June 2006. We support enactment of this proposal.

SECTION II: Restore housing at risk of loss due to deterioration.

HUD multifamily properties are at risk of conversion to market rate or demolition when the property is in poor condition or where the owner has other properties in extremely poor condition or has committed serious program violations. For properties with a Section 8 contract, this risk may occur at or about the time of contract expiration or during a contract term. These properties risk (1) owner default on the mortgage and termination of restrictions or subsidy through HUD's foreclosure and "property disposition" process and (2) disqualification or termination from the Section 8 program, usually due to a refusal by HUD to renew the Section 8 contract. The problems of the building and its impact on the community will rarely be solved by termination of Section 8. Instead, a number of non-costly changes should be made to help save these properties, so long as project-based Section 8 is maintained.

Despite the financial or physical distress of such properties, it is not uncommon for tenants, nonprofits, and local governments to desire to preserve and improve them. Often, the properties have history of serving very low–income elderly renters or families. Often, local groups believe a change in ownership will help put the project back on the right path.

Foreclosure and property disposition. After default, HUD takes an assignment of the mortgage from the original lender in exchange for an insurance payment and becomes the lender for the project. HUD has broad discretion to assure repairs, take possession and operate the property, terminate or extend the Section 8 contract, and force a change in ownership via foreclosure or the threat of it, where major defaults persist. If HUD is the high bidder at the foreclosure sale, HUD takes title to the property and then tries to sell it through the property disposition program.

In 1988 and 1994, Congress adopted and revised a comprehensive preservation policy for troubled properties facing foreclosure and disposition. However, starting in 1995, Congress

granted HUD "flexible authority" (12 U.S.C. §1715z-11a(a)) that HUD has used to ignore those requirements.

For properties acquired by HUD, state and local governments have a right to negotiate the purchase of the property from HUD. HUD is also authorized to make so-called "Up-Front Grants" to purchasers for rehabilitation costs, and until recently funded these grants from the insurance fund. However, as a practical matter, by requiring such grants from the insurance fund to be backed by an appropriation, the Deficit Reduction Act of 2005 effectively eliminated this important preservation tool for troubled properties.

Renewal of the Section 8 contract. Renewal of the Section 8 contract is invariably an important part of a preservation solution for these properties, although HUD may require a transfer to new ownership. Under recently enacted law (Section 311 of the FY 06 Appropriations Act), extended for FY 2007, HUD is required to "maintain any rental assistance payments under section 8...that are attached to any dwelling units in the property," unless the Secretary determines that the property is "not feasible for continued rental assistance payments under such section 8."

Because both the "flexible authority" and the Deficit Reduction Act impede a comprehensive preservation program, a variety of legislative changes are still needed to enable preservation and improvement of these properties. This section highlights those proposals.

Require HUD to maintain project-based Section 8 in HUD dispositions.
An essential ingredient of preserving HUD multifamily properties facing foreclosure or other disposition is retention of the project-based Section 8 contract. Section 311 of the FY 2006 Appropriations bill generally requires HUD to maintain project-based Section 8 contracts when selling properties at foreclosure or from the HUD inventory (P.L. 109-115, 119 Stat. 2936, §311 (2005)). This provision was apparently carried forward as part of the FY 2007 Joint Funding Resolution, which incorporated FY 2006 terms and conditions unless specifically altered.

Section 311 also suffered from language added by the House in conference that allowed HUD to make exceptions where such action is determined infeasible, "based on consideration of the costs of maintaining such payments ... or other factors." HUD's May 31 guidance contains several limitations that improperly impair retention of project-based contracts. Specifically:

- Existing Section 8 contract rents, adjusted only per the OCAF formula and no other available authorities (e.g. Mark Up under MAHRAA Section 524), must be sufficient to carry both the operating costs and any debt service on needed repairs, irrespective of other available funding sources and any adjustments ordinarily available; while HUD may sell a property with Section 8 where contract rents alone are insufficient to support operation and rehab, it need not do so.
- "Deteriorated neighborhood conditions" would justify terminating the contract.
- Section 8 assistance will only flow after substandard conditions are remedied.
- HUD need not bid in its mortgage debt and take title to the property, thus undercutting the ability to create local preservation strategies outside the accelerated foreclosure auction process that is often ill-suited to this purpose.
- Both the statutory mandate and HUD's policy cover just Section 8, not other similar subsidies.
- Residents are consulted only after HUD has made its decision.
- In some cases, as permitted by HUD's May 31 memo, HUD has avoided Section 311 by terminating or abating the contract prior to placing the property into foreclosure, so there is no Section 8 contract left to maintain because the contract authority has already been used for vouchers.

- Finally, courts have ruled that the current "flexible authority" even allows HUD to ignore Fair Housing and civil rights laws in making disposition decisions.

Solution
Congress should therefore revise Section 311's language to address these deficiencies and further the preservation goal.

Strengthen protections for troubled properties.
Every year, HUD is required to address the problems of numerous properties in its portfolio that have fallen into disrepair and/or financial distress. Nevertheless, if repaired and placed under responsible ownership, these properties are often a viable community resource. HUD needs additional tools and guidance — without substantial additional cost — to help resolve these problems.

Solution
Revising Section 311 as recommended above would require HUD to maintain project-based Sec. 8 contracts when foreclosing on HUD-assisted properties with HUD-held mortgages or disposing of HUD-owned properties, as well as when taking other enforcement actions under the contract prior to foreclosure. In addition, Congress should enact Sections 3, 4 (b), and 6 of H.R. 44, introduced in the 110th Congress, which would:

- Repeal HUD's "flexible authority," which HUD has used to relieve itself of obligations to maintain affordability and quality requirements. This, in turn, would require HUD to use all legal tools available, including those established by Congress in 1994 (12 U.S.C. §1701z-11), to ensure future affordability and sufficient renovation of HUD-held and HUD-owned buildings.
- Require HUD to maintain rental assistance to buildings that are undergoing rehabilitation as part of a preservation transfer, while escrowing these funds until the building or units meet housing quality standards, at which time escrowed funds will be made available to the property.
- Amend existing law to grant HUD's non-judicial foreclosure authority to Units of Local Government that have been designated by HUD as part of the note and mortgage sale process. Authorized Units of Local Government will, in turn, have the ability to determine how to handle physically or financially distressed buildings, including moving to foreclosure. HUD-authorized Units of Local Government must manage and dispose of such projects in a manner that will benefit those originally intended to be assisted under the prior housing program.

Strengthen cities' right of first refusal.
A key tool for preserving distressed HUD-held and HUD-owned buildings is the ability of Units of Local Government to exercise their statutory right of first refusal to purchase buildings that become HUD-owned. Historically, negotiations regarding sales price for buildings sold by HUD to local government housing agencies were based on number of industry standards, including projected income, operating expenses, and estimated repair and rehabilitation needs. Ostensibly because of the Deficit Reduction Act of 2005, in May 2006, HUD issued guidance stating that it will no longer consider repair or rehabilitation costs in determining an appropriate sales price for HUD-owned buildings and HUD-held loans. These policies directly raise preservation costs for local government purchasers and their private, preservation-motivated designees. Because purchasers must effectively pay twice for these repair costs, such policies make it nearly impossible for any responsible government housing agency and/or any subsequent preservation developer to preserve properties that have HUD-held loans or are HUD-owned.

Solution
Enact Sec. 5 of H.R. 44, which has been introduced in the 110th Congress, which specifies that, in determining the market value of all multifamily real property and multifamily loans, the Department shall use industry standard appraisal practices, including, but not limited to, consideration of the cost of needed repairs to at least minimum code standards and maintaining the affordability restrictions of the original loan or grant.

Permit owners to transfer project-based Section 8 to another property.
HUD's authority to approve transfer of "Section 8" project-based assistance (PBA) from physically obsolete or economically non-viable projects to new developments — a useful tool for preserving affordable housing resources that otherwise would be lost — was established by a statute enacted in the late 1990s (42 U.S.C. §1437f(bb)) and again recently in Section 318 of the FY06 HUD Appropriations Act. These statutes have differing requirements. Section 318's highly prescriptive language has impeded the ability of assisted property owners and preservation purchasers to complete transactions.
Sec. 318 expires on September 30, 2007. With a few improvements, the effectiveness of this tool in promoting preservation and neighborhood revitalization could be greatly improved.

(We note that H.R. 1227, introduced on February 28, 2007, contains language permitting the transfer of project-based rental assistance from dwelling units damaged during Hurricanes Katrina or Rita. Our recommendation envisions greater flexibility in the use of this important tool than permitted in the bill, with the goal of maximizing its utility as a housing preservation resource.)

Solution
Congress should permanently extend the Secretary's authority to approve transfer of "Section 8" PBA, and make the following changes in the law:

- Expand the definition of eligible projects to include properties assisted with all types of PBA, e.g., Section 8 mod rehab and others not listed.
- Strengthen tenant endorsement and local government support provisions.
- Provide flexibility to transfer PBA to multiple properties, and to make partial transfers of PBA contracts, retaining some units on-site, provided that there is no reduction in the total number of project-based units.
- Allow temporary tenant relocation prior to the availability of new units at the receiving project, consistent with comparable programs.
- Allow flexibility to change unit mix/configuration of units in replacement housing while maintaining the same number of assisted units.
- Authorize prepayment or defeasance of FHA-insured loans in connection with PBA transfer so long as substantive use restrictions are preserved at the receiving project.
- Allow a subordinate lien position on transferred HUD or FHA-insured debt.
- Allow increases in Federal liability and FHA Insurance Fund exposure, to the extent necessary to secure project financing, as determined by the Secretary.
- Allow flexibility for rent increases where the receiving project is covered by the programs established by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Mark-to-Market, Mark Up to Market, Mark Up to Budget, etc.), and standard contract extensions similar to that extended to other comparable projects.
- Affirm applicability of existing fair housing laws and regulations.

These changes would extend the life and improve the effectiveness of an important assisted housing preservation tool for thousands of units at risk of loss in physically obsolete and economically non-viable projects.

Restore the Up-Front Grants program.
In 1994, Congress revised the Multifamily Housing Property Disposition Reform Act in order to relax certain property disposition requirements that, in combination with insufficient appropriations, had created a bottleneck at HUD. At the time, there were more than 500 properties in HUD's foreclosed portfolio and hundreds more in the pipeline due to HUD's inability to deal with the problem. As part of the Act, Congress permitted the Secretary to "provide up-front grants for the necessary cost of rehabilitation and other related development costs" from FHA's General and Special Risk Insurance Fund. Congress reiterated HUD's authority to provide such grants several years later, at least when disposing of HUD-owned properties, as part of the "flexible authority" statute (12 U.S.C. §1715z-11a(a)). The Deficit Reduction Act of 2005 ended FHA's mandatory spending authority for rehabilitation grants, effectively eliminating the Up-Front Grants program by requiring any such grant to be backed by an appropriation.

Solution
Enact H.R. 44, which has been introduced in the 110th Congress. Sec. 2 of H.R. 44 will authorize the HUD Secretary once again to provide grants (including up-front grants) and loans from the General and Special Risk Insurance Fund when managing and disposing of HUD-held and HUD-owned multifamily properties.

Assure that purchasers are in compliance with local/state housing/health codes.
No one — not residents, the local government, or HUD — wants a HUD-assisted property to be acquired by an owner who is in substantial violation of local or state housing or health codes. Section 219 of the 2004 HUD/VA appropriations act (Pub. L. No. 108-199) required that HUD establish rules ensuring that other properties owned by prospective buyers of HUD-owned properties and those with HUD-held mortgages facing foreclosure be in substantial compliance with state and local health and building codes. HUD's rules have still not been finalized, and fail to account for substandard properties located outside of the local jurisdiction where the HUD property is located. Moreover, the existing requirement does not apply to ordinary transfers of non-troubled properties.

Solution
Enact Sec. 7 of H.R. 44, which has been introduced in the 110th Congress, which assures that buyers of any HUD-owned, HUD-assisted, or HUD–insured multifamily housing property must be in compliance with local/state housing/health codes.

Fund Section 531 rehab grants funded by Interest Reduction Payments.
Every year HUD has access to a substantial amount of already appropriated but unused affordable housing funds that result from prepaid or terminated Section 236 interest subsidy (IRP) contracts. More than eight years ago, in Section 531 of MAHRAA (Pub. L. 105-65), Congress directed that these funds be used for rehabilitation of HUD multifamily properties. However, HUD never implemented the program, and late in FY 2002 Congress rescinded the accumulated $300 million (Pub. L. No. 107-206, 116 Stat. 820, 892 (Aug. 2, 2002)). The President's FY 2008 Budget indicates that about $45 million will return to the Treasury as a result of prepayments and foreclosures on Section 236 properties with appropriated IRP. As Congress recognized a decade ago, these funds can provide important new incentives, coupled with new use restrictions, to preserve and improve properties still at risk of conversion to market-rate.

Solution

Congress should require that these resources be used as intended by making an appropriation that redirects these funds, as well as mandating HUD action to implement the rehabilitation program.

SECTION III: Protect and empower residents facing conversion.

Since the mid-1990s, when conversions of privately-owned federally assisted properties to market-rate were first authorized, Congress has intended that residents facing conversion be protected with replacement vouchers, and that communities not suffer a reduction in the total number of affordable housing units. In addition, when MAHRAA was enacted in 1997, Congress established the Section 514 program to support education and outreach to affected tenants so that they might work with their communities to preserve their homes or take steps to address any conversion, as well as to offset predevelopment expenses for nonprofit preservation purchasers. HUD has taken steps that are inconsistent with these policies (at least until recently when HUD committed to restarting a Section 514 program), necessitating several legislative corrections to ensure that these provisions operate as originally intended.

Assure that tenant protections are guaranteed as Congress intended.

To protect tenants facing displacement, in 1999 Congress passed unified authority requiring HUD to provide "enhanced vouchers" for all tenants facing specified housing conversion actions, including owner opt-outs and prepayments ((42 U.S.C. §1437f(t)). In 2000, Congress acted again to clarify the tenant's right to remain in their home (Pub. L. No. 106-246, §2801 (July 13, 2000)). Unfortunately, the law as written and implemented by HUD fails to clearly protect tenants, as Congress intended, in several important respects: some owners still refuse to accept the voucher and, even if the owner accepts it, the lease fails to set forth the good cause for eviction requirement; PHAs use screening to deny assistance to some tenants previously assisted at the property prior to subsidy conversion; and tenants, usually elderly empty nesters, can be displaced by family/unit size mismatches that would not have threatened their home absent the subsidy conversion.

Solution

Legislative revisions should address these shortcomings by:

- Clarifying the owners' obligation to accept the enhanced voucher and evict only for good cause, and requiring this protection to be set forth in the lease;
- Guaranteeing that all affected tenants receive vouchers by clarifying the prohibition on PHA re-screening; and
- Protecting both "empty nesters" and large families facing displacement due to family/unit size mismatches. Congress should allow tenants to remain in their homes with enhanced vouchers until a unit of appropriate size becomes available at the property.

Provide vouchers for residents of all converted units.

In 2006, against all previous practice, HUD adopted a policy that has caused — and will continue to cause — great harm to our nation's affordable housing stock. Congress must make clear its desire to have all lost affordable units replaced so that we don't backslide on our nation's commitment to affordable housing.

Affordable housing is lost to communities when public housing is demolished or owners of private apartments choose to end their participation in federal subsidy programs. Under previous policy, HUD was required to issue housing vouchers to replace every unit of federally-assisted housing that is lost through demolition or conversion to market rate. These "tenant-protection" vouchers enable some tenants to remain in privately-owned apartments at market

rents or help displaced families to relocate to housing that is affordable. Replacement vouchers ensure that communities will not suffer an overall reduction in affordable housing resources.

In PIH 2006-5, on p. 4, buried in an item headed "Tenant Protection Fees," the notice states "HAP and administrative fee funding will only be provided for occupied units in the affected project at the time of the PHA's application for such voucher funding." It is not clear whether this "policy" applies only to replacement of public housing or also to private housing conversion actions. In either case, it contravenes the language of the 2006 appropriations act (which clearly provides funds for "replacement" and not only for "relocation"), prior HUD notices (which it does not refer to), and sections 18(h) and 24(d)(1) of the U.S. Housing Act, 42 U.S.C. §§1437p(h) and v(d)(1). HUD's policy to award vouchers for the full number of subsidized units lost is contained in Notices PIH 2005-15 (April 26, 2005) and 2004-4 (March 29, 2004) (for public housing) and PIH 2001-41 (for conversion of privately-owned units). In the latter notice at pages 9 - 10, HUD states: "When HUD provides vouchers to a PHA as the result of a housing conversion action, HUD will offer housing choice voucher funding on a one-for-one replacement basis to make up for the loss of the affordable housing units in the community, subject to the availability of appropriations."

Thus, in adopting PIH2006-5, HUD unilaterally decided to terminate the one-for-one replacement policy, without congressional authorization. Henceforth HUD proclaimed that funding for tenant protection vouchers would only be provided for units occupied at the time of the Public Housing Authority's application for voucher funding. As a result, in FY2006 HUD issued 3,441 fewer tenant protection vouchers than in FY2005. Indeed, conceding that they are proceeding without Congressional authorization, the Administration's 2008 budget proposals would modify current law to permit HUD to replace only those subsidized units that were occupied just prior to demolition or conversion to market rate. The change in policy would lead to a substantial loss of affordable housing resources in communities that have great need for affordable housing.
Across the nation, there are tens of thousands of people on subsidized housing waiting lists. The demand is overwhelming. We simply cannot afford to lose access to any affordable housing units. Units can be vacant for many reasons – normal turnover, tenants who relocate because their buildings are being converted to market rate or are about to be demolished, etc. While the apartments may be empty at a given moment, they are certainly not empty from lack of people who are in need of affordable housing.
Finally, not having one-for-one replacement will be particularly painful for those on the Gulf Coast, where thousands of units are not currently occupied because of the terrible natural disasters in that area. We urge you to reject the Administration's proposed changes to this by including an affirmative prohibition on HUD's attempts to change federal policy through administrative action.

Indeed, the Gulf Coast, which now faces critical shortages of affordable rental housing, would likely be hit particularly hard by the proposed policy change. Thousands of federally-assisted apartments were damaged by the storm, and some of these are likely to be demolished or sold. Under the policy proposed by the Administration, few of these units would be eligible for "tenant-protection" vouchers, however, because most were evacuated by tenants displaced by the hurricane damage.

Solution
The former policy of providing "tenant-protection" vouchers to replace lost subsidized housing units on a one-to-one basis helps communities to sustain affordable housing resources at a time of growing need. The Administration's proposed changes to this policy should be rejected.

Ensure a vibrant resident capacity building and predevelopment program in expiring Section 8 and other HUD-subsidized properties.
For many years, HUD has declined to provide the funding authorized by Congress for predevelopment costs and technical assistance to tenants facing threats to their housing, despite the results of extensive audits that found relatively few violations of congressional restrictions. In addition, the Department has on several occasions provided funding to unqualified groups to work with tenants, and refused to permit grantees to work with tenants facing threats to their homes in a wide variety of programs, both falling within and outside the current statutory authorization.

Solution
Revise the statute to clarify that HUD must spend the funds authorized each year, ensure that groups working with tenants are qualified and independent from ownership and management, authorize HUD to provide administrative training to grantees to minimize compliance problems, and clarify that funding can be used to assist tenants residing in a wide variety of privately owned subsidized and assisted housing developments.

Provide residents with access to building information.
Residents of HUD housing are HUD's best allies in monitoring and overseeing the public's multi-billion investment in multifamily housing. But residents and their organizations are often hindered by an inability to obtain basic information about their properties, ranging from who owns their buildings, what the property's budget is (except when owners seek a rent increase), available balances and expenditures in Reserve for Replacement accounts, and HUD's subsidy and insurance contracts with the owner.
Although REAC scores and Section 8 Opt Out or Renewal Notices are required by law to be made available to tenants, owners and local HUD offices often fail to make these available, even when requested under the FOIA. (For several years, for example, HUD has declined to make available REAC scores for properties referred to the Enforcement Center — precisely the buildings where residents and communities have the most at stake in knowing what is happening to these homes.)

In addition, HUD's long-standing policy has been to release project operating statements to residents only when owners request rent increases, for a 30 day window only. In January 2006, HUD Assistant Secretary Bernardi compounded this problem by issuing an internal directive discouraging the release of any information under the FOIA which could be embarrassing to current or former HUD officials or policies. As a result, many local offices have withheld even documents, such as approved Mark-to-Market plans, which are plainly releasable to residents under HUD regulations. Some HUD offices have treated any request for subsidy contracts between HUD and private companies as "trade secrets" not subject to public review.

Congressional intervention is needed to reverse this disturbing trend toward increased government secrecy and provide residents the information they need to help monitor the public's extensive investment in subsidized housing. Tenants should be allowed access to basic information affecting their homes.

Solution
Section 8 of H.R. 44, the Velasquez Troubled Housing bill, would provide for "transparency regarding building information" by requiring HUD to post on the worldwide web REAC scores, Section 8 Opt Out or Renewal Notices, and Wellstone "prepayment" Notices. This is part of the Early Warning System discussed below. We support the adoption of these provisions.

In addition, adopting the "Tenant Access to Information" language would empower residents with the information they need to improve their conditions and to more fully assist HUD in its monitoring and oversight mission.

List tenants as third-party beneficiaries on HUD contracts.
When owners violate HUD contracts, tenants often suffer. HUD is sometimes slow to implement effective enforcement measures. Tenants are listed as third-party beneficiaries on Mark-to-Market Use Agreements, but not on other contracts.

Solution
List tenants as third-party beneficiaries on Section 8 Housing Assistance Payments Contracts, Mark-to-Market Restructuring Commitments, and Rehab Escrow Deposit Agreements.

Enlist tenants as partners with HUD in enforcement.
HUD's enforcement of housing quality standards in project-based Section 8 housing is often slow and inflexible, and extremely rare in cases of substandard management and especially for violations of residents rights to organize.

Solution
Congress should clarify HUD's ability to utilize flexible enforcement tools to address violations of housing and program standards, including residents rights. In addition, residents should be empowered to pay their portion of the rent into an escrow fund controlled by HUD, and/or make repairs and deduct the cost from their rent, and to trigger HUD withholding of its portion when they do so, as an incentive to owners to comply with repair and management standards. In addition, communities and residents should be empowered to trigger a special inspection or management review by HUD, in addition to inspections regularly conducted by the Department. (Language allowing a tenant/community trigger for HUD inspections and/or a tenant rent withholding into a tenant/HUD escrow was included in HR 3838, adopted by the House in 1994, and SB 1281, as reported by the Senate Banking Subcommittee, but the two versions were not reconciled or adopted. In addition, an amendment to HR 3838 by Rep. Velasquez allowed Section 8 voucher holders to pay for repairs and be reimbursed by HUD.)

SECTION IV: Provide better data to facilitate preservation transactions.

From 1965 to the mid-1980s, the government played an essential role in creating affordable rental housing. The federal government partnered with the private sector by providing interest rate subsidies (Section 236 or Section 221(d)(3) Below Market Interest Rate (BMIR)), or rent subsidies (Section 8), in exchange for a commitment from property owners to keep their apartments affordable to low-income households. As a result of these programs, there are more than 1.5 million federally assisted, privately owned affordable homes in communities across the nation. These apartment homes provide some of the most affordable rental housing in our communities.

These programs established a date where the regulatory relationship or subsidy would end and the owner could convert the property to market rate. Most of these properties have reached that date. Thousands of affordable apartments are lost each year as owners opt out of their Section 8 contract or prepay the subsidized mortgage. In the eight years between 1996 and 2003, the National Housing Trust found that 300,000 units of HUD assisted and/or insured, multifamily housing had been "lost" due to prepayment of the mortgage or loss of the Section 8 subsidy through owner or HUD choice. Appropriate analysis of preservation options for a particular property, including both new ownership capacity and resources, requires property-level data.

Fortunately, HUD has property data available for the 1.5 million federally assisted and/or insured, multifamily, affordable rental units.

Establish an "Early Warning System" based on existing HUD data.
Current law requires that owners notify tenants and the federal government of a decision to opt out of a Section 8 contract or prepay a subsidized mortgage. However, there is currently no effort to timely inform the public or preservation minded owners of this event. If HUD timely notified the public of opt out and prepayment notices, or other cases where subsidized housing was at risk, mission minded organizations could offer to purchase the property and preserve the apartments as affordable.

Solution
With a minimal investment, HUD could create an "Early Warning System" to help save properties where owners intend to prepay the mortgage, opt out of the HUD subsidy or where HUD enforcement actions may lead to loss of the property's affordability restrictions. Providing this information in a timely fashion to tenants and the public alike will permit development of appropriate local solutions before the preservation opportunity is lost.

The essence of this proposal is a national database of federally assisted properties where the owner has given notice to prepay the mortgage or opt out of the Section 8 contract. The data would be distributed via the web and other means to the public. Mission minded organizations could then assemble the resources necessary to save the housing. Coupling this early warning system with the right to purchase we recommend elsewhere could safeguard many buildings that would otherwise exit the federally supported affordable housing stock, saving resources and avoiding displacement of tenants.

SECTION V: Enact tax legislation.

Enact exit tax relief.
Between 1965 and the mid-1980s, nearly 1.5 million rural and urban affordable housing units were built with some sort of federally subsidized financing — a meaningful but by no means comprehensive response to our nation's lack of affordable housing. Changes in tax laws in 1986 and the aging of both the properties and their investors leaves the properties at risk of loss to the affordable housing stock either through deterioration or conversion to market-rate housing. In many instances, owners of these properties are reluctant to transfer them because capital gains taxes due on essentially the entire sales price (due to prior depreciation deductions) exceed the cash sales proceeds, certainly an unfavorable result when compared to the stepped-up basis available for heirs after the taxpayer's death. These owners are thus often providing no recapitalization and are holding on to the properties until their death, at which point no taxes will be collected on the gain resulting from prior depreciation, not to mention any capital gain above that amount, due to the step up in basis.

Solution
Provide a tax incentive to preserve affordable housing in multifamily housing units that are sold or exchanged to purchasers who agree to keep the properties affordable. The incentive would take the form of an exemption from recapture taxes (noncash gain from depreciation) for sellers of federally assisted housing if they sell to a buyer committed to preserving the property as affordable housing for 30 years after the property transfer. Eligible properties include those assisted under the Section 236, Section 221(d)(3), Section 8, or Section 515 programs.

The current House version, introduced in March 2007, H.R. 1491 is a substantial first step in the legislation needed to resolve this important preservation issue.

Permit the use of LIHTCs with Mod. Rehab. properties.
The Section 8 Moderate Rehabilitation ("Mod Rehab") program was developed years ago to provide financial assistance to owners of deteriorating low income rental properties so they could make needed restorations. HUD guaranteed rental subsidies through 15-year contracts to property owners if they agreed to rehabilitate their property. More and more of these contracts will be expiring in the coming years, and most of these properties have not been renovated since the Mod Rehab contract began. An outmoded prohibition on the use of Low Income Housing Tax Credits (LIHTCs) in properties with Mod Rehab contracts jeopardizes the preservation of nearly 60,000 affordable apartments that are home to very low–income seniors and working families. Housing organizations seeking to preserve these apartments have a strong incentive to opt out of the Mod Rehab contract in order to pursue tax credit equity that is badly needed to finance essential physical improvements. Without the deep subsidy provided by the project-based rental assistance contract, it becomes nearly impossible to ensure that these apartments will remain affordable to very low–income families.

Solution
Congress could easily solve this problem by repealing the prohibition. Bipartisan legislation introduced in the 109th Congress would do just that. H.R. 4873, introduced by Rep. Jim Ramstad (R-MN) and co-sponsored by 39 members of Congress, would eliminate the ban as well as make other improvements to the LIHTC program. This technical fix would come at no cost to the federal government, since equivalent budget authority for vouchers must be provided when Mod Rehab contracts are not renewed.

Michael Bodaken
President

Michael Bodaken serves both as President of the National Housing Trust and President and Treasurer of the National Housing Trust/Enterprise Preservation Corporation. The Trust engages in preservation policy, affordable housing lending and development. He has been largely responsible for growing the organization in becoming a leader in the field of affordable housing preservation. Mr. Bodaken's efforts for the Trust have directly led to the preservation and improvement of over 20,000 apartments throughout the nation, involving over $1 billion in financing. Additionally, Mr. Bodaken serves as President of NHT/Enterprise, an organization founded by the Trust which owns and operates an additional 3,000 affordable apartments in eight states and the District of Columbia, and NHT Community Development Fund, an organization that provides low interest loans to preservation developers across the U.S.

Prior to coming to the Trust, Mr. Bodaken served as the Housing/Community Reinvestment Coordinator ("Deputy Mayor") for the City of Los Angeles. In this position, Mr. Bodaken provided budgetary, legislative and policy assistance to city organizations with annual budgets of more than $140 million, which were responsible for creation and maintenance or over 15,000 affordable rental and single family homes.

Mr. Bodaken is the convener of the National Preservation Working Group, a member of the Advisory Board of the Housing Development Reporter, as well as the Executive Committees of the National Housing Conference. He serves on the board of directors of the National Leased Housing Association, Homes for America, Housing Preservation Project, Urban Vision, Fairfax and Montgomery County Housing Tax Forces, and Stewards for Affordable Housing (SAHF). He is a frequent guest lecturer and panelist at housing industry events.

Testimony of the National Leased Housing Association
Presented by Laura E. Burns
Hearing on Affordable Housing Preservation - June 19, 2008
Committee on Financial Services

My name is Laura Burns. I am the President and CEO of the Eagle Point Companies and a board member of the National Leased Housing Association. My affordable housing experience began in 1985 while working in the public sector for the Boston Redevelopment Authority and later as a consultant and a developer. My company is dedicated to the preservation of the affordable housing stock and over the last six years we have acquired and/or rehabilitated 23 properties and 5,300apartments in six states and Washington, DC that will remain affordable for the next 30 years.

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-five 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. NLHA's members provide or administer housing for over three million families.

Thank you for the opportunity to testify. NLHA has been working over the past year with the committee staff to craft workable legislation and our written testimony includes a number of recommendations to facilitate the preservation of the existing stock of affordable housing. Our specific comments on the draft bill are attached. We appreciate the interest of the Committee and its leadership in crafting a bill that will address many of our concerns.

Eagle Point Experience

I would like to spend my brief time today sharing several experiences that highlight particular barriers to my company's ability to complete preservation transactions.

Eagle Point has enjoyed some very successful and satisfying experiences in coordinating the complex world of state agency programs and the low income housing tax credit program with HUD programs. Eagle Point will only pursue preservation projects that have financial backing to achieve a full rehabilitation with an appropriate operating budget to ensure that we can maintain each property as quality affordable housing.

In 2004, my company acquired a property known as Delsea Village apartments in Millville New Jersey. This 100-unit family property - originally built in 1971 under the HUD Section 236 mortgage insurance program also has Section 8 project based assistance. the property had been well cared for by the prior

owner but for any property that is thirty plus years old, certain systems needed to be replaced and all of the apartments were dated and tired- a declining quality of life for the residents.
We gathered the financial commitments to acquire and renovate the property gained approvals for tax exempt bond financing, low income housing tax credits, a New Jersey low interest loan and other state agency assistance. We provided HUD with an independent study showing the expected market rents after our planned $20,000 per unit renovation. As a section 236 project, HUD guidance allows a budget-based rent increase up to the as-improved market rents upon completion of the rehab. Further, HUD allows the budget to include the new debt service and expected annual operating costs after the renovation. HUD approved the rent increase and use of the 236 interest reduction payment (IRP) subsidy. That project was successfully acquired and renovations began in April 2004.

In order to arrive at Delsea Village, our residents and visitors must drive straight through another HUD-assisted complex known as Delsea Gardens. Although the names and dates of construction are similar, the prior owners were different; Delsea Gardens was in much worse condition. Instead of mowing the grounds, the owner decided to simply pave the front yards. The exterior of the buildings, the play-areas and the manager's office all reflected minimal maintenance.

Delsea Gardens is 100 apartments with Section 8 project-based assistance and it seemed to us a natural and obvious decision to acquire and renovate Delsea Gardens. We negotiated a purchase and sale agreement and obtained the same financing benefits from the state of New Jersey. Our company looked forward to the day our residents at Delsea Village would drive through an improved neighboring property. We looked towards the day that both properties would have the same level of services and improvements so no child would wish he or she lived next door at the nicer property.

However, Delsea Gardens was constructed and financed under a different HUD program that inexplicably does not allow rents to be set at the "as improved market rent"—only based on the current inferior condition. Furthermore, HUD rules limit this project to a budget based review using old debt service and the old cost structure. This of course would not have resulted in adequate funds to operate the property. We made every effort to obtain an approval for a rent increase under HUD rules- in the end, we could not get the approvals or the rent levels we needed from HUD even though after completion of the renovations our rents would not have exceeded the comparable market rents for the area as provided under MAHRA.
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Therefore, the approved subsidy was returned to New Jersey, the seller terminated the purchase contract and shortly thereafter sold the property to an owner who continues to operate the property at a minimal level with no improvements. The pictures before you were taken last week, three years after their neighbors moved back into their renovated apartments next door.

HUD has established this policy which differentiates outcomes for different properties without the direction of Congress. The proposed draft legislation before you would correct this inconsistency and allow a property that is to undergo rehabilitation to request a rent increase based on a budget with increased debt service and other appropriate costs.

We have been involved in another acquisition effort for almost five years- we had our first meeting with HUD four years ago to discuss the need to renovate a 118 unit elderly project in Connecticut which is owned by a non profit. For these last four years we have awaited HUD policy direction relative to whether the seller may accept some of the sales proceeds. Five and a half years from now when the mortgage matures, the seller, a rotary business group, has a unilateral right to sell the property at market rates, terminate the Section 8 contract and accept all of the sales proceeds. This seller has been patient in working with us and has agreed to defer over $1.5 million in value in order to complete the preservation transaction. The residents have had no choice but to be patient as they enter their fourth summer without

renovations and might expect continued plumbing problems, broken elevators and deteriorating windows. We think we are finally close to getting HUD's approval.

A different seller might have decided to walk away from preservation and instead, wait another five years and accept significant increased financial benefit that can be used to further the nonprofit's mission. Again, this unwritten policy to limit sales proceeds to non profits has been HUD's misinterpretation of current law that results in properties that would otherwise be renovated and preserved today, being put at risk of loss in the near future. This draft legislation would address the issue so more properties would be preserved and renovated when the need arises and a preservation buyer is willing and able to acquire the property.

HUD Policies

The problems Eagle Point Properties experienced when trying to preserve Delsea Gardens were the direct result of inconsistent HUD policy application. What HUD would permit in a 236 decoupling situation like Delsea Village was not permitted in an identical property albeit with a Section 221(d)(4) mortgage. There really was no statutory basis for HUD's unequal treatment and no real explanation for Delsea Gardens residents who did not benefit from the major property renovation that was undertaken next door at Delsea Village. It is the frustration with short-sighted HUD policy decisions, some written, some unwritten, and the inconsistent application of those policies along with the recent HAP payment debacles, etc that will eventually result in current owners leaving the programs and will stymie the efforts of preservation entities like Eagle Point to acquire and rehab properties for continued affordable use.

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. Such antiquated guidance and cumbersome procedures continue to alienate the industry. HUD needs 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.

Until that time, we have to rely on Congress to intervene to clarify HUD's policies where they are (without good reason) interfering with responsible preservation efforts. A number of the provisions in the draft preservation bill would confirm HUD's authority under current law to remove artificial barriers and are strongly supported by NLHA.

Preservation Vouchers

The draft preservation bill includes an important provision 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 2007.

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.

Important Principles of Preservation

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. 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, the imposition of use restrictions that are inconsistent with those required under programs like the Low Income Housing Tax Credit (LIHTC) (which is the main tool used to preserve assisted housing properties) will make it difficult to underwrite many transactions. Further, it may seem like sound housing policy to require longer and longer use restrictions, however, the reality is that a property can only remain viable for so long (generally 30-40 years) without a major infusion of capital. Such use restrictions beyond the remaining useful life of a property will keep the property low income, but may not be a desirable place to live. The fact is that the expiration of use restrictions is often the trigger to recapitalize and preserve the assisted housing stock.

We encourage the Committee to adopt a 30 year use restriction for new preservation transactions that would be facilitated by the proposed grant program in the draft bill.

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 like Eagle Point 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. For more information and background, see the attached "A Proposal to Preserve Federally Assisted Affordable Multifamily Rental Housing."

Both the House and Senate have introduced bills (H.R. 1491 and S.1318) that would accomplish such preservation (see attached background on exit tax). We urge the Committee to encourage the Ways and Means Committee to take action on H.R. 1491.

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

A Proposal to Preserve Federally Assisted Affordable Multifamily Rental Housing

From the mid-1960s to the mid-1980s, the federal government made an historic investment in affordable rental housing for millions of lower income American families. Through a number of programs, Congress created financial incentives for the private sector to develop multifamily housing properties throughout the United States to address widespread housing shortages and distressed conditions evident in aging apartment buildings.

Today, largely because of the structure of current tax rules, this valuable housing asset to the federal government is at risk of being lost, either to continued physical deterioration in the case of lower valued properties, or to market rate conversion in the case of higher valued properties. Congress should enact legislation to give owners of federally assisted housing relief from recapture taxes to encourage the transfer of these properties to new owners who will agree to maintain the property as affordable housing for 30 years.[1]

Background. Prior to the enactment of the Low-Income Housing Tax Credit in 1986, the Federal government encouraged capital to be raised from individuals for investment in federally assisted housing by providing more rapid depreciation deductions for their investments. Today those investors carry low or negative basis in their partnership interests that would trigger large depreciation recapture tax obligations if the property were transferred. As a result most investors choose to hold on to their investment until the property is passed to their heirs and the negative basis is eliminated by the stepped-up basis rule.

Lower valued property. Across the nation there are thousands of federally assisted housing properties owned in a limited partnership structure which are badly in need of capital improvements that are not being made because they are locked into their current ownership. Sales of such properties typically do not generate enough cash to cover the recapture tax liability of the limited partner investors. Therefore the properties continue to deteriorate each year, putting them and their tenants at risk. Rather than selling the properties at substantial tax cost, or investing new capital in the properties, existing owners, many now of advancing

[1] The following organizations participated in the development of this proposal: American Association of Homes and Services for the Aging, Council for Affordable and Rural Housing, The Enterprise Foundation, Fannie Mae, Housing Partnership Network, Institute for Responsible Housing Preservation, Local Initiatives Support Corporation, National Affordable Housing Management Association, National Association of Affordable Housing Lenders, National Association of Local Housing Finance Agencies, National Association of Realtors, National Council of State Housing Agencies, National Foundation for Affordable Housing Solutions, National Housing Conference, National Housing Trust, National Leased Housing Association, National Low Income Housing Coalition, National Multi Housing Council.

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age, are incented by the tax rules to hold the property until their death so that their heirs receive stepped-up basis.

This has led to a situation where a valuable resource to the federal government – hundreds of thousands of affordable housing units rented to low-income families – is deteriorating without the investment of needed capital to preserve the property.

Higher valued property. A far smaller number of federally assisted housing properties are located in hot housing markets where the market rents have been rising and the affordable housing units can easily be converted to market rate units or redeveloped as condominiums. While the higher resale value makes it easier to sell such property to new owners who will preserve the affordability restrictions, because of the high recapture taxes that would be owed by the limited partner investors, the far stronger incentive will be to sell the property at the higher price that can be commanded by purchasers who will convert the property to market rate housing or to condominiums. If this continues to occur, tens of thousands of units of affordable housing that represent an investment of billions of federal dollars, will be converted to market rate housing, reducing the supply of affordable housing even as the housing affordability crisis worsens in this country.

Exit Tax as a Stimulus to the Economy

The enactment of an exit tax provision would also provide an immediate stimulus to the economy. First, the Federal government will collect tax dollars on the cash portion of any gain attributable to sale that will never materialize as investors are now holding these properties until their death when their estates will be relieved of any tax burden. Next, the renovation of these properties undertaken by new ownership will create new jobs and increase consumer spending as new kitchen appliances, major building systems, plumbing fixtures and equipment will be purchased and installed. These capital improvements are accomplished without any additional expense to the federal government. As part of the transfer of these properties, state and local governments will also benefit from increased revenues as various transfer taxes and fees, along with sales taxes, are collected as a part of each transaction.

In addition, the transfer of these properties to qualified entities maintaining them as affordable housing will create further economic opportunities through the utilization of new private sector financing initiatives.

Let's take the example of an actual 267 unit property recently transferred and renovated with private equity and bond financing provided by a state housing finance agency. This property is 27 years old, having been built in 1981. The property is comprised of 267 units; 247 one bedroom units and 20 two bedroom units.

The initial due diligence for the acquisition generated revenue in excess of $265,000 to the local firms and companies which provided the title work, survey update, appraisal, physical needs assessment, environmental, architectural and engineering reviews, and accounting and legal work. The local governmental entity received $191,000 in revenue through payment of the realty transfer fee.

The transfer of the property included a construction/renovation budget of $4,445,500. This work provided economic benefit to many segments of the economy including the

manufacturers, and therefore their employees, of the appliances and new system components, the suppliers and installers of these same items, along with the general contractor who oversaw the entire renovation. The various work items in the project included the manufacture and installation of

- new solar roof-top panels
- new triple pane thermal windows
- new tile, carpeting and painting
- updated security system
- new heating and cooling equipment
- new elevators
- new plumbing
- updated electrical systems and energy efficient lighting
- renovated kitchens with new stoves, refrigerators, microwaves, cabinets, countertops, sinks and faucets
- updated bathroom with new sinks, faucets, vanities and toilets

Proposal. A modest change in the tax rules can be adopted to preserve the stock of federally assisted affordable housing at minimal revenue cost to the federal government. Further such action could serve as a stimulus to the sagging economy. This could be accomplished by waiving the depreciation recapture tax liability where investors sell their property to new owners who agree to invest new capital in the property and to preserve the property as affordable housing for another 30 years. Since very few investors subject themselves to recapture taxes today, opting instead to pass on the property to their heirs at a stepped-up basis, the cost of this proposal should be modest, while the benefit to the federal government of extending the affordability restrictions will be far reaching. This concept is embodied in H.R.1491 legislation introduced by Congressmen Davis and Ramstad and S. 1318 introduced by Senators Schumer and Smith.

Comments of the National Leased Housing Association (NLHA) and the Institute for Responsible Housing Preservation (IRHP) on the March 14, 2008 Draft of "Housing Preservation and Tenant Protection Act of 2008"

March 31, 2008

Page 8 *Section 3: Definitions*

"Nonprofit Organization" There seems to be a bias in parts of this bill against using the low-income housing tax credit and in favor of using appropriated funds for preservation **We recommend that the definition of "nonprofit" be similar to the definition in the 202/811 programs by including for profit limited partnerships or limited liability companies with a nonprofit as the sole general partner.** This broader definition will permit use of proceeds from the sale of tax credits for acquisition and rehabilitation of projects, thereby achieving preservation goals while minimizing the expenditure of HUD funds

"Qualified Preservation Entity" –under (4)(A) the 40 year term is not consistent with tax credits and M2M, etc. The entities will need to raise money, generally through the tax credit program, to accomplish the necessary recapitalization. Requiring a term that is longer than the standard affordability periods in other housing programs will make the transactions very difficult to accomplish. **Please amend the term to be consistent with current programs and practices.**

Further, we are not aware of state credit agencies that buy properties and are unclear as to why (B) is necessary. **We suggest that (B) on page 8 be removed.**

Page 9 *Section 101: Rent Supp/RAP Conversions*

This section provides an opportunity for properties with Rent Supplement or Rental Assistance Payments (RAP) to convert to Section 8 (at owner option). If an owner chooses to convert, it must agree to accept the Section 8 for five years beyond the original mortgage maturation date. If the owner converts and subsequently marks up to market (after the first year) under MAHRA, it must agree to 10 additional years of Section 8. The owner may request a 20 year HAP contract.

This provision appears to be an amalgam of various drafts and ideas. Several questions are raised:

(1) The draft does not create new authority for project-based assistance under section 8. **Therefore, what existing authority is being used and are the terms of that authority consistent with the draft provisions?**

(2) The draft provides for the possibility of an immediate mark up to market of rents upon conversion, pursuant to section 524 of MAHRA, but the draft does not make section 524 applicable to converted contracts until 12 months have elapsed after conversion. Also, there may be a conflict with other provisions that limit the first year subsidy to the maximum amount payable under the previous contracts.

(3) After one year, whether a converted contract has expired or not, the contract is required to be transferred to section 524. This transfer prior to contract expiration should be optional with the owner as the 524 terms and conditions for some contracts might not be as desirable, thus creating a disincentive for conversion. **We support the concept, but prefer that the language be revised to address the above concerns, please see Section 110 of proposed *"industry" bill of April 2007.** * *The "industry" bill was compiled by NLHA with assistance from the Institute of Responsible Housing Preservation (IRHP) and contributions from NAHMA, the American Assoc. of Homes and Services for the Aging (AASHA) and SAHF. The proposed April 2007 bill is supported by other organizations such as IREM, NAHB, and the National Housing Conference For a copy of the industry proposal, please contact Denise Muha at dmuha@hudnlha.com*

Page 12-28 Section 102 Displacement Prevention

This section appears to try to preserve at risk (maturing mortgages) Section 221 (d)(3) BMIRs and Section 236 projects by providing rehab "grants" to owners to preserve properties using funds from un-obligated state agency uninsured rent supplement monies. Owners receiving such grants agree to maintain affordability for at least 20 years beyond the mortgage maturation date. Grants would also be made available to NP purchasers for any direct costs (other than the purchase price) and NP owners (and subsequent owners) would be required to agree to maintain the property for the remaining useful life of the property.

Grants would also be provided to owners "to maintain affordability" but would NOT be provided to projects owned by nonprofits. Rents would be capped at the lesser of market rent or 150 percent or FMR. Such assistance will only be provided to projects that agree to use restrictions for remaining useful life of property (but not less than 10 years).

We recommend that any qualified preservation entity be eligible for assistance for profits and nonprofits) and request that loans be provided (on request) in lieu of grants.

Section 102(b). *Enhanced Vouchers.*

This subsection authorizes enhanced vouchers to eligible tenants residing in section 236 and section 221(d)(3) BMIR projects whose mortgages mature and unit subsidies therefore terminate. The draft requires a notice to tenants 9 months prior to this termination. When these same mortgages are prepaid prior to maturity and tenants are eligible for enhanced vouchers existing law requires a notice period of 150 days. The 150-day period is more than ample for both prepayment and maturity events. (although is may be too long if a mortgage is close to maturation). Experience with the excessively

long one-year notice period for section 8 contract expirations indicates that during such long notice periods some tenants will act against their best interest and leave the project before termination and thereby lose their eligibility for voucher protection. (The one-year notice period for section 8 expirations was enacted prior to the availability of enhanced vouchers and it made sense in that context, but it no longer does, nor does 9 months). **We recommend this provision be amended for consistency current law and practice.**

Also, we recommend that lines 8-10 on Page 24 be removed that allow HUD to come up with additional "requirements" – the provision is very specific about the content of the notice, additional requirements will only cause confusion. The use of "termination" is also very confusing. Why not insert "eligibility event" as the draft includes a definition. We suggest the definition on line 14 be amended (page 22) by inserting after the comma "(A) the maturity of the mortgage or loan; (B) the termination of an assistance contract that cannot be renewed; (C) the prepayment of a mortgage or loan or termination of an insurance contract, that covers a multifamily housing project that is not eligible low income housing as such term is defined in section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119); or (D) the expiration of use restrictions imposed pursuant to the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C> 1715*l* note).

The definition of "assisted multifamily housing property" is not adequate. We recommend that paragraph (2) (line 21 page 25) be deleted and replaced with (2) ASSISTED MULTIFAMILY HOUSING PROJECT - the term "assisted multifamily housing project" means a multifamily housing project" receiving assistance or formerly receiving assistance under – (A) section 236 of the National Housing Act (12 U.S.C. 1715z01)); (B) section 101 of the Housing and Urban Development Act of 1965(12 U.S.C. 1701s)); (C) the proviso in section 221(d)(5) of the National Housing Act (12 U.S.C. 1715*l*); or section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). You can then delete (A) and (B) line 6-12 on page 27.

Page 26, when defining "comparable properties" see (B) "are not receiving project-based rental assistance of any kind from any source" – this is confusing. **Clearly a project with rental subsidies is not "Comparable" to the market, but shouldn't this be clarified to include tax credit properties and properties with mortgage subsidies, as they are not market comparable either.**

Pages 28-35 Section 103 Federal Right of First Refusal

This provision is important and controversial, but the draft is riddled with bracketed questions from leg counsel. We strongly oppose any first right of purchase provision and recommend its deletion from the bill.

The provision appears to apply to prepayments of mortgages, maturity of mortgages and expiration of subsidy contracts. It seems to require the owner to sell the project upon the

occurrence of one of the above events and sell only to certain purchasers. An owner apparently cannot keep the property for its own use.

Previous statutory restrictions on the contractual right to prepay have been found by the courts to be a breach of contract. While this provision is less direct, it still curtails contractual prepayment rights by taking property away from an owner if it expresses an intent to exercise its prepayment rights.

The better approach to preservation is to provide incentives and to remove disincentives, not coercion and appropriation of property.

Pages 35-39 Section 104 PBVouchers instead of Enhanced Vouchers

This provision would allow owners to request project based vouchers in lieu of enhanced vouchers (at PHA discretion). The PBVs would not count against the 20 percent cap. There is a similar provision in SEVRA. **We support this provision.**

Pages 39-41 Section 105 State AgencyContracts

This is a confusing section, beginning with the words in the section heading that the housing is not subsidized by the federal government, which is not true.

Subsection (a) attempts to modify the meaning of certain State agency section 8 contracts. It is not clear that this provision can override HUD's interpretation of its own contract form. **Further, if this provision results in a forced modification to the terms of the contract, to the disadvantage of the owner party to the contract, breach of contract litigation could ensue.**

Subsection (b) appears to be an attempt to alleviate some but not all of the harm done to owner parties to these contracts if subsection (a) is effective. Specifically, subsection (b) would permit a mark-up-to-market of rents during the last 5 years of the State agency contract if the owner commits to a 5-year extension contract at the end of the state agency contract term. However, the next provision provides that if State agency debt financing is still outstanding, to mark up to market (at any time apparently), the owner must commit to a 20-year contract and a 55-year affordability period.

Under the current contract, an owner with one of the affected contracts, can terminate at any time and renew under section 524 at comparable market rents with a 5-year contract commitment or it could opt-out of the program. **This section, therefore, abridges contractual rights of owners. <u>We oppose this provision.</u>**

Page 42 Section 106 Conversion of PB Certs to PB Vouchers

This provision attempts to clarify the conversion of Project-based certificate to Project-based vouchers. **Not sure it is necessary, HUD recently issued a notice on this (see PIH Notice 2008-14).**

Pages 43-44 Section 107 State/Local Preemption

This provision provides that if a property does not have a plan of action under LIHPRHA, the preemption provision in current law would not apply. **The Section 236 and Section 221(d)(3) programs are Federal programs regulated by the Federal government and therefore Federal law should preempt State law in this context. Furthermore, tenant protections are in place under current law that require at least a 150 day notice (but no more than 270 days) to tenants, HUD and local governments prior to prepayment, prevent owners from raising rents for 60 days and provide enhanced vouchers for residents (up to 80 and in some cases 95 percent of median income). With the protections in place, there is no need to amend the law. We oppose this provision.**

Page 44 Section 108 HUD Held/HUD Owned

The provision attempts to provide project-based assistance when HUD disposes of HUD-held or HUD-owned properties. The intent is to address inconsistencies with HUD implementation guidance. **No comment.**

Pages 45-46 Section 109 Assignment of Flex Sub Loans to "Qualified" Purchasers

Under the bill, a "qualified preservation owner" is defined as a for-profit or nonprofit organization that agrees to long-term use restrictions on property it purchases. This section authorizes HUD to forgive or assign any flexible subsidy loans it holds if a qualified preservation owner purchases a project subject to such a loan. However, this section is restricted to "nonprofit" organizations that are qualified preservation owners. It would facilitate the preservation of projects with flexible subsidy debt if all qualified preservation owners were accorded the benefits of this section. **We recommend deleting "non profit organization that is a" on page 45 and replace the words owner/purchaser with "qualified preservation entity."**

Page 46 Section 110 PBV rents in Tax credit projects

Formalizes HUD revised position to allow higher Sec 8 rents in tax credit properties w/project-based voucher units. Also establishes a rent floor. Similar provision included in the House passed SEVRA bill. **We support this provision.**

Page 47 *Section 201 Replacement of State Agency Contracts*

This provision presumably covers State agency section 8 projects not covered by section 105 of the bill, or perhaps it covers those as well with inconsistent terms. Essentially, it gives owners, locked into 30 to 40 year State agency contracts the opportunity, with a State agency's approval (not easy to get), to terminate the contract and renew under section 524, at more advantageous rents, if the owner executes a 20-year contract and commits to 40 years of affordability. **We have no objection to this provision.**

Page 48 *Section 202 Transfer of HAPs*

This section mirrors language in the current appropriations bill that provides for the transfer of Section 8 HAP contract (although the Section 8 statute also permits such transfers). The language could be improved by providing that use restrictions and interest reduction payments may be transferred also. Further, such transfers should be permitted to another project or projects. **We support this provision and encourage the language be revised as noted above. In addition, we suggest adding Section 303 of the Katrina bill (H.R.1227), which is more flexible in authorizing transfers of subsidy contracts in areas struck by hurricanes Katrina and Rita.**

Pages 54-55 *Section 203 Transfer Information*

Directs HUD to issue regs that make participation and certification procedures for sales and transfers of FHA or Section 8 properties the same as those for sales of HUD-owned projects, although it is not clear what the purpose is. Such properties and associated individuals are already required to be cleared under the 2530 process.

The provision also appears to say that HUD should provide a notice to the local government and residents when the owner applies to sell or transfer any FHA insured project or one with Section 8. HUD's current TPA process is very comprehensive and administratively burdensome. Additional rules are likely to cause unnecessary delays and increase the costs of transactions that generally bring new capital into the property. Such a requirement is not helpful or welcome.

Further, a "purchaser's record of noncompliance under housing, health and safety codes with respect to owner housing owned or managed by the purchaser regardless of location, shall be grounds for disapproval of the transfer." **This is much more complex that it appears and may result in good purchasers being denied an ability to preserve such properties. We would recommend Section 203 be deleted.**

Page 55 *Section 204 Rehab grants using recaptured IRP*

This section provides for recaptured Interest Reduction Payments (IRP) to be used to fund a grant/loan program to permit rehabilitation of properties. **No objection.**

Page 56-57 Section 205 Budget-based rents

This section would clarify current HUD policy on the approval of budget based rent adjustments to support the costs associated with the rehabilitation of a property that is being preserved as low income (a.k.a. post rehab rents). Rents would be established under MAHRA and would not exceed levels permitted under current law. There is no need to make this provision subject to appropriations. Changes in rent setting provisions do not require appropriation Act approval. Appropriations are provided for the overall cost of section 8 renewals, for example, but not for each modification in rent provisions. This draft bill has several provisions modifying rent setting provisions without requiring appropriations and should not do so for this provision.

Please remove (4) "be subject to the availability of sufficient amounts approved in appropriations Acts". Lines 19-22 on page 57 should remain to ensure that this provision is not interpreted to replace any other renewal provisions in current law. We support this provision.

Page 58 Section 206 IRP Decouplings/Unit Conversions

This provision clarifies that IRP payments should be made for the entire project when the number of units is reduced due to reconfiguration (in a 236 decoupling). **We support this provision.**

Pages 58-59 Section 301 No screening of tenants for enhanced vouchers

This section essentially provides that tenants eligible to reside in a property that is being converted (opt-out or prepay) will be eligible for the vouchers. Sometimes the PHA's screening criteria under the voucher program deem existing tenants ineligible. **We support this provision and agree with Legislative Counsel that the requirement does not need to be made part of the lease.** It would be inappropriate for the lease to address PHA selection standards.

Pages 59-60 Section 302 One for one w/enhanced vouchers

This provision would ensure that HUD provides vouchers for each unit in a conversion property regardless of whether the unit is occupied. The theory is that these vouchers while protecting current tenants are also replacing lost "units" in the community not protecting current tenants. **No objection.**

Pages 60-62 Section 303 Ongoing Enforcement of HQS

Provides that HUD "may" if a project has serious "violations" of HQS or "any other serious or repeated violations of other program requirements, including residents right to organize 1) abate all of part of HAP 2) withhold rent increases 3)use withheld payments to make repairs or 4) assume possession and management of the project.

HUD currently has the authority to address HQS and other violations so additional authority is not required. Further, using such sanctions for vague "other program requirements including tenants' right to organize" is unacceptable.

The provision also would permit tenants to withhold their portion of the rent and if they do, HUD would withhold the HAP funds. **Withholding HAP money from the project only exacerbates repair issues to the tenants' detriment. Tenants can currently voice their dissatisfaction with a property condition in a variety of ways – what is the intent here?**

In addition, the provision allows the tenants (at least 10 percent of them) or the local government to request that HUD conduct a mgmt review or a physical inspection. **Where is the funding coming from -HUD can't get follow up REAC inspections that are necessary scheduled on a timely basis due to funding issues.** Management reviews are already conducted annually, a more frequent review is unlikely to yield different results and would increase the costs for project-based contractors – again this is a funding issue.

This whole section should be deleted or substantially revised to remove any references to management reviews (these are NOT physical inspections) and are conducted annually by HUD or the Contract Administrator. Further, this section should be subject to specific appropriations for this purpose and permit tenants to request a physical inspection only if the property has received a score of below 60 for the last two successive REAC physical inspections (and are not awaiting an appeal decision). HUD's authority and the actions that HUD can take with regard to enforcing a HAP contract and/or regulatory agreement are formally established and do not need to be included in legislation.

Pages 62-63 Section 304 Third Party Beneficiaries

This provision provides for residents of housing projects and resident associations to be third party beneficiaries of various contracts between HUD and other parties, thus allowing them to litigate to enforce HUD requirements or to seek damages. The draft provision is incomplete and it is difficult to fully determine its intended scope.

We assume the requirement that HUD insert third party beneficiary clauses in various contracts is mandatory and not discretionary, and that it applies to new contracts executed after the effective date of the statute and not to existing contracts.

The provision would apply to a "contract for mortgage insurance" between HUD and an owner of a multifamily housing project. We assume the contract intended to be referred to is the Regulatory Agreement used in various forms in HUD's multifamily mortgage insurance programs.

The provision also applies to an annual contributions contract between HUD and a public housing agency in connection with the section 8 housing voucher program. Finally,

bracketed material in the draft indicates an intent to cover various agreements entered into under the Multifamily Assisted Housing Reform and Affordability Act of 1997, all of which involve section 8 project-based assistance.

We strongly oppose allowing residents or resident associations to enforce HUD requirements, and with their own varied interpretations of what statutory, regulatory and administrative provisions embodied in a contract mean. This additional enforcement potential could become burdensome, litigious and costly. It would be a disincentive for owners to participate or to continue their participation in HUD programs.

We recommend that this provision be stricken in its entirety.

Pages 63-64 Section 305 Resident Access to Building Information

This provision would require HUD to provide at the request of a tenant association rep, property owner information (including 2530s), financial information, subsidy contracts, correspondence, management reviews, mgmt contracts, etc. etc. **We believe this provision should not include sensitive information. In addition to concerns with privacy laws it would place individuals at risk of identity theft, etc. We would support this provision if it were amended to remove "shall" in line 17 and replace with "may" and if parts (1) (2) (3)(5) and (6) are removed and part (4) changed to part(1).**

Pages 64-66 Section 306 Transparency Regarding Building Information

Provision would require HUD to post information on its website like REAC inspections, LIHPRHA notices including plans of action, notice to terminate an insurance contract, requests to prepay, opt out notices, etc. **Again, we would have concerns about privacy and sensitive information. With regard to notices to opt out or prepay, the law currently requires such notices be provided to residents and others and should not need to be posted on HUD's already cluttered website.**

HUD currently posts REAC scores on the website and we do not oppose such posting. Further, we would also support the posting of management review ratings. We recommend removal (on page 65 and 66) parts (2)(3)(4) and (5) and add a new (2) "ratings from management and occupancy reviews for the property".

Page 66 Section 401 Maintaining Affordability Through Escrow of Rental Asst.

Prevents HUD from abating a Section 8 contract on a troubled Section 8 property when a transfer of the property is pending and permits HUD to escrow the HAP monies until the property is in compliance. **No comment.**

Page 67-72 Section 402 Multifamily Housing Foreclosure

The provision would amend the foreclosure laws to require, among other things, mortgages transferred by HUD to state/local governments to be foreclosed in the same manner as HUD held mortgages. This would grant HUD's non judicial foreclosure authority to units of local govt, who would then handle the disposition. **No comment.**

Pages 72-73 Section 403 Valuation of Property Dispo (Discount Sales)

This provision attempts to insert normal appraisal methodologies when valuations are done for property disposition deals. **No comment**

Pages 73-74 Section 404 UP Front Grants

The provision would restore upfront grant program that was eliminated a few years ago. **No comment.**

Pages 74-75 Section 405 Maintaining Project-Based Assistance for Property Dispos

Requires HUD to maintain Section 8 assistance when disposing of a HUD held property unless not feasible and then HUD can transfer the HAP. Rent adjustments after property disposition would fall under MAHRA. **No comment.**

Pages 75-77 Section 501 Affordability in LIHPRHA/ELIHPA Transactions

This provision provides flexibility in the renewal of Section 8 contracts in LIHPRHA/ELIHPA projects. Owners of ELIHPA/LIHPRHA projects could renew under any option (instead of just option 5) and the amendment also permits HUD to renew HAP contract terms for longer than the remaining term of the Plan of Action in ELIHPA projects. **We support this provision but suggest that in Section 501(a) the bracketed material should be included.**

Pages 77-80 Section 502 Mod Rehab Projects

This language is intended to level the playing field for mod rehab projects with regard to contract renewals. **We support this provision but would amend the title to read "Section 502. Encouraging Continued Participation in Assisted Housing Programs"**

Pages 80-83 Section 503Prepayment of FHA mortgages

This provision seems to add a paragraph that would not allow HUD to approve a prepayment/termination unless "such prepayment or termination involves (enactment/extension) of any low income affordability restrictions (as such term is defined in section 229 of the LIHPRHA Act of 1990 for the project for a period of not less than ___ " **The blank should be completed with "the remaining term of the original mortgage."**

Section 503(b) addresses HUD's practice of limiting the proceeds of nonprofits as a condition of prepayment approval despite the fact that the property will continue to be subject to use restrictions. **This provision achieves the same objectives as Section 401 of H.R.2930 that passed the House so may not be needed in this bill.**

Pages 83-84 Section 504 Treatment of Second Mortgages

This is the M2M provision that expands the 3 year window for NPs to receive assignment or forgiveness of M2M loan to 5 years. **We recommend changing the 5 years to 7 years to consider the timeframe for enactment of this language. Also, the heading is incorrect – the words "tenant organizations" should be removed and replaced with non-profit purchasers."**

Pages 84-85 Section 505 Rent Adjustments for Subsequent Renewals

Provision affirms that owners can renew under any option that they are eligible for; modifies HUD recent "interpretation" that "exception projects" must under go 'lesser of" test at each renewal instead of at initial renewal; and makes clear that projects that initially renewed under Section 524 and were not eligible for restructuring remain ineligible for mandatory restructuring. **We support the position but suggest including the bracketed language and delete the reference to (b)(3) since Section 502 of the draft repeals (b)(3).**

Pages 85-87 Section 506 Budget Based Rent Adjustments

This section provides that projects that have undergone M2M restructuring can request budget based rents instead of OCAF (HUD regs permit discretion but HUD has not permitted and only refers to OCAFs in HAP contract). The provision would also allow HUD to address rehab needs of early M2M projects that were underwritten too tightly through a 2nd (but simplified) restructuring or through rehab assistance under section 236(s) of NHA. **We support this provision but recommend the budget based language be amended to make it clear this provision applies not withstanding the rent adjustment language in the Section 8 HAP contract.**

Page 87 Section 507 Independent Appraisal for Divergent Rent Studies

The provision addresses HUD's sometime unfair resolution of divergent rent comp studies. If HUD and owner appraisals differ by 15 percent or more a third appraiser selected (and compensated) by HUD and owner jointly to do another study that will be binding on both parties. **We support but recommend that "Secretary's appraiser" (line 18) be deleted and replaced with "Secretary." HUD often deviates up or down, from its appraiser's determination. Also, on line 19 after "15 percent or more" please insert "of the Secretary's determination" and strike "differs" and insert "differ." Guidance needs to be provided as to the base to which the 15 percent is to be applied.**

Page 88 Section 508 Extension of HAP contract

Requires HUD when requested by an owner with an existing HAP to provide a 20 year term (or shorter as requested) in connection with a sale or refinancing. **We support this provision.**

Page 89-90 Section 509 Otherwise Eligible Projects

This provision would permit Section 8 projects with rents below market to apply for debt restructuring. It is limited in scope and requires owner to be fully on board. **We support this provision as drafted as it represents a compromise that we brokered with HUD.**

Page 90-91 Section 510 Period of Eligibility for Nonprofit Debt Relief

This is repetitive of Section 504 that addresses three to five year window for NPs to purchase projects that have been through restructuring, but 504 has an additional provision re: forgiveness of debt if tax credits or local funds are used. **One or the other section should be used.**

Pages 91-95 Section 601 Tenants Capacity to Organize

Permits technical assistance grants to tenant groups etc. **No comment**

Pages 95-104 Section 701 Preservation Database.

Requires HUD to create or amend its databases to include information about each assisted project and make info available to the public. HUD already has a Section 8 database on the web, but assume this would add information about other assisted properties. Asking that the REAC scores be posted is redundant (HUD already does that) – we would oppose Financial info being posted (plus owners do not even know the "financial score"). Requests that notices, plans of action etc be posted was already provided in Section 305 and Section 306 of this draft (we would oppose). The language further requires that HUD give grants if monies available to states/localities to use HUD's database and add info about state/local assistance. **We recommend that this provision be made optional on HUD's part and subject to specific appropriations for this purpose. HUD has existing data systems that are in dire need of upgrading including the Section 8 disbursement systems. We do not want HUD using scarce funds for a new database before it repairs its current systems.**

Items Not Addressed in the Draft

Late Hap Payments: The industry proposal includes a provision to require HUD to pay a late fee to owners when HAP payments are delayed; requires HUD to notify owners when payments will be late; and permits owners to tap reserves to make mortgage payments, etc without prior HUD permission. The legislative language is found in

Section 114 of our proposal. This provision was also included in the Mark to Market bill that was approved by the Financial Services Committee. **We request that this provision be added to the draft.**

Unexpected Cost Increases: Section 113 of the industry proposal attempts to address situations where the Operating Cost Adjustment Factor (OCAF) does not reflect actual cost increases (e.g. utilities, taxes, unreimbursed expenses from natural disasters, etc). We are disappointed that the provision was not included in the March 14 committee draft. We request your consideration that this provision be inserted in any future draft. Our colleagues at NAHMA are the originators of the specific provision and we anticipate they will comment extensively on the importance of this provision to preservation efforts.

Other Issues: A few preservation-related concerns came to mind while formulating our comments which may result in the submission of several technical amendments. We anticipate sending several additional comments/recommendations to the Committee staff over the next two weeks.

Questions concerning these comments should be directed to Denise B. Muha at NLHA 202/785-8888 or dmuha@hudnlha.com

Muha 3/31/08

Shaun Donovan, Commissioner
NYC Department of Housing Preservation and Development
Hearing on the Housing Preservation and Tenant Protection Act of 2008
House Financial Services Committee
June 19, 2008

Good morning Mr. Chairman, Ranking Member Bachus, and members of the Committee. I am Shaun Donovan, Commissioner of the New York City Department of Housing Preservation and Development. HPD is the nation's largest municipal housing development agency. While our mission – to promote quality housing and viable neighborhoods for New Yorkers – has not changed over the years, our challenges have changed dramatically. The crisis of abandonment that plagued many New York communities in the 1970's and '80's was solved by rebuilding neighborhoods, driving down crime and improving schools. We now face the challenge of affordability.

Congresswoman Velazquez represents a district that has undergone an enormous strengthening of the housing market. We were extremely supportive of her preservation bill, H.R. 44, and I am pleased that it is contained in its entirety in The "Housing Preservation and Tenant Protection Act of 2008".

There are about 250,000 assisted housing units in New York City, developed under three key programs: the Low-Income Housing Tax Credit program (64,000 units), HUD's multi-family portfolio (77,000 units), and Mitchell-Lama developments (115,000 units), our State financed affordable housing program. The programs that financed these units—developed decades ago for a different housing market—include expiring use restrictions.

The units represent a safety net of affordable housing for hundreds of thousands of New Yorkers, but the City is at risk of losing them from the overall inventory of affordable housing stock. Given the strength of the City's housing market, as the use restrictions expire in some of these developments, owners face great temptation to leave the programs and raise rents to market levels. In other cases, properties face physical deterioration so severe that units risk becoming uninhabitable. In both these situations, residents of these units face displacement when an owner either opts out or "fails out" of the program.

Mayor Bloomberg's expanded *New Housing Marketplace* plan, which aims to create and preserve 165,000 units over ten years, recognizes the need and the opportunity to focus on these units. Of the 73,000 units to be preserved under the plan, 37,000 are affordable assisted units with expiring uses and subsidies, and HPD has designed a series of initiatives that will allow the agency to achieve that goal. But the City, and cities like us across the country, can not preserve this resource on our own. We need the commitment and partnership of the federal government. That is why I am so pleased to be able to testify on the importance of the "Housing Preservation and Tenant Protection Act" of 2008.

The Committee's bill is a comprehensive set of measures to stem the tide of affordable housing loss. If enacted, it would give HUD and local governments new tools and the flexibility needed to maintain our stock of affordable housing. These tools are needed now more than ever. The problems in the subprime market have risen to the top of the national agenda. Homeowners and neighborhoods are threatened by this crisis and it has highlighted again the importance of having a supply of decent and safe affordable housing available to moderate and low income people. There is much in this bill to be applauded but my testimony will focus on those provisions which most directly compliment the work we are doing in New York City.

On June 2, 2008 Senator Schumer, Congressman Towns, Congresswoman Velazquez , Governor Paterson, and City and State officials announced that a deal had been reached with the owners of Starrett City to keep the development affordable. Starrett City, a nearly 6,000 unit project in East New York, is the largest federally subsidized project in the country. The owners' initial attempt to sell the development and opt-out of the various state and federal subsidies was met with public outcry and ultimately with HUD's rejection of the sale. The agreement reached with government represents a framework for preservation at Starrett that the buyer of the development will adhere to.

The plan covers State and City subsidies in the form of tax exemptions, mortgages and rent setting, but perhaps the most important part of the deal is on the federal subsidies there. Converting the Rental Assistance Payment contract to a project-based Section 8 contract is a lynchpin to preserving affordability at Starrett. We are very grateful to the Committee for including the Starrett City specific legislation in H.R. 3221. Passage of the Committee's bill would extend that possibility to the 470 other developments with these types of contracts.

There are around 35,000 units nationally that are covered by Rental Assistance Payment or Rent Supplement contracts. These subsidies, commonly referred to as "RAP" and "Rent Supp" are decades old antiquated programs. Unlike the newer project-based section 8 program that replaced them, RAP and Rent Supp contracts are not renewable. In the next twenty years all of these contracts will expire, and 35,000 units of affordable housing will be lost. The Committee's bill would rectify this problem by giving owners the option to convert their RAP and Rent Supp contracts to project-based section 8. In exchange for a commitment to longer-term affordability, the owners get the ability to mark rents to market, and the option to renew the contract. This is a very appealing option in high cost markets like New York and Boston but also in weaker markets, where termination of these contracts can lead to abandonment of properties and neighborhood decline. Furthermore, tenants get better protection because there are greater incentives for an owner to continue in the federal program, and should the owner choose to leave the program, the tenants are guaranteed a housing voucher that allows them to stay in their home.

Allowing enhanced vouchers, which are tenant-based in nature, to be converted to project-based Section 8 at the request of an owner is another significant preservation tool created by this bill. This is a good example of a low cost means to preserving thousands

of units of housing. In New York, the cost of an enhanced voucher is more than the cost of project-basing so for a fewer public funds we could create permanent housing. The provision includes important exceptions: this type of project-based voucher would not count against the 20 percent cap on the percentage of housing authority's funds that can be project-based or against the percentage of a project's units that can be project-based.

HPD is currently negotiating with HUD to purchase a portfolio of loans on multifamily properties. The sale would allow HPD to buy all the notes on subsidized properties being held by HUD in New York City. Instead of waiting for the properties to fall into greater disrepair and enter foreclosure for an opportunity to purchase them through a right of first refusal, this sale will allow HPD to purchase the entire portfolio and be proactive about the properties' preservation.

There are two impediments to the sale, both of which your bill addresses. HUD's valuation method for noncompetitive sales to units of local government changed two years ago, and effectively suspended the program. HUD is interpreting language contained in the Deficit Reduction Act of 2005 as requiring them to disregard the repair needs of properties and loans when valuing it for a competitive sale. This change has meant that HUD is asking above market price for properties. For example, Hunts Point I, a 125 unit development located in the Bronx, was offered to HPD at a right of first refusal for $6.7 million. It sold at auction for $150,000. Siloam House, a 25 unit development in Brooklyn was offered to us for $4.4 million. The winning bid was $250,000. The developments were purchased by non-profit preservation buyers, so the units were not lost. But it is risky to allow all of these properties to go to foreclosure sales; legislation, as contained in this bill, is needed to require HUD to fairly value properties and loans when selling to units of local government. In New York City alone, we believe we could preserve thousands of units of affordable housing if we were able to purchase properties and loans at fair market value.

Second, your bill includes amendments to the Multifamily Mortgage Foreclosure Act that are crucial to our being able to properly manage the subsidized loan portfolio. The Multifamily Mortgage Foreclosure Act gives HUD a range of tools, including the ability to perform non-judicial foreclosures. The amendments contained in this bill afford units of local government the same flexibility and are an important means of empowering cities to manage property disposition.

The Housing Preservation and Tenant Protection Act also has the important effect of providing additional resources for rehabilitation of HUD multi-family properties. It repeals the section of the Deficit Reduction Act which requires appropriations for upfront grants. These grants were made available from the FHA General Insurance Fund for repairs on HUD buildings once a unit of local government had taken possession. They were an important resource to fixing up properties that were in a state of disrepair when we acquired them from HUD. Properties acquired from HUD often have rehab needs of over $100,000 per unit. Your bill also makes available recaptured IRP payments for the costs of repairing HUD properties. Together, these funds will go a long way to helping cities afford to preserve these properties.

The tenant protection provisions in the bill are very important and we are particularly supportive of expansion of the enhanced voucher program. HPD administers the fourth largest voucher program in the country. Of the nearly 29,000 vouchers HPD administers, 18% are enhanced vouchers. HUD's recent practice of replacing only occupied units – rather than all units lost in a conversion - with enhanced vouchers has led to a loss of affordable housing. The bill's correction of this practice is necessary. Furthermore, it is important to make these vouchers available to tenants in buildings with expiring mortgages. Currently, only tenants in building that pre-pay are eligible for enhanced vouchers. In all, we believe these provisions will provide thousands of low and moderate income people with a means for housing when owners opt-out or subsidies expire.

Thank you for the opportunity to testify before the Committee today. I look forward to answering any questions you may have.

Prepared Statement of John L. Garvin

Deputy Assistant Secretary for Multifamily Housing Programs
Senior Advisor to the Federal Housing Commissioner
U.S. Department of Housing and Urban Development

Hearing before the Committee on Financial Services
United States House of Representatives

Affordable Housing Preservation and Protection of Tenants

June 19, 2008

Chairman Frank, Ranking Member Bachus, distinguished members of the Committee on Financial Services, on behalf of Secretary Preston, thank you for inviting the Department to testify on the draft legislation entitled "Housing Preservation and Tenant Protection Act of 2008." We appreciate this opportunity to provide the Committee with the Department's comments on this very important issue.

Secretary Preston and Commissioner Montgomery are firmly committed to preserving affordable housing, and moreover increasing the production of new affordable units. Historically, the Department's rental housing programs have been designed primarily to develop subsidized projects that have long-term rent affordability requirements. Therefore, the Department has focused on retaining these properties as affordable for as long as possible, and has worked with Congress to develop tools and incentives to maintain affordability in cases of rental assistance contract expirations. These efforts have resulted in over 90 percent of our owners renewing their project-based Section 8 contracts. Although these tools and incentives do not specifically address mortgage maturity, some of these incentive programs such as the Mark to Market and the Section 236 Decoupling have extended the affordability requirements beyond the maturity of the insured mortgage.

To date, the Department has been very pleased with the success of the role of these programs preserving the affordable housing stock. We have over 2,300 projects with over 200,000 units processed under the Mark to Market Program, over 730 projects with approximately 73,000 units processed under the Section 236 Decoupling Program and approximately 761 projects with some 80,187 units processed under the Mark Up to Market Program. In these three programs combined, the Department has preserved the affordability of over 3,500 projects with about 300,000 units.

However, the Department does acknowledge the need to continue its efforts to preserve as well as develop affordable rental housing units in communities throughout the country.

There are many factors that influence an owner's decision to retain a property as affordable or convert to market rate rents. For a profit-motivated owner, the decision may be influenced by financial considerations, the condition of the property and the income levels in the surrounding neighborhood. For a non-profit owner, the decision is not likely influenced by cash flow consideration since these owners are not primarily motivated by economic returns and their basic mission is to provide affordable housing. These factors apply to mortgage maturity, pre-payments or opt-outs.

We also recognize that most owners need to refinance prior to their mortgages maturing in order to obtain the necessary funding for capital improvements. And the Department recognizes that most preservation transactions utilize Low-Income Housing Tax Credits and we have and will continue to be making program changes to maximize the efficiency of utilizing those programs with HUD programs. The Department is encouraging owners to refinance with FHA insurance and Low-Income Housing Tax Credits to ensure the preservation of the projects as well as the long-term affordability. We understand that

combining these two funding sources can be challenging and the Department is currently streamlining the processing of FHA insurance applications when the owner is also using the Low-Income Housing Tax Credits. For example, we are also working to provide relief in escrow requirements for these transactions and are looking to provide the utmost flexibility in underwriting when these programs are used in combination in a preservation transaction.

The Department also has issued a policy to provide for the deferment of the repayment of Flexible Subsidy Loans which provides relief on the debt service. We are also are working on revising the Section 236 Decoupling Notice to improve this preservation tool especially when it is combined with Low-Income Housing Tax Credits.

HUD is aware of the growing population of seniors in this country and the need to develop and preserve senior housing. We have issued a unit conversion policy that allows for the alteration of under-utilized efficiencies to one-bedrooms in primarily in elderly housing projects where the conversion will result in long term preservation and affordability. And we are working on a demonstration program for mixed financing with the Section 202 program.

One of HUD's most effective preservation tools has been the Mark-to-Market program. There is legislation now pending in Congress that would further extend and expand the use of Mark-to-Market and the Department is generally supportive of the intent of the bill.

While many of the Department's current preservation tools provide incentives to extend affordability, they do not directly address the termination of the affordability requirements resulting from mortgage maturity. However, these programs do provide incentives to owners to continue to provide affordable housing on a long-term basis and beyond the mortgage repayment while improving the physical and financial viability of the properties. These incentives have substantially decreased the actual numbers of insured mortgages that would normally be maturing in the next 10 years.

In the event of a mortgage prepayment, opt-out or maturity, the residents have been and will remain the Department's highest priority. If an owner is going to prepay the mortgage or opt-out of the Section 8 rental assistance contract, the owner must notify tenants at least one year in advance of their intent to prepay or opt-out. In these situations, tenants may qualify for enhanced or tenant protection vouchers.

Currently, there is no statutory requirement for the Department to offer residents special protections, such as enhanced vouchers, when a mortgage matures. To the extent Congress would require and fund enhanced vouchers as legislation requires in opt-outs, the Department would provide those vouchers to eligible residents.

In the event of a foreclosure, the residents are a top priority for the Department. If there is project-based rental assistance, the Department attempts to retain the rental assistance at

the project. However, if there are conditions that warrant that the residents be relocated and the rental assistance is terminated, the Department provides relocation assistance to all residents (assisted or non-assisted) and provides vouchers to the eligible HUD-assisted residents.

In summary, there is always a need to add new preservation tools as well as improve existing tools to adapt to the changing market and to be prepared to offer incentives to owners who have maturing mortgages. There is no cookie cutter approach to preservation transactions. We are committed to continue to work with Congress, our housing partners and state and local governments on the development and preservation of affordable rental housing. Thank you for the opportunity to appear today.

HOUSE COMMITTEE ON FINANCIAL SERVICES

WRITTEN TESTIMONY OF REVEREND LAVERNE R. JOSEPH

PRESIDENT AND CEO, RETIREMENT HOUSING FOUNDATION, ON BEHALF OF

STEWARDS OF AFFORDABLE HOUSING FOR THE FUTURE (SAHF)

JUNE 19, 2008

Chairman Frank, Ranking Member Bachus, and members of the Committee, thank you for the opportunity to submit this testimony on preservation of affordable rental housing.

My name is Laverne Joseph. I am President and CEO of Retirement Housing Foundation, a nonprofit housing provider based in Long Beach California. RHF owns and operates about 15,000 affordable rental homes, assisted living units, and nursing beds in twenty-four states. I am testifying today on behalf of Stewards of Affordable Housing for the Future (SAHF). RHF and SAHF's seven other members together provide high-quality, affordable housing to more than 100,000 Americans in forty-eight states, the District of Columbia, Puerto Rico, and the Virgin Islands. SAHF members include: NHT/Enterprise Preservation Corporation, Mercy Housing, NHP Foundation, Preservation of Affordable Housing (POAH), National Church Residences (NCR), Retirement Housing Foundation (RHF), Volunteers of America, and National Affordable Housing Trust.

SAHF's members came together in 2004 to promote their shared ownership objective, which embraces the notion that stable, affordable housing is critically important in the lives of our citizens. Stable housing can enable working families to retain jobs, grow earnings, and build a better future for their children. Affordable rental homes with services enable low-income seniors to age in place with dignity rather than face disruptive and costly institutionalization. Well designed and operated housing also makes it possible for Americans with disabilities to enjoy a high level of independence. SAHF's members develop, acquire and own affordable multifamily rental homes with these beliefs in mind, and SAHF seeks to bring the full weight of its members' expertise, experience, and entrepreneurial spirit to bear on the task of taking not-for-profit housing preservation to scale.

SAHF's members undertake acquisitions ranging from individual properties to multistate portfolios. They have extensive experience with the Department of Housing and Urban Development (HUD) and USDA programs, housing bonds, tax credits, 501(c)(3) bonds, Federal Home Loan Bank affordable housing program loans and grants, and a wide array of state and local government funding sources. A large portion of our members' units receive project-based Section 8 housing assistance.

RHF is also an active member of AAHSA, the trade association of nonprofit senior housing and health care providers. I am a member of AAHSA's Affordable Housing Finance Cabinet. SAHF and AAHSA work closely together on public policy issues, including preservation, that affect low-income seniors.

The Problem

The need for affordable housing in our society is a pressing one, and yet we are losing much of what we have. The first order of business is to keep affordable the housing we have already built at great expense to the taxpayer. The loss of project-based Section 8 assisted housing is particularly grievous, since tax credit housing without Section 8 cannot serve the very poor.

Our nation is currently embroiled in a housing crisis. Given the weak and slow income growth among households at the bottom half of the distribution, together with the ever increasing cost of housing, housing in America is consuming an increasingly large share of household budgets. In 2005 for example, 37.3 million American households' housing costs were in excess of 30% of their income.[1]

For low- and very-low-income Americans fortunate to receive project-based housing vouchers, the increasing insecurity of losing the subsidy due to the conversion of affordable multifamily units to market rate rentals is all too real. Indeed, Housing Assistance Payment (HAP) contracts that were established in the 1970s and 1980s are expiring at an astonishing rate, resulting in the loss of precious affordable housing. The need for preservation of affordable housing is clear. Further, we are moving towards a world in which housing nonprofit and for-profit developers are increasingly taking on the role of serving not just as developers and owners with a short-term horizon, but as long-term stewards of our affordable housing resources.

Yet the increasing role of non-profit housing providers in developing, providing and preserving affordable housing is too often derailed or made much more difficult by restrictions placed on them by the Department of Housing and Urban Development (HUD). Instead of enabling non-profit preservation owners to bring to scale the development of affordable housing, HUD has created obstacles which prevent non-profits from developing, renovating and properly maintaining affordable housing.

Despite about $38 billion in annual appropriations for housing and community development coupled with the addition, for example in 2005, of roughly 78,000 new and 55,000 renovated units through the federal Low-Income Housing Tax Credit program—or in starker terms—the $4.7 billion in annual expenditures from federal tax credits to build and rehabilitate affordable housing, the government has made little progress in stopping the loss of low-cost rentals from the nation's housing stock.[2] Furthermore, the combination of higher construction and operating costs, along with stagnant or even declining rents tied to household income limits and the fact that non-profits do not have access to distributions of excess cash flow and to equity to invest in properties ultimately undermines the fundamental viability of affordable housing projects.

But the numbers tell the real story:

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[1] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing," (2007), *available at* http://www.jchs.harvard.edu/publications/markets/son2007/son2007.pdf.

[2] Less and less of the federal nondefense discretionary budget—which is itself shrinking—is being devoted to housing programs. Housing assistance as a share of total nondefense discretionary spending dropped from 10.2% in 1998 to 7.7% in 2006. In the past year, spending on housing assistance also failed to keep up with inflation, amounting to a 2.3% cut in real terms. *Id.*

- According to the National Housing Trust, the total number of apartments on which project-based Section 8 rental assistance will expire before 2012 is 857,253 nationwide.

- According to HUD, between 2007 and 2029, the Rent Supplement/Rental Assistance Payment contracts will expire on more than 32,000 units nationwide. Contracts on more than 7,100 units are set to expire from FY 2007 through FY 2011.

- According to HUD, from August 2007 through July 2017, mortgages on 2,044 properties will mature.

    - Of these properties, 636 (51,523 units) have 100% rental assistance. Within the 1,408 properties with partial rental assistance, there are 102,321 assisted apartments and 179,099 apartments overall. Forty-one properties with a combined total of 7,062 units are completely unassisted.[3]
    - A U.S. Government Accountability Office study published in April 2007 found that owners of properties with rental assistance on fewer than 50% of units were more likely to opt out.[4] Of the 2,044 properties with maturing mortgages sited, 592 fall into this category. Combined, these properties have 20,447 assisted units and 79,343 overall units.[5]

Although new units will be produced, the number is not nearly enough to keep up with the pace of lost affordable apartments over the next few years to come. Moreover, even the replacement of Section 8 housing with tax credit housing fails to meet the need to house the very poor, who cannot afford rents that pay even operating expenses. We have lost these apartments even though, as a rule, preservation is cheaper, faster, and greener than new construction.

The importance to our society of preserving affordable rental homes is underlined by the decision of the John D. and Catherine T. MacArthur Foundation to invest $150 million in a decade-long initiative entitled "Window of Opportunity: Preserving Affordable Rental Housing". MacArthur has provided essential grants and program related investment loans to SAHF and its members.

MacArthur is seeking to make a difference in several ways: (1) strengthening social enterprise nonprofits, (2) supporting policy analysis, (3) conducting research into the impact of affordable housing on its residents and the community, and (4) recognizing and encouraging the preservation efforts of state and local government. Details of the initiative can be found at www.macfound.org.

Legislation is Needed to Stem the Loss of Affordable Housing

No amount of private effort or foundation support, though, can preserve federally assisted housing without the active support of Congress and the Administration. If we are to preserve the

[3] HUD Website, www.hudclips.org
[4] GAO, "Project-Based Rental Assistance: HUD Should Update Its Policies and Procedures to Keep Pace with the Changing Housing Market," GAO-07-290 (April 2007), *available at* http://www.gao.gov/new.items/d07290.pdf.
[5] HUD website, www.hudclips.org

affordability of these apartments, we must take affirmative steps well in advance by giving preservation-minded owners and purchasers the key tools they need to recapitalize properties and position them for long-term affordability.

Legislation to encourage the preserving of the affordable housing inventory is necessarily complicated, because the federal assistance and regulatory structures under which our properties operate are themselves complex and have evolved over time. Absent a massive new program, the solution involves a mind-numbing level of detailed revisions in statutes and regulatory policy. The draft Housing Preservation and Tenant Protection Act of 2008, circulated informally, is a very good start at addressing those details and generally reflects our priorities.

Today, I would like to identify nine tools that SAHF considers priorities within the preservation agenda generally.

First, tenant protection vouchers should be available to residents in a much wider range of properties.

When, despite all our efforts, a federally assisted or insured property is lost to affordability, it is the moral obligation of our country to give the former residents access to affordable housing. Current law falls well short of meeting that obligation. Section 302 of the draft bill would expand the range of properties with respect to which tenants would receive enhanced vouchers to include projects without project-based Section 8 assistance.

Second, long-term project-based assistance should be made available under more circumstances.

At RHF, we have had direct experience with the need for twenty-year project based assistance to preserve affordable housing in tight markets. For example, we have used twenty-year HAP contracts, subject to appropriations, to raise the debt and tax credit equity we needed to buy and preserve a ten-property portfolio of affordable housing in and around Boston. Without these contracts, we simply cannot compete with purchasers who would convert affordable apartments to condominiums or market rate apartments. With twenty-year project-based assistance, we believe we could preserve another eleven properties by acquiring them from the same seller group.

Enhanced vouchers are provided to protect existing tenants from displacement upon the occurrence of an "eligibility event" in a multifamily housing project—generally prepayment of the subsidized mortgage or termination of an insurance or rental assistance contract. Upon turnover, these vouchers move with the tenant, and the housing is lost as a resource for future low-income families.

Section 104 of the draft bill would permit the use of project-based assistance in place of enhanced vouchers. Project-basing the assistance will provide a financeable revenue stream for preservation-oriented owners and purchasers, without which many worthwhile projects, especially in strong markets, have been forced to exit the affordable program. The assistance would be provided at the request of the owner, subject to the approval of the PHA, and would cover all existing tenants in the project who would otherwise receive enhanced vouchers.

In that connection, we note that section 205 of H.R. 2930 (the bill to reform Section 202), as passed by the House and as introduced in the Senate, would create a "Senior Preservation Contract" for Section 202 projects without project based assistance. The contract would be for twenty years, subject to annual appropriations.

We also note that the Senate version of SEVRA (S. 2684), introduced in March by Sens. Dodd and Schumer, would create project-based preservation vouchers at the election of the owner and subject to PHA determinations of economic viability and demand. The vouchers would not count against various limits otherwise imposed on project-based vouchers, such as the cap on the share of a PHA's vouchers that may be project-based and the limit on the share of units in any project that may be project-based.

A second important need is to provide long-term, renewable rental assistance for properties with Rent Supplement (Rent Supp) or Rental Assistance Payment (RAP) contracts. There are approximately 35,000 apartments with Rent Supp or RAP contracts. Over the next ten years, the contracts on 21,433 of these apartments will expire. By 2029, all of the apartments will have been lost to contract expiration. These contracts exist in thirty-five states, but the majority of them are located in California, Illinois, Massachusetts, Michigan, New Jersey, New York, Virginia, and Washington State. Under current law, at the expiration of a contract issued with Rent Supp (Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. § 1701s)) or RAP (Section 236(f)(2) of the National Housing Act (12 U.S.C. § 1715z-1)), an owner has no right to renew the contract, and tenants are eligible for enhanced vouchers only in limited circumstances. Not only are all of the assisted apartments at risk of loss, but tenants are inadequately protected against potential rent increases.

To forestall this risk, SAHF supports section 101 of the draft bill, which provides that if the owner submits a request within a twelve-month period beginning on the date of enactment, HUD must convert the contract to Section 8 project-based rental assistance. This action would protect low-income tenants in danger of losing their homes, save valuable rental housing, and in some cases make it possible to mark rents up to market rate to facilitate rehabilitation.

This approach would resolve an impending bad outcome by converting the assistance to a renewable resource. Any authority that is recaptured as a result of conversion of Rent Supp and RAP program contracts should be used by the Secretary for the purpose of making assistance payments with respect to the initial twelve-month term of the new Section 8 contract, and the balance should be used to fund other preservation initiatives under this Act.

Third, Congress should recognize the key role played by the new generation of social enterprise nonprofits in preserving affordable housing.

Many housing nonprofits have evolved from small, local entities to regional and national mission-driven businesses. As they have evolved, they have moved from a reliance on 100% financing to participation in the same programs used by other developers. In addition, there is substantial embedded equity in their properties, in large part because of their stewardship of the properties as the mortgages have amortized.

SAHF's members strive to operate efficiently and at scale in the pursuit of their nonprofit missions, including preservation. They have invested heavily in professional staff, in technology, and in training. Yet HUD sometimes continues to treat them as if they were fledgling organizations somehow unaffected by the market.

HUD's regulatory structure has failed to keep pace with the evolution of these high-capacity, nonprofit organizations and therefore constrains their ability to address the needs of their portfolios and to unlock this equity. For example, HUD regulations generally prohibit distributions of excess cash flow from single-purpose nonprofit organizations to their parent nonprofits, even in circumstances where a for-profit could distribute cash to its owners for their personal use. Similarly, when a nonprofit organization recapitalizes a property using state-allocated bonds and tax credits, it often is not permitted to use sales proceeds for affordable housing, even though a for-profit could distribute its proceeds to its investors. The net effect of these regulations is to lock up the embedded equity in these properties that could be a significant resource for housing development and preservation.

In addition, many smaller-scale, nonprofit owners have found that the needs of their projects have outstripped their capacities. The inability of these smaller nonprofit organizations to receive some proceeds from a sale causes them instead to retain ownership. At the end of their required affordability period, these organizations will be able to sell the properties and retain any proceeds, bringing about a net loss of apartments from the affordable inventory. Instead, these smaller-scale owners should be permitted to receive some proceeds from the sale for their charitable missions, in return for selling to organizations that commit to meeting the properties' rehabilitation needs and renewing their long-term affordability.

Social enterprises such as SAHF members can only extend their impact if successful stewardship of affordable housing produces cash flow to support their missions. Importantly, section 503(b) of the draft bill would remove restrictions on the distribution of cash flow from successful properties when distributions are permitted under similar circumstances to for-profit organizations and make clear that nonprofits may reuse for mission purposes any proceeds of recapitalization. Although the draft bill contemplates limiting this protection to certain events such as preservation transactions, mortgage prepayment, sale, or refinancing, SAHF recommends against the imposition of any such limitation. The purpose of removing limitations on cash distribution is to facilitate the development of a capital base by social enterprise nonprofits so that they can be more effective in providing and preserving affordable housing.

We note that section 401 of H.R. 2930 (the Section 202 bill), as passed by the House, prohibits the Secretary from imposing any condition that restricts the amount or use of sale or refinancing proceeds unless expressly authorized by existing contract. The provision extends beyond 202s and is retroactive to January 1, 2005, reportedly to overturn a restriction imposed on Jewish Community Housing for the Elderly in Massachusetts in connection with its recapitalization of a Section 236 project.

Fourth, HUD properties should be sold with Section 8 assistance attached or the properties' project-based assistance should be re-deployed.

Since properties with rents set at tax credit limits cannot serve very-low-income people without rental assistance, any loss of project-based Section 8 authority causes a permanent loss of affordability. In 2000, for example, 10 percent of seniors ages 65 and older, or 3.4 million, had incomes at or below the federal poverty line. In other words, in 1999, the income year for the 2000 census, the poverty threshold for a person 65 or over living alone was $7,990 and $10,075 for a two-person household with one person in the household 65 or older. Currently there are more than 300,000 units of Section 202 affordable senior housing available in the United States. This means, for each Section 202 affordable senior housing unit that is available, there are ten eligible seniors on waiting lists for a unit. The average time an eligible senior is on the waiting list is 13.4 months.[6] These figures only reinforce the need to ensure that Section 8 assistance is not lost through the sale of a property.

Fifth, HUD's authority to approve transfers of project-based rental assistance as a means of preserving affordability should be extended permanently and be made more flexible.

Transfer of Section 8 authority is, in many circumstances, the only way to avoid the Hobson's choice of (1) rehabilitating a property as is despite the need for changes, or (2) losing precious project-based Section 8 authority. However, the overly tight constraints of existing law have hampered SAHF members' ability to make use of the transfer authority.

SAHF supports giving HUD the permanent authority to approve partial transfers, following the direction of FY 2008 TTHUD Appropriations Act (Pub. L. No. 110-161, Title II, section 215), and beyond that, recommends adding some additional flexibility where existing law has defeated sensible transfers.

Partial transfers serve important policy goals, and the authority for partial transfers should be made permanent.

- *Reconfiguring the unit mix.* Much of the assisted housing (particularly senior housing) built decades ago included a significant number of efficiency apartments. In many areas, especially outside the hottest urban markets, those efficiencies are unmarketable, resulting in persistent vacancies. Obsolescence in a few units can put whole developments in jeopardy. To prevent a net loss of project-based rental assistance, the HUD Secretary should be authorized to permit the partial transfer of such assistance from properties undergoing a unit reconfiguration to properties that have unassisted apartments.
- *Creating mixed-income communities.* Many of the early sitting decisions for assisted housing led to the geographic concentration of poor families. Most of these older assisted properties now require significant rehabilitation. While simply rehabilitating the properties would perpetuate the concentration of poverty, permitting the owners instead to transfer project-based rental assistance to other properties would enable them to provide housing for poor families in areas better served by employment, educational, and

[6] http://www.aahsa.org/aging_services/default.asp

other opportunities. This same practice has been employed successfully under the Moving to Work program with regard to (project-based) public housing assistance.

Other conditions on the transfer of Section 8 authority reflected in a series of appropriations acts should be simplified. The ten conditions required by those acts and narrow administrative interpretations stemmed from a concern over possible misuse of transfer authority to allow developers to sell buildings in prime locations and transfer the Section 8 authority to poor locations. For example, Section 318 requires that the transferring property be physically obsolete or economically nonviable. In some conditions, a property that does not quite meet these conditions may still be in a socially distressed area in which using new resources for rehabilitation at the same scale in the same location would be unwise. Another provision contains mandates regarding subordination of new debt to transferred debt that are unworkable in most situations. These conditions can be relaxed somewhat without serious risk of abuse.

Sixth, extend the period in which Mark-to-Market (M2M) debt may be assigned to nonprofit purchasers or forgiven and clarify that HUD may not require repayment of any portion of junior M2M debt in transactions with additional resources allocated by state or local government.

When the Mark-to-Market (M2M) program was reauthorized for five years in 2002, the program was amended to permit the HUD Secretary to assign junior M2M debt to not-for-profit purchasers or to forgive that debt entirely. These not-for-profit "purchase incentives" recognize the value of not-for-profit stewardship, the stifling effect of this otherwise burdensome debt, and fact that the incentives would enable not-for-profit purchasers to raise funds to buy out old owners and to leverage significant outside resources for rehabilitation, primarily Low Income Housing Tax Credits (assigned debt can be counted in acquisition basis). Two policies at HUD undermine the value of the not-for-profit purchase incentives and are addressed by this section:

- HUD has limited to three years (after the initial restructuring) the period of time during which the HUD Secretary may assign or forgive M2M junior debt. In reality, sellers often require more than three years to decide to sell. Thus, HUD's limit undermines the utility of the incentives. According to HUD, as of February 1, 2007, 65% of the closed portfolio is already beyond the eligibility window, and the number will increase to 75% by the end of FY 2007.
- In July of 2007, HUD issued a policy requiring nonprofit purchasers to pay HUD a portion of the assigned/forgiven debt, prior to its being assigned or forgiven, if the transfer in question involved seller proceeds or a developer fee for the purchaser. This policy directly undermines the not-for-profit purchase incentives put in place by Congress in 2002. Most nonprofit purchasers are utilizing state or local resources to effectuate the transfers. HUD's policy of requiring repayments in connection with these transfers is doubly problematic, in that it ultimately results in the absorption of these state and local resources by HUD. The public entities overseeing the allocation of these resources will be less inclined to support committing resources to these projects if HUD is the ultimate beneficiary of a portion of that allocation.

For this reason, SAHF supports section 105(b) of the draft bill, which would modify the Mark-to-Market statute to extend the period of eligibility for nonprofit purchase incentives and to clarify that HUD may not require a repayment of any portion of junior M2M debt in cases of acquisitions by nonprofit purchasers using purchase incentives and state or locally allocated housing resources.

Seventh, HUD should be authorized to assign or forgive Flexible Subsidy loans.

The Flexible Subsidy Program was created in Sec. 201 of the Housing and Community Development Amendments of 1978, and, until its discontinuance in 1996, provided financial assistance to prevent financial and regulatory defaults (and foreclosures that would have resulted in claims on the FHA mortgage insurance funds) to certain HUD assisted properties. The loans evidencing this assistance are in many cases impeding the ability of projects to be sold to preservation-minded owners and/or recapitalized and rehabilitated. In order for a project to be eligible for a Flexible Subsidy loan, HUD was required to determine, among other things, that the assistance was necessary to maintain the financial or physical soundness of the project and that the assistance was less costly to the government than other available measures. As a result, most properties that received Flexible Subsidy assistance are located in economically challenged neighborhoods, and the existence of Flexible Subsidy debt is often an impediment to employing typically available recapitalization strategies.

SAHF supports using this debt as a tool to promote the sale of properties to nonprofits and to attract state and local resources to support preservation by authorizing HUD to forgive such debt or transfer it to nonprofits in connection with a transfer of the property to a nonprofit, just as the HUD Secretary is authorize to forgive or assign subordinate mark-to-market debt. HUD should also be prohibited from requiring any repayment in connection with that forgiveness or assignment if the purchaser is utilizing any state or locally allocated resources in connection with the transfer.

By making the debt forgivable and/or assignable in connection with nonprofit transfers, Congress will encourage state and local governments to allocate their resources to help preserve and protect these properties for the long term. SAHF supports section 109 of the draft bill, which authorizes HUD to assign flexible subsidy loans to qualified preservation owners.

Eighth, with the approval of the state housing agency or local authority lender, an owner should be permitted to replace the stub portion of a Section 8 contract with a long-term contract, subject to appropriations.

In the 1970s, HUD entered into contracts to provide thirty to forty years of project-based assistance to nearly 173,000 affordable apartments in connection with properties on which state or local instrumentalities provided debt financing, of which approximately 150,000 remain. These contracts expire with respect to approximately 47,000 apartments by 2012 alone. At that point, the first mortgage debt will have been fully amortized. Although owners have the right to renew their Section 8 contracts at expiration, they will be equally free to convert their properties to market-rate apartments or condominiums, further depleting the supply of affordable rental housing.

If we are to preserve the affordability of these apartments, we must take affirmative steps well in advance by giving preservation-minded owners and purchasers the key tools to recapitalize properties and position them for long-term affordability. To attract lenders and equity investors, an owner or purchaser seeking to preserve the long-term affordability of the housing typically must have a Section 8 contract of sufficient duration to amortize most of the mortgage debt and to assure that a property will have Section 8 support through at least the fifteen-year tax credit compliance period. Typically lenders and equity investors require a twenty-year contract and are willing to accept contracts that are subject to appropriations. As a result, replacing funded thirty- or forty-year contracts with twenty-year contracts subject to appropriations would preserve the affordability of the properties well beyond the initial term of affordability.

SAHF supports section 201 of the draft bill, which amends section 523 of MAHRA to provide that, with the approval of a State Housing Agency or local authority, a property owner with a Section 8 project-based contract that has debt financing from a State Housing Agency or local authority may terminate the contract and enter into a new project-based contract for a term of twenty years, subject to appropriations and provided the owner agrees to preserve the affordability of the project for forty years.

Importantly, granting this authorization would generate budget authority savings. Funds for the existing project-based contracts were fully appropriated when the contracts were entered into and in many cases have several years to run. Terminating the remaining appropriated amount of the existing contracts would recapture several years of budget authority. Any authority that is recaptured as a result of termination should be utilized by the Secretary for the purpose of making assistance payments with respect to the initial twelve-month term of the new Section 8 contract, and the balance should be used to fund other preservation initiatives under this Act. Since termination and substitution would be voluntary and require lender approval, not all owners would convert.

Finally, legislation providing new incentives should insist on long-term preservation.

In the 1960s and 1970s, when America first began to try to attract developers to the affordable housing field, Congress concluded that offering a big upside on eventual conversion of the housing to market rate housing was the only way to attract the necessary capital. Today, we are forced to use our scarce tax credit resources to buy out huge appreciation in some markets.

In any case, there is now a large established industry—nonprofit and for-profit—interested in owning and preserving the affordable housing inventory, and we no longer need to offer windfall rewards to attract investors. To conserve tomorrow's resources, SAHF recommends that Congress create a new category—"preservation owner"—that would be entitled to preservation incentives. In return, preservation owners would be expected to keep the properties affordable for at least forty years, subject to the continued availability of rental assistance.

Thank you again for the invitation to testify this morning. SAHF looks forward to the opportunity to continue to work with the Committee and its staff on preservation.

Statement To

Financial Services Committee
United States House of Representatives

Testimony on Affordable Housing Preservation and Protection of Tenants

By Ricky Leung, Secretary
National Alliance of HUD Tenants
June 19, 2008

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

Financial Services Committee
Thursday, June 19, 2008

On behalf of the National Alliance of HUD Tenants (NAHT), I want to thank Chairman Frank, 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 Secretary 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. Title IV comes back full circle to restoring the vision for preservation of HUD's troubled housing initiated by former Senator Ed Brooke in his Property Disposition Amendments of 1978 and continued by Chairman Frank in the Multifamily Property Disposition Act of 1988. We applaud Representative Velasquez, Chairman Frank and Chairwoman Waters for including these NAHT priorities in the Draft Bill.

NAHT has provided detailed comments to Committee staff. About 90% of the Bill has consensus support among the major stakeholders, including several NAHT priorities (all of HR 44; reform and extension of Enhanced Vouchers for all expiring units; and conversion of Rent Supplement and RAP contracts to Section 8). There is also consensus support for Section 601, the Tenant Technical Assistance provision, which is identical to the language adopted unanimously in HR 3965. 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. In August 2008, he will decide again what to do. This time around, we are not so certain he will renew: he can likely make far more money converting to speculative rents on unsubsidized units, and it is no longer certain that HUD will honor its obligations to make annual Section 8 payments for a full year.

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, and soon the National Housing Trust Fund 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[1] 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.

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[1] NAHT has recommended that Section 103 of the Draft Bill be replaced with a more developed version of the First Right of Purchase developed by House Legislative Counsel at the request of Rep. Jose Serrano, with input from NAHT's New York affiliates and the National Housing Law Project. The substantive provisions are the same. We have also recommended that the mandatory provisions of Section 103 precede the voluntary ones in Section 102, with the latter rewritten to be consistent with the Right of First Purchase framework.

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).[2] ***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 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.***

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

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.[3] ***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.

Radical 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. We have lost too many affordable homes, and many more families are facing the destruction of their communities. 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 industry.

The predatory equity crisis poses new challenges for all of us. NAHT's New York affiliates have already met with Committee staff to explore appropriate regulatory controls on US and global lenders and investors to stabilize and protect the market in affordable housing. These ideas should be explored in other legislative vehicles in the near future.

The First Right of Purchase is a Modest Regulatory Tool with Ample Precedent

Meanwhile, a First Right of Purchase would be a limited, no-cost regulatory tool that would enable communities to save at-risk housing. There is ample precedent. ***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.[4] In addition, since 1996 several states, including Illinois, Rhode Island, and Maine have adopted First Right of Purchase statutes.***

In New York City, tenants won Local Law 79, which enacted a First Right of Purchase in the City, based on these statewide models. However, a state trial court struck down the city law due to concerns about preemption conflicts with state and federal laws. Nonetheless, the 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

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[3] 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.

[4] 42 U.S.C. Sec. 1472 (c)

residents of New York may and should function as a wake-up call for the need for immediate action" by other levels of government.

On federal preemption, the 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 why courts should 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.

HUD Section 8 Budget Crisis Increases Opt Out Risk

Until recently, project-based Section 8 buildings like my own were less likely to opt out of subsidy programs, due to the Mark Up to Market Program, when compared to buildings receiving Rent Supplement or RAP rental subsidies. We strongly support Section 101 in the

Draft Bill allowing conversion of Rent Supplement and RAP to Section 8 and hence eligibility for Mark Up to Market to increase owner incentives to stay in.

But since last summer, HUD has admitted it is no longer paying owners 12 months subsidy for annual Section 8 contract obligations. Congress has yet to fill what HUD acknowledges is a $2.4-2.8 billion gap in the project-based Section 8 budget to restore full year payments. Owner representatives have testified before Congress that they are much more likely to opt out of HUD contracts in light of the new funding uncertainty. This risk is particularly great in markets like Manhattan where speculative investors have driven rents to unprecedented levels. According to owner groups, ***as many as 500,000 units where Section 8 contract rents are below market levels could be at risk of owner decisions to exit the program.***

Federal First Right to Purchase Will Save Housing Nationwide

The new Section 8 funding uncertainty reinforces the speculative market trends that make the loss of HUD multifamily housing a nationwide crisis. While Mark Up to Market may have slowed the loss of housing since 2000 in some regions, it has by no means stopped it. Private equity firms, global investors, Real Estate Investment Trusts and other speculators have continually eroded the affordable housing stock in high rental markets.

The Committee today will hear 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. After first promising it had no plans to prepay, AIMCO later 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 is now vacant and being 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. The City of Boston would have exercised a First Right of Purchase to remove High Point from the speculative market to preserve affordable housing and racial diversity.

In ***Hawaii***, a First Right of Purchase 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)[5]. NAHT urges improvements to Section 503 of the

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

Draft Bill to tighten HUD approval requirements for prepayment by nonprofit owners, to avoid scandals 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. [6]

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 306). 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 we have 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.

But 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. The current Administration has adopted a policy of

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[6] There are three additional measures which NAHT has recommended for Title IV of the base bill: (1) encourage HUD to become Mortgage In Possession (MIP) when it has the opportunity to do so, to trigger access to the Mortgage Insurance Fund to pay for major repairs and enable HUD to replace substandard management companies; (2) promote acceptance by HUD of Deeds In Lieu of Foreclosure from owners, as an alternative to often risky foreclosure auctions; and (3) add a provision to Section 405 to ensure continued affordability and tenant participation in the event properties are transferred by HUD to a City agency through the Property Disposition/Foreclosure process. These proposals are in the same spirit of HR 44 and would help improve and preserve troubled housing. The first two have also been recommended by the Preservation Working Group.

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.

withholding any information under the FOIA which might be considered "controversial," leaving the definition up to local staff. Clear direction by Congress is required to reverse these 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 vacant and 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.

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In summary, we urge the Committee to retain and strengthen the critical provisions for a First Right of Purchase and Tenant Empowerment. Along with the less-controversial provisions for Troubled Housing and Enhanced Voucher Reform, conversion of Rent Supplement and RAP to Section 8, extension of Enhanced Vouchers to expiring mortgage units and many others, the Committee has crafted an exciting and comprehensive program that will sustain our homes for decades to come.

When Senator Ed Brooke initiated the principles for preserving at-risk HUD multifamily housing with a maximum of resident and community control in 1977, the privately-owned, HUD multifamily programs serving low income people were relatively new. Senator Brooke understood that a combination of judicious regulation, tenant protection and empowerment was essential to save and improve our homes. We commend the Committee's leadership for crafting a Draft Bill which reaffirms these principles and addresses the new challenges we face today.

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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Testimony of J. Kenneth Pagano
House Financial Services Committee
Affordable Housing Preservation and Protection of Tenants
Thursday, June 19, 2008

Thank you, Chairman Frank for holding this important hearing to examine preservation of affordable rental housing. Good morning, Ranking Member Bachus and members of the committee.

My name is Ken Pagano. I am honored to be here today to speak on behalf of the National Affordable Housing Management Association (NAHMA). I am currently serving as Secretary of NAHMA, Chairman of NAHMA's Regulatory Committee and Vice Chairman of our Tax Credit Committee. I am also President and CEO of Essex Plaza Management Company and President of NAHMA's regional chapter, New Jersey Affordable Housing Management Association (JAHMA).

Chairman Frank, 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 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 our 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. 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 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. Also, the "HUD fatigue" GAO discussed has increased exponentially among our for-profit and non-profit members.

Undependability of Project-Based Section 8 Funding

In an April hearing before the House Appropriations Subcommittee on Transportation and Housing and Urban Development, Assistant Secretary for Housing Brian Montgomery stated HUD would require an additional $2.6 billion above its FY 2009 request to fully fund the 12 month increments of project-based Section 8 HAP contracts at the time of renewal. Other estimates place the need at $2.8 billion above HUD's budget request. 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.

When HAP payments are severely late, housing operators have to lay-off staff, cut services to residents, miss mortgage payments, make late utility payments or miss payments to site vendors, borrow from the project's reserves for replacement, postpone maintenance and / or ask owners for loans. In my own experience as a management agent, the cost of operating project-based Section 8 properties has increased as a result of the HAP payment crisis during the summer of 2007. Despite many years of timely payments, vendors are now asking for upfront deposits, and I've lost discounts because I was not able to pay them on time. Banks and vendors are charging late fees. My properties have paid between 12 to 18 percent late fees on water, sewer and tax payments in New Jersey because HUD did not pay us on time. I had to cut the hours of the Neighborhood Networks community learning centers. I've also had to defer scheduled work outlined in the mark-to-market process because I needed the money to make debt service payments. My properties suffered, and my tenants were also affected.

But the funding problems did not end last summer. For example, in late 2007, a NAHMA member operating in the Midwest experienced a two month delay on a HAP payment, first because HUD did not have the funding to pay the HAP, and then because HUD added a an extra step to the contract renewal procedure by requiring the contract administrator's signature. This member was

especially frustrated because his company submitted the contract renewal paperwork prior to the HUD's deadline—which is 120 days before the annual contract expires.

Another frustrating consequence of the 2007 funding crisis is HUD's "incremental" or short-term funding language in Section 8 renewal contracts. Project-based Section 8 HAP contracts now obligate funding to owners for a period of time (expressed in months) less than the term of the contract (either one-year or multi-year). For example, the contract language might read, "HUD is providing $350,000, which is sufficient to fund HAPs for approximately 4 months of the Renewal Contract term." At every anniversary date for multi-year contracts, HUD is notifying owners when it does not have enough funding to pay for the full 12 month annual increment. HUD's letters state how much funding will be providing to cover a specific number of months and that HUD will obligate additional funding when appropriations are available.

"Incremental" payments on HAP contracts are ***not*** an acceptable standard operating procedure. Rather than simply request the amount of appropriations *it actually needs to fund the full 12 month terms of Section 8 contracts*, this Administration has made a policy decision to tell owners, "We don't have enough money to pay you." Even worse, we are aware of cases in which the few months allotted on the short-funded contract had already expired by the time the owner or agent finally received the paperwork to receive the payment!

There is simply no substitute for fully funding the 12 month contract terms. When HUD talks about funding contracts for the *fiscal year*, they are referring to payments from October 1 to September 30. HAP contracts are renewed in every month of the calendar year, often overlapping federal fiscal years. NAHMA is firm in our position that Section 8 Project-Based HAP contracts must be fully funded *and* paid on time. This program is at a crossroads. Last summer's severe payment problems, combined with HUD's short-term contract funding, are raising questions throughout the affordable housing industry about whether the federal government is truly committed to the project-based Section 8 program--and whether it is worth the risk of participating in the program. This is an especially important question when the LIHTC program is used to preserve HUD properties. LIHTC investors are leery of 12 month HAP contracts with three or four months of funding.

Poor Relationship with HUD—"HUD Fatigue"

More and more NAHMA members, for-profit and non-profit alike, are experiencing 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 transmitted through e-mails, conference calls or notices to HUD staff and / or contract administrators but not directly shared with owners and agents.

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 believe the factors GAO identified which continue to jeopardize preservation efforts include inadequate OCAF rent adjustments, late subsidy payments, high administrative costs for few Section 8 units, outdated HUD

[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.
[3] See page 29 of the GAO report.

policies and procedures; and inconsistent REAC scores (though we feel this factor is likely the result of inconsistencies between REAC inspectors).

All things considered, it is unrealistic to expect owners in desirable neighborhoods to put up with the status quo indefinitely. Stop-and-go contract funding, along with complicated, expensive regulatory requirements, are making it difficult for management agents to convince owners to stay in the program. I am personally feeling pressure to opt-out from the partners on some properties I manage. My owners and limited partners are looking at this situation where their costs are increasing, returns are diminishing and the uncertainty of HAP funding is putting the projects at risk of default on the mortgages. Risks to properties restructured under mark-to-market include default on the first mortgage, as well as inability to make interest payments on the HUD-held second mortgage. The partners are asking me, "Why am I still in this program?" The limited partners are especially vocal about their desire to leave the HUD programs, since they are not receiving reasonable returns on their investments, and they are not receiving tax benefits. At the same time, they are being approached by investors who would like to convert the properties to condominiums or market rate units. The limited partners put considerable pressure on the general partners, and it is getting more difficult to resist their demands.

Some agents have given up altogether on making the argument for preservation. One NAHMA member commented, "I have gone over to the dark side and in good conscience can no longer recommend that an owner take the Mark-up-to-Market (MU2M) option. I now find myself usually recommending that the owner prepay and opt-out." This member offered specifics about the consequences of the opt-outs:

> "We are in the process of opting-out of an 84-unit family building in San Bernardino. The effective date of the opt-out will be June 30, 2008…The owner will realize a…$45 to $95 increase on the section 8 units. He will also save approximately $20,000 a year in bookkeeping expenses, occupancy expenses, office supply costs and HUD audit expenses.
>
> We are also opting out of a 132 unit building with mostly 0-bedroom [efficiency] and 1-bedroom units in Los Angeles, effective November 30, 2008. We are subject to Los Angeles rent control so the increase in rents will be relatively nominal, but we will save over $20,000 a year in bookkeeping expenses, occupancy expenses, office supply costs attributable to HUD verification expenses and also for the HUD audit expenses.

We have four other Title II family buildings that will reach the end of their Use Agreements between 2010 and 2011. Each owner has already advised us that they plan to opt-out at that time and convert their properties to conventional rental. Several other family properties, which previously opted to take the MU2M option will also opt-out at the end of the 5-year contracts. One of these properties is directly across the street from the University of Southern California...In today's market the owner could obtain between $500 to $800 more for each unit as student housing."

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. Although the LIHTC program is a "go-to" program for older HUD properties, this solution also brings new challenges. First, owners must compete for LIHTCs. 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, extensive staff training is necessary to ensure the property 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 exhibits in accommodating 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]

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

Mr. Chairman, 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. It is unrealistic and short-sighted for HUD to expect owners to restrict their rents to maintain affordability when housing operators have no faith that the OCAFs used to adjust rents will keep up with inflation.

Worse still, there is no mechanism to help properties offset unforeseen cost increases between rent adjustments. My properties have had to absorb of substantial, unforeseen and unbudgeted expenses due to cuts in municipal budgets. For example, municipalities are requiring costly security measures and refusing to pick up garbage. They are also reluctant to renew tax abatements on affordable properties. When the local governments are willing to renew tax abatements, they offer less favorable terms.

Complication of the preservation deals

Some owners choose not to preserve their affordable properties because it is just too complicated. Preservation involves long-term planning, long-term regulatory commitments with an Agency many owners and management agents no longer trust, and major changes in on-site operations to accommodate the different regulatory requirements on mixed subsidy properties.

Recommended Actions to Preserve Affordable Housing

Immediate, decisive steps which encourage owners to continue participating in affordable housing programs should be taken before more units are lost. NAHMA has reviewed the March 2008 preservation discussion draft. There is much to like within this draft, and we remain committed to working with you and your staff, Mr. Chairman to enact a strong preservation bill. There are a number of industry supported provisions in Title I, Title II, Title IV and Title V, but I would like to focus my remarks on the items most important to NAHMA. Our suggestions incorporate items that were included in the discussion draft, items we hope will be included in the preservation bill when it is introduced, recommendations that fall outside the 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 generally agreed that the Administration's FY 09 budget request falls between $2.6 billion to $2.8 billion short of the amount necessary to fully fund the 12 month increments of project-based Section 8 HAP contracts. It is absolutely essential to fully fund project-based Section 8 HAP contracts in the FY 09 Transportation-HUD appropriations bill. Likewise, I cannot over-emphasize the importance of 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;**

  The Administration should submit a budget request which reflects the *true cost of funding project-based Section 8 contract renewals for their 12-month terms*. Likewise, 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 Representative Maxine Waters' Mark-to-Market Extension and Enhancement Act (HR 3965) which requires HUD to pay interest on late HAP payments to owners after 30 days. We urge Congress to quickly pass this legislation.

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

- **Of particular importance to NAHMA is Section 506 (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.

- **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 punted on an opportunity to improve the reliability of OCAFs. We urge the Committee 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.**

- **The discussion draft's Section 110 Market Rents for tax-credit financed housing is quite important.** This provision, which allows owners of Section 42 properties to receive higher Section 8 rents under the voucher program, is especially helpful to Section 42 properties and voucher holders in high cost areas.
- **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 Committee 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 and the Rural Housing Service to participate in HUD's Enterprise Income Verification (EIV) income matching program before HUD issues any final rule requiring owners to participate in EIV. 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 HUD mortgage matures. Without these protections, many residents will face substantial rent increases or have to find new housing. We also believe enhanced vouchers (which protect tenants when owners prepay or opt-out) 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 2007 (H.R. 1491) 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 which provides gap financing to qualified preservation entities (whether for-profit or non-profit) would facilitate more successful preservation transactions.

6. **The highest levels of HUD's leadership should take meaningful, proactive steps to restore a feeling a 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, 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 March 2008 discussion draft, there were several provisions that our members consider counterproductive to preservation. Generally speaking, 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 which 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 this Committee 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.

We do believe there is a need for gap financing to facilitate preservation. In my own experience, 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 this operate the properties. I've had preservation deals fall through because the purchasers did not have the resources to carry the properties. 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 2007 (H.R. 1491) would also provide an effective win-win incentive for owners to sell their properties to those 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 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 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 that contain 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 the balances of & 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 306 Transparency Regarding building information and Section 701 Preservation Database

We certainly understand the intention of these sections in helping tenants to find quality affordable housing. HUD has already provided several of the disclosures called for in these sections. HUD began publishing REAC scores on its website in November 2007. This information can be found at http://www.hud.gov/offices/hsg/mfh/mfdata.cfm. Likewise, HUD created a "Multifamily Assistance and Section 8 Contracts Database" found at http://www.hud.gov/offices/hsg/mfh/exp/mfhdiscl.cfm. This

database includes much of the information proposed in Section 701, such as property names, units, rents, and contract expiration information.

We believe HUD has achieved the major goals of these sections. Nevertheless, if the Committee wishes to authorize such databases, we implore members to write the legislation in a way that will not impose addition unfunded mandates on properties by pulling staff away from their property management duties to compile the required information for HUD, and creating more paperwork. The information should come from HUD's existing data.

Conclusion

Thank you again, Mr. Chairman, 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 of The Institute for Responsible Housing Preservation

Presented by Brian Poulin
Financial Services Committee
U.S. House of Representatives
Hearing on Affordable Housing Preservation
July 19, 2008

Mr. Chairman. Thank you for inviting me to testify on the important topic of affordable housing preservation. My name is Brian Poulin. I am a partner in Evergreen Partners LLC based in Portland, ME with offices in Fort Lauderdale, FL and outside of Boston, MA. My partners and I are solely involved in the acquisition, rehabilitation and preservation of federally assisted multifamily affordable housing properties. We own and manage approximately 4,800 units in 11 states.

I am here today in my capacity as 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 Interest Reduction Payments ("IRP") preservation transactions in 1998. Today, these preservation transactions are known as IRP de-coupling transactions. More than 750 Section 236 properties – approximately 75,000 units – have been substantially rehabbed and preserved as affordable housing over the past 10 years using the de-coupling program. HUD recognizes the de-coupling program as one of its premier preservation initiatives.

Mr. Chairman, 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 convert to market rate housing or are in crucial need of updating and repairs. 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 Section 236 de-coupling success story and applying the same preservation tools to these other portfolios. HUD has the statutory and regulatory authority in most instances 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 nor do they allow new debt service to be used in calculating rents, which would be capped at 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 market rate buyers hoping to convert the property to market rate housing to the detriment of the residents most in need.

- 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 a distribution of 6% of new equity. The annual distribution is a critical incentive to owners. Again the Section 8 guidelines do not allow for an updating of the annual distribution. 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 but has chosen not to do so. 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.

My partners and I have personal experience on this issue and find it difficult to justify the purchase, rehab and preservation of a HUD assisted property where the distribution cannot be updated. IRHP proposes that a cap on distributions be eliminated entirely or at the very lease be re-calculated based on any new equity going into the development. 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 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.

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. We also provide a package of tenant supportive services, including lifestyle training, computer training and coordination with local service providers.

Mr. Chairman, your draft 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. It's unfortunate that it takes legislation to make it happen. Your 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, it expands the events for providing enhanced vouchers to residents, and it keeps existing subsidies in properties that otherwise would be lost to deficit reduction. 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.

Mr. Chairman, thank you for providing us the opportunity to testify here this morning on this extremely important issue. We are committed to affordable housing. We are committed to preservation.

Statement to

Committee on Financial Services
United States House of Representatives

Testimony on "Affordable Housing Preservation and Protection of Tenants"

By Amanda Seward, Counsel for the Lincoln Place Tenants Association
June 19, 2008

Prepared Statement by Amanda Seward

Counsel for the Lincoln Place Tenants Association

Financial Services Committee Hearing

Thursday, June 19, 2008 Rayburn-2128

On behalf of the tenants of Lincoln Place Apartments in Venice, California, I am pleased to testify before the Committee on Financial Services as you hold this hearing entitled "Affordable Housing Preservation and Protection of Tenants." We applaud you for recognizing this critical issue and for taking action to preserve the nation's existing stock of federally-assisted affordable, multi-family rental housing. The tenants of Lincoln Place have been victimized by the failure to protect the government's investment in affordable and work force rental housing and their story will hopefully lend support to the position of the National Alliance of HUD Tenants on the policy provisions contained in the March, 2008 draft of the proposed "Housing Preservation and Tenant Protection Act of 2008."

Lincoln Place is not currently a HUD property, but it was financed under a historic mortgage insurance program enacted by Congress in response to the critical shortage of low to moderate income housing in the 1930's and after World War II. In the 1980's the owner of Lincoln Place financed a rehabilitation of the property through a HUD program, but opted out of the program as soon as the commitment period expired. Still, because of rent control and long term tenancies, Lincoln Place provided much of the affordable housing available in this beach and high rent housing market. This 795-unit complex provided 5% of the rental housing available in Venice. The property's subsequent sale to investment speculators and the forced eviction of the tenants tell of the horror communities face when we do not take steps to protect our investment in low to moderate income housing.

The creation of Lincoln Place represented a successful effort by the federal government to address the then existing shortage of affordable rental housing, not unlike the conditions of today. It was financed under Section 608 of Title VI of the National Housing Act of 1934, an aggressive program enacted by Congress which was designed to stimulate investment in low and moderate income rental housing. (Originally, Section 608 was a 1942 addition to Title VI of the National Housing Act and was intended to increase the number of rental units for defense workers.) Section 608 was unique in that it encouraged private rather than public housing, encouraged the development of rental property rather than property sold individually to the general public, and encouraged developers to develop low to moderate income housing, all during a period in which private enterprise was very reluctant to build low and moderate income rental housing.

While one other Federal Housing Authority ("FHA") financing program, Section 207, also was designed to finance privately owned low to moderate income rental housing, language in the postwar amendments to Section 608 made it the leading stimulus in motivating developers to build low to moderate income rental housing in the United States at that time. Indeed, between 1946 and 1952, 80% of FHA sponsored developments comprising five or more rental housing units were insured under Section

608. In the post war amendments to Section 608, amortization of Section 608 mortgages was reduced so as to lengthen the maturity by five years or longer. Working capital requirements were reduced. A high loan to value ratio, a liberal valuation of the land and a high estimate of development costs translated into profits for developers. Forms were simplified and procedures were streamlined to facilitate quick action on applications. For example, the amendments to Section 608 made it possible for developers to "estimate" their costs with no verification required at a later point in the project. There were resulting windfalls, intentional for some developers, but accidental for others as postwar materials prices dropped. In any event, the result was the possibility of financing a large development with very little capital and it represented an unprecedented governmental sponsored boost in promoting private development of affordable housing in America.

In *Where We Live: A Social History of American Housing*, Irving Welfeld states, "The program succeeded beyond all expectations. Four hundred sixty thousand units were built (half in four metropolitan areas: New York City, Chicago, Washington, and Los Angeles). Of these, approximately 400,000 were built by the end of 1951. More units were built under the '608' program in 1950 and 1951 than had been built by all the life insurance companies, limited dividend corporations, semiphilanthropic organizations, and consumer cooperatives." Robert Schafer, in his The *Suburbanization of Multifamily Housing*, goes further. He points out that the rise in multifamily housing starts in 1948-50 was entirely the result of federal financial assistance under Section 608. From 1942-1946, Section 608 mortgage commitments totaled approximately $175 million in multi-family housing. In 1947 alone, mortgage commitments totaled $360 million. It was the largest amount the agency had spent since being formed in 1934 to administer the federal mortgage insurance program and the largest amount sponsored by the government since the 1930's when the federal government first took an active part in promoting housing and first recognized the importance of housing to the general welfare. Lincoln Place was the largest development financed under this federally backed mortgage insurance program in Los Angeles and in the State of California.

In these and other programs where the government guaranteed the loans, the government wanted to ensure against defaults. This prompted the Federal Housing Authority (FHA) to create both design and location guidelines on housing it insured. Lincoln Place was subject to these guidelines, and its strong building standards, site plan and important role in providing affordable and work force housing in the community for over 50 years is testament to the difference a successful private-public partnership can make in creating strong communities.

Lincoln Place was a particularly successful development due to the progressive design ideas of the multicultural team that created it. Working together in post World War II Los Angeles, the group included a Jewish developer, an African-American architect partnering with the heir of former slave owners, and an Asian American draftsman. Their goal was to create luxury on a budget. Their effort in 1949 resulted in a garden apartment complex that in 2005 was recognized as an important California historical resource. Lincoln Place is a wonderful example of how architecture and site planning can be a successful social tool in creating ideal communities.

The tenants varied ethnically, in age and in economic status. Lincoln Place housed whites, African-Americans, Latinos, and Asian-Americans, among others. There were

seniors, families, and young singles starting out in life. There was economic diversity including Section 8 households, teachers, postal workers, architects, designers, veterans, and lawyers. The community included the disabled and seniors living on fixed incomes who attended the birthday parties of their young neighbors. It flourished under the ownership of the original developer until the 1980's, when it was first sold. In 2003, AIMCO, a real estate investment trust ("REIT"), by many accounts the largest apartment owner in the country, purchased the property. AIMCO is also one of the largest owners of HUD subsidized housing in the country. Soon after AIMCO purchased the property in 2003, eviction proceedings began.

On December 6, 2005, the sheriff's department locked out 52 households (21 children and 65 adults). It was the largest lockout in a single day in Los Angeles history. These tenants were not evicted because they did not pay their rent. They were evicted because the owner had other plans for the property, plans that did not include tenants paying below market rents. The locked-out tenants refused to walk away from their homes and their community, although at that point in their battle, the court system and local politicians had failed them.

To the remaining tenants, 83 households who, because of age or disability, were entitled to a longer notice period before being evicted, the lockout was a shock. It was a shock to the community, many members who witnessed the lockout, including a couple of filmmakers who produced short films on the evictions galvanizing an even broader community. It was a shock to the families who were evicted. Some of these tenants have still not found housing. Some have had to move out of state because of the lack of safe affordable housing in the southern California area. Families report that their children still suffer nightmares. Some have moved to areas in Los Angeles where their children often hear gun fire at night.

After the December, 2005 lockout, many of the remaining tenants now felt they had no choice but to move. But they did not give up hope. One of those seniors travels by train and bus three hours once a month to attend monthly tenant association meetings at her former home. Another senior, until she died last month, continued to religiously send five dollars per month to the tenant association in support of the battle. Thirteen of the remaining senior and disabled households refused to leave, holding out hope that the rights of the tenants would be vindicated. One is a Vietnam vet who said he would not let anyone remove him from his home. Another is an 85 year-old woman who said the only way she would move was if the sheriff came and physically removed her.

The community rallied behind the remaining tenants. The local politicians started to listen. The courts started to respond to the tenants' plight. The California Court of Appeal recently ruled the evictions were unlawful. The community and key political leaders have let the owner know that any redevelopment of the property must respect the rights of the tenants and the historic status of the property. The battles still rages, but the eviction lawsuits against the remaining tenants have been dismissed, and the evictions of those who appealed their evictions have been reversed, although the tenants who were evicted have yet to have their tenancies reinstated. Negotiations are underway to find a friendly buyer who will reinstate the tenancies of those who were evicted and preserve and rehabilitate Lincoln Place. The city is now poised to enforce habitability standards

and code regulations. While we are hopeful about the future, the fight has been long and is not over yet.

The success of our efforts to save Lincoln Place is due to a unique set of circumstances that cannot easily be replicated across the nation when the federal government's investment in housing is not protected. It took a group of tenants who loved their community so much they simply refused to accept market force realities. They risked their credit standing, they were forceful to public officials who seemed indifferent to their cause, they rallied behind other politicians who were supportive, they organized community meetings, established a tent city where they spent the night, night after night and communed with the homeless, they pursued the court system and appealed when they lost, they fought the owner's appeals when the tenants won, they provided testimony to anyone who would listen and they persevered for more than 15 years after the property changed hands from the original owners. An activist community supported them when it was not fashionable to do so. A team of lawyers worked on a *pro bono* basis or at reduced fees to defend the tenants' rights in several lawsuits and fought through the appeals. Some politicians lent their support, including notably a member of this Committee, Congresswoman Maxine Waters. The personal sacrifice made by so many people has been extraordinary. But it should not be this hard and it should not take this long.

You have the opportunity to give tenants the tools they need to save their homes. In my view, the most important protection is the National Right to Purchase set forth in Section 103 of the Housing Preservation and Tenant Protection Act. The definition of a nonprofit should be broad enough to cover tenant-based cooperatives and land trusts. Other important provisions include the Tenant Empowerment measures, particularly those that provide tenants access to information, third party beneficiary status to enforce HUD requirements, and rent withholding procedures. Legal fees should be awardable to prevailing parties in the HUD contracts in order to encourage legal support for efforts to enforce legitimate tenant rights. The Preemption guidelines in Section 107 of the Act should be passed to narrow the application of any preemption arguments of owners in efforts to make inapplicable local and state tenant protection laws and ordinances.

Thank you for holding this hearing and allowing the Lincoln Place Tenants Association to share its story. We would be happy to provide more information to the Committee upon request.

BIO

AMANDA SEWARD is currently serving as counsel for the Lincoln Place Tenants Association and is part of the team of attorneys who have been representing the tenants in their eviction cases brought by the owner of Lincoln Place. She is the author of the California State Historic Resource nomination of Lincoln Place, which was approved by the State Historic Resources Commission in 2005. It was through this nomination that she learned of the plight of the tenants. She was an elected member of the board of the first Mar Vista Community Council Board of Directors and she is a founding member of the Mar Vista Historical Society and former Chair of the Residential Council of the Los Angeles Conservancy's Modern Committee. She has been active in the preservation community in Los Angeles for 10 years and has especially focused on the preservation of Modern architectural housing.

Ms. Seward received her JD from Georgetown University Law Center and received her BA in philosophy from Spelman College. She is a member of the State Bar of California and State Bar of Georgia.

DHCD
Maryland Department of Housing
and Community Development

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SECRETARY
Clarence J. Snuggs
DEPUTY SECRETARY

Deputy Secretary Clarence Snuggs – Written Testimony

Chairman Frank, Ranking Member Bachus, distinguished members of the Committee; I am Clarence Snuggs, Deputy Secretary of the Maryland Department of Housing and Community Development. Thank you for giving me the opportunity to testify before you on the Housing Preservation and Tenant Protection Act of 2008. I also want to thank you for your leadership on this issue, and your commitment to finding solutions to preserving affordable housing for the nation's low income families.

The State of Maryland and DHCD are strongly committed to preserving affordable rental housing. Back in the 1990s, the Maryland General Assembly enacted the Maryland Assisted Housing Preservation Act ("MAHPA"), Housing and Community Article, Annotated Code of Maryland, Sections 7-101 – 7-501, which applies to projects that have mortgages insured or assisted under certain federal programs or the project or owner receives project based Section 8 rental assistance. It also applies only to the "owners" (any person or entity that holds legal title, any mortgagee in possession, receiver, or trustee) of those projects.

MAHPA requires that owners give notice of certain "protected actions" to the local jurisdiction, the Secretary of the Department of Housing and Community Development, the local housing authority, the tenant's association (if any), and the individual tenant households within one-two years prior to the action.

"Protected Actions" are:

- The payment in full before maturity of any mortgage that is:
  - Insured under Section 221(d)(3) of the National Housing Act and assisted under
    - Section 101 of the Housing and Urban Development Act of 1965, or
    - Section 8 of the United States Housing Act of 1937,
  - Insured under Section 221(d)(3) and bears an interest rate determined under Section 221(d)(5) of the National Housing Act,
  - Insured or assisted under Section 202 or Section 236(a) or (b) of the National Housing Act,
  - Insured or assisted under Section 515 of the Housing Act of 1949, or
  - A mortgage that is held by the United States Department of Housing and Urban Development ("HUD") and insured or assisted under any of the previously referred to programs.

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- The termination before expiration or failure to exercise any stated renewal option under any agreement providing for project-based Section 8 assistance to any units in an assisted project,

- The termination, including any failure to extend following the expiration, of any agreement providing for project-based Section 8 assistance to any units in an assisted project, or

- The sale or conveyance of an assisted project by the owner in conjunction with or within one year following the effective date of any of the events previously described.

Owners taking a protected action must:

- Offer the right of first purchase to the local housing authority and the local jurisdiction,

- Offer the right of first purchase to any of the following, provided they have registered with the Secretary of Housing and Community Development:
    - Tenant organizations,
    - Tax-exempt low income housing developers,
    - And any other individual or entity not related to the owner with experience in low-income housing.

- Require the purchaser to record a covenant in the local land records restricting the use of the units to residential real property for the greater of the remaining term of any rental assistance agreement or 20 years (if not purchased under a right of first purchase).

- Provided that the project is not purchased under a right of first offer, the owner, upon taking the protected action, must offer the following:

    - $475 to each assisted household on the date the household vacates the unit and reimbursement of relocation expenses over $475 up to $950, and
    - Lease extensions for at least one year from the date of the owner's notice with rent increases limited to one per year on the anniversary date of the lease and limited in amount by the increase in the Consumer Price Index, or
    - Lease extensions for up to three years for households containing senior citizens, the handicapped, or minors with rent increases limited to one per year on the anniversary date of the lease and limited in amount by the increase in the Consumer Price Index.
    - Some assisted households may be entitled to additional compensation equal to three months rent.

Owners are exempt from MAHPA (in general), if:

- Prior to the taking of a protected action, they record a covenant in the local land records continuing the income restrictions on the assisted units for the remainder of the applicable term of the mortgage, or

- If the sale or conveyance of the property is made subject to the existing mortgage.

Over the past five years, DHCD has preserved over 4,300 affordable rental units through the use of Mortgage Revenue Bonds, Low Income Housing Tax Credits, State financing, and other resources. We have committed $75 million in bond authority for preservation this year, and we are currently a finalist for MacArthur Foundation funding for our past and future commitment to preservation efforts. Additionally, we have re-engineered our State funded lending and insurance products to facilitate preservation. We have been proactive in stepping out of the bureaucratic box to preserve affordable housing opportunities in Maryland and look forward to working with the federal government to do the same.

While these accomplishments are noteworthy, based on information from the National Housing Trust, we have over 16,700 affordable units at risk of being lost from the Section 8 Portfolio over the next 4 years. This does not include units such as tax credit units that may be lost as well. The need to preserve this housing is real, especially since it assists some of our neediest families.

DHCD, in addition to being a Cabinet Agency, is also the State's Housing Finance Agency. We support the language in this bill that gives States and State Housing Finance Agencies greater control and participation in the preservation process. We, the State HFAs are the right place to direct statewide preservation authority because we have a favorable track record of supporting preservation; we know the variations in our states. Preservation cannot be one size fits all. We also have the resources --federal and state -- to make preservation happen and the relationships with private sector lenders and developers as well as local governments to craft a solution.

What we need most from the federal government is flexibility and timely decisions. HUD often works out of its "silos" when a team approach that deals with all aspects of any one project would be a better approach. We are a Contract Administrator (CA) for many projects that we are refinancing and it can be difficult to determine who at HUD actually controls the decision about renewing a Section 8 contract and rent increase. Preservation demands new ways of doing business, teamwork and flexibility are key.

Regional or Field HUD offices should be where most decision making occurs with the ability to delegate decision making to state HFAs. We have an excellent working relationship with the Baltimore HUD office and have been able to sit down and negotiate a first-in the nation Intercreditor Agreement designed to streamline the processing of financing packages that involve both federal and State resources. The FHA Risk Share Program and MOUs for subsidy layering requirements are similar examples of

coordinated and delegated decision making between HUD and its sister State agencies. These agreements have a longstanding history of protecting the federal government's interest while facilitating timely and prudent production and preservation of affordable rental housing

What is most important is that the bill enables HUD field offices to defer to requests for changes in existing loan terms and rental assistance contracts that are approved by the State HFA that is refinancing the project. We would also ask that the bill language allow for delegated underwriting and approval of changes in project based rental assistance within some broad parameters. This could be developed following the successful FHA Risk Share and subsidy layering models. There is precedence for this intergovernmental partnership it is efficient and effective government in action

In that light, we would ask that this legislation include a provision that would establish a demonstration program to wave the numerous rules and regulations of the preservation process. The amount of time it takes to preserve properties is one of the biggest obstacles in actually doing deals. We think this provision should be modeled along the HFA Risk Share model that sets basic parameters regarding what protections HUD has to have, but gives the field offices and State HFAs the ability to move quickly when preservation opportunities arise.

We also have some additional suggestions:

The proposed legislation calls for prioritizing the order in which projects are handled for preservation based on the date the old contract expires. This may not be the best approach, as we need to be able to refinance the project when it come to us for financing so we would eliminate the requirement that you have to do the projects that expire first before you do those that expire in the following year. Rather, the legislation should allow the State HFA to set a priority for a project as long as it's within some larger window of expiration – for example, everything within five years expiration should be preserved first before those projects whose contracts are expiring in six to 10 years.

We were pleased to see the requirements that HUD and USDA/Rural Housing Services work together to create a database of subsidized properties. What we would also like to see is language that calls for the coordination of rules and financings between HUD and RHS. Therefore, we would also like to see a requirement for HUD and RHS to develop an Intercreditor agreement that we can all use if a project is funded by both.

We would also move away from the one to one replacement requirement. One to one replacement on site may not always make sense due to density issues, nor may it always be the best policy for accessing Transit Oriented Development (TOD), Smart Growth, or mixed income housing. The better solution will depend on the property and location. If density of low income units is reduced on one site, the local government or state should have access to project based Section 8 to place in other projects -- a way to port a project based voucher and maybe put a few restricted units in an otherwise market rate property. This "pot" of project based vouchers should be controlled at the State level and would

have to replace the total number of units lost with the same number of units, but not necessarily in the same location as the preserved project. To allay concerns that too much affordable housing might be lost at the current location, it would be acceptable to mandate that at least some percentage of units in the preserved project must serve households below fifty percent of median income or the disabled.

Lastly, while we have some resources to finance preservation, we need more. This would include an increase in the cap on MRBs, and an increase in Federal Low-Income Housing Tax Credit, as well as more federal funding for the HOME program or other, new sources of funding which can finance the improvements and repairs preserved properties often need. It would be particularly useful to see provisions that would fund a program to provide short term preservation funding to enable quick acquisition of at-risk properties before using MRBs and Tax Credits are used as permanent financing options. HOME rules and CDBG rules are too complicated for tracking on the back end so it is difficult to use these programs for short term acquisition financing. The new resource would have to be flexible and be designed to work in concert with or in deference to existing programs and requirements

Thank you again for giving me the opportunity to testify.

WRITTEN STATEMENT OF SENATOR EDWARD W. BROOKE

Hearing before the Committee on Financial Services
United States House of Representatives

Hearing on: "Affordable Housing Preservation and Protection of Tenants"

June 19, 2008

Chairman Frank, Ranking Member Bachus, Chairwoman Waters, Ranking Member Capito, and Members of the Committee, I want to thank you for allowing me the opportunity to submit written testimony regarding the critical need to preserve the nation's existing stock of affordable housing. I write in support of the Committee's efforts to develop affordable housing legislation because I believe that it will help keep low income families, many of whom are elderly or disabled, in their homes and in their communities. The preservation of affordable housing is among the most critical housing issues we face today and the ongoing mortgage foreclosure crisis has made the need for housing an even more urgent issue. We have a public and moral duty to ensure that the working families of America have access to affordable housing. That is why I am pleased that the Committee is holding this hearing and that so many organizations are interested in working with the Members of the Committee to develop a broad and comprehensive bill to provide HUD with the tools and resources it needs, including incentive for owners, to preserve units and ensure that low income families continue to have access to affordable housing.

Preservation of affordable housing is an issue that we have been grappling with for many years. I have been strongly committed to the idea of preservation since serving on the Senate Banking and Currency committee in 1967. In 1977, I was approached by a group of tenants from Methunion Manor, a HUD-assisted church sponsored non-profit property located in Boston's South End. Methunion Manor was built in 1970, when the South End was a low-income neighborhood undergoing urban renewal. Seven years later, in part because of the lack of adequate HUD asset management tools, the property had fallen into financial default and physical distress. At the time, like many urban communities in America today, the South End had begun to gentrify. The Department of Housing and Urban Development, which insured the mortgage, was about to foreclose on the property. These tenants believed, and rightly so, that their building would be sold to the highest bidder without the existing long-term affordability requirements, and that they would all be priced out of their homes.

Along with my Democratic colleagues in the Senate, I worked with Members of this Committee to enact a provision Housing and Community Development Amendments of 1978 (P.L. 95-557) that for the first time required HUD to sell properties facing foreclosure to groups that would preserve affordable housing, including local governments and tenant non-profit organizations or non profits, and provided adequate resources to ensure affordability and decent quality. As a result of that legislation, and with HUD's subsequent cooperation, Methunion Manor today is a thriving, affordable,

limited-equity cooperative that is owned and controlled by its residents, and which continues to contribute to the South End's historic diversity.

Although we currently have more protections in place than we did in the 1970's, the scenario that faced the tenants of Methunion Manor is still common today. In the next five years, many project-based Section 8 contracts will expire, and virtually all subsidized mortgages will either be eligible for prepayment or will mature. Thus, we need to make preservation incentives more effective, or many of these nearly one million units of affordable housing will be converted to market rate housing, or will deteriorate further due to a lack of resources for re-capitalization.

The term "preservation" refers to extending the affordability and sustainability of privately-owned, federally subsidized multifamily housing that was created under a variety of mortgage subsidy and rental assistance programs such as the Section 221(d)(3) BMIR, Section 236 and Section 8 programs. Tenants in these units typically pay 30 percent of their adjusted gross income for rent, and the federal government supplements the rent so that landlords receive a fair market value for the unit. In addition, the owners of Section 221(d)(3) BMIR and Section 236 properties typically entered into long-term affordability commitments, typically for a period of forty years. These HUD programs were completely voluntary and landlords had the option to pre-pay the HUD-insured mortgage or in the case of the Section 8 program, opt-out of the Section 8 Housing Assistance Payment contract. If that happens, however, low income families could easily be forced out of gentrifying areas and may be unable to find other affordable homes. To prevent the displacement of families in these circumstances, Congress authorized HUD to provide enhanced vouchers to the tenants to ensure that they could remain in the unit after the affordability restrictions were terminated. However, tenants who do not receive rental assistance as well as tenants in units where the mortgage matures currently are not eligible to receive an enhanced voucher. As a result, these tenants are at risk of paying higher rents or being forced to move and find a more affordable unit.

It is my understanding that tenant advocates and owner representatives have been meeting to review their respective proposals and that they agree or have reached a consensus on many of the prospective proposals. In particular I support their proposals that would provide financial incentives for owners to keep properties affordable, reduce administrative burdens that limit or prohibit more preservation transactions from taking place and create a preservation mandate for HUD in order to encourage landlords to remain in HUD programs and preserve the affordable units that are available today.

One of the ways we can encourage and facilitate the preservation of our affordable housing stock is by allowing property owners to convert Rental supplement (Rent Supp) and Rental Assistant Payment (RAP) contracts into project based Section 8 assistance. Thousands of Rent Supp and RAP contracts are set to expire in the next few years and without any incentives for the property owner to maintain these units as affordable housing we risk losing them. By allowing property owners to convert their long term Rent Supp and RAP contracts to short term project-based Section 8 contracts we will give property owners an incentive to continue to provide affordable housing. We

can also preserve affordable housing by giving the right of first purchase to organizations that pledge to maintain these units as affordable. By utilizing assistance from the federal government these organization would be able to pay a market rate for the properties while still maintaining the affordability. For property owners who want to stay in HUD-assisted programs, we should provide grants and low interest loans so that these property owners can rehabilitate older buildings, many of which are in serious disrepair.

One important issue that we must always consider when dealing with a government sponsored program is the cost. Preservation of existing units is a cost-effective way to address the affordable housing crisis we are facing today. Preservation is less expensive than new construction and these savings are passed on to the tenants and reduce government expenditure. Building new units requires more money, materials and time than preserving existing apartments. Additionally, it is often not possible to replicate affordable units in the face of local opposition.

If we allow the affordable housing that currently exists in gentrifying neighborhoods to disappear, we risk losing mixed income neighborhoods and losing the benefits they bring to the residents and the community at large. There is evidence that living in a healthy mixed use community helps to break the cycle of poverty that has trapped many low income families. Therefore it is crucial that we preserve our stock of affordable housing in areas that are gentrifying rather than forcing low income families out. Furthermore, the market is the most powerful force in ensuring the quality of housing. The discussion draft that I have seen will provide landlords a financial incentive to rehabilitate their properties and provide quality affordable housing.

In this difficult economic environment, as the demand for affordable housing continues to rise, we cannot afford to watch these affordable units be turned into market rate housing, particularly given the limited resources available for affordable housing. As I have previously noted in my testimony, it will be far too costly to try to replace these existing units five, ten, or fifteen years in the future. The time to act is now.
I therefore commend the Committee for examining ways to maintain the existing supply of affordable rental housing and allow us to focus our efforts on preserving the units and protecting the tenants.

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