



July 26, 2010

The Honorable Barney Frank
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank,

As the Committee prepares to mark up H.R. 4868, the “Housing Preservation and Tenant Protection Act of 2010,” we wanted to advise you that there are many provisions in the bill that we strongly support. However, we are writing to restate our continued opposition to several provisions in the legislation that would adversely impact private sector involvement in preservation.

Our organizations are strongly opposed to any provisions in the legislation that will restrict or impinge on private property rights. We believe such overreaching provisions are contrary to preservation and will undermine the public-private partnership that is essential to successful preservation efforts. This legislation discourages private capital in assisted housing from both a lending and an investing perspective. The following provisions in the bill do not allow us to support the legislation:

• Federal First Right of Refusal (Section 107)

Requires the owner of the property to offer HUD the opportunity to purchase the housing before entering into any agreement to sell their property. There are a variety of problems with this provision that include, but are not limited to, undermining owner and investor confidence in their contractual agreements with the Federal Government and alienating willing purchasers who must navigate a lengthy process thereby negatively affecting market value. Further, there is no funding currently available for HUD to make such purchases.

The process outlined in Section 107 would be very disruptive to the efficient allocation of Low Income Housing Tax Credits (LIHTCs). If a buyer who has received an allocation of LIHTCs cannot proceed with the acquisition of the property in a timely manner or faces uncertainty in getting approval for the purchase, the buyer will not want to risk losing an allocation of LIHTCs. We believe that the most successful approach to preservation is to provide voluntary incentives that encourage owners to continue operating the property as affordable housing or to 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. Section 106 of the bill, which outlines a voluntary incentive program, is much more reasonable and will accomplish the same preservation goals.

It is also important to note that with the comparable rent standard provide by MAHRA in 1999, opt-outs have declined by 80 percent, raising the question of why Section 107 is being sought.

• Amendment to Low-Income Housing Preservation and Resident Homeownership Act (Preemption Provision) (Section 108)

The intent of this provision is to permit states and localities to regulate owners of projects assisted under federal laws with respect to preservation and tenant protection even if the regulation conflicts with Federal law and policies. This provision raises a number of Constitutional concerns Congress should be mindful of, but the practical impact on our members is that their contracts with HUD would be rendered meaningless as states and localities attempted to negate Federal law. At the least, this general provision would lead to extensive litigation and uncertainty as to the applicability of both federal and state laws.

• **Maintenance of Housing (Section 302)**

This section creates an overly broad, punitive mechanism for HUD to withhold housing assistance payments and for tenants to withhold their rent contributions. We believe this section inappropriately places HUD in the middle of local landlord-tenant law. This section also has the potential to disrupt a property's operations, and creates a disincentive for properties to remain in the affordable portfolio. At present there is already a rigorous physical inspection standard administered by the Real Estate Assessment Center (REAC), which enforces housing quality standards. HUD has already addressed resident access to housing quality information in several ways. For example, HUD lists a toll-free number on its website for tenants to report poor conditions in assisted housing. Residents are also directed to voice complaints to the performance-based contract administrators. HUD requires the administrators to maintain logs of such complaints and when they were resolved.

• **Resident Enforcement of Public Housing Agency or Project Owner Agreements with HUD (Third-party beneficiary) (Section 303)**

This provision gives the residents the same rights as share holders without the same obligations and allows them to seek "judicial relief" for enforcement. We believe HUD has sufficient tools to enforce contracts and other agreements. We believe this provision could spur frivolous lawsuits against owners and HUD utilizing resources that are better spent on affordable housing.

• **Resident Access to Building Information (Section 304)**

Section 304 of the bill permits the release of personal and private information regarding the owners, investors and management agents to resident groups. This provision goes too far and conflicts with current privacy laws. We believe substantial information is already available to the public and to tenants. Further, the current Title VI of this bill would expand the information that HUD provides to the public on its website which should be sufficient for any resident organization concerned with preservation activities.

Sincerely,

Affordable Housing Tax Credit Coalition
Council for Affordable and Rural Housing
Institute for Responsible Housing Preservation
Institute of Real Estate Management
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Association of REALTORS
National Leased Housing Association
National Multi Housing Council

cc: The Honorable Spencer Bachus
The Honorable Maxine Waters
The Honorable Shelley Moore Capito
House Financial Services Committee

If you have further questions you may wish to contact: Colleen Fisher at cfisher@carh.org, Linda Kirk at admin@housingpreservation.org, Megan Booth at mbooth@realtors.org, Kris Cook at kris.cook@nahma.org, Claudia Kedda at ckedda@nahb.com, Denise Muha at dmuha@hudnlha.com or Lisa Blackwell at lblackwell@nmhc.org.