National Multi Housing Council®

Apartments: Smart Communities, Smarter Living

National Apartment Association

TESTIMONY OF JIM ARBURY

ON BEHALF OF THE

NATIONAL MULTI HOUSING COUNCIL

AND

NATIONAL APARTMENT ASSOCIATION

BEFORE THE

HOUSE COMMITTEE ON FINANCIAL SERVICES

ON

H.R. 1728, THE "MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT"

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1850 M Street, NW, Suite 540 ▪ Washington, DC 20036 ▪ 202.974.2300 ▪ FAX 202.775.0112 ▪ www.nmhc.org ▪ info@nmhc.org

As the Financial Services Committee begins debate on H.R. 1728, the "Mortgage Reform and Anti-Predatory Lending Act," the National Multi Housing Council (NMHC) and the National Apartment Association (NAA) would like to take this opportunity to provide the Committee with key information on the apartment sector as well as how this legislation will impact the multifamily sector.

NMHC and NAA represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance.

The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is the largest national federation of state and local apartment associations. NAA is comprised of nearly 200 affiliates and represents over 51,000 professionals who own and manage more than 6 million apartments. Nearly one-third of Americans rent their housing, and more than 14 percent of all U.S. households live in an apartment community.

As you and your fellow lawmakers take action to address the foreclosure crisis and the concomitant problems that now accompany it, we urge you to carefully consider the meaningful differences between the single-family/multi-unit sector and the apartment sector, which we define as properties with five or more units.

Without a proper understanding of those differences, any actions you take to address the single-family meltdown may cause unintended consequences for our industry. Understanding the needs of the apartment sector is more important than ever because America will increasingly rely on rental apartments to house our citizens.

Unlike most industrial nations, the U.S. population is growing. In fact, our population is expected to increase 33 percent by 2030 to 376 million. That's 94 million more people than there were in 2000. To accommodate that growth, we will need 60 million new housing units by 2030.

But we don't just need more housing, we need different housing. The U.S. is on the cusp of fundamental change in our housing dynamics as changing demographics and housing preferences drive more people away from the typical suburban house and toward rental housing.

Rental housing is clearly important for the 73 million Echo Boomers who are getting ready to enter the housing market, typically first as renters. It's also critical for the estimated 13 million immigrants who will come to this country in the next 10 years.

But the bigger force at work here is a dramatic change in what constitutes the "typical" American household. For generations, married couples with children dominated our housing markets and caused the suburbs to grow explosively. But today these families are less than 25 percent of American households.

In their place are a growing number of nontraditional households who are more likely to choose renting—single parents, couples without children and empty nesters. By 2020, singles and unrelated individuals living together will comprise one out of every three households. That's a profound change.

The takeaway from all of this is that our housing demand is rising, our housing preferences have changed dramatically and rental housing is an increasingly important component of our housing system. These changes were underway before the foreclosure crisis, but with this new development, rental housing has taken on even more prominence.

According to Professor Arthur C. Nelson, Presidential Professor and Director of Metropolitan Research at the University of Utah's College of Architecture and Planning, to meet emerging housing demands, half of all new residential construction between now and 2020 will have to be rental units.

To meet that need, however, federal lawmakers need to take action on four key issues:

(1) Enacting a More Balanced Housing Policy;
(2) Continuing the Ban on Seller-Financed Downpayment Programs;
(3) Retaining and Expanding the Supply of Affordable Rental Housing and Rejecting New Mandates on Multifamily Owners; and
(4) Preserving the Apartment Industry's Access to Capital.

ENACT A MORE BALANCED HOUSING POLICY

For decades, the federal government has pursued a "homeownership at any cost" housing policy, ignoring the growing disconnect between the country's housing needs and its housing policy. In the process, many people were enticed into houses they could not afford, which in turn helped fuel a housing bubble that ultimately burst and caused a global economic crisis.

The nation is now paying the price for that misguided policy and learning firsthand that there is such a thing as too much homeownership; that aggressively pushing homeownership was not only disastrous for the hardworking families lured into unsustainable homeownership, but also for our local communities and our national economy.

If there is a silver lining in this situation, it is the opportunity we now have to learn from our mistakes and rethink our housing policy. Housing our diverse nation means having a vibrant rental market along with a functioning ownership market. It's time we adopt a balanced housing policy that doesn’t measure success solely by how much homeownership there is.

For many of America's most pressing challenges, from suburban sprawl to affordable housing, apartments are a much better solution. Apartments help create stronger and healthier communities by offering enough housing for the workers that businesses need, by reducing the cost of providing public services like water, sewer and roads and by creating vibrant live/work/play neighborhoods.

They will help us house our booming population without giving up all our green space and adding to pollution and traffic congestion. And they will help us reduce our greenhouse gas emissions by creating more compact communities that enable us to spend less time in our cars.

Elements of a Balanced Housing Policy

NMHC and NAA have joined together to advocate for a more balanced housing policy, one that respects the rights of individuals to choose housing that best meets their financial and lifestyle needs. We urge decision makers at all levels of government to work with the apartment industry to craft a smarter housing policy that:

- Assures that everyone has access to decent and affordable housing, regardless of his or her housing choice;

- Respects the rights of individuals to choose the housing that best meets their financial and lifestyle needs without disadvantaging, financially or otherwise, those who choose apartment living;
- Promotes healthy and livable communities by encouraging responsible land use and promoting the production of all types of housing;
- Recognizes that all decent housing, including apartments, and all citizens, including renters, make positive economic, political and social contributions to their communities; and
- Balances the expected benefits of regulations with their costs to minimize the impact on housing affordability.

CONTINUE THE BAN ON SELLER-FINANCED DOWNPAYMENT PROGRAMS

One key element of a more balanced housing policy is to oppose policies that would reinflate the housing bubble. One such program is proposed legislation that would reinstate seller-financed downpayment programs.

Under these programs, builders and other house sellers contribute funds to an organization–AmeriDream, Inc. and Nehemiah Corporation of America are among the most prominent–and the organization, in turn, provides those funds to a prospective house buyer to use as the downpayment.

In 2006, the IRS stripped these organizations of their tax-exempt status, ruling that the sellers often merely raise the property's selling price in order to offer the funding, and therefore the program may not result in a net benefit to the buyer.

The primary beneficiaries of these programs are builders and house sellers, not first-time homebuyers. In fact, in many cases, these programs push more families into unsustainable homeownership by increasing the number of owners with no equity in their properties in a marketplace characterized by falling house values.

Reinstating these programs could create more foreclosures and push homeownership out of reach of many families by artificially inflating house prices. They also threaten the viability of the Federal Housing Administration, which reports that loans issued with seller-financed downpayments are three times as likely to default.

We urge lawmakers to resist calls to return to the failed policies of zero-down mortgages by maintaining the ban on seller-financed downpayments.

RETAIN AND EXPAND THE SUPPLY OF AFFORDABLE RENTAL HOUSING; REJECT NEW MANDATES ON MULTIFAMILY OWNERS

The 2002 Millennial Housing Commission report identified affordability as the "single greatest housing challenge facing the nation." According to Harvard University, 35 million households spend 30 percent or more of their annual income on housing, a common definition of affordability. The causes of the affordability problem are not hard to establish. It is, primarily, an income problem. The fastest-growing industries in the U.S. economy are those with lower-paying jobs such as retail workers, customer service representatives, office clerks and home health aides.

Nationally, in 2006, a family would have to earn $33,925 a year to be reasonably assured of finding an affordable two-bedroom apartment. Yet, roughly 42 million households earned less than that last year.

This shortage existed before our current housing crisis, but the explosion in foreclosures has aggravated it, creating more demand for affordable shelter and causing more people to choose to remain in rental housing. Rental housing has to become a higher priority if we are going to solve the affordable housing shortage.

The federal government's primary involvement in the provision of affordable housing is through two programs, the Low-Income Housing Tax Credit program and the Section 8 Housing Voucher program.

Low-Income Housing Tax Credit Program: Federal Action Needed to Sustain the Program

The LIHTC program is the only federal program that actually subsidizes the construction of affordable housing, but it has become a collateral victim of the banking and mortgage crisis. We urge you to support proposals that will enable current investors to continue and to increase their investment activity, including proposals that will permit the carryback of LIHTCs for up to five years and proposals providing for a temporary acceleration of LIHTCs.

We also support proposals to continue to encourage new investors for the LIHTC market, such as proposals for a temporary modification of the passive loss rules for the limited purposes of the LITHC. In addition, we encourage the Committee to urge HUD to make changes to the formulas used to calculate LIHTC rents applicable to currently occupied properties. These changes are necessary to ensure the continued viability of existing LIHTC properties, which have thin operating margins that are being squeezed by increased expenses and limited revenues.

Maintain the Existing Affordable Housing Stock: A Modest Tax Proposal

In addition to expanding our supply of affordable housing via the LIHTC, Congress also needs to enact exit tax relief to help preserve our existing supply of affordable rental housing. The nation has a serious problem where long-time owners of many affordable apartment properties would now face an enormous tax bill if they sold the property – in some cases the tax bill would exceed the sales value.

This discourages the current owners from making additional capital investments or from selling them to someone who would. Instead, current tax law encourages them to simply hold them until they die and can transfer them to their heirs with no tax implications.

A modest change in the tax rules that would waive the depreciation recapture liability when investors sell their property to new owners who agree to invest new capital in the property and to preserve the property as affordable housing for another 30 years would preserve the stock of federally assisted affordable housing at minimal revenue cost to the federal government. NMHC/NAA are grateful to Representative Artur Davis (D-AL) for his past support of this proposal.

Section 8 Program: Oppose Mandates on Property Owners

NMHC strongly supports the Section 8 Voucher program. Housing Choice Vouchers enable nearly two million households of low- and very low-income families and the elderly to achieve decent, safe and affordable housing. For decades, Section 8 vouchers have provided housing assistance to struggling families, but the program has been troubled with inefficiencies and onerous bureaucratic requirements that can discourage private owners from accepting vouchers. We need to reform the program so it is more "transparent" so it doesn't cost a property owner more to rent to a voucher holder.

NMHC/NAA supported the "Section 8 Voucher Reform Act of 2007" (H.R. 1851, S. 2684) that passed the House of Representatives in the 110th Congress. The bill would have overhauled the program's burdensome and duplicative inspection standards—a priority for NMHC/NAA—and permanently fixed the flawed voucher renewal funding formula. It also streamlined the process for calculating income and rent and implemented changes that would make the program more consistent with the Low-Income Housing Tax Credit (LIHTC) program so the two could have been used together more effectively. While the legislation was not enacted, we are hopeful that the new Congress will work toward the goals highlighted in H.R. 1851/S. 2684.

Given the current limitations of the program, however, we strongly oppose legislation that has been introduced in the House (H.R. 1247, "Protecting Tenants at Foreclosure Act of 2009," and H.R. 1728, the ''Mortgage Reform and Anti-Predatory Lending Act") that, in an effort to protect renters living in foreclosed properties by imposing a set of notice requirements, essentially mandates participation in the voluntary Section 8 voucher program.

Specifically, the legislation requires the "immediate successor in interest" of a foreclosed property to provide the tenant with at least 90 days notice before requiring the tenant to vacate the property. In addition to the 90-day notice, the bills require that the tenant may stay beyond the 90-day notice period to the end of the lease term. Notice is clearly important to the tenant, it is also important to the multifamily housing sector that flexibility remain.

The legislation also requires that the "immediate successor in interest" of a foreclosed property be subject to the pre-existing lease and Housing Assistance Payment (HAP) contracts for Section 8 recipients. Through changes in the language to the HAP contract, the legislation attempts to subject a new owner, who is the "immediate successor in interest," to the existing HAP contract that was agreed to by the previous owner.

There are many problems with this provision. First, it is not clear how this provision would be applied considering that the new purchaser is not party to the existing HAP contract. Further, the HAP contract is not a recorded covenant or lien that passes with the transfer of title to the property. In addition, it is not clear whether this new requirement subjects the "immediate successor in interest" to the contract violations of the previous owner.

When Congress created the Section 8 program, it explicitly made it voluntary because it recognized that there are costs and burdens imposed on property owners who choose to participate. Now, this legislation seeks to mandate that in the event of a foreclosure the "immediate successor in interest" would be subject to the HAP contract of the previous owner. In other words, Section 8 participation would be mandatory.

It is important to note that Section 8 voucher renters do NOT lose their subsidy as a result of a foreclosure. For this reason, it is unclear why Congress would want to provide additional protections to voucher renters while infringing on the rights of the potential purchaser or the "immediate successor in interest." This provision will have the unintended consequence of making it more difficult to encourage the resale of all foreclosed properties. It will also greatly diminish private investment in affordable housing at a time when demand for affordable rental housing is higher than ever. We understand the appeal of such mandates, but ultimately they are self-defeating.

We fully support Section 8 as a critical program for meeting the housing needs of millions of Americans, and many members willingly participate in the program. But we oppose the provisions in both H.R. 1247 and H.R. 1728 subjecting an "immediate successor in interest" to the Section 8 HAP contract of the previous property owner.

As for the other provisions of the renter protection legislation, it is important to note that the bill's provisions apply to every residential unit, from a single-family house or condo to the nation's large apartment properties. Yet there is little data to suggest that nationwide foreclosures are occurring at any significant rate in multifamily rental buildings with more than five units.

We understand the need to protect renters living in single-family houses and individually owned condominiums, but such protections are unnecessary for renters in apartment properties with five or more units. When a multifamily rental apartment community is foreclosed on, renters with a valid lease and who are paying their rent are not evicted.

PRESERVE THE APARTMENT INDUSTRY'S ACCESS TO CAPITAL

In order for the apartment sector to meet the nation's growing housing needs, it is vital for the industry to retain access to capital. During the past year, when just about all sources of mortgage capital left the market, Fannie Mae and Freddie Mac continued to meet the industry's needs. In 2008, they provided an estimated 85 to 90 percent of the mortgage capital to the rental housing industry. Fortunately, prudent underwriting by the Government Sponsored Enterprises (GSEs) has resulted in extremely low delinquent and default rates.

This capital has been critical to ensuring stable property operations. It is at risk, however. With greater dependence on mortgage securitization due to limitations in the marketplace, it is critical to ensure an active investor market. We call upon the Federal Reserve to include multifamily mortgages in its enterprise mortgage security purchases. This market has seen expanded growth since the beginning of the year, but it is still volatile, and the Federal Reserve's participation would add confidence and help expand it.

The level of actual purchase activity would not need to exceed $25 billion over the next year of the planned $500 billion, just five percent of the Federal Reserve's allocation to support the agencies' mortgage programs. Additionally, investments into longer-term obligations of Fannie Mae and Freddie Mac would also improve mortgage liquidity to the rental housing sector due to the longer-term nature of the mortgages, which are prohibited from pre-payment, unlike single-family mortgages.

Congress should urge the Federal Reserve to take these actions to ensure that rental housing continues to meet the mortgage needs. These actions, along with the actions by the Treasury and Federal Reserve to include commercial and multifamily mortgages as part of the Term Asset-Backed Loan Facility (TALF) and to create the Public-Private Investment Program to respond to troubled assets, will ensure that the rental housing sector continues to serve the housing needs of millions of American families.

Thank you for the opportunity to express our views. We look forward to working with the Committee to address these important issues.