



**Stewards of Affordable Housing for the Future
Testimony for the Record
House Committee on Financial Services
March 24, 2010**

Stewards of Affordable Housing for the Future (SAHF) is pleased to submit these comments on HR 4868, the Housing Preservation and Tenant Protection Act of 2010.

SAHF members have a strong commitment to the preservation of affordable housing properties. We view this bill as extremely important for the work that we do. The legislation represents an opportunity to extend preservation protections to more residents of assisted housing properties, to streamline the current rules and regulations governing assisted housing, and to ensure that assisted housing is owned by strong, capable organizations dedicated to the long-term stewardship of the properties. We congratulate the Chairman for introducing this bill and look forward to working with the Committee as the bill moves through the legislative process.

SAHF is a 501(c) (3) consortium of nine sophisticated, non-profit, affordable housing providers who are committed to the long-term, sustainable affordability of multifamily rental properties for low-income families, seniors, and disabled individuals. SAHF members include: the Evangelical Lutheran Good Samaritan Society; Mercy Housing; National Church Residences; National Affordable Housing Trust; National Housing Trust; NHP Foundation; Preservation of Affordable Housing, Inc.; the Retirement Housing Foundation; and Volunteers of America. Together, SAHF members own and operate housing in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – providing homes to approximately 90,000 low-income households across the country. The members are high capacity, mission-driven social enterprises experienced in operating affordable housing properties serving low-income residents while making available a wide range of social services.

SAHF's members came together in 2004 to promote their shared ownership objective, which embraces the notion that stable, affordable housing is critically important in the lives of our citizens. Stable affordable housing can enable working families to retain jobs, grow earnings, and build a better future for their children. Affordable rental homes with services enable low-income seniors to age in place with dignity rather than face disruptive and costly institutionalization. Well designed and operated housing also makes it possible for Americans with disabilities to enjoy a high level of independence.

SAHF's members develop, acquire and own affordable multifamily rental homes with these beliefs in mind. SAHF's members undertake acquisitions ranging from individual properties to multistate portfolios. The members have extensive experience with the Department of Housing and Urban Development (HUD) and Department of Agriculture housing programs, housing bonds, tax credits, 501(c)(3) bonds, Federal Home Loan Bank affordable housing program loans and grants, and a wide array of state and local government funding sources.

Our nation faces a significant affordable housing crisis that has only been worsened by the current economic downturn. In 2007, more than 8.7 million renter households in America were paying more than 50% of their incomes for rent – an increase of more than 1.4 million cost-burdened renter households since 2001.¹ Moreover, the Joint Center for Housing Studies at Harvard University points out that “households in the bottom income quartile are most likely to face affordability problems – indeed, fully 51 percent of low-income renters – paid more than half their incomes for housing.”²

While the need for affordable housing in our society is already a pressing one, the preservation crisis will serve to exacerbate these outstanding needs. Housing Assistance Payment (HAP) contracts established in the 1970s and 1980s are expiring at an astonishing rate, resulting in the loss of precious affordable housing. The nation remains at risk of losing much of what we have. The loss of project-based Section 8 assisted housing and other comparable project-based assistance programs is particularly unconscionable because it is the vehicle by which our federal housing programs are able to serve the very poor. The first order of business is to keep affordable the housing we have already built – making the need for preservation of affordable housing clear.

HR 4868 represents an important and significant step in fulfilling the preservation agenda. We urge the Committee to move forward toward the enactment of this bill. SAHF supports most of the provisions of the legislation, and we believe their enactment would go a long way toward ensuring that the nation’s assisted housing resources remain affordable and available to low-income households. At the same time, there are a handful of provisions in the bill that we believe the Committee should amend prior to final action.

Finally, SAHF wholly supports Title X (Section 202 Supportive Housing for the Elderly). SAHF and its members worked closely with the American Association of Homes and Services for the Aging (AAHSA) in generating the ideas presented in the bill. These ‘fixes’ will go a long way to improving the Section 202 program while aiding nonprofit affordable housing providers in the development of much needed affordable housing for some of America’s poorest senior citizens.

Provisions that SAHF Supports

The bill includes many important provisions that will protect residents of federally-assisted housing from displacement and protect these valuable affordable housing assets from loss to gentrification or obsolescence.

¹ Joint Center for Housing Studies, *State of the Nation’s Housing 2009*, p. 38.

² Joint Center for Housing Studies, *State of the Nation’s Housing 2009*, p.26.

One important need addressed by HR 4868 is to provide long-term, renewable rental assistance for properties and their residents supported by Rent Supplement (Rent Supp) or Rental Assistance Payment (RAP) contracts. Section 101 of the bill allows the conversion of rent supplement and rental assistance payment contracts to project-based Section 8 assistance. Rent Supp and RAP are legacy HUD programs. There are approximately 35,000 apartments assisted with these subsidies. Over the next ten years, the contracts on approximately 21,000 of these apartments will expire. Under current law, upon expiration an owner has no right to renew the contracts and tenants are eligible for enhanced vouchers only in limited circumstances. By 2029, all of the apartments will have been lost to contract expiration. Not only are all of the assisted apartments at risk of loss, but tenants are inadequately protected against potential rent increases. Adoption of this provision would protect low-income tenants in danger of losing their homes, save valuable rental housing, and, in some cases, make it possible to mark rents up to market rates in order to facilitate rehabilitation.

Likewise, SAHF supports the provisions in section 104 of the bill that allow an owner to request project-based section 8 assistance in lieu of enhanced vouchers when such assistance is offered. Enhanced vouchers are provided to protect existing tenants from displacement when the owner of the assisted multifamily housing property prepays a subsidized mortgage or terminates an insurance or rental assistance contract. However, when a unit assisted by an enhanced voucher turns over, the voucher assistance leaves the property with the tenant, and the housing is lost as a resource for future low-income families. Allowing the rental assistance to be project-based will provide a financeable revenue stream for preservation-oriented owners and purchasers and allow many worthwhile projects, especially in strong markets, to continue as affordable housing. We also commend the bill for providing that such rental assistance does not count against the various limits otherwise imposed on project-based vouchers, such as the cap on the share of a Public Housing Authority's (PHAs) vouchers that may be project-based and the limit on the share of units in any project that may be project-based.

Another valuable tool for affordable housing preservation is included in section 110. This provision allows the use of Flexible Subsidies debt to promote the sale of properties to nonprofits and to attract state and local resources to support preservation by authorizing HUD to forgive such debt or transfer it to a nonprofit. The Flexible Subsidy program was created by section 201 of the Housing and Community Development Amendments of 1978, and, until its discontinuance in 1996, provided financial assistance to prevent financial and regulatory defaults (and foreclosures that would have resulted in claims on the FHA mortgage insurance funds) to certain HUD assisted properties.

The bill also takes some other important strides to enhance the role of the nonprofit sector in the delivery of HUD's programs. SAHF welcomes the language in Section 504, for example, that requires HUD to permit nonprofit affordable housing providers to have access to refinancing proceeds in the same manner that applies to for-profit entities. Over the years, many nonprofits, including SAHF's members, have grown into sophisticated owner, operators, and developers of affordable housing. These organizations have become important players in the HUD affordable

housing delivery system. Yet, HUD's regulatory structure has failed to keep pace with the evolution of these high-capacity, nonprofit organizations and therefore constrains their ability to address the needs of their portfolios and to unlock this equity. For example, HUD regulations generally prohibit distributions of excess cash flow from single-purpose nonprofit organizations to their parent nonprofits, even in circumstances where a for-profit could distribute cash to its owners for uses unrelated to the property. Similarly, when a nonprofit organization recapitalizes a property using state allocated bonds and tax credits, it often is not permitted to use sales proceeds for affordable housing, even though a for-profit could distribute its proceeds to its investors. The net effect of these regulations is to lock up the embedded equity in these properties that could be a significant resource for housing development and preservation.

Moreover, many smaller scale nonprofit owners have found that the needs of their projects have outstripped their capacities. The inability of these smaller nonprofit organizations to receive some proceeds from a sale causes them instead to retain ownership. At the end of their required affordability period, these organizations will be able to sell the properties and retain any proceeds, but this comes with a net loss of apartments from the affordable inventory. Instead, these smaller-scale owners should be permitted to receive some proceeds from the sale for their charitable missions, in return for selling to organizations that commit to meeting the properties' rehabilitation needs and renewing their long-term affordability.

SAHF also supports the provisions in section 201 that allow the transfer of Section 8 authority to other properties. This tool is valuable because it helps to avoid a choice that the government or the owner often faces between (1) rehabilitating a highly-distressed, and otherwise undesirable property, or (2) losing precious project-based section 8 authority. Overly tight restrictions in existing law have hampered SAHF members' ability to make use of the transfer authority.

SAHF supports giving HUD the permanent authority to approve partial transfers, and applauds the Committee for including legislative language that adds additional flexibility where the existing law, FY 2010 Transportation, Housing and Urban Development Appropriations Act (TTHUD) (Pub. L. No. 111-117, Division A, Title II, Sec. 212.), has defeated sensible transfers owing to its overly prescriptive regulations. Partial transfers serve important policy goals, and the authority for partial transfers should be made permanent. SAHF applauds the Committee for including language that allows any transfer to take into account the unit configuration relative to the demands of a local waiting list for assistance under Section 8 or current market demand. These partial transfers of assistance would make sense for example, where the owner needs to reconfigure the unit mix in a property – say from efficiencies to one bedroom units in older senior properties – in order to meet the current market demand. One note of concern is that the transferring property must be physically obsolete or economically non-viable. In past experiences working to transfer Section 8 as authorized under FY2010 TTHUD section 212 that the definitions “physically obsolete” and “economically nonviable” have deterred the use of transfer authority to deconcentrate poverty within a neighborhood as part of a redevelopment plan. We encourage the Committee to consider a broad and flexible definition that promotes the needed redevelopment of Section 8 properties.

Sections 504, the prepayment of FHA mortgages on multifamily housing, and section 505, period of eligibility for nonprofit debt relief would also achieve important changes for nonprofits in affordable housing by extending program eligibility to the later of five years from the date of recordation of the affordability agreement and two years after the late of enactment. Section 504 would also prohibit the Secretary from requiring repayment in “additional funds” transactions. When the Mark-to-Market (M2M) program was reauthorized for five years in 2002, the program was amended to permit the HUD Secretary to assign junior M2M debt to not-for-profit purchasers or to forgive that debt entirely. These not-for-profit “purchase incentives” recognized the value of not-for-profit stewardship, the stifling effect of this otherwise burdensome debt, and fact that the incentives would enable not-for-profit purchasers to raise funds to buy out old owners and to leverage significant outside resources for rehabilitation, primarily Low Income Housing Tax Credits. HUD’s policy of requiring repayments in connection with these transfers has been problematic, in that it ultimately creates a disincentive for preservation transfers and results in the absorption of these state and local resources by HUD. The public entities overseeing the allocation of these resources will be less inclined to commit resources to these projects if HUD is the ultimate beneficiary of a portion of that allocation.

SAHF supports section 103(b) of the bill, which provides that, with the approval of a state housing agency or local authority, a property owner with a section 8 project-based contract that has debt financing from a state housing agency or local authority may terminate the contract and enter into a new project-based contract for a term of at least twenty years, subject to appropriations. Importantly, granting this authorization would generate budget authority savings. Funds for the existing project-based contracts were fully appropriated when the contracts were entered into and in many cases have several years to run. Terminating the remaining appropriated amount of the existing contracts would recapture several years of budget authority. Under the bill, any authority that is recaptured as a result of termination would be utilized by the Secretary for the purpose of making assistance payments with respect to the initial twelve-month term of the new Section 8 contract, and the balance would be used to fund other preservation initiatives under this Act.

Finally, SAHF strongly endorses the provisions in section 301, tenant protection voucher to replace lost subsidized units on a 1-for-1 basis, of the preservation bill. Section 301 would expand the range of properties for which tenants would receive enhanced vouchers to include all those projects without project-based section 8 assistance that cease to be covered multifamily housing properties due to demolition, disposition or conversion.

Areas for Additional Consideration by the Committee

There are several provisions in the HR 4868 that SAHF would recommend that the Committee reconsider before reporting out the bill. As mission-driven developers and acquirers of affordable housing, we welcome the concept that the law would encourage the transfer of properties to owners who have the long-term interest of the property and its residents at the core of their mission. However, we oppose the provision in section 107 of the bill that provides the Secretary with a right of first refusal. We believe that the provision is highly unworkable and is too

detrimental to the interests of the owners of these assets. We think it unlikely that a third party would negotiate with the current owner of the property and offer its best price given the possibility that the Secretary will make a competing bid. The third party would face the likely costs of delays and uncertainty that comes with the insertion of the Secretary in the process. Likewise, we raise concerns about the capacity of the Department to execute on these responsibilities and concerns about the processes that the Department would have to create to ensure fair participation in the ultimate acquisition of the property. We welcome other approaches in the bill, such as the incentives included in section 106, which would authorize the Department to provide incentives to owners and preservation entities to enter into transactions that serve to preserve at-risk properties as affordable housing for the long term where the properties might otherwise be lost to the affordable inventory.

As mission-driven owners, SAHF members are committed to providing the residents of their properties with a quality place to live and services to meet their needs. We align ourselves with our residents in their desire for decent, safe, and affordable housing, free from the worry of inordinate rent increases, deterioration in the quality of the living environment, or displacement when the subsidies that keep their housing affordable expired. Yet, SAHF would recommend that the Committee delete the requirement in section 304 that the owners of the property provide tenants with proprietary information related to the financial conditions of the properties and the provisions in section 303 that potentially allow tenants a right of action in the case of a property where the owner's have failed to maintain the property. While this latter provision is noble in its efforts to force bad owners to comply with required building standards, we are concerned that this could have the negative, counterproductive impact of tying up a property in the courts and impeding the opportunity for HUD to transfer the property to a preservation entity if the circumstances dictate.

Finally, one area that could benefit from additional consideration by the Committee is the emerging HUD effort to streamline the project-based rental assistance programs under the Transforming Rental Assistance (TRA) initiative. Decades of federal participation in affordable housing development have spawned a vast array of program rules that impose what the field has come to call "brain damage" on owners and HUD alike. HUD has estimated that the Department now manages at least 13 different project-based rental assistance programs. SAHF is anxious to work with the Congress and the Administration toward simplifying the rules governing project-based assistance and streamlining the policies that govern this assistance. Toward this end, we congratulate the Committee for taking some of the first steps in this process – for example the provisions allowing the conversion of Rent Supp/RAP units to project-based section 8 contracts.

At the same time, we are concerned that the bill has the potential to add to the complexity of the operating environment. We note that the bill has several different definitions of "eligible properties" or "covered properties" and does not seem to apply a consistent approach to the renewal terms and affordable use periods for properties that are renewed at expirations, converted from one form of assistance to another, or transferred to new owners for long-term preservation. These different treatments across various programs and properties add to the complexity and costs of the system, ensuring that scarce rental subsidy resources end up paying

for unnecessary operating cost, legal costs, or transaction costs. As the bill moves through the process, we encourage the Committee to continue to consider ways in which to continue to consolidate and make uniform the existing project-based programs – though not at the expense of moving this bill and its many important provisions to enactment expeditiously.

Thank you very much for introducing and considering this milestone legislation. We will plan to share a few additional, technical comments with the Committee staff and look forward to working with the Committee throughout the upcoming process.