Enterprise®

January 15, 2015

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

Re: Docket Number FR-5576-P-01, Supportive Housing and Services for the Elderly and Persons With Disabilities: Implementing Statutory Reforms

To Whom It May Concern:

We appreciate the opportunity to comment on the Section 202/811 Proposed Rule. The rule presents an opportunity to align the HUD 202/811 program with the direction that many of our housing provider partners are headed. We have had several discussions with our partners at LeadingAge, Stewards of Affordable Housing for the Future (SAHF), and Corporation for Supportive Housing (CSH) and largely agree with many of their comments and points, and would like to use this opportunity to weigh-in individually.

Enterprise offers the following comments:

ePRACs

Maturing Section 202 properties with Project Rental Assistance Contracts (PRACs) have increasingly urgent recapitalization needs, and the current difficulty PRAC owners face in accessing needed financing is a major concern. Enterprise welcomes HUD's development of the new Enhanced Project Rental Assistance Contracts (ePRACs) and their availability for both new and existing properties. Enterprise appreciates that ePRAC has the potential to encourage more flexible and efficient use of existing subsidies and enable the use of resulting savings to service new debt for capital improvements. We are encouraged by the ability to use PRAC subsidies to service debt, as this will have positive implications on the ability to raise additional capital and leverage HUD's resources.

However, we do have concerns, that are shared by our partners. First, while the ability to use PRAC subsidies to service new debt is a tremendous step forward, as a practical matter it will be extremely difficult to find lenders willing to issue debt on properties behind the existing covenant associated with the HUD capital grant. We urge HUD to consult with lenders to identify appropriate subordination or forbearance provisions that will be necessary to allow new debt to flow to these properties.

Second, we have concerns over the requirement that rents will be subject to a five-year comparability study (RCS), as it has implications for existing PRAC contracts. Under current PRAC contracts, we have seen instances in which the income generated from the tenant-paid rent and the PRAC exceeds the market. Usually, this is the result of PRAC subsidy that intentionally includes funding for services or overnight

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security that would not ordinarily be provided in the market. Although the market rent calculated every five years through an RCS may reflect the *value* of such services, this is different than the *cost* of delivering those services. For example, we have seen instances of projects where the PRAC provides support for 24/7 security staffing. Though this may be appropriate for the target population in a Section 202 property and under common practice as an explicitly accepted cost in a PRAC budget, general market conditions may not support or appropriately value this service in the RCS. As a result, in order to increase the program's impact, we recommend either that the RCS limitation not apply under ePRAC, that it apply only to the portion of rent that is not attributable to the cost of such extraordinary, yet important, services, or that the instructions for completing an RCS clearly direct the RCS preparer to value these services on the basis of cost, rather than value.

Third, as SAHF and other partners have noted, many properties have already made energy improvements over the past 5-10 years that significantly limit their ability to achieve additional marginal savings. We believe that owners of these properties should not be penalized for taking a proactive approach to managing their energy use, but should be allowed to access the savings generated by their previous work to fund or finance new property improvements.

In addition, as SAHF and other partners have noted, while we welcome the development of the ePRAC model as an important step in encouraging energy efficiency improvements and allowing properties to take on debt, we are concerned that many properties with urgent capital repair needs will not be able to find adequate operating savings or achieve new energy savings at current funding levels to finance their recapitalization needs. We urge HUD to provide owners the widest possible discretion in using existing subsidy levels more flexibly and allowing the broadest possible use of operating cost savings to fund or finance other property improvements and services. We look forward to working with HUD to identify ways of addressing the full range of capital needs for the PRAC portfolio, as the demand for affordable senior housing is expected to grow rapidly in future years.

Finally, we would like to offer a word of caution regarding ePRAC's combination of long-term use restrictions, subsidy that is subject to annual appropriations, and subsidy that is intended to cover debt service. Like other subsidized projects, a project using an ePRAC will be underwritten by private debt and equity sources to assess the impact of subsidy loss using a "loss run" sensitivity analysis in which subsidy is eliminated and rents are increased to the maximum allowable under its regulatory restrictions, or otherwise feasible in its market. Under PRAC, this analysis is usually acceptable because, even with ongoing use restrictions, rents only need to be sufficient to cover expenses and replacement reserve deposits. Under ePRAC, however, the underwriting will be more challenging. In addition to expenses and replacement reserve deposits, "loss run" rents in ePRAC transactions will also need to be sufficient to cover debt service. This may result in the need for additional reserves or lower debt than would otherwise be supportable. In order to improve the effectiveness of ePRAC and protect these projects from future appropriations risk, we encourage HUD to build as much flexibility as possible into any targeting and rent restrictions in its subsidy contracts and in any other underlying use agreements.

Set-Aside for Frail Elderly
Enterprise firmly believes that affordable, independent housing is a critical resource and link in coordinating the health of low-income older adults. Over the past several years Enterprise has supported strategies to ensure that low-income older adults – regardless of level of frailty – can age-in-place in HUD properties and avoid higher levels of care such as emergency rooms, hospitals, assisted living, or skilled nursing facilities.

However, we have concerns about the firm and binding targeting of a frail population. First, a hard set-aside requirement for frail elders could potentially cause deal-making to become more difficult, and require us to reserve this deal differently under a loss run. Second, we are concerned about the lack of clarity around how the appropriate services to support this frail population will be paid for or delivered, as it implies additional staff time, resources, and partnerships with health and service providers. Finally, we have questions about the circumstances under which the set-aside obligation would be removed. We would seek confirmation that the targeting requirements are contingent on availability of subsidy from HUD.

We understand that there are benefits to targeting a more-frail elderly population; in particular, the opportunity to have a significant, positive impact on the health outcomes on the frail elderly and reduce costs to the healthcare system. Given that, we would support a "preference" rather than a set-aside of units. Many of our housing partners currently have preferences for frail elderly and have found them to be effective in housing this population without the strict requirements of a set-aside.

New Grant Assistance
The proposed rule would provide grant assistance to applicants without sufficient capital or capacity in the predevelopment stage to compete for funding under the Section 202 or Section 811 program. The rule states that such assistance may be used to cover initial costs of necessary architectural and engineering work, site control, and other activities related to the development of supportive housing for the elderly and persons with disabilities.

While we acknowledge that predevelopment grants could incentivize more entities to participate in these programs, we believe that such grants may not be the appropriate resource for generating quality projects and would represent a reduction in the amount of funding available for the production and operation of new housing units.

Enterprise is also concerned that grants would be awarded to entities that may not have the experience or the organizational and financial viability to be awarded Low Income Housing Tax Credit (Housing Credit) financing and meet current Housing Credit underwriting guidelines. As underwriting requirements have tightened in recent years, it has become increasingly difficult to close a Housing Credit deal with a small, relatively inexperienced group. Our experience is that lower-capacity organizations are either not competitive enough to receive a Housing Credit award, or often have difficulties in getting to and executing a Housing Credit closing. We are concerned that these proposed grant funds do not address the issues that would allow lower-capacity organizations to be competitive for the additional funding sources needed for layered-financing transactions.

We also urge HUD to allow grants to be structured to avoid negative tax consequences and underwriting implications for projects using the Housing Credit. For instance, a federal grant made directly to a Housing Credit ownership entity is treated as taxable income and results in a reduction of Housing Credit basis, both of which partially counteract the benefit of the grant. HUD needs to allow for the ability to structure the funding in a form that avoids this, such as a loan from a qualified non-profit. In terms of underwriting, it is important that the grant not require long-term rent and occupancy restrictions, unless there is relief from these restrictions in the event that sufficient subsidy is not provided. If long-term restrictions without relief are put in place with these grants, additional reserves would likely be required and would reduce the effectiveness of the program.

Given the limited funding already available for the HUD 202 and 811 programs, we believe that available resources would be better directed towards operating assistance for more low-income elderly or persons with disabilities rather than predevelopment grants.

SPRACs

We are pleased to see that HUD included regulatory language for Senior Preservation Rental Assistance Contracts (SPRACs) in this proposed rule. Enterprise is supportive of SPRACs and believes the program is critical to ensuring the preservation of pre-1974 202 properties at risk of becoming unlivable or unaffordable.

Enterprise is also supportive of the language allowing owners to use the proceeds from the refinancing of a Section 202 direct loan property at another HUD-assisted senior housing property owned by the same owner. However, we suggest some flexibility with the requirement that the other HUD-assisted senior housing property serves only those residents 62 years of age or older as these properties could have residents who are younger than 62.

Assisted Living Conversion Program

We are pleased to see regulations for the Assisted Living Conversion Program (ALCP) included in the proposed rule. However, we are concerned that the definition for "assisted living facility" in the proposed rule would require a property participating in the ALCP program to be licensed. Previous NOFAs for this program have not required the property to be licensed and doing so could severely restrict the ability for owners to participate in the program. This is especially the case when licensure requires that the property-owner hold the license, employ staff directly, and bear responsibility to provide care, because affordable housing lenders and investors, which expect properties to be owned by single-purpose entities with no employees, are unwilling to take on liability related to these activities.

Service Coordinators

Enterprise is pleased to see regulations for the service coordinator program included in the proposed rule and is pleased that service coordinators are now allowed in Section 811 housing. However, we believe the proposed rule should provide more detail to ensure uniform implementation of the service coordinator program. One example where more explanation is needed is around comprehensive needs assessments, which are not defined.

Enterprise is glad to see the clarification in the definition for "activities of daily living" (ADLs) as well as the new definition for "functional limitations." These definitions will help owners better understand whether their residents are fragile or at-risk. However, HUD should ensure that these changes do not unintentionally make it harder for properties with fewer fragile or at-risk elderly to acquire service coordinators, since service coordination is important for assisting all elderly residents to age-in-place regardless of their functional limitations.

Additional clarification is also requested about the changes made to re-designated paragraph (b) (3) of §891.225. HUD should clarify that the employment of a service coordinator (and their salary) is still an eligible service cost under the contract for project rental assistance and that $15 per unit per month (or more) can be used for such purposes. Many properties currently use this funding to pay their service coordinators and we believe this should remain an allowable expense.

Thank you in advance for your consideration of these comments. If you require any additional information or clarification, please do not hesitate to contact Cheryl Gladstone (cgladstone@enterprisecommunity.org, 212-284-7192) or Allison Charette (acharette@enterprisecommunity.org, 202-407-8711).

Sincerely,

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