

STATEMENT OF THEODORE K. TOON

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Affairs Committee, Subcommittee on Housing and Transportation

United States Senate



“Extension of the Mark-to-Market Program”

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Thank you Chairman Allard, Ranking Member Reed, and members of the Subcommittee for inviting me here today to testify on the proposed Mark-to-Market Extension Act. The preservation of affordable housing in our communities continues to be a top priority for Secretary Jackson, Assistant Secretary Montgomery and the Department of Housing and Urban Development (HUD).

The Mark-to-Market program, originally created by Congress in 1997 (the Multifamily Assisted Housing Reform and Affordability Act (MAHRA)), and extended in 2001 (the Mark-to-Market Extension Act), reduces rents to market levels upon Section 8 contract expiration and renewal. HUD contracts with private owners of rental units to help ensure a certain number units for occupancy by low-income residents. When those contracts expire and are renewed, if the contract rents are found to be above comparable market rents for similar units in the same area, the Mark-to-Market program reduces the new contract rent for those units to market levels. By bringing above-market Section 8 rental rents in line with market levels, HUD controls costs of the Section 8 program and maximizes the number of families that can be helped by such housing assistance. The Mark-to-Market authorities will sunset September 30, 2006. The bill that you have introduced, Mr. Chairman, proposes a five-year extension of the existing Mark-to-Market restructuring authorities, administered by HUD.

As you are aware, under Mark-to-Market, HUD has the mandate to reduce rents to market levels, saving dollars on project-based Section 8 expenditures. Mark-to-Market also includes authorities essential to maintaining the physical and financial viability of the properties with reduced rents. In Mark-to-Market, HUD staff oversees a network of public and private entities to analyze property viability, recommend repairs and other preservation activities, and if necessary re-size the FHA-insured debt to a level that can be serviced by the reduced rents. If debt is re-sized, the owner enters into a long-term use agreement through which the property is preserved as affordable housing for at least 30 years. To be sure, this is a significant tool in HUD's preservation toolbox. Unfortunately, HUD's mandate to reduce rents will continue beyond September 30, 2006, but the Mark-to-Market authorities will not.

Over the past nine years, HUD has been very successful at balancing the dual Mark-to-Market program goals of reducing long-term Section 8 subsidy costs while preserving affordable housing. To date, HUD has preserved 2,200 properties around the country comprising over 188,000 affordable housing units, and in so doing we have promoted the long-term physical and financial viability of these properties. The program has generated net savings totaling \$2 billion to HUD and the American taxpayers. And by preserving affordable housing, we have provided stability for many low income families and the communities where they live.

In discussing reauthorization of Mark-to-Market, I think it's important to consider what has been achieved thus far. To date, this program has preserved properties in all 50 states and the District of Columbia. For example, Chairman Allard, in Colorado, HUD has preserved 31 properties with 1,800 units of affordable housing. In Rhode Island, Senator Reed, 12 properties with more than 1,000 housing units have been preserved, and

another 21 properties with more than 2,000 units will become eligible under this proposed extension. (Attachment A shows the number of properties and units preserved through and active in Mark-to-Market, and the potential referrals over the next five years.) Once restructured, these properties are physically improved and on solid financial footing. That is a “win-win” situation for the tenants and the community.

Not every property can or will be preserved through Mark-to-Market. While preservation is a primary goal of the program, Congress has made it very clear that prudent use of limited resources is an equally important goal. HUD has taken this charge seriously. There have been, and will continue to be, properties referred into Mark-to-Market that simply cannot be responsibly preserved. These projects may be too expensive, functionally obsolete, or located in markets with ready availability of replacement housing.

In other situations, properties that in the Department’s opinion require restructuring do not receive the benefits of the program because the owners refuse to accept the terms of the restructuring. In these cases, HUD makes the determination that the project is infeasible for restructuring. These are difficult decisions, made with consideration of the needs of the affected residents and communities, and with cooperation from both our office and the HUD field offices. Properties that need restructuring but don’t accomplish it are closely monitored by HUD to allow early intervention if the property deteriorates. The analysis done while in Mark-to-Market informs and shapes the Department’s decisions on other management options for the properties thereafter.

Now, let us turn to the discussion before us today, which is the proposed reauthorization of Mark-to-Market. According to the Department’s analysis of potential referrals, if Mark-to-Market is extended as proposed in this bill, over five years (FY 2007-11) nearly 800 properties with 78,000 affordable units will meet the eligibility requirements for Mark-to-Market restructuring. These are project-based Section 8 properties with expiring Section 8 contracts, FHA-insured mortgages, and contract rents above Fair Market Rents. This is the universe of properties that, absent extension of restructuring authorities, will represent the most at-risk properties in HUD’s insured mortgage portfolio because of the required reductions in rents.

In addition to the lost opportunity to preserve another 800 properties, or 78,000 units of affordable housing, the sunset of Mark-to-Market may also expose the FHA Insurance Fund to considerable risk. This is because MAHRA, the legislation that created Mark-to-Market, will continue to require that contract rents on subsidized FHA-insured properties get marked down to market levels upon contract renewal, regardless of whether the program is extended. Reductions in rents to market levels will result in many properties being unable to pay their operating costs and/or their mortgage payments. As we see with other properties in negative cash flow positions, these property owners and managers will be faced with the decision of paying for utilities and routine maintenance, or making their mortgage payments.

It is important to keep in mind that FHA insures the underlying mortgages on these properties. Not only will we see physical deterioration of the projects, which will negatively impact residents, and the overall communities, but the mortgages on these projects also represent real, quantifiable default and foreclosure risk to the FHA Insurance Fund – risk that is estimated to total more than \$400 million over the next five years.

In conclusion, I want to thank you for affording our Department the opportunity to testify on this legislation. Congress' intent in creating and then extending Mark-to-Market was that long-term costs had to be reduced, and that it would be less expensive and more effective to proactively address the physical, financial, and managerial challenges facing our affordable housing portfolio than to wait for the properties to physically decline and financially fail. This belief has been proven true by the successful restructuring of 188,000 apartment units across the country, which has also helped improve the lives of thousands of low-income families who call these units home.

On behalf of the entire Department, I look forward to working with you to ensure that we continue to provide affordable housing in a cost-effective manner.

Attachment A - Testimony of HUD DAS Theodore Toon

State	Completed*		Current Pipeline**		Potential Referrals***	
	# Properties	# Units	# Properties	# Units	# Properties	# Units
AK	8	414	0	0	0	0
AL	105	5,384	8	507	11	993
AR	26	2,077	3	354	20	1,580
AZ	18	1,270	0	0	1	225
CA	159	10,708	5	555	41	3,067
CO	54	2,873	6	603	11	1,385
CT	33	2,852	2	145	12	2,168
DC	28	2,988	3	316	1	302
DE	6	485	1	100	1	221
FL	121	10,899	5	517	6	819
GA	60	5,896	4	297	17	2,001
HI	12	918	0	0	0	0
IA	48	2,694	4	332	22	1,394
ID	10	226	1	56	2	72
IL	75	7,038	8	727	53	7,867
IN	91	8,221	10	967	37	3,934
KS	36	2,465	4	407	23	2,046
KY	171	10,933	9	560	24	2,463
LA	70	6,504	11	1,300	3	196
MA	48	4,166	4	360	23	3,032
MD	53	4,956	0	0	3	170
ME	9	544	0	0	1	140
MI	32	3,286	3	251	19	2,356
MN	15	689	1	36	18	1,131
MO	94	6,310	6	249	17	1,557
MS	105	8,298	7	775	7	650
MT	33	1,759	0	0	10	713
NC	78	4,504	17	747	35	1,987
ND	14	585	0	0	6	335
NE	15	492	2	61	11	584
NH	5	459	1	90	8	350
NJ	50	4,725	3	425	8	1,400
NM	18	1,068	0	0	3	182
NV	12	621	0	0	0	0
NY	272	28,287	20	1,974	55	7,030
OH	388	25,242	19	1,586	61	5,488
OK	54	4,368	2	226	12	998
OR	11	404	0	0	3	110
PA	174	13,901	7	580	38	3,235
PR	21	1,618	3	202	13	1,978
RI	32	1,811	2	147	21	2,050
SC	65	5,030	7	588	12	1,264
SD	19	786	1	44	5	170
TN	94	8,617	8	756	12	1,498
TX	132	11,758	9	1,271	26	3,554
UT	26	1,254	1	8	4	283
VA	37	3,098	1	100	5	296
VI	3	226	0	0	1	216
VT	2	124	0	0	3	183
WA	57	2,504	3	80	8	454
WI	60	2,748	2	132	16	1,194
WV	42	4,065	6	625	27	2,493
WY	23	959	2	57	0	0

Total	3,224	244,107		221	19,113		776	77,814
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- * Completed projects includes all properties reviewed through Mark-to-Market to date, including Full and Lite restructurings, discontinued restructurings, and rent comparability studies. As stated in the testimony text, properties preserved to date, i.e. Full and Lite restructurings, total 2,177 properties with 188,838 units.
- ** Current Pipeline includes all properties currently active in Mark-to-Market.
 - *** Potential Referrals includes all projects eligible for Mark-to-Market FY 07-11 based on current eligibility requirements.