Testimony of

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before the

Subcommittee on Housing and Community Opportunity
Committee on Financial Services

Hearing on The Impacts of Late Housing Assistance Payments on Tenants and Owners in the Project-Based Rental Assistance Program

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Chairwoman Waters, Ranking Member Capito and members of the Subcommittee, thank you for inviting me to testify today. My name is Michael Bodaken. I am the President of the National Housing Trust ("the Trust") a national nonprofit organization formed in 1986, dedicated exclusively to the preservation and improvement of existing affordable housing. Our Board of Directors includes representatives of all major interests in the preservation area, including tenant advocates, owners and managers, state housing agencies, national and regional nonprofit intermediaries, housing scholars and other housing professionals who care deeply about protecting this irreplaceable resource.

The Trust serves as a preservation clearinghouse to the public and private sector. In addition to its public policy and program monitoring role, the Trust's loan fund, National Housing Trust Community Development Fund, provides loans to other nonprofits to finance housing preservation. Finally, in a joint venture with the Enterprise Foundation, an affiliated organization, NHT/Enterprises redevelops and owns many properties supported by project based Section 8. Over the past decade, the Trust has helped save nearly 20,000 apartments in over 40 states. The vast majority of these apartments are subsidized by project based Section 8.[1]

Pursuant to the Committee's request, our testimony today follows the questions provided to the Trust.

1. In what way does NHT use the project based assistance program to serve low income families.

NHT's affiliate, NHT/Enterprise Preservation Corporation, has developed and owns project based Section 8 apartments in Illinois, South Carolina, North Carolina, Virginia, and Washington DC. *Project based Section 8 allows NHT/Enterprise to provide place based housing to extremely low income households.* The average income of residents in the project based Section 8 housing owned by NHT/Enterprise is less than $15,000/annually. Without the project based Section 8 assistance provided by the annual Section 8 HAP contract we could not fulfill that part of our mission.

NHT/Enterprise typically uses low income housing tax credits and bonds to rehabilitate project based Section 8 housing. Attached at **Exhibit 1** are property descriptions and photos of some of NHT/Enterprise's recent property acquisitions and rehabilitations. In each case, NHT/Enterprise provided a significant rehabilitation to the property through the use of low income housing tax credits as well as added additional support services to the families who live in the property. As you can see from these photos, project based Section 8 housing is a unique housing resource that should be preserved.

The project based Section 8 program serves NHT/Enterprise and the residents in another way that is not like any other HUD housing program: *by providing consistent, predictable, stream of resources through the HAP contract, NHT/Enterprise and other owners can engage the* ***private sector*** *in securing billions to help rehabilitate and preserve this unique federal investment. That is why it is so important that HUD and the government make clear that Section 8 HAP contracts will be funded appropriately, i.e. fully and annually.*

[1] The National Housing Trust and NHT/Enterprise are supported by the John D. and Catherine T. MacArthur Foundation. The Foundation has supported leading housing developers and others working to finance affordable housing preservation. A core premise of that support is not only that stable, affordable rental housing matters to the well being of individuals, families and communities, but also that it requires first and foremost stable, financially sound *owners*. To engage in the affordable housing business, owners must be assured that the government won't default on its obligation to fully reimburse owners under their Section 8 contracts.

The table below provides how HUD's policy will affect Section 8 buildings in each of the districts represented by members of the Subcommittee on Housing and Community Opportunity. Detailed lists of properties with expiring Section 8 contracts in each member of the subcommittee's congressional district are provided in **Exhibit 2**.

Subcommittee Member	Number of Apts Covered by HAP Contracts Expiring in FY08*
Rep. Waters, *Chair*	537
Rep. Moore Capito, *Rnk. Mem.*	608
Rep. Biggert	108
Rep. Brown-Waite	69
Rep. Campbell	229
Rep. Carson	1,653
Rep. Clay	1,558
Rep. Cleaver	1,599
Rep. Davis	698
Rep. Donnelly	1,105
Rep. Ellison	387
Rep. Garrett	128
Rep. Green	900
Rep. Lynch	396
Rep. Maloney	452
Rep. Miller	217
Rep. Moore	711
Rep. Murphy	1,140
Rep. Neugebauer	258
Rep. Pearce	582
Rep. Renzi	24
Rep. Sires	1,168
Rep. Velazquez	328
Rep. Wilson	456

***Based on NHT's analysis of HUD's Multifamily Assistance and Section 8 Contract Database**

2(a). What is your understanding of the reasons behind why the Department has been unable to make HAPs in a timely fashion?

I believe the Department should be able to answer that question better than the Trust. I will say that the *Committee should demand the following documents* so we all can better understand why HUD is now issuing ‘short term ‘ Section 8 contracts: The document, if any, that substantiates that the true fiscal year ’08 need to renew all project based Section 8 contracts is equivalent to $8 billion; and the Office of General Counsel opinion that suggests that it is a violation of the Anti Deficiency Act for HUD to enter into contracts for one year without having one year of funding available.

The Department has been unable to make HAPs in a timely fashion for the following reasons:

***Totally inadequate request for funding for FY’08*:** In response to HUD’s FY’07 request, Congress appropriated $5.9 billion for Section 8 project-based contract renewals, an amount that has proven to be $1.2 billion less than what was actually needed. As a result, thousands of property owners have received late Section 8 payments, forcing them to use reserves to cover operational costs. Since many owners have reserves that are inadequate to compensate for this funding shortfall, owners have been forced to cut back on paying for essential services.

Despite this $1.2 billion funding shortfall, HUD’s budget request for FY’08 was *less than* what was appropriated in FY’07, even though the number of contracts up for renewal will increase. If the Administration’s current FY’08 budget request is accepted, the Trust estimates that the FY’08 shortfall will be $2.5 billion. In doing so, HUD ignored the true needs of the program. In the words of Senator Kit Bond (R-MO), Ranking Member, Senate Transportation, Housing Subcommittee on Appropriations:

“Finally, I raise one issue we have not been able to address; namely, HUD and OMB's failure to provide adequate funding for HUD's section 8 project -based housing program for fiscal year 2008. To my colleagues and to OMB and to HUD, I say: Let's get serious. This is a critical and important program which serves many of our most vulnerable citizens--low-income families, extremely low-income families, seniors, and persons with disabilities. If we don't fund it, they are out on the street….. To my good friends at OMB, I say: You cannot walk away from this problem. This problem is real. It must be addressed or we are going to see a tremendous tragedy for the Nation's lowest income and most needy housing residents.” (emphasis added).

Inadequate Funding Compounded by Department ‘borrowing’ subsidies: As a consequence of the Department borrowing from State Housing Finance Agency, long term contracts, and other accounting shifting, the Department and OMB were not telling Congress the total amounts of project based Section 8 actually required to fully fund the program on an annual basis.

Shortfall compounded by CFO/General Counsel Opinion: In July of this year, the shortfall was compounded by a HUD’s Office of General Counsel or Chief Financial Officer opinion that HUD must have an entire year’s of funding available to renew a contract on an annual basis. The Trust has been informed by staff for the Housing Financial Services Committee that HUD has an opinion from its general counsel or its CFO that argues that HUD to have, in hand, a full year’s appropriation in order to fund a year’s HAP contract. We have not yet seen this opinion, nor do I believe it has been produced to the Committee, at least as of the date of this testimony.

Because HUD's current short term, late payment policy is so detrimental to the housing, the residents and the communities in which Section 8 housing is located, the Trust requests that the House Financial Services Subcommittee on Housing and Community Development send a letter to Rep. Olver (D-MA) and Rep. Knollenberg (R-MI) indicating their request that HUD receive $8 billion in funding for all project based Section 8 contracts in FY'08 without taking such additional funding from other needed HUD programs.

2 (b). How does the current situation with late HAP payments compare to prior years in which HAPs were late.

HUD's project based Section 8 budget maneuvering began to unravel in the summer, 2007 when HUD began notifying owners of "late payments' and asking owners to sign contracts with 'partial funding." The changes are reflected in two new documents. The first are letters from HUD accompanying the contract and the second is the contract language itself.

Owners in New York and Washington State and elsewhere received letters that explicitly provided that while the owner is asked to sign a year long contract, HUD does not have sufficient funds to provide Section 8 through the term of that contract. The owner is left in the position of hoping that HUD will eventually continue the contract after the first few months of the contract. The letters states the following:

> *This letter constitutes notice that HUD has determined pursuant to the foregoing provision that **sufficient appropriations are not available** at this time to make housing assistance payments contracts under the Renewal Contract for the entirety of the next annual increment.* (Emphasis added). (See **Exhibit 3**).

The controversial contract language in the contracts owners were asked to sign provided the following which included a *new* Section 2 of the Section 8 Contract. See **Exhibit 4** for attached example from the Belton Woods contract provided by HUD to NHT/Enterprise in September of this year.

> *TERM AND FUNDING OF RENEWAL CONTRACT*
>
> a. *The Renewal Contract begins on August 1 and shall run for a period of one year.*
>
> b. *Execution of the Renewal Contract by the Contract Administrator is an obligation by HUD of $ 593,800 an amount sufficient to provide housing assistance payments for **approximately Five (5) months** of the first annual increment of the Renewal Contract term.*
>
> c. *HUD will provide additional funding for the **remainder of the first annual increment** and for subsequent annual increments, including for any remainder of such subsequent annual increments, subject to the availability of sufficient appropriations. When such appropriations are available, HUD will obligate additional funding and provide the Owner written notification of (i) the amount of such additional funding, and (ii) the approximate period of time within the Renewal Contract term to which it will be applied.*
> *(Emphasis added).*

The Section 8 Administrator for Belton Woods provided the following in his cover letter to the contract. The statement was made in bold, as it appears here:

"I cannot tell you exactly when the property will be paid" (See **Exhibit 4**). (emphasis in original)

The HAP contract forms are available as attachments to the Section 8 Renewal Guide and posted to HUD's website at http://www.hud.gov/offices/hsg/mfh/exp/guide/s8renewpgchg80907.pdf

Within the last two weeks, the Administration proposed using 'stub contracts' for the entire FY'08, even having said in one session that it would continue to make such contracts available "indefinitely." **For the first time ever, HUD explicitly has said to owners and investors that HUD does not have sufficient appropriations to fund an entire year's contract**. Owners had lived with late HAP payments in years past. That was acceptable because owners always believed the government would ultimately come through with the payments. What is different today is that we are being explicitly informed that there are not sufficient funds available.

The differences between the current and previous contract renewals can be summarized as follows:

- Investors and lenders are being asked to invest in properties with short term contracts and no assurance that HUD will continue to provide project based Section 8 on a continuous basis. This will dramatically reduce the amount of funding the private sector is providing to HUD properties.

- HUD has given owners, investors and others reason to believe it may not fund project based Section 8. Owners have a right to terminate. Before this summer, we always assumed HUD would fulfill its part of the bargain. Now, owners are being asked to sign annual contracts with partial funding. Is the owner released from obligations under that contract if HUD doesn't perform? Currently, the law requires that owners provide tenants one year notice of termination. Are owners still bound to abide that law should the Section 8 not be provided?

- Tenants will be made much more anxious. Currently, tenants are provided enhanced vouchers only upon expiration of the owner's notice. What happens if HUD fails to live up to its obligation? Will a tenant receive a voucher? If so, where is the funding for that voucher? The current HUD budget does not anticipate insufficient Section 8 subsidy to these properties.[2]

[2] The Trust is indebted to NAHMA for its memo to members analyzing the legal complexities for owners raised by the potential failure of HUD to fulfill its contractual obligations to provide a full year funding of project based Section 8.

3. How has your organization been impacted by late HAPs? How many of your developments are now bound by 'short-funding' contracts, i.e., contracts in which the funding is not guaranteed for a full 12 months?

NHT/Enterprise has had a number of properties involving almost 500 project based Section 8 apartments affected by late HAP payments. The total amount of late payments is more than $785,000.

NHT/Enterprise Properties at Risk Due to Late HAP Payments

Property Name	**Location**	**Number of Affected Apartments (# of Children; # of Seniors)**	**Amount HAP Payments Received 30+ Days Late (6/07-10/07)**
Hazel Hill	Fredericksburg, VA	145 apartments (151 children; 36 seniors)	$241,157
Belton Woods*	Anderson, SC	200 apartments (334 children; 5 seniors)	$423,919
Galen Terrace	Washington, D.C.	83 apartments (140 children; 7 seniors)	$54,709
O'Keeffe	Chicago, IL	67 apartment (90 children; 4 seniors)	$65,605
Total		**495 apartments (579 children; 52 seniors)**	**$785,390**

**bound by "short funding"*

Hazel Hill, 145 apartments, located in Fredericksburg, Virginia, received its July and August HAP funding two months late. In order for the property to have sufficient operating capital, the owners chose to leave the 2006 year end distribution in operations. *This apartment complex was just named the "Best Preservation Project for 2007" by Affordable Housing Finance Magazine.*

Belton Woods, 200 apartments, located in Andersonville, South Carolina received four of its HAP payments late. Belton received its June and July payments during July and September, respectively, while the August and September payments were not received until October. To provide funding, the property made a $109,815 emergency withdrawal from its replacement reserve account in July. This withdrawal depleted its reserve account make funds unavailable for any emergency repairs. *Additionally, only necessary costs & bills—mortgage payments, utilities, payroll—were paid during the five month period, leaving the property with over $104,000 in trade payables* and the repayment to the replacement reserve account.

Galen Terrace, 83 apartments located in Washington, DC received a payment late. Using existing operating cash and a delay in paying some of the vendor accounts payable, the property was able to fund the necessary expenses at the property. The property recently completed a major rehabilitation and is working to achieve permanent conversion of the construction loan; as a result Galen Terrace does not yet have a replacement reserve account established from which it could withdraw funds for an emergent need.

O'Keeffe, 67 apartments, located in Chicago, Illinois received its August HAP payment in September. To provide funding, the property made an emergency withdrawal of approximately $65,000 from its replacement reserve account in August to cover necessary expenses—mortgage payments, utilities, payroll.

4. How have late HAPs changed your perception of or confidence in the project based rental assistance program?

Our confidence has been badly shaken. The National Housing Trust delivered a letter to this committee and the appropriate THUD appropriations subcommittees last week that has been endorsed by over 50 organizations, the majority of which engage in lending, tax credit investment or ownership, describing this chilling impact and the impact that it has on the Section 8 industry and the residents. See attached **Exhibit 5**.

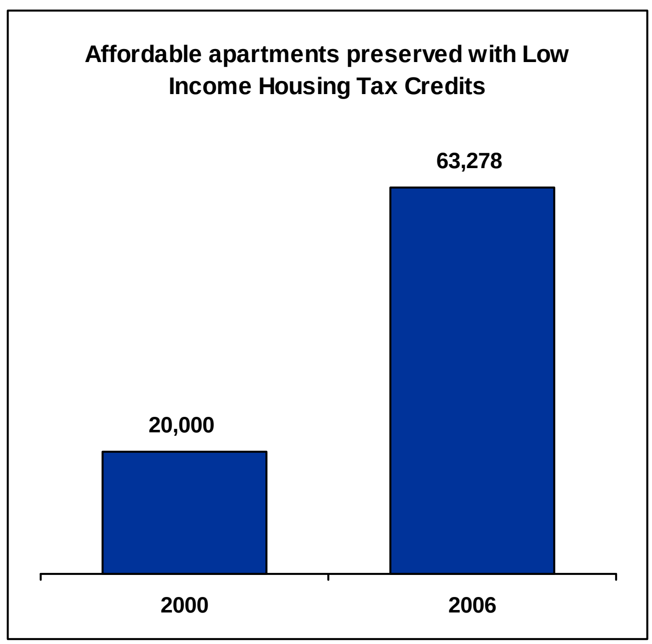
As that letter makes clear, in order for federally assisted housing to stand the test of time, the federal government must act as a fair and consistent partner by honoring the contracts it has entered into with property owners. *If Congress fails to provide a full year's funding for Section 8 it's a "lose-lose-lose" situation: owners will choose the unregulated private market and the federal investment in this housing will have been squandered; residents will be displaced; and communities will suffer the loss of an essential source of affordable housing.*

5. In your opinion, how will late HAPs impact the future stability of the project based rental program, including any impacts on tenants and on the number and quality of new owners entering the program?

We believe the late HAP payments and short funding contracts will have the following impacts:

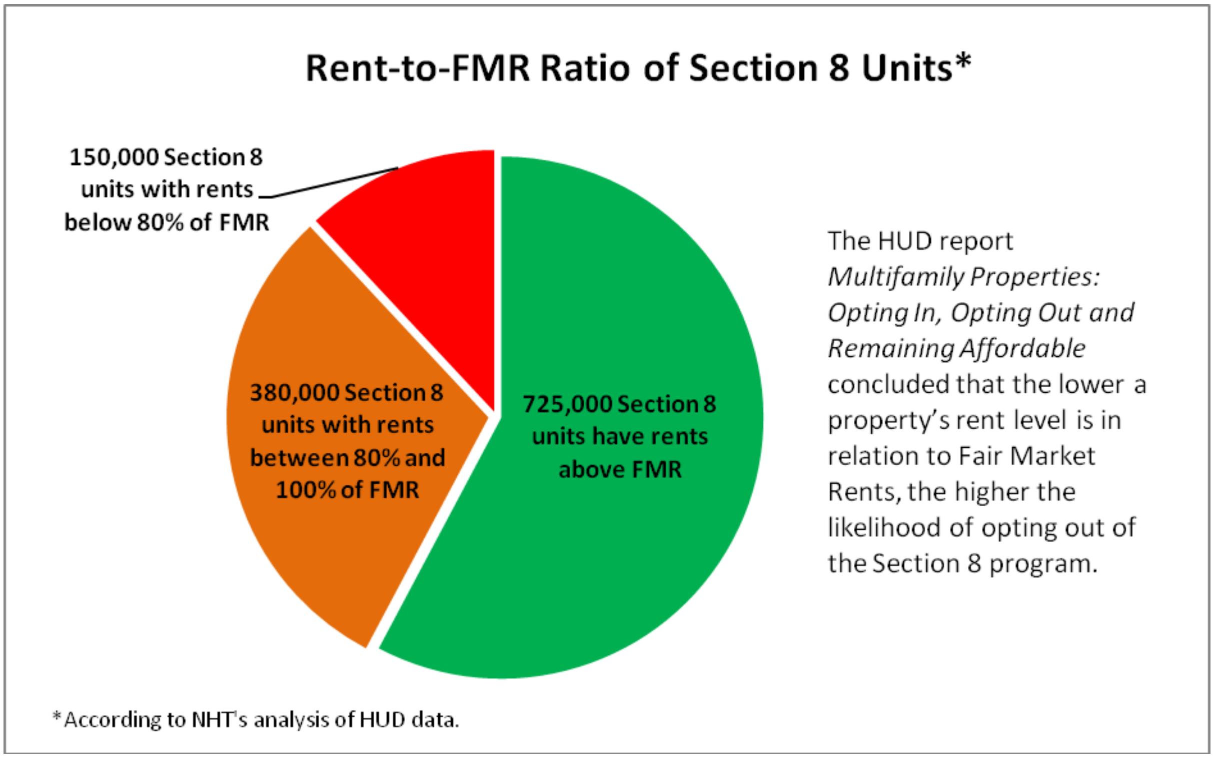
Lenders and Investors Will Avoid the Section 8 Program. Much of the Section 8 stock is over 30 years old and in need of rehabilitation so that it can remain in the affordable housing inventory for the next generation. Over the past decade, state and local governments have increasingly devoted scarce resources to preserve this housing. These resources have leveraged billions of private sector dollars which are invested in the rehabilitation of project based Section 8 apartments.

This investment will be lost at a time when state and local governments are increasing their commitment to the preservation of affordable housing. Just a few years ago, less than a handful of state governments, for example, prioritized preservation in their Low Income Housing Tax Credit programs. Today, 46 states prioritize preservation through points or a specific preservation set-aside in their competitive tax credit program. As a result, the number of affordable apartments preserved using LIHTCs have more than tripled over the last 6 years (see chart). The National Housing Trust calculates that approximately $8 billion was used to rehabilitate 215,000 affordable apartments funded by low income housing tax credits over the last 4 years.



There are scores of state and local preservation programs being used to renovate and preserve existing affordable housing. *It would be truly unfortunate if the private investment of billions of dollars leveraged through these programs each year was lost because the government did not make clear its commitment to fund project based Section 8.*

Owners will Opt Out in Increasing Numbers. Owners of buildings with project based rental assistance projects have the right to opt out of the program. Owners who have properties with market rents proximate or higher than the current project based Section 8 subsidy amount will have no reason to continue to participate in a program in which they have no confidence that the subsidy will be available. According to the Trust's analysis of HUD data, approximately 150,000 Section 8 apartments have rents well below fair market rent:



There is little question that owners of these properties will have every incentive to opt out of the program so long as HUD does not provide a full year, annual contract. Indeed, some will argue that owners should file 12 month notices to opt out of the program simply to protect their investment.

Federal Government Costs Will Increase. When owners opt out, the federal government will spend inordinate amounts of money, probably more than $50 million annually, to provide vouchers to residents. The average Section 8 voucher cost is $1,000 more than the average project based subsidy. When an owner leaves the federal project based Section 8 program, all tenants who had previously received project based Section 8 are entitled to vouchers. *If owners opt out of contracts covering 50,000 additional apartments (a conservative estimate), the cost to the federal government is an additional $50 million annually.*

6. In your opinion, how should the Department resolve the current funding situation? Is "short funding" contracts a feasible alternative to fully funding them for 12 months?

The Department and OMB need to provide Congress an honest assessment of what the true, full year funding needs are for FY'08. We understand that the Department has acknowledged, in private meetings, that it requires an additional $2.5 billion over the President's request to fully fund all project based Section 8 renewals in FY'08.

If the Department does not provide an accurate budget assessment, then Congress should, *as it has in the past*, protect the residents, the housing and the communities in which this housing is located by providing the additional $2.5 billion that the Department has says it needs behind closed doors.

In the event the Department does not make such a request, we ask that the House Financial Services Subcommittee on Housing and Community Development send a letter to Rep. Olver (D-MA) and Rep. Knollenberg (R-MI) indicating their request that HUD receive $8 billion funding all project based Section 8 contracts in FY'08 without taking such additional funding from other needed HUD programs.

Additionally, we ask the Subcommittee to urge the House Appropriations T-HUD Subcommittee to include the following language in the FY08 T-HUD appropriations bill:

"Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may enter into a renewal contract for section 8 project-based assistance that obligates the Secretary to make assistance payments for one year, notwithstanding that some portion of these payments may be funded from future appropriation Acts."

At the end of the day, financial market investments into the project based Section portfolio are dictated by confidence in the government's commitment to this program and the unique housing resource it represents.

Short funding Section 8 contracts is an ill conceived policy that will lead to:

- Owner frustration and opt outs;
- Loss of good affordable housing;
- Increased resident anxiety;
- Chilling investment and lending into properties which were the product of a unique federal/private partnership;
- Dramatically increased costs to the federal government based on the increased cost of vouchers and foreclosures; and
- Dramatically increased Section 8 appropriation need in FY'09 posing an even more significant problem for future Administrations.

The time to act is now.