

The Section 202 Supportive Housing for the Elderly Act of 2009

S. 118

Background:

Affordable housing with supportive services is a key component to our nation's long term care continuum. The HUD Section 202 Supportive Housing for the Elderly Program funds affordable housing for very low-income seniors, and enables seniors to "age in place" with the help of supportive, community-based services. Today there are over 300,000 Section 202 units throughout the United States and an estimated ten seniors are waiting for each unit that becomes available.¹ Approximately 3.4 million seniors live below the poverty level² and among senior renters, 1.21 million have worst case housing needs - meaning they spend over 50 percent of their income on housing or live in severely inadequate housing.³ Under the current Section 202 law, the development and preservation of existing communities can be time consuming and bureaucratic. In contrast, under the Section 202 Supportive Housing for the Elderly Act of 2009, the development and preservation of affordable, supportive, senior housing will be simplified for increased participation by not-for-profit developers, private lenders, investors and state and local funding agencies.

Title I: New Construction Reforms

The Section 202 program was originally a loan paid back to HUD by the sponsor. Since 1990 the program has operated as a capital grant that owners need not repay. Grants are used for the construction of new supportive senior communities and owners receive project rental assistance contracts (PRAC) to subsidize very low-income elderly renters. To promote efficiency and speed up the processing of new developments, proposed Title I reforms would make the following changes to the Section 202 development awards process:

Sec. 101. Amends the "Selection Criteria" used by HUD to select 202 grantees by adding the extent to which the applicant ensures there will be a service coordinator for the property.

Sec. 102. Amends the definition of "development cost limitations" by adding the term "reasonable" so that development costs reflect actual construction costs more closely.

Sec. 103. Amends the requirement regarding owner deposits to specify that deposits only be used to cover operating deficits in the first three years, and cannot be used to cover construction shortfalls.

Sec. 104. Gives the HUD Secretary the discretion to determine that a nonprofit organization that is responsible for the operation of multiple 202 properties may share or transfer administrative responsibilities from local governing boards (as required by current law) to the nonprofit's governing board.

1 "Developing Appropriate Rental Housing for Low-Income Persons: A Survey of Section 202 and LIHTC Property Managers", AARP Public Policy Institute 2006

2 U.S. Census, "Income, Poverty, and Health Insurance Coverage in the United States: 2009"

3 U.S. Department of Housing and Urban Development, *Worst Case Housing Needs 2007*, p. 3, May 2010.

Sec. 105. Amends the non-metropolitan allocation requirement to allow HUD to allocate those funds: (1) through a separate non-metro grant competition or (2) through specific allocations to HUD field offices.

Title II: Refinancing and Preservation of Existing Section 202 Properties

Many older Section 202 facilities are in need of repair, rehabilitation or modernization, but most of them do not have the funds to retrofit their buildings to accommodate the present and future needs of their residents. A recent survey of Section 202 property managers by AARP found that properties holding 20 percent of the 45,000 federally-assisted housing units built between 1959 and 1974 have inadequate reserves to meet current repair needs for accessibility, safety and services. Under Title II, the following changes would enhance the ability of organizations to recapitalize and preserve existing Section 202 housing and increase the funding available for supportive services for aging residents:

Sec. 201. Provides that owners with low-interest rate Section 202 loans may obtain new financing to address the physical needs of the project, even if the new financing does not result in a lower interest rate and corresponding reduction in debt service (as required by current law). Adds the requirement that all owners who refinance will provide affordable housing for 20 years beyond the maturity date of the original loan. To protect tenants in projects with low-interest rate 202 loans, rents may not increase as a result of refinancing except in certain circumstances, and a new preservation project rental assistance (see Section 204) would be available for unassisted tenants.

Sec. 202. Adds to the ways in which owners may use proceeds from a refinancing to include assisting tenants in any HUD-assisted housing owned by the private nonprofit organization, removing the 15 percent limitation on use of funds for supportive services; covering the reconfiguration of obsolete or unmarketable units even if it means fewer units are available; and covering the payment of a developer's fee.

Sec. 203. Permits owners to use residual receipts—excess project income—without limitation for supportive services and for other purposes approved by the Secretary.

Sec. 204. Authorizes a new Senior Preservation Rental Assistance Contract that would be made available to non-profit owners who refinance their Section 202 loans in order to assist tenants in units not covered by project-based rental assistance. Provides that the term of the rental assistance contract would be 20 years with the same general requirements as project based section 8. Requires the project owner to ensure continued project affordability for the 20-year term of the Senior Preservation Rental Assistance Contract or the term required by the new financing, whichever is longer.

Confirms that HUD has authority to subordinate 202 and other subordinate debt to new financing or to permit assumptions of Section 202 debt in connection with a refinancing.

Provides that HUD shall waive prepayment of flexible subsidy loans—extended to owners of HUD-assisted properties in the 1970s and 1980s—upon prepayment or refinancing of a 202 loan

if such a waiver is necessary for the financial viability of the transaction or to preserve the affordability of the property.

Provides that the definition of “private nonprofit organization” involved in refinancing a Section 202 property may be a tax credit limited partnership as defined in section 202(k) of the Housing Act of 1959 in order to take advantage of Low Income Housing Tax Credits.

Requires certain tenant notice prior to the Secretary’s approval of a prepayment.

Title III: Assisted Living Facilities and Expanding Access

Affordable assisted living is an elusive prospect for very low-income seniors. Assisted living costs range from \$1,742 to \$5,197 per month in the United States with the average assisted living resident paying \$2,968 per month.⁴ The Section 202 program includes an Assisted Living Conversion Program (ALCP) to fund the rehabilitation of existing properties to serve frail seniors that need assisted living services. Although HUD does not provide funding for direct services or licensure, the current ALCP program is only open to those buildings able to become licensed under their state’s assisted living statute. This requirement has left the program underutilized. This legislation will make the following changes to increase the availability of assisted living or service-enriched housing to very low-income elderly residents:

Sec. 301. Creates a new category of housing, "service enriched housing," that is eligible for grants under the ALCP program. Service enriched housing is defined as making services available through licensed or certified service providers to assist residents with activities of daily living, including home health services; having a service coordinator on staff; providing separate dwelling units for residents; and making services optional to residents. Grantees could use funds for repairs "that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units" and/or for converting units to assisted living or service-enriched housing.

This provision would also require property management to disclose to residents specific information regarding the availability of services: (1) the right to accept or decline services and choice of provider, (2) the services that are available, (3) the service providers, including how to obtain services, rates, and resident rights and responsibilities.

Sec. 302. Provides that assisted living residents may initially be required to pay more than 40 percent of their income for rent subject to the Secretary’s approval.

Title IV: National Senior Housing Clearinghouse

One of the largest challenges for seniors, their families and service agencies involves identifying affordable senior housing in a given community and determining what services are available to help residents age in place. The various sources that do exist offer limited, often outdated, information. The following provision would establish a national clearinghouse to facilitate the search for appropriate communities serving seniors with low to moderate incomes nationally:

⁴ MetLife, “Market Survey of Assisted Living Costs 2005”

Sec. 401. Requires the Secretary of Housing and Urban Development to establish and maintain a clearinghouse to provide information to the public on senior affordable housing properties including all Section 202 properties, Section 8 properties, low income housing tax credit properties, assisted living properties insured under section 232 of the National Housing Act, assisted living conversion properties, and any other federally assisted or subsidized housing for the elderly. The clearinghouse will include information about the number of available units, the number of bedrooms, the rents, the presence of a waiting list, and the number of seniors on the waiting list, the expected wait for an available unit, and the amenities available including services, common space, activities, level of care, and presence of a service coordinator.

Requires the Secretary to conduct a survey of property owners and sponsors 180 days after enactment of the Act and requires the sponsors to respond to the survey within 60 days of receipt of the request. Requires the Secretary to make the information publicly available through the clearinghouse. Requires the Secretary to conduct a biennial survey to update or modify the information and requires the sponsor to respond within 30 days of the request. Requires the Secretary to update the clearinghouse within 60 days of receipt of the updates from the sponsors.

Requires that the clearinghouse respond to inquiries from state and local governments, other organizations, and individuals and that the information is made available via the Internet website of the Department of Housing and Urban Development in a useable and searchable site. Further requires that the Department establish a toll free number for the clearinghouse to respond to inquiries in the absence of internet access.