

EXAMINATION OF PROPOSED SECTION 202 HOUSING REGULATIONS

HEARING
BEFORE THE
SUBCOMMITTEE ON
HOUSING FOR THE ELDERLY
OF THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
FIRST SESSION

PART 2—WASHINGTON, D.C.

JUNE 26, 1975



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Part 1. Washington, D.C., June 6, 1975.

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EXAMINATION OF PROPOSED SECTION 202 HOUSING REGULATIONS

THURSDAY, JUNE 26, 1975

U.S. SENATE,
SUBCOMMITTEE ON HOUSING FOR THE ELDERLY
OF THE SENATE SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 4232, Dirksen Senate Office Building, Hon. Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Kennedy, Chiles, Clark, and Percy.

Also present: William E. Oriol, staff director; John Edie, professional staff member; John Guy Miller, minority staff director; Margaret Fayé and Gerald Yee, minority professional staff members; Patricia G. Oriol, chief clerk; Eugene Cummings, printing assistant; and Dona Daniel and Trina Hopper, assistant clerks.

OPENING STATEMENT BY SENATOR HARRISON A. WILLIAMS, JR., CHAIRMAN

Senator WILLIAMS. Good morning. This is the hearing of the Subcommittee on Housing for the Elderly of the Special Committee on Aging.

We are meeting in the committee rooms of the Committee on Labor and Public Welfare, and our subject is housing. We bring many elements together today, and we are very pleased to welcome the Honorable Carla A. Hills, Secretary of the Department of Housing and Urban Development, who will testify for us this morning.

This morning's hearing is a continuation of an earlier hearing entitled: "Examination of the Proposed Section 202 Housing Regulations"—regulations which were published for comment on May 15, 1975.

Three weeks ago at a hearing on this issue, Secretary Hills was unable to be with us, and I am delighted that we have been able to work out a mutually convenient time to hear from her this morning.

As the title to the hearing suggests, we are focusing on a specific housing program and how the administration intends to implement it. The program over the years has become affectionately known to many as the 202 program, named after its section number in the Housing Act of 1959. I say "affectionately known" because this program has been extremely popular and, I might add, very successful.

DESPERATE NEED FOR BETTER HOUSING

There are very good reasons why this program has such a remarkable record. Perhaps the most important reason is a very simple one—namely, many elderly have a desperate need for better housing. The White House Conference on Aging recommended a minimum yearly production of 120,000 units of subsidized housing for the elderly. We have not come close to meeting that recommendation.

The need among older persons who rent is especially severe. The 1970 census reports about 3.8 million elderly households who pay rent. It is startling to note that, of this total, 1.5 million elderly renters have incomes under \$3,000 per year and pay over 35 percent of their income for rent. Certainly, the incomes for most older persons have increased since the 1970 census, but rents have also gone up accordingly. In fact, testimony has been presented before this subcommittee indicating that many elderly pay 60, 70, and sometimes over 100 percent of their income for rent. In other words, many are forced to deplete their savings or rely heavily on relatives.

In short, the need is very great. Hundreds of thousands of aged persons are today on waiting lists to get into public or other subsidized housing, and hundreds of dedicated experienced nonprofit sponsors are anxiously waiting to build for needy senior citizens. But we still have no viable section 202 program to assist them. As one manager of 238 units told us at our last hearing:

Our turnover rate runs from 8 to 10 years—attributed to death. We could have 1,500 to 2,000 people on our waiting list within 90 days, if we so desired. We could supply you with 4,000 to 5,000 people on our waiting list—if there were hope.

Our purpose in being here today is simply to see if we cannot spark some hope and work out a mutually acceptable arrangement whereby the section 202 program can once again make available funding to nonprofit sponsors to build housing specifically designed to meet the needs and the desires of older Americans.

I do not wish to make a lengthy statement this morning for our time may be short. But I would like to review briefly where we are today after several years of trying to renew section 202.

CONGRESS APPROPRIATES \$215 MILLION

I think it is fair to say that this administration and its predecessor have not been enthusiastic about renewing this program. But Congress has felt otherwise; last year we tried to incorporate into the Housing and Community Development Act a revised section 202 program to meet certain objections and to complement new programs such as section 8. We were successful, and we were also successful in voting an appropriation level of \$215 million for fiscal year 1975.

Proposed regulations to put section 202 into effect were not published until May 15, 1975, and we do not, as yet, have any final regulations. Fiscal year 1975 will come to an end this coming Monday and, to my knowledge, not \$1 will have been allocated for a single unit of section 202 housing.

The Appropriations Committees in the House and Senate are apparently prepared to extend the borrowing authority for section 202 into fiscal year 1976, but a dark cloud continues to hang over the

program if the testimony and the letters I have received are any indication. In particular, heavy criticism has been levied at the Department's decision to limit funds to short-term construction loans—to the exclusion of permanent long-term financing. Sponsors and organizations throughout the country have clearly indicated to me and to this subcommittee that, without provision for permanent financing, traditional nonprofit sponsors will not be able to participate in the program.

The problem of obtaining long-term loans is an issue of paramount importance, but there are other questions as well which I hope can be discussed this morning.

Before we begin, I would emphasize most strongly that our major purpose in being here is to work out some constructive solutions. The problems facing the implementation of section 202 are by no means insurmountable, and I am confident that we can work with the Department to find a mutually acceptable way to get this program off and running.

There is no question about the past success of this program; there is no question that Congress has clearly indicated its desire to see it return to action. But the delay has been too long, and I sincerely hope that we can begin building new units very soon.

Madam Secretary, this is your first appearance before our subcommittee and I realize it comes at a very busy time for you. I welcome you to our proceedings and I look forward with interest to your statement.

The forum is yours, and proceed as you please.

STATEMENT OF CARLA A. HILLS, SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACCOMPANIED BY DAVID M. DeWILDE, ACTING ASSISTANT SECRETARY, HOUSING PRODUCTION AND MORTGAGE CREDIT, AND ACTING FHA COMMISSIONER; SANFORD H. WITKOWSKI, ACTING DIRECTOR OF THE OFFICE OF POLICY ANALYSIS, HOUSING PRODUCTION, MORTGAGE CREDIT; ROBERT R. ELLIOTT, GENERAL COUNSEL; AND ALBERT J. KLIMAN, BUDGET OFFICER, HUD

Secretary HILLS. Thank you, Mr. Chairman and members of the committee. I appreciate this opportunity to appear before you and discuss HUD's position with respect to Government-assisted housing for the elderly and the section 202 program. I would like to emphasize at the start that the Department is committed to implementing the section 202 program and to provide housing for the elderly and handicapped.

As you may know, we have published a proposed rulemaking for section 202 in the Federal Register. The 30-day comment period ended June 16, 1975. We have received 55 separate responses to the request for comments and we are carefully studying each response before issuing final regulations.

Although we are implementing the 202 program, it is not the sole—nor even the most significant—means for meeting the housing needs of the elderly. The elderly, since enactment of the U.S. Housing Act of 1937, have received a significant share of Federal housing assistance

programs where eligibility was based on income without regard to age.

OTHER HUD PROGRAMS OUTLINED

The old section 202 program, which was a supplement to other housing assistance programs for which the elderly were eligible, has provided only 44,300 housing units, while other HUD programs have already provided over 400,000 subsidized units specifically for the elderly. In addition, over 150,000 units of housing for the elderly have been financed with the assistance of our unsubsidized mortgage insurance programs.

Looking to the future, we expect to continue a high level of assistance to housing for the elderly. For example, the elderly will certainly be among the principal beneficiaries of the new section 8 rental assistance program. Over 40 percent of the applications for new section 8 units received to date are for the elderly and handicapped—over 50 percent in the case of new construction.

Assuming this 40-percent ratio is reflected in final approvals, we will have section 8 commitments for about 160,000 units for the elderly in 1976. This would include the highest number of new units for the elderly ever assisted by HUD in any 1 year. The high rate of applications for housing for the elderly under the section 8 program also indicates that there are sources of permanent financing for subsidized housing for the elderly in the private sector.

It is the section 8 subsidy, whether or not used in combination with the section 202 program, that provides the most effective housing assistance to the elderly. The section 8 program, which has a built-in cost adjustment factor, best meets the needs of the elderly who are particularly susceptible to continuously rising housing costs. In contrast, the old section 202 program, while reducing project borrowing expenses, was not designed to deal with the problem of the increasing rentals required by rising operation and maintenance costs.

As you may recall, the Department had not originally proposed the reinstatement of section 202 loans since the new section 8 program was expected to serve the same clientele more effectively. However, after Congress determined that a revised section 202 program should be implemented, we initiated an intensive evaluation to determine in what circumstances section 202 could provide assistance not available under section 8. One case was identified where section 202 would be particularly beneficial—namely, in providing construction financing for projects with nonprofit sponsors.

There has been a decline in the availability of multifamily construction financing which some economists have attributed to a decline of the real estate investment trusts. Nonprofit sponsors of elderly and handicapped housing have had serious problems in obtaining construction financing. And, even where available, construction loans often bear an interest rate of 12 to 15 percent.

Our revised section 202 program should overcome this retardant to development of housing for the elderly by making construction financing available and at interest rates considerably lower than nonprofit sponsors would pay in the conventional market.

SHORT-TERM LOANS CALLED MORE BENEFICIAL

By designing the section 202 program to aid nonprofit sponsors in the construction phase, the Federal Government is able to assist sponsors secure the financing most difficult to obtain in the private market. Moreover, the impact of the 202 funds can be maximized by using them for construction loans. The 202 short-term construction funds will be repaid and available for new loans approximately every 2 years—subject, of course, to congressional approval of a loan limitation. Under a permanent loan program, the funds would have to be committed for 30 to 40 years.

Under the construction loan approach, the \$215 million budgeted level would cover approximately 8,000 units. If the same \$215 million lending authority were used for permanent loans amortized over a 40-year term, it would require in excess of \$4 billion in Treasury borrowing by the 20th year to aid the same volume of production.

For these reasons, the joint use of section 202 as a construction finance tool and section 8 as a long-term subsidy was recommended by the administration on January 20, 1975. Since that time, we have been developing the new regulations and procedures for the program.

Our proposed regulations limit the participation in the 202 program to private nonprofit sponsors of projects that receive contracts for assistance under section 8. The combined section 202 and section 8 program will work this way:

Initially, the central office will make a geographic allocation of the available section 202 funds among the 10 regions.

HUD central office will then issue invitations to private nonprofit sponsors to participate in the program. Eligible sponsors will be required to identify the State in which they intend to construct section 8 assisted housing for the elderly, but need not identify the specific site or location in that State at which they expect to build.

Next, a central office evaluation committee composed of Washington and field staff, will evaluate the responses to the invitations and rank each nonprofit sponsor's qualifications to participate in the section 202 or section 8 program. The selection of sponsors will also entail the designation of the specific States in which those sponsors may utilize their section 202 fund allocations.

Section 202 funds will then be reserved for successful applicants. This fund reservation assures successful applicants of section 202 financing for use in a designated area for a project that is awarded assistance under section 8.

At the same time, section 8 funds sufficient to subsidize rentals in a project of the size contemplated by the section 202 allocation for construction will be set aside for use by the nonprofit sponsor, rather than requiring the sponsor to compete for those funds with non-202 users.

The sponsor then submits a section 8 assistance contract proposal for a specifically identified project and site to the appropriate HUD field office.

The proposal will be processed under the usual rules for section 8 new construction except that there will be no requirement of advertising for sponsor selection. The sponsor's section 8 proposal will, however, be evaluated by the field office and will be subject to section 213 local government review requirements.

Once the section 8 proposal is approved and the sponsor has obtained a commitment for permanent financing, disbursement of the reserved section 202 construction loan funds can commence.

CAREFUL EVALUATION OF NONPROFIT SPONSORS

As I have indicated, we will undertake an evaluation of the capability of nonprofit sponsors requesting section 202 funds reservations. Applicant sponsors will be ranked taking into account such factors as prior experience in sponsoring housing for the elderly and financial capability. Elderly tenants are among the least able to protect themselves from the consequences of a project default or the suspension or curtailment of project services.

Therefore, we will be carefully selecting the most capable nonprofit sponsors to participate in the section 202 program, giving HUD greater assurance not only that loans will be repaid, but also that projects will be completed as planned and operated successfully.

Section 202 funds will be disbursed only to those sponsors who obtain a commitment for permanent financing. The same conventional, as well as FHA-insured, permanent financing should be available for soundly conceived projects for the elderly and handicapped as for other section 8 projects. Indeed, major nonprofit sponsors may be in an advantageous position to assure permanent financing through their own endowment funds or pension funds. We will, nevertheless, be carefully monitoring this program because of concerns raised about the availability of permanent financing in the comments we have received.

In summary, we are convinced that our combined section 202/section 8 program to provide housing for the elderly and handicapped is a viable one. Section 202 funds are committed where they are most needed and where they can do the most good—in the construction phase. The reduced interest charges on the construction loans should result in lower rental costs for the occupants, or an increase in amenities. Since the funds should turn over every 2 years, as opposed to 40, Treasury borrowing will be kept at a modest level. Thus, we believe the revised section 202 program in combination with section 8 offers an attractive means of meeting a crucial social need while still insuring fiscal responsibility.

Thank you, Mr. Chairman. This concludes the prepared portion of my testimony. I would like very much to introduce those who have come with me from the Department before commencing to answer your questions.

At my immediate right is David M. DeWilde, Acting Assistant Secretary, Housing Production and Mortgage Credit, and Acting FHA Commissioner.

On my far right, Mr. Sanford H. Witkowski, Acting Director of Office of Policy Analysis, Housing Production, Mortgage Credit.

To my immediate left, Robert R. Elliott, our General Counsel, and to my far left, Albert J. Kliman, the Department's Budget Officer.

Thank you.

Senator WILLIAMS. Thank you very much, Madam Secretary.

We appreciate your statement even though I, for one, am disappointed in the conclusions that you have come to on section 202

which we, of course, have lived with here for a long, long time. You are directing the program into an area where it impresses me the need is less, where it will be the less effective, and away from the area of greatest need.

I refer, of course, to the limitation for 202 funds to construction loans, with no application of funds to permanent financing.

PERMANENT FINANCING IS MOST NEEDED

Now, we are a sounding board here too, and we have heard, as you have, from the community of interests, and it has been a unanimous voice that we have heard, that the need is for permanent financing for the potential nonprofit sponsors. Their problem is not the first element of construction loans, but permanent financing; this is the financing problem that they face.

We have other members here and I think, because of the limitations of time, I suggest we rotate on a 5-minute basis and let me start with just a few questions that deal with your high hopes of section 8 in meeting the housing needs of the elderly.

Before that I might ask you, however, on the second page of your statement, you have reviewed housing for the elderly in terms of the gross numbers of housing units—44,000 under 202 and a total of 550,000 units for other programs. What period does that cover?

Secretary HILLS. I believe those statistics are based upon the entire history of the program, since the enactment of the U.S. Housing Act of 1937.

Senator WILLIAMS. That is what I concluded, but I was not sure. It falls far short, obviously, of the expressed housing needs of the elderly—housing needs that could only be met by some support—I think the figure, as I indicated in my statement from the White House Conference on Aging, is 120,000 units annually.

Now, coming to the section 8 rental assistance program, you have such high hopes for in meeting the housing needs of the elderly. Over 40 percent of the applications for new section 8 units received to date are for the elderly and handicapped and I would like to just get the qualitative analysis, if we could have that.

First, who are the applicants? Are these nonprofit sponsor applicants, in any way, in any degree?

Mr. DEWILDE. We do not have an analysis at this point which tells us how many of those are nonprofit, Senator. Part of them are public housing agencies because that is existing housing. Part of them are State agencies, and we assume that a portion of the sponsors who have made proposals for new construction are nonprofit sponsors; a portion are profit motivated but I do not have a breakdown of those figures.

Senator WILLIAMS. These, you say, are sponsors of proposals? It is stated here that they are applicants. Is there a difference? I just want to get the maturity of development for the section 8 program that might affect the housing for the elderly.

Mr. DEWILDE. In this case, applicants include sponsors of new construction and substantial rehab projects and public housing agencies which are sponsoring existing housing programs.

Senator WILLIAMS. Is there construction underway now that is designated as section 8 housing projects, or is that the way you designate them?

Mr. DEWILDE. There are some projects for which we are receiving applications which have already started or are about to start, but it is important to remember that we are just beginning the program. So it may be that no projects have actually begun.

RENTAL ASSISTANCE NOW BEING IMPLEMENTED

Secretary HILLS. Mr. Chairman, perhaps it would add some clarity to note that the section 8 rental assistance program which was enacted last August has only recently been finalized and is only now being implemented. It has not been in effect over 60 days, so these are initial impressions based upon the early applications that have been filed under our new rental assistance program.

Senator WILLIAMS. And section 8 was the high-priority program for implementation under last year's Housing Act, am I right? I think Secretary Lynn said this would have first priority in this area.

Secretary HILLS. We certainly have been giving this high priority since I arrived at HUD, some 100 days ago, and we do have high hopes for the success of the rental assistance program. We think that it is the most equitable way to house our lower-income population.

Senator WILLIAMS. I would like to suggest that we submit specific inquiries on the status of applications and projects under section 8. Could you supply that for the record?

Secretary HILLS. We would be very pleased to.

[Subsequent to the hearing, the following information was received by the subcommittee:]

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., October 16, 1975.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Housing for the Elderly, Special Committee on Aging,
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: This is in response to your letter dated September 4, 1975, concerning housing for the elderly under the Section 8 Housing Assistance Payments program.

For Housing Finance and Development Agencies (HFDA), as of September 5, 1975, a total of 394 applications have been received, representing 48,002 units of which 26,670 units are designated for the elderly. Of the 394 applications, 327 represent new construction, or 39,903 units of which 25,088 units are designated for the elderly; 58 applications represent substantial rehabilitation, or 4,427 units of which 1,348 units are designated for the elderly; and 9 applications represent existing housing, or 3,672 units of which 234 units are designated for the elderly.

For non-HFDA activity, as of September 5, 1975, approximately 840 preliminary proposals have been received (799 new construction and 41 substantial rehabilitation). Since a preliminary proposal cannot be opened until the applicable bidding period expires, units are not tracked at this development stage. However, of the 840 preliminary proposals received, 25 have been approved, representing a total of 1,437 units of which 1,392 units are designated for the elderly. All 25 preliminary proposals are for new construction, except one for a substantial rehabilitation proposal that has 52 units, all of which are designated for the elderly.

For non-HFDA existing housing, as of September 5, 1975, approximately 611 applications have been received, representing a total of 107,730 units of which 37,056 units are designated for the elderly.

In developing and implementing the procedures for collecting data for the automated Section 8 Management Information System (MIS), it was decided not to collect information concerning the profit or nonprofit status of "sponsor" or owner. It was determined that it would be more important to ascertain whether a project is privately or publicly owned; this delineation will be available during October 1975. During the planned revision to the Section 8 MIS, scheduled for

February 1976, we will consider collecting data on the profit or nonprofit status of private owners and "sponsors."

Sincerely,

CARLA A. HILLS.

Senator WILLIAMS. Now, it seems to me a long period of gestation for the program: Legislation in August, and yet we are just getting underway in terms of construction, and implementation through construction now.

Secretary HILLS. I also have to say that my advice is that the 202 program was not funded, the appropriations were not made available, until this past December.

Senator WILLIAMS. I am talking about section 8. We have not gotten to section 202 yet. It seems like a long period for section 8 for rental assistance.

Secretary HILLS. I agree. I am very disappointed at the time it has taken but now it is underway and, looking forward instead of backward, I think we can look to great results from this program.

Senator WILLIAMS. We obviously thought highly in terms of the promise of section 8 to the point where we had married it in our proposal with 202, and I will say that, Mrs. Hills, I know you are not the author of record for 202 being used as a construction loan program.

Secretary Lynn first announced this policy sometime during the first of the year, but you have become the adopted parent and I will say that, the longer period of time gives a high degree of credibility to your statements this morning as you are talking about housing, and that it will take 6 months for the regulation of the 6 percent interest with the emergency housing bill.

When you stated it, I believe you.

Secretary HILLS. That is far more complex a procedure than the one we are addressing.

Senator WILLIAMS. I said we would proceed under 5 minutes. Five minutes have expired on this round.

Senator Percy?

STATEMENT BY SENATOR CHARLES H. PERCY

Senator PERCY. Mr. Chairman, Secretary Hills, I want to thank you very much indeed. I have been called over to the markup on my own legislation in Government Operations, so I will have to leave. My questions will be very limited. Those I cannot ask, I ask the Chair to put to you, if they have not already been asked.

I had the great pleasure of working with our chairman on the Banking Committee for years on housing for the elderly, and I developed a deep interest in it.

I am very concerned, as he is, about our program for elderly housing. I am concerned by the statements made by organizations representing potential nonprofit sponsors that the program is useless to them as presently structured. It would be my hope that the 202 program could be administered in such a way as to really meet an increasing need.

CONCERN ABOUT OVERBUILDING

I am concerned that we have overbuilt in some areas. We have a youth cult in this country. We built dormitories, we financed dormi-

ories, on college campuses all over the country, and thousands of rooms are standing empty right now.

Is there any possibility of utilizing these federally financed housing facilities in the campus atmosphere, some of which have meal facilities, in the next few years for elderly housing? Has any thought been given to this?

Secretary HILLS. Senator, I think that that is an innovative idea, and I would like the opportunity to look into it and see whether we could not make use of those facilities.

Senator PERCY. I will ask, Secretary Hills, that my own staff member consult with your people. We have done a little preliminary work on this. We would like very much to see whether any possibility exists in this area.

Secretary HILLS. We appreciate that.

Senator PERCY. Are you aware of the project I have discussed with Assistant Secretary Crawford, who was most cooperative, to utilize multiunit properties in Chicago as housing for the elderly?

Secretary HILLS. I am aware that Assistant Secretary Crawford and you, Senator, have spoken.

Senator PERCY. What we had in mind there was that we have empty buildings, and we have waiting lists of up to 6 years for desirable housing for the elderly in an urban area such as Chicago. Why not match them, because when you are in the seventies or eighties, you just cannot be patient, and wait 5 or 6 years for housing. Of course, if you were 19, 18, or 17, we have it right now; but if you are in your seventies or eighties you have to wait.

We have this vacant property, I have talked about it to the Director of our HUD area office in Chicago, who, again, was most cooperative. I have felt that it was really wrong for us to have that kind of potential when these groups in the neighborhood are so anxious to get housing for the elderly. I think they would help us find, select, and rehabilitate these properties and help then in the maintenance of the properties. Would such an effort, if Mr. Waner and Assistant Secretary Crawford feel it is feasible, have your support?

SECTION 8 ENABLES PERSON TO SELECT OWN HOUSING

Secretary HILLS. Yes, I think that it is a program that might be developed. One of the virtues of section 8 has been to let the person find his own unit of housing and not to mandate that he must use the housing assistance with respect to a particular unit. But I think that there are variations that could have merit.

We are studying this problem in the Department. It is a question of high priority, not only in connection with the elderly but with all housing demands as it could satisfy some existing demand out of our inventory.

Senator PERCY. Now, the other questions I will submit for the record and I very much appreciate them being answered for our hearing file.

I just want to indicate to you my deep interest and my desire to be of assistance and help. I had a long conversation with your predecessor, Governor Romney, in which I tried to convince him of the need for an Assistant Secretary of the Housing for the Elderly. He finally did name a Special Assistant to the Secretary to handle this.

I feel if we have somebody riding herd on this problem, we can solve it as we have solved other problems. I want you to know that many of us think this is a matter of very, very high priority.

We hope that we can bring to the private forces that are available and that we can act as a catalyst to move them. I want to help in any way I possibly can.

Secretary HILLS. I appreciate that.

Senator PERCY. I appreciate very much you being with us this morning. Thank you so much.

[Subsequent to the hearing, the Department of Housing and Urban Development submitted the following answers to the above-referred-to questions from Senator Percy:]

Question. Is there a need for additional housing units for the elderly, or are you satisfied with the present supply?

Answer. Over 40 percent of the section 8 units for which the Department reserved funds through June 30 are for the elderly or handicapped. This high ratio of section 8 applications covering units for the elderly evidences the need for such housing as seen by those closest to the problems of individual communities, and we expect to maintain a high level of assistance to housing for the elderly so as to increase the supply.

Question. In the face of the statements by organizations representing potential non-profit sponsors that the program is useless to them as presently structured, do you feel that the 202 program you propose to administer will help meet this need?

Answer. We are convinced that our combined section 202/section 8 program to provide housing for the elderly and handicapped is a viable one. The section 8 subsidy, with its built-in cost adjustment factor, will help meet the need of the elderly who are susceptible to rising housing cost. Section 202 funds are committed where they are needed most and where they can do the most good—in the construction phase. However, the final section 202 regulations also provide a new mechanism to assist nonprofit sponsors in paying "points" or discounts incurred in obtaining permanent financing—and this will provide additional strength to the program.

Question. Do you actually feel you are complying with congressional intent by proposing to make only construction loans available and by setting up a cumbersome application process involving some four or five different encounters with the HUD bureaucracy?

Answer. Congress intended that the section 202 program be a tool in providing housing for the elderly and handicapped by permitting the Government to make direct loans to certain eligible nonprofit sponsors. Inherent in HUD's responsibility for administering the program is to assure that available program resources are put to the best use. After careful consideration of all aspects of the question of how best to facilitate the provision of housing for the elderly and handicapped, it was determined that this could best be done by the provision of construction financing. Additionally, we have structured a program which avoids cumbersome application procedures and which minimizes excessive HUD bureaucratic encounters.

Question. What evidence does the Department have to support its contention that construction loans are harder to obtain than permanent financing and that nonprofit sponsors of sound projects (whatever that may mean) are in a position to arrange permanent financing on an equal footing with other sponsors?

Answer. A number of nonprofits have indicated to us that the availability of permanent financing is not the major problem facing them. Rather, it is securing the necessary construction financing in order to complete the project. The Department considers that the section 202 program is properly focusing on the greatest need of builders and sponsors when it supplies construction financing. Also, because of the provisions to address the "points" problem, the lack of permanent financing should not be a major problem area. It also should be noted that FHA insurance will be available on the long-term financing.

Question. What developments, short of an amendment to the law, would make you change your mind about the matter of permanent financing?

Answer. As indicated above, we believe that it is feasible to combine section 202 construction financing with permanent financing available, conventionally or with FHA insurance. We have carefully examined the various difficulties claimed to be involved in this approach, particularly the problem of nonprofits paying "points" and meeting other front-end costs. We believe that these problems are overcome in our final regulations.

Question. Is the comment process on proposed regulations a genuine effort? You say you have 45 comments which you are studying and my information is that the overwhelming majority suggest major changes. Yet your testimony today indicates an unwillingness to amend the regulations substantially. Does this not suggest that asking for comments is a relatively meaningless process?

Answer. The Department received 55 responses to the proposed regulations, and all those which objected to limiting the program to construction funding were carefully reviewed to determine just what problems involved in obtaining permanent financing were considered to require permanent loans. This review indicated that the major problem involved the difficulty of nonprofit organizations in paying the points generally associated with FHA-insured mortgages. The Department recognizes this as an appropriate and significant concern and, as indicated, we have altered our regulations accordingly. In addition, a good number of the other suggestions and recommendations made in the 55 comments received have been accepted in the final regulations. These changes are summarized in the preamble to the revised part 885. Finally, we have adopted the suggestion of several comments which recommended that working capital loans or section 106(b) (Housing and Urban Development Act of 1968) seed money be made available to 202 applicants to assist in the payment of certain preconstruction costs.

Senator WILLIAMS. Senator Chiles, do you have a statement?

Senator CHILES. No, Mr. Chairman, I do not. But I would like to ask a few questions, if I may.

Mrs. Hills, I want to join with others in thanking you for your appearance and your statement.

From the time your proposed regulations have been submitted, what have been the comments from the nonprofit sponsors?

Secretary HILLS. The comment period closed on June 16, and we have received a number of comments, I think approximately 55. I do not believe that they have all been evaluated.

Mr. DEWILDE. We have begun evaluating the comments, categorizing them, listing them by the amount of concern in particular areas, and we have a tentative analysis, which will be complete when we have gone through the last comments.

Senator CHILES. Can you give me some idea of what that is?

"POINTS" POSE A PROBLEM IN FINANCING

Mr. DEWILDE. I could summarize some of the comments by saying there was a considerable amount of concern about the long-term financing, and frequently, we received comments that nonprofits will have difficulty in obtaining long-term loans. The basis for this assertion was that "points" associated with FHA insured mortgages would require substantial out-of-pocket expenses. The majority of nonprofit sponsors did not indicate an unavailability of mortgage funds for elderly projects.

There were comments from some who wanted us to seek additional appropriations, and some who commented about clarification relating to who was eligible to move into this sort of housing.

Some wanted an assurance that the section 8 funds would be available for 40 years rather than 20 years. Some of the comments were concerned about the need for working capital.

Those are a few of the comments that have been expressed frequently.

Senator CHILES. Well, generally speaking, there was concern then about the nonavailability of the permanent.

Mr. DEWILDE. Of the permanent?

Senator CHILES. Permanent funding.

Mr. DEWILDE. Yes.

Senator CHILES. Based on your statement, talking about the number of applications, are these applicants for the construction funds, or were these applicants on the basis of thinking that it was the 202 program as it used to be—permanent financing?

Mr. DEWILDE. The application figures are under section 8 of the program.

Senator CHILES. So the applications are based on the section 8 program. At this time, you do not know who will apply, what your applications will be, just for construction loans. So in your statement that there would be plenty of permanent financing available for these 202 loans, or that the people must think that there is plenty of financing available for long-term financing, what is the basis for this conclusion?

Secretary HILLS. We are confident that the people seeking to construct elderly housing, and who are using section 8 in conjunction with the 202 construction financing, will have the same opportunities as other users of section 8.

Other private users of section 8 have conventional or FHA financing available, and we anticipate that for this program, that same avenue of financing will be available.

Our comment to you was that, in looking at all of the users of rental assistance, or rental subsidy, we note that approximately 40 percent are requesting rental subsidy for elderly housing. That was the point made in that part of the statement.

Senator CHILES. Well, you indicate in your statement that the sponsors will be ranked on the basis of prior experience and financial capability. What about the well-established nonprofit, who has never sponsored a housing project before? Most of our successful 202 projects are done by people who have never sponsored one before.

EXPERIENCE AND FINANCIAL CAPACITY ARE WEIGHED

Secretary HILLS. Well, I think that it is like any program, where you have criteria. If your hypothetical sponsor of elderly housing has never sponsored elderly housing but gives evidence of financial capacity, and other evidence suggests that the project will be a success, those factors will be weighed.

All of these are factors that can be considered. So, where a sponsor has a good track record and has good financial capability, obviously that gives us maximum confidence that it will not be building a project which will come back to us in default, which I think is a particularly hard circumstance for this group of our population.

Senator CHILES. In the past, our section 202 loans were made for 50 years. Suppose a nonprofit can obtain an FHA loan for 40 years. It is my understanding that the section 8 program authorizes payment in 5-year segments, up to a maximum of 20 years. Section 202 is to operate with the FHA-insured loans—or are we going to assure assistance for the full lifespan of these loans?

Mr. DEWILDE. We are making FHA-insured mortgages on section 8 projects for 40 years, despite the fact that the rental assistance contract extends for only 20 years, so there will be 40-year financing available, although the subsidy will extend for only 20 years.

The 5-year term that you mentioned, I do not think, poses any kind of problem here, since the renewal is at the option of the sponsor every 5 years. That is more of a technicality—the 5-year limitation is more of a technicality than anything else.

The sponsor has assurance of 20-year subsidy. It is because we are insuring a mortgage at which there will be subsidy for only 20 years. We have to take some care to see to it that the rents do not get too far away from what the market is so that we still are able to rent the project in the event the subsidy contract is not continued.

Senator CHILES. When would you think we would be able to determine whether there is going to be this long-term money available for the section 202 housing? In other words, at what stage will we be able to say this is going to work, that construction loans are sufficient because of the better interest rate you are going to give, and there is going to be the long-term money available, and, therefore, there will be section 202 programs going forward? Or when can we say it has not worked, and without the permanent financing, section 202 will not be viable?

Secretary HILLS. We will monitor this program very carefully. I can say to you unequivocally, I am committed to it.

The regulations have just been published and comments have been received. We will assess those comments and the final regulations will be published in mid-July. I think that would be a fair estimate of the time frame. We will then take applications, and we will assess those applications. So the program should be underway by the end of September. That is a realistic and optimistic estimate. Then I think we should allow some months to see how the program is working. It is a new program. Thus, I would think that the longer period of time in which you can evaluate its performance, the better your analysis will be. But in 4 to 6 months, you certainly would have some idea of the response from the community.

Mr. DEWILDE. Senator, I would add that during that period of time, while the 202 program is being geared up, we will be operating the section 8 program. We will have some experience by the time the 202 program gets off the ground as to any problems which may be experienced by nonprofit sponsors in securing financing.

CONSTRUCTION FINANCING THE "EXTRA ELEMENT" IN 202

Secretary HILLS. Indeed, we will have some actual experience dealing with the elderly, since we anticipate a very large segment of our rental assistance program will go for elderly housing. So the only difference is that 202 adds the extra element—namely, construction financing.

Senator CHILES. Well, would you say that by next January you should be in a position to come to the Congress and say this is working as we projected? I am just trying to get a date.

Secretary HILLS. I think that we will have some experience by January, Senator. However, construction obviously will not be completed on those projects.

Senator CHILES. It will not be completed, but you will be able to say the worst fears of the nonprofit sponsors are not being realized, that they are able to get these permanent loans, and the projects are going forward.

Secretary HILLS. I think so. I think by January we will be able to tell you two main things: First, that our construction program is attractive to the nonprofit sponsors and, second, that our section 8 rental assistance program is being utilized beneficially for the elderly. Although the two programs will not at that point be connected because the construction will not have been completed, we will have some experience from which I think we can make a reasonable assessment.

Senator CHILES. The reason I am trying to get some kind of date frame of reference, I hope that it is successful, because that is all we have going now. I certainly hope it works.

I hear from all the potential nonprofit sponsors that they are very concerned that it is not going to work. But also they are very concerned, as we in the Congress are, that we have gone through a number of different processes—that really these are stalling, or holding, processes. We hear we are going to do a study, and we are going to look at that, and the net result is that there just has not been housing for many of these areas—certainly not for the elderly over a long period of time. So, again, we are hearing from many people—this is another process of holding or stalling—that there just is not going to be any housing units built.

I hope that is not true, but I think we need some frame of reference at some time where we can say as of this time the program is working, or that the program is not going to work and we have to do something else.

Secretary HILLS. I think your frame of reference is a realistic one, and I would say to you that one of the advantages of our rental assistance program is that it can be utilized; it is currently being utilized, with existing housing, and a very large segment of that program is going for our elderly.

In other words, we are not putting all of our eggs in the new construction basket, which takes so long to complete, but about 40 to 50 percent, based on our estimates since the commencement of our section 8 rental assistance program, are actually going for elderly housing. That, after all, is our goal: to provide decent, safe, and sanitary housing for our elderly, whether it be existing homes or new homes.

Senator CHILES. Do you know any of those that have a nonprofit sponsor?

Mr. DEWILDE. Of course, the existing housing program is just that. It uses existing housing that is in the community so, in that case, we do not compile data to determine the nature or type of project ownership.

NONPROFIT SPONSORED HOME CONCEPT SUCCESSFUL

Senator CHILES. I do not mean to dismiss the importance of that. I think it is tremendously important. I am delighted to see that is going forward.

It has been our experience, when we go back is to see the success of the nonprofit-sponsored home, to see the attitudes of the people that are living there. It has been a tremendous success story—not in every instance—but I just got through going through Jacksonville and looking at some homes there, and talking with the people that are living there. It gives them a style of living, which gives them hope, and gives them renewed vigor. To see something that touched that off not be continued and expanded is what gives us tremendous concern, and that is why, time after time, we start talking about the situation of the nonprofit sponsor, that they not be cut out of the program.

Mr. Chairman, I have exceeded my time.

Mr. ELLIOTT. Perhaps it would be helpful to relate this point in answer to your earlier questions.

Before there is an advance of construction funds, there must be a commitment for permanent financing, so you know at that time that there is permanent financing. That means that relative early in the game you know whether that sponsor has been able to obtain permanent financing.

Senator CHILES. So you think you might get this before January.

Mr. ELLIOTT. I think that is an accurate statement.

Senator WILLIAMS. Is there a time in which we will know whether there will be nonprofit sponsors in there with that permanent financing?

Mr. ELLIOTT. You will know before the point of beginning to advance construction funding, and I think the Secretary has already addressed the time frame as to that.

Senator WILLIAMS. Senator Clark.

STATEMENT BY SENATOR DICK CLARK

Senator CLARK. Mr. Chairman, in traveling around my home State, I have had exactly the same experience as Senator Chiles. We have had great success, particularly with senior citizen housing that has been constructed with nonprofit organizations.

My questions are very brief, Mr. Chairman.

In your testimony, you said that nonprofit sponsors for the elderly have more serious problems obtaining construction financing. Can you name some of those nonprofit groups? Who are these nonprofit groups that have had trouble with construction financing?

Mr. DEWILDE. I do not think we can, at this point, identify specific sponsors who have had trouble obtaining permanent financing because no one yet has gotten financing. No one is particularly, at this point, in position to say he has a project and that he has been trying to get permanent financing for it.

Senator CLARK. I did not say "permanent." I said "serious problems obtaining construction financing." Perhaps you could just submit these for the record.

Secretary HILLS. Very well. We will be happy to try to provide the information.

[The Department submitted the following information for the record:]

While none of those who commented on the proposed section 202 program regulations specifically stated that they would be unable to obtain construction financing, a number of organizations which commented did focus on the need for direct Federal construction financing. All who commented on the subject stated their support for the provision of such financing under section 202.

PERMANENT FINANCING THROUGH OWN FUNDS

Senator CLARK. Again, along that same line, you also suggested in your testimony that major nonprofit sponsors may be in an advantageous position to assure permanent financing through their own endowment funds or pension funds. Can you tell us what nonprofits you are referring to here?

Mr. DEWILDE. I think we could supply that for the record.

Senator CLARK. That would be helpful.

[The Department submitted the following information for the record:]

A large source of long-term mortgage investment funds is represented by the pension and endowment resources of major nonprofit organizations. These include religious, charitable, educational, and labor organizations. Many of these have a lengthy record of investments in multifamily housing projects, including a large measure of housing for the elderly. Although generally not permitted to invest in their own projects, these organizations can and do invest in the projects of other nonprofit organizations. It is very likely that this pattern will continue with respect to section 202 projects.

Senator CLARK. I just have one more question. Today, Dr. Aaron Henry, president of the National Center for Black Aged, submitted testimony in which he expressed concern about 202 housing, as well as other housing for the elderly, with respect to making the programs work for minorities. You have not had an opportunity to see this yet because it was just given to the committee today, but I would like to give you a copy of that and ask you to respond to their concerns for the record.

Secretary HILLS. I will be pleased to, Senator.

Senator CLARK. Thank you very much.

Secretary HILLS. Thank you.

[The Department submitted the following information for the record:]

Dr. Aaron Henry, on behalf of the National Center on Black Aged, objected primarily to what was, in their view, HUD's undue emphasis in the section 202 program selection criteria on an applicant's past housing experience and financial performance. This emphasis would, they felt, limit the usefulness of the program and unfairly restrict minority participation.

In response to this and similar comments on the proposed section 202 regulations, HUD has modified the program criteria in the final rule to permit applicants to provide any information they may have regarding their special capacity to serve the needs of lower income elderly or handicapped families, including members of minority groups. While this special capacity need not be limited to housing an applicant's capacity and experience will, for obvious reasons, remain important selection factors for the section 202 program.

Senator WILLIAMS. I am glad that Senator Clark did raise the question in connection with endowment funds and pension plans that might be a source of permanent financing.

Pension plans—did you have in mind their union organization pension programs as a possibility? Unions have been interested in the 202 program, but not in connection with their pension plan.

Mr. DEWILDE. Pension plans in the past have also been of long-term mortgages; they have helped us, and this is the kind of long-term mortgage they could buy.

Senator WILLIAMS. You are going to support this in the record.

Mr. DEWILDE. Yes.

Mr. ELLIOTT. Pension funds have also purchased increasing amounts of Gennie Mae mortgage-backed securities which have been a way for pensions to provide funds to the housing area.

PENSION PLAN HAS POTENTIAL

Senator WILLIAMS. Your problem here is with a union pension fund being used directly in housing. There are legal problems.

I would like to have you, if you could, amplify your statements, in terms of that kind of pension plan as a potential for elderly housing.

Secretary HILLS. We would be glad to supply that for the record, Senator.

Senator WILLIAMS. I would hope there is a real prospect there.

[The Department submitted the following information for the record:]

Retirement-pension funds have become an important source of capital for the financing of housing, including housing for the elderly. In large measure, they have done so by secondary market purchases. Indeed, pension funds are purchasing increasing amounts of Government National Mortgage Association mortgage-backed securities. Approximately 22 percent of GNMA mortgage-backed securities issued to date have been purchased by such funds.

Mr. ELLIOTT. There are of course limits on the type of investments that trustees can make under pension funds. They usually vary from State to State.

Senator WILLIAMS. We are talking about unions; it is a national law now.

Mr. ELLIOTT. There are investment powers that may be governed by the State law.

The other point I would like to mention is that there could be legal problems in funding a project which is limited as to admission to a certain group, but if the nonprofit sponsor has a project generally allowing admission to a wide variety of persons, I do not think you run into that type of selection which would create certain legal problems.

Senator WILLIAMS. Let me just clarify now. Is our record going to be made complete on your best evaluation of permanent financing potential for nonprofit sponsors?

Secretary HILLS. We will be happy to supply that for the record, Mr. Chairman.

[The Department submitted the following answer for the record:]

Our best analysis indicates that, if they are assisted in meeting the problems that might be encountered in paying points and other front-end costs, sponsors of section 202 projects should be fully capable of competing for permanent financing funds, particularly with FHA insurance available.

Senator WILLIAMS. Right now you are concluding that permanent financing is available from the fact that many applicants for section 8 seek housing for the elderly. We then look at section 8 applicants and find a lot of them are public bodies, some of whom have bonding authority and have their own method of financing. They do not have to go to another institution for borrowing since the housing authority has its own bonding authority. Are those section 8 applicants?

Mr. ELLIOTT. That is right.

NONPROFIT FRONTING FOR PRIVATE DEVELOPERS?

Senator WILLIAMS. So we have a problem in finding who you believe are, in fact, those who can get permanent financing. Our testimony has been that nonprofit sponsors just cannot afford it, and they are being reached by entrepreneurs who want to use the nonprofit route to be an applicant on this 202, but the developer will, in fact, be putting up money and managing it.

We have lots of evidence here that the nonprofit will just be fronting, in a sense, for a private developer. Do you have evidence of that? Has that reached you in any of your communications, in response to regulations?

Mr. ELLIOTT. Yes, I think it has.

Senator WILLIAMS. There is a real problem in the sense it is not responding to what we hoped, that the nonprofit sponsor be, in fact, the sponsor—not just the legal-entity sponsor—and manage the housing.

Secretary HILLS. We do have that problem under study.

Senator WILLIAMS. Senator Kennedy, you may proceed. We have a live quorum; do you wish to respond?

Senator KENNEDY. I have not voted, but I do not want to miss my opportunity. Do you want me to go ahead? I will not be too long, but if you would like to go to the floor, I could go on with my questioning.

Senator WILLIAMS. Let us continue then.

STATEMENT BY SENATOR EDWARD M. KENNEDY

Senator KENNEDY. I want to thank you, Mr. Chairman, for having these hearings, and I want to welcome Secretary Hills to the committee. I have written you a number of times, but I will mention the one occasion that I am pleased with, and that was the work that is being done by HUD on the lead paint poisoning.

We had a hearing the other day on lead paint poisoning and the extension of the legislation. You are aware we are expending about \$9 million in that area.

A year ago, the request was \$3½ million, which really cut back the program dramatically. We know that your Department has devoted a certain amount of resources within the Department to this particular program, in compliance with the amendments that Senator Schweiker had put on. That brought the HUD agency into the program because, basically, it is a housing and a health problem. You have some people in your Department that testified before our committee, and they were absolutely superb.

I thought they were imaginative, creative, sensitive, and really made a very, very strong and powerful impression. I wrote you a letter to indicate who those people were, and I thought it was really superb.

Secretary HILLS. I appreciate very much your comments. I have been quite impressed, since I have arrived at HUD, at the great amount of talent, diligence, and sincerity of effort.

FAILURE TO IMPLEMENT 202 PROGRAM

Senator KENNEDY. Now, we get to something else. I apologize for missing your testimony, but I had to be up in Boston last evening and I just came back from the city. I look forward to the exchange and I

apologize for some of these points that I plan to go over, but on March 26 I wrote to your office requesting action on implementing the section 202 program—questioning and criticizing the failure to have a single program, to have expended a single dollar to provide the housing for the elderly, and to have established any regulations. I have not received a response to that letter and I hope to get one from you. I do not know whether we have a copy of that or not. I can give your staff people a copy of the letter at the end of the hearing, but I hoped that you could give me some response.

Secretary HILLS. You certainly will get a response. I am very surprised to hear you have sent a letter that has not been answered. I will check on that.

Senator KENNEDY. I understand you still do not have any regulations on that particular problem. Is that in final form?

Secretary HILLS. The regulations, Senator, were put out on May 15. The comment period closed on June 16, and we are presently assessing the comments received.

After that assessment, and with the benefit of those comments, the final regulations will be put out, and we envisioned that we will be taking applications pursuant to the program in the latter part of the summer.

Senator KENNEDY. Since you have been in the Department, have you given some consideration to the timespan for the development of regulations? I also happen to have been chairman of the Administrative Practices Committee, and we have been looking into a number of different agencies about the promulgation of these various regulations, rulemaking, and other kinds of procedures. I am just wondering whether this 8-month period, since the implementation, was something that we should, as legislators, expect to be sort of a routine period of time before we can get regulations which will be final and permanent before there will be action.

Secretary HILLS. Senator, I think in connection with this program the appropriations were not made available until the last of December. Realistically, we are not addressing an 8-month period. However, I sincerely regret the delay that has taken place, and I, too, am very concerned about regulations. We are required, first of all, to draft regulations for any new program, to put them out for comment for a 30-day period, and then to assess carefully the comments received. Otherwise, there would be no real reason to take them in in the first instance. Depending upon the quantity of comments received, you must add some time to the drafting period, the comment period, the assessment period, and the final drafting period. To finalize regulations so they can be utilized by those affected, you necessarily are addressing some substantial period of time—2 months, 3 months as a minimum. The more complex the program, usually the more comments, the longer the drafting period, and the longer the assimilation period. Nonetheless, I must confess that I find it very distressing that I found at HUD several programs were not implemented which the Department was committed to implement. It is a concern of mine.

Now, we are trying to expedite that. We have some very good people addressing the required regulations, but it is a big problem.

NONCOMPLIANCE WITH THE IMPOUNDMENT CONTROL ACT?

Senator KENNEDY. Well, the point is, I hope that we didn't pass the law for the authorization just because there were not any appropriations. I think it is quite clear that Congress will appropriate some moneys on this, and that we would not have to wait until the appropriations are actually made before you can move ahead in terms of development of the regulations. I think that is true about any of the programs.

Obviously, if we passed a law, we authorize it and we intend to see that it is implemented. I do recognize that this goes back over a period prior to your responsibility.

Can you tell me why there was no compliance with the Impoundment Control Act, which requires notification to the Congress, and a request for deferral of rescission, if appropriated funds were to be withheld?

Secretary HILLS. I am aware of the GAO letter.

Senator KENNEDY. They say that the decision not to apportion the section 202 budget authority until May 9 constitutes impoundment of budget authority, which should have been—but was not—reported to the Congress pursuant to the Impoundment Control Act.

Secretary HILLS. There was no intent to impound. There was a delay in the implementation of the program. It may be a nice legal question whether, when you are slow in drafting your regulations, that constitutes an impoundment. I do not believe that is the law. I can say, apart from that question, that there was absolutely no intent to impound.

Senator KENNEDY. Well, of course, you are aware that HUD requested OMB to apportion all of the \$214 million, and this request was disapproved by OMB because the regulations for the new section had not been developed. Then, on May 9, after the new regulations were developed, OMB apportioned the money which, in turn, would make it available for obligation on the basis of the new regulations when they are published. I understand it was this which led the GAO to conclude that, effectively, there was a violation of the Impoundment Control Act by the failure of reporting.

Secretary HILLS. I believe your facts may be in error on that, Senator. Let me ask our General Counsel if he has any additional facts.

Mr. ELLIOTT. Senator Kennedy, I think you are referring to the letter to you of May 30 from the Comptroller General,¹ and that letter points out in the third paragraph, on May 9, OMB did apportion \$214.5 million.

In the letter of June 3, No. B11539A, the Comptroller General, to the Speaker of the House and President of the Senate, did point out again that the \$214.5 million had been apportioned.

I think that, therefore, the essence of the GAO's position is as the Secretary stated. It is not based upon the decision by the OMB not to apportion.

¹See part 1, "Examination of Proposed Section 202 Housing Regulations," appendix 2, item 6, p. 62.

DENIAL OF IMPOUNDMENT

Senator KENNEDY. You do not consider the action prior to May 9 an impoundment?

Mr. ELLIOTT. We do not; no, we do not. There was no intention to impound.

Senator KENNEDY. Well, the Comptroller General believes there was, and I dare say that those of us who support the program and support the appropriations, let alone the senior citizen who wants the benefits from it, would certainly believe that there is an impoundment.

I guess you could make a legal case about it, but the practical effect of it would certainly lead me to believe, not getting into the question of motivation, that there was the effect of impoundment. GAO believes so as well.

Mr. ELLIOTT. I think the GAO held that, because the regulations would not be in effect by the end of the fiscal year, there was a de facto impoundment.

Senator KENNEDY. Well, you are a skilled attorney, and I do not question the fact that you will make the best case you can, but it does seem to me, and I would think in terms of the interpretation of the GAO, that this, in effect, is what was done. But we should move on. Have you told us how many housing units, under your regulations, you anticipate to be contracted for in fiscal year 1976 under the 202 program? How many do you actually believe will be physically started?

Secretary HILLS. We anticipate, under section 202, approximately 4,000 new starts in fiscal 1976.

Senator KENNEDY. What is the basis for that?

Mr. DEWILDE. It is a rough approximation of how many of the units would actually be underway by the end of the next fiscal year. It is an estimate, because it depends on how fast we put the money in.

Senator KENNEDY. How do you make those assumptions?

Mr. DEWILDE. The basis is that \$215 million would cover about 8,000 units, and we estimate that about half of the sponsors would get their units started by the end of the fiscal year.

Senator KENNEDY. Could you tell us what conversations you have had with the sort of nonprofit sponsors that would lead us to that particular conclusion? Because that runs completely contrary to the testimony we have had, and maybe we are not getting the same information you are getting.

For example, who have you talked with among the nonprofit sponsors? Who have you consulted with?

Secretary HILLS. There have been a large number of sponsors who have come in to discuss this, particularly members of the Ad Hoc Committee on the Elderly.

Senator KENNEDY. Perhaps you could just review a few names with us, in the nonprofit groups, that think that this kind of a program you have developed would lead to the kinds of figures that you have talked about. I would like to, on behalf of the committee, get that information from them as well.

The committee has received letters from a number of groups that dispute your judgment, and I think a number of them have had very significant experience in this area. I would like to know who you have been talking to, that we have not, which leads you to that kind of conclusion.

Secretary HILLS. I think we could give you our list of some of the people that have come in and consulted with us on this program.

Mr. ELLIOTT. Senator Kennedy, I would like to make clear that our list would not necessarily reflect sponsors who are in agreement with our views on this, because, as you know and as the chairman knows, many of the groups have expressed concern about the feasibility of the program. When we submit a list of all of the sponsors we have talked to, we do not mean to tell you that they are all in agreement with us.

VIEWS OF NONPROFITS SOUGHT?

Senator KENNEDY. Let me be more precise. Can you give me the names of any spokesmen for the nonprofits, that you have talked to, that believe you will come up with the number of housing units that you have outlined?

Mr. DEWILDE. I do not think we specifically discussed that figure with any specific spokesman.

Senator KENNEDY. Don't you think it would be appropriate? Certainly a number of the spokesmen have reached entirely different conclusions. Their statement,¹ the ad hoc group itself, talks about a mechanism of permanent financing, and any advantage gained by the construction loan is lost.

The testimony and public statements before this committee is that it runs almost 180° to what your estimates are. We do the best we can—I know the chairman does—to try to present balanced views on this, and I do not know whether we are just a group of people that are looking at it one way, or you have other information that shows the contrary. If you have consulted with nonprofits in this very important area, where they have such a significant role, and have been able from your consultation that this thing will fly the way you have described it. I would like to find out the basis for that conclusion.

If you have not, then I would like to know that as well. Because then we could evaluate, at least, what judgment to give your view to this.

Mr. DEWILDE. I do not want to imply we have not discussed the possible problems of the program with a large number of prospective sponsors. We have discussed the issues thoroughly with large numbers.

Senator KENNEDY. Well, I am not implying that you have not discussed the general provisions with a wide number of sponsors. I am not implying that. I am asking you to provide for me now, a single spokesman for the nonprofit group that believes you will reach the figures that you have outlined here, the names of those sponsors. Have you got any?

Mr. DEWILDE. We have not discussed a specific estimate that we made with the nonprofit sponsors.

Senator KENNEDY. The approach of permanent financing—have you discussed that?

Mr. DEWILDE. We have discussed that.

Mr. ELLIOTT. Senator Kennedy, I think the views of the nonprofit sponsors will depend in part upon the final regulations. We have had some very good comments made as to the permanent financing aspects of the program, and other aspects of it.

¹ See part 1, "Examination of Proposed Section 202 Housing Regulations," p. 16.

We have had a number of questions raised, and I think that, in taking into account those comments and coming up with final regulations, a number of those issues are going to be addressed. So it is somewhat difficult to indicate whether a particular nonprofit sponsor agrees with what we will do. We would expect to have the final regulation in effect next month.

Senator KENNEDY. They certainly understand the approaches. They can make some value judgment based upon the direction you are moving, and I should think making—

SECTION 8 SUBSIDY NEEDED WITH PROGRAM

Mr. ELLIOTT. They are in agreement that the program must be used with a section 8 subsidy, because without that, the necessary subsidy could be lacking.

I do not think that they necessarily are opposed to a program which provides construction financing. I think, of course, that they have focused on how construction financing is going to be combined with permanent financing, and therefore have made comments in that regard. We hope to have a program that is workable in that regard. If it is, then I think they will respond accordingly.

Mr. DEWILDE. Senator, I want to make sure you do not have the impression we have our head in the sand. We realize any multifamily construction program would be a lot better off if it had a straight loan from the Federal Government for the life of the project. That is a nice, clean, simple way to develop multifamily housing, and every developer would benefit greatly from that.

Senator KENNEDY. So would some senior citizens.

Mr. DEWILDE. What we are trying to do is deal with the trade-off where we can roll over that money, and produce a lot more units with the same amount of money in a revolving fund, rather than tie up the money for long-term loans.

Senator KENNEDY. I do not question your logic, but I do question whether that program can work. I do not believe it can. It is a personal judgment—you are professionals in this, and have given a lot of thought to it.

I personally do not believe it will. I do not know whether you have gathered any impression from the testimony of Mr. Martin, Mr. Millman, Mr. Pitman, and Mr. Williams—I have known John Martin for a number of years—who have appeared before these committees, and a number of others as well. He has been enormously helpful to us, and I would just be interested, without commenting in detail, in where the thrust of this testimony is basically mistaken.

Secretary HILLS. I met with Mr. Millman and some of his colleagues for a considerable period of time one day, and felt that it was beneficial. I will tell you that his concern was permanent financing.

Now we have a new program. We believe that by providing construction financing the program can work.

Many people are very pessimistic that we will be able to achieve the 40,000 units that we were estimating under our subsidy program. But, I can tell you that we exceeded that number as of last Friday. Oftentimes where there is no experience with a program, there is pessimism.

I cannot warrant success, but we are cautiously optimistic that this program, the way it is set up, will be able to assist nonprofit

sponsors in this area. We cannot tell you we absolutely know that nonprofit sponsors will benefit in a certain ratio. We have not even assessed their comments on draft regulations. We are at the very threshold of a brandnew program.

Senator KENNEDY. Well, now, if your estimates are shown to be unrealistic, would you consider reversing the decision to limit the construction financing and provide permanent financing instead?

“CAUTIOUSLY OPTIMISTIC” ABOUT PROGRAM

Secretary HILLS. If the program cannot be implemented, of course, we would address the concern.

I would hate to say 3 months prior to taking and acting upon potential applications, that if the program does not work, we will change it to a way that a group predicts that it will work more efficiently. I would hate to put a deterrent on getting behind the program as it is formulated, as a lot of people have spent time to try to assure that it will work. But you know very well that we are committed to trying to make the program work. If it is truly impossible, if our vision is so clouded that its formulation is an impossibility, of course, we will have to reassess it.

As I said to you, I am cautiously optimistic that the program will enable us to construct new housing for our elderly population, and that our rental subsidy will enable them to utilize the new housing in an efficient fashion, in a better way than it has been possible in the past.

Senator KENNEDY. I certainly respect your decision on this. I think it is important to understand that, as you know, the congressional intention quite clearly was to permit these kinds of permanent financing. I think that that is not only in the language of the act, but that is the further recognition in the GAO finding. So you are making a judgment based on how you think you can maximize the resources.

But it is quite clear that the Congress provided the direction for permanent financing and you are making a judgment which, as far as I have seen, not a single nonprofit group feels is going to be successful. I understand your reluctance to comment on the possibility that it might not work. You are reluctant to say if it does not work now, we will go the other route. I am sure, if it is a sufficiently viable program, you will be flooded with applications, but I don't think you will be.

Secretary HILLS. But it is premature to say that. I will be happy to tell you that we will come back 3 months after the program is implemented to address our experience.

Mr. ELLIOTT. Senator Kennedy, we have no question but that there would be legal authority to make permanent financing.

I also mentioned that in the late 1960's it is my understanding that a number of projects were financed as to construction under section 202, and then converted permanently under 236, so your statement that you think it cannot be done surprises me a little bit.

Senator KENNEDY. Well, can you give us any time frame where you think you will have a fair judgment on this?

Mr. ELLIOTT. As to whether it will go forward?

Senator KENNEDY. Yes.

Mr. ELLIOTT. The Secretary earlier indicated the time frame there, and that was to the end of the year or in January. I also mentioned

that you would have a reading by that time by reason of the fact that prior to receiving any construction advances of 202 funds, the sponsor must have a permanent loan takeout commitment, and so you know at that point that the sponsor has been successful in obtaining permanent financing, and that is what we expect to take place in the time frame between now and January.

PROLONGED DELAY

Senator KENNEDY. Well, the problem with waiting until January before making any kind of adjustment is that then you run into the delay, with the changed regulations, and we go a whole year.

Mr. ELLIOTT. We would not wait until January in that sense, Senator. First of all, within the next 30 days or so, we will take all of the comments that came in and make the regulations final.

That is the first opportunity to address this question. The January date is addressed to your question, when we would have a definite reading. Prior to that time, the sponsors would be applying for and seeking permanent financing, and we would have some experience as a result.

Secretary HILLS. Senator Kennedy, I do not believe you were in the room when we were going over the time frame.

Senator KENNEDY. No. I was not.

Secretary HILLS. We have put out the regulations for comment, and that comment period expired on June 16.

We are now assessing the 55 comments that we have received. We will be able to put out final regulations in mid-to-late July. After that, we will be able to take applications. Hence, we are looking to an active program for the end of September, I think, as a realistic matter.

After applicants file their applications, we will not have any experience until the program has been in operation for 2 to 3 months. It is very difficult, on 1 percent of the applications being filed, to have any kind of a realistic experience. That is how we got to January 1.

Senator KENNEDY. We passed a law in August, and it takes effect 15 months later. We don't know if it will fly or not.

I do think that the effect of what you are saying here is that we will be around again for who knows how long before we settle into a program that will take off, and there is an extraordinary kind of need for this program.

I hope that we could try, and I can only say that we should work out some kind of monitoring system, Mr. Chairman, in the process, where we could get a closer kind of view of working with the Secretary—HUD—to watch this closely, and to at least attempt to make some judgments about these matters. And if our judgment is correct—that it will not take off—we will not have to wait until the first of the year for a change or an alteration of policy.

Secretary HILLS. All along the line, including the period during which we are assessing the comments, we will be very carefully monitoring the program. Where changes are indicated, we will not hesitate to alter the regulations within the framework that we have set forth.

Senator KENNEDY. Well, as you know, we will follow this very closely with your people and hope that we are proven wrong.

I do not think we will be proven wrong, and I want you to know of our impatience with the delays in getting this program off the ground. It is a problem where attention is desperately needed, and I think the congressional intent is really quite clear in providing the kind of authority to permit you to reassess the program. Those who are the most knowledgeable and have the greatest kind of practical experience feel it is absolutely essential, and you have taken a very serious responsibility to fly in the face of the judgments of people that are in the Department. I think that is a very serious responsibility, and I want you to understand that we want to work closer with you in monitoring this program.

I know the action you have taken is being challenged with regard to its legality, and I just want you to know we are going to follow it very closely. We will stay after it with you, until we are able to get a program that will make some sense.

I am hopeful that you are right, and I do not want to wait 1 day longer than is necessary to get the program flying. Thank you.

EFFECT OF CONGRESSIONAL CONCERN ON REGULATIONS

Senator WILLIAMS. Finally, Madam Secretary, we have had your period of public comments in response to proposals. Now, we have been talking at this hearing for some time, and we had hoped that the congressional concerns might have an impact on these regulations.

Evidently, there is still 30 days before finalizing regulations for 202; did I understand that correctly?

Secretary HILLS. I think that is a fair estimate. I am terribly reluctant, in view of the record that HUD has had in the past, for making unduly optimistic predictions on times of regulations and numbers of units expected. So if I seem somewhat cautious in my estimates, it is that I want to maintain my credibility during the period that I am at HUD. Let me say July 15—if it should be 1 day later, I will certainly advise you and the committee.

Senator WILLIAMS. I would rather have a little more delay and see some of the public comments and congressional concern incorporated into the final regulations myself.

I just want to tell you that I have expressed my concern that 202 might take a turn in the direction that we had not thought desirable, where the nonprofit sponsor might well be the nominal sponsor, and behind the nominal sponsor would be the developer.

I have a letter here that comes from an organization of sound accomplishment and great reputation, and I would like to read this letter to describe what I hope will not be a classic development under these programs. It says:

Abe Cramer asked me to give you information about the development taking place here in Silver Spring because you had expressed some concern and where perhaps you can offer an opinion.

The National Capital Association of B'nai B'rith Lodges Senior Citizens Housing Corp. is considering the possibility of a contract with the engineering firm for that firm to utilize our name in the building of an apartment project for senior citizens in the Wheaton area. It sounds like a good deal; they know how to build, they know what they're doing, they have the land, et cetera.

However, as a part of the deal, they also want to be contracted as the managers. Their management fee would be \$42,000 per year. This, of course, is a separate fee, and added to this has to be the costs of hiring resident managers, supervisors, maintenance men, et cetera. Outside of the fact that we feel that the local nonprofit

corporation should maintain the responsibility for management, we also feel that the fee is way out of line.

In addition, it would say that so much of what has been the best history of 202 would be lost if this develops into the approach pointed out in this letter.

In fact, because of the difficulty of the nonprofit getting permanent financing, the nonprofit would then lose its own impact into the character of the housing, the decision on amenities, and all of the other things, as Senator Chiles said, that have made this kind of housing that has developed a style that is so beneficial to older people.

I have expressed this as a concern. It is not necessary for you to comment—you do not have to—but those who have responded to the invitation to respond to your proposal have the feeling that this could be a classic development, and we think, here in Congress, that it does not meet the objective of 202 as it used to be, and I think as it can be again.

Secretary HILLS. We are also interested in maintaining the independence of the nonprofit sponsor and we are addressing those concerns. I am interested in your letter.

Senator WILLIAMS. Our interest has been fully expressed here, by all of the members of our committee, so we will hope to have this communication continuing, and good luck. Thank you.

Secretary HILLS. Thank you very much Mr. Chairman.

[Whereupon the subcommittee was adjourned at 10:30 a.m.]

APPENDIX

MATERIAL SUBMITTED BY THE NATIONAL CENTER ON BLACK AGED, INC.

ITEM 1. STATEMENT OF DR. AARON E. HENRY, PRESIDENT, NATIONAL CENTER ON BLACK AGED, INC.

Mr. Chairman and members of the committee, we wish to express our appreciation for your invitation to submit comments on the Housing and Community Development Act of 1974 in general, and section 202 in particular. The National Center on Black Aged, Inc., has been working to implement the Housing and Community Development Act for some time and is a member of the Ad Hoc Coalition on Housing for the Elderly. While we endorse generally the activities and positions of the ad hoc coalition, we do not speak for the coalition. Furthermore, NCBA has a major concern which is not shared by some other members of the coalition and we have additional points of emphasis that are of greater importance to NCBA than some other members of the coalition.

We have already made our concerns known to HUD in our comments on the proposed section 202 regulations and in a memorandum which was sent earlier to Secretary Hills. We have attached copies of our previous comments and will summarize our position briefly here. NCBA is primarily concerned that blacks and other minorities have the opportunity to develop, plan, own, and manage their own housing projects. Some members of the coalition believe that it is sufficient to provide housing units for minorities in housing projects that others own and manage. The reason NCBA believes that minorities should own and manage their housing projects, as explained in detail in our comments of June 13, 1975, is that NCBA wants to assure that minorities benefit economically from all aspects of housing and not just be given an apartment in which to live. Therefore, we have concluded that the proposed 300-unit restriction or some alternative method would be useful in order to prevent other established organizations from monopolizing housing opportunities for minorities.

There is a second concern which would also make it difficult for black aged and other minorities to develop elderly housing programs. This is the extensive requirement contained in the proposed 202 regulations for past housing experience and financial histories. Our comments of June 6, 1975, made clear that dedicated newcomers and community groups should be given the opportunity to develop housing programs for the elderly. The logic of HUD's present draft 202 regulations, however, would allow only established and AAA financial-rated sponsors to be approved for projects. Community groups and others are all but written out of the program. We do not think that this is what Congress intended.

This situation has been further exacerbated by HUD's approach to funding. HUD has failed to obligate the bulk of the funds Congress appropriated under section 202, has unnecessarily restricted section 202 funds to construction loans, and has underfunded section 106(b), which was intended to provide seed money. We believe that Congress intended the act to provide the necessary seed money and other funds to make available to interested sponsors the wherewithal to develop sound housing programs for the elderly. We have continually urged HUD to do what it can to make the program work for minorities. We are still urging it.

Finally, we are especially concerned that the act, as interpreted by HUD regulations, fails to require the necessary social services envisioned by Congress when it passed the act. Our memorandum of May 12, 1975, made clear that the Housing and Community Development Act was intended to do more than just give the elderly a place to live. Rather, the act required that social services and special facilities be made available to the aged. We think it is wasteful to invest public funds in brick and mortar and to overlook the importance of social services for the elderly. To be solely concerned with brick and mortar results in the same type of problem housing that exists throughout our Nation where the elderly are forced to live and die in isolation.

ITEM 2. LETTER AND ENCLOSURE FROM RICHARD N. HAMILTON, EXECUTIVE DIRECTOR, NATIONAL CENTER ON BLACK AGED, TO DAVID M. DeWILDE, ACTING ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT, FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, DATED JUNE 6, 1975

DEAR MR. DeWILDE: The National Center on Black Aged has studied the proposed regulations issued by the Department of Housing and Urban Development to implement section 202 of the Housing Act of 1959, as amended by the Housing and Community Development Act of 1974.

These comments will discuss two problems for aging blacks that are posed by the regulations:

1. The requirements for the necessary social services to be developed by sections 202 and 8 packagers are yet to be made clear; and
2. The regulations, as drafted, may place an unwarranted emphasis upon the past housing experience and financial resources of sponsors that will weaken the 202 program in general and housing for aging blacks in particular.

I. The section 202 regulations fail to provide sufficient guidance on the types of social services required for elderly housing

The National Center on Black Aged has already sent to Secretary Hills a copy of our memo detailing the social services provisions of the Housing and Community Development Act of 1974. Although we are encouraged that the proposed section 202 regulations acknowledge the statutory requirement that social services be provided to tenants of elderly housing projects, we are concerned that the proposed rulemaking fails to make clear just what social services are to be provided and if and how social service plans are to be evaluated.

The references to social services in the proposed rulemaking are needlessly vague. Section 895.1 of the regulations merely restates a portion of the new subsection 202(f) of the revised Housing Act of 1959:

"The housing projects are to be designed to provide an assured range of necessary services for the occupants, which services may include among others health, continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, as well as transportation where necessary to facilitate access to social services, and services designed to encourage and assist occupants to use the services and facilities made available."

The restatement of 202(f) in the regulations, however, omits language in the statute calling for consultation with the Secretary of Health, Education, and Welfare pursuant to title III of the Older Americans Act. Section 895.210 of the regulations states only that the applicant may include any information which "indicates any special capability to develop and operate a successful housing project." And what should be the most important portion of the regulations, section 895.305(b)(1), merely states that the social services requirements of section 209 of the Housing and Community Development Act will be specified later by the field office. Again the proposed regulation omits any of the references to HEW found in the statute.

Nowhere in the proposed 202 rulemaking does HUD indicate with the necessary specificity just what social services are to be provided. The center views this omission with some alarm. Our analysis of the Housing and Community Development Act led us to believe that social service requirements would be worked out in conjunction with the Department of HEW, including the Administration on Aging and the area agencies on aging. Yet the 202 regulations issued to date state that applicants will not be given notice of social service requirements until after they have received notice of a section 202 fund reservation. And although those regulations clearly point out that the HUD field office will evaluate applications, no mention is made of the statutorily required consultation with HEW.

NCBA urges HUD to spell out specific social services guidelines, evaluation procedures, and criteria either in its section 209 regulations or in its final 202 rulemaking so that applicants can adequately prepare for this important phase of the housing package. Further, section 895.310 should be revised to include a subsection (n) requiring applicants to include descriptions of social services plans in their preliminary proposals. Finally, section 895.315 should also be revised so that social services will be one of the items evaluated by the field office in the preliminary proposal.

II. The section 202 regulations may place an undue emphasis upon the past housing experience and financial performance of applicants which will limit the usefulness of the program and unfairly restrict minority participation

Although the proposed rulemaking fails to clarify the scope of social services, the importance of past financial performance and housing experience is made abundantly clear. The draft 202 regulations are replete with references to the past financial records and housing experience of applicants. Section 895.210 requires both detailed financial data for the past 5 years:

"Evidence of sufficient working capital to organize, plan, and complete construction of a project for housing and related facilities and to provide operating reserves during the startup of a project. Such evidence shall include the applicant's balance sheet(s) and statement(s) of income and expenses for each of the past 5 years applicant has operated, such reports to be audited by an independent public accountant, if possible."

and detailed descriptions of housing project experience for the past 10 years:

"Evidence of the capacity to carry through to completion and successful long-term operation a project for housing and related facilities. Such evidence shall include a detailed description of all rental housing projects (including care facilities) owned or operated by the applicant during the past 10 years. This description should include a listing of the locations, numbers, and types of units; types and sources of financing; and indicators of successful project management, such as amenities and services provided, turnover, vacancy, and delinquency rates and rent collection losses."

Section 895.305(c) and 895.315(c) also stress past experience and financial stability.

While there can be no question that a successful elderly housing project will require some expertise in housing and a degree of financial stability, NCBA has reservations about the extent of the requirements in the proposed rulemaking. Past experience in housing and financial success does not necessarily translate into a capacity to provide decent housing for the elderly. Far from it, many inner-city entrepreneurs have had both long years of housing experience and tremendously profitable financial histories, but only at the expense and discomfort of their tenants. Our own experiences with community groups demonstrates that determination and a concern for the elderly are important qualities in the development of elderly housing projects. Moreover, if HUD continues to rely upon those who have been successful in the past, minority organizations and the minority elderly they serve will again be shortchanged.

We urge the Department to revise its regulations so that past financial data and housing experience will be evaluated to prevent slumlords, not minorities, from taking advantage of section 202. As it issues invitations for requests to receive reservations, HUD should make every effort to reach minorities and minority groups and apprise them of the opportunities provided by section 202.

Finally, section 895.315 should also be revised so that social services will be one of the items evaluated by the field office in the preliminary proposal.

Conclusion.—HUD's final 202 regulations should be rewritten so as to comply with the social services requirements of the Housing and Community Development Act and to encourage greater minority representation.

We are enclosing a copy of our memo on social services and a listing of black newspapers to assist HUD. We will be happy to work with the Department as it begins to provide additional housing for black aged.

Respectfully submitted.

RICHARD N. HAMILTON.

{Enclosure}

SOCIAL SERVICES FOR THE AGED TO BE DEVELOPED BY NCBA SPONSORED HOUSING ORGANIZATIONS UNDER THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Issues.—Following discussions with HUD national and regional level officials there has been some uncertainty among our NCBA affiliates developing housing programs as to:

(1) Whether the section 8 and section 202 programs will require social services; and

(2) How such social service programs, if required, will be evaluated and rated during the application stage.

Conclusions. (1) The Housing and Community Development Act of 1974 does require social services for section 8 and section 202 housing programs. (2) Those requirements include consultation with HEW pursuant to the Older Americans

Act. (3) The regulations issued to date by HUD describe social services requirements only vaguely. (4) There is a general lack of understanding on the part of HUD personnel as to the scope and importance of social services in housing programs for the elderly.

Discussion.—The Housing and Community Development Act of 1974, 42 U.S.C. 5301 (1974) (hereinafter referred to as the 1974 act), clearly requires that elderly social services be included in the designing programs under the act. The section with which the center is chiefly concerned, section 8, 42 U.S.C. 1437f, and section 202, 12 U.S.C. 1701g, are found in title II of the 1974 act, but are actually parts of two earlier pieces of housing legislation.

Neither the U.S. Housing Act of 1937, 42 U.S.C. 1437 (1937) (hereinafter referred to as the 1937 act), which contains section 8, nor the Housing Act of 1959, 12 U.S.C. 1701g, amended 1969 (hereinafter referred to as the 1959 act), which contains section 202, initially required the development of comprehensive social services for the aged. The 1974 act, however, revises the 1937 and 1959 acts and, in at least three instances, includes new provisions requiring social services for section 8 and section 202 housing.

SECTION 8

Section 201(a) of the 1975 act, 42 U.S.C. 1430, sets forth the completely rewritten 1937 act. Although the revised section 8 provisions do not themselves require social services, the language of the amended 1937 act as well as the language of the 1974 act clearly require such services. Section 3(4) of the amended 1937 act defines the term "operation" to include, *inter alia*, social services and goes on to indicate which social services are to be developed, and how they are to be provided:

"The term also means the financing of tenant programs and services for families residing in low-income housing projects, particularly where there is maximum feasible participation of the tenants in the development and operation of such tenant programs and services. As used in this paragraph, the term 'tenant programs and services' includes the development and maintenance of tenant organizations which participate in the management of low-income housing projects; the training of tenants to manage and operate such projects and the utilization of their services in project management and operation; counseling on household management, housekeeping, budgeting, money management, child care, and similar matters; advice as to resources for job training and placement, education, welfare, health, and other community services; services which are directly related to meeting tenant needs and providing a wholesome living environment; and referral to appropriate agencies when necessary for the provision of such services. To the maximum extent available and appropriate, existing public and private agencies in the community shall be used for the provision of such services."—42 U.S.C. 1437a.

Section 4(a), 42 U.S.C. 1437b, of the amended 1937 act authorizes the Secretary of Housing and Urban Development to make loans or commitments to make loans to help finance the "development, acquisition, or operation" of low-income housing projects. Finally, section 209 of the 1974 act specifically requires all projects for the elderly pursuant to the 1937 act to include social services:

"The Secretary shall consult with the Secretary of Health, Education, and Welfare to insure that special projects for the elderly or the handicapped authorized pursuant to United States Housing Act of 1937 shall meet acceptable standards of design and shall provide quality services and management consistent with the needs of the occupants. Such projects shall be specifically designed and equipped with such 'related facilities' (as defined in section 202(d)(8) of the Housing Act of 1959) as may be necessary to accommodate the special environmental needs of the intended occupants and shall be in support of and supported by the applicable State plans for comprehensive services pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 or State and area plans pursuant to title III of the Older Americans Act of 1965."—42 U.S.C. 1438.

SECTION 202

Section 210 of the 1974 act, 12 U.S.C. 1701q, amends the section 202 program of the 1959 act. Unlike section 8, the actual language of section 202 contains a new subsection calling for social services:

"In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable

State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health, continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health, Education, and Welfare pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 or pursuant to title III of the Older Americans Act of 1965."—12 U.S.C. 1701q

SOCIAL SERVICES REQUIRED BY SECTIONS 8 AND 202

Despite the differences in the manner in which social services are required for the two sections, the social services components for both section 8 and section 202 are essentially the same. Both call for:

- (1) Consultation by the Secretary with the Secretary of Health, Education, and Welfare;
- (2) "Quality services" (in section 8) or "an assured range of necessary services" (in section 202);
- (3) Necessary "related facilities" as defined in section 202(d)(8) of the 1959 act, to provide social services; and
- (4) Support of State and local plans, including plans approved pursuant to title III of the Older Americans Act of 1965, section 3021, 42 U.S.C. 3002, as amended in 1974 (hereinafter referred to as the Older Americans Act).

THE OLDER AMERICANS ACT OF 1965

The Older Americans Act provides some insight into how elderly social service programs under the 1974 act should be administered in conjunction with the Department of Health, Education, and Welfare.

SECTION 203

Two parts of the Older Americans Act should be considered. Section 203 of the act requires that all—

"Federal agencies proposing to establish programs substantially related to the purposes of this act shall consult with the Administration on Aging prior to the establishment of such services, and Federal agencies administering such programs shall cooperate with the Administration on Aging in carrying out such services."—42 U.S.C. 3013.

Section 203, however, is often ignored and, moreover, it is questionable whether, even if it were strictly adhered to, it would require consultation with the Administration on Aging with respect to every single social service plan for every section 202 or 8 housing project.

TITLE III

But sections 209 and 210 of the 1974 act, 42 U.S.C. 1438, 12 U.S.C. 1701q, directly refer to title III of the Older Americans Act.

Title III of the Older Americans Act establishes and finances an administrative structure at State and area levels for the planning, coordination, and delivery of social services for the elderly through public and private agencies:

"It is the purpose of this title to encourage and assist State and local agencies to concentrate resources in order to develop greater capacity and foster the development of comprehensive and coordinated service systems to serve older persons by entering into new cooperative arrangements with each other and with providers of social services for planning for the provision of, and providing, social services and, where necessary, to reorganize or reassign functions, in order to—

"(1) Secure and maintain maximum independence and dignity in a home environment for older persons capable of self-care with appropriate supportive services; and

"(2) Remove individual and social barriers to economic and personal independence for older persons."—42 U.S.C. 3021.

The types of social services contemplated by title III of the Older Americans Act include:

(A) Health, continuing education, welfare, informational, recreational, homemaker, counseling, or referral services;

(B) Transportation services where necessary to facilitate access to social services;

(C) Services designed to encourage and assist older persons to use the facilities and services available to them;

(D) Services designed to assist older persons to obtain adequate housing;

(E) Services designed to assist older persons in avoiding institutionalization, including preinstitutionalization evaluation and screening, and home health services; or

(F) Any other services;

if such services are necessary for the general welfare of older persons.—42 U.S.C. 3022.

The State and area agencies on aging that are created in title III, 42 U.S.C. 3024(a), provide a method and structure for:

(1) "Determining the need for social services" in each area;

(2) "Evaluating the effectiveness of the use of resources" in meeting the needs of the elderly; and

(3) "Entering into agreements with providers of social services" for the delivery of such services.—42 U.S.C. 3024(c)(1).

The State and area agencies on aging, however, are not intended to themselves provide social services to the elderly. Public and private providers are to be funded whenever feasible "except where, in the judgment of the State agency, provision of such service by the State agency or an area agency on aging is necessary to assure an adequate supply of such service."—42 U.S.C. 3025(a)(8).

Our experience with area agencies on aging shows that they have often neglected minorities and minority providers. Nevertheless, the reference to the requirements of title III of the Older Americans Act in the 1974 act makes it clear that the Congress intended that housing projects for the elderly be reviewed and evaluated before approval by state and area agencies on aging.

REGULATIONS UNDER THE 1974 ACT

To date, HUD has issued final regulations for the section 8 program only. An examination of those regulations, however, should also give a reasonable indication of what we can expect in the way of section 202 regulations when they are issued.

SECTION 8 REGULATIONS

Section 8 regulations have been issued with respect to three types of housing—new construction, substantial rehabilitation, and existing housing.

The regulations for each of the three indicate a gap in the requirement for social services. The final new construction regulations issued in the *Federal Register* on April 29, 1975, on site and neighborhood standards, for instance, specifically require only that—

"The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized, standard housing of similar market rents."—Sections 880-112g, 40 Fed. Reg. 18688 (1975) (Due to a printing error, this regulation appears as sections 800-112(g) in the *Federal Register*.)

No other reference is made to social services in the regulations except for the requirement that all new construction and developers' packets will comply with "HUD requirements pursuant to section 209 of the HUD Act (1974 act) for projects for the elderly or handicapped."—Sections 880.111(b)(4), 880.204(5), 40 Fed. Reg. 18687, 18691 (1975).

The identical references to siting for social services and section 209 are made in the *Federal Register* of April 30, 1975, with respect to substantially rehabilitated housing.—Sections 881.111(b)(4), 881.112(f), 881.204(5), 40 Fed. Reg. 18907, 18911 (1975).

The existing housing regulations in the *Federal Register* of May 5, 1975, however, fail to make even these cursory references to social services.—40 Fed. Reg. 19612 (1975).

SECTION 209 REGULATIONS

Section 209 regulations, which should provide HUD guidelines for elderly social services for section 8 housing projects, have yet to be issued.

DISCUSSIONS WITH HUD STAFF

The understanding on the part of HUD officials of the role of social services in the 1974 act is critical. Short of the courts, HUD will be the final authority on the meaning of the act and the administrative agency which will have the primary responsibility in the evaluation of NCBA affiliates' grant applications.

Our first contact with a HUD official concerning social services was in Mississippi, where our consultant, Tom Karter, was told that a great deal of weight would be given to the social service components of section 202 and section 8 programs in HUD's evaluation of applications.

More recent discussions with HUD officials, however, have been to the contrary. Some HUD officials have indicated that social service programs will be given no weight when grant applications are considered. Others have said that section 8 requires no social services at all. (This is true in only the narrowest sense, since section 209 of the 1974 act requires social services for all elderly projects pursuant to the 1937 act, including section 8.) Still others have said that the only social services contemplated under the 1974 act will be the congregate dining facilities mentioned in section 7 of the 1937 act, 42 U.S.C. 1437e. Apparently there is still some confusion at HUD as to the role of social services in housing programs.

Conclusion.—Although I am confident that HUD's section 209 regulations, when they are finally issued, should make clear the importance of the social services required by statute, I suggest that you bring this problem to the attention of the Department and offer our assistance in the formulation of social services guidelines.

ITEM 3. LETTER FROM AARON E. HENRY, PRESIDENT, AND RICHARD N. HAMILTON, EXECUTIVE DIRECTOR, NATIONAL CENTER ON BLACK AGED; TO DAVID M. DeWILDE, ACTING ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT, FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, DATED JUNE 13, 1975

DEAR MR. DEWILDE: NCBA has already submitted comments to HUD on the draft 202 regulations published in the *Federal Register* on May 15, 1975. We have just met with several other national organizations concerned with the aged and we now wish to comment further on an issue of major importance to black aged.

The present draft regulations restrict individual housing sponsors to 300 units in each of the 10 Federal regions. Although this figure may be an unrealistically low one if it is maintained for the life of the 202 program, we do think that some sort of restriction is in order if it will help prevent other established national groups from foreclosing equitable minority and local participation in the program.

Several national organizations have told us, however, that local groups are not capable of sponsoring their own projects, and that the 300 unit limit is not workable. Further, these national organizations claim that they can meet minority needs themselves. This is not completely accurate. Many of the other established aging and housing organizations have provided minority services. Protestant groups have provided services to blacks; Catholic groups have provided services to blacks; Jewish groups have provided services to blacks; labor groups have provided services to blacks. And this is well and good. But it is about time that black groups themselves be given reasonable opportunity to provide housing services directly to blacks. No minority group—including aging blacks—will be satisfied with just a place to live. They want and deserve ownership and management control of their own housing projects.

There is a fundamental difference between some other national organizations and NCBA pertaining to the full meaning of "housing." The fact that black elderly may be allowed to live in housing projects sponsored and owned by other organizations does not satisfy NCBA. There are numerous economic benefits built into housing projects that may not reach the black community unless black sponsors are in control of the project, such as:

1. Land purchase;
2. Architectural services;
3. Construction contracts; and
4. Jobs in construction and in managing and maintaining projects, at all levels.

Needless to say, many low-income housing projects have been built by public and private agencies to house poor people, including poor blacks. I need hardly point out that blacks have not been allowed to participate equitably in owning, constructing, managing and maintaining such properties. This situation must not be allowed to continue. It makes no sense for elderly blacks to live in a housing unit when they and their family members had little or nothing to say about the site for the project, the architect, the contractor and subcontractors, the construction workers, and the management and maintenance firms. Further, NCBA is concerned about the higher levels of unemployment and poverty facing black elderly, and we are also deeply concerned about the tragically high rates of unemployment—exceeding 40 percent—facing their children and grandchildren in their late teens and early 20's.

The most effective way to insure that all the economic benefits of elderly housing reach the black family is for NCBA and other black organizations to sponsor, own, manage, and maintain our own housing projects for the elderly and not depend on the unreliable or occasional generosity of other national organizations.

We have seen in other important programs how several national organizations can dominate a program and, in effect, exclude others. The manpower program is a case in point. The title IX employment program under the Older Americans Act is now operated by five national contractors. And even though Congress has clearly indicated that others, and especially minority groups, are eligible to participate in the program, the Department of Labor has steadfastly refused even to meet with NCBA and other groups to discuss project proposals. While some blacks are employed and trained by these national contractors, the full needs and the quality of services required by blacks are not being equitably met. Again, and unnecessarily, blacks are forced to rely on the generosity of others and blacks are suffering because of it.

Although the 300-unit restriction may not permit economies of scale, the initial 202 appropriation is a limited one of \$214.5 million. It is estimated that it will permit the construction of only 10,000 units. The proposed limit of 300 units per region would permit a single national group to operate 300 units in each of 10 regions or a total of 3,000 units throughout the country. At an estimated cost of \$20,000 per unit those 3,000 units would expend \$60 million—nearly one-third—of that \$214.5 million appropriation. And if the program were to be further dominated by national organizations, as has been suggested, then additional sponsors would never be recognized when the program is expanded.

We urge HUD to strike a long-range reasonable balance between the 300 unit restriction and the danger to minority and local groups if some of the major national organizations are permitted to dominate the 202 program. We propose that HUD do the following:

1. Obligate all of its fiscal year 1975 appropriations by June 30, 1975. HUD, through a questionable application of the Impoundment Control Act of 1974, now plans to obligate only \$34 million by that date;
2. Seek additional funds, up to the authorized \$800 million, from Congress. The present allocation will support only 10,000 units. Additional funds would both prevent dominance by national organizations and provide more housing for the elderly; and
3. Develop iron-clad procedures to guarantee participation by dedicated newcomers. As a long-range alternative to the 300 unit limit, HUD should give greater weight in evaluating proposals from minority groups that have not yet secured 202 reservations.

The 202 program can be made to work. The black elderly and black organizations have been underrepresented in the past. We are counting on HUD for our fair share now.

Respectfully submitted.

AARON E. HENRY.
RICHARD N. HAMILTON.