NATIONAL HOUSING LAW PROJECT
advancing housing justice

STATEMENT OF
GIDEON ANDERS, EXECUTIVE DIRECTOR
NATIONAL HOUSING LAW PROJECT
BEFORE THE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
U.S. HOUSE OF REPRESENTATIVES
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I am Gideon Anders, Executive Director of the National Housing Law Project (NHLP), a 38-year old nonprofit corporation that seeks to advance housing justice for low income persons by, among other things, preserving and increasing the supply of decent affordable housing throughout the United States. NHLP has worked on the preservation of Department of Housing and Urban Development (HUD) assisted and Rural Housing Service (RHS) financed housing for more than 28 years. Personally, I have worked on RHS housing issues for more than 35 years, and on rural housing preservation issues for 28 of those years.

While NHLP is deeply concerned with the adequacy of the supply of decent, safe, sanitary and affordable housing in rural and urban areas, the primary principle that guides our preservation work is the need to protect federally assisted residents against displacement from their homes. The statutory requirement that requires owners of Section 515 housing to maintain their developments as affordable housing for 20 years was enacted in 1979 at NHLP's suggestion when we discovered that the program imposed no use restrictions on owners and that some were converting their developments to other uses by displacing elderly and other households at will. Our staff also assisted in drafting the rural provisions of the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), which was enacted after an increasing number of owners of developments that were financed before 1979 were prepaying their loans and displacing elderly and other households from homes they had expected to occupy for the rest of their lives.

In 1991, NHLP assisted Mid-Minnesota Legal Services in litigating *Lifgrin v. Yeutter,* the first post-ELIHPA prepayment case that challenged an owner's failure to maintain affordable rents after prepaying a Section 515 loan. The residents prevailed in that case and the development was returned to the Section 515 program. NHLP has participated and assisted other legal services programs litigate cases that successfully challenged illegal prepayments of Section 515 loans. We currently represent several Missouri residents in *Charleston Housing Authority v. U.S.D.A*, in which the United States Court of Appeals for the Eighth Circuit recently upheld the district court decision that the ELIHPA prepayment restrictions preclude the housing authority from prepaying its Section 515 loan. The Court also upheld the district court's decision that the housing authority's decision to prepay its loan and to demolish the 50 unit development that served predominantly African-American households violated the Fair Housing Act.

We are also assisting plaintiffs' attorneys in *Goldammer v. U.S.D.A.*, a case currently before the Ninth Circuit, which, for the first time, squarely raises the issue of whether an owner of a Section

515 development can force the prepayment of an RHS loan using state quiet title law that is in clear contravention of federal law.

At the request of the subcommittee, we are testifying here today on HR 5039, which proposes to lift the ELIHPA prepayment restrictions, protect residents through the creation of a new voucher program and provide RHS with authority to extend incentives to Section 515 owners that would enable the owners to revitalize their developments and maintain them as affordable housing for at least an additional 20 years.

We thank you, Congressman Ney, for inviting us to testify. We also thank Congressmen Geoff Davis and Frank for working with you in an effort to resolve a series of difficult issues involving the Section 515 Rural Rental Housing Program. I also want to thank your staff with whom I have met several times to discuss this bill and other matters.

NHLP generally supports the provisions of HR 5039 that enable RHS to revitalize and preserve the Section 515 housing stock. We, however, have serious reservations about the provisions that would lift the prepayment restrictions on projects financed prior to 1989 and about the voucher program that is proposed to protect residents against displacement. In both cases, we have recommendations that we believe will improve the bill.

Our views and these comments are shaped by the fact that the Section 515 housing stock serves the neediest rural households. According to figures recently released by RHS, nearly 94 percent of the 460,000 families currently residing in Section 515 housing are very low-income households. The average household income in all Section 515 developments is slightly more than $10,000, while the average household income of those receiving Rental Assistance (61 percent of the households) is just under $8,000. Households headed by females represent nearly three quarters of all households residing in Section 515 housing and households headed by elderly persons represent nearly one-half. Persons with a disability are the head of an additional 10 percent of the Section515 households. Minority households comprise 29 percent of the households occupying Section 515 housing. Approximately 16 percent of all Section 515 households are rent overburdened, in that they pay more than 30 percent of their income for rent.

To place our comments in perspective, we reaffirm our fundamental belief that there is an absolute and continuing need for decent, safe, and affordable rental housing in rural areas throughout the United States and that the existing Section 515 housing stock is a major and critical element in meeting that need. Rural communities continue to have a greater need for affordable, decent, safe, and sanitary housing than their urban counterparts because housing conditions in rural areas have historically been, and continue to be, worse than in urban areas. The approximately 500,000 units of Section 515 housing that have been constructed in rural areas continue to serve a critical need in those communities. Frequently, those developments are the only available affordable rental housing that is decent, safe, and sanitary.

Our primary concerns with HR 5039 are that it does not become a vehicle for the displacement of nearly 110,000 persons currently residing in Section 515 housing and that it does not deprive rural communities as well as racial and ethnic minorities of critically needed decent, safe, and affordable housing. Our secondary concern is that any voucher program that is adopted should operate in a manner that provides residents of Section 515 housing with a right and an opportunity to remain in their homes or to easily relocate to other decent safe and sanitary

housing. Lastly, we believe that any legislation that seeks to preserve and improve the condition of the Section 515 stock must have a viable mechanism for transferring part of that stock to the nonprofit and public sector, a mechanism for preserving properties that are troubled, and a cost effective system for revitalizing properties that will be continue to be operated as affordable housing for the next twenty or more years.

Rural Rental Housing Residents Should Not be Displaced by Prepayments

HR 5039 should be amended to condition prepayments on the availability of vouchers. The introduction to HR 5039 states that "any revitalization or disposition of [the Section 515] portfolio, which houses nearly 500,000 low-income families and seniors, **should be handled with great care.**" (Emphasis added). Unfortunately, we do not see that care being exercised in the bill as it is currently drafted. Unless amendments are made to HR 5039, over 110,000 residents of Section 515 housing will be displaced from their homes. This is because HR 5039 does not condition the lifting of prepayment restrictions on the availability of vouchers and does not guarantee the right of residents to remain in their homes.

Our estimate of persons threatened with displacement is based primarily on the Comprehensive Property Assessment Portfolio Analysis (CPA) released by the Rural Housing Service in 2004. It concluded that if the ELIHPA prepayment restrictions were lifted on pre-1989 developments, ten percent of the total Section 515 stock, approximately 46,000 units, would be prepaid. Based on RHS recently released data, this translates to more than 73,000 persons that would be displaced by prepayments.

We believe that the number of projects and units that will be prepaid over time will be substantially larger. This is because the CPA estimate was based on a then current real estate market analysis. It concluded, based on market studies conducted in 2003 and 2004, that owners of 46,000 units had sufficient market incentives in 2004 to prepay their loans and convert the housing to market rate housing. The CPA made no effort to estimate whether owners had other incentives to prepay their loans or whether owners who did not have financial incentives in 2004 to prepay their loans would gain those incentives in succeeding years. We believe that both factors will increase the actual number of prepayments.

Our review and analysis of prepayments over the past several years reveals that not all prepayment are driven by market conditions. Many section 515 owners are prepaying their loans because they no longer want to be subject to the RHS reporting and regulatory requirements. Some are prepaying their loans as part of their estate planning process, while others are prepaying in order to free sizeable reserve funds accumulated in RHS restricted accounts.

More significantly, we believe that a large number of owners whose developments are located in markets that may not currently provide sufficient economic conversion incentives, will prepay their loans over the next several years as real estate market conditions in those markets improve. These owners will not prepay their loans immediately, nor will they enter into revitalization agreements that commit them to remain in the program for an additional 20-years. Instead, they will operate the housing under the current 515 program until such time as local real estate markets improve to the point that they are financially induced to covert the housing to market rate housing. Unfortunately, the CPA made no estimate as to the number of Section 515

developments that are located in such markets. We anticipate that as many as 20,000 additional units could be affected, resulting in the displacement of an additional 36,000 persons. This would bring the total number of persons threatened with displacement to nearly 110,000 if HR 3059 is adopted in its current form.

Unfortunately, the current bill does not protect any residents against displacement. Unlike the bill introduced by you, Chairman Ney, in 2003, HR 5039 does not condition the lifting of the prepayment restrictions on the availability of vouchers. This is extremely significant because it places residents at risk if this bill is enacted before an appropriations bill is adopted or if the appropriations are insufficient to protect all residents from displacement. It effectively puts the interest of 1600 owners before the interest of 110,000 low-income residents.

For the past several years appropriations bills have been passed late in the year while authorizing legislation has been passed earlier. Thus, a distinct possibility exists that HR 5039 will be enacted into law before any appropriations are made available for vouchers and owners will be allowed to prepay their loans and raise their rents before residents can be protected by vouchers.

For very low income elderly residents and for residents with disabilities, particularly those residing in market areas where prepayments are likely to occur, the consequences will be catastrophic. Households with incomes of $10,000 or less will not be able to remain in their homes, will not be able to find other affordable, decent, safe, and sanitary housing and will not qualify for the Housing Choice Voucher program because, in most jurisdictions, that program is oversubscribed, as evidenced by long or frequently closed waiting lists.

Our concern about resident displacement is not allayed even if an appropriations bill is enacted within a reasonable period of time after HR 5039 becomes law. This is because the current HUD and RHS voucher programs do not permit assistance to be provided retroactively. In other words, if voucher funding is not available as of the day that an owner prepays a Section 515 loan, residents, even if they are allowed to remain in their homes, will be forced to pay market rent for their units until RHS can issue a voucher that will pay their rent prospectively. Most RHS residents simply do not have the resources to do so.

While RHS is undoubtedly and deservedly proud of the fact that it has recently issued 34 vouchers under its new voucher demonstration program to residents of a Georgia development, the agency is unable to retroactively assist hundreds, if not thousands, of other residents whose rents were increased by owners who prepaid their loans between October 1, 2005 and April of 2006. The Notice recently published in the Federal Register by HUD and USDA, advising the public that the agencies have implemented the demonstration voucher program, precludes housing authorities from providing voucher assistance to any tenant before the tenant's unit is inspected for compliance with HUD's Housing Quality Standards (HQS).

Even if voucher funding becomes available on a timely basis, we are very doubtful that the Administration's Fiscal Year 2007 (FY 2007) $74 million funding request will be sufficient to meet the potential demand for vouchers. Last year, when it first proposed lifting the prepayment restrictions, the Administration estimated that it would need $214 million for each of three years in order to meet the voucher demand created by prepayments. This year, it has only requested $74 million and has expanded the purposes for which these funds can be used to include revitalization activities. Unfortunately the Administration has made no public effort to assess the

number of developments and units that are likely to be prepaid and the number of vouchers that will be needed to protect residents against displacement when the prepayment restrictions are lifted.

NHLP does not subscribe to the assumption underlying the Administration's budget request that, at most, one third of the owners who will become eligible to prepay their loans after the prepayment restrictions are lifted will actually prepay their loans during the first year that the restrictions have been lifted. If, as the CPA report concluded, 1600 owners have a current economic incentive to convert their developments to other uses, we cannot believe that at least a majority of those owners will not want to convert their housing as quickly as they can. There is no reason why they will not jump at the opportunity to terminate their participation in the Section 515 program, thus enabling them to make more money by operating the housing as market rate housing.

Even if one assumes that the Administration's assumptions are correct and that the FY 2007 appropriations request is justified by a reduction in the length of the voucher term--from three years to one year--the appropriations request is insufficient to protect even one third of the residents who are threatened with displacement. This is because the Administration has expanded the purposes for which funds can be used to include revitalization. If the administration plans to undertake a meaningful revitalization program in FY 2007, it will not also be able to protect residents from displacement through the issuance of vouchers.

As we do not believe that low-income residents should face the risk of displacement if voucher funding does not become available in a timely or sufficient manner, we strongly urge that the Committee modify HR 5039 to condition prepayments on the availability of vouchers. At the very least, we urge that the bill be amended to allow RHS to make voucher assistance available retroactively to the date of prepayment regardless of when the unit is inspected for HQS compliance.

We will discuss our concern that HR 5039 does not guarantee the rights of residents to remain in their homes below, when we discuss the adequacy and sufficiency of the proposed voucher program. Before doing so, however, we want to express our concern about the impact and consequences of lifting the ELIHPA prepayment restrictions.

Developments in high cost areas and those that serve minority households must be preserved.
The removal of the prepayment restrictions will decimate the affordable rental housing stock in communities that have the greatest need for affordable housing. Rural communities in which real estate prices and rents have escalated simply do not have other decent, safe and affordable housing. The construction of federally assisted housing that serves low and very low-income households was effectively stopped in the 1980's. The removal of the RHS housing stock, which will occur when the prepayment restrictions are lifted, will eliminate a critical supply of affordable housing from the most needy communities and will deprive low- and very low-income persons of their capacity to continue to live in those communities. My home state, California, is a good example. We expect that practically all the Section 515 housing in the state will be prepaid if HR 5039 is enacted into law. This is because developments that currently charge $300 or $400 a month in rent will be able to charge $1500 or $1800 in rent after the prepayment restrictions are lifted.

Effectively, HR 5039 advances the proposition that we abandon the most highly needed portion of the Section 515 stock and that we deny low-income households the capacity to live in localities in which real estate prices have increased so that we can preserve and revitalize housing in communities where property values have not increased and where the demand for affordable housing is not as great. Such a policy simply does not make sense.

The fact that HR 5039 directs RHS to give funding priority for new Section 515 funding to communities where prepayments have occurred, regrettably will not resolve this problem because the Administration has proposed to stop funding for the Section 515 program. Moreover, even if funding were available, it would be significantly cheaper to preserve the existing Section 515 stock than to construct new units in the same localities.

We are also concerned that HR 5039 repeals a major civil rights provision that seeks to preserve affordable housing that serves minority households by requiring that before a prepayment is authorized the housing be offered for sale to nonprofit or public entities that would retain the affordable nature of the housing. As nearly 30 percent of the households occupying Section 515 housing are people of color, we are concerned that the lifting of the prepayment restrictions will not only remove low-income households from high priced communities but will also deprive persons of color from living in these communities.

We, therefore, urge that the Committee seriously consider amending HR 5039 to continue to require that owners of projects that serve people of color be required to offer to sell those developments to nonprofit or public entities at their fair market value before they are allowed to prepay their loans.

At the very least, we request that the Committee conform the RHS vouchers to the HUD Enhanced Voucher Program. Under that program, vouchers that are issued to persons threatened with displacement remain in the community in which the owner opted-out of the project-based Section 8 program The continued availability of vouchers effectively replaces the project-based housing that has been removed from the community's housing stock. We see no reason why the rural vouchers authorized by HR 5039 should not be treated in the same manner.

Lastly, we urge the committee to extend the prepayment notice provisions contained in the bill to require landlords to inform public and nonprofit institutions located in their market area of their intent to prepay their loans. Such institutions can assist residents that are likely to be displaced in locating alternative housing.

Adequacy of the Proposed Voucher Program

The voucher program proposed in HR 5039 has several significant issues that undermine its effectiveness. First, it does not guarantee residents the right to remain in their homes. Second, it unnecessarily requires residents to live in the Section 515 development on the date of prepayment in order to qualify for a voucher. Third, it sets the voucher subsidy at a level that may disable residents from moving to neighboring communities and otherwise discourages portability and use of the voucher for homeownership. Fourth, it does not address the need for increases in voucher subsidies as rent and utility costs increase or household incomes decrease.

Residents of prepaid project must have a clear right to remain in their homes. As drafted, the proposed voucher program does not guarantee residents of Section 515 housing the right to remain in their homes. The bill simply restricts owners from discriminating against voucher holders by virtue of the fact that they are voucher holders. It does not preclude them from denying current resident the right to remain in their units for any other reason. If a landlord does not like the resident, believes that he or she is too demanding, or if the resident has created any other difficulties, the landlord is free to deny the resident the opportunity to remain in his or her home.

The HUD Enhanced voucher program guarantees residents the right to remain in their apartment when the landlord terminates his or her participation in the Section 8 program. The RHS voucher program should guarantee Section 515 residents the same right. Given that 60 percent of the program participants are elderly or persons with a disability–for whom the process of relocating is a severe hardship–this is critical requirement.

HR 5039 should be amended to make the right to receive a voucher absolute and not subject to the eligibility criteria of a local housing authority. Under the RHS demonstration voucher program, Section 515 residents can only qualify for vouchers if they meet the administrating housing authority's voucher eligibility criteria. We see no reason for this requirement and believe that it should be eliminated. The purpose of the voucher is to protect the resident against displacement. Housing authorities are simply administrative intermediaries that should not be allowed to impose their own eligibility criteria to determine if the resident is eligible for assistance, particularly when the resident remains in the same unit and the landlord has previously approved the resident's eligibility to reside in the unit.

Section 515 residents should become eligible for vouchers as of the date that their landlord notifies them of the intent to prepay the loan. The provision that conditions voucher eligibility on the household actually residing in the prepaid development on the prepayment date is too restrictive. It disqualifies residents from receiving a voucher if they move from the development after receiving a notice of the owner's intent to prepay but before the owner actually prepays. Since owners will now have an absolute right to prepay, there is no reason why residents who chose to move from the development should be required to stay in their units until the prepayment date. Such a requirement hampers residents' capacity to move to other decent, safe, and sanitary housing that may become available in the community prior to the prepayment date. It also unnecessarily increases competition for vacant apartments in the community since all residents of a prepaid development may have to move at the same time. It is particularly restrictive if the owner of the prepaid development decides not to continue to rent the units to the Section 515 residents, forcing them to move in a very short time frame.

This shortcoming can be addressed simply by modifying HR 5039 to state that residents become eligible for vouchers as of the date that the owner sends out the notice of intent to prepay.

The formula for determining the voucher subsidy must be modified. The level of subsidy that is provided under the voucher program is also too restrictive. On the upper end of the formula, the subsidy cannot exceed the rent charged for the prepaid unit, or a comparable unit in the same market, as of the prepayment date. While this should work when the resident remains in the same unit, it may not work if the resident chooses, or is forced, to move to another community or decides to use the voucher to purchase a home. This is because rents or costs in neighboring

communities may be higher and the voucher subsidy may not be sufficient to cover such costs. As with the HUD enhanced voucher program, we suggest that HR 5039 be amended to provide that if the resident moves from the prepaid development, the upper limit of the voucher subsidy be the same as that for HUD Housing Choice Voucher Program in the community to which the voucher holder moves.

On the lower end of the subsidy formula, the bill requires the household to pay at least 30 percent of household income for shelter or the amount that the household paid for rent under the Section 515 program, whichever is higher. While this provision is acceptable as long as the household does not experience a significant change in income or expenses, it needs to be amended to accommodate hardships. Under the HUD Enhanced Voucher program, the amount of subsidy extended to a household can be increased if the household income decreases by 15 or more percent. Because no one benefits from an eviction of a household due to its failure to pay rent due to a decrease in income, HR 5039 should be amended to conform to the HUD Enhanced Voucher program.

Lastly, HR 5039 should clarify that RHS is obligated to adjust the voucher subsidy annually to accommodate rent and utility cost increases imposed by landlords and utility companies.

The Right of First Refusal Must Be Made More Effective

Unfortunately, the provisions of HR 3059 that are intended to provide nonprofit and public agencies, as well as resident organizations, an opportunity to purchase developments prior to their prepayment is ineffective. They only preclude owners of the housing from transferring the housing to anyone except a nonprofit or public agency for 75 days after the owner of the development has notified RHS of his or her intent to prepay the loan. It does not preclude the owner from negotiating a sale with anyone else prior to notifying RHS of the intent to prepay or from negotiating the sale during the 75 days but not completing the sale until after the 75 days have expired. It does not require the owner to negotiate with a nonprofit or public agency in good faith and does not give the nonprofit or public agency a right to purchase the development. Significantly, it does not authorize any funding or subsidies for the purchasing entity to maintain the housing as affordable housing.

HR 5039 should be amended to give nonprofit and public agencies as well as resident organizations an absolute right of first refusal to purchase any development that an owner is seeking to prepay, to provide funding for such purchases, and to provide subsidies to ensure that the development continues to serve low income households.

On a related matter, we also urge that provisions be included in HR 5039 that make all nonprofit and public agencies that are negotiating for the transfer of a Section 515 development eligible for RHS predevelopment grants. Currently, these grants are only available to nonprofit and public agencies that offer to purchase a development when the owner offers to sell the development under the prepayment process. Since prepayments will no longer be prohibited, the authority to make predevelopment grants must be modified.

The Bill Also Needs to Protect Resident of Troubled Projects

Residents of troubled projects should also be eligible for vouchers. HR 5039 should also be amended to address issues related to troubled Section 515 developments. Currently, if RHS is unable to secure an owner's cooperation in bringing a development up to standards, it will foreclose on the development and, if necessary, reduce its foreclosure sale bid to ensure that the property is sold to a third party and not brought into the RHS inventory. When the foreclosure is complete, RHS's subsidy is terminated and residents are either displaced by increased rents, by the new owners revitalization plans, or forced to remain in the troubled and often substandard development.

We believe that residents in troubled projects should be protected in the same manner that residents of prepaid project are protected. Accordingly, we urge that the Committee amend HR 5039 to authorize RHS to issue vouchers to residents of developments that are being foreclosed upon, thus giving them the opportunity to move to other decent housing in the community.

We also urge that HR 5039 be amended to prevent RHS from simply foreclosing on troubled properties and allowing them to be sold to the highest bidder without placing habitability and use restrictions on the properties. Whenever possible, RHS should be required to force the transfer of troubled properties to nonprofit or public agencies and to provide those agencies with incentives and financial assistance to rehabilitate the properties and to rent them to low- and moderate-income households. The agency should only be allowed to dispose of troubled properties to the highest bidder when there is no clear need for affordable housing in the community in which the housing is located. In such cases, the agency should place habitability restrictions on the property to ensure that troubled projects are not used for habitation without bringing them up to decent safe and sanitary standards.

Revitalization

As noted earlier, we generally support the revitalization provisions contained in HR 5039. We think that revitalization of the Section 515 stock is critical if it is expected to serve the needs of low-income households and communities for an additional 20 years.

We do, however, urge the committee to reconsider a provision in the bill that gives owners the right to obtain a commercial rate return on the investment made by limited partners under the Low Income Housing Tax Credit program. The investors already receive a lucrative return on their investment through the tax credit program. We see no reason why owners should be allowed to collect additional returns on that same investment. It will simply provide owners with additional profits and unnecessarily increase the cost of operating developments, which either translates into greater subsidies or higher rents.

We also urge the committee to modify HR 5039 to protect residents in developments undergoing revitalization from displacement, to provide them with relocation benefits and a right to return to their units if relocation is necessary.

In addition, we strongly urge that residents be given an opportunity to review and comment upon proposed revitalization plans. Residents are intimately familiar with the management and condition of the development in which they live. They should be allowed to review the

revitalization plan to ensure that all necessary systems are revitalized and the actions affecting them, such as individual unit revitalization activities, are carried out in a manner that considers the residents' needs.

Lastly, we urge that the provision regarding the termination of the long term use agreement be amended to allow an owner to terminate the use agreement only if the incentives that were offered but not provided are significant and material to the revitalization agreement.

Minimum and Maximum Rents

We endorse the provision in HR 5039 that limits residents rents to 30 percent of income. We also question the need and justification for a minimum rent. Minimum rents are not justified by the fear that extremely low-income households under report their income. We believe that RHS and landlords have ample tools to verify resident income and that rent determinations should be based on that verification. All the studies and reports about income and rent determination that we have seen suggest that both favorable und adverse mistakes are made in the income and rent determination process by landlords as well as residents. Such mistakes affect households of all incomes. Accordingly, we do not believe that extremely low-income households, which are the only household subject to minimum rents, should be penalized by their imposition.

Thank you Mr. Chairman and subcommittee members for the opportunity to present our views on HR 5039. The National Housing Law Project is prepared to assist you and your staff in addressing the various issues that the bill seeks to address.