

Statement To

**Committee on Financial Services
United States House of Representatives**

**Testimony on the Expiring HUD Mortgage Crisis
and the Need for Federal Action to Save Our Homes**

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**Financial Services Committee Hearing
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On behalf of the National Alliance of HUD Tenants (NAHT), I am pleased to submit these comments regarding the emerging crisis of expiring HUD-assisted mortgages. NAHT appreciates the opportunity to testify before the Committee today, and to express our strong support for H.R. 4679, the Displacement Prevention Act filed by Rep. Frank and other Committee members.

Founded in 1991, NAHT is the nation's only membership organization representing the two million families who live in privately-owned, HUD-assisted housing. Our membership today includes voting member tenant groups and area wide coalitions or organizing projects in 26 states and the District of Columbia. We are governed by an all-tenant board of Directors elected by member organizations from HUD's 10 administrative regions at our annual June Conference.

I have been a NAHT Board member and Vice President for the West for most of the past decade, and was a co-founder of the organization in 1991. I also serve as the President of the Statewide Alliance of Tenants (SWAT) in California, which represents HUD tenants from across our state. I am also the President of the Washington Squares I & II Tenants Association where I live in Sacramento. Washington Squares is a 103 unit complex where the owners prepaid their HUD mortgage and converted to high market rents, with some residents, including myself, able to stay in our homes only with the aid of Enhanced Vouchers. So far, Congress has provided Enhanced Vouchers to buildings where owners prepay their 40 year mortgages before mortgage maturation, or when they opt out of expiring project-based Section 8 contracts.

NAHT strongly supports the provisions of H.R. 4679 which would extend Enhanced Vouchers for the currently unprotected 101,000 or more families in non-Section 8 units who would otherwise lose their homes when HUD mortgages mature. For me and more than 180,000 others who have received Enhanced Vouchers to date, I can personally tell you that this made all the difference in the world--the difference between having a decent home and being out on the street.

We also urge that Congress firmly reject the Bush Administration's proposals to abolish Enhanced Vouchers after one year, and to reduce the Section 8 Voucher program by 30%, or 600,000 families, by 2009. These proposals, if adopted, will break faith with landlords who count on HUD honoring Enhanced Voucher rent contracts, and will inevitably lead to tenant displacement, increased homelessness, and the further destruction of the nation's affordable housing system--which seems to be the ungodly strategy of the Bush appointees at HUD.

These proposals go exactly in the wrong direction. Tenants like myself live in constant fear and insecurity because Voucher renewals are "subject to annual appropriation" by Congress. Not too many years ago, Section 8 funding was appropriated for five or more years at a time, giving elderly and low income tenants some measure of security and peace of mind. Now, even the promise of annual renewals has been destroyed by the reckless proposals of the Bush Administration, driven by the gigantic structural deficits caused by their tax cuts for the wealthy and their war in Iraq. NAHT urges the Committee to work toward long-term contractual funding security for Section 8 tenants.

Homeland security should begin with a home. The elderly, disabled, and low income working families who live in these buildings--many of us veterans who have served our country and worked all our lives to build our communities--deserve nothing less.

The Nation Continues to Lose Affordable Housing at an Alarming Rate

Besides protecting tenants from displacement, H.R. 4679 will also help preserve at-risk affordable housing. Enhanced Vouchers are clearly not enough--in my own development, only 21 apartments with Enhanced Vouchers remain out of 103 units since the owners prepaid; the rest have been converted to high market rents. When NAHT last testified before the Congress in October 2002, we submitted a report documenting a loss of 199,764 privately-owned HUD-subsidized housing units lost due to owner decisions to prepay or "opt out" of expiring project-based Section 8 contracts, between 1996 and 2001. As Enhanced Voucher tenants move out or pass away, these units are permanently lost as affordable housing.

NAHT was the only national organization to speak out against Congress' repeal of the mandatory regulatory structure of the Title VI Preservation Program in 1996. Title VI provided additional HUD subsidies to owners in exchange for guaranteed repairs, permanent affordability, and the promotion of transfers to nonprofit and tenant ownership. We warned of dire consequences for the nation's affordable housing stock if this regulatory program were repealed. Unfortunately, the data show that these predictions have come true.

To slow the loss, Congress in 1999 adopted the voluntary Mark Up to Market program, which offered higher Section 8 subsidies for owners who chose to renew their expiring contracts in high market areas. NAHT's 2002 report showed that the average annual affordable housing loss remained roughly the same before and after the adoption of Mark Up to Market--about 41,000 units continue to be lost each year. Recent data from the National Housing Trust, which show a loss of 300,000 HUD units as of 2003, have confirmed this trend. While no doubt this figure would be even higher without Mark Up to Market, clearly we need to do more to preserve the nation's affordable housing stock.

The GAO Report on expiring mortgages notes that in the next 10 years, project-based Section 8 contracts aiding 1.1 million families will expire. Even in the absence of the expiring mortgage problem, the steady erosion of affordable housing would likely continue at the rate of 41,000 units each year.

Expiring Mortgages Will Accelerate Loss of Affordable Housing

The new crisis in expiring HUD mortgages will only accelerate this loss. Clearly, unless action is taken now by Congress, up to 101,000 families could be displaced and an equivalent number of units lost if owners convert non-Section 8 units to unrestricted market rents upon mortgage maturation.

My own state, California, has the highest number of developments affected by this crisis--278 apartment complexes, fully 12% of the total nationally. Given the superheated housing market in virtually all corners of my state--people making \$85,000 a year are living out of their cars in Silicon Valley--we can expect a huge number of these apartments converting to high rents as soon as their owners have the chance.

In addition, many more of the 135,000 project-based Section 8 units in expiring mortgage buildings could be subject to owner opt-out decisions as well. Because these units are currently under HUD rent regulatory agreements, owners have strong incentives to renew Section 8 contracts. But as HUD mortgages expire, owners in high rental markets will be tempted to opt out of these Section 8 contracts as well. Although some may choose to renew under HUD's Mark Up to Market program, others will not, so we can expect to see an increase in the overall rate and number of Section 8 opt outs as HUD mortgages expire.

GAO Report May Undercount At-Risk Units

There is some evidence that GAO Report may have undercounted the problem of expiring mortgage units. In Massachusetts, the Mass Alliance of HUD Tenants has discovered 10 Massachusetts developments with expiring HUD mortgages, totaling 3,222 units, which are not included in the GAO Report. All were refinanced under HUD's Title II Preservation Program in the early 1990's.¹ Under Title II, HUD's project-based Section 8 incentives and new Use Restrictions expire at the end of the original 40 year mortgage term.

Although Title II owners typically took out second or third "equity take-out" loans, often insured with HUD mortgage insurance under the 241(f) program, these loans do not entail any extension of affordability restrictions after the original mortgage term. At High Point Village in Boston, for example, the original HUD mortgage and Title II Use Restriction expire in September 2006, yet the 540 units at High Point, including 221 not receiving project-based Section 8, do not appear in the GAO Report.

The GAO list for Massachusetts includes 40 developments totaling 7,297 units. The exclusion of 3,222 units (44% of the total reported by the GAO) represents a potentially large undercount, if this represents a systematic error in either HUD's database and/or GAO methodology. Although the 10 missing developments are all Title II extensions, there are other Title II buildings which do appear on the GAO list, so it is not clear what the basis of the error is, or how extensive it is. We urge the Committee to request HUD and the GAO to look at this issue more closely and make the appropriate corrections.

Congress Should Adopt a New Regulatory Program to Save At Risk Housing

It is now clear that voluntary incentives, such as the Mark Up to Market Program, are insufficient to deter owners who choose not to extend expiring HUD contracts in high market areas. NAHT believes that Congress should reestablish a national regulatory framework to limit owners' ability to opt out, pre-pay, or not extend Use Agreements attached to expiring

¹The 10 developments are: Georgetowne I (601 units), High Point Village (540 units), Brandywine (402 units), Burbank (173 units), Camelot Court (160 units), all in Boston; Milliken (201 units) in Fall River; Cromwell Court (124 units) in Barnstable; Battles Farm (320 units) in Brockton; Mountain Village (200 units) in Worcester; and Clarendon Hills (501 units) in Somerville. Several of these properties are owned by First Realty Management, which is testifying before the Committee today.

mortgages. Restoring the regulatory framework of the Title VI Preservation Program and extending its concepts to expiring HUD mortgages and Section 8 contracts would preserve more units and be cheaper in the long run than replacing lost units with new construction.

For example, Congress could enact rent restrictions for former HUD-subsidized buildings, require owners to accept HUD subsidy offers, and provide tenants and tenant-endorsed nonprofits a Right of First Refusal when owners sell. NAHT urges Congress to consider these approaches to complement the voluntary incentives for owners provided by Mark Up to Market and proposed in H.R. 4679.

Ironically, in buildings where HUD is executing five to twenty year Mark Up to Market contracts, the cost of additional annual Section 8 Budget Authority and outlays is approaching, and possibly exceeding, the cost of the Title VI Preservation Program, but with none of the benefits. Although Congress repealed Title VI due to concerns about costs, at least residents and HUD negotiated major repair programs, permanent affordability, and transfers to nonprofit purchasers benefitting 30,000 families.

The equivalent expenditures of Mark Up to Market yield none of these offsetting benefits--in fact, short term extensions of five years leave residents and HUD at continued risk that owners will opt out down the road. 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. The restoration of a Title VI-type regulatory program will in fact save money, since mandatory negotiations will lessen owner windfalls and ensure that Congress receives guaranteed benefits on its investment.

The argument for re-regulating expiring mortgage buildings is particularly compelling in light of the massive taxpayer financed windfall profits HUD housing owners have enjoyed for the past 40 years. Owners typically have invested little of their own funds, benefitting from risk-free investments guaranteed by HUD, operating and capital subsidies, and huge windfall profits through the sale of tax shelters when the properties were built. Many owners have been able to reap a second or third windfall profit through resyndications and/or HUD's lucrative Title II Preservation Program.

For example, in a typical Title II building like High Point Village in Boston, the owner was able to take out a \$18.9 million "equity take out" loan in 1993 while investing only \$2.2 million in repairs--paid for by huge increases in Section 8 subsidies and rent increases which displaced many moderate income families. Interest payments on these equity loans were exempt from taxes as well. Subsequent increases in Section 8 subsidies are now used to finance improvements to the property in preparation for a potential market conversion when the 40 year mortgage expires in 2006. Imposing regulations on this building going forward will ensure that the public's huge investment in this resource does not morph into a third windfall profit for the owner at the expense of affordable housing when the mortgage matures.

Deregulation is a strategy that has failed in the energy, telecommunications, banking, and airline industries in the US and in countries around the globe. The evidence is in--deregulation is a failure in the subsidized housing industry as well. Congress should act now to restore regulations to save our homes.

H.R. 4679 Will Provide Important Incentives to Save Affordable Housing

NAHT recognizes that Congress today does not have the political will to enact a new regulatory framework for expiring HUD mortgage properties. In this context, NAHT supports additional voluntary incentives such as the provisions of H.R. 4679 which would provide grants and operating subsidies to encourage owners to extend Use Restrictions on non-Section 8 assisted units. These provisions would be a welcome complement to the Mark Up to Market program which has encouraged owners to renew expiring Section 8 contracts in many cases.

In addition, we urge Congress to complement H.R. 4679 with one or more strategies to provide capital funds for acquisition and repair of at-risk buildings as a further incentive for owners to stay in the program. Generally, formulating federal assistance in the form of capital grants with lower on-going outlays for debt service wherever possible will preserve housing at the least long-term costs to the government. In this session, NAHT urges the Committee's support for the Preservation Matching grant (H.R. 445) filed by Rep. Jerrold Nadler (D-NY) and the National Housing Trust Fund bill (H.R. 1102) filed by Rep. Sanders (I-VT), also incorporated in the Bring America Home Act (H.R. 2897) filed by Rep. Carsons (D-IN).

Strengthen Congress' Goal of "Enhanced Vouchers for All"

NAHT applauds H.R. 4679 for proposing to extend Enhanced Vouchers to currently unprotected tenants in expiring mortgage buildings. We had proposed this in our Senate testimony in October 2002, and are pleased to see it incorporated in this bill.

We encourage the Committee and sponsors of H.R. 4679 to use this opportunity to incorporate other technical adjustments to make the goal of "Enhanced Vouchers for All" work better. For example, NAHT has proposed more flexible "occupancy standards so that Section 236 moderate income tenants are not forced out or into smaller units when tenants receive Section 8 Preservation Vouchers. Congress should also eliminate the problem of unnecessary "rescreening" of tenants in good standing by local Housing Authorities when voucher conversions occur. NAHT supports language proposed Senator Sarbanes (D-MD) in his Voucher Reform bill, introduced in the last session of Congress.

In addition, we urge the Committee to require a five year phase-in of rent increases to those Section 236 tenants who are income-eligible for Enhanced Voucher assistance, but who would be forced to pay huge rent increases to raise their rents to the required 30% of income minimum required by the Enhanced Voucher program. Many of these moderate-income, hard-working families are faced with rent increases as much as 80-100% overnight when owners raise their rents to high market levels.

For example, a family of four earning \$25,000 a year may have paid \$400 for a two bedroom apartment in Dallas prior to prepayment or mortgage maturity. After prepayment, the rent increases to \$600+. The family gets the \$480 deduction for two children, bringing their adjusted gross income to \$24,120 a year. Their rent at 30% of income would be \$603 per month. If the new rent increases to \$653 per month, they get an Enhanced Voucher worth \$50 and a \$200 per month rent increase.

A Congressionally mandated phase-in would minimize this problem for Section 236 tenants in expiring mortgage buildings, as well as where owners prepay. Alternatively, Congress could raise the allowable income deductions for children and elderly or disabled family

members to the IRS standard deduction, or return to the former 25% of income standard for affordability in the Section 8 program.

Repeal Preemption Language in LIHPRHA

While Congress may not be willing to enact regulations governing rents and occupancy in buildings where owners opt out of federal contracts, it should not prohibit state and local governments that do. We are pleased that H.R. 4679 addresses this issue by clarifying that the nine month Notice to tenants and communities in the bill does not pre-empt state or local laws which may provide for a longer Notice period.

Similarly, the Committee and bill sponsors should seek amendment or repeal of Section 232 of the now-defunct Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA), which makes it more difficult to enact tenant protections at the local level in the event that federal ones are ended through prepayment or expiring mortgages. Owners argued for this provision to protect their appraisals under the previously mandatory program. In the absence of a federal regulatory framework such as LIHPRHA, the federal government should not interfere with the right of state and local governments to protect residents in accordance with local needs and conditions. Such efforts have been adopted or are under way in Massachusetts, Washington, Oregon, California, Denver and New York. Unfortunately, federal courts in California and Minnesota have struck down two-year Notice laws in those states because, in part, Section 232 was read to pre-empt these laws in favor of the one-year federal Notice statute.

Where I live, in Sacramento, tenant groups and the California Coalition for Rural Housing are working hard to enact a local ordinance to save at-risk HUD housing. Every year, NAHT comes up here and asks for help in repealing Section 232; I ask that you make this a priority this year, either in H.R. 4679 or some other legislative vehicle.

Encourage Tenant Participation

NAHT is pleased that H.R. 4679 includes language to require owners to notify tenants and communities before mortgage expiration dates, to give residents and local officials an opportunity to engage in dialogue with owners about preserving affordable housing. NAHT encourages the Committee and bill sponsors to extend this period to one year, rather than nine months, both to afford residents, owners and localities more time to come up with alternatives and to make the Notice period the same as that required for expiring Section 8 contracts.

More important, NAHT urges the Committee and bill sponsors to amend H.R. 4679 to authorize Technical Assistance Funds to enable tenants to more readily participate in the decisions affecting our homes. Most residents in expiring mortgage buildings are today not organized and are completely unaware of the risks and opportunities ahead. In particular, funds must be made available to qualified third-party nonprofit tenant outreach organizations to enable residents of expiring mortgage buildings to respond effectively.

Congress' previous investment in tenant outreach funds, particularly through HUD's Outreach and Training Grant (OTAG) program, was highly effective in helping many of us to save our homes. I would not be sitting here today--in fact, I'd be homeless today--were it not for the invaluable assistance which tenants in my building received from the California Coalition for Rural Housing (CCRH), HUD's OTAG grantee in Sacramento. Almost all of the 30,000 families whose homes were purchased by nonprofit or tenant organizations under the Title VI

Preservation Program were able to do so because of the early-stage assistance they received by HUD's nine OTAG grantees who received three-year grants in 1994, supplemented by smaller Intermediary Technical Assistance Grants (ITAGs) provided by third-party agencies. Most of the success stories of tenant participation in HUD's Mark to Market program similarly resulted from HUD's 26 OTAG grants in 1998, funded pursuant to the \$10 million in annual Section 514 funding authorized by Congress since 1997.

Unfortunately, since August 2001 the current Administration has largely destroyed the OTAG and ITAG programs. It has illegally shut off funds to 18 out of 32 active grantees, failed to provide \$600,000 owed to the Corporation for National and Community Service for a HUD-funded VISTA Volunteer program, and refused to appoint anyone to run the Section 514 Program, despite former Secretary Martinez' false pledges before this Committee in 2002.² Far from running Section 514, since 2001 HUD has acted to punish the small nonprofits who have attempted to assist tenants. HUD's leadership want us to go away so that our voices won't be heard when they try to dismantle affordable housing in our communities.

Nonetheless, the 14 OTAG grantees who were allowed by HUD to continue have further demonstrated the value of this approach. In Northern California, for example, SWAT has worked closely with CCRH to help preserve or extend affordable housing at several developments which would almost certainly have been lost without OTAG assistance. The Eastern Massachusetts OTAG grantee has helped tenants save thousands of expiring Section 8 units in a variety of scenarios since 1998. Today, we are submitting for the hearing record a Report prepared by OTAG grantees on the effectiveness of the OTAG, ITAG and VISTA programs in empowering tenants to save our homes, including detailed recommendations on how HUD can better administer these programs.

It is clear that HUD has no intention of operating the Section 514 program without further direction from Congress. Moreover, HUD has recently determined that Section 514 "sunset" in September 2006, and that it has no authority to obligate any of the \$10 million currently authorized for Section 514 each year beyond that date. In addition, HUD has recently restricted the remaining grantees to narrow and unworkable definitions of "eligible properties"

Accordingly, we ask that the Committee direct HUD to honor its contracts and invoices with existing Section 514 grantees by lifting the illegal funding suspensions, and to clarify that existing grantees can assist tenants in expiring mortgage properties--at least the ones with project-based Section 8. In addition, we ask you to direct HUD to provide the \$10 million annually authorized by Congress for new OTAG and ITAG contracts and to restart the HUD-funded VISTA Volunteer program in multifamily HUD housing. Finally, we ask that the Committee and bill sponsors provide for a new Technical Assistance program for OTAG and

²The Inspector General audits authorized by Congress in Section 1303 of the Defense Appropriations Act of 2002 have largely exonerated Section 514 grantees of the allegation that grantees had spent federal funds on "lobbying," the ostensible purpose of the audits. The IG audits identified only \$11,002 in four grants out of \$13 million audited as potentially linked to federal "lobbying," despite an unprecedented 100% audit review with no standard for material error. Subsequent investigation by OMHAR has reportedly reduced this amount to no more than \$1,062, which is vigorously disputed by the grantee. HUD's use of the "no materiality" standard evidently led to "false positive" lobby allegations; for example, five grantees were cited even though the IG could not actually identify any dollar amounts spent on "lobbying." Nonetheless, HUD illegally suspended 21 active grants in August 2002, with no notice or due process as required by HUD grant agreements, statutes, and HUD's own Audit Resolution Handbook. Most remain suspended today; several organizations are bankrupt.

ITAG-type assistance in expiring mortgage and expiring Section 8 properties after the current program expires in 2006.

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