

# Subcommittee Holds Hearing on Preservation Bill

## *NLIHC's Memo to Members*

*March 26, 2010*

The House Financial Services Subcommittee on Housing and Community Opportunity held a hearing on March 24 on H.R. 4868, the "Housing Preservation and Tenant Protection Act of 2010." This bill was introduced by Committee Chairman Barney Frank (D-MA) on March 17.

Representative Emanuel Cleaver (D-MO) opened the hearing by thanking Mr. Frank for the bill. Representative Shelly Moore Capito (R-WV), Ranking Member on the subcommittee, expressed her support for the public-private partnerships that have created affordable housing in recent years, but is concerned about the potential costs of H.R. 4868.

Ms. Capito said that the best way to preserve housing was to create incentives for private owners to maintain affordability rather than requiring them to do so. In particular, she cited section 107 of the bill as an example of the type of provision that concerns her. Section 107 would preserve affordability by creating a right of first refusal, allowing HUD or its assignee to match any offer received by an owner who wants to sell a project rather than maintain its affordability. On the other hand, she prefers the proposed approach in section 106 that would create a completely voluntary program of incentives to encourage owners to sell to buyers who will maintain the affordability of projects.

Representative Judy Biggert (R-IL) thanked Mr. Frank for including her bill to reform Section 202 in H.R. 4868. Ms. Biggert also expressed concern with any provision that might encroach on owner's rights, including section 107. She also objected to the provision that would prevent federal law from preempting state and local laws on preservation, allowing states and local governments to adopt stronger preservation protections for properties in their areas than are provided under federal law (Section 108).

Representative Al Green (D-TX) supports a provision in the bill that strengthened the ability of tenants to organize and participate in decisions regarding their homes. His bill to restore an earlier tenant organizing program is included in H.R. 4868. He also questioned whether section 107 was sufficient to protect tenants since it was not a right to purchase as was in the draft bill circulated by the Financial Services Committee in June 2009. Mr. Green placed a letter in the hearing record, sponsored by Representative Luis Gutierrez (D-IL) and signed by Mr. Green and ten other Members of Congress, supporting a strong right to purchase and other provisions important to tenant advocates. A copy of the Gutierrez letter is available at <http://www.nlihc.org/doc/Gutierrez-Housing-Preservation.pdf>

Two representatives of the Administration made of the first panel: Carol Galante, Deputy Assistant Secretary for Multi-Family Housing, HUD, and Tammye Treviño, Administrator, Rural Housing Service, U.S. Department of Agriculture (USDA). Both expressed general support for the legislation.

Ms. Galante said that with H.R. 4868, "[w]e have the opportunity to move forward together to safeguard affordable shelter for our families and neighbors in need, and to improve and revitalize multifamily properties that anchor our communities." She stressed the importance of preserving assisted units not only for the benefit of current tenants but also to ensure that "affordable units will not be lost for future generations."

Ms. Galante expressed particular support for provisions that would eliminate “red tape” and streamline regulatory requirements. She also commended the committee for proposing the preservation database, saying, “such a clearinghouse of information – capturing data on HUD mortgages, project-based assistance, Low Income Housing Tax Credit properties and other federal assistance – is long overdue.” Ms. Galante noted that HUD is moving ahead of the legislation to establish such a database.

While Ms. Galante highlighted provision of regulatory incentives to encourage owners, who might otherwise not seek to maintain affordability at the end of their current agreements to work with preservation purchasers (Section 106), she said the department did not support tenants’ right to purchase and even had operational concerns with section 107’s right of refusal.

Ms. Galante said that it is critical that residents are aware of their rights and have a say in the preservation of their own homes and that HUD is generally supportive of the bill’s focus on the rights and responsibilities of tenants. However, HUD is not in full support of the section that restores the tenant organizing program, because it requires HUD to transfer funds directly to VISTA. Ms. Galante said that HUD has already drafted a new tenant outreach program, called Tenant Resource Network, or TRN, which would allow program recipients to work with VISTA in local communities.

Finally, Ms. Galante talked about HUD’s Transforming Rental Assistance (TRA) initiative, which “would simplify HUD’s complex regulations, help address the capital repair backlog, provide mobility to subsidized families and move HUD’s rental housing programs into the housing market mainstream, as well as, help preserve the nation’s assisted housing stock.” Ms. Galante said the Administration “would soon transmit proposed legislation to this committee to authorize the long-term property-based rental assistance contracts, with a resident mobility feature.”

Ms. Treviño spoke to the provisions of the bill that would authorize a permanent program to preserve rural multifamily housing, including farm labor housing, which had not been included in previous bills.

The participants on the second panel represented divergent views of H.R. 4868. For profit owners and managers of federally assisted housing, represented by George Caruso, National Affordable Housing Management Association (NAHMA) and Raymond K. James, National Leased Housing Association (NLHA) testified in opposition to tenant protection provisions in the bill.

Specifically, both NAHMA and NLHA oppose section 107’s right of first refusal and section 108’s anti-preemption provisions, but both organizations generally support the section 106 preservation incentive program. Both organizations also expressed concern about the provision that gives tenants access to financial data about a housing development, saying it is too broad and could result in the release of personal information about the owners of projects.

Michelle Norris testified on behalf of the American Association of Homes and Services for the Aging in favor of the section 202 reforms in the bill. However, she too expressed concern about section 107’s right of refusal, saying that the provision’s processes and timeframes might undermine preservation efforts.

Toby Halliday testified on behalf of the National Preservation Working Group (PWG), which includes NLIHC. He said the bill “safeguards affordable apartments that are home to more than one million extremely low income families, elderly and disabled persons.” He noted that the bill as introduced had undergone significant changes since it was initially circulated in draft form, Most of the changes were made at the behest of the private industry owners and managers. Such changes include replacing a right of first purchase with a right of first refusal and limiting the circumstances

when tenants can directly enforce HUD contracts to circumstances where HUD fails to act on a documented deficiency.

Ricky Leung testified on behalf of the National Alliance of HUD Tenants (NAHT), and expressed NAHT's general support for the bill and the efforts of the committee to protect the homes of low income residents all over the country. Mr. Leung expressed particular support for the provisions that address NAHT priorities relating to preemption (Section 108), tenant access to information (Section 304), tenant enforcement of contracts (Section 303), and the escrowing of rental assistance in cases where a property does not meet housing quality standards (Section 410).

Mr. Leung expressed support for the section 106 preservation incentive program, but suggested several changes, including extending affordability restrictions, maintaining housing quality standards, and ensuring that transfers are arms length transactions to prevent "scam" transfers. Mr. Leung was most critical of the decision to drop the right of first purchase in favor of the right of refusal because the later cannot protect tenants when owners choose to retain the property and let affordable restrictions expire at the end of the contract term.

William C. Shumaker testified on behalf of the Council for Affordable and Rural Housing (CARH) that while the provisions to protect and preserve rural housing are important and needed, more needs to be done. For example, he urged the committee to take action to restore investment interest in the Low Income Housing Tax Credit.

The Committee is expected to markup the bill after the spring recess.

View an archive of the hearing's webcast and access testimony at:

[http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/hr\\_031710.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr_031710.shtml)