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

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

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

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

Background: What Is Preservation?

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

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

What Factors Work Against Preservation?

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

Market Forces

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

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

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

Project-Based Section 8 Funding

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

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

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

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

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

Poor Relationship with HUD—“HUD Fatigue”

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

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

¹ See page 27 of the GAO report.

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

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

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

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

Considerations about Long-Term Financial and Physical Sustainability

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

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

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

³ See page 29 of the GAO report.

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

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

Insufficient Operating Cost Adjustment Factors (OCAFs)

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

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

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

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

Recommended Actions to Preserve Affordable Housing

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

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

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

It is absolutely essential to fully fund project-based Section 8 HAP contracts in future

Transportation-HUD appropriations bill. Likewise, I cannot over-emphasize the importance of

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

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

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

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

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

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

- **Extending the HAP Contract;**

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

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

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

- **Of particular importance to NAHMA is Section 507 (b) of the discussion draft, Meeting Rehabilitation Needs of Previously Restructured Projects.**

The underwriting assumptions for the early (pre-October 1 2001) Mark-to-Market properties with respect to operating and utility costs and other factors have become obsolete. This provision will allow a voluntary second restructuring to help the early restructured properties with rehabilitation needs.

However, NAHMA feels that restricting rehabilitation assistance to the "qualified preservation owner," as defined in Section 2, is too limiting. Rehabilitation assistance should be available at the request of any owner of a property that was restructured prior to October 1, 2001.

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

In August, 2006 several affordable multifamily housing industry trade groups⁵ developed the Recognized Increased Cost (RIC) proposal. The RIC plan would provide real time, mid-cycle relief for unforeseen operating costs between rent increases. It assumes that owners will borrow against future higher rents based on the recognized cost increase. Sources for RIC loans include residual receipts, replacement reserves, forgoing deposits to replacement reserves, or other sources such as owner affiliates. Such an approach yields three regulatory consequences:

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

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

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

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

- **Meaningful OCAFs**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Title VIII Rural Housing Preservation**

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

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

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

Proposed Policies that NAHMA Could Not Support in Their Current Form

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

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

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

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

Section 303 Ongoing enforcement of housing quality standards

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

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

Section 304 Third party beneficiary status for residents

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

Section 305 Resident Access to building information

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

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

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

Conclusion

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

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

APPENDIX 1: DRAFT RECOGNIZED INCREASED COST (RIC) LANGUAGE

SEC. ____ . PRESERVING PROJECTS FROM UNEXPECTED COST INCREASES.

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

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

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

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

(e) TREATMENT OF FUNDS. -

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

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

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

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

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

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

SEC. _____. CONTRACT RENEWALS AT MARKET RENT.

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

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

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

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

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

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