March 11, 2013

Regulations Division
Office of General Counsel
US Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-5667-N-01
"Advance Notice of Senior Preservation Rental Assistance Contracts Award Process"

We appreciate the opportunity to comment on this Advance Notice. SPRAC represents a needed resource to preserve the ongoing affordability of this stock. We are writing on behalf of owners and managers of eligible properties and other organizations that support the preservation of high quality housing that is affordable to low-income seniors.

Previously refinanced or matured properties
The Section 202 Supportive Housing for the Elderly Act of 2010 was signed into law on January 4, 2011. We believe that properties that were eligible on this date should remain eligible for SPRAC awards even if the properties have already completed a prepayment transaction or reached maturity since that date. The statute provides HUD new authority as follows:

> "… in connection with a prepayment plan for a project approved under subsection (a) by the Secretary ***or as otherwise approved by the Secretary to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization and to further preservation and affordability of such project,*** the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract…"

In the case of properties with Section 202 mortgages that matured after the date of enactment, many owners have made their best efforts to recapitalize their properties and, to the extent possible without rental assistance, preserve the affordability of the property. In most cases recapitalizing the property required new debt and higher rents, and for units without rental assistance these rent increases imposed hardship on existing tenants and may even have led to displacement of very low-income residents. We believe that retrospective award of SPRAC contracts for properties that would otherwise experience resident displacement or lack of access for lower income individuals is essential to preserving the long-term affordability of the units within the context of recapitalization and is consistent with the statute's provision for projects "otherwise approved by the Secretary to prevent displacement of elderly residents in the case of…recapitalization and to further preservation and affordability."

There are many examples of properties that have refinanced their Section 202 loans subject to HUD approval because the physical needs of the property required immediate attention. Similarly to the example above, these recapitalization projects typically required rent increases for unassisted units, jeopardizing the long term affordability of these units for very low income seniors. We believe that properties that refinanced after the enactment of the Act should also be considered eligible for SPRAC awards, since such award is “in connection with a prepayment plan for (the) project” and is also necessary to prevent further displacement and protect affordability for future very low-income residents. We believe that this is within the authority of the statute even if it is subsequent to the maturity or refinancing action.

In addition, properties that do not receive SPRAC awards under this funding round should be eligible to apply for future SPRAC funding. This would allow other properties to move ahead with immediately needed repairs and/or transfers now without forfeiting their ability to seek SPRAC later to preserve and maintain the affordability if additional resources become available.

Reliance on competitive 9% LIHTCs
Most or all of the properties eligible for SPRAC could also benefit from 9% tax credit equity, but strong competition in most states will make it difficult to predict whether a particular property will receive an award. Therefore, we urge that an applicant have the option of submitting rehabilitation plans both with and without 9% credits. If a property receives a SPRAC award based on its tax credit award proposal but does not receive a 9% award, it should still be able to receive the SPRAC award based on its plan without tax credits if that plan meets eligibility criteria.

Sponsor capacity
The Notice doesn’t facilitate or acknowledge the role of strong non-profits in acquiring and preserving properties that are in disrepair and their commitment to long-term, responsible ownership. On the other hand, some current 202 owners lack the capacity for managing the refinancing and rehabilitation of these properties, and some prospective purchasers may themselves have limited experience and capacity with the challenges inherent in 202 refinancing and renovation. Given the significance and scarcity of the SPRAC resource, we believe that HUD should regard the development and management capacity of the owner (existing or new) as a critical element of the SPRAC application. HUD should make SPRAC awards only to owner/purchaser applicants with experience in successfully renovating, owning, and sustainably managing HUD-assisted properties (as evidenced by APPS data or other objective record of experience with HUD-assisted properties), and with tax credit experience if tax credits are proposed in the refinancing. Appropriate entities would include owners that utilize the services of appropriate property management companies.

Property conditions and vacancy
Many of the properties in this portfolio are old and have not had access to adequate resources to make repairs or improvements. Eligibility criteria 2, 3, and 4 (relating to REAC inspections, Management and Occupancy Review scores, and lack of Departmental Enforcement Center open referrals) should not by themselves be a cause of project ineligibility. The SPRAC application can show how a SPRAC award will facilitate needed rehabilitation and overcome the existing deficiencies, particularly if there is a transfer to a more capable owner. HUD should not restrict applications based upon these criteria but should allow and actively encourage applications where the current owner or a preservation purchaser has a viable plan for using new SPRAC resources to facilitate necessary rehabilitation and management changes.

The requirement for proximity to amenities and services (eligibility criterion 7) may penalize properties that have worked out ways to import these benefits when they are not "proximate." Long-standing arrangements that have been satisfactory to HUD or that otherwise adequately meet resident needs should also be able to meet this criterion. While there could be an argument to give an application more weight for effective and convenient services, HUD has not previously monitored whether there is proximity to services and amenities, so a property shouldn't be disqualified now.

A vacancy rate above 7% may have one or more causes and should not itself be a cause for disqualification. It could be the result of the difficulty in marketing older units at budget-based rents to fixed-income seniors, which the refinancing, rehabilitation, and SPRAC assistance are intended to address. It could be unmarketable or obsolete efficiency units, poor management, or lack of capital to provide the amenities that would attract seniors or provide proper maintenance. In still other cases an owner may consciously plan for vacancies to rise in order to ease the problems of tenant relocation and displacement during planned renovations. The single fact that vacancy rates have risen above 7% should not prevent the property's residents from benefiting from SPRAC assistance if there is a viable plan to correct the problem, such as a preservation transfer.

Award process and income targeting

HUD's proposed process would rank SPRAC applications meeting basic program criteria by maturity date. We believe the significance attached to mortgage maturity date could deny SPRAC assistance to projects with later maturity dates but that have urgent repair needs and could better leverage limited SPRAC resources. We believe that HUD should impose additional requirements for SPRAC eligibility, including the owner/purchaser capacity discussed above. We also support the requirement that eligible properties must commit to a 20-year subsidy contract and use agreement and that all properties must commit to substantial rehabilitation, as required by Housing Notice 2012-08 and defined by the HUD MAP guide.

The advance notice also proposes priority consideration for owner/purchaser applicants who commit to targeting very low income (50% of area median income or below) tenants for future vacancies and a separate eligibility pool for applications serving seniors with higher incomes. Given the scarcity of this resource, the compelling need, and uncertainty with regard to future funding, we recommend SPRAC funding only for those properties for which the owner agrees to make their best efforts to reserve turnover units for very low income seniors. Once these higher threshold criteria are satisfied, we support the proposed allocation of SPRAC resources in order of the property's original 202 financing maturity date until all available funds are awarded.

Timing of awards

There are special considerations when a property transfer is anticipated. An unintended consequence of making conditional SPRAC awards that are not contingent upon a specific rehabilitation plan is that potential purchasers may tend to bid up the value of the property based on the SPRAC-enhanced future rental income stream. Given this dynamic, even the most responsible purchaser would be forced to dedicate more resources to property acquisition and would therefore have less capital available for property repairs. In order to avoid this undesirable outcome, HUD should award the SPRAC contract only after the prepayment request is evaluated on both the merits of the recapitalization plan and the capacity of the proposed owner/purchaser. HUD should require that if the current owner plans to sell the property, the prepayment request should include a property appraisal (based on existing affordability restrictions and without SPRAC), a conditional commitment of the acquiring entity, evidence of its development and management capacity, and details about the planned rehabilitation. Although we would not propose a complete prepayment submission that would require incurring significant predevelopment costs, the SPRAC application should include information on the property's physical needs, the proposed redevelopment plan, and the capacity of the owner/purchaser application in detail sufficient to evaluate the proposal's strength and viability.

Administration of SPRAC Awards
We strongly endorse the plan to administer SPRAC awards in HUD's Washington, DC headquarters. There are simply not enough funds available or sufficient qualified field staff for the application process to be handled by field offices, so we appreciate the decision to review and awards funds in Washington.

Additional funding
We note that the current funding available is only sufficient to provide for the continued viability and affordability of approximately 11% of the eligible senior housing and strongly urge that additional funding be made available for this purpose in future years.

Thank you for your consideration of these comments.

Sincerely,

California Housing Partnership
Enterprise Community Partners
LeadingAge
Local Initiatives Support Corporation
National Affordable Housing Management Association
National Housing Trust
National Leased Housing Association
Network for Oregon Affordable Housing
Stewards of Affordable Housing for the Future