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Housing for the Elderly: Legislation in the 106th Congress

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ABSTRACT

Since 1959, the federal government has provided rental housing designed for occupancy specifically by the elderly under the Section 202 housing program. The Administration's budget proposal for FY2000 contained recommended changes to the Section 202 program that would expand the use of funding. Also, several bills have been introduced in the 106th Congress that would make major changes to the Section 202 program, and other housing subsidies for the elderly. Several of these bills were combined to form Title V of the VA-HUD and Independent Agencies Appropriations Act for FY2000 (P.L. 106-74). This report provides background information on the Section 202 program, and a discussion of the proposed and adopted legislation. The report will be updated to reflect legislative activity in the 106th Congress.

Housing for the Elderly: Legislation in the 106th Congress

Summary

Since 1959, the federal government has provided rental housing designed for occupancy by the elderly under the Section 202 housing program. On the whole, the program has been considered successful (having only one defaulted loan) but some legislators believe it has become costly and it has been modified in recent years.

In its budget proposal for FY2000, the Administration requested \$660 million for housing for the elderly under Section 202. While this is the same level as in FY1999, the Administration had proposed new uses of funds to help subsidize a full range of housing options for the elderly. Members of Congress have also shown concern for keeping housing affordable, and helping the elderly to live independently as long as possible. To date, five bills have been introduced in the 106th Congress which strive to achieve this goal through amendments to Section 202 as well as other housing programs that benefit the elderly.

Title V of P.L. 106-74, which passed the House as a revised version of H.R. 202, combines some provisions of the original H.R. 202, H.R. 1336, H.R. 1624 and S. 1319 into a bipartisan effort to preserve affordable housing for senior citizens and low-income families into the 21st century. The enacted provisions are intended to protect existing residents of federally assisted housing from being forced out of their homes in the face of market rent increases; provide for the development of affordable living facilities under several existing programs; and preserve affordable housing under the existing Section 8 program by renewing contracts with owners at market rate rent levels when necessary.

The original H.R. 202, H.R. 425, H.R. 1336, H.R. 1624 and S. 1319 intended to assure affordable housing and services for senior citizens into the 21st century at least cost to the federal government through amendments to the Section 202 housing program; the use of enhanced vouchers and matching grants; renewing Section 8 rents at market levels; and forming housing partnerships of federal, state, and local governments.

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Housing for the Elderly: Legislation in the 106th Congress

Introduction

According to the Department of Commerce, Bureau of the Census, in July 1998 there were more than 34 million Americans over 65 years of age, and the Bureau projects that by the year 2020, more than 53 million, or one in eight Americans, will be over 65 years of age. This statistic, in addition to information provided by the Department of Housing and Urban Development (HUD), that only one-third of low-income senior citizens in need of affordable housing actually receives assistance, presents a dilemma: how to meet the need for affordable housing for senior citizens at a time when the population is also continuing to grow.

Legislation has been proposed in the 106th Congress, both by the Administration and individual Members, to address this issue. Some of these provisions have been enacted as Title V of the VA-HUD and Independent Agencies Appropriations Act for FY2000 (P.L. 106-74). The enacted provisions are intended to protect existing residents of federally assisted housing from being forced out of their homes in the face of market rate rent increases; provide for the development of affordable assisted living facilities under several existing programs; and preserve affordable housing under the existing Section 8 program by renewing contracts with owners at market rate rent levels when necessary.

Background

The federal government operates several rental assistance housing programs that provide units for large numbers of elderly residents, including Section 8, Section 236, and public housing. However, since 1959, the federal government's primary tool for supplying affordable housing designed for occupancy by the elderly has been the Section 202 program of the 1959 Housing Act. As originally created, Section 202 authorized direct low-interest rate loans to provide housing for the elderly. This direct loan program provided construction financing and 50-year loans at a 3% interest rate to nonprofit and limited dividend sponsors of housing for elderly persons with low or moderate incomes. The original Section 202 program aided in the construction of approximately 45,000 housing units built for the elderly in the 1960s, but it was phased out in 1969 in favor of another program, Section 236 rental assistance.

The Section 236 program was authorized by the Housing and Community Development Act of 1968. It combined mortgage insurance with subsidized interest payments to the mortgagee, for the production of low-cost rental housing. This interest rate subsidy lowered the effective interest rate to 1% where the interest rate

under the Section 202 program had been 3%. It was believed that this would open up affordable housing to more of the lower-income elderly.

The Section 236 program was not restricted to occupancy by the elderly; it was designed for low-income families as well. “Tenants in a Section 236 project paid either a basic monthly rent including their share of utilities, or 30% of their income, whichever was greater, with set ceiling rents. When the oil crisis of the 1970s occurred, utility costs increased above the limits set for rents.”¹ Operating costs became so high that many of the projects were not able to survive. In 1973, President Nixon declared a moratorium on assisted housing, and the Section 236 program was one of the programs suspended.

The Section 8 rental assistance program was authorized by the Housing and Community Development Act of 1974. Under the Section 8 program, HUD enters into assistance payment contracts with owners of rental housing, who agree to provide decent housing for low-income families.² In 1974, the Section 202 program was reauthorized and revised to permit construction loans and 40-year financing to nonprofit sponsors for the construction and substantial rehabilitation of housing projects for the elderly. An important aspect of the revised Section 202 program was that all projects receiving long-term loans would meet the requirements for, and would receive the benefits of, leased housing assistance payments under the Section 8 program. This meant that eligible tenants would pay no more than 25% (later raised to 30%) of their income for rent. The assistance payment covers the difference between this amount and the fair market rent for the unit. Section 202 rents are limited to the amount necessary to operate and maintain the project, and to cover the amortization of the debt incurred to develop and construct the project. If necessary, rents in Section 202 projects can go up to 120% of the fair market rents established by HUD for each housing area on the basis of rents for comparable units.

Almost since the inception of the Section 202 program, sponsors have expressed a need to coordinate the funding of Section 202 housing for the elderly with the provision of supportive services. The National Affordable Housing Act of 1990 reauthorized the Section 202 program, this time making it not only a housing program but a “supportive” housing program with services to ensure that the elderly tenants can live independently longer, while paying affordable rents. The supportive services provided in housing projects assisted under this program must be tailored to meet the needs of the elderly persons living in the units. These services should include meals, transportation, housekeeping, personal care, health services, and other services as needed. Also, up to 15% of the funds for supportive services in a project may be used to pay the salary of a service coordinator to make sure that necessary services are provided to those who need them.

¹ Housing and Development Reporter. Preservation-Prepayment. Boston. Warren, Gorham, and Lamont, 1993. p. 17:0011.

² For background information on the Section 8 program, see CRS Report 96-667, Section 8 Housing: Past, Present, and Future, by Susan Vanhorenbeck. Also see CRS Report 98-860, Housing the Poor: Federal Housing Programs for Low-Income Families, by Morton J. Schussheim.

Under the 1990 legislation, the Section 202 program was changed from a combination of direct loans and Section 8 assistance, to a combination of capital advances and rental assistance for very low-income elderly persons under its own program. The capital advance is a non-interest bearing loan which does not have to be repaid as long as the housing is available for occupancy by very low-income persons for at least 40 years. In essence then, the capital advance is actually a grant, unless the building is used for a purpose other than that for which it was first designated. This capital advance can be used to aid nonprofit organizations in financing the construction, acquisition, or rehabilitation of a structure to be used for supportive housing for the elderly under the Section 202 program.

Rental assistance for Section 202 projects is now provided through 5-year renewable contracts between HUD and the project owners. Under these contracts, HUD agrees to pay the operating costs not covered by the tenant rents. Tenants pay 30% of their income as rent, or if they are receiving welfare assistance, the shelter rent payment determined by their welfare assistance. Because projects funded since 1990 have not had a debt payment to contend with, it is easier for them to provide housing and services at a lower subsidy cost to the federal government than projects financed under the pre-1990 Section 202 program.

Legislation in the 106th Congress

In its budget proposal for FY2000, the Administration requested the use of Section 202 funding for new efforts at housing the elderly through HUD appropriations. Currently, Section 202 funds are used to house the elderly in supportive housing with services and support from service coordinators. The Administration's proposal would permit the use of Section 202 funding for capital grants which could be used by owners of Section 202 projects for modernization or conversion to assisted living facilities, and increased funding for service coordinators. The Administration also proposed a change in the law which would allow Section 8³ housing vouchers to cover the rent portion of assisted living costs.

Several bills were introduced in the 106th Congress which sought to keep housing affordable for the elderly and provide them with needed services. H.R. 202 was introduced in the House by Representative Lazio in January. On September 22, a substitute bill for the original H.R. 202 was introduced. This bill combined provisions of several other bills (H.R. 425, H.R. 1336, and H.R. 1624) with sections of the original H.R. 202. The revised H.R. 202 was amended at markup by the House Committee on Banking and Financial Services on September 24, and provisions consistent with S. 1319, introduced by Senator Jeffords, were also incorporated into the bill. On September 27, 1999, H.R. 202 passed the House, and an amended version was subsequently included in the VA-HUD bill as Title V, when that bill was reported out of conference. The VA-HUD and Independent Agencies Appropriations Act for FY2000 (P.L. 106-74) was signed into law on October 20, 1999.

³ Section 8 is the federal government's largest rental subsidy program. While it is not designed primarily to house the elderly, many elderly families reside in Section 8 units.

Summary of Title V of P.L. 106-74

Authorization of Appropriations. Title V of P.L. 106-74 authorizes \$710 million for Section 202 Supportive Housing for the Elderly and \$201 million for Section 811 Supportive Housing for Persons with Disabilities. Title V also authorizes “such sums as may be necessary” to repair and convert housing projects for the elderly into assisted living facilities; \$50 million for service coordinators and congregate services in assisted housing for FY2000, and “such sums as may be necessary” to renew all grants made in prior years for service coordinators and congregate services in public housing, for FY2000.

In Title II of the VA-HUD and Independent Agencies Appropriations Act for FY2000, the appropriations actually funded for these programs differ somewhat from the amounts authorized in Title V. While \$710 million was appropriated for Section 202 Supportive Housing for the Elderly, \$50 million of that amount was earmarked for service coordinators and the continuation of existing congregate services in assisted housing, and an additional \$50 million was earmarked for grants for conversion of existing Section 202 projects to assisted living facilities. In FY1999, \$660 million was appropriated for the Section 202 program, and \$194 million was appropriated for the Section 811 program.

Refinancing of Section 202 Projects. Originally, H.R. 202 contained a section that provided for the refinancing of Section 202 projects which were constructed before 1990. (See discussion *Converting Financing...*, beginning on page 8.) However, before the VA-HUD appropriations bill went to conference, HUD issued a notice permitting non-profit owners of Section 202 properties to prepay and refinance these mortgages under the revised Section 202 program at terms which would keep them affordable and available for current and future tenants, for at least as long as the term of the original loan. Since HUD had already issued this notice, the conferees did not keep this provision in the bill. However, in report language, conferees direct HUD to permit owners who refinance Section 202 projects to keep at least 50% of the savings from the prepayment, so that they may use it to improve the properties or services for the residents.

In Title V, conferees also require HUD “to conduct a study of the net impact on the Federal budget deficit or surplus of making available, on a one time basis, debt forgiveness relating to the remaining principal and interest from Section 202 loans with a dollar-for-dollar reduction of rental assistance amounts under the Section 8 rental assistance program.”⁴

Expanding Affordable Housing Opportunities. As stated above, Title V authorizes sums as may be necessary for capital repairs and the conversion of assisted housing for the elderly into assisted living facilities. HUD is directed not to make a grant for conversion activity unless the sponsor applying for the grant documents, in the application, a firm commitment for the funding of services from other sources. In awarding grants, HUD is to consider the extent to which a conversion is needed

⁴ U.S. Congress, House of Representatives, 106th Congress, 1st Session, Conference Report H.Rept. 106-379, October 13, 1999. p.170.

or expected to be needed based on the age and income of tenants in the project, community support, commitment by the sponsor to promote independence of tenants to be assisted, and the ability to provide services, 24-hour staffing and on-site health care.

Title V establishes a Commission on Affordable Housing and Health Care Facility Needs in the 21st Century, which is to provide an estimate of the need for affordable housing, assisted living facilities, and health care facilities by elderly in the future. It is also to identify methods of encouraging private sector participation and investment in affordable housing for the elderly, and to submit a report to Congress by December 31, 2001.

Title V contains a provision limiting the number of dwelling units in projects occupied by low-income disabled person. The bill states that no more than 25% of the amount appropriated for the Section 811 program (supportive housing for the disabled) may be used to support projects having over 24 dwelling units. This means that group homes and other housing facilities for the disabled would be limited in size to smaller projects.

HUD is required under Title V to conduct a study demonstrating the per-unit costs of, and the benefits and problems associated with, providing housing under Section 811 in projects having 8 to 24 units and more than 24 units. The report is also to include the same information on providing housing under the Section 202 program for projects having 30 to 50 units, 50 to 80 units, 80 to 120 units and more than 120 units. Besides economic factors, the study is to examine the social considerations afforded by smaller and moderate-sized developments. HUD is to submit its report to Congress by January 20, 2000.

In further efforts to expand affordable housing opportunities, Title V amends the Section 8 rental assistance program by authorizing the use of Section 8 vouchers for the rental component of assisted living facilities. These vouchers could be used to subsidize the rents of elderly persons who choose to move from subsidized housing to assisted living facilities, or for elderly persons who remain in Section 8 projects that are being converted into assisted living facilities. The Section 8 voucher can be used only to subsidize the portion of cost attributed to the housing component of the rent; no portion of the cost of services may be subsidized by the voucher.

Renewal of Expiring Section 8 Contracts. In an effort to encourage owners of Section 8 projects to renew their contracts, Title V of P.L. 106-74 authorizes “mark-to-market” contract renewals at comparable market rent levels (or higher in some cases) for projects that meet certain criteria. In addition, these contracts will be renewed with terms of at least 5 years rather than 1 year. If Section 8 expiring contracts have rent levels above comparable market rent levels, but are not being restructured under the mark-to-market endeavor, the contracts will be renewed at the market rent level. Other Section 8 contracts that are not subject to restructuring will be renewed at the lesser of existing rents adjusted by an operating cost adjustment factor, or a rent level that provides income sufficient to support a budget-based rent.

Enhanced Vouchers. Title V authorizes HUD to provide “enhanced vouchers” to residents of a property on the expiration date of a federally-assisted housing

contract that is not being renewed. An “enhanced” voucher (also called a “sticky” voucher) is a Section 8 voucher that pays a higher subsidy than a regular voucher, and may be given to residents of assisted housing when owners opt-out or remove their projects from the subsidy program. Often, when an owner leaves a program, the rents on their units increase to a level where even a regular voucher is insufficient to aid tenants. In order to avoid displacement of these tenants, HUD sometimes gives them enhanced vouchers so that they can remain in their units without the new rent level being a burden to them. Before this law was signed, tenants of projects with expiring contracts had no access to enhanced vouchers, and many of them might have been displaced.

Title V authorizes HUD to provide enhanced vouchers to elderly and disabled residents receiving Section 8 rental assistance in multifamily projects, tenant-based Section 8 vouchers, Section 101 rent supplement, Section 23 units, and those projects receiving assistance under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, where assistance contracts will expire between FY2000-FY2004.⁵ The amount of assistance provided under a regular Section 8 voucher is equal to the fair market rent set by HUD for the area, minus 30% of the adjusted family income; assistance under enhanced vouchers would be set at higher levels. However, if a tenant in one of these covered projects decides to move, since the purpose of the enhanced voucher is to enable them to stay in place, they would forfeit the enhanced voucher at that time, and be eligible for regular assistance.

In areas of low vacancy rates, where there is an inadequate supply of affordable housing for families, enhanced vouchers could be given to non-elderly and non-disabled low-income families residing in these covered projects.

Section 236 Assistance. The Section 236 program, as enacted in 1968, provided a subsidy to reduce mortgage interest payments, and thus reduce the rental costs of the units. With increasing costs of utilities and maintenance, it became evident by 1973 that the reduction in mortgage payments was not a sufficient subsidy to keep most projects affordable, and many did not survive. Also, in 1973, President Nixon declared a moratorium on assisted housing, and Section 236 was one of the programs that was suspended. It has received no funding since then, and the surviving projects rely on rental receipts or recaptures from state programs to remain in operation.

Since 1993, there has been an increase in the number of owners who are prepaying their mortgages in order to remove themselves from the Section 236 program. Approximately 12,000 units were removed from the inventory in 1998 alone. As of 1998, there were approximately 477,000 occupied Section 236 units, many of them occupied by the elderly.⁶ In an effort to keep Section 236 projects in the program and to keep them affordable, Title V makes two amendments to the program. First, it authorizes the use of mortgage interest reduction payment grants

⁵ Section 101 and Section 23 are pre-Section 8 programs which no longer receive funding, but operate on rental payments.

⁶ Department of Housing and Urban Development. Congressional Justifications for 2000 Estimates, Part 2, February, 1999. p. C-11.

to refinance Section 236 projects in order to reduce the cost of the debt, so that the projects could charge lower rents. To qualify for this refinancing, an owner must agree to continue to operate the project under low-income eligibility restrictions, for the period of the interest reduction payments plus an additional 5 years. Second, Title V permits project owners to retain any excess rental income from a project, to use for benefit of the project, according to terms and conditions regulated by HUD. Previous law required owners to release any excess income to HUD to hold in a reserve fund that may be used to aid other projects. This change in the law is intended to give Section 236 owners greater flexibility and increased funding to maintain their properties and keep them affordable.

Observations. As the “baby boomer” generation ages, there will undoubtedly be an increased need for housing with more supportive services and assisted living facilities. Such housing is often not affordable for low-income persons, and for many, the need might not be met. Title V of P.L. 106-74 authorizes such housing to receive federal assistance, but this assistance is dependent upon appropriations. If funding for assisted living facilities will share the finding appropriated for other Section 202 projects, the issue is raised of whether this might put a burden on the Section 202 program, by decreasing the number of units that can be provided for those elderly who do not need special assistance.

Further, authorization of “enhanced vouchers” is intended to enable more elderly, disabled and low income families to remain in their homes. However, it has been pointed out by some legislators and housing analysts that providing enhanced vouchers may also subsidize higher rents for owners who have opted-out of the program than for owners who renew their contracts. This provision might prompt some owners to leave the program, if rents are not increased to the same levels for those who remain in the program. Increasing the value of the vouchers would result in an increase in the cost of the vouchers to the federal government. There was no estimate in the bill of the number of enhanced vouchers that would be needed, nor an estimate of what they would cost.

Raising the rent levels for Section 8 contracts is among the most critical provisions of the new law. If owners are to be encouraged to stay in the Section 8 program, it is generally recognized that these levels must be comparable with market-rate rents. Thus it becomes critical for HUD to use an appraisal system in determining rent levels that will make sure they are truly “comparable”. Many owners believe that HUD’s current method of basing rent levels on fair market rents (FMR) is antiquated and inadequate in most areas. Raising the rent levels to at least 90% of the “comparable market rents for the market area,” may encourage some owners to renew their contracts, but to others, even a 10% difference from market rents may be significant enough (particularly if large developments are involved) to discourage them from staying in the program.

Rent subsidies are based on “comparable market rents” for the “market area.” Thus, a clear definition of these terms is extremely important. If a “market area” were defined as a Standard Metropolitan Statistical Area (SMSA) or even a county, as it often is, it may be too broad an area in which to set comparable rents. For example, a two-bedroom apartment in the Georgetown section of Washington, D.C., and one in Suitland, Maryland, may be in the same SMSA, and may be identical in size and

appearance, but would have very different rental values. On a smaller level, this is true of units even within the same county. A unit of identical size and appearance in Oxon Hill and one in Laurel, Maryland are both in Prince George's County, but again the difference in location would not warrant "comparable" rents for the apartments. Comparable rents may have to be based on comparable units in "submarket areas" in order to be truly "comparable."

Another change in the law that is likely to be welcomed by tenants and owners alike is extending the term of Section 8 contracts. For several years, tenants have complained that they have worried from year to year whether or not their units would remain in the Section 8 program, because they did not know if contracts would be renewed. Permitting contracts to be written for multiple years is intended to ease this worry. Also, some owners of projects may be more willing to participate in the Section 8 program if they know they can get a contract to cover several years rather than one, as was previously the law.

Amendments to the Section 236 program also are likely to be welcomed by managers of these projects who have felt for many years that Congress has overlooked them in providing affordable alternatives to housing the elderly and low-income. These managers have urged Congress to amend the Section 236 program so that they may keep some of the income from rents to improve the properties. By making interest reduction payments more easily available to these owners, Congress is attempting to keep these projects affordable for the future.

Summary of H.R. 202, as Introduced

H.R. 202, "Preserving Affordable Housing for Senior Citizens into the 21st Century," as introduced by Representative Lazio on January 6, 1999, was intended to assure affordable housing and needed services for low- and moderate-income senior citizens in the next century at least cost to the federal government. The bill sought to do this by converting the method of financing for Section 202 projects funded before 1990 and canceling their Section 8 contracts; authorizing appropriations for the present program; and making amendments that drafters of the bill believed would give greater flexibility to the present program. Representative Lazio is Chairman of the House Banking Subcommittee on Housing and Community Opportunity.

Converting Financing for Pre-1990 Projects. When Congress revised the Section 202 program in 1974, it provided capital assistance for senior housing projects through repayable long-term direct loans, and 20-year rental assistance contracts under the Section 8 program, to cover reasonable construction and operating costs. At that time, the Section 8 program was new and relatively small, and the issue of increasing numbers of Section 8 rental assistance renewals was not considered. However, as years of rental assistance progressed, so did the cost of the assistance. Due to inflation and increased costs of utilities, services, and other expenses, many owners of Section 8 projects claim that the amount of assistance written into their contracts is no longer sufficient to keep a project in good operating condition. As a result, Congress has had to provide owners of Section 8 projects with additional funds through amendments to Section 8 contracts and through increased funding in contract renewals. In recent years, Congress has seen this cost of

assistance increase to the point where between one-third and one-half of the appropriated funds for HUD in a fiscal year is provided for the renewal and amendments of Section 8 contracts, and the numbers continue to grow.⁷

In 1997, the HUD-VA Appropriations Act for FY1998 (P.L. 105-65) contained a restructuring plan for Section 8 contracts usually referred to as “mark-to-market.” The plan seeks to restructure contracts for Section 8 project-based properties with FHA-insured mortgages and rents exceeding market levels. Congress sought to “restructure” the most expensive of these Section 8 contracts so that renewals would be less costly.⁸ Some legislators have suggested that a similar but less complicated restructuring could be done for the pre-1990 Section 202 contracts in order to make them more affordable. H.R. 202 would do this by converting all direct loan contracts for pre-1990 projects into interest-free capital advances and 5-year renewable project rental assistance contracts, which pay the difference between the project income and reasonable costs of operating units occupied by elderly low or moderate-income persons. HUD and other data indicate that the main expense in providing Section 202 housing, in projects funded before 1990, is the cost of repaying the loan for the construction or acquisition of the building. The American Association of Homes and Services for the Aging estimates that between 40% and 50% of a project’s Section 8 subsidies are used for this purpose. If these owners were recipients of “debt forgiveness,” they would not need the amount of rental assistance they now receive to keep their projects in good operating condition.

Although H.R. 202 intended to save money over the long term, the initial cost could have been substantial, given the amount of debt forgiveness that would be necessary to relieve these projects of their loans (about \$8 billion). As introduced, the legislation would have authorized the Secretary of HUD to forgive any debt related to a pre-1990 Section 202 loan, but only to the extent that funds had been appropriated. A possible way to reduce the bill’s initial cost would be to write off the debt over a 20-year period, rather than a wholesale forgiveness of the debt up front. As the debt is forgiven each year, the amount of project rental assistance would be reduced at an annual savings in federal outlays. As introduced, H.R. 202 did not specify a timetable for debt forgiveness.

While this provision was not included in the revised version of H.R. 202 that became Title V of P.L. 106-74, the new law requires a study of debt forgiveness for Section 202 loans. HUD is directed to conduct an analysis of the cost to the federal budget of a one-time debt forgiveness initiative, and to report to Congress within three months of the new law’s enactment.

Cancellation of Section 8 Contracts. H.R. 202 also would have cancelled Section 8 contracts made in conjunction with the financing of pre-1990 Section 202 projects. Instead of receiving Section 8 assistance, these projects would have been under 5-year renewable project rental assistance contracts (PRACs), authorized

⁷ For background information on Section 8 contracts and renewals, see CRS Report 97-264, *The Problem of Section 8 Expiring Contracts*, by Susan Vanhorenbeck.

⁸ For background information on the Section 8 restructuring program, see CRS Report 97-1002, *HUD Multifamily Housing Reform: Section 8 Restructuring*, by Susan Vanhorenbeck.

directly under Section 202. These contracts would be written to provide owners of projects with enough subsidy to keep the projects in affordable, marketable condition for the tenants. If any of these projects had obligated but unexpended funds received under the previous Section 8 contracts, funds could be kept by the project to improve its marketability or to provide services to the elderly residents, to retrofit or renovate a project, to provide a service coordinator, or if the Secretary of HUD deemed necessary, these unexpended funds could be recaptured by HUD.

The bill also contained a provision related to residual receipts held for a project. Residual receipts are funds held in reserve by a housing authority to cover unforeseen expenses which may occur (such as rental payments for units which tenants vacate without notice or payment of rent). In recent years, Congress has been questioning whether amounts held by housing authorities in these accounts are excessive. This bill suggested that a \$500 limit per unit be placed on residual receipts held, with any excess funds used to improve the viability and affordability of the project, or for services for low-income elderly residents. It is important to note that the bill only “suggested” this \$500 limit; the amount would actually have been left to the discretion of the Secretary on a project-by-project basis, dependent on need.

H.R. 202 also stated that if the Secretary of HUD believed that the conversion of a Section 202 project could be conducted more efficiently with the aid of another public or private entity, the Department could enter into a contract with one to do so. The Secretary would also have been given authority to waive any provision of law or regulation as necessary to carry out the provisions of this bill.

Authorization of Appropriations. As introduced, H.R. 202 would have authorized an appropriation of \$700 million for supportive housing for the elderly (Section 202) and \$225 million for supportive housing for the disabled (Section 811) in FY2000, and such sums as would be necessary for FY2001 and FY2002.

Section 202 Program Amendments. H.R. 202 would have made other amendments to the Section 202 program, including:

- permission to use other federal funding, as well as funding from other non-federal sources, for any amenities, design and construction of supportive housing for the elderly and disabled (Section 202 or Section 811 housing). Previously, only other non-federal sources of funding were permitted. This would free up obligated but unexpended funds from a previous Section 8 contract for use by the project to improve the property or make it more accessible for the elderly or disabled;
- opening up occupancy to “low-income elderly” in projects built before passage of H.R. 202 that have high vacancy rates (rather than restrict occupancy to “very low-income elderly”).⁹ This would

⁹ As defined in the Housing Act of 1937, “low-income” means persons or families whose adjusted incomes do not exceed 80 % of the area median income; “very low-income” means families or persons whose adjusted incomes do not exceed 50% of the area median income.

permit greater numbers of the elderly to occupy affordable housing with supportive services.

Observations. A major provision contained in H.R. 202 was the refinancing of pre-1990 Section 202 projects. This provision was not included in Title V of the VA-HUD and Independent Agencies Appropriations bill for FY2000, because before final action on the law, HUD issued a notice permitting non-profit owners of Section 202 properties to repay and refinance their mortgages, provided the housing remains available and affordable to existing and future tenants, under terms at least as advantageous to them as the terms required by the original loan. This debt forgiveness could be very costly, and Title V does require HUD to do a study of this cost.

For the federal government, H.R. 202 may have eliminated the ever-escalating cost of the renewal of Section 8 contracts, and the annual cost of Section 8 outlays related to Section 202 projects would decrease. Also, projects would have been permitted to keep unexpended funds of their Section 8 contract to use for repairs and modernization of projects. In report language, conferees on P.L. 106-74 direct HUD to do this, but it is not written into the law.

Summary of H.R. 425

H.R. 425, the “Housing Preservation Matching Grant Act of 1999,” as introduced by Representative Vento on January 19, 1999, sought to promote the preservation of affordable housing units and minimize the involuntary displacement of low-income tenants residing in such housing. It proposed to do this through a “matching grant” partnership program of federal, state, local governments, and the private sector in operating and assisting housing that is affordable to low-income persons and families. While the bill would have aided all low-income families residing in assisted housing projects, the types of assisted projects that would have benefitted from this legislation are predominantly occupied by elderly tenants.

The Matching Grant. In recent years, Congress has attempted to devise ways to provide decent, affordable housing for the poor without the full burden of cost falling on the federal government. In providing housing assistance, it has found one way to do this through “matching grant” programs. This approach has been used for several years in providing assistance (particularly in the provision of services) for the homeless and the elderly. Matching grants can work in several ways, but basically, a matching grant program provides a certain amount of federal assistance based on the dollar value of assistance received from state and local governments, and from private entities. The actual amount of the grant is usually determined through a formula designed for a specific program.

H.R. 425 would have authorized HUD to make grants to states for low-income housing preservation. States interested in applying for the grants would do so through their appropriate state agencies. HUD would determine the aggregate amount of grants to be made available in any fiscal year to any applying state, based on its determination of the state’s need in proportion to the aggregate need among all states in the given fiscal year.

The federal grant would match state funds on a two-to-one basis, providing three times the dollars available for preserving affordable housing. In determining the amount of state funds that would be eligible to be matched, the bill provided that any funds contributed by the state for the preservation of affordable housing after January 1, 1999, would apply; however, any tax credits or proceeds from the sale of tax exempt bonds by state or local governments would not be considered as non-federal sources of income in determining the matched amount to be provided.

Use of Grants. The bill would have given great flexibility to states in designing programs for using the grants. Grants provided under this bill would be used for the acquisition, preservation, operating costs and capital improvements of eligible housing projects. Eligible projects include: projects with HUD-insured mortgages such as Section 221, Section 236¹⁰ and projects taken over by HUD which were formerly insured; projects with Section 8 project-based assistance; and projects purchased or authorized for purchase by a resident tenant organization.

The owner of a project receiving funds under this matching grant program would be required to waive all rights of prepayment, and any voluntary termination of the mortgage insurance contract for the project. The owner would also be bound to a firm commitment to extend all low-income affordability restrictions for the project.

Authorization of Appropriations. H.R. 425 would have authorized such sums as may be necessary for FY2000 through FY2004 to be appropriated for the matching grants.

Observations. Many of the projects that would have been assisted by this bill are older (Section 221 and Section 236) and in need of extensive repair and improvements. Since they receive no appropriations for improvements or operating costs, owners of such projects may be forced to convert to market rents when their contracts expire, if they want to keep the projects operable. This could cause the displacement of thousands of low-income persons, many of them elderly. This bill would have enabled the federal government to assist these projects without bearing the burden of the full cost because of the “matching grant” approach. However, the “two for one” provision of the matching grant in this bill might have been a point of contention. Some legislators may have seen this ratio as being too costly at a time when federal funding for other domestic programs was being cut.

Finally, one provision of the bill raised further issues. The provision, which would have required owners of assisted projects to waive their right of prepayment and assure affordability of the project, set no time limit on these restraints. Would this mean that someone receiving a grant could never convert the project to one of

¹⁰ Section 221 and Section 236 are federal rental assistance programs authorized in the 1960's. Under these programs, profit and nonprofit owners received FHA mortgage insurance and interest rate reductions for the construction of projects so that they might be affordable to low-income households, with particular emphasis on housing the elderly. These programs were precursors of the Section 8 program and are no longer appropriated; however, they depend on rental receipts for maintenance and operation.

market rents? If so, this provision could significantly have affected the number of owners willing to participate.

Summary of H.R. 1336

H.R. 1336, the “Emergency Residents Protection Act of 1999,” as introduced by Representative Lazio on March 25, 1999, sought “to protect vulnerable residents of affordable housing ... and to help provide these residents with peace of mind and security for living.”¹¹ The bill attempted to achieve its goal through use of “enhanced” vouchers, raising rent levels for Section 8 renewals, and amending the Section 236 program. A hearing on H.R. 1336 was held by the House Subcommittee on Housing and Community Opportunity on May 4, 1999. All of the provisions of this bill were modified and incorporated into Title V of the VA-HUD and Independent Agencies Appropriations Act for FY2000.

Summary of H.R. 1624

H.R. 1624, the “Elderly Housing Quality Improvement Act,” as introduced by Representative La Falce on April 29, 1999, was similar to the proposal contained in the Administration’s budget request for FY2000. The bill sought to improve the quality of housing for the elderly by creating a new capital grant program to assist providers of housing for the elderly with capital repairs and conversion to assisted living facilities; providing refinancing and grants for the rehabilitation and maintenance of federally assisted housing for the elderly; providing Section 8 vouchers to elderly persons who need to live in assisted living facilities; renewing congregate housing services contracts and promoting the use of service coordinators.

These major provisions of H.R.1624 are contained in Title V of P.L. 106-74; however, they are modified and authorized at a lesser amount than they would have been in H.R. 1624.

Summary of S. 1319

S.1319, the “Save My Home Act of 1999”, as introduced by Senator Bond on July 1, 1999, was intended to address the Section 8 opt-out crisis facing our nation. Many of the Section 8 contracts written between private owners of rental housing and HUD have reached, or will soon be reaching, the end of their contract terms, and many of these owners have elected not to renew the contracts. As a result, many of the residents (and many of them are elderly) would be forced to move from their homes. S.1319 sought to protect these vulnerable tenants by offering higher rent levels to owners so that they would renew their contracts, and measures of protection for tenants whose contracted would not be renewed.

Enhanced Vouchers. This bill contains the same provision for enhanced vouchers as found in H.R. 1336. It would have authorized HUD to provide such vouchers to tenants who would like to remain in their units when the assistance

¹¹ H.R. 1336, Section 2(b)

contracts between the owners and HUD are not renewed. This provision is found in Title V of P.L. 106-74.

Section 8 Renewals. Most owners opt-out of the Section 8 program because they are subsidized at rates far below the market rates they could receive for their units. S. 1319 would have permitted HUD to renew expiring contract rents at levels up to market rents, but only for projects in low-vacancy areas, or where they are predominantly occupied by the elderly and disabled.

S. 1319 also would renew the expiring project-based contracts for terms up to 10 years.

Establishment of an Appraisal Clearinghouse. In the past several years, there has been an increase in complaints from project owners that HUD's method of appraisal in determining market rents does not take into consideration the whole appraised area, nor significant differences within that area.

S. 1319 would have established an "Appraisal Clearinghouse" to develop appraisal standards for use in establishing the market value of multifamily housing throughout the United States, including rural areas that have no "comparable" housing in the same area.

In establishing market rents, the appraisal was to take into consideration neighborhood characteristics such as the risk of crime, access, street appeal, utilities, property amenities, and other relevant comparisons. In order to conduct these appraisals as accurately as possible, the bill required HUD to hire and assign qualified staff with appraisal expertise to its field offices, and it also permitted HUD to contract with state and local housing finance agencies for determining the market rents of covered projects.

Tenant Purchase of Properties. S. 1319 provided technical assistance for tenant organizations, non-profits, and public entities that would want to preserve rental properties that may opt-out of the Section 8 program when rental assistance is below market rate. The bill also required HUD to establish a procedure which would have facilitated the voluntary sale or transfer of these projects to tenant organizations or tenant-endorsed community-based non-profits.

Authorization of Appropriations. S. 1319 authorized appropriations of such sums as may be necessary for the provision of enhanced vouchers from FY2000 through FY2004.

Observations. Title V of P.L. 106-74 authorizes the enhanced vouchers that would have been authorized through this bill. It also renews Section 8 contracts for extended terms as requested in this bill. However, Title V renews Section 8 contracts for 5-year terms where this bill would have authorized renewals for 10-year terms.

The establishment of an appraisal clearinghouse within this bill was an attempt to improve the determination of market rent levels. Neighborhood characteristics play an important part in deciding the desirability (and thus value) of housing, and should be considered in marking rent levels. Title V contains a section which authorizes the

Secretary of HUD to develop a method of comparing market rents and fair market rents in a more equitable manner, and providing for adjustments to the rent levels when necessary for renewals.

The facilitation of the voluntary sale or transfer of opt-out properties to tenant organizations or tenant-endorsed community-based nonprofits would have been another avenue for the preservation of affordable housing, however, this provision was not endorsed in Title V.

Conclusion

While the major provisions of most of the bills introduced in the first session of the 106th Congress are incorporated in Title V of the VA-HUD and Independent Agencies Appropriations Act for FY2000, there are still some provisions, such as the use of matching grants to encourage the development of affordable housing, which may see further action in the second session. It should be remembered that while many avenues for preserving the affordability of housing in the 21st century have been proposed in various bills, and finally authorized through Title V, most of them are dependent on future appropriations. Future appropriations will determine the level of housing assistance to these vulnerable groups: elderly, disabled, and low-income families