

# STATEMENT OF THEODORE K. TOON

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Subcommittee on Housing and Community Opportunity

United States House of Representatives



“H.R. 647, the Mark-to-Market Extension Act of 2007”

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Thank you Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee for inviting me 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, Commissioner 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)), reduces rents to market levels upon Section 8 contract expiration and renewal. This program was extended in 2001 (through the Mark-to-Market Extension Act) and in 2007 (through 2011). HUD contracts with private owners of rental units to help ensure a certain number units for occupancy by low-income, very low-income, and extremely 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 bill that you have introduced proposes two technical modifications, and two eligibility modifications to the Mark-to-Market program.

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 2,300 properties around the country comprising over 200,000 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 over \$2.1 billion to HUD and the American taxpayers.

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.

By preserving affordable housing in all 50 states and the District of Columbia, including long-term use agreements through which the properties are preserved as affordable housing for at least 30 years, we have provided stability for many low income families and the communities where they live. That is a “win-win” situation for the tenants and the community.

Beyond those properties assisted through Mark-to-Market are other preservation needs, and that brings us to the discussion before us today, which is the proposed legislative modifications to Mark-to-Market. While the Administration has not taken a formal position on H.R. 647 and is still analyzing the budgetary impacts of the legislation, I can discuss the likely programmatic impact of each of the legislative changes.

First is the issue of Exception Rents. For projects that cannot be preserved at market rent levels but provide desperately needed affordable housing, Congress provided authority to use above-market, or exception rents. The estimated need for this authority was based on projections made ten years ago. Today we have a much better sense of the true needs. While HUD has exercised prudent discretion in using this authority only when absolutely necessary, we are today within a few hundred units – not buildings but a few hundred apartment units – of the existing cap, and expect to hit the cap by the end of this calendar year. We project that your proposal to increase that cap from five percent to nine percent of the portfolio would allow HUD to continue to use this authority through the Mark-to-Market sunset in FY 2011.

The second proposed modification deals with at-market or below-market properties, which are currently not eligible for Mark-to-Market. Extending eligibility to these projects, at the owner’s option, will make eligible approximately 1,500 projects with expiring contracts in the next four years, and the profile of these projects illustrates the need for Mark-to-Market: over half of the projects have at least one trouble indicator in physical condition or financial health, the best statistical predictive measures for future default. We have seen many properties in need of rehabilitation and debt restructuring that were not eligible for Mark-to-Market. By requiring that the cost of such restructures be less than the cost of a default of the property, this proposed provision will charge my office with continuing to exercise fiduciary responsibility in its preservation efforts.

Third is the challenge of disaster-damaged properties. This provision of your proposed legislation would allow HUD to utilize the restructure tools of Mark-to-Market, specifically the field assessment, rehabilitation, and debt restructuring authorities, toward the repair or rebuilding of Section 8, FHA-insured properties that may be damaged or destroyed in a Presidentially-declared disaster area. The number of properties to which this would apply is of course unknown, though a look at the past ten years suggests perhaps 10 to 15 Section 8 properties per year, on average, may fall into this category.

The final proposed modification extends the period of eligibility for non-profit purchasers requesting debt relief to five years. To date we have completed 57 such transactions with debt relief totaling over \$85 million. Today, nearly three quarters of the

portfolio of closed Mark-to-Market projects are already beyond the current three-year eligibility window. This proposed change would make over 1,000 properties eligible for this type of acquisition by non-profit housing owners, with the benefits of Mark-to-Market debt relief.

In conclusion, on behalf of Commissioner Montgomery, I want to thank you for affording our Department the opportunity to testify on this legislation. Congress' intent in creating and twice extending Mark-to-Market was to preserve affordable housing and save money by proactively addressing the physical and financial challenges facing our affordable housing portfolio. This program has been successfully implemented, resulting in the restructuring of 200,000 affordable apartment units across the country, improving the lives of tens of thousands of low- and moderate-income families who call these units home

We look forward to working with you to ensure that we continue to provide affordable housing in a cost-effective manner. Thank you, and I stand prepared to address any questions you may have.