

August 5, 2009

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

Dear Chairman Frank:

Thank you for your commitment to affordable housing preservation. We, the undersigned organizations, have worked with you and your staff for more than two years to craft solution-oriented legislation to preserve affordable multifamily housing. There are many provisions in the draft bill which we strongly support. However, we are writing to restate our continued opposition to several provisions in the draft bill that would adversely affect the ability of our members to provide affordable housing.

Our organizations are strongly opposed to any provisions in the draft legislation that will restrict or otherwise abrogate current housing assistance contracts, mortgage agreements or 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. If the following provisions are included in the preservation bill, we will not be able to support the legislation:

- Right of First Purchase (Section 103);
- Third Party Beneficiary Status for Residents (Section 304);
- Ineligibility Because of Action of Prepayment (Section 802); and
- Resident Access to Private Information (Section 305).

Our specific objections are detailed in the attached letter to Secretary Donovan.

We strongly believe that preservation is best achieved through voluntary incentives. Likewise, good stewardship of the housing takes precedence over whether the ownership is a for-profit or non-profit entity.

In your comments during the hearing with Secretary Donovan, you mentioned “exit tax” relief as an important preservation tool. As you know, our groups have been working toward passage of such legislation as we believe it is an important incentive to preserving the assisted stock and should be the remedy of choice as an alternative to any Federal “right of first purchase” legislation. Representatives Artur Davis and Geoff Davis recently re-introduced Affordable Housing Preservation Tax Relief Act (H.R. 2887), an exit tax bill that is broadly supported by all sectors of our industry. We have requested that Senator Schumer re-introduce a companion bill in the Senate. The legislation provides that investors in assisted housing will be relieved of their recapture tax

obligations upon selling the property to a preservation entity who will maintain affordability restrictions for thirty years. We will work with the Ways and Means and Senate Finance Committees, which have jurisdiction over tax legislation. We hope the same cooperation between the housing authorizers and tax writers that resulted in the enactment of the Housing and Economic Recovery Act (HERA) can be achieved to pass the Affordable Housing Preservation Tax Relief Act (H.R. 2887).

We would welcome the opportunity to discuss these issues with you and your staff. Please do not hesitate to contact either Denise Muha, Executive Director of the National Leased Housing Association at 202-785-8888, or Kris Cook, Executive Director of the National Affordable Housing Management Association at 703-683-8630 x 13 to arrange this meeting.

Sincerely,

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 Leased Housing Association
National Multi Housing Council

Attachments

Cc: The Honorable Spencer Bachus
The Honorable Maxine Waters
The Honorable Shelley Moore-Capito
Housing and Community Opportunity Subcommittee Members

August 3, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th St. SW
Room 10000
Washington, DC 20410

Dear Secretary Donovan:

We are writing to thank you for your commitment to preserving the nation's federally assisted rental stock. Your testimony during the June 25th hearing before the House Financial Services Committee was well received by our respective memberships who have been frustrated in recent years by HUD policies and practices that impeded our preservation efforts.

Our organizations have been working with the Committee staff over the last two years to shape preservation legislation that addresses the myriad of HUD administrative barriers that you indicated in your testimony that HUD will be reviewing. We are optimistic that issues affecting post-rehab rents, restriction of nonprofit proceeds, redefinition of equity and other distribution issues are among those that can and will be addressed by HUD internally.

We are most pleased by your remarks during the hearing that support our belief that preservation is best achieved through incentives. Our organizations are strongly opposed to any provisions in the draft legislation that will restrict or otherwise abrogate current housing assistance contracts, mortgage agreements or property rights. We believe that such overreaching provisions endanger the very partnerships that have developed, maintained and continue to support this housing stock. Your recognition during the hearing of the legal and practical barriers related to a "right of first purchase" provision is welcome and appreciated. We also are grateful for your stated understanding that public/private partnerships play a pivotal role in preservation and that good stewardship of the housing takes precedence over whether the ownership is a for profit or nonprofit entity.

Chairman Frank in his comments during the hearing mentioned "exit tax" relief as an important preservation tool. As you know, our groups have been working toward passage of such legislation as we believe it is an important incentive to preserving the assisted stock and should be the remedy of choice as an alternative to any Federal "right of first purchase" legislation. Representatives Artur Davis and Geoff Davis recently re-introduced an exit tax bill (H.R. 2887) that is broadly supported by all sectors of our industry. We have requested that Senator Schumer re-introduce a companion bill in the

Page 2

Senate. The legislation provides that investors in assisted housing will be relieved of their recapture tax obligations upon selling the property to a preservation entity who will maintain affordability restrictions for thirty years. We hope you will support this effort.

Attached with this letter is a list of several provisions in the draft preservation bill that are extremely problematic for our respective memberships and unless addressed, will prevent our support for the measure.

We thank you for commitment to being a “leader and a partner” in preserving critical housing resources.” Our organizations stand ready to work with you.

Sincerely,

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 Homebuilders
National Leased Housing Association
National Multi Housing Council

Cc: David Stevens, Carol Galante, Peter Kovar, Fred Tombar

Attachment

Attachment

August 3, 2009 Industry Letter to Secretary Donovan

Problematic Provisions in House Preservation Discussion Draft

Right of First Purchase (Section 103): Our organizations believe any successful approach to preserving housing will provide voluntary incentives that encourage owners to continue operating the property as affordable housing or to sell the property to a preservation entity (either for profit or nonprofit) that will preserve its low income use. This provision would shatter the stability and predictability of assisted housing laws and regulations and will lead to numerous lawsuits due to what would amount to an expropriation of private property and breach of existing contracts. Forced preservation is not necessary as there is an active and large community of preservation entities that have been in the business of preserving older assisted properties over the last ten years. HUD's own data on opt-outs during the last 9 years support this statement and evidences the fact that concerns expressed over opt-outs has been exaggerated. Our memberships will never support any legislation that violates contract or property rights. Our support for the preservation draft is not achievable unless Section 103 is removed.

Third Party Beneficiary Status for Residents (Section 304): This provision provides that residents of housing properties and resident associations be third party beneficiaries of various HUD contracts between HUD and other parties, thus allowing them to litigate to enforce HUD requirements or to seek damages. Over the years, HUD has consistently taken the position that tenants are not and should not be third party beneficiaries under housing assistance contracts. We believe such a provision would encourage frivolous lawsuits and provide tenants with the same rights of shareholders without the same liabilities or obligations. Residents are provided protections from eviction under state and local laws as well as various HUD regulations. This provision will be a disincentive for owners to participate in or to continue their participation in HUD programs.

Ineligibility Because of Action of Prepayment (Section 802): Section 544(h)(3) would be amended to prevent rural properties who have received damages in an ongoing civil action from participating in a rural housing restructuring program unless they repay a portion of their damages. This provision violates a court settlement agreement concerning abrogation of prepayment rights.

Resident Access to Private Information (Section 305): This provision attempts to make property information available to residents and resident associations. While our organizations support the provision of information concerning physical inspections, management reviews, etc, we cannot support the provision of sensitive information that would include social security numbers and proprietary financial information of owners/partners. Such information is an invasion of privacy but most importantly would place individuals at risk of identity theft.