The American Association of Homes and Services for the Aging
Written Testimony

House Financial Services Committee
Subcommittee on Housing and Community Development

Legislative Options for Preserving Federally- and State-Assisted Affordable Housing and Preventing Displacement of Low-Income, Elderly and Disabled Tenants

The members of the American Association of Homes and Services for the Aging (www.aahsa.org) help millions of individuals and their families every day through mission-driven, not-for-profit organizations dedicated to providing the services that people need, when they need them, in the place they call home. Our 5,800 member organizations, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

On behalf of our members and the residents they serve, AAHSA would like to thank Chairman Frank and the Committee for tackling the affordable housing preservation issue in this comprehensive legislation. In recent years it has become evident that the loss of affordable housing will accelerate without this important legislation at the precise time that the availability of affordable housing for seniors is so challenged. Under Title VII of this bill the Section 202 Supportive Housing for the Elderly program will be reformed and modernized to address growing need for innovative financing of new developments and preservation projects, the increasing demand for supportive services to help seniors age in place, greater opportunities for rural senior housing and the expansion of affordable assisted living. AAHSA enthusiastically supports this important bill and urges its adoption.

New Development

The Section 202 program is the most successful elderly housing production program in the country. Both development and preservation deals are increasingly complex as gap financing from multiple sources is necessary for almost every Section 202 project built today. State and local requirements and varying eligibility has made this program more and more difficult to use effectively. A number of provisions under Title VII will make the development of new supportive senior housing communities easier and more uniform, including setting adequate development cost and PRAC limits, requiring that the funding of service coordinators be included as a selection criteria, factor, requiring the proper use of the up-front owner deposits, and establishing a new method of allocating non metro units. Subtitle A of Title VII also requires HUD to provide adequate PRAC increases and increases for unexpected and unavoidable cost increases, such as insurance premiums or utility costs. We were delighted that what was once the centerpiece of the new construction subtitle of this legislation, delegated processing, of mixed finance transactions was included in last summer's landmark legislation reforming the GSE's and establishing the National Housing Trust Fund.

Preservation

The core of Title VII and the reason it appropriately is included in this preservation bill is Subtitle B. It will further the preservation of senior housing, one of the most important federal housing policies Congress can endorse and facilitate. Preservation of existing housing can be done at a fraction of costs of new construction and it helps retain the best HUD properties in prime locations with access to transportation and services. Many elderly housing facilities have "aged" and need modernization and/or retrofitting and refinancing in order to accommodate supportive services to aging residents, assure quality of life, and accessibility. These projects could be preserved for an additional 20 years with the infusion of dollars far less than the cost of new construction.

The key changes are detailed below and highlight the difficulty involved in navigating the various legal and regulatory requirements involved in the multiple funding programs involved in a given project. Although, many of the provisions simply require HUD to do what it already has the discretion to do, there are some that require statutory changes.

- Refinancing Older Section 202 Properties
  Title VII, Subtitle B provides for critical tools to address the refinancing needs of older Section 202 properties, those that need the most work and are most at risk for loss. In particular, the original Section 202 program was a 3% loan for 50 years targeted to low-income elderly and sponsored by non-profits. These properties are not currently able to refinance and preserve the properties as affordable without the legislative authority in this Subtitle. (The original refinancing authority only applied to properties where the interest rate would be reduced.) In addition, Subtitle B provides authority to increase debt and mark rents up to budget with the Secretary's approval as most of these projects require significant rehabilitation and interest rates will be higher than their original 3% interest. Finally, the legislation changes the affordability period for refinancing. Under the initial authority, a use agreement was required only until the original mortgage matured. This legislation would require 20 years of affordability after refinancing.

- Senior Preservation Rental Contract
  This same cohort of properties also desperately needs the project based rental assistance authorized in the Subtitle to prevent the displacement of existing seniors living in unassisted units and to make certain that the housing is affordable into the foreseeable future. A total of 289 older Section 202 projects with 42,700 units (59% efficiencies) were built during the initial period (1959-1974). Of those projects 261 remain. Of those, 168 have project based section 8 assistance, a total of 13,054 units and 19 have rent supplement contracts, a total of 324 units. Only 24 projects have 100% Section 8 assistance. A GAO Report that Chairman Frank requested in 2004 identified 41 Section 202 properties with mortgages maturing through 2013. Of the 3,208 units in those properties, only 871 or 27% have section 8 assistance.

The older Section 202 properties are not eligible for enhanced vouchers, placing those properties and residents the most at risk for problems. These projects, built between 1959 and 1974 are in need of substantial rehabilitation in order to be preserved for another 30 – 40 years. Unfortunately any attempt to refinance these projects and do the necessary work means that the existing residents, who are paying rents that have been suppressed by the provider to serve a low-income population, will face rent increases that they cannot afford. The creation of a senior preservation rental contract would permit owners to actively preserve properties to serve existing and future seniors. Without a program to provide rental assistance for these properties, these Section 202s become more likely to leave the affordable housing portfolio as they reach the end of their mortgage term.

An AAHSA member acquired a property in the Cleveland area that illustrates these issues. The property was developed in the early 1970's when HUD enticed faith-based and other non-profits to address a severely underserved senior housing market by building small, efficiency units. Sixty percent of the units were efficiencies. The original non-profit owner had worked hard to maintain the building and keep the rents low, reflective of the neighborhood. Over time, however, apartments that were once desirable and marketable have been overshadowed by newer, more attractive and marketable affordable alternatives for the elderly. Over time the building and its systems aged, like the residents, and are in need of rehabilitation and reconfiguration.

None of the residents received rental assistance and were ineligible for enhanced vouchers once the rehabilitation was complete. To overcome this dilemma and to avoid displacing low income elderly, the purchaser pieced together funding from at least four sources, including the city, the state, tax credit equity, and subordination of existing HUD debt. Had rental assistance been available from the outset, funding streams at least from the city and the state may have been unnecessary and available for other affordable housing projects. The funding for rental assistance has run out. Over 20 residents have had to move due to the lack of subsidy and more seniors are on the verge of displacement.

- Payment of Equity in Sales Transactions
  Christian Church Homes of Northern California, an AAHSA member, has attempted to purchase troubled 202 and 236 properties from other not-for-profit, single asset owners that were no longer interested in pursuing affordable housing. HUD denied their requests to purchase the properties at a price above the outstanding indebtedness, thus denying the not-for-profit their equity, which they planned to use to further their mission. As a result of HUD's refusal to treat not-for-profit buyers and sellers as they would have for-profits, the owners have decided to simply wait out the term of their mortgages. These properties may not be preserved as affordable housing when the current owners are no longer subject to HUD approval for sale.

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Increasing Options for Senior Housing and Supportive Services

In 2000, the House Financial Services Committee, recognizing the need to link housing and services for the elderly, established the "Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century". A number of AAHSA members served on the commission. The Commission's final report to Congress, "A Quiet Crisis in America", included a comprehensive assessment of frailty among seniors and the role that affordable supportive housing plays in the wellness and independence of the elderly.

The Section 202 program represents the only federal program designed specifically to provide supportive housing for low-income elderly. Subtitle B includes provisions that directly address housing with supportive services in the prepayment and refinancing of Section 202s.

- Use of Excess Proceeds
  Subtitle B would require HUD to permit providers that refinance to use any excess mortgage proceeds to use those funds to expand and enhance supportive services, to provide on-site service coordination or to otherwise further their affordable housing mission, either at the refinanced site or another site. The refinancing of Section 202 properties provides an opportunity for substantial capital to be raised and through excess proceeds and contributed developer's fees to create enough money to seed a permanent funding stream for staff service coordinator staff and supportive services.

- Eliminates the cap on funding for supportive services
  The current 15% on the limitation on the use of funding has long been a moving target for organizations striving to provide supportive housing. It has never been clearly defined what the 15% limitation applies to and the HUD offices have varying policies. The current limitation, no matter what the field office has based it on, ignores the growing frailty and service needs of the resident population that we are working with. The legislation would also lift the cap on residual receipts so that excess residual receipts could be used for supportive services or service coordinators. Lifting the caps would go a long way to sustaining service programs and service coordination.

  There remains a tension between funding services and service coordination as a regular part of a senior housing operating budget and reducing the increasing costs of the section 8 program; so these funds can help alleviate the pressure on operating budgets. Many providers would like to rely on the service coordinator grant program to fund service coordinators; but the Section 202/8 properties face dismal prospects for new service coordinator grants. The funding strain has made it less possible for facilities to incorporate the service coordinator funding into their operational budgets, leaving sponsors dependant on the annual grant process to fund a new coordinator or retain their existing one. This dependence on the grant program for permanent funding for service coordinator staff means that the majority of the funding goes towards renewals. That picture is changing slightly for the better in the new Administration; however tight budgets still mean that lifting the caps as proposed in this legislation is critically important in order to provide service coordinators.

Section 202 Mortgage Maturation
In addition to commenting on Title VII, we would also like to comment on Section 102 of this important legislation. The 2004 GAO study that Chairman Frank requested provided Congress with detailed information about affordable housing at risk of loss by the year 2013. That report made it abundantly clear that impending mortgage maturations represent a potential loss of affordable housing. It is indeed the next preservation crisis, and nothing has changed. It's just coming sooner. In addition, the limited availability of rental assistance for older, non-profit owned properties in need of recapitalization represents potential displacement for hundreds of very low-income tenants if rehabilitation is undertaken to preserve the properties. Both issues are critical to preventing displacement of low-income renters and to preserving affordable housing. And the legislation that the Committee is now considering addresses these important issues directly.

Many of the non profits that make up AAHSA's membership look at the impending mortgage maturations as opportunities to purchase properties owned by others. Others, particularly Section 202 single asset providers, need some incentives to maintain the housing as affordable housing as mortgage maturation approaches and beyond. They may need some funding for repairs and many of the residents need rental assistance, but they do not need to completely refinance the entire mortgage as they could do if the provisions of Title VII of this bill are enacted. This group of properties has different needs than those that are candidates for prepayment and refinancing. So AAHSA would like to thank you for including Section 202 properties as eligible recipients of grants and loans under Section 102 because these properties are at risk unless Section 102 is enacted.

In addition to those sponsors that are working to preserve their communities, there is a group of non profits, typically single asset owners, with maturing mortgages that are interested in selling their properties. In many places investors have already begun to approach these owners promising a good price for the property. We have reports from Florida, New York, and Michigan that investors are offering top dollar that are appealing to owners because of board disinterest in maintaining the property. Original board members no longer are involved or the current board would like to use the proceeds to meet newer missions and purposes. In some cases HUD offices already have approved transfers of physical assets. Those properties will no longer be affordable housing.

Investors promise that they will keep the housing affordable at least until the mortgage matures (as they are required to do under the regulatory agreement and any other use agreements), and some even beyond mortgage maturation. To many sellers these proposals sound like a good deal; however, many of these properties are prime real estate and it is clear that their future as affordable housing is limited once the original mortgage matures. The provisions to give incentives to current owners or to purchasers who will keep the housing as affordable housing are creating the future of aging services

critical to preserve affordable senior housing. Without incentives, even non profit owners nearing mortgage maturity may simply wait out their mortgage and sell to the highest bidder.

Conclusion

AAHSA believes this legislation is critical for the future of affordable multifamily housing for seniors at a time when the senior population is exploding and the availability of affordable housing is limited. We are gratified that the Committee has chosen to include the Section 202 provisions in this bill and that 202 providers will be able to access incentives to maintain their housing as affordable housing at mortgage maturity.