



Housing Assistance Council

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**Statement of
Moises Loza, Executive Director,
Housing Assistance Council
before the Committee on Financial Services,
Subcommittee on Housing and Community Opportunity,
U.S. House of Representatives
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Thank you for the opportunity to submit testimony to the Subcommittee on H.R. 5039, the Saving America's Rural Housing Act of 2006, and thank you, Chairman Ney, for holding this important hearing. My name is Moises Loza and I am the Executive Director of the Housing Assistance Council, a national nonprofit organization dedicated to improving housing conditions for low-income rural Americans. Let me say first that HAC appreciates the effort that has gone into this legislation by you, Rep. Davis, Rep. Frank, and all of your hardworking and committed staff.

The Housing Assistance Council (HAC) was established in 1971 and is celebrating its 35th anniversary this year. HAC provides financing, information, and other services to nonprofit, for-profit, public, and other providers of rural housing.

Throughout its existence, HAC has been active in efforts to preserve decent, affordable rental housing for the low-income and very low-income rural tenants who often have no other housing options. HAC convened blue ribbon task forces in 1991-92 and, with the National Housing Law Project and with support from the John D. and Catherine T. MacArthur Foundation, in 2004-2005, to make major rural housing preservation policy recommendations. In 2005 the U.S. Department of Agriculture awarded HAC \$2,000,000 under its new Preservation Revolving Loan Fund program to assist owners and purchasers with preservation efforts, to which HAC has added \$500,000 from its existing loan funds. HAC sponsored a national rural housing preservation conference in 2005 and will hold a preservation training conference in May 2006. In addition, the organization has published research reports, guides for nonprofit organizations and public agencies, numerous articles, and a special issue of its quarterly magazine on the topic.

The Housing Assistance Council views the Saving America's Rural Housing Act of 2006 as a step towards resolving serious issues regarding the availability of decent, affordable rental housing for low-income rural Americans. At the same time, HAC suggests some changes to the bill to strengthen its protections for the existing housing supply and for low- and very low-income rural tenants.

My testimony includes a brief overview of rural rental housing conditions and needs, then focuses on HAC's suggestions for H.R. 5039 and other steps to meet these needs.

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The nearly 5 million rural households (about one-quarter of the total) who rent their homes suffer some of the worst housing problems in the United States. Housing costs are their most significant problem. More than one-third of them are cost burdened (i.e., they pay over 30 percent of their income for housing).

Rural renters are twice as likely as owners to live in physically substandard housing. Approximately 12 percent of nonmetro renters live in either moderately or severely inadequate housing; for minorities, the rate rises to 18 percent.

Worst case needs, as defined by the Department of Housing and Urban Development, afflict one in every four very low-income renter households in nonmetropolitan areas. That is, they are extremely cost burdened and/or inadequately housed, and they do not receive federal housing assistance. The vast majority of these households are severely cost burdened, paying more than half of their income for their housing costs.

Elderly people often face some of the worst housing conditions. In many rural areas, if a low-income senior cannot find an affordable apartment, her choices are likely to be a nursing home or relocation to an unfamiliar urban area.

USDA Rural Development's Section 515 rural rental housing program, particularly when coupled with the Section 521 rental assistance program, provides decent, affordable homes for rural renters. Data just released by USDA RD show that as of January 2006 the average income for a Section 515 household is \$9,785. For those receiving Section 521 rental assistance, the average is \$7,836. There is not enough rental aid for those who need it: 17 percent of Section 515 tenant households are cost-burdened (that is, they pay more than the federal standard of 30 percent of their income for housing costs). The majority of Section 515 tenants (59 percent) are elderly or disabled and 94 percent have very low incomes (that is, they earn less than half the median income in their areas).

Section 515 has proven extremely successful at providing decent, affordable housing for the lowest income rural Americans. The majority of Section 515 apartments were built before 1995, however, and many of these older buildings need significant physical repairs or updates. At the same time, a substantial number of Section 515 loans may be paid off, potentially enabling their owners to convert the units to market rents and displace current tenants. Yet preserving these units has become expensive for the government.

THE SAVING RURAL AMERICA'S AFFORDABLE HOUSING ACT

H.R. 5039 would establish two new ways to deal with Section 515 properties. First, owners of most developments financed before December 15, 1989 would be permitted to prepay their mortgages and a new voucher program would be created to protect tenants. Second, almost all Section 515 properties would be eligible for a revitalization/refinancing program.

Prepayment

HAC's primary concern is ensuring the availability of decent, affordable rental homes for current and future tenants. To that end, HAC has long supported the protections for rural rental housing units established by the Emergency Low-Income Housing Preservation Act (ELIHPA).

HAC recognizes that enforcement of ELIHPA has become expensive for the government with respect to properties financed before December 15, 1989. HAC appreciates that this bill, unlike the draft legislation released by USDA in summer 2005, would retain prepayment restrictions on properties financed after December 15, 1989, pre-1989 properties subject to use restrictions, and Section 514 farm labor housing developments. If ELIHPA is to be repealed for other pre-1989 properties, HAC believes tenants will be best protected by permitting prepayment only if vouchers are available or if sufficient decent, available rental housing in the market area is affordable to Section 515 tenants without subsidies.

The bill also authorizes USDA to give priority for new construction of Section 515-financed units to areas that need the housing because of prepayments. While HAC supports replacing prepaid units where they are needed, federal funds could be better used to avoid prepayment, for example by encouraging transfers of property ownership, than to replace prepaid units.

Vouchers and Tenant Protection

HAC supports the inclusion of vouchers in this bill, since vouchers can help low-income tenants afford to rent on the open market when landlords are willing or required to accept vouchers and affordable units are available. To best protect tenants, HAC suggests several changes in the bill's voucher provisions.

First, vouchers should be available to tenants who live in the property on the date of the owner's notice to the tenants, not only to those who live there on the date of prepayment. This change would enable tenants to explore alternative housing, and to take advantage of available opportunities, before prepayment actually occurs.

Second, the bill seems intended to require prepaying property owners to accept vouchers, as they are under HUD's Mark to Market program. HAC supports that intent. The bill's wording may need some clarification, however. Its provisions that vouchers "may be used" and "may be provided" imply an option rather than a requirement. Also, it refers to "communities with insufficient affordable housing alternatives," implying that tenants in communities with alternative housing may not be eligible for vouchers. To indicate clearly that USDA tenants have the same rights as HUD tenants, this bill could use the language of HUD's Section 8(t): "the assisted family may elect to remain in the same project in which the family was residing . . .".

HUD tenants' rights could also inform this bill's provisions that, while allowing USDA vouchers to be used anywhere in the country, would link their value to the market rent in the area of the prepaid property. When HUD tenants move, their Section 8(t) vouchers convert to standard Housing Choice Vouchers with the accompanying portability features. Because USDA vouchers could become costly if tenants move from relatively inexpensive small towns to pricey cities, unrestricted portability may not be the best choice for USDA's voucher program. For some tenants, however, such a move may be the best option. HAC suggests, therefore, that the bill make an exception to the value limit for elderly or disabled tenants who move to expensive areas to be close to family members or essential services.

Finally, the bill should protect tenants when a property owner allows its loan to become delinquent so that USDA will accelerate payments, enabling the owner to pay the loan in full without requesting approval for prepayment. It is not clear whether or how often owners use this tactic but, if and when they do, their tenants should be eligible for vouchers on the same terms as those in prepaying properties.

Revitalization

H.R. 5039 would provide numerous useful options for restructuring project financing to enable owners to revitalize their properties. Revitalization, particularly when it involves a transfer of ownership, would be further aided by allowing consolidation of loans, consolidation of owner entities, and coverage of management fees for nonprofit owner/managers.

Relatively small, but useful additional assistance for revitalization transfers could be provided by enhancing USDA's existing authority to make grants to cover due diligence expenses for nonprofits and public agencies purchasing properties. First, at present these grants are available to nonprofits and public agencies purchasing during the prepayment process, but are not available for transfers of ownership outside the prepayment process. Instead, they should be available to any purchaser accepting 20-year use restrictions, not solely to nonprofits, and for any transfer of ownership, whether or not connected to a loan prepayment. Second, until this year, these grants were capped at \$20,000 each, an amount insufficient to cover purchasers' upfront costs, which can be as high as \$100,000. USDA's appropriations legislation increases the limit to \$50,000 for fiscal year 2006, a provision that should be made permanent.

HAC also suggests minimizing the cost of revitalization by excluding Low Income Housing Tax Credit investors' capital from the calculation of return on investment. The tax credits alone are effective incentives for investors to participate, so it is not necessary to provide an additional return on their investment. The added return would simply add to the revitalization cost – a cost that must be borne by the government (that is, by U.S. taxpayers) or by the tenants despite their low and very low incomes.

At the same time, the bill would create a disincentive for prepayment-eligible owners to choose revitalization. At the end of the loan term the owner would repay to USDA the lesser of all writedowns, write-offs, subsidies, and grants, or 75 percent of appraised value. If prepayment were clearly unprofitable, a pre-1989 owner might choose revitalization, but an owner who could profit by prepaying a loan – in other words, an owner in a strong real estate market where affordable housing is likely to be needed – would be unlikely to refinance and revitalize with use restrictions if that option would be unprofitable in the long run. The profit-sharing provision should be revised to give owners an incentive to select revitalization rather than prepayment.

Rights of First Refusal

The bill tries to create two rights of first refusal, an idea HAC strongly supports. To ensure these provisions are effective, their language should be clarified and funding should be provided to assist entities exercising these rights.

In the prepayment context, the bill provides that for the first 75 days after notifying USDA that it wants to prepay, an owner could sell only to a purchaser that would accept 20-year use restrictions. The owner would not, however, be required to bargain in good faith if it received such an offer, to sell to a preservation purchaser if the offered terms were reasonable, to provide an opportunity for the preservation purchaser to match other offers, or even to give preference

to that purchaser. HAC recommends revising the bill's language to establish a clear right of first refusal for a purchaser that would accept 20-year use restrictions. The bill should also, like ELIHPA, require active advertising to such purchasers. In addition, a time period longer than 75 days could be useful for purchasers that must investigate financing and conduct due diligence before making an offer.

The bill also attempts to provide a right of first refusal for tenants in the revitalization context. It would give an owner the option to offer a property to the tenants for purchase as a cooperative or condominium in conjunction with revitalization. The owner is not required to extend such an offer, however, nor to give preference to the tenants, to negotiate in good faith, or to sell if reasonable terms are offered. Again, HAC recommends establishing a clear right of first refusal.

Rent Levels

HAC appreciates the provisions of H.R. 5039 that limit rents to 30 percent of income for tenants in revitalized projects and tenants with vouchers. HAC does not understand, however, why the bill accepts USDA's request for establishment of a minimum rent for tenants in revitalized properties. USDA officials have stated that a minimum rent will help combat fraud based on underreporting of income, but USDA already has the authority to verify tenants' incomes. Creating a new administrative process to determine which tenants should be exempted from the minimum income requirement seems unlikely to add to the agency's ability to obtain accurate verifications.

In addition, the standards for annual rent increases in revitalized projects seem unnecessarily complex. The bill would require USDA to establish standards for affordable rents, rather than tying rent increases to project operating costs, as the agency does now. USDA's administrative costs could be reduced by adopting the Department of Housing and Urban Development's Fair Market Rents (FMRs) instead of creating its own standard, and its rent subsidy costs by allowing rents to increase to the higher of (1) area FMRs or (2) levels based on project operating costs.

Other Provisions

HAC suggests a few other revisions to the process that would be created by H.R. 5039. First, the bill would require USDA to create a database of potential purchasers, but does not specify how the database should be used. The bill should state clearly that owners must use the database to provide notice to the public of requests to prepay. In addition, rather than limiting the database to entities that have expressed an interest in purchasing properties, the bill should allow any interested entity to be included.

USDA would be required to implement "a plan to administer requests to prepay" within 90 days after the bill is enacted into law. It is not clear whether a plan means something different than regulations. HAC suggests requiring regulations rather than a plan, since regulations provide an opportunity for public comment, an important factor in developing a new program. A new program also deserves sufficient time for thoughtful preparation of regulations and careful consideration of public comments, and those activities are likely to require more than 90 days.

The bill currently does not authorize specific dollar amounts for revitalization costs or vouchers. These should be added.

Producing New Units

Finally, HAC observes that rural America needs not only preservation of existing decent, affordable rural rental housing units, but also production of new units.

USDA's budget proposal for 2007, like others in the last few years, proposes to finance construction of new rural rental units through the Section 538 rental guaranteed loan program. Section 538, however, serves a higher-income population than Section 515, up to 115 percent of area median. The governing law makes USDA Section 521 rental assistance unavailable for Section 538 developments.

Rent subsidies also cannot end rural America's rental housing problems. Too often rural areas simply do not have enough decent, affordable rental units available. Furthermore, funding for HUD's Section 8 vouchers, which help tenants pay rent for market-rate housing, is being frozen or reduced despite increases in rent costs. In some rural places, HUD vouchers are not available because administering agencies do not exist everywhere.

Section 515 properties, especially those with Section 521 rental assistance, are able to serve extremely low-income tenants. HAC encourages the Subcommittee to support increased annual appropriations for the Section 515 program and/or creation of a new rural rental production program.

CONCLUSION

The Housing Assistance Council appreciates the efforts of Congress and the Administration to address the serious issues connected with the aging rural rental housing stock. It will not be easy to meet the national housing goal, stated in the Housing Act of 1949, of providing "a decent home and a suitable living environment for every American family." Preserving the current homes of tens of thousands of low-income rural tenants, and continuing to produce new homes for others, will be important steps in that direction.

Thank you very much.