

H.R. 4868: Housing Preservation and Tenant Protection Act of 2010

H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010, contains provisions that would help preserve government subsidized apartment communities, protect affordable housing residents, maintain housing affordability, and reform the elderly and rural housing programs. While NAHMA strongly supports the *goal* of preserving the affordable housing stock, we oppose H.R. 4868 as introduced because it includes five sections that will drive away equity investment, infringe on owners' property rights, inappropriately inject HUD into landlord-tenant law, and require HUD to release housing providers' confidential and proprietary information. These sections not only work against successful preservation of affordable housing, but also discourage private sector participation in HUD programs.

NAHMA strongly opposes the following sections of H.R. 4868 and requests their removal from the bill:

- Section 107: First Right of Refusal;

This provision gives state housing agencies or their assignee the right to purchase assisted properties before third-party buyers. We feel the provision violates owners' property rights in existing contracts and that the lengthy negotiation process associated with this provision will drive away potential third-party buyers & equity providers and jeopardize transactions with LIHTCs.

- Sec. 108: Clarification of State and Local Authority;

This section allows certain state and local preservation laws to preempt federal law. However, we find this language vague and confusing. This section may make it difficult for HUD to interpret which laws qualify for Federal preemption and which do not.

- Sec. 302: Maintenance of Housing;

This section allows HUD to withhold subsidy payments to enforce housing quality standards. It also requires HUD to notify tenants if property violations of housing quality standards occur and study a proposal that would allow tenants to withhold their rent (in escrow) to enforce housing quality standards. However, NAHMA feels that serious violations will likely be resolved before HUD sends the notice. Furthermore, we also worry that the notice could list "violations" that are under appeal, which may not be violations at all, requiring HUD to release a notice that was unnecessary.

- Sec. 303: Resident Enforcement of Public Housing Agency or Project Owner Agreements;

This section allows tenants to enforce owners' housing agreements with HUD through lawsuits. However, HUD already has a number of effective and sufficient enforcement tools. In addition, giving tenants the right to go to court will further constrain HUD's ability to provide affordable housing and add litigation with no clear positive result; and

- Sec. 304: Resident Access to Building Information.

NAHMA absolutely opposes release of confidential personal and proprietary information proposed in Section 304. We feel that releasing this information will drive off equity investors who do not want their holdings subject to general scrutiny.

Nevertheless, NAHMA does support the 60 other provisions in H.R. 4868, especially:

- Section 406, which requires HUD to pay an interest penalty on late housing assistance payments (HAP) to property owners;
- Section 501, extending the Mark-to-Market Program restructuring authority;
- Section 508, providing budget-based rent adjustments and meeting rehabilitation needs;
- Section 512, increasing the Mark-to-Market cap on exemption rents;
- Title VII, reforming the Section 202 elderly housing program; and
- Title VIII, providing for rural housing preservation.

NAHMA will continue to work with all interested Members of Congress to remove the provisions which violate owners' contractual rights, privacy rights, and the right to maintain confidential or proprietary information. We believe Sections 107, 108, 302, 303, and 304 will not only work against successful preservation of affordable housing, but also discourage private sector participation in HUD programs. We are hopeful these concerns can be addressed in order to move forward with the much-needed legislative changes to preserve affordable housing.