

111TH CONGRESS
2D SESSION

S. 118

AN ACT

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Section 202 Supportive Housing for the Elderly Act of
4 2010”.

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

Sec. 1. Short title and table of contents.

TITLE I—NEW CONSTRUCTION REFORMS

Sec. 101. Selection criteria.
Sec. 102. Development cost limitations.
Sec. 103. Owner deposits.
Sec. 104. Definition of private nonprofit organization.
Sec. 105. Nonmetropolitan allocation.

TITLE II—REFINANCING

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

TITLE III—ASSISTED LIVING FACILITIES AND SERVICE-
ENRICHED HOUSING

Sec. 301. Amendments to the grants for conversion of elderly housing to as-
sisted living facilities.
Sec. 302. Monthly assistance payment under rental assistance.

TITLE IV—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT
OF 2010

Sec. 401. Budgetary effects.

7 **TITLE I—NEW CONSTRUCTION**
8 **REFORMS**

9 **SEC. 101. SELECTION CRITERIA.**

10 Section 202(f)(1) of the Housing Act of 1959 (12
11 U.S.C. 1701q(f)(1)) is amended—

12 (1) by redesignating subparagraphs (F) and
13 (G) as subparagraphs (G) and (H), respectively; and

1 (2) by inserting after subparagraph (E) the fol-
 2 lowing new subparagraph:

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

9 **SEC. 102. DEVELOPMENT COST LIMITATIONS.**

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

14 **SEC. 103. OWNER DEPOSITS.**

15 Section 202(j)(3)(A) of the Housing Act of 1959 (12
 16 U.S.C. 1701q(j)(3)(A)) is amended by inserting after the
 17 period at the end the following: “Such amount shall be
 18 used only to cover operating deficits during the first 3
 19 years of operations and shall not be used to cover con-
 20 struction shortfalls or inadequate initial project rental as-
 21 sistance amounts.”.

22 **SEC. 104. DEFINITION OF PRIVATE NONPROFIT ORGANIZA-**
 23 **TION.**

24 Section 202(k)(4) of the Housing Act of 1959 (12
 25 U.S.C. 1701q(k)(4)) is amended to read as follows:

1 “(4) The term ‘private nonprofit organization’
2 means—

3 “(A) any incorporated private institution
4 or foundation—

5 “(i) no part of the net earnings of
6 which inures to the benefit of any member,
7 founder, contributor, or individual;

8 “(ii) which has a governing board—

9 “(I) the membership of which is
10 selected in a manner to assure that
11 there is significant representation of
12 the views of the community in which
13 such housing is located; and

14 “(II) which is responsible for the
15 operation of the housing assisted
16 under this section, except that, in the
17 case of a nonprofit organization that
18 is the sponsoring organization of mul-
19 tiple housing projects assisted under
20 this section, the Secretary may deter-
21 mine the criteria or conditions under
22 which financial, compliance and other
23 administrative responsibilities exer-
24 cised by a single-entity private non-
25 profit organization that is the owner

1 corporation responsible for the oper-
 2 ation of an individual housing project
 3 may be shared or transferred to the
 4 governing board of such sponsoring
 5 organization; and

6 “(iii) which is approved by the Sec-
 7 retary as to financial responsibility; and

8 “(B) a for-profit limited partnership the
 9 sole general partner of which is—

10 “(i) an organization meeting the re-
 11 quirements under subparagraph (A);

12 “(ii) a for-profit corporation wholly
 13 owned and controlled by one or more orga-
 14 nizations meeting the requirements under
 15 subparagraph (A); or

16 “(iii) a limited liability company whol-
 17 ly owned and controlled by one or more or-
 18 ganizations meeting the requirements
 19 under subparagraph (A).”.

20 **SEC. 105. NONMETROPOLITAN ALLOCATION.**

21 Paragraph (3) of section 202(l) of the Housing Act
 22 of 1959 (12 U.S.C. 1701q(l)(3)) is amended by inserting
 23 after the period at the end the following: “In complying
 24 with this paragraph, the Secretary shall either operate a
 25 national competition for the nonmetropolitan funds or

1 make allocations to regional offices of the Department of
 2 Housing and Urban Development.”.

3 **TITLE II—REFINANCING**

4 **SEC. 201. APPROVAL OF PREPAYMENT OF DEBT.**

5 Subsection (a) of section 811 of the American Home-
 6 ownership and Economic Opportunity Act of 2000 (12
 7 U.S.C. 1701q note) is amended—

8 (1) in the matter preceding paragraph (1), by
 9 inserting “, for which the Secretary’s consent to pre-
 10 payment is required,” after “Affordable Housing
 11 Act)”;

12 (2) in paragraph (1)—

13 (A) by inserting “at least 20 years fol-
 14 lowing” before “the maturity date”;

15 (B) by inserting “project-based” before
 16 “rental assistance payments contract”;

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

19 (D) by inserting “, or any successor
 20 project-based rental assistance program,” after
 21 “1701s))”;

22 (3) by amending paragraph (2) to read as fol-
 23 lows:

24 “(2) the prepayment may involve refinancing of
 25 the loan if such refinancing results in—

1 “(A) a lower interest rate on the principal
2 of the loan for the project and in reductions in
3 debt service related to such loan; or

4 “(B) a transaction in which the project
5 owner will address the physical needs of the
6 project, but only if, as a result of the refi-
7 nancing—

8 “(i) the rent charges for unassisted
9 families residing in the project do not in-
10 crease or such families are provided rental
11 assistance under a senior preservation
12 rental assistance contract for the project
13 pursuant to subsection (e); and

14 “(ii) the overall cost for providing
15 rental assistance under section 8 for the
16 project (if any) is not increased, except,
17 upon approval by the Secretary to—

18 “(I) mark-up-to-market contracts
19 pursuant to section 524(a)(3) of the
20 Multifamily Assisted Housing Reform
21 and Affordability Act (42 U.S.C.
22 1437f note), as such section is carried
23 out by the Secretary for properties
24 owned by nonprofit organizations; or

1 “(II) mark-up-to-budget con-
 2 tracts pursuant to section 524(a)(4)
 3 of the Multifamily Assisted Housing
 4 Reform and Affordability Act (42
 5 U.S.C. 1437f note), as such section is
 6 carried out by the Secretary for prop-
 7 erties owned by eligible owners (as
 8 such term is defined in section 202(k)
 9 of the Housing Act of 1959 (12
 10 U.S.C. 1701q(k)); and”;

11 (4) by adding at the end the following:

12 “(3) notwithstanding paragraph (2)(A), the
 13 prepayment and refinancing authorized pursuant to
 14 paragraph (2)(B) involves an increase in debt service
 15 only in the case of a refinancing of a project assisted
 16 with a loan under such section 202 carrying an in-
 17 terest rate of 6 percent or lower.”.

18 **SEC. 202. USE OF UNEXPENDED AMOUNTS.**

19 Subsection (c) of section 811 of the American Home-
 20 ownership and Economic Opportunity Act of 2000 (12
 21 U.S.C. 1701q note) is amended—

22 (1) by striking “USE OF UNEXPENDED
 23 AMOUNTS.—” and inserting “USE OF PROCEEDS.—
 24 ”;

(2) by amending the matter preceding paragraph (1) to read as follows: “Upon execution of the refinancing for a project pursuant to this section, the Secretary shall ensure that proceeds are used in a manner advantageous to tenants of the project, or are used in the provision of affordable rental housing and related social services for elderly persons that are tenants of the project or are tenants of other HUD-assisted senior housing by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer, including—”;

(3) by amending paragraph (1) to read as follows:

“(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, except that upon the request of the non-profit owner, sponsor, or organization and determination of the Secretary, such 15 percent limitation may be waived to ensure that the use of unexpended amounts better enables seniors to age in place;”;

(4) in paragraph (2), by inserting before the semicolon the following: “, including reducing the

1 number of units by reconfiguring units that are
2 functionally obsolete, unmarketable, or not economi-
3 cally viable”;

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

6 (6) in paragraph (4), by striking “according to
7 a pro rata allocation of shared savings resulting
8 from the refinancing.” and inserting a semicolon;
9 and

10 (7) by adding at the end the following new
11 paragraphs:

12 “(5) rehabilitation of the project to ensure long-
13 term viability; and

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

17 “(A) in the case of a project refinanced
18 through a State low income housing tax credit
19 program, the fee permitted by the low income
20 housing tax credit program as calculated by the
21 State program as a percentage of acceptable de-
22 velopment cost as defined by that State pro-
23 gram; or

1 “(B) in the case of a project refinanced
2 through any other source of refinancing, 15
3 percent of the acceptable development cost.

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

8 **SEC. 203. USE OF PROJECT RESIDUAL RECEIPTS.**

9 Paragraph (1) of section 811(d) of the American
10 Homeownership and Economic Opportunity Act of 2000
11 (12 U.S.C. 1701q note) is amended—

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

13 and

14 (2) by inserting before the period at the end the
15 following: “or other purposes approved by the Sec-
16 retary”.

17 **SEC. 204. ADDITIONAL PROVISIONS.**

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

22 “(e) SENIOR PRESERVATION RENTAL ASSISTANCE
23 CONTRACTS.—Notwithstanding any other provision of
24 law, in connection with a prepayment plan for a project
25 approved under subsection (a) by the Secretary or as oth-

1 erwise approved by the Secretary to prevent displacement
 2 of elderly residents of the project in the case of refinancing
 3 or recapitalization and to further preservation and afford-
 4 ability of such project, the Secretary shall provide project-
 5 based rental assistance for the project under a senior pres-
 6 ervation rental assistance contract, as follows:

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

10 “(A) for a term of at least 20 years, sub-
 11 ject to annual appropriations; and

12 “(B) under the same rules governing
 13 project-based rental assistance made available
 14 under section 8 of the Housing Act of 1937 or
 15 under the rules of such assistance as may be
 16 made available for the project.

17 “(2) Any projects for which a senior preserva-
 18 tion rental assistance contract is provided shall be
 19 subject to a use agreement to ensure continued
 20 project affordability having a term of the longer of
 21 (A) the term of the senior preservation rental assist-
 22 ance contract, or (B) such term as is required by the
 23 new financing.

24 “(f) SUBORDINATION OR ASSUMPTION OF EXISTING
 25 DEBT.—In lieu of prepayment under this section of the

1 indebtedness with respect to a project, the Secretary may
2 approve—

3 “(1) in connection with new financing for the
4 project, the subordination of the loan for the project
5 under section 202 of the Housing Act of 1959 (as
6 in effect before the enactment of the Cranston-Gon-
7 zalez National Affordable Housing Act) and the con-
8 tinued subordination of any other existing subordi-
9 nate debt previously approved by the Secretary to
10 facilitate preservation of the project as affordable
11 housing; or

12 “(2) the assumption (which may include the
13 subordination described in paragraph (1)) of the
14 loan for the project under such section 202 in con-
15 nection with the transfer of the project with such a
16 loan to a private nonprofit organization.

17 “(g) FLEXIBLE SUBSIDY DEBT.—The Secretary
18 shall waive the requirement that debt for a project pursu-
19 ant to the flexible subsidy program under section 201 of
20 the Housing and Community Development Amendments
21 of 1978 (12 U.S.C. 1715z–1a) be prepaid in connection
22 with a prepayment, refinancing, or transfer under this sec-
23 tion of a project if the financial transaction or refinancing
24 cannot be completed without the waiver.

1 “(h) TENANT INVOLVEMENT IN PREPAYMENT AND
2 REFINANCING.—The Secretary shall not accept an offer
3 to prepay the loan for any project under section 202 of
4 the Housing Act of 1959 unless the Secretary—

5 “(1) has determined that the owner of the
6 project has notified the tenants of the owner’s re-
7 quest for approval of a prepayment; and

8 “(2) has determined that the owner of the
9 project has provided the tenants with an opportunity
10 to comment on the owner’s request for approval of
11 a prepayment, including on the description of any
12 anticipated rehabilitation or other use of the pro-
13 ceeds from the transaction, and its impacts on
14 project rents, tenant contributions, or the afford-
15 ability restrictions for the project, and that the
16 owner has responded to such comments in writing.

17 “(i) DEFINITION OF PRIVATE NONPROFIT ORGANI-
18 ZATION.—For purposes of this section, the term ‘private
19 nonprofit organization’ has the meaning given such term
20 in section 202(k) of the Housing Act of 1959 (12 U.S.C.
21 1701q(k)).”.

1 **TITLE III—ASSISTED LIVING FA-**
 2 **CILITIES AND SERVICE-EN-**
 3 **RICHD HOUSING**

4 **SEC. 301. AMENDMENTS TO THE GRANTS FOR CONVERSION**
 5 **OF ELDERLY HOUSING TO ASSISTED LIVING**
 6 **FACILITIES.**

7 (a) TECHNICAL AMENDMENT.—The section heading
 8 for section 202b of the Housing Act of 1959 (12 U.S.C.
 9 1701q–2) is amended by inserting “**AND OTHER PUR-**
 10 **POSES**” after “**ASSISTED LIVING FACILITIES**”.

11 (b) EXTENSION OF GRANT AUTHORITY.—Section
 12 202b(a)(2) of the Housing Act of 1959 (12 U.S.C. 1701q–
 13 2(a)(2)) is amended—

14 (1) by striking “(2) CONVERSION.—Activities”
 15 and inserting the following:

16 “(2) CONVERSION.—

17 “(A) ASSISTED LIVING FACILITIES.—Ac-
 18 tivities”; and

19 (2) by adding at the end the following:

20 “(B) SERVICE-ENRICHED HOUSING.—Ac-
 21 tivities designed to convert dwelling units in the
 22 eligible project to service-enriched housing for
 23 elderly persons.”.

24 (c) AMENDMENT TO APPLICATION PROCESS.—Sec-
 25 tion 202b(c)(1) of the Housing Act of 1959 (12 U.S.C.

1 1701q-2(c)(1)) is amended by inserting “for either an as-
 2 sisted living facility or service-enriched housing” after “ac-
 3 tivities”.

4 (d) REQUIREMENTS FOR SERVICES.—Section
 5 202b(d) of the Housing Act of 1959 (12 U.S.C. 1701q-
 6 2(d)) is amended to read as follows:

7 “(d) REQUIREMENTS FOR SERVICES.—

8 “(1) SUFFICIENT EVIDENCE OF FIRM FUNDING
 9 COMMITMENTS.—The Secretary may not make a
 10 grant under this section for conversion activities un-
 11 less an application for a grant submitted pursuant
 12 to subsection (c) contains sufficient evidence, in the
 13 determination of the Secretary, of firm commitments
 14 for the funding of services to be provided in the as-
 15 sisted living facility or service-enriched housing,
 16 which may be provided by third parties.

17 “(2) REQUIRED EVIDENCE.—The Secretary
 18 shall require evidence that each recipient of a grant
 19 for service-enriched housing under this section pro-
 20 vides relevant and timely disclosure of information
 21 to residents or potential residents of such housing
 22 relating to—

23 “(A) the services that will be available at
 24 the property to each resident, including—

1 “(i) the right to accept, decline, or
2 choose such services and to have the choice
3 of provider;

4 “(ii) the services made available by or
5 contracted through the grantee;

6 “(iii) the identity of, and relevant in-
7 formation for, all agencies or organizations
8 providing any services to residents, which
9 agencies or organizations shall provide in-
10 formation regarding all procedures and re-
11 quirements to obtain services, any charges
12 or rates for the services, and the rights
13 and responsibilities of the residents related
14 to those services;

15 “(B) the availability, identity, contact in-
16 formation, and role of the service coordinator;
17 and

18 “(C) such other information as the Sec-
19 retary determines to be appropriate to ensure
20 that residents are adequately informed of the
21 services options available to promote resident
22 independence and quality of life.”.

23 (e) AMENDMENTS TO SELECTION CRITERIA.—Sec-
24 tion 202b(e) of the Housing Act of 1959 (12 U.S.C.
25 1701q–2(e)) is amended—

1 (1) in paragraph (2)—

2 (A) by inserting “or service-enriched hous-
3 ing” after “facilities”; and

4 (B) by inserting “service-enriched hous-
5 ing” after “facility”;

6 (2) in paragraph (5), by inserting “or service-
7 enriched housing” after “facility”; and

8 (3) in paragraph (6), by inserting “or service-
9 enriched housing” after “facility”.

10 (f) AMENDMENTS TO SECTION 8 PROJECT-BASED
11 ASSISTANCE.—Section 202b(f) of the Housing Act of
12 1959 (12 U.S.C. 1701q–2(f)) is amended—

13 (1) in paragraph (1), by inserting “or service-
14 enriched housing” after “facilities” each time that
15 term appears; and

16 (2) in paragraph (2), by inserting “or service-
17 enriched housing” after “facility”.

18 (g) AMENDMENTS TO DEFINITIONS.—Section
19 202b(g) of the Housing Act of 1959 (12 U.S.C. 1701q–
20 2(g)) is amended to read as follows:

21 “(g) DEFINITIONS.—For purposes of this section—

22 “(1) the term ‘assisted living facility’ has the
23 meaning given such term in section 232(b) of the
24 National Housing Act (1715w(b));

1 “(2) the term ‘service-enriched housing’ means
2 housing that—

3 “(A) makes available through licensed or
4 certified third party service providers supportive
5 services to assist the residents in carrying out
6 activities of daily living, such as bathing, dress-
7 ing, eating, getting in and out of bed or chairs,
8 walking, going outdoors, using the toilet, laun-
9 dry, home management, preparing meals, shop-
10 ping for personal items, obtaining and taking
11 medication, managing money, using the tele-
12 phone, or performing light or heavy housework,
13 and which may make available to residents
14 home health care services, such as nursing and
15 therapy;

16 “(B) includes the position of service coor-
17 dinator, which may be funded as an operating
18 expense of the property; ;

19 “(C) provides separate dwelling units for
20 residents, each of which contains a full kitchen
21 and bathroom and which includes common
22 rooms and other facilities appropriate for the
23 provision of supportive services to the residents
24 of the housing; and

1 “(D) provides residents with control over
 2 health care and supportive services decisions,
 3 including the right to accept, decline, or choose
 4 such services, and to have the choice of pro-
 5 vider; and

6 “(3) the definitions in section 1701(q)(k) of
 7 this title shall apply.”.

8 **SEC. 302. MONTHLY ASSISTANCE PAYMENT UNDER RENTAL**
 9 **ASSISTANCE.**

10 Clause (iii) of section 8(o)(18)(B) of the United
 11 States Housing Act of 1937 (42 U.S.C.
 12 1437f(o)(18)(B)(iii)) is amended by inserting before the
 13 period at the end the following: “, except that a family
 14 may be required at the time the family initially receives
 15 such assistance to pay rent in an amount exceeding 40
 16 percent of the monthly adjusted income of the family by
 17 such an amount or percentage that is reasonable given the
 18 services and amenities provided and as the Secretary
 19 deems appropriate.”.

20 **TITLE IV—COMPLIANCE WITH**
 21 **STATUTORY PAY-AS-YOU-GO**
 22 **ACT OF 2010**

23 **SEC. 401. BUDGETARY EFFECTS.**

24 The budgetary effects of this Act, for the purpose of
 25 complying with the Statutory Pay-As-You-Go-Act of 2010,

1 shall be determined by reference to the latest statement
2 titled “Budgetary Effects of PAYGO Legislation” for this
3 Act, submitted for printing in the Congressional Record
4 by the Chairman of the Senate Budget Committee, pro-
5 vided that such statement has been submitted prior to the
6 vote on passage.

Passed the Senate December 18, 2010.

Attest:

Secretary.

11TH CONGRESS
2D Session

S. 118

AN ACT

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.