

**Statement To**

**Subcommittee on Housing and Community Opportunity  
Financial Services Committee  
United States House of Representatives**

**Testimony on H.R. 647, the Mark to Market Extension Act**

**By Paula Foster, Vice-President/West  
National Alliance of HUD Tenants  
October 23, 2007**

Thank you for the invitation to testify today in support of H.R. 647, and to offer some suggestions for additional reforms. My name is Paula Foster. I am President of the Ingram Square Tenants Association in San Antonio, Texas; the Vice President/West of the National Alliance of HUD Tenants (NAHT); and a tenant in Section 8 housing restructured under the Mark to Market Program. I am also an active member of the Texas Tenants Union, based in Dallas, which helped us organize and sustain the tenants association in my development.

Founded in 1991, NAHT is the nation's only membership organization representing the 1.7 million families who live in privately-owned, HUD-assisted housing. The elected NAHT Board represents a membership including voting member tenant groups and areawide coalitions in 23 states. NAHT participated in the HUD roundtables which crafted the Mark to Market program, and testified in support of MAH.R.AA in 1997 and the first Mark to Market Extension bill in 2001. We are pleased to speak again in support of extending and improving this vital program.

**1) Tenants' experiences with Mark to Market.** The Committee has asked NAHT to describe tenants' experiences with the Mark to Market Program, and to provide examples of ways in which restructured properties are better off. My family and I are one of the many thousands whose lives have been improved by Mark to Market.

I was fortunate to be able to move into Ingram Square in 1986. I had moved to San Antonio with my husband, who was in the military, and took care of my children at home. But when my husband and I divorced and he moved away, I didn't know anyone, and our family found ourselves living in a homeless shelter for 9 months. I eventually found a job and moved into Ingram Square on an emergency basis. I knew this was the right home for us and I've been determined to make it work ever since. One of my children has been diagnosed with ADHD, and our two bedroom apartment now houses my three children and one grandchild, in addition to me.

Today, I work in a nonprofit group home providing direct services and counseling to mentally disabled children and adults. At \$9 per hour, this challenging job does not pay enough for a market rate apartment, which would cost at least \$775 per month in my area. Section 8 allows me to pay much less for rent and leaves enough to support my family; without Section 8, I'd be homeless again. I have been able to give back to my community through volunteering for the tenants association and advocacy for the disabled. I was the first parent in Texas assisted by the state for ADHD, and in 1994 I helped pass a state law that allows low income people to make "one-stop" applications for multiple programs in any state agency in Texas.

Although I was lucky to move into Ingram Square, I noticed right away there were serious problems. Like many 1970's concrete buildings, Ingram Square was plagued by water and roof leaks, porches that were falling apart, plumbing problems, and a playground whose rusty, rotted metal slides were a danger to our children.

In April 2000, our landlord, AIMCO, applied to M2M to bring much needed repairs to our complex. The first tenant meeting scheduled by Ontra, HUD's PAE, was scheduled for July. At this time, tenants were not organized independently of management, and we were fearful to speak up about what we really wanted. This is where the Texas Tenants Union (TTU) came in. Duane Stewart from the TTU flew in from Dallas and conducted door to door outreach to explain Mark to Market and encourage us to attend the meeting. (I later learned that the TTU organizer's salary and travel costs were paid from an Outreach and Training (OTAG) grant, funded by HUD from Section 514 of MAH.R.AA.) At least 41 tenants attended, more than 1/3 of the residents. We were not comfortable speaking in front of management, but when they left, we were vocal in providing input about property conditions.

Duane returned to Ingram Square two months later to hold a meeting with us and help us form an organization. We had to hold the meeting outside, because AIMCO would not let us use the community room. When the Draft Restructuring Plan was released in January 2001, Duane met with us to review the Draft and prepare written comments prior to the second meeting with Ontra, held in February.

AIMCO began to make the Mark to Market repairs in June 2001. Central A/C was installed in the first year—a real necessity in Texas, and a supreme victory for our Tenant Association! Meanwhile, repairs and replacements to be funded from the Reserve Account were not completed on time; we had to really stay on AIMCO’s case when they used cheap materials and sometimes did shoddy work. From 2002 to 2004, we felt we were the Eyes and Ears of HUD to let them know how their funds were really being used. TTU worked with us the whole time, from beginning to end and in between. We could not have done it without them.

Throughout this process, TTU’s OTAG funded staff made more than 10 trips to San Antonio to help our Tenants Association develop and oversee Mark to Market repairs, sometimes with two people coming on each trip. AIMCO was initially hostile to our proposals and attempts to organize. They made tenants fear that we would lose their homes if we went up against management. But with training and support from TTU, we overcame this fear and said, *this is our home, why shouldn’t we have a say so in it?* I became a leader of the Tenants Association and we started meeting once a month, despite management’s intimidation.

Our homes are better and safer now thanks to Mark to Market. But they are better still thanks to organized tenant involvement, made possible through HUD’s OTAG program and the sustained support of the TTU. If the only thing we had was two meetings organized by HUD’s PAE, we wouldn’t have what we have today, and HUD would not have gotten its money’s worth.

We are not alone. The 32 OTAG groups prepared a national Report submitted to HUD in October 2002 giving a rich overview of how tenants benefited from the Mark to Market program throughout the country, thanks to organized tenant involvement made possible through HUD’s OTAG grants and HUD funded VISTA Volunteer program. I request permission of the Subcommittee to submit a copy of this Report with my testimony today.

**2) Need for preservation tools in H.R. 647.** It is essential that Congress extend the Mark to Market program and adopt the reforms requested by HUD and a wide spectrum of industry groups in H.R. 647 to improve the program. The provision extending debt forgiveness for nonprofit transfers would particularly help tenants at Prince Hall Gardens I in Fort Worth, where nonprofits are ready to take over a troubled former M2M property with failing REAC scores.

NAHT suggests one amendment to win swift passage of this bill: to cap “exception rent” increases at the “old” Section 8 contract rent level. This would address Republican objections in the Senate that a program designed to reduce Section 8 subsidy payments to market levels should not end up paying owners more than what they received before “restructuring.” NAHT has proposed this compromise to Republican Senate staff and believes it could break the Senate logjam which has so far held up S 131, the Senate companion to H.R. 647. Although we understand that a third of the pending “exception rent” proposals at HUD would be affected, these M2M Plans can still go forward using state and local subsidies to fund any underfunded repair needs.

**3) Additional improvements for Mark to Market: Restore resources for tenant involvement.** There is one important area where further amendment to H.R. 647 is required,

however: the need to get out resources to help tenants organize and participate in Section 8 contract renewal decisions, not just in Mark to Market but across the board.

Across America, most tenants in HUD housing remain unorganized and unaware of their rights. As in my complex, tenants are almost always afraid of organizing for fear of losing their homes. It is very difficult and rare for tenants to organize without some kind of outside assistance and support, from an experienced tenant coalition or organizing project, Legal Services or similar group.

In passing MAH.R.AA, Congress recognized this problem and the value of tenant involvement by creating the Section 514 program. Section 514 requires the Secretary of HUD to make available not more than \$10 million annually from the larger project-based Section 8 account (\$5.9 billion in fiscal year 2007) to provide resources to help tenants participate in the decisions affecting our homes. From 1997 -2001, HUD provided a total of \$26.3 million in three programs—OTAG, ITAG and VISTA—to carry out this important objective. OTAG funds provided to the Texas Tenants Union made possible our success at Ingram Square.

Although located in the section of MAH.R.AA which created Mark to Market, Congress made Section 514 funds more broadly available to help tenants cope with ALL Section 8 contract renewal decisions. In 1999, in response to a growing number of owner opt outs, Congress clarified this by emphasizing that funds are to be made available to all expiring Section 8 contracts, including *below* market contracts which “may not be renewed.”

Unfortunately, since 2002, HUD has failed to provide any funds for tenant outreach from Section 514, although up to \$50 million could have been made available over five years. Worse, in 2002, HUD illegally cut off funds and failed to honor contracts with the Corporation for National Service (CNCS), the federal agency which runs VISTA, or the OTAG grantees in most of the country. I’d like to submit to the Subcommittee two maps showing the result: The first, from 2001, shows the nonprofit tenant outreach groups cities around the country which received either three year OTAG grants, like the one to TTU, and/or VISTA Volunteers to help organize tenants.

The second, from 2003, shows the groups that remained after HUD’s failure to fund Section 514, or to honor its contracts with these groups. HUD tenant outreach plummeted throughout the country, and nonprofit organizations that were the only housing advocacy organization in several states, such as Missouri, New Mexico, and Arizona, were bankrupted and destroyed.

***HUD mishandled Section 514 audits.*** The destruction of tenant outreach in most of the country is a direct result of HUD’s handling of the unusual Section 514 audits mandated by Congress in Section 1303 of the Defense Appropriations Act of 2001. Congress mandated the audits for “each award of funds” made under Section 514 for the previous five years, to determine whether “any” OTAG funds had been spent on impermissible lobbying. HUD interpreted this to require an unusual 100% review of all records, with no ‘materiality’ standard or room for error: a \$5 mistake could lead to contract termination and a four year debarment.

We are pleased to report that the IG audits exonerated the OTAG, ITAG and VISTA programs of the allegation of inappropriate lobbying. After a 100% review of all records for \$13 million awarded to 42 organizations over five years, HUD questioned less than \$1,000 in two organizations spent on federal lobbying—and these amounts are vigorously disputed by grantees<sup>1</sup>.

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<sup>1</sup> A total of 5 groups were concluded to have conducted improper "lobbying" with HUD money; their funds were cancelled and reclaimed and the groups were debarred for 4 years, starting in 2002. Of these, HUD did not actually identify dollar amounts in 3

There were no proven "lobby" allegations whatsoever in the VISTA program, the vast majority of OTAG grantees, and the ITAG program. There was not one proven instance of an ineligible property aided by an OTAG grantee in the entirety of the country (although HUD erroneously maintained there were three ineligible properties in DE and MD).

Despite this, HUD illegally suspended 18 out of 32 grants for close to three years, mostly for minor administrative errors that easily could have been resolved. HUD provided the suspended grantees with no Notice or due process, as required under the OTAG contracts; these suspensions were not required by the IG, in most cases. <sup>2</sup>HUD then failed to follow the procedures in its Audit Resolution Handbook, at every step, in contrast with HUD's typically laissez faire treatment of owners and Housing Authorities who are allowed to continue receiving funds under their contracts while fighting far more serious audit findings. I would like to submit to the Subcommittee's record a legal opinion by the Washington law firm of Fried, Frank on the illegality of HUD's treatment of Section 514 grantees, to which HUD has never responded.

I am pleased to report that TTU, along with 13 other OTAG grantees, received no audit findings whatsoever. But these groups have since spent down their grants, and HUD has provided no new funding for several years. Most of the 18 suspended grantees were eventually able to get funds restored in 2005, but all but three of these drew down remaining funds to cover obligations from prior years and did not do much new outreach work. Coupled with HUD's failure to fund Section 514, this means even fewer tenants receive assistance today than in 2003.

According to the IG's Semi Annual Report to Congress for 2002, 42% of HUD's field audit resources in 2002 were spent on the Section 514 audits--we estimate this conservatively as \$7 million in IG costs. Of course, these were resources that *not* spent on overseeing HUD's multibillion investment in owners and Housing Authorities, as tenant volunteers would be happy to assist HUD with if we had the Section 514 resources to serve as HUD's "Eyes and Ears."

***Effect of failure to implement Section 514 on tenants.*** Tenants across America are still suffering from HUD's failure to implement Section 514. At TTU, the end of OTAG funding has cut the organizations staff down to one outreach worker for HUD housing, with no funds for travel. And Texas is a big state! That TTU and its Director, Sandy Rollins, continue to have a national impact is a huge tribute to her dedication and skill. In our state alone, funding cutbacks at TTU have had the following consequences for the M2M program:

- Jerusalem Apts - Longview, TX - 100 units -- TTU worked with the tenants at this property when it entered M2M back in 2000. The property was owned by an under-funded local church-based non-profit and the M2M plan was lacking. It did, however, call for some improvements which TTU's OTAG organizer was trying to make sure were implemented when OTAG funding ran out. Had TTU's funding not been interrupted, a nonprofit sale or at least implementation of the Plan could have happened. Instead, TTU learned last month that HUD terminated the contract, displaced all the residents, and are now selling the property (Nov. 15th) on the court house steps to the highest bidder with no HAP contract.

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grants, merely asserting but not proving that lobbying had occurred. There were two groups cited for under \$1,000 of alleged "lobby" expenditures; these were entirely erroneous findings, both in Region III (DE and PA), where the regional IG was demonstrably incompetent and HUD refused to review extensive rebuttals submitted by the organizations.

<sup>2</sup> The 32 OTAG grants made in 2001 had only been funded for four months when funds were suspended for eight months due to an unrelated Anti-Deficiency Act allegation against former OMHAR Director Ira Peppercorn. HUD's Inspector General exonerated Peppercorn in March 2002, and pressure from Chairman Frank got HUD to resume funding in April 2002. The audits were mandated as part of a special appropriation in the Defense Appropriations Act of 2002 to "rerecord" \$11.3 million of Section 514 funds suspended in the Peppercorn investigation.

- Pine Lake Estates - Nacogdoches - 100 units - entered M2M in 2007 - No TTU outreach or organizing due to lack of resources - Owner disqualified in August 2007 due to adverse financial or managerial actions or omissions. TTU would be working with the tenants to identify a buyer if they had capacity.
- Chateau Village - 150 units - Houston – Owner entered M2M in 2007, but opted for M2M Lite. If TTU had the resources, it would work with the tenants to try to convince the owner to enter the full M2M Program, as it did with Roxton Arms, Eastwood Terrace and others.
- 10 properties in Texas have entered or re-entered M2M since TTU’s OTAG funding ran out in 2006. Tenant turn-out is almost non-existent at some of these properties—often less than 2%, when the PAE’s organize the meetings without TTU aid to the tenants. By contrast, TTU’s average turn-out at meetings when they can organize them is 24%.

This story is repeated across the country. In the South, Plain States, Mountain States and most of the Midwest, there is no tenant organizing or outreach whatsoever, outside of a few cities. Today, although some tenant outreach organizations barely survive in about 20 cities with private foundation funds, only three groups remain with Section 514 funding, in Rhode Island, Hawaii and Kentucky. The problem in high market areas, where owners are opting out and converting to market rents, is particularly dire: the nation has lost more than 350,000 units through owner opt outs since 1996, and at least another 100,000 more through HUD voucherization of troubled housing. Yet HUD has provided no funds since 2002 to help tenants save these homes.

***HUD PDR Report demonstrates effectiveness of OTAG groups.*** Rather than work with the grantees, some HUD officials have instead “blamed the victims.” In August 2004, HUD’s Office of Policy Development and Research (PDR) concluded that “the level of direct tenant involvement in the process has been minimal. In particular, tenant organizations have been only sporadically involved in restructuring negotiations (p.22),” despite the clear Congressional mandate to involve us in the process. In its examination of 15 detailed case studies, PDR concludes that “the involvement of tenant support and/or advocacy groups, such as the ITAG/OTAG grantees, appears to be almost non-existent. Among the case studies there was only a single example of such a group being involved in the negotiating process. Just as importantly, tenants expressed no knowledge that such groups were available for support or consultation (p. 115).”

There is a good reason for these observations: ***HUD had shut down the Section 514 program in most of the country at the time the PDR case studies were conducted!*** Of the 15 case studies, two were in states that never had an OTAG grant; six were in states where the OTAG grants had been illegally suspended, in October 2002 (18 months before the study); and two more were Mark to Market Lite buildings where OMHAR required no tenant involvement process. The case studies cited only two success stories of tenant involvement, in Cleveland and New York State—which happened to be the only two areas with active OTAG grants during the study!

In short, the PDR case studies actually support the effectiveness of OTAG funded tenant involvement, while observing the dearth of tenant involvement where OTAG groups did not exist. Unfortunately, no one informed the PDR researchers about the funding suspensions, and PDR made no effort to contact either NAHT or any of the OTAG grantees to get the tenant perspective on the program.

Nonetheless, the PDR Report has since been cited out of context by HUD’s Alternative Management Control Review, OAHF Director Ted Toon, and others at HUD as proof that the “OTAG program was ineffective,” because tenants had not heard of the grantees and were not involved. The PDR Report proves the opposite: the OTAG funded areas were the *only* ones where

tenant involvement was substantial. A simple review of the hundreds of pages of narrative reports submitted by each OTAG grantee to OMHAR would also dispel the mistaken view that the program was ineffective. After refusing to implement the program and punishing grantees, HUD staff are now blaming their victims.

***HUD punishes remaining OTAG grantees.*** Unfortunately, HUD's policy of punishing OTAG grantees continues today. In the three remaining states, HUD has refused to apply a recent Office of General Counsel opinion to these grants, which would allow funds to be used in the vast majority of properties eligible under the OTAG Grant Agreements, as intended by Congress. In Hawaii, after HUD reluctantly agreed to restart the grant in October 2006, the newly hired OTAG organizer was literally pulled out a tenant meeting and terminated in February due to HUD's narrow definition of "eligibility." As a result, no OTAG funds are available to help tenants in Hawaii cope with the second highest Section 8 opt out rate in the country, including eight buildings at risk in downtown Honolulu.

In Rhode Island, the OTAG grantee was able to raise other funds to creatively save the 200 units at Barbara Jordan I, no thanks to HUD; HUD retroactively cut off OTAG funding for this building, forcing staff layoffs, even though the local HUD Office considered Barbara Jordan its highest priority at-risk building and had encouraged the group to work there.

After this record of failure to honor contracts and active punishment of nonprofit tenant outreach providers, it will take a long time to rebuild confidence that HUD wants to work with tenants again.

***HUD supports new Section 514 program.*** Nonetheless, the NAHT Board has continued to press HUD to restart the Section 514 program. Last year, to his credit, Commissioner Montgomery agreed, and convened a Stakeholders group including NAHT and several former OTAG grantees to help design a new program, to be called TRIO (Tenant Resource, Information and Outreach). The Commissioner's efforts to reprogram \$10 million from project-based Section 8 in March 2007 were rejected by Appropriations Committee staff in light of the new Section 8 funding crisis. Commissioner Montgomery has pledged to try again in fiscal year 2008. However, the earliest these funds can be provided will be 2009. In addition, the Stakeholders are concerned about serious flaws in HUD's unworkable design for TRIO which would increase the risk of program failure in the future.

Last week, NAHT testified before the Subcommittee on Housing and Community Opportunity about the Section 8 shortfall. Clearly Congress must act to add \$2.5 billion to Section 8 to prevent a catastrophe of mass displacement and a big jump in owner opt outs next year. But it is also urgent that Congress and HUD provide resources as soon as possible so that tenants are informed about the issue and prepared to engage with their owners and HUD to urge renewal and preservation of Section 8 contracts, before this crisis hits and tenants are forced onto the street.

\$10 million out of an \$8 billion program is not too high a price to pay to engage residents in decisions about saving our homes. As Ingram Square shows, a small amount of Section 514 funds can ensure that the billions of dollars invested by HUD in multifamily housing are spent wisely and well. We, the tenants who live there, are the best experts about what is needed in our buildings, and to act as volunteer "Eyes and Ears" for HUD's overstretched field staff. We appreciate the Subcommittee's support for Section 514 in the past, and request your leadership again to reactivate the program.

***Amendment needed in H.R. 647.*** The Stakeholders convened by HUD seek the Committee's support for an amendment to H.R. 647 to make sure that Section 514 funds already authorized by Congress are in fact spent for this purpose, and to get resources out soon. The attached amendment would accomplish three important purposes:

***1) Get resources out to assist tenants before the end of 2007.*** Congressional action is needed to ensure that Section 514 funds are in fact available earlier than 2009, HUD's new target timeline for TRIO. The proposed amendment would require HUD to re-fund prior Section 514 tenant outreach grantees at the same level as the previous awards made in FY 2001, authorizing funds from the Section 8 account in FY 08. The language specifies that only former grantees with no audit findings, a recent two year track record, and current capacity in tenant outreach and federal grant management would be eligible.

Only 14 of the 32 grantees awarded funds in 2001 had no audit findings whatsoever; of these 14, we estimate that some would either not be interested or meet the current capacity test. As a result, we estimate that no more than \$5 million would be needed for prior grantees, leaving at least \$4 million for a TRIO NOFA later in FY 2008. This approach would at least provide urgently needed funds to the most experienced tenant outreach organizations in several major states, creating a solid infrastructure for the TRIO program in subsequent years.

The proposed amendment would also require HUD to enter into an Interagency Agreement for \$1 million with the Corporation for National and Community Service to resume HUD matching funds for a national VISTA Volunteer program in HUD multifamily housing. We are submitting for the Committee record an August 10, 2007 letter from VISTA Director Jean Whaley pledging support for a renewed partnership with HUD and NAHT, based on the successful 1996-2002 partnership. HUD funds for VISTA Volunteers in multifamily HUD housing would be matched dollar for dollar with CNCS/VISTA resources.

***2) Close loopholes in Section 514.*** The proposed amendment also includes language to require HUD to spend \$10 million annually for Section 514, clarifies that all Section 8 and HUD multifamily buildings are eligible for assistance, and clarifies that tenant outreach grantees must be independent of current or future owners to receive funds. The amendment also proposes to allow the carry-over of unused Section 514 funds into future fiscal years.

***3) Ensure Stakeholder concerns are reflected in TRIO program design.*** Finally, we propose text to ensure that the new TRIO program works in the field and is compliant with key recommendations of HUD's Alternative Management Control Review (AMCR), which resulted from the 2002-2005 Section 514 audits. The proposed amendment would ensure that funds reach qualified, experienced tenant outreach groups that currently operate at the state or metropolitan level (approximately 15-18 at present), rather than one or two national providers, as proposed by HUD. Second, the amendment would ensure that TRIO grants include meaningful performance based measures and reimburse grantees for actual costs incurred, as recommended by the AMCR, rather than the unworkable and wasteful "fee for activity" model proposed by HUD.

Thank you for the opportunity to testify today. I would like to submit, for the record, the documents referred to in my testimony. I would also like the Subcommittee's permission to submit additional documents in response to points that may arise in today's hearing, if that is warranted.

10/22/07 DRAFT authorizing language for FY 2008:

Objectives:

- Expedite flow of funding to qualified groups, including via restart of VISTA
- Revise Section 514 to address prior deficiencies
- Address stakeholders' major concerns about future program design, including flawed administration through national intermediary and need to ensure cost reimbursement.

This recommendation should be included in the Mark to Market bill, and/or any other available vehicle.

SEC. \_\_\_\_ . Section 514(f)(3)(A) of the Multifamily Assisted Housing Reform and Affordability Act is revised to read as follows:

"(3) Funding. -

"(A) In general. - The Secretary shall make available \$10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary shall make obligations to tenant groups, nonprofit organizations, and public entities, for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation and improvement of low-income housing for which project-based rental assistance, subsidized loans, or enhanced vouchers under section 8(t) are provided (including transfer of developments to tenant groups, nonprofit organizations, and public entities, and predevelopment assistance to enable such transfers), for tenant services, and for tenant groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons. For outreach and training of tenants and technical assistance, the Secretary shall implement a cooperative grant program utilizing performance-based outcome measures for eligible costs incurred. Recipients providing capacity building or technical assistance services to tenant groups shall be qualified nonprofit statewide, countywide, areawide or citywide organizations with demonstrated experience including at least a two-year recent track record of organizing and providing assistance to tenants, and independence from the owner, a prospective purchaser or their managing agents. The Secretary may provide assistance and training to grantees in administrative and fiscal management to ensure compliance with applicable federal requirements. The Secretary shall expedite the provision of funding for fiscal year 2008 by entering into new multi-year contracts with any prior grantee without adverse audit findings, and by entering into an Interagency Agreement for not less than \$1,000,000 with the Corporation for National and Community Service to resume the tenant outreach and training program under the same terms, conditions and sponsorship as that most recently conducted by the Corporation. The Secretary shall also make available flexible grants to qualified nonprofit organizations that do not own eligible multifamily properties, for tenant outreach in underserved areas, and to experienced national or regional nonprofit organizations to provide specialized training or support to grantees assisted under this section. Notwithstanding any other provision of law, funds authorized under section 514 for any fiscal year shall be available for obligation in subsequent fiscal years."