aahsa®
creating the future of aging services

SAHF
THE BUSINESS OF MISSION

April 2, 2010

Carol Galante
Deputy Assistant Secretary for Multifamily Housing Programs
U. S. Department of Housing and Urban Development
451 7th Street, SW, Room 6106
Washington, DC 20410

Dear Ms. Galante:

Thank you very much for the productive outreach meeting last week and the opportunity to provide written comments on several key questions related to the reinvention of the section 202 program. We applaud your effort to make the program relevant in today's environment and to redesign it in ways that attract sufficient additional capital and services resources to get the program back to scale, improve the lives of residents, and enable sponsors to serve those with greater frailties. The "game-changing" opportunity is to combine 202 and other capital funding for bricks and mortar with HHS program funding for predictable, long-term mainstream services in a way that serves low-income seniors effectively and cost-effectively.

American Association of Homes and Services for the Aging (www.aahsa.org) members serve as many as two million people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our 5,700 members offer the continuum of aging services. Stewards of Affordable Housing (SAHF) is a national consortium of sophisticated affordable housing nonprofits that includes many of the largest providers of section 202 housing.

The demographic need is clear. The number of seniors in America is expected to double by 2030, when one in five citizens will be over the age of 65. By 2050, one out of every four seniors will be age 85 or older. Currently, some 3.6 million seniors are living below the poverty level. Research shows a strong correlation among old age, chronic conditions, disability, and the use of long-term care services.

As you know, Congress has already funded the section 202 program for FY 2010. We believe strongly that funding should continue in FY 2011 and are seeking to cause that to happen. These facts make even more urgent the program reinvention on which you are embarked, so that these funds are spent in a way that points to the future. Finally, we share your belief that incremental change will not be enough. Accordingly, this letter not only responds to the specific questions you posed but also emphasizes the critical role of assured services in achieving real impact. As the reality of the "age tsunami" becomes clear to the American public and the Congress over time, the section 202 program should be a solution that can grow to meet the need.

A brief history.

As background for our comments, we think it would be useful to review how we found ourselves in a situation today that frustrates all of us inside and outside of government.

Since its inception in 1959, the section 202 program has provided decent, supportive housing for several generations of low-income seniors, housing developed and operated by nonprofit sponsors. In its earlier years, until the 1980s, the program financed or helped finance properties that are still significant local institutions scaled to the needs of local markets.

Declines in funding for housing development including section 202, annual fair share limits on property sizes, and selection criteria often have channeled funds to weak markets and even caused overbuilding in some places despite the overwhelming national need while producing inefficiently small properties in robust markets. Program volume dropped dramatically from 20,000 units in 1976 to about 3500 in 2008. Misguided cost control strategies, especially in the 1980s, minimized common areas needed for services. Program rules also forced selection of energy systems based on first cost rather than life cycle cost, and many properties are now saddled with unnecessarily high utility bills or have been forced to replace HUD-specified original heating and cooling equipment. In recent years, funding awarded to 202 projects has been chronically insufficient to do the whole job, so while there has been some leverage in the program, most of the outside funds have been used to meet shortfalls in 202 funding. The concept of combining 202 funding with low income housing tax credit (LIHTC) equity was and is a good idea promoted since 2000 by the sponsor community, but its promise has been slow to take hold because it has been hobbled by overly complicated processing.

Of course, sponsors have been complicit in all of this by responding to the HUD NOFAs, but for a reason. They have seen the 202 program as the only way to serve very poor seniors and thus their missions.

It is against this background that we respond to your questions regarding the optimum redesign of the program.

Should HUD require that 202 projects leverage low income housing tax credit equity in order to reduce per unit capital advance amounts?

Section 202 development can only begin to get back to scale as a program and with respect to individual properties if the 202 grant funding can leverage other sources of capital and be matched with mainstream services funding. If we craft a model that works cost-effectively for seniors, over time the program can grow to match the need.

The most promising source of leverage is the LIHTC, and we strongly support its use, though several factors counsel against *requiring* its use in the 202 program. The current softness in the tax credit investor market makes the LIHTC effectively unavailable in some jurisdictions, and the substitute cash grant programs are temporary and smaller. Moreover, application cycles rarely are in synch with 202 funding cycles. Finally, it is not clear that all state housing finance agencies (HFAs) are ready or willing to allocate tax credits to senior housing with services, although that might be remedied by legislation setting aside an additional LIHTC allocation for senior housing with services.

Many states attempt to encourage the development of supportive housing for persons with special needs in their tax credit allocation plans.[1] A study by the Corporation for Supportive Housing found that nine states set aside a portion of their tax credits for supportive housing projects.[2] Arizona, however, is the only one that specifically targets seniors. Set-asides in the other states either target other special need populations, such as the homeless, or encompass multiple special needs populations. More frequently, states promote supportive housing in the allocation plans by awarding points in the competitive scoring process for projects serving special needs populations. While 20 states award additional points, only 11 offer points for supportive housing targeted to elderly populations.

Since rents cannot support services, we also note that investors in LIHTC properties with significant services typically insist on firm assurances of funding for those services and a safety valve that allows a sponsor to eliminate services if they are not funded. The optimum solution from an investor perspective would be to have reliable commitments from Medicare, Medicaid, and other key sources of services funding for the 15-year LIHTC compliance period. We urge the Department to seek such commitments from HHS as part of its silo-busting effort to obtain access to mainstream service programs.

Over the long term, the LIHTC market is likely to wax and wane, so we recommend that the new program design accommodate that reality. HOME, CDBG, and FHLB AHP have been used, and we expect that they will continue to be used in the future. But we also hope and expect that there will develop other sources of leverage.

Although, for the reasons outlined above, we do not recommend requiring the use of LIHTC proceeds for leverage, we strongly support the use of the competitive process to incentivize sponsors to develop properties that use leverage, including the LIHTC, to achieve scale appropriate for the markets they serve.

---

[1] Special needs populations might include people who are currently or formerly homeless; people with serious, chronic mental health issues; people affected by substance use; people with HIV/AIDS; people with physical or developmental disabilities; ex-offenders; frail elderly; homeless or emancipated youth; victims of domestic violence and others.

[2] James Tassos, *Using the Housing Credit for Supportive Housing: An Assessment of 2005 State Policies*, (San Francisco, CA: Corporation for Supportive Housing, 2006), 6. Link to http://www.practitionerresources.org/cache/documents/637/63766.pdf

We would like to make a final point here. The goal of the reinvented program should be not to reduce 202 funding on a per-property basis, but to add other funding to enable sponsors to build optimally sized, cost-effective properties.

Should HUD block grant 202 funds to States for allocation and administration of funds (similar to HOME)?

Distributing 202 funds by block grant has intuitive appeal, and LIHTC sponsors have found that grants and loans from city-controlled HOME funds have been very useful. We believe this option merits further consideration, but we have several concerns.

One concern is the lack of institutional capacity at the state level. Many HFAs are not well set up to administer federal pass-through grant and loan programs. In addition, HOME funding is typically provided in the form of capital grants or loans. Section 202 properties, however, can serve the poor only with PRAC contracts, and HFAs have no PRAC experience. Indeed, many HFAs are not even section 8 contract administrators. If, as we suggest above, there is leveraging from other sources, HFAs would be administering funds for properties that are not in their LIHTC portfolios. Even if the plan would be to encourage states to build that capacity, from an HFA perspective the program scale may not warrant the staff cost, especially in small states.

An alternative might be to provide targeted block grants not to HFAs, but to state housing cabinet departments. This would achieve 50-state coverage, but undermine the key advantage of "one-stop shopping" at the HFAs and might reduce the incentives of the HFAs to launch coherent programs.

HUD could achieve most of the benefit of block granting by reducing its underwriting control, especially in cases where the 202 awards are a modest part of funding that also includes LIHTC equity or other major sources. HUD already has the authority to delegate most of the processing of 202 capital advances after the selection for an award to a governmental entity providing the balance of the financing, typically an HFA. HUD might need to retain a residual underwriting capacity for properties when there is no dominant other provider of capital.

Finally, we are very supportive of the efforts of HUD and HHS to develop a partnership to combine a housing platform with HHS-funded services, and are concerned that block granting the funds would take the energy from the long-term partnership between HUD and HHS and with other federal agencies that will be essential to a vibrant program that meets the needs of aging seniors in their homes, whether houses or apartments.

As noted below, we are inclined at this stage to believe that a national or regional competition is the best approach for the new program. Even if the redesign ultimately leads in the direction of a block grant, we suggest that bridging towards that result would be more productive than trying to make that change now.

Should HUD provide 202 funding only to projects that are substantially ready to proceed (e.g., have local approvals, funding commitment, and underway with working drawings)?

We share your implicit goal of shortening the time between the appropriation of 202 funds and placement in service of senior housing, and support steps to avoid the dropping of projects altogether because on close analysis they turn out to be infeasible. A property with multiple funding sources—202 or not— inherently takes time, and some of the criticism for delay is unwarranted or should be laid at the doors of projects underfunded by HUD --- and duplicative processing.

Speeding up placement in service involves a balancing act. For its part, HUD can accelerate placement in service by eliminating duplicate processing, by expecting serious market analysis, by conducting its own careful review of the market, and by seeking legislation, if necessary, to reduce the pressure to make awards in communities where there is already an adequate supply of affordable housing for seniors.

In our experience, the principal factor that leads nonprofit LIHTC developers to bring in their projects on time is sponsor experience (or co-sponsor experience). Experienced LIHTC sponsors apply their own feasibility screens as they sort out potential projects, declining to use limited development staff and pre-development funds to pursue projects that are unlikely to be built. We urge the Department to proceed cautiously before relying heavily on development team contractors or consultants especially for properties with leveraged financing. It is our experience in the LIHTC program that it is very often sponsors who are over-reliant on technical assistance that then are unable to run, finance and refinance, and asset manage their properties over time.

We recognize that, beyond sponsor capacity, practical project readiness also plays a role in moving projects to construction and placement in service. Certainly the existence of a comprehensive financing plan, drawings at some level of detail, site control, and a reasonable likelihood of obtaining proper zoning and variances are critical. However, if 202 funding is insufficient to meet a large share of the demand, forcing sponsors to proceed to expensive construction drawings and permits before award may deter the best sponsors and, at best, wastes resources that could go into affordable housing. Moreover, there is significant variation around the country in the cost of securing zoning and other entitlements. We would be pleased to work with you to develop more detailed standards for readiness that take these variations into account.

In a reinvented program, long-term service commitments will be another essential part of readiness to proceed, and the availability of those commitments will depend materially on the success of HUD's silo-busting work with HHS.

Should HUD provide 202 funding only to sponsors that have a significant track record in developing similar housing?

Giving heavy weight to a sponsor's capacity and track record in developing affordable supportive housing for seniors would greatly strengthen the program as it continues its long-term move from a program that provides full funding to one that provides only one of multiple sources of funding. The likelihood that the housing will be built in a timely manner is higher. The hand-holding required between HUD and the sponsor will be diminished. An Arthur Anderson study completed for HUD in 2000 identified the lack of experience among many sponsors as a major factor in delaying the development process.

We also believe that the required base of experience should include the provision or accessing of services. HUD's NOFAs typically have stated that "you, or a co-sponsor, must have experience in providing housing *or* services to elderly persons." However, unless a sponsor has experience in working through the complex housing development and financing processes, delays in reaching initial closing are likely. At the same time, a section 202 sponsor should have experience in providing or accessing supportive services if the section 202 program is to achieve its mission of providing supportive housing so that seniors can age in place. In short, experience in both housing development and supportive services should be critical to the 202 awards process.

As in any program, however, there must be room for new participants and there is a need to foster the strong players of tomorrow. We would recommend that the newer, less experienced sponsors be required to partner with sponsors with capacity and a track record. As co-sponsors with experienced developers, ambitious start-up organizations can bring real value to 202 housing by drawing on their local contacts and building their expertise for the future.

Should HUD provide 202 funding only for projects that reserve some or all supported units for frail seniors?

We believe that section 202 properties linked with health and supportive services can provide a cost-effective answer for meeting the long-term care needs of lower-income seniors. The economies of scale created by affordable, multi-unit residential settings provides an efficient platform for the delivery of home and community based services to help residents meet their needs as they age. The potential also exists for these congregate properties to become a hub for service delivery, extending their reach to seniors in the surrounding neighborhoods. We do not believe that Section 202 housing should be targeted or reserved only for the frail elderly.

The population of section 202 properties typically involves a range of levels of frailty and vulnerability to frailty. An important goal is to support all residents' ability to age safely in the community by making available a range of services to meet their evolving needs and to prevent the premature need for higher levels of care. Some residents may initially be independent and benefit from wellness and prevention programs (e.g., fall prevention). As a senior ages and becomes frailer, she may benefit from congregate meals, help keeping up her apartment, self-care education, and medication management to ultimately needing assistance with managing their personal care. The most frail, chronically disabled elderly residents benefit from more intensive care coordination, including efforts to minimize ER and hospital use and, where necessary, facilitating appropriate transfers to and from the housing property or bringing in hospice care.

Savings in Medicaid from preventing premature entry into higher levels of care and in Medicare from preventing repeat hospitalizations (the "frequent flyer") may materialize sooner and more dramatically if the seniors in section 202 housing were frail or primarily frail and nursing home eligible. However, we believe that section 202 properties should accommodate diversity in their senior population. We do not believe that the section 202 program should become a nursing home program or even an assisted living program by another name.

We also believe that the supportive services to be provided in section 202 properties should be those adapted to the needs of the residents and should include services beyond those typically paid for by Medicaid waiver dollars, where they are available. Supportive services are much more than health related services and they can forestall the need for more intensive health related services. Those services are typically paid for by programs funded under the Older Americans Act or by CDBG or state and local programs and often include services such as housekeeping, chore services, congregate meals, and transportation. Those services are provided to the appropriate range of residents and not restricted to the frail elderly.

Should HUD provide 202 funding through a national competition?

In its FY2011 HUD budget proposal, HUD indicated that one of its goals for the section 202 program is to fund larger projects that can be more cost effective and serve as better platforms for the delivery of supportive services. The current statute requires HUD to allocate funds on a fair share basis. HUD has interpreted fair share as requiring allocations to each field office which result in allocations of 20 or 30 units per field office even in major metropolitan areas and may result in projects built where there is no real demand.

Awarding funds through a national competition is clearly one way to fund larger projects. However, without some geographic distribution in the awards over time, the program could lose its support in Congress and the nonprofit community. There are other allocation methods that may achieve fair share and larger projects. HUD could consider collapsing the allocation areas to a larger area than the field offices, such as the HUB or regional office level. Or the awards could be made on a rotating basis over a three year or some other period.

We agree that funding larger projects does have an advantage in providing housing with services. It is difficult for sponsors to achieve an economy of scale in projects to provide services to elderly residents to help them age in place as their needs change with only a small number of units. Service providers also need a sufficient level of demand to generate fees to cover service costs and/or to make services cost-efficient. Larger projects provide economies of scale in developments by spreading design and system costs across more units and anticipating savings in management down the line.

The award selection process should not necessarily demand only larger projects. Projects should be scaled to demand in their markets, the development realities there, and the critical mass needed for the services they provide.

The Redesigned Section 202 Program – Future Game Changer

In addition to responding to the questions you posed, we would like to emphasize a key element that is needed to make this a game-changing reinvention. While a few section 202 and LIHTC developers and others have managed to cobble together facilities and programs that meet the full range of needs of low-income seniors, others have been driven by point systems to promise supportive services without reliable, long term funding. The current approach has not gone to scale and is not scalable without firm, long-term commitments for mainstream services funding from HHS, state and local programs from the start. Equally important is a set of program rules that fosters the integration of HUD and HHS and other supportive services programs.

As you made clear at the stakeholders' outreach meeting and as our comments confirm, any redesign of the section 202 program needs to be a signature program that attracts significant new housing and services resources to help meet the challenge of serving the exploding population of low-income seniors in their rental homes. We are anxious to continue to work with you to achieve a program that is effective and practical and that attracts significant new resources to serve our common goal of meeting cost-effectively the needs of low income seniors.

Very truly yours,

AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING

William L. (Larry) Minnix
President and CEO

STEWARDS OF AFFORDABLE HOUSING FOR THE FUTURE

William C. Kelly, Jr.

William C. Kelly, Jr.
President