

Testimony of

**Timothy R. Kenny**  
**Executive Director**  
**Nebraska Investment Finance Authority**  
**Lincoln Nebraska**

In support of

**H.R. 3186**  
**“Build Houses for Our Military’s Enlisted Service Members Act”**

Before the

**Subcommittee on Housing and Community Opportunity**

2128 Rayburn House Office Building  
February 8, 2006

Mr. Chairman and members, thank you for the opportunity to testify before the subcommittee today. My name is Timothy R. Kenny. I am the Executive Director of the Nebraska Investment Finance Authority (known by the acronym "NIFA"). NIFA's main office is located in Lincoln Nebraska. It is the quasi-governmental, statewide authority that administers the Section 42 Low Income Housing Tax Credit Program for Nebraska. I have had the honor of serving in that position for the last twelve years. Previously, in similar positions, I have administered the LIHTC programs for the States of Texas and Utah. In addition, I serve on the Board of Directors of the National Council of State Housing Agencies ("NCSHA").

I have been asked to testify in support of H.R. 3186 as a result of my recent experiences with the regulatory conflicts the bill seeks to correct. I became familiar with those conflicts, quite by accident, during a conversation on the quadrangle at Fort Sam Houston Texas, where, in 2002, I was part of a civilian support group visiting National Guard and Reserve units. Fort Sam Houston is the headquarters of a medical services training group where many very highly skilled enlisted personnel serve to support the military's medical units.

I was talking with our tour escort, a young sergeant (E-4), and I asked him what life was like in the Army. I was curious because my two boys, who were in high school at the time, were considering military service. I was surprised when the young soldier told me he loved the military and his job, but he that was going to have to quit. When I asked why, he said "because I can't find a safe place around here for my wife and kids where I can afford to live."

His problem struck me as quite strange because I knew there had to be Sec. 42 developments in San Antonio. I made a mental note at the time to do some research on the matter.

Not much later, that research opportunity came rushing into my Nebraska office. My tax credit program administrator informed me that two important multi-family rehabilitation projects, in Bellevue Nebraska, near our own Offutt AFB, were having a hard time achieving tax credit eligible occupancy. Also, a multifamily project approximately 10 miles south of the gates of Offutt was showing high vacancies.

This was quite surprising given the demonstrated housing shortage at Offutt. The two older multifamily projects, undergoing a comprehensive "rehab," had a 33% military occupancy before the rehabilitation efforts were started. They were ideally suited for enlisted military personnel and their families.

When researching these problems I learned that a low income soldier, airman or sailor (and we have them all at Offutt) who had a housing voucher from the Department of Defense (called the "basic allowance for housing" or BAH) was not treated in the same way as the client of our local Housing Authority who had a Section 8 voucher.

I believed this conflict was simply regulatory, and one can understand how the conflict arose. Specifically, “income” for purposes of the Sec 42 program is measured by the HUD Sec. 8 voucher rules. The theory was that if a person is to be considered for Section 8 assistance, and they have BAH assistance from Defense, they should not receive voucher assistance from HUD. This makes good sense.

Unfortunately, in practice, when the rule is applied to determine if a low income service person is eligible to live in a tax credit project, the “test” penalizes the service member. The rules for testing for occupancy require the BAH to be treated differently from the HUD housing voucher.

**What happens in practice? The HUD voucher is not included in “income” but the BAH amount, from the Department of Defense, is included in “income” for tax credit unit occupancy qualification. The result is the low income serviceman or woman, and their family, is often denied occupancy.**

This unfortunate result does not seem equitable or appropriate. Furthermore, the designation of the BAH as “income” for purposes of testing occupancy eligibility under Section 42 is inconsistent with the treatment of the BAH for Federal Income Tax purposes. The BAH is not includable as an item of “taxable” income for military personnel.

It is no wonder that the sergeant in San Antonio could not find an affordable and safe place for his family to live.

I am very proud of the Sec. 42 tax credit program and the resulting projects developed across the United States. They are well planned and maintained. They are closely supervised and inspected by investors and state agencies. They are evidence of a successful and effective way of leveraging federal resources with private sector dollars for the benefit of low income citizens, no matter if the citizens are agricultural, industrial or service workers. But apparently, these units are not readily available for those who serve in the defense of our country.

This exclusion is not, I believe, willful but simply the unintended consequence of conflicting regulatory provisions. It is frustrating, however, when we see unmet housing needs around our military bases, and yet some of the developments proximate to the bases have high vacancies.

This is a point where one should ask “who” does this problem affect and how widespread is it?

I’ve attached some graphics that show the impact in Omaha, the location of Nebraska’s only large military base. Offutt is located in the area with the highest median income in Nebraska.

The first graph shows for single enlisted personnel (E-1 to E-5), there is a problem at the E-4 and E5 level in Nebraska. The second graph shows for married personnel, with no outside income, E-5's are excluded. The third graph (for married personnel and assuming the spouse has a part time job at minimum wage for 1,000 hours per year) shows the problem begins with the family at the E-1 level (the basic "recruit").

Essentially, enlisted and NCO personnel (with dependents) E-1 through E-5, the lowest paid but the trained, technical, working "heart" of our military services, are excluded from this excellent housing resource simply because their "voucher" comes from the Dept. of Defense rather than HUD.

How widespread is the issue? As I've visited with my colleagues across the United States, it depends on the concentration of branch, mission and the availability of on-site housing. It definitely is an issue for other states, particularly those with lower Area Median Incomes.

Is it a temporary problem? As you know, a massive nationwide improvement program of "on base" military housing is underway. Nevertheless, based upon my telephone interviews with the Pentagon's privatization managers, the Department of Defense on average is still counting on the local communities to provide up to 60% of the necessary housing for military personnel. This relatively high percentage requirement will be the average local community's "off base" responsibility AFTER the completion of all the current improvement and privatization efforts.

Will H.R. 3186 cure this problem immediately? I think not, but it can "quick start" solutions as each state reviews its housing situation and inventory and then uses its discretion to adjust the state's Qualified Allocation Plan ("QAP's) accordingly.

Will the proposed change make military personnel with BAH allowances eligible for Sec. 8 Vouchers? It is my understanding that this is not the intent of H.R. 3186 and I am sure the HUD regulators can insert the appropriate language to avoid that circumstance. However, including such language in the bill would certainly clarify the issue and reduce the chances of that occurrence.

Will the provisions of H.R. 3186 fix the problem in Omaha? In my opinion, yes! It will not only allow us to better serve the housing needs of our military personnel, but also enable us to fill vacancies that might exist in Sec. 42 properties. By stimulating "rehabilitation" efforts, it will help us fulfill our goal of keeping Omaha a very "military friendly" city.

Most importantly, the provisions in H.R. 3186 will help improve the quality of life for that sergeant and his family (if he is still in the service) and thousands more like them around the United States. The current military realignment process contemplates moving large new contingents of enlisted personnel to communities in 25 states:

Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

The provisions of H.R. 3186 will help the communities in these states more quickly address the inevitable housing stresses that will come with these personnel realignments.

All of these communities could, like we did in Nebraska, consider using the very effective, shallow, 4% tax credit and tax exempt bonds (under Section 142 of the Internal Code) to produce new housing or to rehabilitate existing housing stock. The net effect of approval of passage of provisions like those enumerated in H.R. 3186, could result not only in the stimulation of the production of new housing for these communities but also in the preservation and rehabilitation of very solid, older, existing housing stock. In short, this would be a “win-win” result because we would be using resources already allocated and appropriated.

In the end, quality affordable housing will help the U.S. retain these highly trained, motivated and courageous volunteers in the military. It just makes good sense to make better use of our human, structural and financial resources.

Let me note, at this time, that we have touched base with many of your colleagues and the housing community on this issue. Many members of the House are currently co-sponsors of this bill. Members from both houses have worked with us to urge HUD to change these provisions. I have attached copies of those communications as exhibits.

The National Association of Homebuilders agrees with the changes proposed by H.R. 3186. The National Mortgage Bankers Association has also been contacted and I believe that they agree that the issue of off-base military housing needs to be addressed.

The National Council of State Housing Agencies favors improvements to the tax credit program and they support the concept proposed in H.R. 3186 with the understanding that state HFA's will be able to use their discretion, just as they do currently through their Qualified Allocation Plans, to introduce the opportunity into their states in a manner that is consistent with their state's housing needs and existing inventories.

This change needs legislative action, however, because HUD, by conversation and by letter dated February 10, 2004 (attached) has told us that they cannot make this regulatory change without evidence of Congressional intent.

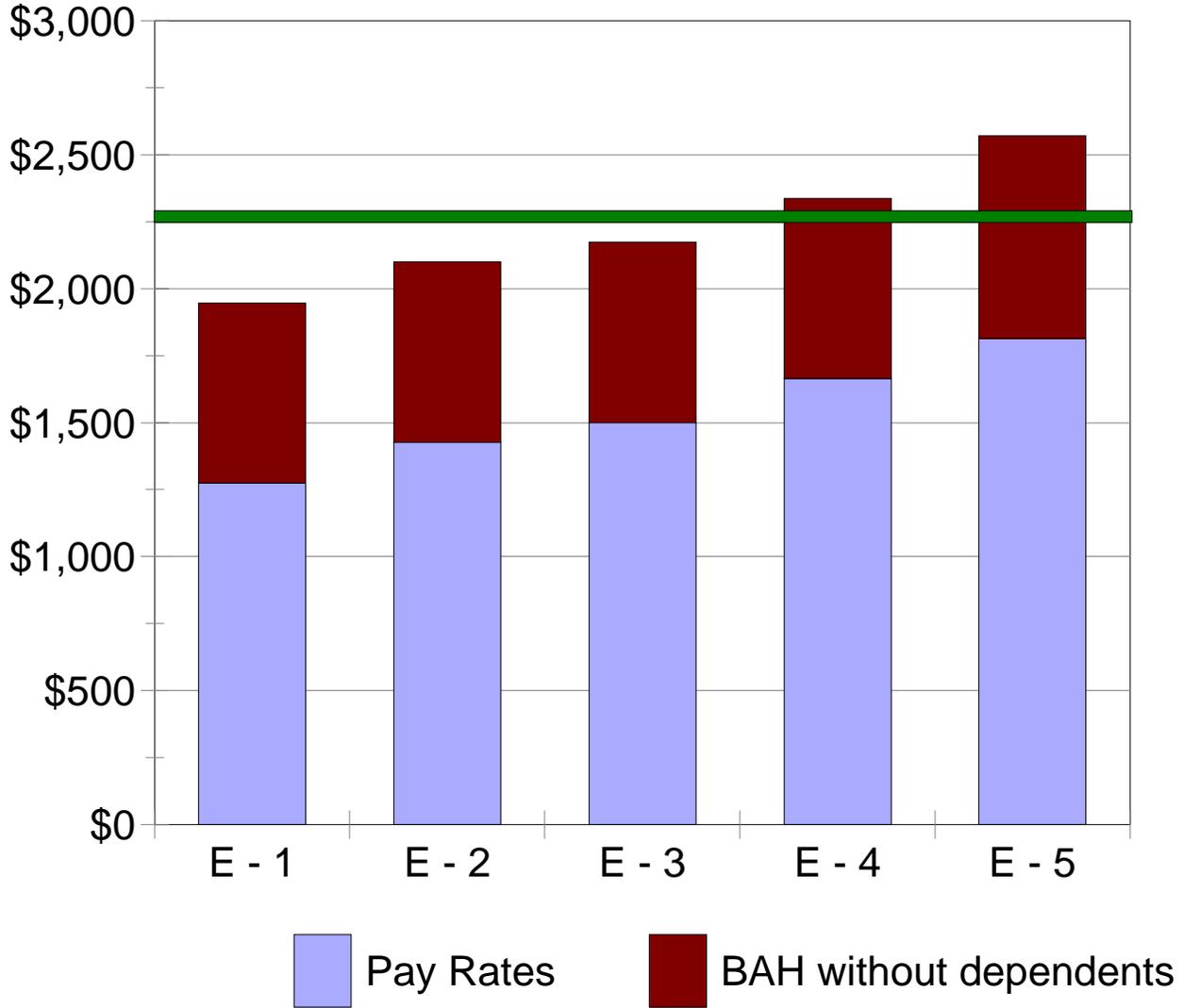
Members of the committee, I close by asking you to consider this low cost opportunity to improve the lot of all the committed “housers”, communities and deserving military personnel and their families.... Please favorably consider the provisions of H.R. 3186 in this committee.

2006 Monthly Basic Enlisted Pay Rates  
+  
BAH Rates without dependents

compared to

Omaha Nebraska  
LIHTC Maximum Income Limits (1 person)

## 1 Person - Income Limit verses Pay Rate + BAH without dependents



### 2006

	E - 1	E - 2	E - 3	E - 4	E - 5
Pay Rates	\$1,273	\$1,427	\$1,501	\$1,663	\$1,814
BAH without dependents	<u>\$673</u>	<u>\$673</u>	<u>\$673</u>	<u>\$673</u>	<u>\$756</u>
Total	<u>\$1,946</u>	<u>\$2,100</u>	<u>\$2,174</u>	<u>\$2,336</u>	<u>\$2,570</u>

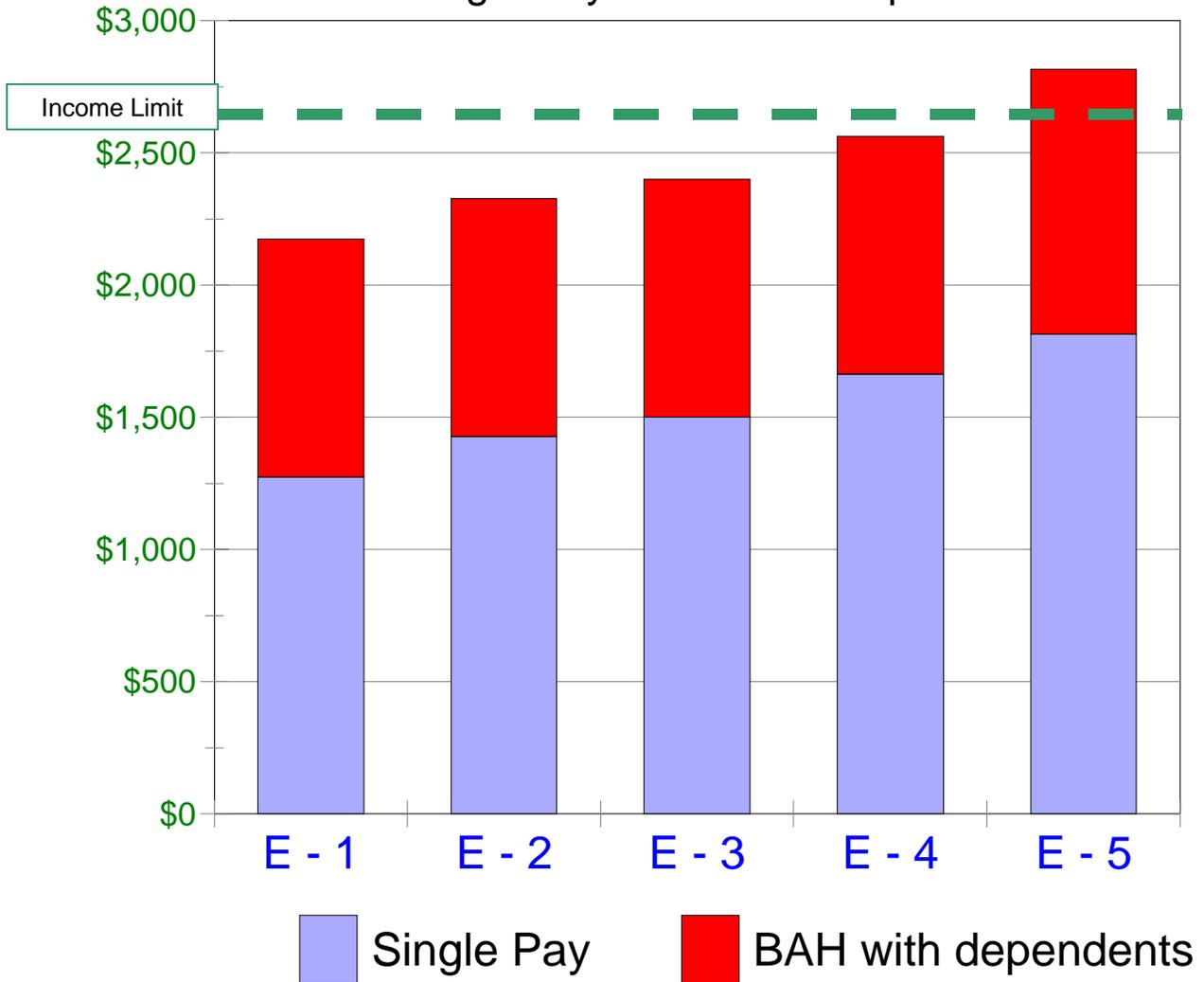
NOTE: \$2,285 = LIHTC Maximum Income Limit (1 person monthly)

2006 Monthly Basic Enlisted Pay Rates  
+  
BAH Rates with dependents

compared to

Omaha Nebraska  
LIHTC Maximum Income Limits (2 persons)

## Income Limits - 2 persons verses Single Pay + BAH with dependents



### 2006

	E - 1	E - 2	E - 3	E - 4	E - 5
Single Pay	\$1,273	\$1,427	\$1,501	\$1,663	\$1,814
BAH with dependents	<u>\$900</u>	<u>\$900</u>	<u>\$900</u>	<u>\$900</u>	<u>\$1,002</u>
<b>Total</b>	<b>\$2,173</b>	<b>\$2,327</b>	<b>\$2,401</b>	<b>\$2,563</b>	<b>\$2,816</b>

NOTE: \$2,610 = LIHTC Maximum Income Limit (2 persons monthly)

2006 Monthly Basic Enlisted Pay Rates

+

BAH Rates with dependents

+

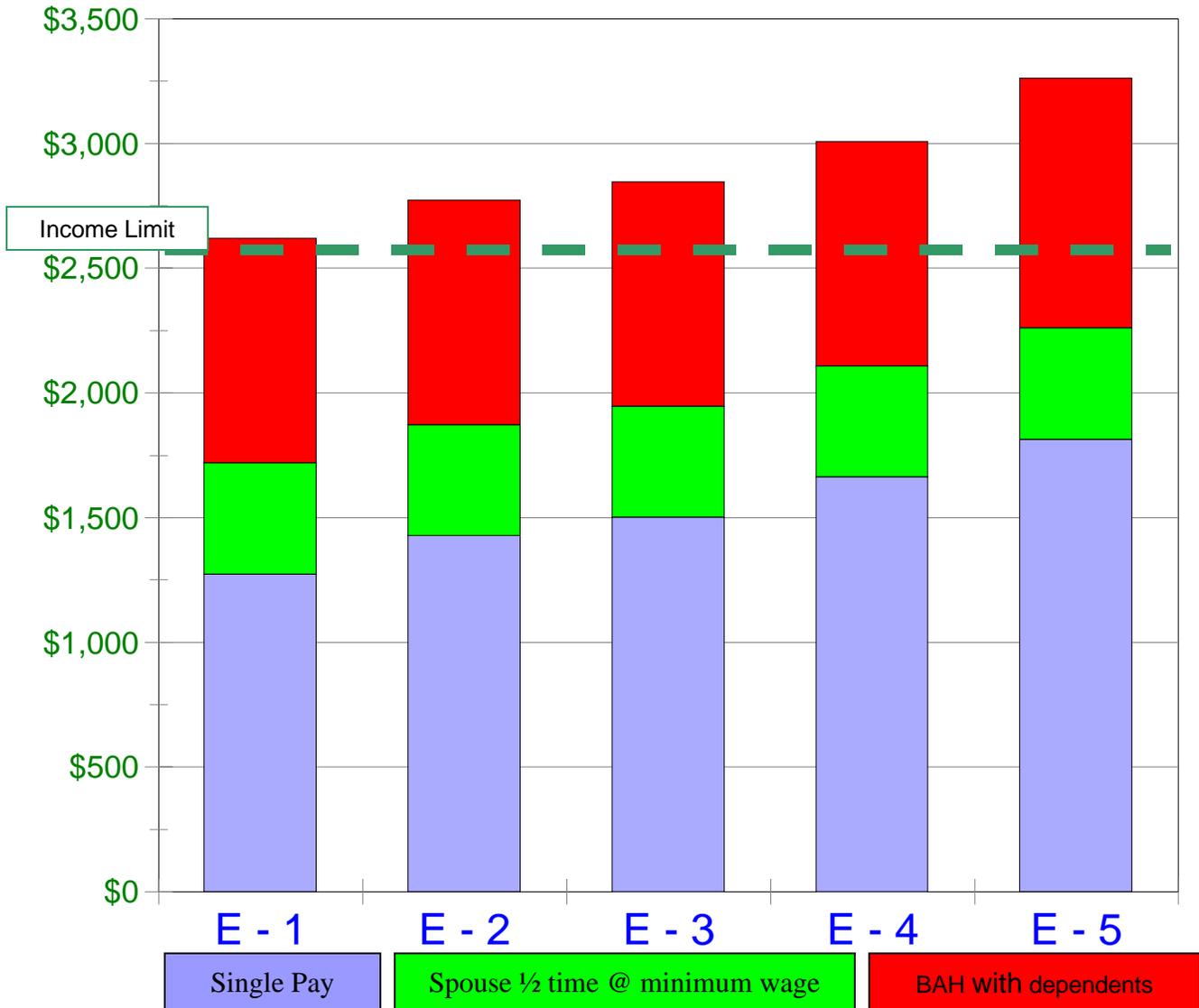
**Spouse 1/2 time @ Minimum Wage**

compared to

Omaha Nebraska

LIHTC Maximum Income Limits (2 persons)

## Income Limits - 2 persons verses Single Pay + Spouse 1/2 + BAH w/dep



**2006**

	E - 1	E - 2	E - 3	E - 4	E - 5
Single Pay	\$1,273	\$1,427	\$1,501	\$1,663	\$1,814
Spouse 1/2 time @ minimum wage	<u>\$446</u>	<u>\$446</u>	<u>\$446</u>	<u>\$446</u>	<u>\$446</u>
BAH with dependents	\$900	\$900	\$900	\$900	\$1,002
<b>Total</b>	<b>\$2,619</b>	<b>\$2,773</b>	<b>\$2,847</b>	<b>\$3,009</b>	<b>\$3,262</b>

NOTE: \$2,610 = LIHTC Maximum Income Limit (2 persons monthly)

Basic Enlisted Monthly Pay Rates Effective January 2006			
Pay Grade	Less than 2 years of service.	More than 2 years of service.	
E-5	\$1,814	\$1,935	
E-4	\$1,663	\$1,748	
E-3	\$1,501	\$1,596	
E-2	\$1,427	\$1,427	
E-1	\$1,273	\$1,273	
E-1 with less than 4 months of service	\$1,178		

### BAH Rates

2006	Nebraska				
Pay Grade	E-1	E-2	E-3	E-4	E-5

#### Basic Allowance for Housing (BAH Rates) for Enlisted Members with Dependents

OMAHA/OFFUTT AFB, NE	\$900	\$900	\$900	\$900	\$1,002
----------------------	-------	-------	-------	-------	---------

#### Basic Allowance for Housing (BAH Rates) for Enlisted Members without Dependents

OMAHA/OFFUTT AFB, NE	\$673	\$673	\$673	\$673	\$756
----------------------	-------	-------	-------	-------	-------

### Limits for the LIHTC program

2005	Omaha MSA Maximum Rent Limits (includes utilities)			
Efficiencies	1 - bedroom	2 - bedroom	3 - bedroom	4 - bedroom
685	\$734	\$880	\$1,018	\$1,135

2005	Omaha MSA Maximum LIHTC Family Income Limits - 60% of Median (annual and monthly)			
Family Size	1 person	2 persons	3 persons	4 persons
Per Year	\$27,420	\$31,320	\$35,220	\$39,180
Per Month	\$2,285	\$2,610	\$2,935	\$3,265

PSP



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

FEB 10 2004

Mr. Timothy R. Kenny  
Executive Director  
Nebraska Investment Finance Authority  
200 Commerce Court  
1230 O Street  
Lincoln, NE 68508-1420

Dear Mr. Kenny:

Thank you for your letter of January 23, 2004, requesting my assistance in changing Department of Housing and Urban Development (HUD) regulations to enable military personnel to qualify for Section 42 low-income housing tax credit projects in Nebraska. The Internal Revenue Service provides that income limits for tenants of set aside units in low-income tax credit projects must be based on the income limits for very-low income families that are published by HUD for the Section 8 program. Section 8 program rules are used to determine the applicant's annual income that is compared to income limits to determine eligibility. HUD's regulations are based on the laws that are enacted by Congress, and regulatory changes are based on Congressional actions. The requested change in regulation is to add the military basic allowance for housing as one of the exclusions from income.

As you know, HUD regulations for Section 8 assisted properties require that annual income include all amounts monetary or not that go to the benefit of the family or are anticipated to be received from a source outside the family during the 12-month period following admission, unless specifically excluded by regulation. Your letter expressed concern that many military families in rural areas do not qualify for Section 42 projects because their incomes exceed the very-low income limit for the locality when the basic allowance for housing is included in the annual income amount.

Congress has determined that the Section 42 low-income housing tax credit program will serve very-low income families based on the income limits for a geographical area as set by HUD. Military families are excluded from Section 42 housing in certain rural localities because their income is more than 50 percent of median income for that area. HUD income limits are used to maintain the limited amount of assisted housing for those with the least amount of resources to obtain housing. The Congressional intent for the Section 42 program does not support a change in regulation.

I hope the information provided is helpful. If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stillman D. Knight, Jr.', written over a horizontal line.

Stillman D. Knight, Jr.  
Deputy Assistant Secretary  
for Multifamily Housing Programs

**United States Senate**  
**WASHINGTON, DC 20510**

June 23, 2005

The Honorable Christopher S. Bond  
Chairman  
Subcommittee On Transportation,  
Treasury, the Judiciary, HUD,  
and related agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Subcommittee on Transportation,  
Treasury, the Judiciary, HUD,  
and related agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Chairman Bond and Ranking Member Murray:

We are writing regarding the Low Income Housing Tax Credit (LIHTC) program. This program was created by the Tax Reform Act of 1986 as an alternative method of funding for housing for low and moderate income households in private developments. It is managed by the states, and has been one of the most successful housing production programs ever created by Congress.

Unfortunately, through a reference to HUD regulations for income determination purposes, the LIHTC program guidelines discriminate against the families of low-income enlisted military personnel who use the basic allowance for housing (BAH) to obtain off-base housing. It is our intention that this pool of decent, safe, and affordable housing financed through the LIHTC and/or tax-exempt bond programs be accessible to active duty personnel and their families.

The Department of Housing and Urban Development (HUD) has stated in a letter that they are unwilling to exempt BAH income from the LIHTC income calculation without an expression of Congressional intent to do so. We believe that the BAH should not be considered income for the purpose of qualifying for affordable housing financed with the LIHTC and/or tax exempt bonds. It is important to note that Section 8 voucher assistance is not considered income for purposes of the LIHTC. Government assistance, whether it be the BAH or Section 8 voucher assistance, should be treated equally and not counted as income for purposes of the LIHTC and/or tax exempt bonds. Therefore, we request the following report language to the Transportation, Treasury, the Judiciary, HUD, and related agencies Appropriations bill for FY2006.

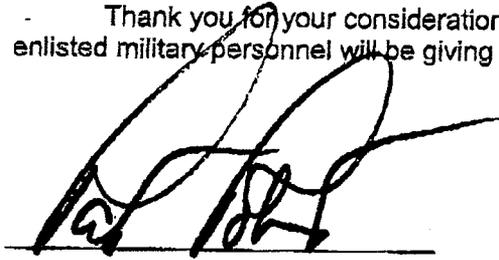
"It is the intent of the Appropriations Committee that the BAH from the Department of Defense not be treated as "income" for purposes of determining family income for Sec. 142 and Sec. 42 of the federal Internal Revenue Code, in the same manner as housing vouchers of all types from HUD. No low income member of the armed services, national guard or active reserves should be denied access to affordable housing because the housing assistance source is the Department of Defense rather than HUD."

We believe this language will provide HUD with the proper notice of Congressional intent necessary to make the needed regulatory changes.

June 23, 2005  
Page 2

Thank you for your consideration. We look forward to working with you to ensure that enlisted military personnel will be giving every opportunity to obtain affordable off-base housing.

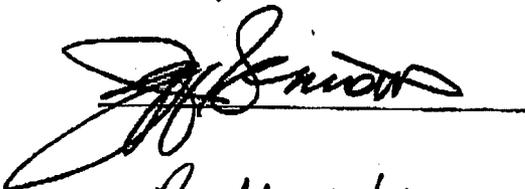
Sincerely,



Charles Schumey

Blanch R. Lincoln

George Allen



York H

Bill Nelson

E. Benjamin Nelson



**NAHB**  
NATIONAL ASSOCIATION  
OF HOME BUILDERS



**LEGISLATIVE AND POLITICAL RELATIONS**

---

*Joseph M. Stanton*  
*Chief Lobbyist*

September 6, 2005

The Honorable Jim Ryun  
United States House of Representatives  
1110 Longworth House Office Building  
Washington, DC 20515

Dear Representative Ryun:

On behalf of the 220,000 members of the National Association of Home Builders (NAHB), I want to thank you for introducing H.R. 3186, the *Building Homes Act of 2005*. NAHB supports this important legislation, which will expand opportunities for enlisted military personnel to have safe, decent and affordable housing.

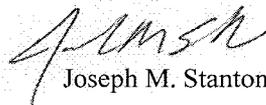
As you know, enlisted military personnel and their families face a shortage of quality, affordable housing in duty stations around the country. This lack of supply is likely to be compounded by the transfer of military units as part of the ongoing Base Realignment and Closure (BRAC) process. While housing shortages for servicemen and women could be addressed effectively through the Low Income Housing Tax Credit (LIHTC) program, enlisted military personnel are ineligible for such housing because of a technicality in housing regulations.

Currently, the Department of Housing and Urban Development (HUD) includes the Basic Allowance for Housing (BAH) as income in its calculation for determining if a family meets the income qualifications for LIHTC housing. HUD does not, however, include Section 8 housing assistance as income in the same income qualification process. This incongruence in the regulations is unfairly penalizing military families and limiting their access to affordable housing.

H.R. 3186 will aid America's servicemen and women by directing HUD to exclude the BAH in its calculation of income for the purposes of the LIHTC program. This will enable more enlisted personnel to secure quality, affordable housing for their families. At the same time, this legislation would result in no additional cost to the taxpayers since credit allocations to the states would not increase.

Again, NAHB appreciates your leadership in introducing legislation to expand housing assistance to America's enlisted men and women and their families. I look forward to working with you on this important issue.

Sincerely,



Joseph M. Stanton

JMS:gb

**Congress of the United States**  
**Washington, DC 20515**

October 11, 2005

Chairman Joe Knollenberg  
House Appropriations Committee  
Transportation/Treasury/HUD Subcommittee  
2358 Rayburn HOB  
Washington, D.C. 20515

Chairman Christopher "Kit" Bond  
Senate Appropriations Committee  
Transportation/Treasury/HUD Subcommittee  
Room SD-133  
Washington, D.C. 20510

Dear Chairmen Knollenberg and Bond:

As you prepare for conference on the Transportation/Treasury/HUD Appropriations Act (H.R. 3058/S. 0000), we strongly urge you to include report language to end discrimination against military families seeking low-income housing.

The Low Income Housing Tax Credit (LIHTC) program was created by the Tax Reform Act of 1986 as an alternative method of funding to provide housing for low and moderate income families in private developments. It is managed by the states, and has been one of the most successful housing production programs ever created by Congress.

Unfortunately, the LIHTC program's guidelines currently discriminate against the families of low-income enlisted military personnel (E-5 and below) who use the basic allowance for housing (BAH) provided by the Department of Defense to obtain off-base housing. The guidelines reference regulations at the Department of Housing and Urban Development (HUD) that calculate household income levels to determine whether families qualify for low-income housing. These regulations do not exclude the BAH from income determinations, although Section 8 housing voucher assistance – the government's equivalent low-income housing support for civilians – is excluded.

The Department of Housing and Urban Development (HUD) has stated in a letter that they are unwilling to exempt the BAH from the LIHTC income calculation without a clear expression of Congressional intent. The BAH should not be considered income for the purpose of qualifying for affordable housing financed through the LIHTC program and/or tax exempt bonds. The decent, safe and affordable housing financed through tax-exempt bonds should be accessible to active duty personnel and their families.

Government assistance, whether it be the BAH or Section 8 voucher assistance, should be treated equally and not counted as income for purposes of low-income housing eligibility. Therefore, we request your strong support for including the following language in the final conference report for your appropriations bill:

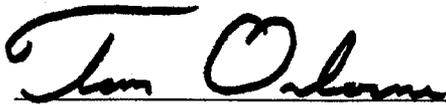
"It is the intent of the Appropriations Committee that the BAH from the Department of Defense not be treated as "income" for purposes of determining family income for Sec. 142 and Sec. 42 of the federal Internal Revenue Code, in the same manner as housing vouchers of all types from HUD. No low income member of the armed services, national guard or active reserves should be denied access to affordable housing because the housing assistance source is the Department of Defense rather than HUD."

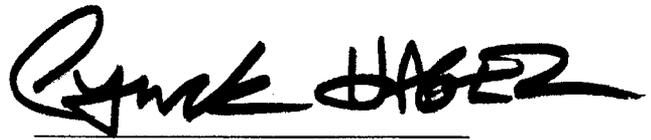
This conference report language will provide HUD with clear Congressional intent to make the regulatory changes necessary to end housing discrimination against military families.

Sincerely,

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

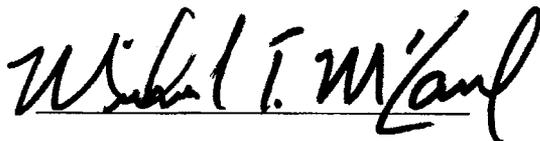
  
\_\_\_\_\_

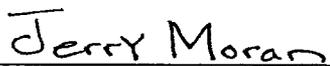
  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

