



400 North Columbus Street
Suite 203
Alexandria, VA 22314
(703) 683-8630
(703) 683-8634 FAX
www.nahma.org

**Testimony of George Caruso, SHCM, NAHP-e
House Financial Services Subcommittee on Housing and Community Opportunity
H.R. 4868, Housing Preservation and Tenant Protection Act of 2010
March 24, 2010**

Good Morning Madam Chairwoman, I'm George Caruso, the Executive Vice President of Edgewood Management Corporation in Germantown Maryland. We are the 9th largest manager of assisted housing in the nation. I am appearing today for the National Affordable Housing Management Association (NAHMA). I would ask that my full written statement be placed in the record; it has details in it to support my testimony this morning.

We're pleased with much of HR 4868, The Housing Preservation and Tenant Protection Act of 2010. NAHMA has been a strong supporter of Preservation for some twenty years now. NAHMA has had the opportunity to review the bill in detail at our Winter Meetings last week. Although our General Membership opposes the overall bill in its current form, our opposition is limited to provisions in seven sections: Sections 107, 108, 109, 110, 302, 303, and Section 304.

We applaud the remaining 60 sections of the bill. Indeed, we appreciate that numerous provisions address issues that we have been discussing with Committee members on both sides of the Aisle for a number of years. These issues include long-term physical and financial viability of properties, continued affordability of properties with mature mortgages, and protecting tenants from severe rent burdens when affordability restrictions expire.

Let me get to the major issues we have:

First: Section 107 Federal First Right of Refusal. This provision will, in our view, serve to drive potential purchasers and equity providers away. There are a variety of problems with this provision which include, but are not limited to, undermining owner and investor confidence in their agreements with the Federal Government and alienating willing purchasers who must wait for a lengthy process, thereby affecting market value. A better, more workable approach is suggested in Section 106, the Preservation Exchange Program, which NAHMA supports.

Second: Section 304 Resident Access to Building Information. The provisions of this section are overly broad, and they will force the release of proprietary information. It is useful to observe that the bulk of the information required to be released here is submitted to HUD through the most secure computer system they have, and accessible only on a limited basis inside HUD since they judge it to be very sensitive. The less sensitive building information referenced in this section is already publically available from HUD.

Third: Section 110 Authority for HUD to assign Flex Subsidy Loans. We view this provision among others as tilting the playing field in preservation to Non Profit organizations. NAHMA represents both For Profit and Non Profit owners. Part of our policy is that there be no bias between the two types of ownership. Both bring substantial advantages to the table; both are required to make preservation work. Preservation tools should be equally available.

Our concerns on the remaining sections we object to are detailed in our written testimony.

On a positive note, we are particularly pleased to see the provisions in Section 406, Correcting Harm Caused by Late Subsidy Payments, Section 501 Extension of the Mark-to-Market Program and Section 508, Budget-Based Rent Adjustments. Section 406 penalizes HUD for making excessively late subsidy

payments to owners, and will assure that properties are properly funded going forward. The language in Section 508 will allow for a re-underwriting of a group of Mark to Market Properties that were incorrectly underwritten initially, and retain them as viable assisted housing going forward. These sections will work to assure more housing is preserved.

There are other sections of the bill we find very encouraging; they too are detailed in our written materials.

Thank you for allowing us to share our views and concerns with the Subcommittee. NAHMA remains committed to the essential task of preserving the assisted and affordable housing portfolio. We are available to the Members and Staff to answer questions and make suggestions to get to a successful conclusion.

**NAHMA's Overall policy view on HR 4868
The Housing Preservation and Tenant Protection Act of 2010**

Title I – Preservation of Federally Financed and State Financed Affordable Housing at Risk of Conversion To Market-Rate Housing.

Section 101 – Conversion of Rent Supp and RAP Contracts. We are of the view that it is long past time to consolidate these legacy contracts into project-based Section 8. We support this section.

Section 102 – Preservation of Properties with Expiring Use Restrictions. We generally support these provisions. The language specifying that further assistance can only be given to properties in strong markets suggests that a major reworking of the RHS portfolio in the upper Midwest and Mississippi Delta may be required.

Section 103 – Enhanced Voucher Assistance. We continue to support the use of Enhanced Vouchers. We support this section.

Section 104 – Project-Based Preservation Assistance. Continued Project-Based Preservation Assistance is essential, we support this provision and the concept generally.

Section 105 – Preservation of State Financed Affordable Housing. The language on state agency deals is needed, we support it.

Section 106 – Preservation Exchange Program. The provisions in this section are useful preservation tools, and we support them.

Section 107 - Federal First Right of Refusal. We oppose this section in its entirety. This provision will, in our view, drive potential purchasers and equity providers away. There are a variety of problems with this provision which include, but are not limited to, undermining owner and investor confidence in their agreements with the Federal Government and alienating willing purchasers who must wait for a lengthy process, thereby affecting market value. It will make it difficult to do preservation deals with Tax Credits due to the time and final right of HUD to purchase. The provisions in Section 106 serve the same purpose to preserve the affordable portfolio and are much preferable.

Section 108 – Amendment to LIHPRA. We oppose this section as well. LIHPRA applies only to a small percentage of the overall portfolio, and changing the provisions of the agreements on an ex-post-facto basis is unacceptable to NAHMA. We are also opposed to the broad and vague exemption from federal preemption of state and local laws “*intended to further preservation of affordable housing or to protect tenants when owners propose to terminate their participation in Federal affordable housing programs.*” (Italics added.)

Section 109 – Preservation of HUD Held and HUD Owned Buildings. We oppose this section because the language is too broad, and it needs to be revisited and tightened. HUD holds both performing and non performing mortgage notes. Our information suggests that HUD holds roughly 10,000 performing mortgage notes on properties that are well run and in good condition. Performing notes from properties with passing REAC scores and Management Reviews should be excluded from the provisions of Section 109.

Section 110 – Authority to Assign Flexible Subsidy Loans. We oppose this Section. We view this provision, among others, as tilting the playing field in preservation to non-profit organizations. NAHMA represents both for-profit and non-profit owners. Our policy is that there must be no bias between the two

types of ownership. Both bring substantial advantages to the table, and both are required to make preservation work. Preservation tools should be equally available to all owners.

Section 111 – Use of Existing Section 8 Funds to Preserve Affordable Housing. We support this language and support the expanded access to Residual Receipts.

Section 112 - Authority for Ginnie Mae to Securitize FHA Mortgages. We support Ginnie Mae being given authority to securitize loans.

Title II – Restoration of Housing At Risk of Loss Due to Deterioration.

NAHMA supports all the provisions of Title II.

Sections 204 and 205, Clarification of Budget-Based Rent Increases for Rehabilitated Projects and [continuing] Interest Reduction Payments for Section 236 Projects Experiencing A Reduction of Units, will be extremely useful tools in preservation transactions. Bringing the concept of Mark-Up-To-Market to these transactions will give purchasers and existing owners new ways to ensure that the properties have enough operating cash and cash to fund capital work.

Title III – Protection of Residents

Section 301- Tenant Protection Vouchers. The one for one voucher replacement is an important component of preservation, we support this section.

Section 302 – Maintenance of Housing. We oppose this section in its entirety. HUD already has enough statutory, regulatory, and handbook authority to address issues presented by non-compliant owners. We

object to converting all of those tools to a statutory framework. The current system works, and should not be changed. Statutory language will tend to constrain HUD as time moves forward.

The provisions allowing tenants to escrow rents and the preemption on evictions bring what are now state or local landlord tenant issues into the Federal arena. Adding language here will confuse the current legal environment, and generate significant additional litigation. We believe limited resources are best used to preserve the housing rather than to pay legal fees.

Section 303 – Resident Enforcement of Public Housing Agency or Project Owner Agreements with HUD. We oppose this section in its entirety. While the section-by-section analysis of HR 4868 indicates that this section just comports the language in this bill with the Mark- to-Market and Tax Credit agreements, our reading of the language suggests that the bill goes beyond the intent in either the Mark-to-Market or Tax Credit contexts. HUD already has sufficient enforcement tools. Giving tenants the right to go to court will, we believe, only serve to constrain HUD and add litigation with no clear positive result.

Section 304 – Resident Access to Building Information. We oppose this section in its entirety. We do not believe any public purpose is served by releasing the full 2530 Previous Participation Certification (also known as an APPS filing) for an ownership and/or management entity. Also the bill states that Social Security Numbers are to be redacted, other personal and proprietary information would still be available. The APPS system now includes information on partnership structures, upper tier ownership structures, and links to all other properties owned or operated by the entity. Releasing that information will give any recipient the ability to “reverse engineer” the corporate structure and interest holdings of not only the property in question, but also the owners, general partners, and large holding limited partners. We strongly believe this information which is provided to HUD on a confidential basis should remain so. Making this information available generally will serve to drive off equity investors who do not want their holdings subject to general scrutiny.

The last sentence of paragraph (a)(3) on page 119 lines 24 and 25 is chilling since the generality of the statement would include correspondence between ownership and HUD on fair housing matters, tenant fraud issues, and many other sensitive and private subjects involving individuals living on the site or prior tenants.

Issuing copies of Management Reviews will release significant amounts of private confidential tenant data since Management Reviews examine individual tenant files and comment on issues contained therein. Neither HUD nor the Contract Administrators have the resources to issue edited versions of these documents.

Finally, the annual audits required by the Department similarly contain significant amounts of confidential and business data in some schedules and in the footnotes, management representation letters, and legal representation letters. As we have noted elsewhere, this information now flows to HUD through their most secure computer system.

The language in paragraph (b) protection of personal information on page 120 at lines 10 to 15, while helpful, will not prevent releases of information that would allow “reverse engineering” of property fiscal structures, and ownership data.

Title IV- Preservation of Troubled Projects Facing Foreclosure

NAHMA supports all the provisions of Title IV.

Section 406 – Correcting Harm Caused by Late Subsidy Payments is a significant step forward, and NAHMA strongly supports the provisions. We have for some time been discussing these issues with the Committee and Subcommittee members. We are very pleased the provisions have been included. These

provisions will be especially helpful to small owners and non-profit organizations that do not have the capital available to carry properties for several months when payments are delayed.

Title V- Incentives Under MAHRA for Owners to Maintain Housing Affordability.

NAHMA supports all the provisions of Title V.

Sections 501 and 508, Extension of the Mark to Market program and Budget-Based Rent

Adjustments, are extremely important. Section 508 also allows restructuring of early Mark-to-Market projects. This provision is very helpful, and it will allow struggling early Mark-to-Market deals to have their rents and financing adjusted to assure their continued viability. This authority will be very useful in preserving the stock of affordable housing.

Section 512 Exception Rents, will allow HUD Broader Exception Rent authority, and is very useful in preserving housing in high cost markets.

Title VI - Preservation Database.

NAHMA supports all the provisions of Title VI, based on the assumption that HUD and the USDA-Rural Housing Service are responsible for collecting, assembling and providing the information.

This information already exists in HUD's REMS system and in a similar data base at USDA.

Title VII – Section 202 Supportive Housing for the Elderly.

NAHMA supports all of the provisions of Title VII, and supports our colleagues at AAHSA in their testimony on this Title. The tools added in Title VII will allow for better preservation of the existing Section 202 stock, we support all of the provisions.

Title VIII – Rural Housing Preservation.

NAHMA supports all the provisions of Title VIII.