



**Testimony of Toby Halliday
Vice President, National Housing Trust
March 24, 2010**

**Subcommittee on Housing and Community Opportunity,
House Committee on Financial Services**

H.R. 4868, the Housing Preservation and Tenant Protection Act

Subcommittee Chairwoman Waters, and Ranking Member Capito, Chairman Frank and Ranking Member Bachus, and members of the Committee, thank you for inviting me to testify today. My name is Toby Halliday, and I am Vice President for Federal Policy for the National Housing Trust. It's my pleasure to testify in support of H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010.

The National Housing Trust is a national nonprofit organization formed in 1986, dedicated exclusively to the preservation and improvement of existing affordable rental housing. Through our work in real estate development and affordable housing finance, the Trust has helped save and improve more than 22,000 apartments in 41 states, leveraging more than \$1 billion in investment for affordable housing. The majority of these apartments have HUD subsidized mortgages or project-based rental assistance contracts.

Today I also testify on behalf of the National Preservation Working Group, a coalition of nonprofit organizations supporting affordable rental housing. We welcome the opportunity to expand upon our previous testimony on this important issue. Participants in the Preservation Working Group are:

Action Housing (PA)
Alliance to Develop Power (MA)
American Association of Homes and Services for the Aging
Association for Neighborhood and Housing Development (NY)
California Housing Partnership Corporation
California Rural Housing Coalition
Center on Budget and Policy Priorities
Chicago Community Development Corporation
Chicago Rehab Network
Coalition for Economic Survival (Los Angeles)
Coalition on Housing and Homelessness in Ohio
Community Builders (MA)
Community Economic Development Assistance Corp (MA)
Community Service Society of New York
Emily Achtenberg (MA)
Enterprise Community Partners
Housing Assistance Council
Housing Preservation Project (MN)

Local Initiatives Support Corporation
Mercy Housing
Minnesota Housing Partnership
National Affordable Housing Trust
National Alliance of Community Economic Development Associations
National Alliance of HUD Tenants
National Council of State Housing Agencies
National Farm Worker Service Center (CA)
National Housing Conference
National Housing Law Project
National Housing Trust
National Low Income Housing Coalition
Network for Oregon Affordable Housing
New York Tenants and Neighbors
Oregon Opportunity Network
Preservation of Affordable Housing (MA)
Stewards of Affordable Housing for the Future
Texas Tenants Union
Urban Homesteading Assistance Board (NY)

Preservation is a crucial national priority

H.R. 4868 safeguards affordable apartments that are home to more than one million extremely low income families, elderly and disabled persons. It includes many policy recommendations made to Congress by the National Housing Trust and the National Preservation Working Group.

One-third of our nation's families and seniors depend on quality rental housing. Preserving affordable housing is cost effective, environmentally responsible, and is the logical first step in solving our nation's housing dilemma.

There is an emerging crisis in the commercial real estate market that could have significant impacts on the affordable housing market. Thousands of commercially financed rental properties now are worth less than the debt that is owed on them. Yet many properties need to be refinanced, even as the recession forces rents downward and commercial credit is as tight as ever. One certain impact is that many residents of these properties will be displaced as a result of default and foreclosure even though they may never have missed a single rent payment.

As foreclosures on homes and apartment buildings continue to unfold, a growing number of renters are competing for a limited supply of affordable housing. Many of these families will be seeking apartments at the lower end of the cost spectrum, where there is already a shortage of affordable rental housing for the poorest households. Although market conditions have resulted in lower housing costs for many middle-income households, increased demand for the most affordable housing is actually leading to higher rents and tighter credit screening in some markets. At the same time, many cash-strapped states and local governments are reducing assistance to needy families. All of this leads to a heightened risk of homelessness.

The relatively high overall housing vacancy rate created by current economic conditions masks the critical mismatch between the nature of existing supply and unmet demand. A recent analysis

conducted for HUD demonstrates that between 2005 and 2007 the number of units affordable to households at or below 50% of area median income fell by 7%, *or a loss of over 1.5 million homes*, while the number of units affordable to households with incomes of over 100% of area median grew by 34%.¹

Shortages of decent, safe, affordable housing are complicated further by ongoing problems with the Low Income Housing Tax Credit (LIHTC). Uncertainty among traditional investors about future profitability, together with a preference for the simplest and shortest investment options among other investors, has left the LIHTC crippled in all but a few markets, dramatically reducing the creation of new affordable units from its peak in 2007.

This legislation includes important new tools to protect residents and preserve affordability when assisted housing is refinanced, recapitalized, or when the underlying financing naturally matures. For example, this legislation includes provisions that would, at the owners' discretion, provide rental assistance for affected apartments, both for HUD-assisted and Rural Development Section 515 properties. These new preservation tools, in providing equal affordability protections to these apartments, are more cost-effective than other approaches to replace affordable apartments that are lost to conversion. Finally, improving preservation tools makes the rehabilitation of these properties less risky, leading to the creation of more construction jobs.

The legislation we see today also benefits from extensive discussion and revision to accommodate competing interests. For example, last summer several private industry groups raised strong objections to draft provisions that they feared would have required owners to sell or experience financial losses on expiring properties, revealed potentially proprietary owner information, excluded certain owners from the Rural Development Multifamily Portfolio Revitalization program, and provided tenants with an expanded right to take legal action if a landlord was in violation of their HUD contract. In the bill as it currently stands, all of the provisions that raised the concern of private owners have been revised or removed entirely, despite the strong objections of many members of the PWG.

First, the current draft replaces a right of first purchase with a right of first refusal, which allows preservation-oriented buyers to match the offer of any other purchaser of a HUD-assisted property. This ensures any seller a full and fair sales price, and is modeled on similar provisions already in force in many jurisdictions. It is also a low-cost way to protect the substantial taxpayer investment that has already been made in existing affordable rental properties. H.R. 4868 also retains an important local control provision that ensures that state and local preservation and tenant protection laws are not pre-empted by federal law.

The legal standing for tenants provided in an earlier draft has been replaced with a revised provision that allows legal action only when HUD has failed to act on a documented deficiency. This protects responsible owners while ensuring that residents have some recourse against unscrupulous landlords. H.R. 4868 also permits residents to escrow their rents when properties are in disrepair. Rent must always be paid, but may go into an escrow account or used for HUD-approved repairs when the Secretary determines serious violations of housing quality standards or housing program requirements.

¹ Eggers, F.J. & Moumen, F. (2009, June). *American Housing Survey: Rental Housing Dynamics: 2005-2007*. Prepared for U.S. Department of Housing and Urban Development Office of Policy Development and Research. Bethesda, MD: Econometrica, Inc.

We are interested to learn more about a new proposal to create a voluntary program to encourage the transfer of assisted rental properties to preservation-oriented owners. We believe this could be a useful new preservation tool, so long as appropriate checks are in place to prevent deterioration of the property during negotiation and buyers have both the desire and the capacity to support long-term affordability.

Preserving Affordable Rural Housing and Housing for the Elderly

Many Section 202 properties serving the elderly are 40 years old or older, in need of repair and improvements, and are stretched to meet the needs of their increasingly frail residents. Under the current law, the development and preservation of existing Section 202 elderly properties can be cumbersome. Title VII of the bill would simplify, streamline, and modernize procedures to improve and preserve these properties, encourage broader participation by developers, lenders, and investors, and create needed construction jobs.

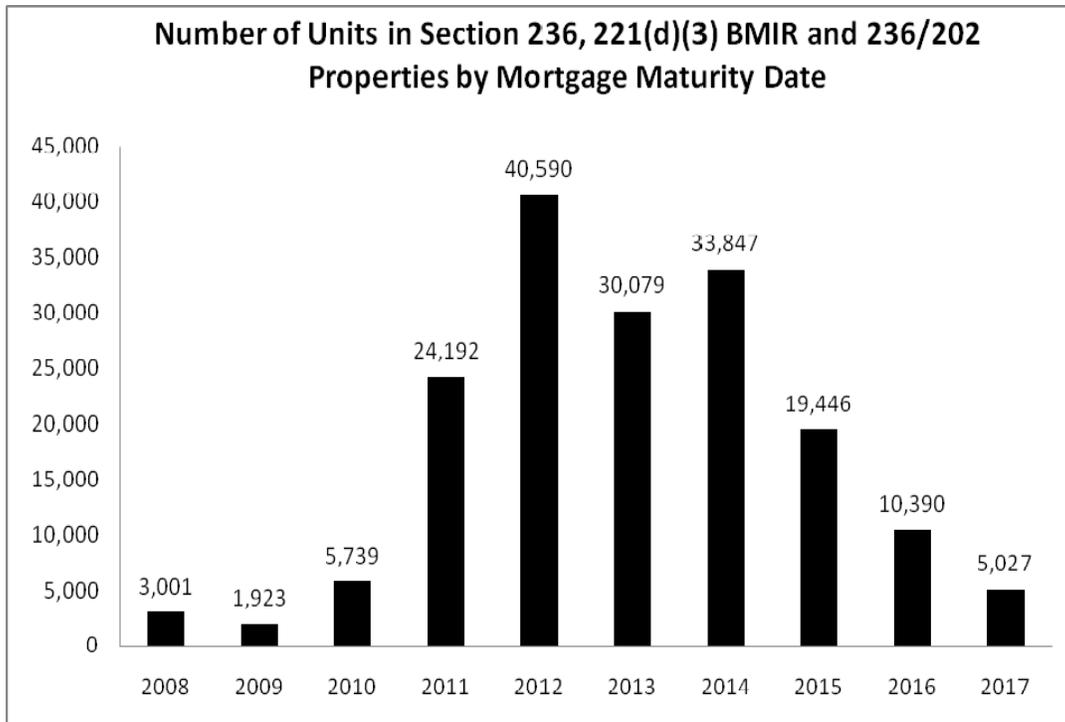
The Trust strongly endorses these provisions. We also support the proposal to provide new resources to protect current and future residents from rent increases needed to pay for necessary recapitalization. The bill should clarify that such assistance will be made available to all currently unassisted units when a property is refinanced and rehabilitated. Without such a provision, properties are at greater risk of conversion, or currently unassisted units could face significant rent increases.

Finally, we support the proposed changes for Section 515 rural housing administered by the Department of Agriculture. The formal authorization of Rural Development's Multifamily Portfolio Revitalization program is critical to save needed affordable rental housing that is at risk of conversion in many rural and formerly rural areas.

Essential subsidized housing is at risk

The federally assisted housing rental stock is an especially important resource because it provides homes affordable to those with worst case housing needs at a time when housing affordability challenges are growing worse. The largest of these programs, the project-based Section 8 rental assistance program, provides affordable apartments for more than 1.3 million extremely low income households.

Federally subsidized housing serves nearly every community in the nation. Over 1.5 million affordable apartments have been lost since 1995, and many more are at risk. The Trust's analysis shows that nearly 170,000 federally assisted apartments with contracts expiring over the next decade are located in the districts of the members of this committee, as shown in Attachment A. Many properties were constructed more than 30 years ago and are suffering from physical deterioration and are in need of significant capital improvements.



Current federal policies provide few incentives for the owner to retain the property's original use, compared to strong market incentives encouraging the owner to opt out of affordability requirements. Over the next five years, contracts on more than 900,000 Section 8 units will expire. When a Section 8 contract expires, the owner can choose to opt out of the program, ending the obligation to maintain the housing as affordable. In addition, nearly 200,000 affordable apartments in properties with HUD subsidized mortgages will be at risk of conversion to non-affordable use when their mortgages mature over the next 10 years. Many of these apartments have project-based assistance included in the numbers above, but many receive no assistance but remain affordable to residents because of restrictions associated with the HUD-subsidized mortgages.

Federal government costs increase when an owner opt out of a federal project-based rental assistance contract because the vouchers provided to protect eligible tenants from being displaced typically cost more—\$1,000 more than the average project-based subsidy.

Current policies tend to limit the ability of preservation-minded owners to recapitalize, earn sufficient cash flow, and build a sustainable capital base. Programs and regulations are fragmented, cumbersome, unpredictable and inconsistently applied. Here are but a few examples:

- Owners of Section 8 properties financed by State Housing Agencies are not entitled to mark their rents up to market, even though the market rents in the community may be higher than their current rents and the owner could use the funding to avoid operating at a deficit;
- HUD routinely terminates, rather than suspends, the Section 8 contracts on troubled properties, making it quite difficult for a new, mission minded owner to obtain debt and tax credits to repair the property;

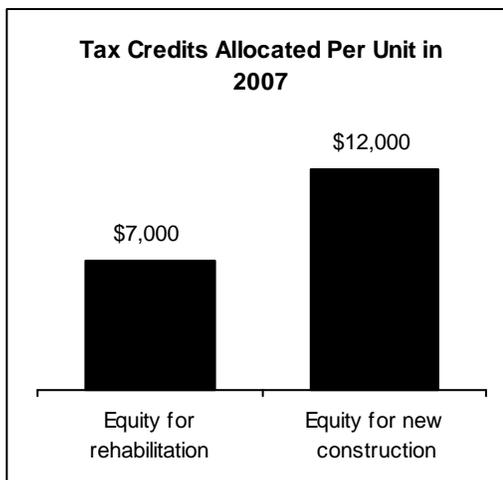
- Current law requires that owners give notice to tenants and the federal government of a decision to opt out of a Section 8 contract or prepay the subsidized mortgage, but this information is not made publicly available. If preservation minded organizations knew which owners were planning to leave the federal programs, they could offer to purchase the property and preserve the apartments as affordable.

Preservation is the logical first step in solving our nation’s housing dilemma

Over the past decade, state and local governments have increasingly devoted scarce resources, including low income housing tax credits, to preserve this housing. These tax credits have attracted billions of dollars in private sector investment in the rehabilitation of federally subsidized housing. Nearly all 50 states are now using low income housing tax credits to preserve existing affordable housing.

Preserving existing affordable housing provides an opportunity to reinvest in and improve our communities and protect the historic investment made by the federal government. If we do not preserve and improve the millions of apartments that have been produced through these successful public-private partnerships, we will permanently lose our nation’s most affordable homes. This will represent a squandering of billions of taxpayer dollars. Safeguarding this housing presents an opportunity to reinvest in and improve our communities.

It is also more energy efficient to preserve existing housing than it is to build new affordable housing where there is not an existing transportation infrastructure. The National Housing Trust and Reconnecting America have identified federally assisted affordable housing located in close proximity to existing or proposed public transportation in 20 cities. *More than 250,000 federally assisted housing units in these cities are located within a half mile of rail or frequent bus transit. Approximately 63 percent of subsidized apartments near rail stations are covered by federal rental assistance contracts that expire before the end of 2012.*



Policymakers must act to ensure that this essential housing resource remains affordable to families and seniors. Preserving affordable housing near transit means more than simply saving a building—it means preserving meaningful transit opportunities for low-income families and seniors. Affordable housing located near transit allows families and seniors to live an affordable lifestyle in sustainable communities that offer access to employment, education, retail, and community opportunities.

Attachment A

Expiring Housing Assistance Contracts In Committee Members' Districts

Committee Member	Apts with Project-Based Contracts Expiring through FY2019	Committee Member	Apts with Project-Based Contracts Expiring through FY2019
Rep. Frank, MA, <i>Chair</i>	3,277	Rep. Suzanne Kosmas, FL	366
Rep. Bachus, AL, <i>Rnk. Mem.</i>	641	Rep. Leonard Lance, NJ	1,271
Rep. Gary L. Ackerman, NY	1,015	Rep. Christopher Lee, NY	3,000
Rep. John Adler, NJ	1,304	Rep. Frank D. Lucas, OK	1,744
Rep. Joe Baca, CA	2,055	Rep. Stephen F. Lynch, MA	4,187
Rep. Michele Bachmann, MN	2,051	Rep. Dan Maffei, NY	3,622
Rep. J. Gresham Barrett, SC	2,253	Rep. Carolyn B. Maloney, NY	2,908
Rep. Melissa L. Bean, IL	1,954	Rep. Donald A. Manzullo, IL	2,290
Rep. Judy Biggert, IL	1,230	Rep. Kenny Marchant, TX	624
Rep. John Campbell, CA	1,205	Rep. Carolyn McCarthy, NY	2,025
Rep. Shelley Moore Capito, WV	2,520	Rep. Kevin McCarthy, CA	1,001
Rep. Michael E. Capuano, MA	13,919	Rep. Thaddeus McCotter, MI	2,421
Rep. Andre Carson, IN	5,572	Rep. Patrick T. McHenry, NC	1,145
Rep. Michael N. Castle, DE	4,097	Rep. Gregory W. Meeks, NY	2,698
Rep. Travis Childers, MS	2,263	Rep. Brad Miller, NC	2,579
Rep. William Lacy Clay, MO	4,226	Rep. Gary G. Miller, CA	410
Rep. Emanuel Cleaver, MO	4,628	Rep. Walt Minnick, ID	1,553
Rep. Joe Donnelly, IN	3,507	Rep. Dennis Moore, KS	2,330
Rep. Steve Driehaus	4,931	Rep. Gwen Moore, WI	5,047
Rep. Keith Ellison, MN	5,143	Rep. Randy Neugebauer, TX	1,388
Rep. Bill Foster, IL	2,169	Rep. Ron Paul, TX	752
Rep. Scott Garrett, NJ	781	Rep. Erik Paulsen, MN	2,607
Rep. Jim Gerlach, PA	1,126	Rep. Ed Perlmutter, CO	1,191
Rep. Alan Grayson, FL	822	Rep. Gary Peters, MI	3,845
Rep. Al Green, TX	2,448	Rep. Bill Posey, FL	1,401
Rep. Luis V. Gutierrez, IL	2,035	Rep. Tom Price, GA	285
Rep. Jeb Hensarling, TX	854	Rep. Adam Putnam, FL	1,119
Rep. Jim Himes, CT	3,461	Rep. Edward R. Royce, CA	692
Rep. Rubén Hinojosa, TX	1,669	Rep. David Scott, GA	1,383
Rep. Paul W. Hodes, NH	3,969	Rep. Brad Sherman, CA	2,540
Rep. Lynn Jenkins, KS	2,479	Rep. Jackie Speier, CA	898
Rep. Walter B. Jones, NC	1,213	Rep. Nydia M. Velázquez, NY	4,973
Rep. Paul E. Kanjorski, PA	3,338	Rep. Maxine Waters, CA	1,879
Rep. Mary Jo Kilroy	3,463	Rep. Melvin L. Watt, NC	2,608
Rep. Peter King, NY	324	Rep. Charles Wilson, OH	1,903
Rep. Ron Klein, FL	455	Total	169,082



Toby Halliday
Vice President

Toby Halliday is Vice President for Public Policy for the National Housing Trust (NHT). NHT engages in the preservation and revitalization of affordable rental housing through real estate development, lending, and public policy initiatives to better the quality of life for the families and elderly who live there. NHT has helped to save more than 22,000 affordable apartments in 41 states through technical assistance, real estate development, and lending activities. Since joining the Trust in early 2008, Toby has worked with other supporters of affordable rental housing to promote policy changes at HUD and in Congress to facilitate the preservation and improvement of affordable rental housing. Mr. Halliday is the moderator of the National Preservation Working Group.