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National Affordable Housing Management Association – 400 N. Columbus Street, Suite 203 - Alexandria, VA 22314
Phone 703-683-8630 - Fax 703-683-8634 - www.nahma.org



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S. 118: Section 202 Supportive Housing for the Elderly Act and S. 1481: Frank Melville Supportive Housing Investment Act

Enacted Date: Both S. 118 and S. 1481 were signed into law by President Obama on January 4, 2011 as P.L. 111-372 and P.L. 111-374 respectively.

Background

The nation's affordable housing crisis has taken a heavy toll on elderly and disabled living on low to moderate incomes that are often fixed. The need for affordable housing for these special populations far exceeds supply. However, the Section 202 and 811 programs have been flat funded for the majority of the last decade, only receiving a minimal increase in FY 2010. As a result, fewer units are built each year from the available new construction appropriations in the 202 and 811 accounts. Furthermore, the Obama Administration proposed eliminating funding for new 202 and 811 construction in their FY 2011 budget request until the new construction program was substantially reformed. This situation is made more difficult by the loss of existing elderly and disabled units due to project conversions to market-rate developments and the deterioration of existing stock.

To help respond to this crisis, Congress passed two important bills in the 111th Congress : S. 118, the Section 202 Supportive Housing for the Elderly Act, and S. 1481/H.R. 1675, the Frank Melville Supportive Housing Investment Act.

S. 118 was not introduced as a stand-alone bill in the House. Instead, Rep. Barney Frank (D-MA) included this legislation as Title VII of H.R. 4868, the Housing Preservation and Tenant Protection Act. The legislative language for both bills provided significant reforms to the elderly housing program to help seniors age in place, preserve existing units, and make it significantly easier for 202 properties to provide supportive services. While NAHMA opposed H.R. 4868 for reasons unrelated to Title VII, we did support Title VII itself, as well as S. 118. NAHMA worked with industry colleagues to ultimately pass S. 118 on December 21, 2010.¹

¹ NAHMA also supported H.R. 2930 and S. 2736, the previous incarnations of the Section 202 Supportive Housing for the Elderly Act, in the 110th Congress (2009-10).

The Frank Melville Supportive Housing Investment Act, as introduced by Rep. Christopher Murphy (D-CT) in the House and by Sen. Robert Menendez (D-NJ) in the Senate, provided significant reforms to Section 811 to help disabled households live independently and simplify the delivery of rental assistance to 811 units. NAHMA supported both H.R. 1675 and S. 1481 and worked with industry colleagues to ultimately pass S. 1481 on December 21, 2010.²

Summary

S. 118 amends and improves Section 202 of the Housing Act of 1959, which provides supportive housing for the elderly. The legislation offers new Section 202 construction procedures, improves refinancing for older 202 properties to make them more attractive in preservation deals, and amends the grant authority for property conversions to assisted living facilities to include non-licensed “service enriched housing.”

H.R. 1481 amends and improves section 811 of the Cranston-Gonzalez National Affordable Housing Act, which provides supportive housing for the non-elderly disabled population. The act streamlines and simplifies rental assistance for those with disabilities, modernizes the capital advance program, and includes the delegated processing of Section 811 applications to state or local housing authorities, which Section 202 applicants received under the Housing and Economic Recovery Act of 2008. The bill also reforms tenant selection procedures and tenant protections, develops cost limitations, and authorizes project-based rental assistance for Section 811 properties. Finally, the legislation authorizes \$300 million in appropriations for the Section 811 account for FY 2011-2015.

S. 118: Section 202 Supportive Housing for the Elderly Act

Title I: New Construction Reforms

The first section of S. 118 provides several reforms to the construction of new Section 202 units that will improve efficiency and speed up the processing of new developments.

First, the legislation adds an additional selection criteria preference for 202 applicants that will have a service coordinator available to the property once it is completed. A similar provision was included in HUD’s draft Section 202 Reform Act, circulated in October 2010 for comment.

The bill also requires that owner deposits may only cover operating deficits during the first three years of project operation. The deposits may not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.

This section also amends the definition for a “private nonprofit organization” to included entities such as tax credit limited partnerships.

² NAHMA also supported H.R. 5772 or S. 3595, the previous incarnations of the Frank Melville Supportive Housing Investment Act, in the 110th Congress (2009-10).

This section also amends the nonmetropolitan funds allocation. Previously, HUD had to allocate at least 15 percent of Section 202 new construction appropriations on a national basis for nonmetropolitan areas. Now, HUD must allocate at least 15 percent of Section 202 new construction appropriations to nonmetropolitan areas via a national competition or by giving nonmetropolitan funding to regional HUD offices for disbursement.

Title II: Refinancing

The second section of this bill improves refinancing procedures for older 202 projects to make them more attractive in preservation deals. Refinancing may occur to help rehabilitate a 202 project, even if the refinancing does not result in a lower interest rate or corresponding debt service. In order to be eligible for the refinancing procedures, the refinancing may not increase rents for HUD assisted or unassisted tenants, unless HUD provides an exception under MAHRA. However, prepayment and refinancing that increases the debt service may only be approved if the mortgage interest rate is 6 percent or lower.

This section also allows up to 50 percent (originally only 15 percent) of a 202 project's annual savings to be used to help preserve the property and increase the services available to tenants. Spending activities for the savings may include:

- Increasing supportive services;
- Rehabilitating units;
- Reducing the number of units that are functionally obsolete, unmarketable, or not economically viable;
- Construction of additional facilities, including assisted living facilities;
- Reducing the rents of unassisted tenants living in the project;
- Rehabilitating the project to ensure its long-term viability; and
- The payment of a developer's fee to the project owner, sponsor, or third party developer.

The legislation increases the use of residual receipts to cover the costs of supportive services. Previously, the use of residual receipts was limited to 15 percent of the cost of increasing supportive services. Now, there is no limit. HUD may also allow residual receipts to be used for other purposes as they deem appropriate.

In the case of refinancing or recapitalization during a prepayment, Title II also authorizes HUD to offer a new Senior Preservation Contract, which would provide project-based rental assistance to units without rental assistance contracts during a preservation transaction. The new contracts would be 20 years long, subject to annual appropriations, and governed by project-based Section 8 rules. Properties with these contracts would also be subject to a use agreement to ensure continued affordability.

Title II also provides HUD with the authority to waive the prepayment of a flexible subsidy loan upon prepayment or refinancing, if that waiver is necessary for the financial viability or preservation of the affordability of the property. This tool will also help preserve existing Section 202 units.

Finally, a project may not prepay their loan unless it has notified tenants of the request to prepay and provided tenants with an opportunity to provide feedback on that prepayment.

Title III: Assisted Living Facilities and Service-Enriched Housing

Title III amends the grants for conversion of elderly housing to assisted living facilities. It authorizes a separate clause for conversion of properties to non-licensed “service enriched housing,” which provides supportive services through licensed or certified third party providers to assist the residents in carrying out activities of daily living, rather than just assisted living facilities.

S. 1481: Frank Melville Supportive Housing Investment Act

Section 2: Tenant Based Rental Assistance

Section 2 of the legislation simplifies the existing law for tenant-based rental assistance for Section 811 recipients. This clause converts existing Section 811 tenant-based vouchers to regular tenant based Section 8 assistance, administered by PHAs. However, the law ensures that Section 811 vouchers and vouchers from non-elderly disabled tenants turned over to PHAs are given to non-elderly disabled tenants and families.

Section 3: Modernized Capital Advance Program

Section 3 of the legislation modernizes project rental assistance contracts (PRAC) for the Section 811 program. Upon contract renewals, HUD is authorized to adjust annual contract amounts, if necessary, by providing for reasonable project costs, including adequate reserves and service coordinators. HUD also has the authority to adjust the annual contract amount in emergency situations.

Any Section 811 properties that are assisted with LIHTC must accept 30 year contracts. PRAC funding for these projects will be available for at least five of those 30 years.

If a Section 811 project is no longer needed as supportive housing for persons with disabilities, the legislation gives HUD the authority to convert that project’s contract.

Section 811 PRACs may not be used to replace state or local funds previously used, or designated for use, to assist persons with disabilities. Any multifamily housing project receiving Section 811 capital grants must limit supportive housing for persons with disabilities to 25 percent of that project’s units.

Section 3 also authorizes the delegated processing of Section 811 applications by state and local housing authorities, similar to the delegated processing in place for Section 202 programs. This provision was also included in HUD’s draft Section 811 Reform Act.

In addition, this section provides tenant protections and determines those eligible for occupancy in Section 811 projects. Project owners are required to adopt written tenant selection procedures that are consistent with improving housing opportunities for very low-income persons with

disabilities and related to program eligibility requirements. Applicants who are rejected must be notified promptly, in writing, of the grounds for rejection. Residents in units that receive assistance must be disabled or have at least one disabled member in their household. Owners may not deny an available unit based on a particular disability. However, project owners may offer selection preferences to persons with disabilities that can benefit from supportive services offered at the project. Owners may not terminate tenancy or refuse lease renewals unless a tenant commits serious or repeated violations of the terms of the lease, violates applicable Federal, state, or local law, or other good cause. Tenants must receive a written notice, specifying grounds of the termination or non-renewal, at least 30 days in advance.

Residents receiving Section 811 assistance must have the option, but are not required to, participate in supportive services available at the project. This provision was included in HUD's draft Section 811 Reform Act.

HOME program cost limitations will apply to units receiving Section 811 assistance. However, the cost limits may be waived for the costs of special design features to make housing accessible or meet the special needs of a person with disabilities. A similar provision was included in HUD's draft Section 811 Reform Act circulated in October 2010.

Finally, HUD has the authority to determine the percentage of Section 811 capital advances provided to multifamily housing projects that meet program requirements.

Section 4: Project Rental Assistance

Section 4 of S. 1481 authorized HUD to provide project rental assistance to existing, eligible projects through state housing agencies and other entities. This will expand number of units assisted with Section 811 without substantially increasing Section 811 appropriations levels. This new rental subsidy is expected to be attached to other affordable housing projects that do not receive direct rent subsidies, like LIHTC or HOME properties.

The initial PRACs for this new assistance stream must be 15 years, with funding guaranteed for five of those years. Funding for these PRACS will be renewed upon expiration, subject to appropriations. Only up to 25 percent of units at a multifamily housing project may receive these new Section 811 PRACs. Projects that already receive rental assistance are not eligible. Tenants must meet Section 811 eligibility requirements to receive this assistance.

Section 4 defines an eligible project as a new or existing multifamily housing project that receives development costs from either public or private sources and has received a commitment for LIHTCs, HOME assistance, or other government funding. Project-rental assistance may only be provided to projects that have U.S. Health and Human Services programs or received medical assistance administered or monitored by a State agency.

Project receiving rental assistance under this clause must provide supportive housing for persons with disabilities for at least 30 years.

HUD must submit a report on the effectiveness of the new PRACs to Congress within three years and again in two years.

Section 6: Authorization of Appropriations

Section 6 authorizes \$300 million for Section 811 for each fiscal year from FY 2011-2015.

Positive Aspects

NAHMA strongly supported the passage of S. 118 and S. 1481. These bills contain important tools that make it easier to preserve and expand the supply of affordable housing to elderly and disabled populations.

S. 118 makes several streamlining and simplification reforms to the existing Section 202 program, which will increase program participation by not-for-profit developers, private lenders, investors and state and local funding agencies. Under the legislation, owners have an opportunity to use record low interest rates and the equity in their properties to refinance their mortgages and fund the much-needed rehabilitation work. This will extend the useful lives of these properties, even in this compromised mortgage credit environment. The legislation also allows Section 202 properties to use annual project savings and residual receipts to recapitalize and preserve existing Section 202 housing, as well as increase supportive services to assist frail and aging residents.

S. 1481 converts tenant-based assistance under Section 811 to the tenant-based Section 8 program, which will simplify the procedures and processing for the assistance. The bill allows for conversions of properties from disabled to other housing in areas that lack a low-income disabled population, permitting HUD to focus more funding on areas with greater need. The legislation provides additional rental assistance to existing affordable properties to expand the number of units available to disabled households, as well as help meet the physical and supportive needs of disabled tenants residing in Section 811 units.

NAHMA is intrigued by the inclusion of delegated processing for Section 811 new construction capital advance applications by state and local housing authorities. We hope that the delegated processing reduces the processing time and streamlines Section 811 capital advance applications for the program going forward, similar to the Section 202 delegated processing.

NAHMA Concerns

Although Congress has passed this important legislation to help streamline and simplify the Section 202 and 811 programs, we remain concerned that these programs are coming under increased scrutiny as the Administration and Congress look for additional ways to cut government spending in FY 2011 and FY 2012. Section 202 and 811 are some of the few federally-funded programs left in the nation that construct new affordable housing. Without the capital advances developers and owners receive from these programs, it is very difficult to create new housing targeted to serve special, low-income populations that require supportive services. NAHMA will continue to work with Congress and the Administration to ensure adequate funding is requested for Section 202 and 811 programs. We will also work to ensure any authorizing legislation proposed provides common sense reforms that do not hurt the operation of these programs.

Although NAHMA understands the additional costs of creating a national senior clearinghouse database, we are disappointed Congress removed this clause from the final version of S. 118 that passed both houses. The database would have helped facilitate moving additional low-income elderly tenants into available units receiving some form of federal assistance, providing them with housing and potential services, which would help keep them out of costly nursing homes.

NAHMA Position

Overall, NAHMA is very pleased that Congress passed these needed reforms to the Section 202 and 811 programs. These new laws will help preserve and rehabilitate existing Section 202 and 811 properties and expand the number of units available to house elderly and disabled tenants.

We will stay in communication with HUD as the Department develops regulations to implement these bills. We will also continue to work with Congress and the Administration to ensure adequate funding is requested for Section 202 and 811 programs and that any authorizing legislation proposed in the 112th Congress provides common sense reforms that do not hurt the operation of these programs.