

SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY
 ACT OF 2007

DECEMBER 4, 2007.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
 Services, submitted the following

R E P O R T

[To accompany H.R. 2930]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2930) to amend section 202 of the Housing Act of 1959 to improve the program under such section for supportive housing for the elderly, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	7
Background and Need for Legislation	7
Hearings	10
Committee Consideration	11
Committee Votes	11
Committee Oversight Findings	11
Performance Goals and Objectives	11
New Budget Authority, Entitlement Authority, and Tax Expenditures	12
Committee Cost Estimate	12
Congressional Budget Office Estimate	12
Federal Mandates Statement	17
Advisory Committee Statement	17
Constitutional Authority Statement	17
Applicability to Legislative Branch	17
Earmark Identification	17
Section-by-Section Analysis of the Legislation	17
Changes in Existing Law Made by the Bill, as Reported	20

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Section 202 Supportive Housing for the Elderly Act of 2007”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—NEW CONSTRUCTION REFORMS

Sec. 101. Project rental assistance.
 Sec. 102. Selection criteria.
 Sec. 103. Development cost limitations.
 Sec. 104. Owner deposits.
 Sec. 105. Definition of private nonprofit organization.
 Sec. 106. Preferences for homeless elderly.

TITLE II—REFINANCING

Sec. 201. Approval of prepayment of debt.
 Sec. 202. Sources of refinancing.
 Sec. 203. Use of unexpended amounts.
 Sec. 204. Use of project residual receipts.
 Sec. 205. Additional provisions.

TITLE III—ASSISTED LIVING FACILITIES

Sec. 301. Definition of assisted living facility.
 Sec. 302. Monthly assistance payment under rental assistance.

TITLE IV—FACILITATING AFFORDABLE HOUSING PRESERVATION TRANSACTIONS

Sec. 401. Use of sale or refinancing proceeds.

TITLE I—NEW CONSTRUCTION REFORMS**SEC. 101. PROJECT RENTAL ASSISTANCE.**

Paragraph (2) of section 202(c) of the Housing Act of 1959 (12 U.S.C. 1701q(c)(2)) is amended—

(1) by inserting after “ASSISTANCE.—” the following: “(A) INITIAL PROJECT RENTAL ASSISTANCE CONTRACT.—”;

(2) in the last sentence, by striking “may” and inserting “shall”; and

(3) by adding at the end the following new subparagraph:

“(B) RENEWAL OF AND INCREASES IN CONTRACT AMOUNTS.—

“(i) EXPIRATION OF CONTRACT TERM.—Upon the expiration of each contract term, the Secretary shall adjust the annual contract amount to provide for reasonable project costs, and any increases, including adequate reserves, supportive services, and service coordinators, except that any contract amounts not used by a project during a contract term shall not be available for such adjustments upon renewal.

“(ii) EMERGENCY SITUATIONS.—In the event of emergency situations that are outside the control of the owner, the Secretary shall increase the annual contract amount, subject to reasonable review and limitations as the Secretary shall provide.”.

SEC. 102. SELECTION CRITERIA.

Subsection (f) of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q(f)) is amended—

(1) by striking “SELECTION CRITERIA.—” and inserting “INITIAL SELECTION CRITERIA AND PROCESSING.—(1) SELECTION CRITERIA.—”;

(2) by redesignating paragraphs (1), (2), (3), (4), (5), (6), and (7) as subparagraphs (A), (B), (C), (D), (E), (G), and (H), respectively;

(3) by inserting after subparagraph (E) (as so redesignated by paragraph (2) of this subsection) the following new subparagraph:

“(F) the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing, who has the managerial capacity and responsibility for carrying out the actions described in subparagraphs (A) and (B) of subsection (g)(2).”; and

(4) by adding at the end the following new paragraph:

“(2) DELEGATED PROCESSING.—

“(A) In issuing a capital advance under this subsection for any project for which financing for the purposes described in the last two sentences of sub-

section (b) is provided by a combination of a capital advance under subsection (c)(1) and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that—

- “(i) is in geographic proximity to the property;
 - “(ii) has demonstrated experience in and capacity for underwriting multi-family housing loans that provide housing and supportive services;
 - “(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section, and
 - “(iv) agrees to issue a firm commitment within 12 months of delegation.
- “(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency has applied to provide delegated processing pursuant to this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.
- “(C) An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.
- “(D) Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital advance amounts or project rental assistance and such reductions shall be subject to appeal.”.

SEC. 103. DEVELOPMENT COST LIMITATIONS.

Section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)) is amended, in the matter preceding subparagraph (A), by inserting “reasonable” before “development cost limitations”.

SEC. 104. OWNER DEPOSITS.

Section 202(j)(3)(A) of the Housing Act of 1959 (12 U.S.C. 1701q(j)(3)(A)) is amended by inserting after the period at the end the following: “Such amount shall be used only to cover operating deficits during the first three years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.”.

SEC. 105. DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.

Subparagraph (B) of section 202(k)(4) of the Housing Act of 1959 (12 U.S.C. 1701q(k)(4)(B)) is amended by inserting before the semicolon the following: “; except that, in the case of any national organization that is the owner of multiple housing projects assisted under this section, the organization may comply with clause (i) of this subparagraph by having a local advisory board to the governing board of the organization the membership of which is selected in the manner required under clause (i)”.

SEC. 106. PREFERENCES FOR HOMELESS ELDERLY.

Subsection (j) of section 202 (12 U.S.C. 1701q(j)) is amended by adding at the end the following new paragraph:

“(9) PREFERENCES FOR HOMELESS ELDERLY.—The Secretary shall permit an owner of housing assisted under this section to establish for, and apply to, the housing a preference in tenant selection for the homeless elderly, either within the application or after selection pursuant to subsection (f), but only if—

- “(A) such preference is consistent with paragraph (2) of this subsection; and
- “(B) the owner demonstrates that the supportive services identified pursuant to subsection (e)(4), or additional supportive services to be made available upon implementation of the preference, will meet the needs of the homeless elderly, maintain safety and security for all tenants, and be provided on a consistent, long-term, and economical basis.”.

TITLE II—REFINANCING

SEC. 201. APPROVAL OF PREPAYMENT OF DEBT.

Subsection (a) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) in the matter preceding paragraph (1), by inserting “, for which the Secretary’s consent to prepayment is required” after “Act”;

(2) in paragraph (1)—

(A) by inserting “project-based” before “rental assistance payments contract”;

(B) by inserting “project-based” before “rental housing assistance programs”; and

(C) by inserting “, or any successor project-based rental assistance program,” after “1701s)”;

(3) in paragraph (2)—

(A) by inserting “(A)” before “a lower”;

(B) by inserting before the period at the end the following: “, or (B) a transaction in which the project owner will address the physical needs of the project, but only if, as a result of the refinancing (i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e), and (ii) the overall cost for providing rental assistance under section 8 for the project (if any) does not increase”.

SEC. 202. SOURCES OF REFINANCING.

The last sentence of section 811(b) of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by inserting after “National Housing Act,” the following: “or approving the standards used by authorized lenders to underwrite a loan refinanced with risk sharing as provided by section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1701 note),”; and

(2) by striking “may” and inserting “shall”.

SEC. 203. USE OF UNEXPENDED AMOUNTS.

Subsection (c) of section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) in the matter preceding paragraph (1), by inserting after “tenants,” the following: “or is used in the provision of affordable rental housing and related social services for elderly persons by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer,”;

(2) in paragraph (1), by striking “not more than 15 percent of”;

(3) in paragraph (2), by inserting before the semicolon the following: “, including reducing the number of units and reconfiguring units that are functionally obsolete, unmarketable, or not economically viable”;

(4) in paragraph (3), by striking “or” at the end;

(5) in paragraph (4) by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following new paragraphs:

“(5) the payment to the project owner, sponsor, or third party developer of a developer’s fee in an amount not to exceed—

“(A) in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as calculated by the State program as a percentage of acceptable development cost as defined by that State program; or

“(B) in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost; or

“(6) the payment of equity, if any, to—

“(A) in the case of a sale, to the seller or the sponsor of the seller, in an amount equal to the lesser of the purchase price or the appraised value of the property, as each is reduced by the cost of prepaying any outstanding indebtedness on the property and transaction costs of the sale; or

“(B) in the case of a refinancing without the transfer of the property, to the project owner or the project sponsor, in an amount equal to the difference between the appraised value of the property less the outstanding indebtedness and total acceptable development cost.

For purposes of paragraphs (5)(B) and (6)(B), the term “acceptable development cost” shall include, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.”.

SEC. 204. USE OF PROJECT RESIDUAL RECEIPTS.

Paragraph (1) of section 811(d) of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended—

(1) by striking “not more than 15 percent of”; and

(2) by inserting before the period at the end the following: “or other purposes approved by the Secretary”.

SEC. 205. ADDITIONAL PROVISIONS.

Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note) is amended by adding at the end the following new subsections:

“(e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—Notwithstanding any other provision of law, 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, at the election of the private nonprofit organization owner of the project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:

“(1) Assistance under the contract shall be made available to the private nonprofit organization owner—

“(A) for a term of at least 20 years, subject to annual appropriations, and

“(B) under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937.

“(2) Any projects for which a senior preservation rental assistance contract is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.

“(f) MORTGAGE SALE DEMONSTRATION.—

“(1) IN GENERAL.—The Secretary may sell mortgages associated with loans made under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) in accordance with the relevant terms for sales of subsidized loans on multifamily housing projects under section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11). For the purpose of demonstrating the efficiency, effectiveness, quality, and timeliness of asset management and regulatory oversight of certain portfolios of such mortgages by State housing finance agencies, the Secretary shall carry out a demonstration program, in not more than three States, to sell portfolios of such mortgages to State housing finance agencies for a price not to exceed the unpaid principal balances of such mortgages and otherwise in accordance with the requirements of such section 203.

“(2) LIMITATIONS.—In carrying out the demonstration program, the Secretary shall—

“(A) prohibit State housing finance agencies from giving preference to, or conditioning the approval of, awards of subordinate debt funds, allocations of tax credits, or tax exempt bonds based on the use of financing for the first mortgage that is provided by such State housing finance agency; and

“(B) require such agencies to allow refinancing or prepayment of loans made under section 202 of the Housing Act of 1959 with a loan selected by the owners, except that any use restrictions on the property for which the loan was made shall remain in effect for the duration provided under the original terms of such loan.

“(g) SUBORDINATION OR ASSUMPTION OF EXISTING DEBT.—In lieu of prepayment under this section of the indebtedness with respect to a project, the Secretary may approve—

“(1) in connection with new financing for the project, the subordination of the loan for the project under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) and the continued subordination of any other existing subordinate debt previously approved by the Secretary to facilitate preservation of the project as affordable housing, or

“(2) the assumption (which may include the subordination described in paragraph (1)) of the loan for the project under such section 202 in connection with the transfer of the project with such a loan to a private nonprofit organization.

“(h) FLEXIBLE SUBSIDY DEBT.—The Secretary shall waive the requirement that debt for a project pursuant to the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a) be prepaid in connection with a prepayment, refinancing, or transfer under this section of a project if such waiver is necessary for the financial feasibility of the transaction and is consistent with the long-term preservation of the project as affordable housing.

“(i) PREPAYMENT WHEN SECRETARY’S CONSENT NOT REQUIRED.—In connection with the prepayment under this section of a loan for which the Secretary’s consent to prepayment is not required, at the project owner’s election—

“(1) all tenants of the project shall be eligible for enhanced vouchers in accordance with section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)); or

“(2) if the project will continue to be owned by a private nonprofit organization owner, such private nonprofit organization owner may enter into a senior preservation rental assistance contract with the Secretary in accordance with subsection (e).

“(j) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—For purposes of this section, the term ‘private nonprofit organization’ has the meaning given such term in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).”.

TITLE III—ASSISTED LIVING FACILITIES

SEC. 301. DEFINITION OF ASSISTED LIVING FACILITY.

Section 202b(g) of the Housing Act of 1959 (12 U.S.C. 1701q–2(g)) is amended by striking paragraph (1) and inserting the following new paragraph:

“(1) the term ‘assisted living facility’ means a facility that—

“(A) is owned by a private nonprofit organization; and

“(B)(i) is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located); or

“(ii)(I) makes available, directly or through recognized and experienced third party service providers, to residents at the resident’s request or choice supportive services to assist the residents in carrying out the activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, toileting, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light of heavy housework, and which may make available to residents home health care service, such as nursing and therapy, and certain health related services; and

“(II) provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility; and”.

SEC. 302. MONTHLY ASSISTANCE PAYMENT UNDER RENTAL ASSISTANCE.

Clause (iii) of section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii)) is amended by inserting before the period at the end the following: “, except that a family may be required at the time the family initially receives such assistance to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount or percentage as the Secretary deems appropriate”.

TITLE IV—FACILITATING AFFORDABLE HOUSING PRESERVATION TRANSACTIONS

SEC. 401. USE OF SALE OR REFINANCING PROCEEDS.

Notwithstanding any other provision of law, in connection with the sale or refinancing of a multifamily housing project, or the transfer of an assistance contract on such a property, that requires the approval of the Secretary of Housing and Urban Development, the Secretary shall not impose any condition that restricts the amount or use of sale or refinancing proceeds, or requires the filing of a financial report, unless such condition is expressly authorized by an existing contract entered into between the Secretary (or the Secretary’s designee) and the project owner before the imposition of a condition prohibited by this section or is a general condition

for new financing with a mortgage insured by the Secretary. Any such condition previously imposed by the Secretary after January 1, 2005, shall, at the option of the project owner, be considered void and not enforceable, and any agreement containing such a condition shall be rescinded and may be reissued without the void condition.

PURPOSE AND SUMMARY

H.R. 2930, the “Section 202 Supportive Housing for the Elderly Act,” facilitates the construction, rehabilitation and preservation of affordable, supportive housing for very-low income elderly persons. The goal of the bill is to streamline the development of new 202 housing units, while enabling owners of older Section 202 projects to rehabilitate and preserve their properties as affordable for very low-income elderly persons, while preserving the highest quality of housing and services available.

BACKGROUND AND NEED FOR LEGISLATION

The “Section 202 Supportive Housing for the Elderly Act of 2007” amends the Housing Act of 1959 (P.L. 86–372). At its inception, the Section 202 program provided low-interest, 50-year construction loans to non-profit developers for the development of affordable housing projects for moderate income seniors. Currently, there are 292 projects with over 40,000 units with active loans under this phase of the program.

The Housing and Community Opportunity Development Act of 1974 made several key changes to the program. The duration of loans was reduced from 50 to 40 years; section 8 project-based assistance was added to enable more low-income elderly households to participate in the program; the interest on loans was raised to the U.S. Treasury’s cost of borrowing; new developments were required to support state and local support service plans; and 20–25 percent of program funds were to be used for non-metropolitan areas.

In 1990, the Cranston-Gonzalez National Affordable Housing Act (P.L. 101–625) modified the program significantly, replacing loans with capital advance grants combined with a project rental assistance contract (PRAC) and establishing the program structure under which the program currently operates. Additionally, in 2000, the American Homeownership and Economic Opportunity Act (P.L. 106–569) provided detailed terms and conditions under which owners are allowed to prepay Section 202 mortgages and refinance for the purpose of project rehabilitation and modernization. The bill also permits the use of private financing and Federal Low Income Housing Tax Credits in combination with Section 202 capital funds by permitting for-profit limited partnerships to own Section 202 properties, under the condition that the sole general partner be a private non-profit organization.

The Committee believes that the Section 202 program, the only HUD affordable housing program exclusively serving seniors, provides a vital link between affordable housing and supportive services. Moreover, the demand for available, affordable housing for seniors will only increase as members of the “baby boomer” generation reach their 60s. According to *A Quiet Crisis in America*, a report by the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century, the number of senior house-

holds will have grown by 53 percent by 2020. A recent AARP study of the nation's available Section 202 housing stock estimated that for every unit of Section 202 housing that became available in 2006, there were 10 seniors waiting. The need to produce more housing and preserve the existing housing stock is very real, and soon may be dire.

Capital Advance New Construction. The American Homeownership and Economic Opportunity Act of 2000 permitted the combination of 202 capital advance funds with other financing sources, including Low-Income Housing Tax Credits. However, the Committee has received testimony from project sponsors stating that, due to HUD's interpretation of existing law, the underwriting process for mixed finance grants is prolonged and often results in increases in development costs and delays in bringing developments online. It is the intention of the Committee that this bill will encourage sponsors to combine financing sources by simplifying the grant underwriting process. For projects which combine Section 202 program funds with other sources of capital financing, the bill provides that the processing of the capital advance must be delegated to an experienced State or local housing finance agency, while projects that are financed solely by 202 grant funds will continue to be processed by HUD. Additionally, HUD will retain the ultimate authority to approve the project costs, and must provide written explanations of costs approved by the state or local housing finance agency which HUD subsequently disallows.

The Committee believes that the provision of service coordinators is critical in linking residents of Section 202 properties with supportive services. Therefore the bill amends the selection criteria by which new projects are evaluated to receive a grant by creating an additional preference for those proposed projects that will provide for a full or part-time service coordinator position.

Additionally, the bill permits owners to establish, either in the application process or after grant selection, a preference in the tenant selection of homeless elderly persons.

With regard to use of owner deposits, current HUD practice is to require that owners use these funds to meet development cost shortfalls. However the intended use of these funds is only to cover operating budget shortfalls during the first three years. The bill prevents HUD from forcing owners to use owner deposits to cover development shortfalls.

The bill also provides protections for 202 owners to ensure that HUD operating assistance keeps pace with actual property costs. Current statute only permits, but does not require, payment of such cost increases and, in practice, many 202 owners often are not granted needed cost increases. The bill would require HUD to make adjustments to operating assistance to cover reasonable cost increases, including, but not limited to, increases associated with service coordinators and emergency situations beyond the control of the owner.

Refinancing of Loan Program Projects. The American Homeownership and Economic Opportunity Act of 2000 included provisions to streamline the prepayment of Section 202 loans, while providing safeguards for the affordability of units. However, many of these provisions, specifically where they serve to preserve existing housing stock, have not been fully implemented by HUD. The bill

provides more explicit language to ensure that owners can take full advantage of provisions in the 2000 Act, which provided more flexibility to owners to use refinancing proceeds. Many owners seek to enhance their supportive services or build community rooms in older developments. However, HUD has placed unwarranted limits on use of refinancing proceeds, often leaving owners few other options than waiting out the term of their mortgages, where no requirement for owners to keep units affordable remains. H.R. 2930 provides, more explicitly, the authority to use refinancing proceeds with more flexibility, allowing owners to use proceeds for activities which aid the provision of affordable housing and expand available supportive services of developments.

H.R. 2930 authorizes a new Section 8 project-based rental assistance program, or Senior Preservation Rental Assistance, to provide rental assistance to projects that currently do not receive any rental assistance. Projects built between 1959 and 1974 did not require an accompanying rental subsidy, as the low 3 percent interest rate enabled owners to charge very low rents. However as these projects age and require significant rehabilitation, owners will be forced to raise rents in order to cover cost or rehabilitation. A Senior Preservation Rental Assistance Contract will allow owners to finance the rehabilitation of their properties without raising the rent for elderly residents, which otherwise could risk their displacement, homelessness or premature institutionalization. Additionally, owners who choose to prepay a loan which does not require the approval of the HUD Secretary may protect the affordability of the project by either making all tenants eligible for enhanced vouchers or, if the owner maintains ownership of the property, the owner may enter into a Senior Preservation Rental Assistance Contract.

In addition to the establishment of the Senior Preservation Rental Assistance contract, the bill enables owners who were previously ineligible to refinance their loan to address the substantial physical needs of a property. Current statute requires, as a condition of refinancing, that such new financing must result in a lower interest rate. However projects built between 1959 and 1974 have a 3 percent interest loan and therefore are unable to refinance at a lower rate. By removing the requirement that owners secure a lower interest rate, the bill would make such properties eligible for prepayment and enable them to address the rehabilitation needs of a project.

Another barrier owners face when seeking to modernize and extend the functionality and affordability of a project is the reconfiguration of obsolete units. During the Subcommittee hearing, several witnesses testified to the need to reconfigure a large number of small, efficiency units, which are often vacant and no longer desirable for elderly households seeking to age in place. However, HUD practice has been to disallow reconfiguration, or to require owners to create new units to replace any unit that is combined or lost. H.R. 2930 allows owners to combine obsolete units to create larger units, for which a higher demand exists, therefore avoiding potential vacancies.

The bill waives the requirement that owners repay flexible subsidy debt and permits HUD to subordinate the original HUD debt where such requirements would diminish the amount of proceeds that could be used for rehabilitation.

The bill includes a mortgage sale demonstration program, the purpose of which is to examine whether state housing finance agencies might be able to more effectively administer section 202 loans, in contrast to how they are currently managed by HUD. The demonstration would authorize HUD to sell the Section 202 mortgage portfolios of three states to the State housing finance agencies. The purpose of the demonstration is to enable HUD to evaluate, in conjunction with State or local housing finance agencies, the benefits, costs, and effects of implementing the program on a broader scale.

Facilitating Affordable Housing Preservation Transactions. During the course of the Subcommittee on Housing and Community Opportunity hearing on H.R. 2930, a number of witnesses testified on the need to extend the allowable uses of proceeds from sale or refinancing of loans for the Section 202 and related HUD programs that provide housing for elderly households, including the Section 236 and Section 221(d)(3) programs, which are also in need of rehabilitation and modernization. In an effort to limit the activities eligible for sale or refinancing proceeds, HUD practice has been to require sponsors to enter into contracts limiting the use of funds beyond the limitations already required by law. For owners seeking to rehabilitate existing properties or invest in developing new affordable housing units, these proceeds are a vital source of funds. The Committee believes that the bill, by prohibiting HUD from imposing further limitations and releasing owners who are restricted by existing contracts, will provide owners the flexibility to continue to provide affordable housing and supportive services through proceeds.

Assisted Living Conversion Program. The Committee believes that the Section 202 program provides a foundation for the effective delivery of services by federally funded program partners. The American Homeownership and Economic Opportunity Act authorized grants to convert Section 202 units and buildings to assisted living, and grants have been appropriated each subsequent year for this purpose. However, the Committee believes that many meritorious projects are excluded from this Assisted Living Conversion Program because of overly restrictive limitations on eligible service providers. H.R. 2930 broadens the definition of assisted living facility to include a broader range of service providers, while safeguarding a high quality of service provided to residents.

HEARINGS

The Subcommittee on Housing and Community Opportunity held a hearing on September 6, 2007 entitled “H.R. 2930, the Section 202 Supportive Housing for the Elderly Act of 2007”. The following witnesses testified:

PANEL ONE

- Mr. John Garvin, Senior Advisor to the Assistant Secretary for the Office of Housing/Acting Deputy Assistant Secretary for the Office of Multi-Family Housing

PANEL TWO

- Mr. David Lizarraga, President and Chief Executive Officer, TELACU
- Mr. Thomas W. Slemmer, Chief Executive Officer, National Church Residences
- Ms. Deje Kondon, Executive Director, Presbyterian Homes & Housing
- Ms. Ellen Feingold, President, Jewish Community Housing for the Elderly
- Mr. Michael Frigo, Administrator, Mayslake Village
- Mr. Steve Protulis, President, Elderly Housing Development and Operations Corporation
- Ms. Terry Allton, Vice President of Support Services, National Church Residences

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 25, 2007, and ordered H.R. 2930, Section 202 Supportive Housing for the Elderly Act of 2007, as amended, reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote.

During the consideration of the bill, the following amendment was considered:

An amendment by Mr. Frank, No. 1, a manager's amendment making various technical and substantive changes, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 2930 facilitates the construction, rehabilitation and preservation of affordable, supportive housing for very-low income elderly persons. The goal of the bill is to streamline the development of new 202 housing units, while enabling owners of older Section 202 projects to rehabilitate and preserve their properties as affordable for very low-income elderly persons, while preserving the highest quality of housing and services available.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 22, 2007.

Hon. BARNEY FRANK,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2930, the Section 202 Supportive Housing for the Elderly Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Chad Chirico.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 2930—Section 202 Supportive Housing for the Elderly Act of 2007

Summary: H.R. 2930 would amend the American Homeownership and Economic Opportunity Act of 2000 to increase the number of properties that are eligible to prepay loans issued under Section 202 of the Housing Act of 1959. The bill also would authorize a new demonstration program for the sale of loans made under Section 202 and allow the savings generated through the refinancing of Section 202 loans to be used for additional purposes. Finally, the bill would authorize a new program for project-based rental assistance for certain properties that are currently financed with a Section 202 loan.

CBO estimates that enacting H.R. 2930 would increase direct spending by \$94 million in 2008 because the bill would effectively modify the terms of existing federal loans—reducing the present value of expected cash flows for such loans. We also estimate that implementing the bill would have a net discretionary cost of \$212

million over the 2008–2012 period, assuming appropriation of the necessary amounts.

H.R. 2930 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA); any costs to state, local, or tribal governments would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2930 is shown in the following table. The costs of this legislation fall within budget functions 370 (mortgage and housing credit) and 600 (income security).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN DIRECT SPENDING					
Mortgage Sale Demonstration:					
Estimated Budget Authority	88	0	0	0	0
Estimated Outlays	88	0	0	0	0
Use of Unexpended Amounts:					
Estimated Budget Authority	5	0	0	0	0
Estimated Outlays	5	0	0	0	0
Refinancing:					
Estimated Budget Authority	1	0	0	0	0
Estimated Outlays	1	0	0	0	0
Total Changes in Direct Spending:					
Estimated Budget Authority	94	0	0	0	0
Estimated Outlays	94	0	0	0	0
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Project-Based Rental Assistance:					
Estimated Authorization Level	0	23	52	78	111
Estimated Outlays	0	14	40	68	98
Delegated Processing Fees:					
Estimated Authorization Level	0	2	3	5	5
Estimated Outlays	0	1	2	4	5
Multifamily Loan Guarantees:					
Estimated Authorization Level	0	-5	-5	-5	-5
Estimated Outlays	0	-5	-5	-5	-5
GNMA Offsetting Collections:					
Estimated Authorization Level	0	*	*	*	*
Estimated Outlays	0	*	*	*	*
Total Changes in Spending Subject to Appropriation:					
Estimated Authorization Level	0	20	50	78	111
Estimated Outlays	0	10	37	67	98

Note: Components may not sum to totals because of rounding; GNMA = Government National Mortgage Association; * = between 0 and -\$500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 2930 will be enacted in fiscal year 2008, that the full amounts authorized will be appropriated for each year, that outlays will follow historical patterns, and that appropriation laws necessary to implement the Federal Housing Administration (FHA) and Government National Mortgage Association (GNMA) programs will be enacted each year. Components of the estimated costs are described below.

Background

The Section 202 Housing for the Elderly program was established as part of the Housing Act of 1959. The program currently makes capital grants and rental assistance available to nonprofit entities to develop housing that is affordable to very low-income elderly households. Prior to 1990, the Department of Housing and Urban Development (HUD) made direct loans to nonprofit developers, rather than capital grants, with an average term of 40 years

for those loans. HUD holds about 4,000 Section 202 loans with a total unpaid balance of over \$5 billion. The interest rates for those loans range from 3 percent to 9 percent, with an average maturity date of 2025. Property owners who agree to operate their project until the maturity date of the original loan (under terms that are at least as advantageous to tenants as under the original loan agreement) may prepay their loans if such refinancing results in a lower interest rate and a reduction in debt service. The prepayment rate for Section 202 loans averages about 15 percent per year and most refinancing transactions involve FHA-insured loans; however, FHA insurance is not required.

Direct spending

Because several provisions of the legislation would change the expected cash flows associated with existing federal loans made under the Section 202 program, those changes constitute a modification of the existing loans. Under credit reform procedures, the costs of loan modifications are estimated on a present-value basis and recorded as changes in direct spending in the year in which the legislation is enacted. In total, CBO estimates that enacting H.R. 2930 would increase direct spending by \$94 million in 2008.

Mortgage Sale Demonstration. Section 205 of H.R. 2930 would authorize HUD to sell mortgages associated with Section 202 loans. It would require the department to carry out a demonstration program in not more than three states to sell portfolios of those mortgages to state housing finance agencies for a price not to exceed the unpaid principal balances of such mortgages. Based on HUD data, CBO estimates that the average outstanding principle balance is about \$100 million per state and that HUD would select three states with average-size portfolios for the demonstration program by the end of 2009. Because the majority of those mortgages have interest rates that are above the federal cost of funds and are estimated to have low default rates, selling those mortgages at a price less than or equal to the unpaid principal balances would result in a loss to the government on a present-value basis. CBO estimates those loan sales would cost \$88 million in 2008. The cost of the demonstration program could be higher or lower depending on the particular states selected.

Use of Unexpended Amounts. Section 203 of the bill would expand the eligible uses for savings generated by refinancing Section 202 loans. Those new purposes include the reconfiguration or reduction in the number of rental units that are functionally obsolete and the payment of equity to the project owner or seller. This section also would eliminate the restriction on the amount of savings that owners can use to provide supportive services to elderly tenants as well as restrictions on the owners' ability to direct savings to other properties. Finally, the bill would allow HUD to waive the requirement that borrowers repay any debt incurred through the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 if such waiver is necessary for the financial feasibility of the transaction.

Currently, about 15 percent of Section 202 loans are refinanced each year and fewer than 2 percent of property owners that apply for prepayment are denied. CBO estimates that these provisions would increase the prepayment rate by making such transactions

more attractive to property owners and increase the likelihood that HUD would approve the transactions. Based on data provided by HUD, CBO estimates that several additional properties would have their loans prepaid each year. CBO estimates such prepayments would cost \$5 million in 2008 on a present-value basis.

Refinancing. Section 201 of the bill would allow owners of properties financed with a Section 202 loan to refinance if the new financing were used to address the physical needs of the project, even if the refinancing would not result in a lower interest rate. Loans made prior to 1974 have interest rates of approximately 3 percent, and borrowers may not prepay their debt under current law. Based on data provided by HUD, CBO estimates that HUD currently holds about 260 loans of this type with a total unpaid balance of about \$190 million. Taken by itself, this section would result in direct spending savings, but enacted in conjunction with section 205, it would slightly increase direct spending.

Section 205 of the bill would allow HUD to approve the subordination of existing debt in lieu of prepayment. When refinancing to address a property's physical needs, CBO expects that the owners of Section 202 properties would be more likely to subordinate those low-interest loans than to prepay them because the interest rates on those old loans are substantially lower than current market rates. Issuing new primary debt on top of the existing 3 percent loans would increase the risk of default for those loans. Based on data provided by HUD, CBO estimates that Section 202 loans have an annual default rate of 0.25 percent. CBO expects that under section 205, the majority of those loans would be refinanced by 2012 and that the default rate for the subordinated loans would increase but remain below 1 percent per year. CBO estimates that the increased default rates would cost \$1 million in 2008 on a net-present-value basis.

Spending subject to appropriation

CBO estimates that H.R. 2930 would authorize the net appropriation of \$20 million in 2009 and \$259 million over the 2009–2012 period. CBO estimates that appropriation of those amounts would result in spending of \$212 million over the next five years.

Project-based Rental Assistance. Section 205 would authorize a new program for project-based rental assistance to be used in connection with the prepayment of a Section 202 loan. This provision would primarily affect properties with loans made prior to 1974 that do not have existing rent subsidies on all units. Based on HUD data, CBO estimates that beginning in 2009 around 50 properties each year (averaging 80 units per property) would receive such rental assistance at an average cost of about \$5,300 per unit. Thus, by 2012, a cumulative total of about 200 properties would be assisted by the new program. Assuming appropriation of the necessary amounts, CBO estimates that providing project-based rental assistance to these properties would cost \$14 million in 2009 and \$220 million over the 2009–2012 period.

Delegated Processing Fees. Section 102 would require HUD to delegate the processing of certain capital grants to interested state or local housing agencies. The provision would direct HUD to develop a schedule of reasonable fees to be paid to the delegated processing agencies and would allow the fees to be included as part of

the total capital grant amount. Based on information provided by HUD, industry groups, and state agencies, CBO assumes that the fee structure would be similar to those used for Participating Administrative Entities in the Section 8 Mark-to-Market program and for the underwriting of low-income housing tax credits. CBO estimates that, over time, about two-thirds of capital grants would be processed by state or local housing agencies and that those agencies would be paid a fee of about 1 percent of the grant value. Grants currently average a little more than \$4 million per property. Assuming appropriation of the necessary amounts, CBO estimates that paying fees for the delegated processing of capital grants would cost \$1 million in 2009 and \$12 million over the 2009–2012 period.

Multifamily Loan Guarantees. As described above, H.R. 2930 would increase the number of Section 202 loans that are refinanced each year. Although not required by law, most of the refinanced loans are likely to be insured by FHA's multifamily mortgage insurance or risk-sharing programs. The Federal Credit Reform Act of 1990 requires an appropriation of the subsidy costs and administrative costs associated with loan guarantees. The subsidy cost is the estimated long-term cost to the government of the loan guarantee, calculated on a present-value basis, excluding administrative costs. Under current law, HUD estimates that FHA's guarantees of multifamily loans will result in net offsetting collections (that is, negative outlays that are recorded as a credit against discretionary spending) because guarantee fees collected on those mortgages will more than offset the costs of expected defaults, calculated on a present-value basis. CBO estimates that the average subsidy cost for the multifamily programs that could be used to refinance Section 202 loans is –2 percent and that this legislation would result in about 50 additional loan guarantees each year. CBO estimates that implementing this legislation would result in additional offsetting collections of \$5 million in 2009 and \$20 million over the 2009–2012 period, contingent on enactment of appropriation bills that would establish authority to make loan guarantees by specifying annual loan commitment levels.

GNMA Offsetting Collections. GNMA is responsible for guaranteeing securities backed by pools of mortgages that are insured by the federal government (known as the mortgage-backed securities, or MBS program). In exchange for a fee charged to lenders or issuers of the securities, GNMA guarantees the timely payment of scheduled principal and interest due on the pooled mortgages that back those securities. The Administration estimates that the value of the fees collected by GNMA will exceed the cost of loan defaults each year. Accordingly, under credit reform, the GNMA MBS program will have an estimated subsidy rate of –0.21 percent in 2008, resulting in net collections to the federal government.

Because most FHA multifamily loan guarantees are included in GNMA's MBS program, CBO estimates that increasing the number of Section 202 loans refinanced with FHA insurance would result in additional GNMA collections over the 2008–2012 period, but they would total less than \$500,000 per year. Those savings would affect discretionary spending because, like FHA, GNMA requires appropriation action to establish the total amount of its guarantees.

Intergovernmental and private-sector impact: H.R. 2930 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments that participate in affordable housing projects and programs. Any costs those governments incur to comply with program requirements would be incurred voluntarily.

Estimate prepared by: Federal Spending: Chad Chirico and Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Keisuke Nakagawa.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2930 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SHORT TITLE: SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY
ACT OF 2007

Title 1: New construction reforms

Section 101. Project rental assistance. Requires the Secretary to adjust the annual contract amounts for renewal of Project Rental Assistance contracts to provide for reasonable project costs (including adequate reserves, service coordinators, and service cost) and to cover emergencies such as utility cost spikes. Prohibits the use of previously appropriated unspent contract funds from being applied to adjustments.

Section 102. Selection Criteria. (a) Amends the Selection Criteria for grant selection to include the extent to which a project will provide a service coordinator. (b) Requires delegated processing for 202 projects which combine capital advance funds with other sources of financing and that have already been approved by HUD, for the purpose of issuing a capital advance, to a state or local agency which (1) is in geographic proximity to the property, (2) has demonstrated experience in underwriting multifamily housing loans that provide housing and supportive services, (3) may or may not be providing LIHTC in combination with the 202 capital advance and (4) agrees to issue a firm commitment within 12 months of delegation. (c) Waives the delegated underwriting requirement where no State or local agency has applied to provide delegated underwriting. (d) Permits the state or local agency to charge a reasonable fee for processing, which will be included in the capital advance amount. Require the Secretary to develop a schedule for reasonable fees to be paid for delegated underwriting. (e) Confirms HUD Secretary's authority to approve rents and development costs and requires that the Secretary execute a capital advance within 90 days of receipt of commitment.

Section 103. Development Cost Limitations. Amends development cost limitations by adding the term "reasonable" to the phrase "developments cost limitation."

Section 104. Owner Deposits. Amends use of owner deposits by limiting use to operating deficits during first three years, clarifying that deposits shall not be used to cover construction shortfalls.

Section 105. Definition of Private Nonprofit Organization. Amends definition of "owner" to create an exception for national nonprofit organizations that run multiple projects. Such projects may use local advisory boards to meet the governing board requirement, except that the national organization will maintain responsibility for the operation of the housing.

Section 106. Preferences for Homeless Elderly. Permits project sponsors to implement preferences for homeless elderly, where such persons meet all program eligibility requirements and the project provides supportive services to meet their needs.

Title II: Refinancing

Section 201. Approval of Prepayment of Debt. Authorizes a 202 project to seek new financing to permit the owner to address the physical needs of the project, even if the new financing does not result in a lower interest rate, on the condition that (1) HUD Section 8 costs do not increase, and (2) rent charges on tenants will not increase.

Section 202. Sources of Refinancing. Authorizes new lenders to underwrite loans refinanced with risk sharing loans.

Section 203. Use of Unexpended Amounts. Permits use of unexpended amounts to include uses in the provision of affordable rental housing and related social services for elderly persons by the private nonprofit organization's project owner, sponsor, or developer. Includes: (1) striking the 15 percent limitation on supportive services; (2) covering the cost of reducing and reconfiguring obsolete units; (3) conditionally covering the payment of a developer's fee; and (4) in the case of sale or refinance, permitting equity payments to be calculated based on the appraised value of the project.

Section 204. Use of Project Residual Receipts. Authorizes the use of residual receipts held for a project in connection with a prepayment or refinancing in excess of \$500 per unit for activities to increase supportive services or other purposes approved by the Secretary.

Section 205. Additional Provisions. (a) Authorizes Senior Preservation Rental Assistance Contracts. Senior Preservation Contracts would be made available to private nonprofit owners whose 202 loan predates the accompanying rental subsidy, for whom the cost of refinancing and rehabbing a project could otherwise significantly raise the rents. This contract would allow the sponsor to cover this cost increase with the project-based assistance in conjunction with a refinancing and preservation transaction.

(b) Authorizes a Mortgage Sale Demonstration in up to three states, in which the Secretary may sell 202 mortgages to state housing finance agencies (in accordance with Section 203 of the Housing and Community Development Amendments of 1978) for a price not to exceed the unpaid principal balance of the loans.

(c)(1) Clarifies that HUD has authority to subordinate 202 and other subordinate debt to new financing; and (2) authorizes HUD to approve assumption of 202 loans in connection with a transfer of a project with such a loan, to a private nonprofit organization.

(d) Waives the required payment of a Flexible Subsidy loan upon prepayment or refinancing of a 202 loan, if such a waiver is necessary for the financial feasibility of the transaction or to preserve the long-term affordability of the project.

(e) In connection with a prepayment where approval from the secretary is not required (1) enables all tenants to be eligible for enhanced vouchers, and (2) permits owners to enter into a Senior Preservation Contract with HUD, on the condition that the project will continue to be owned by a private nonprofit organization.

(f) Confirms definition of private nonprofit organization as defined in section 202(k) of the Housing Act of 1959.

Title III: Assisted living facilities

Section 301. Definition of Assisted Living Facility. Amends the definition of assisted living facility to make the requirement regarding project eligibility more flexible. The bill would require projects to be either (1) licensed and regulated by the State or local government, or (2)(a) make available directly a recognized and experienced third party service provider's supportive services to assist residents with the activities of daily living, and (b) provide separate dwelling units each of which includes a full kitchen and bathroom for residents. Under current law, a project must comply with all three of these requirements.

Section 302. Monthly Assistance Payment Under Rental Assistance. Permits voucher holders in assisted living facilities to pay more than 40 percent of their income for rent, subject to HUD approval.

Title IV: Facilitating affordable housing preservation transactions

Section 401. Use of Sale or Refinancing Proceeds. Prohibits HUD from imposing additional restrictions, other than those already required by law, in connection with a sale of refinancing of a multi-

family housing project where HUD approval of prepayment is required.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HOUSING ACT OF 1959

* * * * *

TITLE II—HOUSING FOR THE ELDERLY OR HANDICAPPED

* * * * *

SEC. 202. SUPPORTIVE HOUSING FOR THE ELDERLY.

(a) * * *

* * * * *

(c) FORMS OF ASSISTANCE.—

(1) * * *

(2) PROJECT RENTAL ASSISTANCE.—(A) INITIAL PROJECT RENTAL ASSISTANCE CONTRACT.—Contracts for project rental assistance shall obligate the Secretary to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income elderly persons that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary [may] shall adjust the annual contract amount if the sum of the project income and the amount of assistance payments available under this paragraph are inadequate to provide for reasonable project costs.

(B) RENEWAL OF AND INCREASES IN CONTRACT AMOUNTS.—

(i) EXPIRATION OF CONTRACT TERM.—Upon the expiration of each contract term, the Secretary shall adjust the annual contract amount to provide for reasonable project costs, and any increases, including adequate reserves, supportive services, and service coordinators, except that any contract amounts not used by a project during a contract term shall not be available for such adjustments upon renewal.

(ii) EMERGENCY SITUATIONS.—In the event of emergency situations that are outside the control of the owner, the Secretary shall increase the annual contract amount, subject to reasonable review and limitations as the Secretary shall provide.

* * * * *

(f) **【SELECTION CRITERIA.—】** *INITIAL SELECTION CRITERIA AND PROCESSING.—(1) SELECTION CRITERIA.—*The Secretary shall establish selection criteria for assistance under this section, which shall include—

【(1)】 (A) the ability of the applicant to develop and operate the proposed housing;

【(2)】 (B) the need for supportive housing for the elderly in the area to be served; , taking into consideration the availability of public housing for the elderly and vacancy rates in such facilities

【(3)】 (C) the extent to which the proposed size and unit mix of the housing will enable the applicant to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

【(4)】 (D) the extent to which the proposed design of the housing will meet the special physical needs of elderly persons;

【(5)】 (E) the extent to which the applicant has demonstrated that the supportive services identified in subsection (e)(4) will be provided on a consistent, long-term basis;

(F) the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing, who has the managerial capacity and responsibility for carrying out the actions described in subparagraphs (A) and (B) of subsection (g)(2);

【(6)】 (G) the extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

【(7)】 (H) such other factors as the Secretary determines to be appropriate to ensure that funds made available under this section are used effectively.

(2) *DELEGATED PROCESSING.—*

(A) In issuing a capital advance under this subsection for any project for which financing for the purposes described in the last two sentences of subsection (b) is provided by a combination of a capital advance under subsection (c)(1) and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that—

(i) is in geographic proximity to the property;

(ii) has demonstrated experience in and capacity for underwriting multifamily housing loans that provide housing and supportive services;

(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section, and

(iv) agrees to issue a firm commitment within 12 months of delegation.

(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency has applied to provide delegated processing pursuant to this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.

(C) *An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.*

(D) *Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital advance amounts or project rental assistance and such reductions shall be subject to appeal.*

* * * * *

(h) DEVELOPMENT COST LIMITATIONS.—

(1) IN GENERAL.—The Secretary shall periodically establish reasonable development cost limitations by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limitations in the Federal Register. The cost limitations shall reflect—

(A) * * *

* * * * *

(j) MISCELLANEOUS PROVISIONS.—

(1) * * *

* * * * *

(3) OWNER DEPOSIT.—

(A) IN GENERAL.—The Secretary shall require an owner to deposit an amount not to exceed \$25,000 in a special escrow account to assure the owner's commitment to the housing. *Such amount shall be used only to cover operating deficits during the first three years of operations and shall not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.*

* * * * *

(9) PREFERENCES FOR HOMELESS ELDERLY.—*The Secretary shall permit an owner of housing assisted under this section to establish for, and apply to, the housing a preference in tenant selection for the homeless elderly, either within the application or after selection pursuant to subsection (f), but only if—*

(A) *such preference is consistent with paragraph (2) of this subsection; and*

(B) *the owner demonstrates that the supportive services identified pursuant to subsection (e)(4), or additional supportive services to be made available upon implementation of the preference, will meet the needs of the homeless elderly, maintain safety and security for all tenants, and be provided on a consistent, long-term, and economical basis.*

(k) DEFINITIONS.—

(1) * * *

* * * * *

(4) The term “private nonprofit organization” means any incorporated private institution or foundation—

(A) * * *

(B) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located, and (ii) which is responsible for the operation of the housing assisted under this section; *except that, in the case of any national organization that is the owner of multiple housing projects assisted under this section, the organization may comply with clause (i) of this subparagraph by having a local advisory board to the governing board of the organization the membership which is selected in the manner required under clause (i); and*

* * * * *

SEC. 202b. GRANTS FOR CONVERSION OF ELDERLY HOUSING TO ASSISTED LIVING FACILITIES.

(a) * * *

* * * * *

(g) DEFINITIONS.—For the purposes of this section—

[(1) the term “assisted living facility” has the meaning given such term in section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)); and]

(1) *the term “assisted living facility” means a facility that—*

(A) is owned by a private nonprofit organization; and

(B)(i) is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located); or

(ii)(I) makes available, directly or through recognized and experienced third party service providers, to residents at the resident’s request or choice supportive services to assist the residents in carrying out the activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, toileting, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care service, such as nursing and therapy, and certain health related services; and

(II) provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility; and

* * * * *



**SECTION 811 OF THE AMERICAN HOMEOWNERSHIP AND
ECONOMIC OPPORTUNITY ACT OF 2000**

SEC. 811. PREPAYMENT AND REFINANCING.

(a) APPROVAL OF PREPAYMENT OF DEBT.—Upon request of the project sponsor of a project assisted with a loan under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act), *for which the Secretary's consent to prepayment is required*, the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which—

(1) the project sponsor agrees to operate the project until the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any *project-based* rental assistance payments contract under section 8 of the United States Housing Act of 1937 (or any other *project-based* rental housing assistance programs of the Department of Housing and Urban Development, including the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)), *or any successor project-based rental assistance program*, relating to the project; and

(2) the prepayment may involve refinancing of the loan if such refinancing results in (A) a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan, *or (B) a transaction in which the project owner will address the physical needs of the project, but only if, as a result of the refinancing (i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e), and (ii) the overall cost for providing rental assistance under section 8 for the project (if any) does not increase.*

(b) SOURCES OF REFINANCING.—In the case of prepayment under this section involving refinancing, the project sponsor may refinance the project through any third party source, including financing by State and local housing finance agencies, use of tax-exempt bonds, multi-family mortgage insurance under the National Housing Act, reinsurance, or other credit enhancements, including risk sharing as provided under section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note). For purposes of underwriting a loan insured under the National Housing Act, *or approving the standards used by authorized lenders to underwrite a loan refinanced with risk sharing as provided by section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1701 note)*, the Secretary **[may]** *shall* assume that any section 8 rental assistance contract relating to a project will be renewed for the term of such loan.

(c) USE OF UNEXPENDED AMOUNTS.—Upon execution of the refinancing for a project pursuant to this section, the Secretary shall make available at least 50 percent of the annual savings resulting from reduced section 8 or other rental housing assistance contracts in a manner that is advantageous to the tenants, *or is used in the*

provision of affordable rental housing and related social services for elderly persons by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer, including—

(1) **[not more than 15 percent of]** the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services;

(2) rehabilitation, modernization, or retrofitting of structures, common areas, or individual dwelling units, *including reducing the number of units and reconfiguring units that are functionally obsolete, unmarketable, or not economically viable*;

(3) construction of an addition or other facility in the project, including assisted living facilities (or, upon the approval of the Secretary, facilities located in the community where the project sponsor refinances a project under this section, or pools shared resources from more than one such project); **[or]**

(4) rent reduction of unassisted tenants residing in the project according to a pro rata allocation of shared savings resulting from the refinancing**[.]**;

(5) *the payment to the project owner, sponsor, or third party developer of a developer's fee in an amount not to exceed—*

(A) *in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as calculated by the State program as a percentage of acceptable development cost as defined by that State program; or*

(B) *in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost; or*

(6) *the payment of equity, if any, to—*

(A) *in the case of a sale, to the seller or the sponsor of the seller, in an amount equal to the lesser of the purchase price or the appraised value of the property, as each is reduced by the cost of prepaying any outstanding indebtedness on the property and transaction costs of the sale; or*

(B) *in the case of a refinancing without the transfer of the property, to the project owner or the project sponsor, in an amount equal to the difference between the appraised value of the property less the outstanding indebtedness and total acceptable development cost.*

For purposes of paragraphs (5)(B) and (6)(B), the term "acceptable development cost" shall include, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.

(d) **USE OF CERTAIN PROJECT FUNDS.**—The Secretary shall allow a project sponsor that is prepaying and refinancing a project under this section—

(1) to use any residual receipts held for that project in excess of \$500 per individual dwelling unit for **[not more than 15 percent of]** the cost of activities designed to increase the availability or provision of supportive services; and

(2) to use any reserves for replacement in excess of \$1,000 per individual dwelling unit for activities described in paragraphs (2) and (3) of subsection (c), *or (B) a transaction in*

which the project owner will address the physical needs of the project, but only if, as a result of the refinancing (i) the rent charges for unassisted families residing in the project do not increase or such families are provided rental assistance under a senior preservation rental assistance contract for the project pursuant to subsection (e), and (ii) the overall cost for providing rental assistance under section 8 for the project (if any) does not increase.

* * * * *

(e) SENIOR PRESERVATION RENTAL ASSISTANCE CONTRACTS.—Notwithstanding any other provision of law, 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, at the election of the private nonprofit organization owner of the project, the Secretary shall provide project-based rental assistance for the project under a senior preservation rental assistance contract, as follows:

(1) Assistance under the contract shall be made available to the private nonprofit organization owner—

(A) for a term of at least 20 years, subject to annual appropriations, and

(B) under the same rules governing project-based rental assistance made available under section 8 of the Housing Act of 1937.

(2) Any projects for which a senior preservation rental assistance contract is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the senior preservation rental assistance contract, or (B) such term as is required by the new financing.

(f) MORTGAGE SALE DEMONSTRATION.—

(1) IN GENERAL.—The Secretary may sell mortgages associated with loans made under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) in accordance with the relevant terms for sales of subsidized loans on multifamily housing projects under section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11). For the purpose of demonstrating the efficiency, effectiveness, quality, and timeliness of asset management and regulatory oversight of certain portfolios of such mortgages by State housing finance agencies, the Secretary shall carry out a demonstration program, in not more than three States, to sell portfolios of such mortgages to State housing finance agencies for a price not to exceed the unpaid principal balances of such mortgages and otherwise in accordance with the requirements of such section 203.

(2) LIMITATIONS.—In carrying out the demonstration program, the Secretary shall—

(A) prohibit State housing finance agencies from giving preference to, or conditioning the approval of, awards of subordinate debt funds, allocations of tax credits, or tax exempt bonds based on the use of financing for the first mort-

gage that is provided by such State housing finance agency; and

(B) require such agencies to allow refinancing or prepayment of loans made under section 202 of the Housing Act of 1959 with a loan selected by the owners, except that any use restrictions on the property for which the loan was made shall remain in effect for the duration provided under the original terms of such loan.

(g) SUBORDINATION OR ASSUMPTION OF EXISTING DEBT.—In lieu of prepayment under this section of the indebtedness with respect to a project, the Secretary may approve—

(1) in connection with new financing for the project, the subordination of the loan for the project under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act) and the continued subordination of any other existing subordinate debt previously approved by the Secretary to facilitate preservation of the project as affordable housing, or

(2) the assumption (which may include the subordination described in paragraph (1)) of the loan for the project under such section 202 in connection with the transfer of the project with such a loan to a private nonprofit organization.

(h) FLEXIBLE SUBSIDY DEBT.—The Secretary shall waive the requirement that debt for a project pursuant to the flexible subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a) be prepaid in connection with a prepayment, refinancing, or transfer under this section of a project if such waiver is necessary for the financial feasibility of the transaction and is consistent with the long-term preservation of the project as affordable housing.

(i) PREPAYMENT WHEN SECRETARY'S CONSENT NOT REQUIRED.—In connection with the prepayment under this section of a loan for which the Secretary's consent to prepayment is not required, at the project owner's election—

(1) all tenants of the project shall be eligible for enhanced vouchers in accordance with section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)); or

(2) if the project will continue to be owned by a private nonprofit organization owner, such private nonprofit organization owner may enter into a senior preservation rental assistance contract with the Secretary in accordance with subsection (e).

(j) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—For purposes of this section, the term "private nonprofit organization" has the meaning given such term in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)).

SECTION 8 OF THE UNITED STATES HOUSING ACT OF 1937

LOWER INCOME HOUSING ASSISTANCE

SEC. 8. (a) * * *

* * * * *

(o) VOUCHER PROGRAM.—

(1) * * *

* * * * *

(18) RENTAL ASSISTANCE FOR ASSISTED LIVING FACILITIES.—

(A) * * *

(B) RENT CALCULATION.—

(i) * * *

* * * * *

(iii) MONTHLY ASSISTANCE PAYMENT.—The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2) (using the rent and payment standard for the dwelling unit as determined in accordance with this subsection), *except that a family may be required at the time the family initially receives such assistance to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such an amount or percentage as the Secretary deems appropriate.*

* * * * *

