

**Testimony of
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**On Behalf Of the
National Association of Home Builders**

**Before the
United States House Committee on Financial Services,
Subcommittee on Housing and Community Opportunity**

on

**H.R. 3186: "Build Houses for our
Military Enlisted Servicemembers Act"**

February 8, 2006

Introduction

The 225,000 members of the National Association of Home Builders (NAHB) appreciate the opportunity to share our views on H.R. 3186, the "Build Houses for Our Military's Enlisted Servicemembers Act." NAHB supports this important legislation, which will expand opportunities for enlisted military personnel and their families to have access to safe, decent and affordable housing. Many of NAHB's multifamily members develop and operate affordable housing built under the Low Income Housing Tax Credit (LIHTC) program in communities with substantial military populations, such as El Paso, Texas and Norfolk, Virginia. However, they report a sense of frustration in having to turn down some members of the military, particularly junior enlisted personnel, because their incomes are just over the maximum permitted under the program's rules. With enlisted military personnel and their families facing shortages of affordable housing at duty stations across the country, a situation likely to worsen by the transfer of military units as part of the recent Base Realignment and Closure (BRAC) process, NAHB believes Congress' focus on H.R. 3186 is very timely.

H.R. 3186 seeks to correct a technical anomaly in the method by which income eligibility is calculated for enlisted military personnel to qualify for occupancy in a LIHTC property. Correcting this anomaly could help some enlisted military personnel qualify to live in LIHTC properties who otherwise would be determined to be over-income. Some enlisted military personnel are deemed over income because the LIHTC law directs allocating agencies to use income eligibility regulations set by the U.S. Department of Housing and Urban Development (HUD) for its Section 8 program to determine eligibility for LIHTC properties. HUD's Section 8 guidelines include a military member's basic allowance for housing (BAH) as part of the household's annual income. This is inconsistent with the treatment of Section 8 housing subsidies, which are not considered income under HUD's Section 8 guidelines and, therefore, are also not included for LIHTC eligibility purposes. Further, neither Section 8 nor the BAH are considered income for federal income tax purposes. Including the BAH for purposes of determining incomes for occupancy in LIHTC developments can push a military member's income over the permitted LIHTC maximum, sometimes by just a few dollars.

Enlisted Military Personnel and Housing

There are approximately 1.5 million servicemen and women in today's active duty military. Enlisted personnel comprise 86 percent or 1.2 million of this total. The U.S. Department of Defense (DoD) traditionally has primarily relied first on the private market to meet the housing needs of these personnel and their families. For many years, typical waiting lists to secure housing on-base have ranged from several months to as much as two years, depending on the duty station and rank. In fact, only 24 percent of all military families live on-base, according to the Office of the Deputy Under-Secretary of Defense for Installations and Environment (DUSDIE).

Further driving military personnel to the private sector is the current state of on-base housing. Again, according to the DUSDIE, DoD's on-base housing is an average of 33 years old with 25 percent of the stock over 40 years old, and 49 percent considered "old and in need of repair." In fact, the substandard condition of on-base housing is the driving force behind the DoD's military housing privatization initiative. Recognizing that there is a shortage of affordable, quality housing in communities surrounding many military installations, DoD has committed to improving the housing stock on its bases. Nonetheless, DoD recognizes that the majority of military personnel and their families will continue to live off base and secure their housing in the private market.

The availability and affordability of housing in the private market in military communities is not consistent across the country. Some duty stations have an adequate supply of affordable housing, while other markets are extremely tight, especially with the significant increases in housing costs seen in many communities over the last several years. In either situation, the supply and cost of affordable housing will be complicated by the troop reassignments from the BRAC process, which will shift massive numbers of personnel and their families.

Below are some of the military communities receiving a large influx of troops:

- Ft. Benning (Columbus, GA) – 13,929
- Ft. Riley (Manhattan, KS) – 4,486
- Cecil Field (Jacksonville, FL) – 21,448
- Ft. Bliss (El Paso, TX) – 20,835

- Ft. Sam Houston (San Antonio, TX) – 17,693
- Ft. Bragg (Fayetteville, NC) – 6,172
- Langley Air Force Base, Naval Shipyard Norfolk, Naval Support Activity Norfolk (Norfolk/Virginia Beach, VA) – 3,919

How these markets will absorb such numbers of new households is unclear – it is very likely housing prices will be driven up by the significant increase in the demand for housing, particularly affordable rental housing. It will be critical that every resource, including LIHTC housing, is available to ensure the housing supply can meet the increased demand.

Income Eligibility Determinations for LIHTC Properties

Section 42 of the Internal Revenue Code (the Code) does not define annual income. Instead, Section 42(g)(4) provides that Section 142(d)(2)(B) (regarding income eligibility determination for individuals) shall apply for purposes of determining whether any LIHTC project is a qualified low-income housing project and whether any unit is a low-income unit. This section, as well as the regulations governing the LIHTC program, state that “tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 (the Housing Act)...” 24 CFR Part 5 (Section 5.609) sets forth HUD’s requirements with respect to calculating family income in order to make a determination of eligibility for the Section 8 rental assistance program, but HUD does not include the proposed Section 8 assistance as part of family income. While there is no specific provision in the HUD regulations excluding any proposed Section 8 assistance, HUD ignores such assistance because its focus is examining income to decide if Section 8 assistance will be awarded.

Regarding the BAH, there are varying treatments depending on the source. For example, Section 5.609 specifically excludes “special pay to a family member serving in the armed forces who is exposed to hostile fire from income (special pay),” but does not reference the BAH. Further, 42 USC 1437(a)(b)(5)(A) of the Housing Act provides for mandatory exclusions from income for purposes of determining eligibility, but is silent as to whether or not the BAH is excluded from income for purposes of determining eligibility for the Section 8 program. HUD’s Housing Choice Voucher (HCV) Handbook, on the other hand, lists both special pay (except pay

received by a service member who is exposed to hostile fire) and the BAH as income for purposes of determining a family’s income eligibility. In short, there is some confusion between the law, HUD’s regulations and HUD’s other guiding documents. Although there is no provision in the law specifically excluding or including the BAH for purposes of income eligibility for the LIHTC program, because it is included in the HUD HCV Handbook, the BAH is considered income by allocating agencies. As a means of resolving these conflicting authorities, HUD believes it needs specific statutory direction from Congress to exclude the BAH from income for purposes of determining Section 8 eligibility (and, by extension, LIHTC eligibility).

Examination of the Impacts of the BAH Included as Income

Two potential residents of an LIHTC-financed property – one a member of the armed forces and one a civilian – each receive a subsidy for housing. The civilian’s subsidy is in the form of Section 8 assistance, and the armed forces member’s is in the form of the BAH. Both residents meet the LIHTC income limit restrictions in the absence of these housing subsidies. When a leasing agent is qualifying each potential resident for that property, he or she must include the BAH in the income calculation, which often results in the rejection of that applicant because they are over income. The end result is that enlisted military personnel are disqualified for no other reason than the form of their housing subsidy. Below are two examples to illustrate this effect using data for the El Paso, Texas, Metropolitan Statistical Area (MSA).

Tables 1 and 2 show the basic information regarding income limits, military pay and the BAH for the El Paso, Texas MSA.

Table 1 – 2005 Income Limits (60% AMI), El Paso, Texas MSA

% AMI	1-Person	2-Person	3-Person	4-Person	5-Person
60	\$17,820	\$20,340	\$22,920	\$25,440	\$27,480

Table 2 – 2005 Enlisted Military Personnel Pay Rates & BAH for El Paso, Texas (With & W/out Dependents)

Pay Grade	Time In	Basic Pay/ Month	BAH w/o Dependents	BAH with Dependents	Basic Pay + BAH w/o Depts.	Basic Pay + BAH with Depts.
E-1	>4 Mos.	\$1,235.10	\$615	\$783	\$1,850.10	\$2,018.10
E-2	<2 Yrs.	\$1,384.50	\$615	\$783	\$1,999.50	\$2,167.50
E-3	>2 Yrs.	\$1,547.70	\$615	\$783	\$2,162.70	\$2,330.70
E-4	>2 Yrs.	\$1,695.60	\$615	\$783	\$2,310.60	\$2,478.60
E-5	>2 Yrs.	\$1,877.10	\$669	\$871	\$2,546.10	\$2,748.10

Tables 3 and 4 show the impacts of including the BAH as income when qualifying enlisted military families under the LIHTC program for a 3-person and 4-person household, respectively. The 3-person income limit is used as an example of a married couple with one child and the 4-person income limit is used as an example of a married couple with two children.

Table 3 – Enlisted Military Pay & BAH Compared w/LIHTC 3-Person Income Limits (60% AMI)

	E-1 (>4 Mos.)	E-2 (<2 Yrs.)	E-3 (>2 Yrs.)	E-4 (>2 Yrs.)	E-5 (>2 Yrs)
Salary	\$1,235.10	\$1,384.50	\$1,547.70	\$1,695.60	\$1,877.10
Salary Plus BAH with Dependents	\$2,018.10	\$2,167.50	\$2,330.70	\$2,478.60	\$2,748.10
LIHTC Income Limit: 3-Person	\$1,910/Mo	\$1,910/Mo	\$1,910/Mo	\$1,910/Mo	\$1,910/Mo
Over (+) / Under (-) LIHTC Income Limit	+\$108.17	+\$257.50	+\$420.70	+\$568.60	+\$838.10

Table 4 – Enlisted Military Pay & BAH Compared w/LIHTC 4-Person Income Limits (60% AMI)

	E-1 (>4 Mos.)	E-2 (<2 Yrs.)	E-3 (>2 Yrs.)	E-4 (>2 Yrs.)	E-5 (>2 Yrs)
Salary	\$1,235.17	\$1,384.50	\$1,547.70	\$1,695.60	\$1,877.10
Salary Plus BAH with Dependents	\$2,018.17	\$2,167.50	\$2,330.70	\$2,478.60	\$2,748.10
LIHTC Income Limit: 4-Person	\$2,120/Mo	\$2,120/Mo	\$2,120/Mo	\$2,120/Mo	\$2,120/Mo
Over (+) / Under (-) LIHTC Income Limit	-\$101.83	+\$47.50	+\$210.70	+\$358.60	+\$628.10

In the cases of E-1 through E-5 (with the exception of an E-1 under the 4-person income limit), enlisted military personnel would meet the income limits for the El Paso, Texas MSA, but when the BAH is included as income they exceed the limits and do not qualify for LIHTC housing units.

Solution in H.R. 3186

H.R. 3186 takes a relatively simple approach to addressing the anomaly in the law regarding treatment of the BAH when calculating income for LIHTC housing. It excludes the BAH from consideration as income in order to qualify for an available unit in such properties. More importantly, this legislation treats enlisted military personnel and their families the same as civilian families that make the same income and receive housing assistance. Thus, the bill would allow the use of vacant LIHTC units to meet the need for military housing and would also support the production of new and rehabilitation of existing LIHTC properties in areas where the current non-military population will not support such activity.

Conclusion

H.R. 3186 is an important piece of legislation that will help increase access to affordable housing for America's enlisted military servicemembers and their families through the LIHTC program. The LIHTC program is the finest affordable housing production program in history and has provided high quality, affordable housing for millions of civilian families. It can do the same for low- and moderate-income enlisted military personnel and their families as well. Again, NAHB appreciates the opportunity to provide our views on this legislation and looks forward to working with the subcommittee to pass this meaningful legislation.