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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 3.6 million seniors live below the poverty level[2] and among senior renters, 1.29 million have worst case housing needs - meaning they spend over 50% of their income on housing[3]. Under the current Section 202 law, the development and preservation of existing communities can be time consuming, bureaucratic and often require duplicative waivers from HUD Headquarters in Washington. Under the Section 202 Supportive Housing for the Elderly Act of 2008, the development and preservation of affordable, supportive, senior housing will be streamlined and 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 advance grant for the construction of new supportive senior communities with a project rental assistance contract (PRAC) to subsidize very low-income elderly renters. Even though the award now comes in the form of a grant, HUD continues to undergo a protracted "underwriting" process that often increases red tape, delays the development process and results in escalated costs. 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 Project Rental Assistance form of assistance to require rather than permit the Secretary to adjust annual contract amounts to cover reasonable project costs and any increases including adequate reserves, service coordinators, and service costs when necessary or upon renewal. Provides for increases to cover emergencies including utility cost spikes, insurance cost spikes, tax increases that are outside the control of the owner.

Sec 102. Amends Selection Criteria by adding as a criterion the extent to which the applicant ensures that there will be a service coordinator for the property. Provides that the Secretary retains the authority to approve final rents and development costs and shall execute the capital advance within 60 days of receipt of the commitment from the state or local agency. Requires the

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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: 2005"
3 Harvard Joint Center for Housing Studies, "State of the Nation's Housing 2006"

Secretary to state reasons in writing if HUD reduces the capital advance amount or the initial project rental assistance amount and provides that such reductions are appealable.

Sec. 103. Amends development costs limitations by adding the term "reasonable" to modify development costs.

Sec. 104. Amends the requirement for owner deposit to require that the deposit cover only operating deficits in the first three years and not be held to cover construction shortfalls.

Sec. 105. Amends the definition of "owner" to establish an exception for national non profits from the community based board members as the governing board.

Sec. 106. Provides that owners of Section 202 housing may establish a preference for homeless elderly either as part of the application or at a later time as long as appropriate supportive services are made available on a consistent, long-term, and economical basis.

Sec. 107. Amends the requirement that at least 20 percent of Section 202 capital grants be allocated to nonmetropolitan areas by allowing HUD to allocate those funds: (1) through a separate non-metro competition or (2) through specific allocations to HUD field offices.

Title II: Refinancing and Preservation of Existing Section 202 Properties

The Section 202 program has been in existence for over forty years and represents a multi-billion dollar national commitment to affordable living arrangements for the nation's most vulnerable seniors. Unfortunately, for every unit of affordable housing that is built, two are lost[4] making preservation an important strategy for dealing with our affordable housing crisis. Limited federal funding has left many properties with no source of preservation financing. 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% 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. Owners have an opportunity to use record low interest rates and the substantial equity in these projects to fund the much needed rehabilitation and extend the lives of these properties. 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 the new financing may be obtained for a 202 project to permit the physical needs of the project to be addressed, even if the new financing does not result in a lower interest rate and corresponding reduction in debt service, and only if the rents charged for unassisted tenants do not increase or such families are provided rental assistance under a senior preservation rental assistance contract and the overall cost for providing section 8 rental assistance, if any, does

4 Harvard Joint Center for Housing Studies, "State of the Nation's Housing 2006"

not increase. Provides that the affordability period after a refinancing extend 20 years past the mortgage maturity date and provides authority to mark rents up to market and budget and to increase debt service only in the case of a refinancing of a mortgage rate of 6% or below.

Sec. 202. Amends sources of refinancing to require that the Secretary shall permit risk share lenders to apply the same underwriting requirements as are permitted for loans refinanced under risk sharing as are applied to full insurance loans.

Sec. 203. Amends the uses of unexpended amounts or loan proceeds to include uses that would be used in the provision of affordable rental housing and related social services for elderly persons; to strike the 15% limitation on supportive services; to cover the reduction and reconfiguration of obsolete or unmarketable units; to cover the payment of a developer's fee equal to the lesser of 15% of the acceptable development cost, or the maximum fee allowed by the State's LIHTC program if the new financing includes tax credits and 15% of acceptable development costs if the project is not refinanced with low income housing tax credits; to define "acceptable development cost" so as to ensure viability of these transactions; to permit equity payments to be calculated based on the appraised value of the project, including taking into consideration above market Section 8 rents. Adds a requirement that the rehabilitation shall ensure long term viability of the property.

Sec. 204. Amends the use of certain project funds to permit residual receipts to be used without limitation for supportive services and for other purposes approved by the Secretary.

Sec. 205. Authorizes a new Senior Preservation Contract that would be made available to a non-profit owner as project-based rental assistance for units not covered by project-based rental assistance in the case of a preservation transaction. Provide that the term of the contract would be 20 years subject to annual appropriations with the same general requirements as project based section 8. Require the project owner to enter into a use agreement to ensure continued project affordability for the greater of the term of the Senior Preservation Contract or such term required by the new financing.

Confirms HUD's authority to sell Section 202 loans. Authorizes the Secretary to carry out up to a five state demonstration to sell HUD held Section 202 mortgages at no more than the unpaid principal balance of the loans to state HFAs for the purpose of demonstrating the efficiency, effectiveness, quality and timeliness of asset management and regulatory oversight by state housing finance agencies. Limits the HFAs selected for the demonstration from tying refinancings of Section 202 mortgages to state agency products including awarding preference in tax credit allocations or requiring state agency financing. Requires the Secretary to conduct an evaluation of the performance and results of the demonstration and report to the Congress not later than 3 years after enactment the findings of the evaluation study and any recommendations for expanding the demonstration.

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 HUD with authority not to require prepayment of a flexible subsidy loan upon prepayment or refinancing of a 202 loan if such waiver is necessary for the financial viability of the transaction or to preserve the affordable character of the property.

Provides that the definition of "private nonprofit organization" in a refinancing may be a tax credit limited partnership as defined in section 202(k) of the Housing Act of 1959.

Requires certain tenant notice and tenant participation 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.[5] 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 to very low-income elderly:

Sec. 301. Amends the definition of assisted living under the Assisted Living Conversion Program to permit non licensed facilities that provide supportive services either directly or through a recognized and experienced third party at the resident's choice as eligible grantees.

Sec. 302. Amends the definition of rental assistance for assisted living to permit residents with assisted living vouchers to pay more than 40% of their income for rent subject to the Secretary's approval.

Title IV: Facilitating Affordable Housing Preservation Transactions

Sec. 401. Restricts the Secretary from imposing any condition that restricts the amount or use of sale or refinancing proceeds, or requires financial reports unless the condition is expressly authorized by an existing contract between HUD and the owner or is a general condition for new HUD insured financing. Makes null and void any such condition imposed by the Secretary after January 1, 2005 and authorizes re-issuance of any use agreement without the voided condition.

Title V: National Senior Housing Clearinghouse
One of the largest challenges for seniors, their families and service agencies face involves identifying affordable senior housing in a given community and determining what services are

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5 MetLife, "Market Survey of Assisted Living Costs 2005"

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 low and moderate income seniors nationally:

Sec. 501. Requires the Secretary of Housing and Urban Development to establish and maintain a clearinghouse to provide information to the public of 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 90 days after enactment of the Act and requires the sponsors to respond to the survey within 30 days of receipt of the request. Requires the Secretary to make the information publicly available through the clearinghouse. Requires the Secretary to conduct an annual 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. Authorizes such sums as may be necessary to operate the clearinghouse.